

Appeal Decision

Inquiry held 12-15 and 19 November 2024

Site visits made 11 and 20 November 2024

by Tom Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th December 2024

Appeal Ref: APP/U2235/W/24/3346817

Land east of Albion Road and north of Copper Lane, Marden TN12 9EG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended (the '1990 Act') against a refusal to grant outline planning permission.
 - The appeal is made by B. Yond Homes Ltd. against the decision of Maidstone Borough Council ('MBC').
 - The application is ref. 23/504068/OUT.
 - The development proposed is described on the application form as 'outline application with some matters reserved (access only sought) for the removal of 2 former agricultural sheds and erection of up to 117no. dwellings and associated infrastructure including partial footways on Albion Road.'
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Decision

1. The appeal is allowed and planning permission is granted for the removal of 2 former agricultural sheds and the erection of up to 117 dwellings and associated infrastructure, including partial footways on Albion Road, at land east of Albion Road and north of Copper Lane, Marden TN12 9EG, in accordance with the terms of application ref. 23/504068/OUT, subject to the conditions at schedule 1 to this decision (and to the obligations contained within the associated deed of 3 December 2024 under section 106 of the 1990 Act, the 'S106').

Preliminary matters

Evidence

2. The proposal is in outline other than in respect of access. The site location plan, 22037-S101-C, shows the extent of the appeal site and of land within the appellant's ownership (red-edged and blue-edged respectively). The latter encompasses a detached property, the Howlands, and its plot. Details of appearance, landscaping, layout and scale are reserved for future consideration (the 'reserved matters'). I have therefore treated as illustrative any reference to reserved matters in the evidence before me, including those shown on the site layout plan, 22037/SK25K.
3. Curiously given what remains for future assessment, there are verified photomontages associated with the proposal (alongside a critique of them

and a response to that critique). Drawing from an illustrative site layout, photomontages have been produced as an attempt to overcome MBC's objection to the scheme. As with all other details related to reserved matters, I have treated them as illustrative. I note that MBC did not, however, take the opportunity to request further details at application stage in order to enable their determination of the scheme.¹

4. It would not be entirely fair to characterise illustrative material as the appellant's 'best attempt'.² To treat them as such would necessarily set aside that MBC could have requested that specified details had been submitted during their determination of the application. Had MBC done so, the evolution of the scheme may well have differed. Moreover treating any illustrative details as approximating the finished article would unduly constrain the future ability both of the appellant and MBC to propose, amend, and assess reserved matters applications.

Access

5. The third and fourth reason for refusing permission given in MBC's decision notice of 22 December 2023 in respect of application ref. 23/504068/OUT related to the appropriateness of proposed access arrangements (a position stemming from engagement with Kent County Council, 'KCC'). Following MBC's decision notice, the appellant undertook consultation on a revised approach to access between 17 September and 8 October 2024. The current approach is described in the Transport Assessment Addendum ('TAA'), and illustrated in appendices to it.
6. In short, the current approach would involve narrowing a nearby stretch of Albion Road. That would enable the provision of a footway that would run for some 45m along the eastern side of Albion Road towards Russet Grove (Seymour Drive). Russet Grove is a recent development of 124 dwellings constructed pursuant to permission ref. 17/504754/FULL. The proposed footway would be in addition to off-site upgrades to footpath KM281, on the opposite side of Albion Road to the appeal site heading away from it westwards. There would also be pedestrian, cycle and emergency vehicular access to Copper Lane in the location of an existing field gate.
7. The Planning Inspectorate's Procedural Guide to Planning Appeals explains that the appeal process should not be used to evolve a scheme. The current approach to access differs clearly from that proposed previously. That said, the approach now proposed is somewhat analogous to that which could be achieved via a negatively worded or Grampian condition, rather than significantly altering the nature of the scheme overall. Such conditions are commonly imposed on both outline and detailed planning permissions to prohibit development until a specified action has been taken (or agreement under section 278 of the Highways Act 1980 as amended effected).³

¹ With reference to article 5(2) to the Town and Country Planning (Development Management Procedure)(England) Order 2015 as amended.

² The phrase used in closing on behalf of MBC (paragraph 12.f).

³ Planning Practice Guidance reference ID: 21a-009-20140306.

8. Moreover there has been consultation on the approach now proposed, in relation to which numerous responses were received. There was, furthermore, the opportunity at the inquiry to discuss access; the contribution of Councillor Adam being of particular relevance in that context. There is therefore no reason to disregard the current proposed approach to access from my assessment of the scheme (cognisant of the principles in *Wheatcroft*, and in *Holborn Studios*).⁴

Implications for trees

9. The proposal is supported by a 2022 Arboricultural Impact Assessment (the 'AIA'), and there is a subsequent arboricultural proof of evidence. Appendix 4 to the AIA is a Tree Protection Plan ('TPP') that shows which trees would be protected, and which would be removed to facilitate the proposal or are recommended for removal on arboricultural grounds. The TPP has been updated in the light of the current proposed approach to access (plan 22037/SK30B, for brevity the 'TPPR').
10. As in the AIA, 28 trees or tree groups would either be removed or partially removed to facilitate the development, along with the majority of commercial orchard stock. The TPPR shows that an additional cluster of trees towards the site limits by 75 Russet Grove would be removed in relation to access. The TPPR also shows that a short section of what are annotated on the TPP as 'small trees & bushes', by access to the Howlands, would be removed.
11. On 7 November 2024 MBC served Tree Preservation Order (5014/2024/TPO, the 'TPO'). The relationship of the TPO to the TPP is shown on plan 1035-OA-104. With reference to the additional cluster of trees proposed for removal via the TPPR, which are not covered by the TPO, one is dead.⁵ That tree would, in all likelihood, require removal at some point in time irrespective of the outcome of this appeal. The section of 'small trees & bushes' is part of a patchy roadside hedge, the present condition of which likely results from flailing over many years.
12. Plan ITB15098-GA-074 indicates that 2 other trees within the appeal site are also within that cluster (referred to in appendix MCG2 of the arboricultural proof). There is some ambiguity, however, as to whether both would need to be removed, the TPPR potentially reflecting a precautionary approach. Notwithstanding that development within the root protection area of a tree may be detrimental, the trunks of both those trees appear to fall outside the access visibility splay proposed and path of the proposed footway. I will return to the arboricultural implications of the scheme.

Statutory context

13. Various statutory duties are relevant to my determination. The general biodiversity duty applies,⁶ as does that in respect of Sites of Special

⁴ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37], *Holborn Studios Ltd. v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin).

⁵ And ostensibly within the highway at present, as shown on plan ITB15098-GA-074.

⁶ Section 40 of the Natural Environment and Rural Communities Act 2006 as amended.

Scientific Interest ('SSSIs'),⁷ including on account of the proximity of the Marden Meadows SSSI nearby to the east. I have also been mindful of statutory duties in respect of the High Weald Area of Outstanding Natural beauty,⁸ the nearest boundary of which is several miles southwards, and in respect of heritage assets,⁹ there being a number of listed buildings dotted around Marden (with the Conservation Area, the 'MCA', being some distance to the north of the site loosely drawn around West End, Church Green and the High Street). Each proposal must be determined in accordance with the development plan unless material considerations indicate otherwise.¹⁰ There is no dispute that MBC are able to demonstrate in excess of a five year supply of deliverable sites relative to needs.

Policy context

14. The development plan here includes policies of the Local Plan Review 2021-2038 (adopted 20 March 2024, the 'LPR') and of the Marden Neighbourhood Plan (made as part of the development plan on 15 July 2020, the 'MNP'). The LPR superseded MBC's 2017 Plan, other than in respect of certain policies. I have had regard to various other material considerations including the National Planning Policy Framework (published 12 December 2024, the 'NPPF'), notably the Planning Practice Guidance ('PPG').
15. Of particular relevance to the appeal site is LPR allocation LPRSA295, whereby the appeal site is allocated for 'approximately 113 dwellings'. In line with the statutory basis for decision taking, the development plan is effectively the starting point for determining proposals. Although there may very well be other material considerations, the function of an appeal is not to amount to some form of re-examination of extant policies.
16. Rationally there is no dispute between MBC and the appellant (the 'main parties') that 'up to 117', or indeed 117 dwellings itself, would be compliant with that policy numerically. Down to a certain threshold that would also, clearly, be true of a lesser number. Allocation LPRSA295 was informed by an earlier call for sites process and MBC's associated strategic housing land availability assessment ('SHLAA').¹¹

The dispute between the main parties

17. As above, the LPR was adopted on 20 March 2024 following MBC's decision notice in respect of application ref. 23/504068/OUT. By consequence of allocation LPRSA295, MBC rationally withdrew its first reason for having refused permission. That related to what was previously contended to be an inappropriate location for residential development relative to the spatial approach set via the 2017 Plan.
18. By consequence of the adoption of the LPR, MBC also advanced a modified version of their second reason for refusal at appeal. In short, the emphasis

⁷ Section 28(G) of the Wildlife and Countryside Act 1981 as amended.

⁸ Section 85 of the Countryside and Rights of Way Act 2000 as amended.

⁹ Sections 66(1) and 72(1) of the Listed Buildings and Conservation Areas Act 1990 as amended.

¹⁰ Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended.

¹¹ In respect of the SHLAA, the site is covered by two entries, sites 295 and 314. The only difference in extent between those SHLAA entries, allocation LPRSA295, and the appeal site is the incorporation of some of the plot of the Howlands in order to facilitate access.

shifted from landscape-led in broad terms to compliance with the specific 'conditions' to LPRSA295. As 'conditions' has a specific planning meaning, to avoid any confusion in terminology I have hereafter referred to the stipulations of LPRSA295 as 'criteria'. Again that shift of emphasis is logical given that the allocation of the site for approximately 113 dwellings will inevitably fundamentally alter it.

19. That also accounts for the divergent approach taken in the evidence of Marc Tones, associated with the appellant's case, and that of Peter Radmall in relation to MBC's case. The former takes more of a landscape-based approach to evaluating existing circumstances and the likely effects of the proposal. The latter focusses principally on whether compliance with the criteria to policy LPRSA295 has been demonstrated.
20. In terms of effects on local and landscape character, taking account of the statement of common ground between the main parties agreed on 11 November 2024 ('SoCG'), the dispute between them was narrow by the close of the inquiry. By that juncture only compliance with LPRSA295 criteria 4, 9, 10 and 17 remained at issue.
21. There is a particular inter-relationship between the space available to fulfil the criteria to policy LPRSA295 and policy LPRHOU5 concerning residential density. Criterion 17 to policy LPRSA295 relates to open space provision, to which the substance of MBC's sixth reason for refusal relates. There is also an inter-relationship between LPRSA295 criterion 17 and criteria 18, 19 and 20. Policy LPRSP6(E) relates in part to open space at Marden, and policy LPRINF1 to open space more generally across the Borough. Establishing whether or not the proposal could provide for sufficient open space is critically important in determining, bluntly, whether or not the proposal seeks to achieve too much within too limited a site.
22. The third and fourth reasons for refusal in MBC's decision notice related to pedestrian, cycle and vehicular access. In the light of the appellant's revised approach to access summarised above, KCC observed via correspondence of 8 October 2024 that '...whilst it is disappointing that the appellant is unwilling to bring forward a more straight forward solution, the acceptability of the proposed pedestrian access strategy has been demonstrated in technical terms... Having reviewed the TAA the appellant has addressed this authority's previous concerns in a satisfactory manner. Therefore KCC Highways do not consider that either of the highway based reasons for refusal represent sustainable grounds for objection'.
23. During the initial stages of the inquiry MBC were not of the same view as KCC. They maintained an objection to the scheme insofar as the suitability of cycle provision was concerned. As the inquiry progressed, however, that objection too was not pursued. Similarly, including having discussed ecology at the inquiry including with representatives of KCC, Marden Wildlife ('MW') and Kent Wildlife Trust ('KWT'), subject to suitably-worded conditions, MBC no longer maintained the fifth reason for refusal given in their decision notice regarding effects to ecology.

24. MBC charges Community Infrastructure Levy ('CIL'). That serves to fund certain forms of infrastructure, 25% of receipts generated within Marden Parish returning to it by consequence of the MNP. Notwithstanding CIL, MBC's seventh reason for refusal related to the additional pressure that the scheme would place on KCC infrastructure in the absence of a correctly executed deed pursuant to section 106 of the 1990 Act. KCC set out at appeal that, in their view, the S106 'does capture the contributions that KCC requires as a distinct priority...'.
25. Summarising the foregoing, by the close of the inquiry only compliance with certain criteria of policy LPRSA295 and inter-linked development plan policies remained in dispute between the main parties (the residual of MBC's second reason for refusing permission along with their sixth). I am not, however, bound to agree with the position of any party to an appeal.

Approach to proposals in outline

26. In the evidence before me there is some divergence between the main parties as to how I should approach assessing whether or not the scheme would be capable of complying with the development plan in the first instance. That relates to whether 'certainty' of compliance is required now,¹² and secondly how paragraph 1 of policy LPRSA295 should be interpreted (which reads 'the following conditions are considered appropriate to be met before development is permitted').
27. MBC read paragraph 1 of policy LPRSA295 as requiring that the criteria to it must be met at outline stage, an outline permission representing the grant of permission and having the effect of fixing the permissible quantum of development. Peter Rainier reads more flexibility into 'considered appropriate to be met', a somewhat ambiguous phrase.
28. As planning seeks to reconcile different interests in the land, it is inevitable that different policies, and perhaps even different criteria within policies, pull in different directions. There is a broader argument that development may still be capable of complying with the development plan as a whole, or a particular policy to it, even if there is non-compliance in certain respects.
29. The main parties rationally agreed, however, that the criteria to policy LPRSA295 can only sensibly be understood as giving effect to development of approximately 113 dwellings. Were I to read it a different way, for example if compliance with LPRSA295 criteria were such that only a scheme significantly below approximately 113 dwellings could be delivered in a policy-compliant manner, that would effectively call into question the robustness of that allocation. The implications of such a skewed approach would be even more far-reaching; alongside other allocations, the appeal site is considered by MBC to be deliverable within the terms of the NPPF. Questioning that would also logically entail questioning whether MBC can, in actuality, demonstrate an adequate forward supply of deliverable sites.
30. The foregoing line of questioning would also exist were I to accept MBC's position that LPR site allocations were 'landscape blind' (a phrase in the

¹² MBC statement of case, paragraph 5.14.

officer report associated with application ref. 23/504068/OUT).¹³ Notwithstanding the extent of any assessment of, or comparative analysis between, sites informing the LPR, evidently MBC were satisfied at examination that the site could accommodate 113 dwellings or more in landscape terms.¹⁴

31. As above, the site was also assessed as being deliverable through the SHLAA. Moreover the Borough's administrative area covers swathes of protected landscapes. At a strategic or overarching level, it would therefore be untenable to suggest that the landscape implications of development did not inform the approach in the LPR.
32. Moreover, notwithstanding the absence of a parameter plan in this instance, and with reference to relevant caselaw,¹⁵ the main parties agreed at the inquiry that I should initially address 'whether, as a matter of judgement on the evidence before me, the proposal would be capable of being policy compliant?'. I have approached the appeal in that context.

Main issues

33. Against the background above, the main issues are (i) whether sufficient open space provision would be achievable, and (ii) the effect of the scheme on local and landscape character.

Reasons

The site and its context

34. The site is approximately 5.96ha of land bounded by hedgerows to all sides save for a field access via Copper Lane. The principal or main element of the site, somewhat rectangular, is a commercial plum and apple orchard. That element of the site is, in the main, occupied by regular rows of fruit trees running north-south in line with the landform; MBC's officer report indicates a level change of approximately 7 metres across the site from the former to the latter. Orchard trees appeared to be of limited variety, and all are modest having been extensively pollarded or pruned over time.
35. The main element of the site spans between the plot boundaries of properties off Russet Grove to the north and to Copper Lane to the south. To the east is some land ostensibly associated with historic properties thereabouts. To the west is a field, again roughly rectangular, with a short edge to Copper Lane and longer edge to Thorn Road. As Thorn Road progresses northwards it becomes Albion Road (Albion Road in turn leading to the High Street).
36. The site also incorporates a smaller section of land between the orchard and Albion Road, and some of the plot of the Howlands too. That 'minor' element of the site has been essentially left to its own devices for many years. It has become overgrown with ostensibly self-seeded scrub and

¹³ In respect of which MBC brought an appeal elsewhere to my attention, core document J.4, although that does not appear to expressly deal with that matter in the terms put to me at appeal.

¹⁴ Peter Rainier's proof of evidence, paragraphs 9.5 to 9.6.

¹⁵ As referenced in appeal APP/W330/W/22/3304839.

trees. The former agricultural sheds referred to in the description of development above have become subsumed by vegetation over time.

37. As opposed to higher graded land elsewhere in the surrounding area, the site is identified in Natural England mapping as grade 3 in respect of agricultural land classification ('ALC'). Nevertheless the LPR allocates the site for residential development, and therefore inherently envisages the loss of agricultural land here and elsewhere (the LPR marrying up competing interests in the land at a strategic level).
38. By consequence of its allocation also, the Copper Lane boundary of the site forms the theoretical extent of the built form of Marden here. Presently Russet Grove reflects that extent as built. That said, there is a line of what appear to be principally early twentieth century properties extending along the extern side of Thorn Road as far as Copper Lane, with Leyside and Oakleigh beyond.
39. There is a more staunchly rural character to the landscape around and beyond Copper Lane. Nevertheless, the southern fringe of the site is somewhat artificial or human-made. There are various low-lying ponds close to the southern edge of the site. Somewhat characteristic of the historic landscape of the Low Weald, those ponds, in all likelihood, originated as human interventions in the land to provide for a ready supply of water.
40. There were once, moreover, buildings along the southern edge of the site. Those buildings appear to have once comprised Copper Lane Farm (including as illustrated on the 1872 map of the area reproduced in the appellant's Heritage Assessment). Historic village morphology and landscape character are intertwined here, as they are elsewhere. Marden has extended into its formerly rural surroundings incrementally over time. Including on account of the history to the southern edge of the site, there may be some archaeological interest on site.
41. There are no public rights of way through the site, the nearest being footpath KM281. That footpath heads westwards away from Albion Road on the opposite side to the appeal site between the plots of Derwen House and Kon Tiki. It then joins footpath KM283 which rounds Bluebell Drive before the Parsonage Play Area. In turn, by Cornflower Drive, footpath KM283 joins footpath KM280, which thereafter heads northwards by the recreation ground (heading to the High Street in relatively short order).
42. Copper Lane is not itself a public right of way, though leads to rights of way in the wider landscape. Having walked around the area during my site visits, including to various viewpoints in the appellant's Landscape and Visual Impact Appraisal ('LVIA'), and locations to which photomontages relate, there is some visibility of the site from footpath KM278 and when approaching Marden from the south-east along Thorn Road. There are also views of the site from elsewhere, including from private vantage points. Nevertheless on account of the topography and boundary features to the site, it would be fair to describe any wider visibility as relatively limited (and, in the main, in conjunction with other built development).

Open space

Relevant policies

43. That the site is overly cramped relative to what is proposed is at the core of both MBC's second reason for refusal, and their sixth which contends that there would be 'an inadequate amount of natural and semi-natural open space both in quantum and public useability...'. In respect of the latter MBC cited conflict with policy DM19 of the 2017 Plan, the equivalent extant provisions to which are now at LPR policy LPRINF1, and with MNP policy A2. In respect of open space provision criteria 17 to 20 of policy LPRSA295 are also relevant, as are policies LPRSP6(E) and LPRSP13.
44. LPR policy LPRINF1 is titled 'publicly accessible open space and recreation'. Under the sub-heading 'quantity standards' that policy sets out that a certain amount of 5 types or typologies of open space will be sought of new housing or mixed-use development. Those typologies are 'amenity green space', 'provision for children and young people', 'publicly accessible outdoor sports', 'allotments and community gardens' and 'natural/ semi-natural areas of open space'. Examples of each typology are given.
45. On a plain reading of MBC's sixth reason for refusal, their concern relates only to the provision of one LPRINF1 typology ('natural and semi-natural open space'). MBC's objection to the scheme relates, in actuality, to the provision of several typologies. Given MBC's sixth reason for refusal cites conflict with policy LPRINF1, which in turn relates to 'publicly accessible' open space, it might be inferred that MBC's objection relates not to the existence of a certain amount of natural/ semi-natural open space, but to that which is also publicly accessible.
46. Whether LPRINF1 envisages, however, that provision of natural/ semi-natural areas of open space is also publicly accessible is, at best, ambiguous. Examples of that typology include scrub, open and running water, ponds, wastelands and 'closed cemeteries and graveyards'. Those are not features which typically come to mind in terms of publicly accessible open space, unless you are particularly adventurous or macabre. Understanding how policy LPRINF1 operates is also complicated as there is no indication of any overlap between different typologies of open space; 'informal recreation spaces', an example given of the 'amenity green space' typology, may well be, and almost invariably is, semi-natural.
47. Moving through policy LPRINF1, in addition to 'quantity standards', there are also 'quality standards' and 'accessibility standards'. Quantity standards refer to the area expected to be given over to each of the 5 typologies. In respect of all typologies other than natural/ semi-natural areas of open space quantity standards are expressed in relation to 'ha/1,000 population'. In respect of all typologies other than natural/ semi-natural areas of open space and publicly accessible outdoor sports there is also a set 'minimum size of facility (ha)', reflecting that certain types of open space can only rationally be a minimum size (such as sports provision).

48. In terms of 'natural/ semi-natural areas of open space' there is more flexibility under 'quantity standards', in that development should 'make a contribution towards maintaining the borough-wide target of 6.5ha of natural/ semi natural open space per 1,000 head of population'.
49. LPRINF1 'quality standards' are design and management approaches sought in respect of open space provision. Further to my reasoning at paragraph 46 above, quality standard 2.x. is that provision should 'promote biodiversity on-site through design, choice of species and management practices'. That indicates that open spaces should also be designed so as to promote biodiversity net gain ('BNG'). Page 27 of the MNP also points to the multifunctional benefits of open space, including ecologically.
50. LPRINF1 'accessibility standards' apply 'if open space cannot be provided in full on development sites, due to site constraints, housing delivery expectations on allocated sites, or location...'. That part of policy LPRINF1 allows, in those circumstances, for provision of off-site open space (provided that would be within specified distances).
51. Whilst more detailed, policy LPRINF1 is nonetheless aligned in substance with MNP policy A2.¹⁶ MNP policy A2 sets out how 'all major development should provide areas of amenity, recreation, woodland, ponds or other water features and these to be retained for community use.' Understandably the MNP places considerable importance of maintaining, improving and providing additional open space for the local community. It also sets out that Marden is 'fortunate to have a number of public open spaces as well as a variety of sport and recreational amenities'.
52. That is a very different tenor to the LPR. Policy LPRSP6(E), criterion c., seeks to achieve 'improvements to open space which improve overall quality, and address forecast deficits of 0.9 hectares play, 3.3 hectares sports, 0.9 hectares allotment, and 27.4 hectares natural/ semi-natural green space'. It is unclear what those 'forecast deficits' are, how they have been calculated, or how they relate to the Borough-wide target in LPRINF1.
53. Numerically the 27.4ha of natural/ semi-natural green space sought via policy LPRSP6(E), criterion c., would represent a vast increase in population if the 6.5ha per 1,000 population target in policy LPRINF1 were to apply. That is despite LPRSP6(E) referring to only two substantial housing proposals at Marden, the appeal site allocation and 124 dwellings at site H1(46), which has become Russet Grove (or Seymour Drive).
54. LPRSP13 criterion 8.b. is that 'all new development should make a contribution, either on site, or where not feasible, off-site to improve the Borough's open spaces'. That is not inconsistent with the 'accessibility requirements' section of policy LPRINF1, and envisages that in certain circumstances off-site contributions towards open space will be an acceptable approach.

¹⁶ Noting section 38(5) of the Planning and Compulsory Act 2004 as amended.

55. LPRSP13 criterion 8.e., however, goes further. That criterion sets out how 'unless stated in a site allocation, new development should make a contribution towards increasing and improving open space as set out in LPRINF1'. By consequence of policy LPRSP13, criterion 8.e., open space requirements in site allocations appear to have the whip hand in terms of setting expectations for open space provision.
56. Policy LPRSA295, criterion 17, is that there should be 'provision of new open space on site in accordance with policies LPRSP13 and LPRINF1. Provision shall include not less than 1.25 hectares of open space, with typologies in accordance with policy LPRSP13 and LPRINF1. The strategy shall ensure that areas designed to support biodiversity net gain shall not be publicly accessible.'
57. Focussing on the first sentence of LPRSA295 criterion 17, that refers specifically to 'on site' rather than off-site provision. In the second sentence the use of the word 'typologies', rather than the standards as in LPRINF1, indicates that 1.25ha of open space on site is the full quantum expected.
58. But there is some complexity. Policy LPRSA295, criterion 20 is that: 'where it is not feasible, due to site characteristics, to provide an appropriate level of on-site open space in accordance with policy LPRSP13 and LPRINF1, the scheme shall make appropriate financial contributions towards off-site provision targeted at known deficiencies in the area.' Reading the two together, the policy expectation is for not less than 1.25ha of open space on site, but otherwise compliance with the quantity and accessibility standards in LPRINF1 via off site provision.
59. That said, policy LPRSA295 criteria 18 and 19 entail further complexity. Criterion 18 is that 'not less than 0.3 hectares useable green open space shall be provided, incorporating children's play to meet the needs of the development'. That introduces a similar ambiguity as to the potential overlap between the function of different typologies, as in respect of policy LPRINF1. Reflecting on my reasoning in paragraph 46 above it could be read so as to suggest that not less than 0.3ha should be 'useable' as opposed to merely 1.25ha of 'open space' which is not necessarily publicly accessible.
60. In my view the only sensible way of resolving the foregoing ambiguities is to recognise that natural/ semi-natural open space may legitimately serve various overlapping functions and that there is no necessity for each and every element of it to be publicly accessible. My view in that respect is reinforced by the 0.3ha 'useable' requirement for the site being in LPRSA295 beneath criterion 17 which sets the overall quantum expected. Natural/ semi-natural open space may also logically have paths running through them, for example (and may not be entirely 'natural' as accounted for in the phrasing of that typology).
61. There is a caveat to that, however. The final sentence to LPRSA295 criterion 17 is that the strategy to providing open space on site 'shall ensure that areas designed to support biodiversity net gain shall not be publicly accessible'. That is contradictory to LPR policy LPRINF1 quality standard

2.x., supporting paragraph 9.89 to it, and to the recognition in the MNP that open space can entail various benefits. That specificity is not replicated in other LPR site allocations.

62. In my view that stipulation can only be made sense of as a specific reference to the habitat value of the site to particular species that may be adversely affected by it becoming publicly accessible (notably ground nesting birds). As above, the site was promoted via a call for sites in 2019/2020. The appellant's Amended Ecological Assessment ('ECA') sets out that ecological surveys were carried out on site as early as May 2019. The ECA also identifies that public consultation raised concerns regarding implications for turtle doves in particular. Consequently the final sentence of LPRSA295 criterion 17 might fairly be read as seeking to ensure that any approach to open space provision does not unduly affect the habitat value of the site as part of providing for BNG.
63. A similar site-specific logic would be fair to read into LPRSA295 criterion 19. That is that 'the function and quality of any open space shall not be prejudiced by a dual requirement to provide surface water drainage mitigation'. In some instances there may be no need to provide surface water drainage mitigation or attenuation beyond adhering to the relevant provisions of the Building Regulations 2010 as amended. In respect of the appeal site there is, as above, a decline in level from north to south. There are also ponds located towards the boundary of the site with Copper Lane. There is therefore evidently the need to suitably attenuate potential runoff resulting from the topography and alteration of the site's drainage characteristics.
64. LPRSA295 criterion 19 does not, however, go as far as to say that any approach to addressing attenuation must be separate to open space provision. LPRINF1, again within its own terms related to public open space, envisages that provision of natural/ semi-natural areas of open space may include ponds. Criterion 19 can only therefore be made sense of as a means to ensure that any attenuation on site does not unduly interfere with the nature of any open space to be provided.
65. As an attempt to draw the foregoing together, as I read it, the policy expectation is that a minimum of 1.25ha of open space is provided on site (of which not less than 0.3ha should be useable or publicly accessible). That specificity does not negate the overarching need to comply with the quantity, quality and accessibility standards in LPRINF1. Provision above 1.25ha or 1.55ha, the latter if the 0.3ha of publicly accessible space is instead added to the 1.25ha figure, may legitimately be made off site. Undue effects to the existing value of the site to ecology amidst the provision of BNG should be avoided, as should be avoided in respect of the interaction of any surface water drainage measures and open space provision. That is notwithstanding that natural or semi-natural open space may have some overlapping functions.

Open space provision

66. Approaching something of a parameter plan, plan 1035-OA-102 illustrates what proportion of the site would be given over to different functions. That plan includes a public open space assessment table or legend setting out the LPRINF1 quantity requirements for different typologies of open space. The requisite requirements there are calculated pro-rata on the basis of the scheme entailing an increase in population of 281,¹⁷ although '1.25/1.55' hectares is also referenced reflecting LPRSA295 criteria 17 and 18.
67. On a pro-rata basis the legend to the foregoing plan indicates that adherence to LPRINF1 typology quantity requirements would give an overall requirement for 2.64ha of open space provision. Shading different areas of the site different colours reflecting their potential function, Peter Rainier calculates total on-site open space provision to be 2.67ha.
68. Marion Geary responded at the inquiry with MBC's position on the foregoing via core document O.14. That contains both an alternative version to the foregoing plan along with notes and calculations of MBC's position (both in terms of what is required in the first instance and would practically be delivered by virtue of the illustrative layout).
69. As with my reasoning above in respect of photomontages, the level of detail analysis of the scheme is surprising given that it is in outline. Whilst I engage with that detail as it is before me, it bears repeating that details of appearance, landscaping, layout and scale are reserved for future consideration. In that context I now turn to the differing positions of the main parties in respect of the relevant requirement and what would or could be provided, on a typology by typology basis, with reference to LPRINF1.

Amenity green space

70. In respect of 'amenity open space', shaded purple on plan 1035-OA-102 and on core document O.14, the main parties are agreed that the LPRINF1 requirement is 0.2ha and that the illustrative scheme would enable the provision of some 0.29ha on site. There is nothing before me to indicate other than that, in this respect, a policy compliant quantum would be exceeded by 0.9ha.

Provision for children and young people

71. In respect of this typology, pro-rata MBC calculate the LPRINF1 quantity requirement to be 0.07ha. With reference to the pink shaded areas on plan 1035-OA-102 and on core document O.14, MBC say that the illustrative scheme would enable the provision of 0.09ha, the appellant advancing a figure of 0.15ha. MBC's calculation of what the illustrative scheme indicates would be capable of being provided is preferential. The appellant's calculation in that respect is essentially mathematical, taking account of the land area potentially available for such as opposed to its practical useability (to which LPRINF1 quality standard 2.iii relates in particular).

¹⁷ Based on a metric of 2.4 individuals per dwelling, the Council ostensibly using a fractionally (and immaterially) different metric of 2.38.

72. I do not, however, agree with MBC's apparent perspective that the minimum size of space on-site for this typology should be 0.25ha (with reference to the minimum facility size in LPRINF1). Following that logic to its absurd conclusions, each and every residential or mixed-used scheme would be said to generate a need for 0.25ha of provision for children and young people. As above, various provisions of the development plan enable a contribution to be made to off-site provision in the eventuality that on site provision is insufficient.
73. Moreover a requirement of any planning obligation is that it is fairly and reasonable related in scale and kind to the development. To require a scheme which only generates a pro-rata requirement of 0.07ha to provide more than treble that would fail that test. I acknowledge, however, that there would be something of a theoretical deficit of 0.07ha in terms of provision for children and young people on site. That is as 0.25ha rationally cannot be required to be provided on site, which, as above, is the minimum size of facility as in LPRINF1. I will return to that point.

Publicly accessible outdoor sports

74. The main parties are agreed that the pro-rata LPRINF1 requirement in this respect would be 0.45ha. Whilst there would be no on-site provision, MBC explain that 'the appellant has agreed to provide financial contributions towards off site sports facilities in the village'. That is also referred to in paragraph 7.13.ii) of the SoCG (albeit a slightly higher figure of 0.48ha is given there). The S106 contains a contribution to off-site provision, based on a formula relative to the number of dwellings that would be built drawing from the averaged cost of projects in the Borough in that respect. It is common ground between the main parties that off-site provision via that mechanism would be policy compliant.

Allotments and community gardens

75. Again on a pro-rata basis with reference to LPRINF1, MBC indicate that 0.06ha provision should be made for allotments and community gardens. Illustratively, the appellant intends to provide 2 community orchards. Both main parties agree that the area given over to those would amount to 0.25ha. MBC accept that there is a 'precedent' in respect of orchard provision, notwithstanding the minimum size for the relevant typology is given in LPRINF1 as 0.66ha. In my view that is a fair and balanced position; the site falls within the Kent fruit belt where orchards are characteristic, although they are neither as accessible or adaptable as allotments.¹⁸

Natural/ semi-natural areas of open space

76. The pro-rata LPRINF1 standard would generate a requirement on site for approximately 1.8ha of this typology. MBC say, discounting certain peripheral elements of the site shaded light blue on plan 1035-OA-102, along with 'any ecological habitat e.g. for badgers/ turtle doves', that provision of only 1.6ha would be made on site. In that respect, however, I prefer the appellant's calculated provision of 1.98ha. As I have reasoned

¹⁸ Accounted for in 0.25ha being well in excess of the pro-rata requirement of 0.06.

above, some natural/ semi-natural open space may legitimately not be publicly accessible.

77. Based on the illustrative approach, relative to a pro-rata requirement of 1.8ha, the scheme could thereof enable 'over-provision' of some 0.18ha of natural/ semi natural open space. That is notwithstanding that policy LPRSA295, criterion 17, requires that 'not less than 1.25 hectares of open space' is provided on site. By consequence, the unilateral undertaking under section 106 of the 1990 Act of 4 December 2024 advancing a payment of £19,239 towards off-site provision of 0.27ha of natural/ semi-natural open space is not necessary to make the development acceptable.¹⁹

Consideration

78. The foregoing reasoning results, simplistically, in an overall LPRINF1 open space requirement of 2.58-2.77ha (on and off site).²⁰ Discounting the S106 contribution towards 0.45ha of off-site sports provision, that results in an LPRINF1 on-site requirement of 2.13-2.32ha. If 0.09ha on-site provision for children and young people were to be counted, along with 0.25ha in respect of community orchards, the proposal would enable the provision of 3.06ha of open space (on and off site). That would reduce to 2.61ha on-site (deducting 0.45ha of off-site sport provision).
79. Overall open space provision would therefore, illustratively, be comfortably in excess of the requirement viewed through the lens of policy LPRINF1, and substantially more than a figure of either 1.25ha or 1.55ha with reference to LPRSA295 criteria 17 and 18.
80. In terms of any deficit in respect of provision for children and young people, inherent in my reasoning above is that there may in numerical terms be the opportunity to incorporate a larger area in that respect on site (there is a surplus of 0.9ha in respect of amenity green space).²¹ Adding 'oversupply' of natural/ semi-natural space of 0.18ha to that would give a figure of 0.27ha. That exceeds the 0.25ha minimum facility size in respect of provision for children and young people as in LPRINF1.
81. That said, following the logic of LPRINF1, LPRSP13, and LPRSA295 criterion 20, noting the agreed approach between the main parties in respect of outdoor sports provision of 0.45ha and existing provision at Marden reflected via the MNP and described above, it would equally be legitimate to address that provision via off-site contribution. Notwithstanding that the scheme is in outline, a suitable approach in that respect could therefore readily be secured via negatively worded condition.
82. As an addendum to that, I accept that the illustrative scheme shows what might be described as pockets of relatively higher density. Marion Geary's proof states that a cluster of 29 dwellings to the north-east of the site, including flats, and 4 properties proposed close to the site entrance would

¹⁹ And also therefore fails the tests in NPPF paragraph 58 and CIL Regulation 122.

²⁰ 0.2ha in respect of amenity green space, 0.07ha in respect of provision for children and young people, 0.45ha in respect of publicly accessible outdoor sports, 0.06ha in respect of allotments and community gardens (or 0.25ha in respect of community orchards) and 1.8ha in respect of natural/ semi-natural open space.

²¹ Which MBC appear to accept could offset shortfall (closing, paragraph 70).

amount to around 57 to 58 dwellings per hectare ('dph'). The prevailing density around Marden is lower, notwithstanding that those pockets are areas of the site with the closest visual relationship to the existing built form of Marden.

83. Again, however, the scheme is in outline. Following on from my reasoning above, there is some inherent flexibility.²² Residential density, at best an approximation for effects, is also a numerical calculation of the number of dwellings accommodated within a given area; any tightly-drawn area around several properties will inevitably result in a higher apparent density than a broader approach considering those properties within their wider context. There are flats towards the south-eastern corner of Russet Grove which might reflect similar residential densities if considered in isolation. I am not of the view that the illustrative layout indicates that LPRSP15 could not be complied with in respect of ensuring a suitable relationship with the surrounding built environment in that respect.
84. Reinforcing that reasoning, the site as a whole is approximately 5.96ha. Even if 117 dwellings were delivered, mathematically that would represent an overall density of around 20dph. That is a relatively low figure, including set against policy LPRHOU5 criterion 5. That policy sets out that at or adjacent to Rural Service Centres, as Marden is categorised, 'development will be expected to achieve a net density of 30 dwellings per hectare where that is compatible with the individual settings of those sites.' Although each proposal turns on its merits, I note that in absolute terms development at Russet Grove represents a far higher overall density (124 dwellings on a site of 4.20ha amounting to just under 30dph).

Local and landscape character

Relevant policies

85. MBC accepted at the inquiry that the scheme would not conflict with the first element of policy LPRSA295, criterion 4, namely that 'the south part of the site around the existing ponds shall be kept free of development'. That may appear contradictory given that the southern element of the site is proposed to host an attenuation basin,²³ pumping station, associated infrastructure, and access to Copper Lane. Reflecting on my reasoning in paragraph 15 above, however, that is a rational view with which I agree.
86. Setting aside that the southern element of the site is perhaps the most altered element of the site, addressing surface water drainage cannot be achieved other than via measures related to the lowest topographical element of it. Subject to a suitable approach to design and landscaping, there is nothing to indicate that any measures related to drainage attenuation could not be designed so as to appear naturalistic, or could not be effectively occluded from view such as to have barely any appreciable effect in landscape terms.

²² In contrast to the position in *Crystal Property (London) Ltd. v Secretary of State for Communities and Local Government & Anor* [2016] EWCA Civ 1265 (see appeal APP/W3330/W/22/3304839, paragraph 43).

²³ Engineering operations being development pursuant to section 55(1) of the 1990 Act.

87. KCC's Design Guide in respect of movement recommends the provision of a secondary access where more than 50 dwellings are proposed to be served by a single access, on grounds of emergency access. Pedestrian and cyclist access to Copper Lane, via which various public rights of way may be reached, is sensible in terms of achieving some permeability through the site and connectivity with the wider area. To minimise the effect of the scheme relative to current circumstances, it is also sensible to repurpose an existing agricultural access (as shown on plan ITB15098-GA-057 Rev. B).
88. In that context what remains in dispute is whether the scheme would be capable of being delivered in way such that there would be sufficient landscaping and 'structural landscaping' throughout the site, and to the southern edge, in line with LPRSA295 criteria 4, 9 and 10.
89. There was some debate at the inquiry as to the meaning of 'structural landscaping', a term undefined in policy LPRSA295, noting that other LPR allocations instead indicate that landscaping should 'screen' development. Rationally it could be argued that structural landscaping involves some intervention that would meaningfully compete with the built form of development, or that which is substantial or consolidated.
90. I prefer, however, the text in policy LPRSA295 itself. Criteria 4, 9, and 10 all referring to the function of landscaping or structural planting as to 'soften and break up the impact of built development'. In my view a judgement as to whether any effects of landscaping in that respect would be acceptable must be context-specific.

Relevant landscape studies

91. Of 159 national (landscape) character areas, the site falls within the Low Weald ('NCA121'). NCA121, an extensive and roughly horseshoe-shaped tract of land, is introduced as a low lying clay vale. It is further described in Natural England's study, where there is not woodland, as a predominantly gently undulating, intimate and pastoral landscape. Fields are noted as tending to be small and irregular, often assarts, although there is also note of fields given over to fruit growing on the drift deposits of brickearths tending to be larger and more regular.
92. Within the KCC Landscape Assessment of 2004, the site forms part of the Low Weald Fruit Belt (an area extending from Tonbridge to Staplehurst). As with NCA121 that is similarly described as a gently undulating, small scale agricultural landscape. Fruit trees are mentioned, as are also open arable fields and pasture. Within MBC's Landscape Character Assessment of 2012/2013, the site is at the fringe of the Staplehurst Low Weald landscape character area ('LCA44'). LCA44 is described as characterised in part by a sense of history and intimacy, albeit there appears to be more emphasis on the loss of historic hedgerows and to the presence of large scale open fields.

The site in context

93. Broadly, and as a whole, the site is somewhat characteristic of the features described in the studies referenced above of the wider landscapes of which

it is part. It is in the main, a sloping commercial orchard bounded by hedgerows with standards. Inherent in the foregoing studies, however, is that the landscape hereabouts is not homogenous.

94. I saw that much of the land southwards of the site might fairly be described as characterised by larger scale open fields. Walking along footpath KM278 and Thorn Road nearby there is a sense of the landscape opening up. Field boundaries in that direction tend to become less mature than around the periphery of Marden, including as landscape character around the Village has been influenced by domestic planting.
95. The foregoing studies reflect on how the landscape has changed over time. That is particularly apt in relation to the appeal site. Historically, as shown on the Tithe map of 1849 reproduced in the appellant's Heritage Statement, the site comprised several smaller and irregular open fields. Those historic field boundaries have been effaced or diluted over time. The site is only shown as, in part, occupied by trees in mapping of 1968. Commercial stock, and also trees ostensibly planted as a windbreak running laterally across the site, appear relatively young compared to the site's boundaries.
96. The southernmost element of the site, the treatment of which is of some concern to MBC and addressed via LPRSA295 criterion 10, is moreover arguably the least 'natural' element of the site (on account of the presence of ponds and, historically, Copper Lane Farm). Although hypothesis, many historic farms associated with smaller landholdings became unviable in the post-war years and were either left to deteriorate or were demolished.
97. In part, and subsequently of relevance in terms of ecology, the site's current nature results also from benign neglect. It has not been used for an intensive form of agriculture, such as certain types of arable cultivation, for many years. Whilst there is no evidence before me as to the viability of agriculture here, much of the site has been essentially left to its own devices, hedgerows and areas of scrub in particular.
98. Agriculture, which may take various forms,²⁴ is not development in planning terms.²⁵ Notwithstanding protections to ecology and trees in other regimes,²⁶ there appears to be, theoretically, nothing to prevent the grubbing out of orchard trees and otherwise maintaining the site for more intensive agricultural production.
99. Therefore in terms of existing character, the site has something of a transitional character, somewhere between a more intimate historic feel and modern open cultivation (both facets of landscape character hereabouts). Moreover, inherent in the landscape studies above is that the intimacy of landscape character, in other word its structure, derives in large part from hedgerows or the margins of fields themselves.

²⁴ Section 336(1) of the 1990 Act.

²⁵ Ibid. section 55(2)(e).

²⁶ Notably via the Wildlife and Countryside Act 1981 as amended and the TPO.

Likely effects of the scheme

100. It is unnecessary for me to approach landscape implications in detail via the methodology in GLVIA3 and TGN02/21.²⁷ That is as the site is allocated, which will inevitably entail significant change (as a resource, visually, in respect of illumination and relative tranquillity). As addressed above, the process which led to its allocation cannot be summarised as landscape blind. Although the site is understandably accorded some importance locally, it is not designated for its landscape qualities, nor is there anything to indicate that it is out of the ordinary in terms of representing a valued landscape with reference to NPPF paragraph 187.a).
101. Similarly it is by-the-by that the appellant's evidence does not grapple expressly with LPRSA295 conditions 4, 9 and 10 (as MBC particularly reference in respect of the associated Design and Access Statement). The site has a long history of promotion and advancing through a call for sites process through to the SHLAA and incorporation into the LPR, with a commensurate process in respect of assessing constraints, opportunities and scheme design. The lack of express reference to LPRSA295 criteria may simply be a symptom of that process. In any event, arriving at an answer is not necessarily conditional on detailing your working out.
102. Reflecting on MBC's position, the scheme would entail the loss of existing trees as in the TPPR and commercial stock. It may be the case that in the context of a fully worked up scheme some pressure arises in respect of others, MBC noting the implications of an attenuation basin in that context. Based on the illustrative plans and photomontages, viewpoint 4 in particular in respect of the latter, new trees are shown as dotting or punctuating the site as opposed to forming concentrated blocks, belts, or impeding certain views into the site from Copper Lane.
103. The Outline Landscape and Ecological Management Plan, shows that much of the southern area to the site would be planted with wildflower or scrub planting, which will inherently have limited effect in terms of impeding views. Obviously, and still within the overall LPRSA295 envelope of 'approximately 113', fewer dwellings could be delivered. Nevertheless, for 5 principal reasons, I am of the view that sufficient landscaping could be integrated so to enable compliance with LPRSA295 criteria 4, 9 and 10.
104. Firstly, as reflected above, the structure and intimacy of the landscape here results in large part from hedgerows and the boundaries of fields. Much of the existing hedgerows to the site and many boundary trees would be retained, and could readily be augmented or supplemented subject to a suitable approach to landscaping. That also in terms of the arboricultural and amenity value of trees with reference to British Standard 5837:2012, 'Trees in relation to design, demolition and construction'.
105. Tree removal relative to TPO protected trees would be very limited. That would be largely confined to a group near the Howlands and another group

²⁷ The Landscape Institute and Institute of Environmental Management & Assessment's Guidelines for Landscape and Visual Impact Assessment: Third edition (updated November 2021, 'GLVIA3') and the Landscape Institute's Technical guidance note 02/21 'Assessing landscape value outside national designations'.

running laterally across the site (G1 and G3 on plan 1035-OA-104). In the AIA the former is G69 and G70, the latter part of G3. Those appear to have been planted either in connection with the Howlands or as a windbreak to the commercial orchard as above.

106. G69 is, I acknowledge, graded 'B2' in the AIA with reference to BS5837:2012 (i.e. of moderate value). However TPO protected trees which would be retained are also predominantly graded B2 also, none graded higher.²⁸ Correlating my site visit observations with the evidence before me, those categorisations appear fair. Although not in linear terms, the scheme moreover aims towards net gains of 57.05% in terms of hedgerow habitat units despite any losses.
107. Secondly, as shown on the illustrative plans, landscaping or tree planting would give a structure to the site over time. Dwellings would be arranged in clusters. Trees would be dotted around them. Irrespective of whether the trees or dwellings come first, trees would over time visually compete, if that is the right term, with the dwellings proposed (recognising that scale is also reserved). Such an arrangement would represent a looser and less consolidated grain than at Russet Grove. The scheme at Russet Grove has what might fairly be characterised as a hard, linear, southern edge.
108. Thirdly the site is not a significant part of wider vistas, notwithstanding that there is some more distant visibility. Furthermore, where there is visibility of the site, that is almost invariably in conjunction with other residential development including at Russet Grove, properties to the east of Thorn Road and Albion Road and the Howlands. There is therefore a fair degree of susceptibility for the site to accommodate development without that appearing unexpected or obtrusive (consistent with my reasoning in respect of the relatively low level of residential development proposed).
109. Fourth, historic hedgerows here have been lost, and there is no surety that the existing nature of the site would remain as it is. Whilst historic development at the southern side of the site has largely blended in with the landscape, as referenced above the site reflects something of a transition in landscape qualities between intimacy and openness. Maintaining some openness by virtue of the separation of residential development to the south, along with intimacy on site by virtue of clusters of dwellings with planting around them, would be an appropriate landscape response.
110. Fifth, and lastly, I have reasoned above that there would be sufficient open space on site. The plans before me in respect of landscaping are illustrative, and therefore inevitably do no account for the level of detail that it would be legitimate to assess in the future. In respect of planting and trees that includes in respect of species, degrees of maturity, numbers and locations. In summary there is nothing substantive before me to indicate that the scheme could not be delivered in such a way so as to ensure a contextually appropriate approach to landscaping and structural landscaping (that would adequately soften and break up the impact of built development).

²⁸ Including AIA trees T6, T7, T22, T23, T24, T25, T29, T35, T42 and T84.

Other matters

111. I have taken careful account of all representations in respect of the proposal, whether in relation to the application, appellant's consultation on a revised approach to access, or at appeal. Those representations reflect various concerns in addition to matters addressed via the main issues above, including the potential implications of the scheme as regards access, ecology, flooding, drainage and sewerage, living conditions, heritage and implications for infrastructure.

Access

112. Consistent with my reasoning in respect of the intertwined history to the Village and its landscape context, neither Albion Road, Copper Lane, nor other highways in the surrounding area were designed to accommodate the level of usage they currently experience (or to modern standards in terms of design). At present Albion Road is relatively narrow, third parties indicating that it may be 4.6m wide on occasion. Being in the main hedge or tree-lined, there is limited informal space available either side of the carriageway near the proposed access to take refuge from oncoming vehicles.
113. There are no demarcated or signed parking restrictions at Albion Road near the appeal site, such that cars may be parked on street. Whilst that appears uncommon,²⁹ I nevertheless saw one vehicle parked to the east of Albion Road close to the access the Howlands during my second site visit. Reflecting the foregoing characteristics, and leading conveniently to the High Street, Albion Road presently acts as something of a shared space. I saw a number of individuals walking along it during my second site visit.
114. More broadly than in respect of Albion Road, many local residents express concern regarding the traffic implications of the scheme in terms of highway safety and efficiency. That is particularly in respect of junctions in the surrounding area and when there are intermittent peak demands on the highway network. There is also some concern expressed regarding the representativeness of the evidence in respect of traffic generation advanced by the appellant, noting that initially MBC objected to the scheme on the basis of the absence of a Stage 1 Road Safety Audit ('RSA').
115. The current approach to access is described above. In my view it would be fair to characterise it as having several compromises. Firstly, footpath KM281 is narrow, some 1.2m wide at its narrowest, and is part of a somewhat circuitous route towards the centre of the Village. That is the case in respect of the width of the proposed footway, which would be 1.5m wide in the main, but for elements narrowing to 1.2m. As on plan ITB15098-GA-060 Rev: E, for a section by Russet Grove double height kerbs will be required to avoid excessive encroachment into the root protection area of trees. That may lead to some hesitancy in terms of use.
116. The scheme would necessitate the narrowing of the carriageway to 3.5m for a stretch between the site and Russet Grove. White lines are proposed

²⁹ Noting core document K.6.

either side to reduce the apparent width available to 2.75m. That constriction will, inevitably, result in some delays to road users. Moreover, one representor in particular expressed concern that certain agricultural equipment operated by P.J. Burke off Copper Lane close to Howland Road is 3.65m in width. Taking that at face value, Albion Road here could no longer be used by such vehicles.

117. With reference to the Department for Transport's 2021 publication 'Inclusive Mobility', and to Active Travel England's 2023 standing advice, the scheme would be suboptimal. Paragraph 3.2 of the former recommends that footways and footpaths should be a 'minimum width of 2000mm under normal circumstances'. Paragraph 2.11 of the latter recommends that lane widths of between 3.2 and 3.9m should not be proposed, given that would entail the potential for conflict between cyclists and motorists (in turn referring to the guidance in the Department's Local Transport Note 1/20).
118. NPPF paragraph 115.b) seeks to ensure 'safe and suitable access to the site' for all users. With reference to the foregoing, many local residents express concern that the scheme would be inadequate in terms of inclusivity, for example in respect of those who are differently abled. I am mindful of the public sector equality duty.³⁰
119. Nevertheless, as described above, Albion Road is relatively narrow such that on occasion two vehicles cannot pass at a time presently. That is the case when Albion Road hereabouts is used by those driving larger vehicles, and when parked vehicles reduce the available space to motorists. Some degree of additional delay along Albion Road would not, therefore, be wholly uncharacteristic. I also note that there are also other carriageways in the surrounding area of greater width, for example Howland Road leading to the centre of the Village, which could be taken by larger vehicles.
120. There is no demarcated parking provision in this location. Most, if not all, properties off Albion Road and Thorn Road have off-street parking. I am not therefore of the view that any loss of the ability to park on street would be unduly averse. In respect of representativeness, I note that the TAA considers traffic data from 2024, and projects that forward based on the implications of the scheme in 2029. Whilst there will be peaks and troughs in traffic movement, in terms of trip generation and highway demands there is nothing to indicate that the scheme would have an unacceptable effect relative to baseline circumstances (including in respect of modelled junctions).
121. Notwithstanding my reasoning in paragraph 115 above, footpath KM281 is nevertheless part of a relatively convenient route to various Village facilities, particularly recreation. At present it is either unsurfaced, or that surfacing which has previously been laid has deteriorated. Relative to its current state, appropriate surfacing would be beneficial, notably to those individuals with particular mobility requirements (provision for which is made in the S106). The proposed footway along Albion Road would

³⁰ Section 149 of the Equalities Act 2010 as amended.

similarly be of benefit in that respect compared to circumstances presently as described at paragraph 112 of this decision.

122. Whilst not optimum in terms of geometry or arrangement, section 4.2 of Inclusive Mobility nevertheless recognises that there may be occasion where minimum footway widths may be relatively narrow. KCC's Design Guide similarly refers to a minimum recommended footway width of 1.2m. White lines would narrow the apparent width of the carriageway, such that cyclists would be guided towards adopting the primary position (i.e. in the centre of the carriageway as opposed to around 0.5m in from the nearside kerb). That approach, over a short stretch here, would not be incompatible with the guidance in section 7.2 of Local Transport Note 1/20.
123. In respect of the adequacy of site access, the scheme would provide for suitable visibility splays with reference to the approach in the Government's 2007 Manual for Streets (as illustrated on plans ITB15098-GA-074 and ITB15098-GA-063 Rev. D). That is notwithstanding any implications for trees or hedges (addressed elsewhere in this decision). Whilst I accept that the TAA may not reflect any near misses, there are nevertheless no personal injury accidents recorded in the vicinity of the appeal site over the most recent five year period (1 April 2019 to 31 March 2024).
124. In short, there is no indication that the scheme would have an unacceptable effect on highway safety. Moreover, as above, the scheme has been subject to an RSA, and KCC have no objection to the scheme in respect of highways implications.³¹ Consequently, whilst there are compromises, those are not such that they are critical to the scheme.

Ecology

125. MBC ultimately withdrew their opposition to the scheme on ecological grounds, subject to conditions, their fifth reason for refusing permission having cited various alleged inadequacies, uncertainties or potential adverse implications of the scheme in that respect. Particular reference was made in that reason to implications in relation to badgers, great crested newts, birds, and to an alleged failure to take account of information held by Kent Wildlife Trust ('KWT') and Marden Wildlife ('MW'). Conflict was cited with Local Plan 2017 policy DM3, the equivalent extant provisions now at LPRSA14(A), and with MNP policy NE4 'biodiversity and habitats'.
126. In the course of the inquiry my attention was particularly drawn to Government Circular 06/05: Biodiversity and Geological Conservation. Paragraph 99 of that Circular begins: 'it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.' Much of the discussion at the inquiry focussed not necessarily on the presence of protected species, but on the robustness of the evidence in that regard. Emma England, Ray Morris and Nicholas Trower represented KCC, MW and KWT respectively at the inquiry session on ecology (each, inevitably, had differing perspectives).

³¹ Core documents K.14 and K.21.

127. Reflecting on the history to the scheme, as set out in the ECA,³² the site has been subject to various ecological surveys, including in respect of specific species, some as early as May 2019. As a broad summary, the principal ecological value of the site, in respect of both flora and fauna, lies at and around its margins, hedgerows, ponds and untended areas. That is as opposed to the mainstay of the site.
128. The majority of the site has over the years been maintained and managed, to greater or lesser degree, as a commercial orchard. That has been undertaken, I understand, without specific restriction in terms of management or the use of herbicides or pesticides (which may otherwise apply, for example had the site been organically certified). Although at face value quizzical, the ecological value of the commercial orchard is therefore limited; the use of pesticides and herbicides are inherently averse to ecological diversity.
129. As above, the ecological value of the site might fairly be said to result from both quirks of history and benign neglect. The site has not recently been used for an intensive form of agriculture. In respect of flora, as noted in the ECA, the site was not found to contain particularly uncommon plant species (a finding consistent with records hereabouts held by the Kent and Medway Biological Records Centre). Although there would be some tree loss, as above that would be minor relative to retained arboricultural value.
130. In respect of additional trees proposed to be removed as in the TPPR, the Ecology Assessment reviewed this location. Consistent with their proximity to Albion Road, the Howlands and Russet Grove, there is no indication that those features are particularly ecologically valuable. In any event there is considerable headroom in proposed BNG of 25.91%, beyond 20% as in policy LPRSP14(A). As such, even if the removal of all those additional features on the TPPR compared to the TPP is necessary, there would be appropriate opportunity to manage that sensitively and to provide for BNG.
131. As above the site is near to the Marden Meadows SSSI, in contrast to the appeal site one of the best remaining examples of unimproved hay meadows in Kent. There is no indication of any overlap in noteworthy flora here and there, or of a particular functional habitat affinity or connectivity with the SSSI. Whilst there is a potential hydrological pathway between the two, there is no countervailing evidence before me to Natural England's assessment that the scheme would not entail adverse effects to the SSSI.³³ Given the distance, and nature of the intervening land, between the site and the Wanshurst Green Local Wildlife Site, and also between the site and the North Downs Woodlands Special Area of Conservation, there is no tangible potential for adverse effects in those regards.

³² Stated to have been prepared in line with the Chartered Institute of Ecology and Environmental Management's Guidelines for Ecological Impact Assessment (2018), with phase 1 surveys undertaken in line with the Joint Nature Conservation Committee's Handbook for Phase 1 Habitat Surveys (2010) alongside species-specific surveys being conducted with reference to best practice guidelines referenced at ECA paragraph 2.4.2.

³³ As in their correspondence of 16 October 2023, to which appellant's Drainage technical memorandum and surface water drainage strategy relate in part.

132. The site evidently has some value to fauna. The ECA and associated surveys found some evidence of the use of the site by wildlife including bats, badgers, reptiles, invertebrates and birds, noting that waterbodies in the surrounding area are of some habitat value to great crested newts. Local residents have also mentioned sightings of mice, owls, kestrels, kingfishers, and voles. The site will undoubtedly be used by other animals from time to time. That said there is a differential value of the site to different animals.
133. The ECA found that the site was of limited overall value in respect of bats. I have reasoned above that much of the existing arboricultural value of the site would be preserved as proposed via the illustrative plans (and existing hedgerows could be gapped up or augmented). Although not in linear terms, the scheme aims towards net gains of 57.05% in terms of hedgerow habitat units despite any losses. Potential disturbance to bats could be further minimised by adherence to condition related to illumination and provision of bat boxes.
134. As there is some evidence of use of part of the site by badgers, a Natural England license will be required in that respect, with mitigation likely entailing provision of an artificial sett and sensitive working measures during construction. There is nothing to indicate that the foregoing licence would be unlikely to be granted, nor that there would be inadequate space on site to accommodate any necessary measures in practice.
135. Again the principal value of the site to reptiles relates to its margins and ponds as opposed to the orchard (where the land around commercial stock has been actively managed). Although the ECA notes that the site proves suboptimal habitat for newts, there are nonetheless indications that ponds in the wider area host newts. Again, however, on account of the level of BNG proposed, and subject to sensitively managing ecology before and during construction, unacceptable adverse effects in that respect would be avoidable. As in respect of badgers, there is no indication that any site specific license in respect of great crested newts is unlikely to be granted (if anything the evidence before me points to a good likelihood in both respects).
136. Whilst KCC took issue with certain calculations that went into the appellant's BNG calculation, they are nevertheless of the view, holistically, that ecological improvement of the site is achievable. Given the existing nature of the site, and notwithstanding that statutory BNG does not apply to this scheme, there is nothing before me to suggest otherwise. As above, there are protections for ecology in other regimes too.
137. The principal argumentation in respect of ecology relates, however, to the implications of the scheme to ground-nesting birds, to turtle doves chief amongst them. In respect of the evidence before me, the ECA is dated August 2023. Emma England's proof is of 12 November 2024, following a holding objection from Kent Wildlife Trust. There is various correspondence from Ray Morris on behalf of MW referenced in Emma England's proof, which also takes account of the appellant's 'Technical Note: Ecology Response' produced by Ecology Solutions on behalf of the appellant of

March 2024' (core document F.6). There is further correspondence from Daniel Wood of 7 November 2024 explaining the approach taking to bird surveys (core document O.20).

138. The Technical Note goes further than the mitigation and enhancement proposed via the ECA (including as shown on the plan entitled 'Additional Enhancement Measures Rev: B' appended to it). In short, amongst other details, the additional measures proposed include some 0.2ha of additional mixed scrub to the south-east of the site. That would be separated from the area of the site proposed for residential development by cat proof fencing, to reduce the potential for predation.
139. Intended provision in that respect relates to turtle doves in particular, though such habitat may be used by other birds and animals (the ECA recording use of the site by yellowhammers amongst other bird species).³⁴ The Technical Note also signalled the appellant's openness to 'the provision of a reasonable financial contribution to KWT and Marden Wildlife Groups 2024 Turtle Dove research programme and off-site nesting habitat'.
140. Nonetheless paragraph 1.9 of Emma England's proof records that, despite the foregoing additional measures, at the time it was produced there remained some disagreement in terms of the potential effects of the scheme. The domestic population of turtle doves has experienced a precipitous decline in recent years. They are also 'cryptic', or difficult to detect, for various reasons (including on account of their sensitivity to perceived threats).
141. I understand that in 2021 there were only some 2,092 breeding pairs nationally, around a third of which are to be found in Kent. Ray Morris estimated that around 20 to 30 turtle doves rely on habitat around Marden (some 3-4% of the Kentish population). The foregoing places some importance on ensuring appropriate measures are taken, given that even ostensibly small losses of habitat can aggregate to a significant effect in the context of a struggling population.
142. That said, even at its highest, the value of the site at present to turtle doves appears limited. Daniel Wood's proof sets out that only in the bird survey of 5 June 2024 was a single turtle dove recorded at the eastern boundary of the site, a bird which subsequently moved off-site. It appears common ground between the appellant and KCC that the site, generally, provides poor foraging habitat for turtle doves.
143. Data held by MW in respect of GPS-tagged turtle doves is suggestive only of a slightly higher value. That shows use of the site on occasion by turtle doves, or a single bird recorded on several occasions.³⁵ I acknowledge that the scheme, by virtue of residential development itself but also domestic activity and the potential for increased predation, has the potential to adversely affect the existing value of the site to turtle doves.

³⁴ Local representations having referred to sightings of other birds including fieldfares, redwings, linnets and nightingales.

³⁵ On 27 and 29 May and 13 June 2024.

144. Nevertheless the likely implications of the scheme should not, in my view, be overstated for 4 principal reasons. Firstly, tending to the commercial orchard, maintaining surrounding land, and picking fruit will inevitably entail disturbance. Secondly, as above, agriculture may encompass a range of activities including grazing and arable production, and is not development in planning terms. Notwithstanding protections to ecology or trees in other regimes, there appears to be nothing to prevent a more intensive form of agriculture here.
145. Thirdly, the site is already close to residential development and therefore subject to some disturbance and potential for predation, relative to which the installation of cat proof fencing would be of benefit. With reference to policy LPRSA295 criteria 17 and 18, as reasoned above, there is nothing to prevent a good quantity of space on site being 'inaccessible'. Fourth, I heard from Ray Morris that many farmers or landowners nearby are understandably keen to participate in schemes which enable provision of suitable habitat for turtle doves. Subject to a Grampian condition in that respect,³⁶ and in conjunction with measures on site, in my view the scheme could readily mitigate any adverse effects in respect of turtle doves and ground-nesting birds (there being nothing necessarily to prevent mitigation counting towards BNG provision).³⁷
146. In summary, the proposal would inevitably alter the nature of the site and its value to certain species. Nevertheless, subject to sensitive management of construction and mitigation via conditions, the proposal would be capable of suitably safeguarding ecology in line with policy LPRSP14(A) and NPPF paragraph 187.d).

Flooding, drainage and sewerage

147. Several local residents have expressed concern that the southern element of the site and the area around it are prone to waterlogging or flooding. Others have objected to the scheme based on their experience of drainage and sewerage at Russet Grove, I understand served by a pumped approach. Whilst there is evidently some surface water runoff towards the south of the site, as set out in the appellant's Flood Risk Assessment ('FRA') the site is within flood zone 1 (i.e. at low probability of flooding, having a less than 0.1% annual probability of river flooding).
148. On account of the nature of the soil, as noted in the appellant's Drainage Strategy, infiltration does not appear a viable option (core documents F.8 and F.9). An attenuation basin has therefore been proposed to address the additional implications of the scheme. Whilst that approach would not alleviate any wider propensity for flooding, it could nevertheless ensure that the scheme would have no contributory adverse effect. As in the representation of the Upper Medway Internal Drainage Board, regulatory approval may be needed in terms of land drainage, however NPPF paragraph 201 sets out that planning decisions should assume other

³⁶ To which PPG Reference ID: 21a-009-20140306 relates.

³⁷ With reference to the Government's BNG guidance of 13 March 2024.

regulatory regimes related to the control of processes and emissions will operate effectively.

149. Somewhat similarly water and sewerage provision is governed principally by separate legislation.³⁸ Notwithstanding local residents' experience in respect of Russet Grove, there is no substantive evidence before me that suitable drainage and sewerage could not be provided and maintained. I note that Southern Water, the infrastructure provider here, have no objection to the scheme (core document G.9). There is therefore no indication that, in respect of flooding, drainage or sewerage the scheme would entail unacceptable effects.

Living conditions

150. I have set out above how there are a number of properties neighbouring the site. The living conditions of the occupants of those properties will inevitably be affected, recognising that living conditions are in large part dependent on personal perception. Notwithstanding that there is no right to a particular view, as a result of the scheme the context to the Village will change here including by virtue of illumination and residential activity.
151. Nevertheless subject to a suitable approach to appearance, landscaping, layout and scale as reserve matters, there is nothing to suggest that undue effects would result to those nearby. That is whether in respect of privacy, outlook, the availability of nature light or otherwise.
152. Construction would be temporary, and any disruption resulting from it could be minimised subject to adherence to conditions. Noting the comments of MBC's Environmental Protection Team, there is no indication that air quality at or immediately around the site is unfavourable or approaching limit values (as opposed to elsewhere in the Borough subject to monitoring). Nevertheless, on a precautionary basis, a condition related to air quality in the wider area would ensure unacceptable effects would be addressed.

Heritage

153. As above, Marden has successively expanded from its historic linear centre around which the MCA is drawn. Whilst the setting of heritage assets is not confined merely to their visual context, the nearest boundary of the MCA is a significant distance away at Roundel Way beyond Russet Grove. There is no meaningful visual inter-relationship between the two on account of that separation, nor tangible relationship to the significance of the Conservation Area (other than that the site remains agricultural, the context in which the Village emerged and grew historically). Although existing development detrimental to significance does not justify further harm, earlier eras of development here have been many multiples more impactful in respect of the setting of the MCA than the scheme would be.
154. The nearest listed building is Bishop House and Jewell House, beyond Jewell House Cottage (next to Kon Tiki).³⁹ The list entry describes that listed

³⁸ Principally the Water Industries Act 1991 as amended.

³⁹ List entry no. 1060707.

building, something of a grand, symmetrical country estate property, as early to mid-eighteenth century in origin. On account of that listed building being set well back from Albion Road within its plot, and Albion Road here being flanked by hedges and trees, again there is no meaningful intervisibility between it and the site. Similarly there is no indication of a particular relationship between that listed building and the appeal site other than their, incidentally, falling relatively close to one another.

155. Arguably any building or human intervention in the landscape has a degree of significance in reflecting the past in the physical form of the present. In that context there is some heritage interest in Holders' Cottages and Holders' Hall, both to the east of the site (buildings thereabouts being shown on the 1849 Tithe Map of the area). As reflected earlier, there is also some potential for archaeological interest to be embodied in the site. Nevertheless, and again subject to a suitable approach to reserved matters, there is nothing to indicate that the scheme would adversely affect the significance of those assets to any appreciable degree, and any archaeological interest could be suitably and proportionately addressed via condition. As such the scheme would have a neutral effect in respect of any historic significance.

Obligations and infrastructure

156. NPPF paragraph 56 sets out that consideration should be given to whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations (in that order of preference). Obligations should only be sought where they meet the tests set out in NPPF paragraph 58, also at CIL Regulation 122.
157. In that context the S106 commits all those with a legal interest in the land to the fulfilment of certain obligations in the eventuality that the appeal were to be allowed, conditional on my reasoning. There are obligations by way of financial contributions towards education, to off-site sports provision, improvements to footpath KM281, and in respect of monitoring. There are also obligations in respect of the provision of affordable housing, along with various associated details of implementation, trigger points, notice requirements and enforceability.
158. There is either an appropriate basis for all contributions or provisions of the S106, or they fulfil the intention of the scheme. That includes the approach to affordable housing provision in line with LPR policy LPRSP10(B), and in respect of the methodology by which sums in respect of off-site sports provision and footpath improvements have been established (respectively core documents O.21 and O.19). There is no dispute between the main parties over the justification or appropriateness of any obligations.
159. Notwithstanding the concerns raised by local residents in respect of existing pressures on infrastructure, it was clarified at the inquiry that there are no other relevant obligations which have been sought but not fulfilled by the S106. There is a slight nuance to that in that KCC have put sums to other pressures that would arise from the proposal via correspondence of 18

November 2023 (in the knowledge that these are not supported by MBC). That differential position may reflect that MBC charges CIL.

160. I accept that infrastructure at Marden may be stretched, local residents having referred particularly to healthcare, nurseries, bus services and broadband. There is also some concern that the train network is at or above capacity. I also acknowledge that infrastructure upgrades may not move in lockstep with development. Nevertheless there is no robust evidence before me to indicate that provision in those respects is necessary in this instance. Moreover the funding of certain forms of infrastructure referenced above may not be partially or wholly reliant on the public sector, or relate to far broader issues than a particular development might legitimately be expected to contribute towards addressing.
161. As such there is nothing to indicate that the scheme would result in unacceptable effects in respect of infrastructural strain. Inherent in my reasoning above is that the obligations within the S106 are necessary to make the development proposed acceptable, and also accord with the relevant provisions of NPPF paragraph 58 and CIL Regulation 122.

Conclusion

162. Marion Geary commented at the inquiry that the site would have to work hard to accommodate what is proposed (if not too hard, as is MBC's position in objection to it). It would. But in my view that is right. NPPF paragraph 129 sets out how planning should support development that makes efficient use of land. Moreover ensuring that land works hard to accommodate an appropriate level of development minimises the need for other land to be given over to development (consistent with NPPF paragraph 187).
163. Consequently, having taken account of the development plan as a whole along with all other relevant material considerations as above, the proposal would be eminently capable of being policy compliant. I therefore conclude that the appeal should be allowed subject to the conditions below (and provisions of the S106).

Conditions

164. In addition to requiring reserved matters applications and commencement in accordance with statute via condition 1, for clarity, as so as to ensure that the proposal is implemented as assessed above, I have imposed condition 2 requiring adherence to the relevant supporting plans. For certainty, and noting the judgement in *I'm Your Man*,⁴⁰ I have also imposed condition 3 limiting the scheme as for up to 117 dwellings.
165. Notwithstanding the absence of a parameter plan, noting my reasoning in paragraphs 4, 66 and 69 above, and with reference to LPRSA295, criteria 4, 9 and 10, it is nevertheless reasonable to specify that plan 22037/SK25K informs the broad arrangement of green infrastructure on site (via

⁴⁰ *I'm Your Man Ltd. v SSE & North Somerset DC* [1999] 4 PLR 107.

condition 4). Following my reasoning at paragraph 80 and 81 I have imposed condition 5 in respect of provision for children and young people.

166. To ensure that development integrates appropriately with the topography of the site, with local character, and pays suitable attention to the relationship of the scheme to the living conditions of those nearby, I have imposed condition 6 related to site levels. For similar reasons, i.e. to manage and reduce disruption during construction, I have imposed condition 7 requiring adherence to a construction method statement.
167. Given the nature of the site as in paragraphs 34 to 36 of this decision and to ensure access is provided from the outset, I have imposed condition 8. Following my reasoning in paragraph 7 of this decision it is also necessary to specify that no dwelling shall be occupied before off-site highway works have been implemented via condition 9. Access to Copper Lane, in line with the Kent Design Guide, need only be provided at a juncture when more than 50 dwellings are occupied (as would be achieved via condition 10).
168. Notwithstanding that landscaping and layout are reserved matters, it is nevertheless necessary to impose conditions 11 and 12 to ensure that all dwellings are served by appropriate vehicle manoeuvring space along with cycle storage and refuse provision. With reference to NPPF paragraph 118, in order to reduce private vehicular usage and associated emissions, I have imposed condition 13 requiring adherence to a travel plan. Also relevant to the traffic implications of the scheme, with reference to my reasoning in paragraph 152, condition 14 is necessary on a precautionary basis to ensure that the scheme does not entail unacceptable adverse effects in relation to air quality (in line with NPPF paragraph 199).
169. Following on from my reasoning at paragraphs 13 and 125 to 146 above, conditions 15 to 20 related to ecology are necessary. There is significant overlap between the conditions proposed by MDC in those respects (and as such conditions 15 to 20 amalgamate various requirements without omitting the intended substantive effect of any put to me). Similarly, following on from my reasoning at paragraphs 9 to 12 and 104 to 106, and noting the statutory duty on me under section 197 of the 1990 Act, I have imposed condition 21 related to adherence to an arboricultural method statement. Provision is made within the conditions referenced immediately above for existing studies to be updated as necessary.
170. Following on from my reasoning in paragraph 134 and 135, given that ecological mitigation and habitat enhancement would be secured via various conditions, and given the protections in other regimes, it is unnecessary to impose conditions specifically related to licensing.
171. To ensure the development proposed is acceptable in respect of addressing flooding and drainage, in line with my reasoning in paragraphs 147 to 149 of this decision, adherence to condition 22 is also necessary. In my view, however, there is no need for a specific condition governing a post-implementation verification report as MBC have suggested; adherence to approved details and establishing measures for ongoing management and maintenance pursuant to condition 22 is, instead, proportionate.

172. LPR policy LPRQD6, criterion 2 sets out that all dwellings should adhere to the Building Regulations 2010 as amended in respect of accessible and adaptable dwellings (standard M4(2) as currently reflected in Approved Document M, last updated 1 October 2024). Condition 23 would secure the dwellings as M4(2). Policy LPRQD6, criterion 3 is that 'where the council has identified evidence of a specific need for a wheelchair accessible standard M4(3) property (for which the council is responsible for allocating or nominating a person to live in that dwelling) that is relevant to a site, this will be negotiated with the developer...'.
173. There is no evidence before me at this juncture in that respect, though of course that evidence may emerge in time (with provision in that respect being consistent with NPPF paragraph 135.f)). As in policy LPRQD6, however, the onus is on MBC to identify needs. There would in my view be the opportunity to do so in the future, and for provision in that respect to legitimately be negotiated within the ambit of reserved matters (notwithstanding any provisions of the S106 in this respect).
174. In respect of dwelling standards, I have also imposed condition 24 for compliance with LPR policy LPRSP14(C), criterion 7, regarding water efficiency. To secure adherence with LPR policy LPRQD1, 'Sustainable Design', in respect of renewable and low carbon energy, I have imposed condition 25.
175. Following my reasoning in paragraphs 40 and 155, consistent with NPPF paragraph 207, I have imposed condition 26 to suitably address archaeology. Although there is a limited potential for any contamination on site in the light of the site's principally agricultural history, as a precautionary approach in line with NPPF paragraph 196, condition 27 is nevertheless necessary should any unforeseen contamination be encountered.
176. There is no robust justification before me in respect of MBC's proposed condition in relation to public art (and there is also no reference to that in policy LPRSA295). Whilst MBC does have Public Art Guidance published in November 2017, that pre-dates the LPR and MBC's adoption of CIL. Nonetheless as landscaping is reserved, which incorporates both natural and semi-natural elements, there is nothing to indicate that an appropriate approach in this respect could not be arrived at if necessary.
177. Conditions 6, 7, 15, 17, 18, 19, 20, 22 and 26 must necessarily apply before any development is commenced. Those conditions relate to implications of the development proposed, or to its construction, which, if not managed suitably from the outset, may result in adverse effects (or to matters which are integral to the overall scheme design).
178. Given the proposal is in outline, with reference to NPPF paragraph 56, there is no necessity of imposing conditions proposed by MBC related to height limits, materials, design quality, landscaping, boundary treatments, secured by design or an open space strategy. For clarity, that does not indicate that

any of those matters are incidental or unimportant, simply that their consideration falls squarely to reserved matters applications.

179. In imposing conditions, I have had regard to the NPPF, to the PPG, and to relevant statute. Although some conditions have an implication for reserved matters, in my view none are of such a degree of specificity or overlap in that regard that they would be inappropriate to impose at this stage. In that context I have amended the wording of certain conditions put to me, and amalgamated some as well, to ensure that all are appropriate (without altering their fundamental aims).

Tom Bristow

INSPECTOR

SCHEDULE 1, CONDITIONS

- 1) Details of appearance, landscaping, layout and scale (the 'reserved matters') shall be submitted to, and approved in writing by, the local planning authority before any phase of the development hereby permitted takes place, and the development shall be carried out as approved. Application for approval of the reserved matters shall be made to the local planning authority not later than the expiration of 3 years from the date of this permission. The development hereby permitted shall begin not later than the expiration of 2 years from the approval of the reserved matters (or, in the case of approval on different dates, the date of approval of the last of the reserved matters to be approved).
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 22037-S101-C, ITB15098-GA-060 Rev. E, ITB15098-GA-074, ITB15098-GA-063 Rev. D and ITB15098-GA-057 Rev. B.
- 3) The development hereby permitted shall comprise not more than 117 dwellings.
- 4) Reserved matters applications pursuant to condition 1 shall include, or be accompanied by, a green infrastructure plan. The green infrastructure plan shall be informed by supporting plan 22037/SK25K, and shall in turn inform reserved matters applications.
- 5) No dwelling hereby permitted shall be occupied until suitable open space provision for children and young people in line with Local Plan Review 2021-2038 policy LPRINF1 has been made, whether on site or towards off-site provision, in line with a scheme which shall previously have been submitted to and agreed in writing by the local planning authority.
- 6) No development hereby permitted shall take place until details of the proposed finished floor levels of all dwellings have been submitted to and approved in writing by the local planning authority. Those details shall be accompanied by an existing site plan showing levels at 0.5m contour intervals, with the finished floor levels of all dwellings being as close as feasible to existing ground levels. Land raising and retaining structures should be avoided where possible, but where they are clearly justified should be kept to the minimum extent or height necessary. The development shall accord with approved levels details.
- 7) No development hereby permitted shall take place until a construction method statement ('CMS') has been submitted to, and approved in writing by, the local planning authority. The CMS shall include details in relation to construction of:
 - (i) the parking of vehicles of site operatives and visitors,
 - (ii) the loading and unloading of any plant and materials,

- (iii) the storage of any plant and materials, and
- (iv) measures to control the emission or transfer beyond the site of any dust or dirt resulting from construction.

The approved CMS shall be adhered to throughout construction.

- 8) Other than works related to this condition, no development hereby permitted shall take place until access to the site via Albion Road has been provided and made available for use in accordance with approved plans ITB15098-GA-074 and ITB15098-GA-063 Rev. D (other than in respect of the footway along Albion Road, but including in respect of visibility splays). Once provided and made available for use, access shall thereafter be retained and visibility splays maintained such that there is no obstruction to visibility within them more than 1m above adjacent carriageway level, or 0.6m above adjacent carriageway level where there is a footway present within them.
- 9) No dwelling hereby permitted shall be occupied until off-site highway works have been provided in accordance with approved plans ITB15098-GA-074, ITB15098-GA-060 Rev. E, and ITB15098-GA-063 Rev. D. Once provided as approved, off-site highway works shall thereafter be retained.
- 10) No more than 50 dwellings hereby permitted shall be occupied until access to Copper Lane has been provided in accordance with approved plan ITB15098-GA-057 rev. B. Once provided as approved, that access shall thereafter be retained as such.
- 11) Reserved matters applications pursuant to condition 1 shall include, or be accompanied by, details of vehicle parking, turning and manoeuvring areas (which shall be submitted to, and approved in writing by, the local planning authority). No dwelling hereby permitted shall be occupied until it is served by approved provision in those respects. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (or any subsequent modification thereto, or otherwise), once provided as approved, such provision shall thereafter be maintained only for its intended purpose.
- 12) Reserved matters applications pursuant to condition 1 shall include, or be accompanied by, details of secure and covered cycle storage and refuse provision or facilities, including 'day of collection' areas (which shall be submitted to, and approved in writing by, the local planning authority). No dwelling hereby permitted shall be occupied until it is served by approved provision in those respects. Once provided as approved, such provision shall thereafter be maintained only for its intended purposes.
- 13) No dwelling hereby permitted shall be occupied until a travel plan has been submitted to, and approved in writing by, the local planning authority. The travel plan shall encourage use of public transport, walking and cycling, with objectives in respect of modal split targets, together with a

programme of implementation and monitoring. The travel plan shall be implemented and monitored as approved.

- 14) No development hereby permitted other than site preparation and groundworks shall take place until an air quality scheme ('AQS') has been submitted to and approved in writing by the local planning authority. The AQS shall include an assessment of the effects of the development in relation to any Air Quality Management Area in Maidstone Borough Council's administrative area, and of any measures necessary to mitigate adverse effects directly related to the development proposed. The development shall accord with the approved AQS.
- 15) No development hereby permitted shall take place until a biodiversity net gain and habitats management plan (collectively the 'HMMP'), which shall ensure a minimum 20% biodiversity net gain ('BNG') in respect of habitats, has been submitted to, and approved in writing by, the local planning authority. The HMMP shall be informed by the associated Biodiversity Net Gain Assessment prepared by Ecology Solutions of 2023, the Ecological Appraisal prepared by Ecology Solutions of August 2023, and the Technical Note prepared by Ecology Solutions of March 2024 (including the plan entitled Additional Enhancement Measures Rev. B) along with any updated ecological studies as necessary. The HMMP shall include details of:
- (i) proposals for BNG relative to pre-development biodiversity value,
 - (ii) measures to minimise the effects of the scheme in respect of biodiversity,
 - (iii) measures to enhance ecological diversity,
 - (iv) monitoring arrangements in respect of BNG and habitats for a period of 30 years from the completion of the development (which shall include a non-technical summary, details of the roles and responsibility of people or organisations, and of habitat creation and enhancement, management, monitoring and reporting measures).

The development shall accord with the HMMP as approved, along with the local planning authority being notified after the establishment of habitat creation and otherwise in line with approved management, monitoring and reporting measures.

- 16) Reserved matters applications pursuant to condition 1 above shall include, or be accompanied by, an Ecological Design Strategy ('EDS'). The EDS shall have been informed by the associated Biodiversity Net Gain Assessment prepared by Ecology Solutions of 2023, the Ecological Appraisal prepared by Ecology Solutions of August 2023, and the Technical Note prepared by Ecology Solutions of March 2024 (including the plan entitled Additional Enhancement Measures Rev. B) along with any updated ecological studies as necessary. The EDS shall include details of:
- (i) its purpose and conservation objectives for the proposed works and habitat management,

- (ii) a review of site potential and constraints,
- (iii) reference to any necessary mitigation licences or other relevant documents,
- (iv) the type and source of materials to be used where appropriate, e.g. native species of local provenance,
- (v) a timetable for implementation demonstrating that works are aligned with the proposed timetable of development,
- (vi) details concerning required management, monitoring and remedial measures of retained and created habitats (including in respect of amphibians, reptiles, bats, badger, breeding birds, and hedgerows),
- (vii) mechanisms for securing management and in respect of monitoring and remediation,
- (viii) detailed designs and working methods to achieve stated objectives as appropriate (including the extent and location/area of proposed works on appropriately scaled plans).

The detailed designs as in (viii) above shall include details of:

- (i) soft landscaping works including in respect of species, size and location of new habitats (e.g., trees, shrubs, hedges and grassed areas to be planted),
- (ii) proposed ecological features (including in respect of habitat boxes, numbers, make and model, locations, height and aspect, and in respect of hibernacula their number, size, locations, materials and suitability for hibernation),
- (iii) the suitability of any proposed artificial badger sett (including with reference to implications from groundwater, disturbance or otherwise), and
- (iv) measures to support the movement of wildlife but restrict the movement of predatory animals such as domestic cats.

The EDS shall be implemented and managed as approved.

17) No development hereby permitted shall take place, including any site preparation or groundworks, until a Construction and Environmental Management Plan ('CEMP') has been submitted to, and approved in writing by, the local planning authority. The CEMP shall include details of:

- (i) the purpose and proposed objectives of proposed works,
- (ii) a risk assessment of potentially damaging construction activities,
- (iii) the identification of biodiversity protection zones and the use of protective fences, exclusion barriers and warning signs,
- (iv) the extent and location of proposed works shown on appropriately-scaled maps and plans for all relevant habitats and species,
- (v) detailed designs and working methods necessary to achieve stated objectives (including in respect of location and timing),
- (vi) a timetable for implementation demonstrating that works are aligned with the proposed phasing of construction,

- (vii) any relevant and necessary protected species licences and any relevant mitigation measures required in that context,
- (viii) a non-native invasive species protocol,
- (ix) persons responsible for implementing and monitoring the works, including times when specialist ecologists need to be present to undertake or oversee works,
- (x) the role and responsibility of an ecological clerk of works or similar suitably-qualified person, and
- (xi) in respect of the disposal of any waste associated within implementing works.

The CEMP shall be adhered to throughout construction.

- 18) No development hereby permitted shall take place until a Landscape and Ecological Management Plan ('LEMP') has been submitted to, and approved in writing by, the local planning authority. The LEMP shall be informed by the Outline Landscape and Ecological Management Plan prepared by Allen Scott Landscape Architecture of August 2023, which shall also be supported by any updated ecological or arboricultural studies as necessary, shall include details of:

- (i) a description and evaluation of features to be managed,
- (ii) landscape and ecological trends and constraints that may influence management,
- (iii) aims and objectives of management (including related to different species),
- (iv) appropriate management prescriptions for achieving aims and objectives,
- (v) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period),
- (vi) details of the body or organisation(s) responsible for implementing the LEMP,
- (vii) ongoing monitoring and remedial measures, and
- (viii) the legal and funding mechanism by which the long-term implementation of the plan will be secured by those responsible for it.

The approved LEMP shall be implemented, adhered to, and maintained as approved.

- 19) No development hereby permitted shall take place until a lighting strategy has been submitted to, and approved in writing by, the local planning authority. The lighting strategy shall accord with the approach in the Bat Conservation Trusts' Guidance note 08/18: Bats and artificial lighting in the UK (or successor document). The lighting strategy shall include details of:

- (i) any areas and features on-site where disturbance by virtue of illumination could occur to bats or other sensitive ecological receptors,
- (ii) the identification of roosting or nesting sites and foraging or commuting routes as relevant,

- (iii) the location of any external light installation relative to (i) and (ii),
- (iv) the provision of technical specifications for all external lighting,
- (v) any shielding, baffling or other measures to limit light spill,
- (vi) the provision of lighting contour plans to show expected lux levels on both horizontal and vertical planes.

The development hereby permitted shall be undertaken, and maintained, in accordance with the approved lighting strategy. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (or any subsequent modification thereto, or otherwise), no external lighting other than that approved via the lighting strategy shall be installed in relation to the development hereby permitted.

- 20) No development hereby permitted, including any site clearance, shall take place until a turtle dove and ground-nesting bird mitigation, compensation and management strategy ('TDMS') has been submitted to, and approved in writing by, the local planning authority. The quantity and quality of any on site habitat shall be established by:
- (a) available peer reviewed scientific research,
 - (b) surveys of the site in line with relevant breeding bird survey methodologies, the UK Rare Breeding Birds Panel's 2020 criteria for categorising turtle dove breeding evidence in the UK, and Turtle Dove National Survey Methods published in 2021 (UK Rare Breeding Birds Panel, Natural England, British Trust for Ornithology, the Royal Society for the Protection of Birds) or relevant successor documents, and
 - (c) relevant data held by Marden Wildlife and the Kent Wildlife Trust.

The TDMS shall include details of:

- (i) its purpose and conservation objectives, which shall include ensuring that any harm to turtle doves is either avoided, mitigated or compensated for, and that any ground-nesting bird habitat, particularly in respect of turtle doves, is managed favourably to maximise its suitability in that regard,
- (ii) the site's value, potential and constraints,
- (iii) detailed design measures to achieve conservation objectives,
- (iv) the extent and location or area of any proposed works on appropriately scaled maps,
- (v) the type of interventions to be undertaken and where, for example the use of native species of local provenance to provide for scrub habitat and sustenance,
- (vi) details of how any turtle dove and ground-nesting habitat will be protected by whatever measures (for example cat-proof fencing, thorny planting, path locations, and interpretation boards),
- (vii) a timetable for implementation aligned with the proposed phasing of development,

- (viii) details of the body or organisation(s) responsible for implementing the TDMS,
- (ix) initial aftercare and maintenance of works,
- (x) monitoring arrangements, to be undertaken by a suitably qualified ecologist at appropriate intervals,
- (xi) maintenance arrangements, and
- (xii) a procedure for any remedial measures to be established and implemented in line with an agreed timetable in order to ensure that the conservation objectives of the TDMS are met in full.

For the avoidance of doubt, the TDMS shall allow for off-site provision of habitat for turtle doves in the eventuality that on-site provision would not fully achieve conservation objectives. The quantity and quality of any off site provision shall also be informed by the methodology at details (a), (b) and (c) to this condition, taking into account also the proximity and suitability of any off-site provision, including as regards any existing use thereof by turtle doves, as shall any subsequent monitoring. Again for the avoidance of doubt, in the eventuality that the TDMS relates to both on site and off site provision, the provisions at details (i) to (xii) of this condition will apply to all relevant habitat.

The TDMS shall be implemented as approved in line with the timetable at detail (vii) and thereafter maintained as approved in line with detail (xi). After each monitoring period full breeding turtle dove survey results shall be submitted to the local planning authority, including details of any required remedial management pursuant to detail (xii) above.

- 21) Reserved matters applications pursuant to condition 1 above shall include, or be accompanied by, an Arboricultural Method Statement ('AMS') in accordance with British Standard 5837:2012 'Trees in Relation to Design, Demolition and Construction' or successor document (which shall be submitted to, and approved in writing by, the local planning authority). Any development hereby permitted shall be in general accordance with the Arboricultural Implications Assessment, ref. J61.93, 11 November 2022, and plan 22037/SK30B, updated as necessary by subsequent studies. The AMS shall address any trees on or off site that may be affected by undertaking the development hereby permitted, and shall include details of:
- (i) protective fencing and ground protection,
 - (ii) any demolition, level changes and hardsurfacing (including in respect of access and footway provision),
 - (iii) any foundations, services, utilities and drainage measures,
 - (iv) appropriate working methods including in relation to site boundaries and any construction encroaching within trees root protection areas,
 - (v) the timing, phasing and methodology of any arboricultural works,
 - (vi) a tree protection plan, and
 - (vii) measures to be taken in the eventuality that any trees intended to be retained are adversely affected as a result of undertaking the

development hereby permitted (namely their replacement as soon as reasonably practicable).

The development hereby permitted shall be undertaken in accordance with the approved AMS.

- 22) No development hereby permitted shall take place until a detailed surface water drainage scheme ('SWDS'), based on sustainable drainage principles has been submitted to, and approved in writing by, the local planning authority. The SWDS shall take account of the associated Flood Risk Assessment (July 2023, ref. HSP2023-C3571-C&S-FRAS1-1263) the Technical Memorandum to it (5 June 2024, ref. HSP2024-C3571-C&STR-2388) and associated plan MAR-HSP-00-00-DR-C-1000 Ref. P02. The SWDS shall include details of:
- (i) objectives, which shall include that any surface water implications of the development hereby permitted can be addressed on site without increasing flood risk elsewhere,
 - (ii) design parameters, including with reference to any rainfall durations, storm duration and intensity, and climate change,
 - (iii) measures to delay and control surface water discharge from the site, including that any attenuation basin is designed so as to hold standing water year round,
 - (iv) measures to prevent pollution entering receiving groundwater and surface waters,
 - (v) a timetable for implementation,
 - (vi) measures for ongoing management and maintenance, including arrangements for adoption by any relevant public authority or statutory undertaker.

The SWDS shall be implemented in line with the approved timetable and thereafter maintained and managed as approved.

- 23) The dwellings hereby permitted shall meet the accessible and adaptable dwellings standard as in the Building Regulations 2010 as amended (M4(2) as reflected in Approved Document M, 1 October 2024, or any successor document), and affordable dwellings the M4(3) wheelchair user dwellings standard in accordance with evidence from the local planning authority of a specific need.
- 24) No dwelling hereby permitted shall be occupied until it has been designed and built so as to achieve the potential consumption of wholesome water of 110 litres per person per day, as in the Building Regulations 2010 as amended and Approved Document G (2024 Edition) or any superseding standard.
- 25) Reserved matters applications pursuant to condition 1 above shall include, or be accompanied by a scheme to secure at least 10% on site renewable or low carbon energy production (which shall be submitted to, and approved in writing by, the local planning authority). No dwelling hereby

permitted shall be occupied until such point that it is served by provision as approved in that respect. Once provided as approved, such provision shall thereafter be maintained.

- 26) No development hereby permitted shall take place until a programme of archaeological work in accordance with a written scheme of investigation, specification and timetable, has been submitted to, and approved in writing by, the local planning authority (which shall contain details in respect of recording, assessment and publication of archaeological interest encountered). The development hereby permitted shall be undertaken in accordance with the approved scheme.
- 27) If, during the course of undertaking the development hereby permitted, any unforeseen contamination is encountered, measures for remediation shall be submitted to, and approved in writing by, the local planning authority before development affecting the relevant part of the site proceeds. Development shall be undertaken in accordance with any approved remediation measures.

SCHEDULE 2, APPEARANCES

For the appellant

Richard Turney KC	Landmark Chambers
Peter Rainier	DMH Stallard
Marc Tomes	Allen Scott Landscape Architecture
Mark Gimingham	i-Transport
Daniel Wood	Ecology Solutions

For MBC

Emma Dring	Cornerstone Barristers
Marion Geary	MBC
Peter Radmall	Peter Radmall Associates
Emma England	Kent County Council

Interested parties

Richard Adam	Councillor, Marden Parish Council
Ray Morris	Marden Wildlife
Nicholas Trower	Kent Wildlife Trust