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## Appeal Decision

Inquiry held on 21-23 January 2025

Site visit made on 22 January 2025

by **A Dawe BSc (Hons), MSc, MPhil, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21<sup>st</sup> February 2025

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**Appeal Ref: APP/H2265/W/24/3346228**

**Land at former Court Lane Nurseries, Court Lane, Hadlow**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr David Maher of Dandara South East Ltd against the decision of Tonbridge and Malling Borough Council.
  - The application Ref is TM/22/01474/FL.
  - The development proposed is described as: Full planning application for the erection of 57 residential dwellings (Use Class C3) including affordable housing provision, a new children's day nursery and pre-school (Use Class E) alongside hard and soft landscaping including access, car parking, public open space, SuDS, and associated infrastructure.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 57 residential dwellings (Use Class C3) including affordable housing provision, a new children's day nursery and pre-school (Use Class E) alongside hard and soft landscaping including access, car parking, public open space, SuDS, and associated infrastructure at Land at former Court Lane Nurseries, Court Lane, Hadlow in accordance with the terms of the application, Ref TM/22/01474/FL, subject to the conditions in the attached Annex A.

### Preliminary Matters

2. Since the appeal was submitted, a new National Planning Policy Framework was published on 12 December 2024 (the Framework). In relation to Green Belt land, this includes the introduction of an additional category of development that should not be regarded as inappropriate development in the Green Belt. I have therefore had regard to this change in my decision. Furthermore, the Council and Appellant had adequate opportunity to take this into consideration prior to the Inquiry, and indeed has resulted in the Appellant increasing the intended provision of affordable housing from 40% of the total number of dwellings proposed to 50%. An amended Tenure Plan Ref. DE476-13I has been submitted in relation to this. As this does not materially change the nature of the proposed development, relating only to some changes to the tenure of the dwellings concerned, no-one would be prejudiced by that change to the proposals being considered under this appeal. I have therefore determined the appeal on that basis.
3. Since the Inquiry, the Framework was amended on 7 February 2025 to correct cross-references from footnotes 7 and 8, and amend the end of the first sentence of paragraph 155 to make its intent clear. For the avoidance of doubt the amendment to paragraph 155 is not intended to constitute a change to the policy

set out in the Framework as published on 12 December 2024. Furthermore, this is the approach taken by the parties in their evidence and at the Inquiry, such that they would not be prejudiced by these amendments.

### **Main Issues**

4. As a result of the publication of the new Framework referred to above, the Council has reviewed its position. It is therefore now common ground between the Council and Appellant that in terms of the effect on the Green Belt, the appeal scheme would not be inappropriate development in the Green Belt. I have nevertheless considered this issue for myself in determining the appeal, as set out below.
5. Furthermore, since the Council's determination of the planning application, the Appellant has undertaken further work in relation to local biodiversity, and has submitted with the appeal an Ecological Appeal Statement and Ecological Impact Assessment dated August 2024. The Council's fourth reason for refusal (RfR) related to insufficient information having been submitted at that time. With the submission of the further information, the Council considers this to have addressed that RfR. In light of that, I have not included this as a main issue, albeit I have considered ecology under other matters.
6. Following an amended housing requirement resulting from the revised Framework, the Council and Appellant are in agreement that the supply of deliverable housing sites in the Borough is currently at a level of 2.89 years, and I have no substantive basis to consider differently. This again is therefore not included as a main issue.
7. In the above circumstances, and following the submission of planning obligations secured in an agreement under section 106 of the Act (s106 Agreement), the Council no longer contests the reasons for refusal in its decision notice and did not present formal evidence to the Inquiry in the form of Proofs of Evidence. That is not to say that such matters do not remain for my consideration. The Council's changed position does not remove the harm it identifies in relation to its second and third reasons for refusal, relating to the character and appearance of the surrounding area and loss of Best and Most Versatile Agricultural Land (BMVAL).
8. The main issues for consideration are therefore:
  - i) the effect of the proposed development on the Green Belt;
  - ii) the effect of the proposed development on the character and appearance of the surrounding area;
  - iii) the effect of the proposed development on BMVAL;
  - iv) whether or not acceptable provision would be made for various infrastructure and affordable housing through planning obligations;
  - v) whether any harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

## Reasons

### *Green Belt*

9. Policy CP3 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy, 25 September 2007 (the Core Strategy), sets out, amongst other things, that National Green Belt policy will be applied generally to that area of the Borough comprising the Metropolitan Green Belt. The appeal site is within the Green Belt. The Framework, in paragraph 153, states that substantial weight is to be given to any harm to the Green Belt, including harm to its openness, but in footnote 55 clarifies that this is other than in the case of development on previously developed land (pdl) or grey belt land, where development is not inappropriate.
10. Paragraph 154 of the Framework sets out various exceptions to development being considered inappropriate, none of which apply in this case. However, paragraph 155 introduces the additional category referred to previously. This states that the development of homes, commercial and other development in the Green Belt should also not be regarded as inappropriate where: (a) the development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan; (b) there is demonstrable unmet need for the type of development proposed; (c) the development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of the Framework; and (d) where applicable the development proposed meets the 'Golden Rules' requirements set out in paragraphs 156-157. I shall consider each criterion in turn.

### Criterion (a)

11. Grey Belt is defined as land in the Green Belt comprising pdl and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143 of the Framework. It excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusal. In this case the only relevant consideration in this respect relates to designated heritage assets (HAs) which I shall therefore consider first.
12. The proposed development would be close to the Hadlow Conservation Area (the CA) and listed buildings (LBs) within Hadlow to the west of the site. Amongst those LBs is the Grade I listed Hadlow Tower and associated Grade II\* listed ranges around the stable yard and the gateway to the former castle. The Grade II\* listed St Marys Church and associated churchyard Grade II listed buildings, including headstones and tombs, are also close to the site. Paragraph 212 of the Framework states that when considering the impact of a proposed development on the significance of a designated HA, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Paragraph 213 goes on to state, amongst other things, that any harm to, or loss of, the significance of a designated HA should require clear and convincing justification.
13. With regard to the CA, there would remain a degree of separation from the proposed development with intervening existing relatively modern housing relating to The Forstal, trees on the site boundary and, at the point of closest proximity to the south-west part of the site, garden land and associated screen fencing. There

- would also be the proposed open space along the western edge of the site that would provide a green buffer between that site boundary and the intended housing. Furthermore, open countryside views outwards from the CA would remain dominated by the those to the south, where not screened by mature trees. For those reasons, the proposed development would preserve the integrity of the CA.
14. Having regard to the setting of the LBs, the proposed development would be clearly separated from them, including by the housing relating to The Forstal and intervening trees. Other than Hadlow Tower, the likely extent of intervisibility between those LBs and the proposed development would therefore also be limited.
  15. Hadlow Tower is a prominent feature within the townscape, visible from vantage points within and beyond the existing settlement. It is also clearly visible from the site, as would be the proposed development from the upper parts of the Tower. However, again that is in the context of its intervening setting which includes The Forstal housing. Furthermore, views of the Tower from the site would likely be retained from the areas of the proposed development relating to those streets that would be roughly east-west oriented. As such, the setting of Hadlow Tower would not be so affected by the proposed development as to amount to harm. The setting and integrity of that HA would therefore be preserved.
  16. For the above reasons, the application of the policies relating to designated HAs does not provide a strong reason for refusal.
  17. A relatively small part of the site, in the north-east corner, comprises an existing hard surfaced car parking area, and associated access relating to the Saplings nursery which also serves houses fronting onto it; and a disused single storey former classroom building. The remainder of the site remains undeveloped land comprising rough grass and redundant orchards associated with the former nurseries to the east of the site, bordered to varying extents by trees. The Council and Appellant agree that only that north-eastern part of the site is therefore pdl. Based on the submitted evidence, the nature of those respective parts of the site referred to above, and my observations, I have no substantive basis to disagree. As such, due to the presence of that non-pdl land, having regard to whether the site represents grey belt land therefore requires consideration of the site's contribution to those three Green Belt purposes referred to above.
  18. Purpose (a) is to check the unrestricted sprawl of large built-up areas. In this respect, it is disputed by the Council and Appellant as to whether Hadlow should be considered a large built-up area. Nevertheless, even if it were considered as such, the extent of any sprawl is important.
  19. The majority of the site, comprising the open non-pdl land, currently provides separation between the main built-up settlement and the former nurseries buildings to the east. In that respect, this part of the Green Belt provides a degree of containment of the main settlement, restricting outward sprawl, albeit there are existing dwellings and the Saplings nursery which extend the settlement eastwards to the north of the site. The site's role in this respect is however weakened by the degree to which it is already contained on three of its sides by development and land associated with that development.
  20. Purpose (b) is to prevent neighbouring towns merging into one another. In this respect, there are no other settlements nearby. Furthermore, there is that existing presence of built form to the north and east which partly contains this relatively

small site in the context of the wider Green Belt. As such, the site does not play a significant part in preventing such merging.

21. Purpose (d) is to preserve the setting and special character of historic towns. In this respect, the site is located mainly on undeveloped land to the east of the main settlement of Hadlow. Whilst relating to a countryside setting on the edge of the settlement, as referred to above, the site is enclosed to varying degrees by development on three sides to the west, north and east. Furthermore, the particularly historic elements of Hadlow comprising the CA and the various listed buildings referred to previously are separated from the site by other relatively modern development or garden land, notably relating to The Forstal. Notwithstanding that Hadlow Tower is clearly visible from the site, for these reasons, the site itself plays a relatively modest part in preserving Hadlow's setting and special character.
22. For these reasons, the site does not contribute strongly to any of the Green Belt purposes (a), (b) or (d). I therefore agree with the Council and Appellant that the proposed development would utilise grey belt land for the purposes of paragraph 155 of the Framework.
23. The purposes of the Green Belt set out in paragraph 143 of the Framework also include purpose (c) to assist in safeguarding the countryside from encroachment and (e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land. Taking account of my findings above relating to the site's contribution to purposes (a), (b) and (d), and whilst there would be encroachment into the countryside, the location, site area, scale and nature of the proposed development would ensure that it would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan. As such, the criterion comprising paragraph 155(a) of the Framework would be met in this case.

Criterion (b) - need for the type of development proposed

24. As referred to previously, the supply of deliverable housing sites in the Borough is currently at a level of 2.89 years. This clearly shows there to be a lack of a five year supply (5 year HLS) of such sites. Furthermore, there is a poor record of recent delivery identified through the Housing Delivery Test (HDT). That indicates that, for the most recent 2023 HDT, the delivery of housing was substantially below (being at a level of 60%) the housing requirement over the previous three years. These factors therefore identify a demonstrable unmet need for housing.
25. In respect of the proposed Nursery, this would replace that existing adjacent to the site. Although the submissions do not include a detailed needs assessment, I understand from the evidence presented that there remains a clear demand for this facility locally, highlighted by the need to operate a waiting list. This is in the context of my understanding that Saplings Nursery is currently constrained by uncertainty in the long-term due to the rolling one-year leasing agreement. Based on the submitted evidence and the provision in the planning obligations, there is clear intention to replace the existing facility with that proposed and to secure its long-term operation in a new modern building with improved space. As such, I am satisfied that there is also a demonstrable unmet need for the proposed Nursery.

Criterion (c) - sustainability of location

26. The proposed development would be located immediately on the edge of Hadlow, which is designated as a Rural Service Centre in the Core Strategy, being a rural settlement where a reasonable range of services exist or are easily accessible. Such centres are recognised as being the most sustainable locations for further housing and employment development within the rural area. In this respect, Hadlow itself contains services and facilities including schools, a small number of convenience stores, doctors surgery, dentist, library, hairdressers and pharmacy. This is also in the context whereby opportunities to maximise sustainable transport solutions will vary between urban and rural areas as recognised in the Framework.
27. Those services and facilities are within walking distance of the site, albeit that some would involve crossing the A26. In this respect, there is a controlled crossing point for pedestrians in the centre of Hadlow, albeit not in direct alignment with those pedestrian routes to and from the site. Likewise, the proposed Nursery, as for that intended to be replaced, would be within walking distance of existing dwellings in Hadlow.
28. For pedestrians, the development itself would provide appropriate footways or shared surface areas. This would be connected to external routes to the centre of Hadlow either via the existing Court Lane footway or via links to The Forstal and its associated footways. I acknowledge that the existing footway along Court Lane is narrow in places and I note the comment that cars are known to park partly on the footway. However, the proposed pedestrian links to The Forstal would provide alternative and direct pedestrian access to the centre of Hadlow. Whilst the section of that route alongside St Marys Church is unlit, pedestrians would still have the option of walking via The Forstal and Court Lane during the hours of darkness.
29. I have no substantive evidence that pedestrian access to and from the centre of Hadlow would be unsafe, including in respect of highway use generally; that there would not be adequate options for all users; or that the design of The Forstal's footway would be unsuitable for additional use. I also note that the Council's Highways section has raised no objections in respect of pedestrian access. Furthermore, I have no substantive basis to consider that any additional use of the footway in The Forstal resulting from the proposed development would be likely to attract anti-social behaviour, especially with the presence of existing lighting and the degree of natural surveillance from dwellings on that road.
30. The proposals also make provision for adequate cycle parking, thereby encouraging that alternative mode of transport to the car. It is likely that cycle trips to other settlements would be limited due to the strategic and heavily trafficked nature of the A26. Furthermore, access to a reliable train service would require a multi-modal journey which would be likely to discourage train use by prospective residents. Nevertheless, there is a bus route running through the centre of Hadlow, enabling access by public transport to locations, facilities and services further afield.
31. I note comments about buses being full during school times and often do not stop or are cancelled. However, I have no substantive evidence or basis to consider the bus services to be limited to the extent that they would not offer a reasonable alternative choice of transport to other destinations. Also to encourage the use of

alternative modes of transport to the car and a reduction in car journeys, the submission and implementation of a Travel Plan could be secured by a condition.

32. For these reasons, the proposed development would be in a sustainable location for the purposes of the paragraph 155(c) of the Framework.

#### Criterion (d) – Golden Rules

33. The ‘Golden Rules’ relate to contributions that should be made where major development involving the provision of housing is proposed on land released from the Green Belt through plan preparation or review, or on sites in the Green Belt subject to a planning application. The latter is relevant in the case of this appeal.
34. In respect of the first of those contributions, the proposed provision for 50% of the housing on the site to be affordable would address this. The second relating to contributions for necessary improvements to local or national infrastructure, is addressed through the obligations set out in the submitted s106 Agreement, which I will deal with in more detail later in my decision.
35. The third contribution relates to the provision of new, or improvements to existing, green spaces that are accessible to the public. It goes on to say in the Framework that new residents should be able to access good quality green spaces within a short walk of their home, whether through onsite provision or through access to offsite spaces. In this respect, the proposal includes adequate provision for open space and children’s play within the site that would be accessible to both prospective residents and those currently living locally. For the latter, this would be via both the Court Lane access and the proposed pedestrian access directly to The Forstal on the western side of the site. Those planning obligations referred to above would also include provision for management of the on-site open space, and appropriate contributions to existing local off-site open space to mitigate the potential additional usage by prospective residents. As well as the on-site provision, that off-site space relating to Williams Field would be within walking distance of the proposed development, albeit on the northern edge of Hadlow to the west of the A26.
36. For the above reasons, the proposal would not be inappropriate development in the Green Belt having regard to the Framework. This is also the agreed position of the Council and Appellant. Furthermore, in complying with the Golden Rules, having regard to paragraph 158 of the Framework, significant weight should be given to the proposed development in favour of the grant of permission. I shall return to this in the planning balance. As such, in terms of the effect on the Green Belt, it is unnecessary to consider any other considerations and whether very special circumstances exist, relating to the fifth main issue.

#### *Character and appearance*

37. The site is located on the edge of Hadlow on mainly agricultural land. As such the proposed development would cause inevitable urbanisation of existing countryside with the introduction of a significant amount of built form and the associated infrastructure, movements, and lighting. However, the proposal would be closely related to the adjacent existing settlement, on a site confined to varying degrees by development to the west, north and east as referred to previously. This would limit the extent of that urbanisation and loss of landscape character associated with the countryside beyond the existing settlement.

38. The density and layout of development would also be generally comparable with that existing housing of The Forstal. Furthermore, the majority of the proposed houses would be 2-storey height with pitched roofs, and of a design that would complement the existing varying house designs locally, subject to detailed consideration of external building materials that could be secured by a condition. Furthermore, the submissions indicate an appropriate balance between hard surfacing, including parking provision, and soft landscaping, again subject to details that could be secured by a condition.
39. The proposed Nursery building with apartments above would be likely to draw greater attention in that existing local context, due to the massing created by its combined 3-storey and flat roof design, and the upper floor north-facing slit window design. However, despite its massing effect, the flat roof design would limit the extent to which it would rise higher than the nearby 2-storey buildings with pitched roofs. Furthermore, it would be well back from Court Lane such that, together with the likely softening effect of intervening vegetation, and the use of appropriate materials, it is unlikely that it would be a dominant feature in that streetscene.
40. The proposed 2.5 storey apartment block in the north-west part of the site, despite its greater height than the proposed houses, would include a pitched roof design to complement similar roof designs in that close vicinity. Again, the appropriate use of materials, in the context of the development as a whole could be secured by condition. Both this and the Nursery/apartments block would also be seen in the context provided by the existing variety of building designs and types in the locality. That would be combined with their proposed positioning close to existing buildings at the northern end of the site, which would limit the extent to which they would impinge on the wider rural landscape character beyond the existing settlement.
41. The proposals would inevitably be clearly visible from the footpath running to the west of the site southwards and from neighbouring properties, noticeably extending the urban edge of Hadlow onto mainly open land. However, the proposals include provision for open space on the western and southern sides of the site. Together with existing and proposed tree planting, these features would be likely to soften the appearance of the proposed development as viewed from those vantage points, albeit to varying degrees depending on whether or not the trees are in leaf. Although clearly not to the same degree as would be the case with the proposed development, such visual effects would also be in the context, to varying extents, of existing sight of built form in the close vicinity of the site from those vantage points.
42. I saw that the adjacent footpath to the site's western boundary was in a well-maintained condition. As previously referred to, the proposals would provide access to that footpath for pedestrians. However, there is no substantive evidence to indicate that the proposal would harmfully change the nature of that footpath, both in terms of the extent of its use and degree of additional noise.
43. The existing access to the site would be widened, encompassing existing verge, to enable a safe new access for the proposed development, including provision for emergency vehicles. Whilst such provision does not reflect the existing access points from Court Lane into The Forstal and Appletons, in this case there is not the same degree of physical restriction on the eastern side. Furthermore, the visual effect would be softened to a degree by new planting on a landscaped strip along that eastern side of the access.

44. There would be some loss of hedgerow from the site boundary to enable the proposed pedestrian access points to The Forstal and footpath on the western side of the site. However, the extent of loss to enable such openings would be limited in the context of the amount of remaining hedgerow, and the proposed new planting within the site would also provide some degree of mitigation.
45. For the above reasons, I conclude on this issue that the proposed development would cause some harm to the character and appearance of the surrounding area. As such, it would be in conflict with policy CP24 of the Core Strategy and policy SQ1 of the Tonbridge and Malling Development Plan Document: Managing Development and the Environment, adopted April 2010 (the MDEDPD) which together, amongst other things, require development, through its scale, density, layout, siting and character and appearance to respect the site and its surroundings; wherever possible to make a positive contribution towards the enhancement of the appearance of the area; and to protect, conserve and, where possible, enhance the character and local distinctiveness of the area, and the distinctive setting of, and relationship between, the pattern of settlement, roads and landscape, urban form and important views. However, also for the above reasons, the extent of that harm would be to a moderate degree, which I shall consider further in the planning balance.

#### *BMVAL*

46. Paragraph 187 of the Framework sets out that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the wider benefits from natural capital and ecosystem services, including the economic and other benefits of the best and most versatile agricultural land.
47. The site area is confined to approximately 2.3 hectares, albeit with part of the northern end comprising a car park and former classroom building. The majority of the site is however Grade 2 agricultural land, and as such represents BMVAL. However, it is not currently serving any agricultural purpose and I understand that situation is unlikely to change. Notwithstanding those circumstances, the extent of loss of BMVAL resulting from the proposed development, due to the relatively small area of land concerned, would not be significant.
48. For those reasons, whilst there would be harm caused by the loss of BMVAL, that harm would be limited. I shall consider this further in the planning balance.

#### *Planning obligations*

49. I shall consider all of the planning obligations submitted in the s106 Agreement later in my decision. However, one of those obligations, despite its inclusion in the s106 Agreement, remains contested by the Appellant, relating to a financial contribution towards special education needs and disabilities (SEND) provision. I shall therefore consider that obligation here.
50. The contribution concerned would be towards the provision of additional SEND places at the Nexus Foundation Special School in Tonbridge. I have had regard to the submissions from the Appellant claiming this not to meet the tests set out in paragraph 58 of the Framework and in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

51. Firstly, I acknowledge the intention for the inclusion of SEND provision in the proposed on-site Nursery, albeit with no formal mechanism having been put forward to secure this. Nevertheless, in any case, SEND provision is also required for other age groups and in specialist schools. Following the discussion at the Inquiry on this issue, I am also satisfied that there would not be any overlap between what would be covered by the secondary education contribution and that relating to SEND.
52. Prior to the Inquiry, there were also no specific projects identified by Kent County Council (KCC) to which the contribution would be made. However, it was clarified at the Inquiry by KCC officers that the contribution would be towards the provision of additional SEND places at the Nexus Foundation Special School, which has now been incorporated into the s106 Agreement.
53. On that basis, and for the above reasons, I consider the financial contribution concerned would be necessary to mitigate the additional demand on SEND services arising from the proposed development and to provide appropriate access to such education provision for prospective residents. As such, it would meet the tests referred to above and would accord with policy CP25 of the Core Strategy relating to the mitigation of development impacts.

## **Other Matters**

### *Highways*

54. I acknowledge concerns raised in respect of highway capacity and safety matters, relating to the traffic likely to be generated by the proposed development, the safety of the access, and in relation to Court Lane and the local highway network generally. In considering these aspects, I have also taken account of the submitted Transport Assessment, Transport Assessment Addendum (TAA) and further Transport Technical Note, and the comments from the Highways Authority.
55. I note concern about the timing of the traffic surveys conducted, having regard to differences between movements during and immediately after Covid restrictions and those now. However, I have no substantive basis to find that the evidence submitted inadequately assesses comparative traffic movements and trip rates. In this respect, the evidence indicates that despite the inevitable increase in vehicle trips locally, resulting from the proposed development, these would not be to an unacceptable level for the local road network. Furthermore, in terms of the TAA highlighting that significantly higher traffic volumes would historically have been expected when the Hadlow College site was fully operational, I acknowledge that there can be no guarantee as to future use of that site. However, that is not the situation currently and I have no substantive evidence to indicate its likely return to that same level of use.
56. It is apparent that the proposals would provide for a sufficient number of on-site parking spaces in terms of adopted standards, both for the proposed Nursery and the individual dwellings, albeit with many of the latter being in a less convenient tandem formation.
57. Visibility splays at the proposed site access would meet the required standards and could be secured and maintained through a condition. Furthermore, traffic calming measures comprising road build-outs and the repositioning of the 30mph speed restriction sign, would also be secured as part of the proposals in the interests of

road safety at the point of access onto Court Lane. I note concerns about the amount of existing traffic on Court Lane and in relation to the narrowing effect caused by cars parked on one side. However, I have no substantive evidence or basis to find that the proposals would harmfully exacerbate any existing problems on Court Lane, including any pressure on the Court Lane/A26 junction; would compromise safety in respect of The Forstal and Appletons, including by causing increased on-street parking; or that any existing highways problems are at a level whereby it would be inappropriate to introduce any additional traffic onto Court Lane or the wider road network.

58. I also have no substantive evidence or basis to find that the proposed traffic calming measures would cause undue additional vehicle noise, having regard to the living conditions of neighbouring residents.
59. The proposed access would also include a wide footway on its eastern side to enable provision for emergency vehicles, recognising that in this case that there would be no secondary access. Based on the submissions, I am satisfied that, for the scale of development proposed in this case, such emergency access provision would be sufficient. Furthermore, no concerns about a lack of a secondary access have been raised by the Highway Authority.
60. I note that Court Lane is sign posted as being unsuitable for heavy vehicles. However, in respect of the construction phase, associated vehicle movements could be controlled through a Construction Management Plan secured through a condition. I also have no substantive evidence to indicate that service and emergency vehicles cannot or would not be able to access Court Lane.
61. Additionally, I note a concern about the proposal not taking account of any detrimental impact to the junction of Court Lane and the A26 resulting from a proposed new dwelling at that junction. I do not have full details of that proposal to enable proper consideration of any safety concerns associated with it, and have no substantive basis to consider this to be a prohibitive factor relating to the appeal proposals.
62. For these reasons, in highways terms, the proposed development would be acceptable subject to various necessary conditions. I also note that the Highway Authority raise no concerns with the submissions, again subject to conditions.

#### *Local facilities and services*

63. I have had regard to concerns over the existing local infrastructure, such as schools and health facilities, as well as water supply, not being able to accommodate the additional demand resulting from the proposed development. In this respect, where there is substantive evidence of a need for mitigation of additional demand resulting from the proposed development, as I will also refer to later in my decision, provision would be made through appropriate planning obligations. I am therefore satisfied that in these respects there would be sufficient provision to avoid unacceptable impacts from the proposed development.
64. Whilst I note concern about existing problems with the supply of water to homes locally, I have no substantive evidence or basis to find that the proposed development would harmfully exacerbate that situation.

### *Drainage and flood risk*

65. As identified in the submitted Flood Risk Assessment (FRA), the site is located in flood zone 1 and therefore has a low probability of flooding from tidal and fluvial sources. The majority of the site is also at a very low risk of surface water flooding, albeit there are some areas just outside of the site with the risk of such flooding ranging from low to high. The risk of flooding on the site from groundwater or artificial sources is also at a low level.
66. To mitigate the risk of flooding in relation to the proposed development, surface water runoff would be discharged through infiltration to the ground via the combination of an infiltration blanket with basin above in the open space at the southern end of the site, and permeable paving in parking spaces and private/minor road areas. It is also proposed to incorporate appropriate treatment into the drainage system to ensure acceptable quality of discharged water. The drainage features are also proposed to be appropriately managed and the implementation and maintenance of the system could be secured through an appropriate condition. As such, I also have no substantive basis to consider it a likely health and safety hazard or a magnet for rubbish and dumping. I also note that the Lead Local Flood Authority raises no objections subject to appropriate conditions.
67. Furthermore, I note that foul flows would be via connections to the local main sewers and that Southern Water raise no objections to this in principle. To this end a foul sewage drainage strategy could be secured by condition.

### *Ecology*

68. As referred to previously, to address the Council's reason for refusal relating to ecology, the Appellant has submitted an Ecological Appeal Statement and Ecological Impact Assessment to address the Council's concerns and those of the Kent County Council Ecological Advice Service (the EAS).
69. The main considerations relate to Great Crested Newts (GCNs), biodiversity net gain (BNG), Japanese Knotweed, reptiles and bats. In respect of GCNs, the Appellant has submitted a GCN District Level Licensing Impact Assessment and Conservation Payment Certificate. As such, it is likely that favourable conservation status could be maintained for the local population of GCNs, subject to mitigation measures secured through appropriate conditions.
70. The submissions indicate that there would be an on-site BNG of 11.95% in area habitats and 32.21% in hedgerow habitats. This is based on a biodiversity baseline that pre-dates habitat clearance that has taken place on the site since initial ecological surveys were conducted, and takes account of the submitted Landscape Masterplan. It is acknowledged that the overall loss of broadleaved woodland from the proposals would not be mitigated for on the site and that the trading rules of the metric have not been met. As such, it is proposed to seek off-site compensation of a minimum of 0.76 medium distinctiveness woodland units. The EAS comments that it is not clear if the additionality principle has been considered as part of the BNG calculations, but that it is nevertheless likely that a BNG would be achievable for the proposed development.
71. Provision to address the presence of Japanese Knotweed on the site could be secured as part of the submission and implementation of a Construction Ecological Management Plan (CEMP) that could be secured by condition.

72. The site contains suitable habitat for reptiles and a low population of common lizard and grass snake have been recorded. Although I understand that habitats have been made less suitable for reptiles since 2018, a precautionary approach to site clearance could be secured by condition. Furthermore, the proposals would include the provision of suitable reptile habitat.
73. The site has been found to be unsuitable for roosting bats. Foraging and commuting bats have been recorded on the site albeit with general activity levels being low. Noting that habitat has previously been removed from the site, of that remaining, the proposals would result in some loss of existing foraging and commuting habitat for bats. However, mitigation measures are proposed, including new planting in combination with the significant amount of intended retained boundary vegetation. A bat sensitive lighting strategy is also proposed.
74. Given the likely presence of Hedgehog on and around the site, it is proposed to integrate measures to provide habitat for that species. In other respects, I note that no evidence of badgers has been found on the site and that hazel dormice are also likely not to be present.
75. Measures to mitigate for any impacts to breeding birds and other protected and priority species during the construction of the proposed development could be secured via the CEMP previously referred to.
76. For the above reasons, subject to the implementation of mitigation measures and a biodiversity gain plan, which could be secured by appropriate conditions, the proposed development would be acceptable in terms of its ecological effects.

*Living conditions of existing residents*

77. In terms of neighbouring properties in The Forstal, they would either directly face or be side on or angled to those proposed dwellings facing that boundary. However, whether it be the degree of separation of those directly facing properties from the proposed dwellings, or the side-on/angled juxtaposition of others, still with a good degree of separation, these factors would be likely to prevent a harmful loss of privacy, outlook and sunlight and daylight. To varying degrees, intervening existing and proposed vegetation and trees would also be likely to further reduce the extent of overlooking, more so in the summer months with trees in leaf. Whilst the proposed pedestrian access from the site via The Forstal would inevitably increase footfall along that cul-de-sac, I have no substantive evidence to indicate that this would be to such an extent as to cause unacceptable noise levels or loss of privacy to existing residents in that road.
78. In respect of the existing Court Lane properties that back onto the site, those proposed dwellings closest to that northern boundary would be separated from it by their rear gardens. Together with the long rear gardens of the Court Lane properties and the varying extents of intervening vegetation, it is again unlikely that the proposals would cause harmful loss of privacy, outlook or sunlight/daylight. The proposed dwelling at plot 50 would be close to the side of the nearest property in The Forstal. However, the juxtaposition would be such as to again prevent a likelihood of harmful loss of those amenities referred to above.
79. The westernmost of the existing Nursery Cottages would have a dwelling to one side and another in front. That at plot 55 to the side would partially project beyond the rear of that existing house. However, there would be no direct overlooking of

that property from habitable rooms at first floor level and the degree of separation would be likely to avoid harmful loss of outlook and sunlight/daylight at the rear. The proposed house to the front of that property would be angled slightly away from that existing, which combined with the degree of separation, would again be likely to maintain an acceptable level of privacy, outlook and sunlight/daylight. The existing high hedge between the two would also provide a high degree of screening whilst retained as such.

80. In respect of the proposed apartments above the Nursery, habitable room windows would not directly face those existing residential properties to the north-west of that block. Together with the degrees to which the proposed apartments would be separated from those existing properties, it is likely that these factors would prevent a harmful loss of privacy to those existing residents. Furthermore, again given that degree of separation, it would also be unlikely that any light emitted from the Nursery/apartment block would be harmfully intrusive in relation to those existing properties.
81. In terms of any additional noise and disturbance and air pollution generated by the proposed development, notwithstanding the presence of an existing access and car park at the northern end of the site alongside and in front of existing dwellings, there will inevitably be more movements and activity on the site as a whole than existing. In this respect, I have also had regard to the proximity of existing houses to the proposed access road. However, there is no substantive evidence to indicate that the levels of noise or pollution generated would be such as to cause harmful additional disturbance or at levels beyond what would be reasonable for a residential area, albeit acknowledging that the site is currently largely undeveloped countryside. Based on the proposed layout, there is also no substantive basis to consider there to be a likelihood of unacceptable disturbance caused by car headlights shining towards existing properties. Furthermore, noise and disturbance during the construction phase could be controlled by a condition securing the submission and adherence to a construction management plan.
82. Having regard to concerns about increased anti-social behaviour as a result of the proposed development, a Crime Prevention Statement (CPS) has been prepared to support the proposals. Furthermore, I note that the Kent Police Designing Out Crime Officer acknowledges that steps have been taken to incorporate several crime prevention measures into the proposals; that the CPS has extensively addressed Crime Prevention Through Environmental Design and Secured by Design principles; and that the proposed nursery car park would have alternative crime prevention measures and local management. I have no substantive basis to find differently.

*Other matters relating to proposed Nursery/apartments*

83. I have had regard to concerns raised about safety and safeguarding issues associated with the provision of dwellings above the proposed Nursery. In this respect, I note that the proposed habitable room windows and balconies associated with the apartments would all be on the southern side of the building and therefore not facing onto the Nursery's outdoor play areas, which would be on the northern side. Those windows on the northern elevation would be at a high level, thereby restricting outlook. The apartments would also be accessed from a distinctly separate part of the building to the Nursery entrance. Furthermore, I have no substantive evidence to indicate that there would be any other aspects of the

proposals relating to that development block that would be a likely safety and safeguarding risk. Additionally, compliance with Building Regulations would be considered separately under different legislation from that relating to this appeal.

#### *Energy efficiency/sustainable construction*

84. The submissions include an Energy Strategy Statement which sets out how the proposal would be developed in terms of reducing energy consumption and CO2 emissions. Together with Building Regulations requirements, a number of measures would be incorporated into the design of the buildings. This would include provision for electric vehicle charging, with the submissions setting out that there would be one charging point for every plot and two for the nursery parking area.

#### *Unexploded ordnance*

85. I note a concern about the need for a more detailed risk assessment to be conducted on the site relating to any risk from unexploded ordnance. I heard at the Inquiry that this would be addressed in relation to proposed contamination investigation work on the site.

#### **Conditions and planning obligations**

86. The Council has provided a schedule of suggested conditions in the event of the appeal being allowed which I have considered in the light of advice in the National Planning Practice Guidance. The Appellant has commented upon that schedule and the two parties have reached agreement on its content following further discussion and some suggested amendments during the course of the Inquiry. The schedule includes a number of pre-commencement conditions which the Appellant has confirmed in writing to be acceptable. I have referred to the condition numbers, cross referenced to the attached annex, in brackets for clarity purposes.

87. The standard condition (1) would be necessary to set the timescale for commencement of development. For certainty, a condition requiring the development to be carried out in accordance with the approved plans would also be necessary (2).

88. In the interests of the character and appearance of the site and surrounding area, conditions would be necessary to secure details of materials that would be used externally on the development (3); tree protection measures relating to existing trees intended to be retained (13); the submission and implementation of a hard and soft landscaping scheme (14), the latter two also being in the interests of local ecology; and details of the proposed boundary treatment, also in the interests of privacy (26). Furthermore, so as to ensure the adequate provision for children's outdoor play, a condition would be necessary to ensure the submission and implementation of a specification for intended play equipment (25).

89. In order to provide acceptable drainage for the proposed development, conditions would be necessary to secure the submission and implementation of a detailed sustainable surface water drainage scheme together with the submission of a verification report (4 & 5); and a foul sewage drainage strategy (20).

90. So as to provide acceptable living conditions for prospective residents of the proposed apartments above the Nursery, with particular regard to noise

transmission, a condition would be necessary to secure a suitable sound insulation assessment, and the implementation of any associated works (6).

91. The following conditions would be necessary in the interests of highway safety, requiring: the submission and implementation of a Construction Management Plan (7); provision of the proposed vehicle parking spaces, also in the interests of providing and maintaining adequate parking (8); the implementation of the proposed site access and associated visibility splays, and securing the construction of the first 5 metres of the access with the use of a bound surface (10).
92. In the interests of environmental sustainability, encouraging the use of alternative modes of transport to the car and reducing car journeys, conditions would be necessary to provide and maintain the proposed cycle parking (9); and to secure the submission and implementation of a Travel Plan (23).
93. In the interests of protecting the local environment and human health, conditions would be necessary to secure site investigations and a risk assessment of the degree and nature of any contamination on site and the impact on human health, controlled waters and the wider environment, any necessary remediation, and arrangements for responding to any discovery of unforeseen contamination; and the submission of an associated verification report (11 & 12).
94. To ensure that any features on the site of archaeological interest are properly examined and recorded, a condition to secure the implementation of a watching brief would be necessary (15).
95. In order to protect local ecological interests, the following conditions would be necessary, requiring the submission and implementation of: a lighting design plan for biodiversity (16); an Ecological Design Strategy (17); a construction ecological management plan (18); and a biodiversity gain plan (19).
96. To enable the Local Planning Authority (LPA) to retain control over future development on the site, specifically concerning the proposed Nursery element, and given its close proximity to the proposed residential dwellings, a condition would be reasonable and necessary to prevent a change of use without the prior written consent of the LPA (21).
97. The Council has suggested a condition (22) to remove permitted development rights for the enlargement the proposed dwellings consisting of additions or alterations to their roofs, relating to Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO). The Council explained at the Inquiry that this was to prevent prominent additions relating to rooms in the roofs of the proposed dwellings, contrary to the general design of the development. I consider that to be sufficiently clear justification in this case.
98. The Council, in its original suggested conditions schedule, had also included in relation to the above, the removal of such rights relating to Class A, the enlargement, improvement or other alteration of a dwellinghouse, and Class D, the erection or construction of a porch outside any external door of a dwellinghouse. However, having regard to paragraph 55 of the Framework, the Council agreed at the Inquiry that there would not be clear justification to do so in those respects due to adequate control through the GPDO. I have no substantive basis to consider differently.

99. A condition would be necessary to secure future-proof digital infrastructure in the development through the submission and implementation of details for the installation of fixed telecommunication infrastructure and gigabit-capable connections to multi-point destinations and all buildings on the site (24).

100. As referred to previously, planning obligations have been submitted under s106 of the Act. Taking account of my findings relating to the SEND contribution, those obligations make provision for the following:

- 50% of the proposed dwellings to be affordable housing, with a mix comprising 14 social rented, 9 intermediate housing and 6 first homes. That mix is agreed by the Council and Appellant to be appropriate in the circumstances of this case, as clarified in the Inquiry, and I have no substantive evidence to indicate otherwise. The provision would therefore accord with policy CP17 of the Core Strategy concerning the provision of affordable housing, and paragraphs 66, 67, 156 and 157 of the Framework.
- Provision for the proposed nursery school and associated car parking, including management of that car parking.
- Provision and management of appropriate on-site open space. This would be in accordance with policy OS3 of the MDEDPD relating to provision of open space, and would be necessary in the interests of the amenities of prospective residents, and the visual and ecological quality of the site. There is also provision for appropriate financial contributions towards off-site Open Space at William Field recreation ground and Haysden Country Park, again in accordance with policy OS3 of the MDEDPD and necessary to mitigate for their likely increased use arising from the proposed development. These provisions in relation to open space would also be necessary in the interests of the health and well-being of prospective residents.
- Provision of highway works, including two road narrowings on Court Lane and relocation of the speed sign, in accordance with policy SQ8 of the MDEDPD relating to, amongst other things, road safety. These works would be necessary as highway safety measures relating to the proposed site access design.
- Appropriate financial contributions, all of which would be necessary to mitigate for the likely increased use of the respective services arising from the proposed development, towards:
  - Secondary education relating to the expansion of schools in the West Kent Selective and Tonbridge and Tunbridge Wells Non-Selective Planning Groups including Mascalls Secondary Academy, and SEND provision, so as to provide appropriate access to education for prospective residents;
  - Local health services comprising the refurbishment, reconfiguration and/or extension of Hadlow Medical Centre and/or Woodlands Health Centre and/or towards new general practice premises development in the area serving the proposed development, in the interests of providing appropriate access to healthcare for prospective residents;

- Additional resources, equipment and stock at Hadlow Library, in the interests of maintaining a comprehensive and efficient library service;
- Additional equipment and resources for Adult Education Centres and outreach provision, to help prospective residents overcome social isolation and to encourage community cohesion, as well as improving skills in a wide range of areas;
- Additional resources for Integrated Children's Services to enable expansion of capacity within hubs and provision of outreach work in the vicinity of the proposed development. This is in order to secure sufficient educational leisure-time activities for the improvement of young persons well-being, and sufficient facilities for such activities for people aged 13 to 19 and certain people aged 20 to 25 who have additional needs;
- Provision for adult social care relating to priority areas of assistive technology, adapting community facilities, sensory facilities and Changing Places; serving adults with a physical or learning disability, or physical or mental illness; also safeguarding those at risk of harm and abuse, and supporting unpaid carers;
- Works at household waste transfer station facilities serving the proposed development, in order to maintain a sustainable waste management service in the interests of the amenities of prospective residents.

All of these financial contributions and would be in accordance with Core Strategy policy CP25.

### **Planning balance**

101. I have found that the proposed development not be inappropriate development in the Green Belt. Furthermore, in complying with the Golden Rules, having regard to paragraph 158 of the Framework, the proposed development should be given significant weight in favour of the grant of permission. Additionally, I have found there would be no harm caused to heritage assets comprising the nearby CA and LBs. I have found that some harm would be caused to the character and appearance of the surrounding area. However, for the reasons set out, the extent of that harm would be moderate. Furthermore, I have found that some harm would be caused due to the loss of BMVAL, but it would be to a limited extent.
102. As previously identified, the Council is not able to demonstrate a 5 year HLS, with the current figure standing at 2.89 years' worth of supply. Furthermore, as also identified through the HDT, there is a poor recent record of housing delivery, which was substantially below the housing requirement over the previous three years. As such, having regard to paragraph 11(d) of the Framework, whereby there are no areas or assets of particular importance that provide a strong reason for refusing the development proposed, the most important policies for determining the appeal are out-of-date and the paragraph 11(d)(ii) balance is engaged.
103. Having regard to the Government's objective of significantly boosting the supply of homes, the proposed development would have the benefit of contributing 57 dwellings towards the Borough's supply. I acknowledge the comment that there

would be no single storey houses, albeit that the proposed apartment block would contain ground floor units. However, I am satisfied, based on the submissions, that there would be an appropriate mix of housing types and sizes, with adequate provision of outdoor space.

104. Furthermore, the proposed housing provision would include the added benefit of 29 affordable dwellings, which would be of an appropriate mix of tenures distributed in varying sized clusters around the development. That would represent a significant addition to local supply against a backdrop of much need for such housing in the Borough.
105. Added to this is the significant shortfall in HLS with no clear indication as to how that will be addressed, and the recent delivery having been significantly less than the 75% level set out in footnote 56 relating to paragraph 155(b) of the Framework. As such, those benefits relating to additional housing generally and the affordable dwellings would be substantial.
106. The proposed development would also be likely to generate significant economic benefits including direct and indirect jobs during the construction phase, albeit for the short-term duration of that phase; and then once operational, in terms of the local economic output of new residents, additional residential expenditure, indirect and induced jobs, local economic employment output, and retained Nursery jobs.
107. In respect of the Saplings Nursery, I have previously referred to the clear demand for this facility, albeit in the absence of a detailed needs assessment, and I also understand that a significant number of the attending children live in or adjacent to Hadlow. I have also previously highlighted my understanding that Saplings Nursery is currently constrained by uncertainty in the long-term due to the leasing situation, and the clear intention for re-providing the Nursery as part of the proposed development with a modern more spacious facility. I have also found that the development as a whole, including the proposed Nursery, would not be inappropriate development in the Green Belt, which is not disputed by the Council and Appellant. In those circumstances, the new provision on the site would be likely to represent a significant benefit. Furthermore, particularly in relation to the proposed pedestrian access between the development and The Forstal on the west side of the site, this would have the benefit of improved provision for walking to and from the Nursery when compared with the access to the existing facility.
108. The proposed on-site open space and play provision, whilst required for the proposed development, would also be likely to benefit existing local people to a moderate degree, especially with the accessibility via the intended direct pedestrian accesses to the adjacent footpath and The Forstal on the west side of the site, as well as via the main site access. However, in respect of the financial contributions towards off-site open space, I have no substantive basis to consider that this mitigation would include aspects likely to provide a net benefit to existing users.
109. As referred to previously, the proposed development is intended to provide BNG. It does not fall under the statutory requirement for the provision of 10% BNG. Furthermore, there are no development plan policies that refer directly to BNG or any specific required level of provision. However, policy CP1 of the Core Strategy refers, amongst other things, to balancing the need for development against the need to protect and enhance the natural environment and that the quality of the natural environment will be preserved and, wherever possible, enhanced.

Additionally, policies NE2 and NE3 of the MDEDPD together, amongst other things state that biodiversity will be protected, conserved and enhanced and that opportunities to improve ecological conservation value will be sought. The Framework also sets out that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, providing net gains for biodiversity. In these circumstances, I attach moderate weight to the proposed BNG.

110. The proposed highway improvements to Court Lane, that would aim to reduce traffic speeds would, as a result, be to the significant benefit of all road users, not just prospective residents of the proposed development.
111. Provision of financial contributions towards education provision and health services in the local area would mitigate for the likely additional demand as a result of the proposed development. Notwithstanding that these provisions have been considered in relation to the Golden Rules, with the significant weight in favour of the grant of permission given to the development in complying with them, there is no substantive evidence to indicate that they would also have a net benefit for existing users of those services.
112. In respect of additional income to the Council from Council Tax and the New Homes Bonus, I have received insufficient evidence to indicate the extent to which this would represent a benefit as opposed to mitigation and so afford this little weight.
113. Notwithstanding my findings in relation to the second and third main issues, I have found there to be no other matters that would cause unacceptable harm, subject to appropriate conditions and planning obligations where applicable.
114. Taking all of the above into account, in applying paragraph 11(d)(ii) of the Framework, the extent to which there would be adverse impacts of granting permission relating to the second and third main issues would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

## **Conclusion**

115. For the reasons given above I conclude that the appeal should be allowed.

*A Dawe*

INSPECTOR

## ANNEX A – CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
  - Site Location Plan Drawing No. DE476-09A
  - Proposed Site Plan Drawing No. DE476-10H
  - Parking and Cycle Storage Plan Drawing No. DE476-11F
  - Storey Heights Plan Drawing No. DE476-12F
  - Tenure Plan Drawing No. DE476-13I
  - Boundary Treatment Plan Drawing No. DE476-14F
  - Refuge Storage and Collection Plan Drawing No. DE476-15F
  - Illustrative Masterplan Drawing No. DE476-16G
  - Materials Plan Drawing No. DE476-17E
  - House Size Plan Drawing No. DE476-18E
  - Landscape Masterplan Drawing No. DE476-020G
  - Hertford House type (Plot 7) Drawing No. DE476-30E
  - Maidstone House type (Plots 9, 10 & 11) Drawing No. DE476-31E
  - Vyne v1 House type (Plots 14,15,28,29,& 54) Drawing No. DE476-32E
  - Vyne v2 House type (Plots 25,26,27) Drawing No. DE476-33E
  - Vyne v3 House type (Plot 55) Drawing No. DE476-34E
  - Frogmore v1 House type (Plots 17,23,33,37,38,39) Drawing No. DE476-36E
  - Gosford v1 House type (Plots 31 & 34) Drawing No. DE476-37E
  - Gosford v3 House type (Plots 18,24,32,40 43) Drawing No. DE476-39E
  - Penshurst v1 House type (Plot 36) Drawing No. DE476-40F
  - Penshurst v3 House type (Plots 30 & 56) Drawing No. DE476-42E
  - Bletchley House type (Plots 12 & 13) Drawing No. DE476-43E
  - Windsor v1 House type (Plots 19, 20 & 21) Drawing No. DE476-44E
  - Chartwell (Plots 35 &57) Drawing No. DE476-46E
  - Blenheim v1 House type (Plots 16 & 22) Drawing No. DE476-47E
  - Blenheim v1 House type (Floor Plans) Drawing No. DE476-48E
  - Apartment House type Drawing No. DE476-51E
  - Nursery Elevations (p1) Drawing No. DE476-52B
  - Nursery Elevations (p2) Drawing No. DE476-53B
  - Garages, Carports and Storage Drawing No. DE476-54D
  - Taunton House type (Plots 52 and 53) Drawing No. DE476-57
  - Bedford v1 House type (Plot 51) Drawing No. DE476-58A
  - Bedford v2 House type (Plot 50) Drawing No. DE476-59A
  - Street Scenes A-AA, B-BB, C-CC Drawing No. DE476-60A
  - Street Scenes D-DD, E-EE Drawing No. DE476-61D
  - Street Scenes F-FF, G-GG Drawing No. DE476-62A
  - Street Scenes H-HH, I-II Drawing No. DE476-63D
  - Bedford Plus House type (Plots 41 & 42) Drawing No DE476-64
  - Hertford M4(2) Compliant House type (Plot 8) Drawing No DE476-65
3. No development, other than the demolition of any buildings, removal of hardstanding, ground investigations or site survey works, shall take place until

details of materials to be used externally have been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

4. Development shall not begin other than the demolition of any buildings, removal of hardstanding, ground investigations or site surveys, until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall be based upon the Flood Risk Assessment and Drainage Strategy prepared by Fairhurst dated 20th January 2023 and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site.

The drainage scheme shall also demonstrate (with reference to published guidance):

- Provisions for measure to prevent the discharge of surface water onto the highway;
- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters;
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

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

5. No building of the development hereby permitted shall be occupied other than in accordance with an agreed implementation schedule until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority in writing. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.
6. Prior to commencement of any work above ground of the nursery and flatted building, the applicant shall supply to the Local Planning Authority a suitable sound insulation assessment providing suitable details of the substantially enhanced sound insulation performance of sound reduction achieved by the floor/ceiling boundary between the commercial nursery/residential use with the purpose of resisting the transmission of airborne sound such that the weighted standardised difference (DnT, W + Ctr) shall not be less than 53 decibels (i.e. an enhancement of the minimum levels stated in the Building Regulations of

10dB). Any works as approved by the Local Planning Authority shall be put into place prior to first residential occupation.

7. No development hereby permitted shall commence unless and until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include the following:
  - (a) Routing of construction and delivery vehicles to / from site;
  - (b) Parking and turning areas for construction and delivery vehicles and site personnel;
  - (c) Timing of deliveries;
  - (d) Provision of wheel washing facilities;
  - (e) Arrangements for environmental management control of all demolition and construction works;
  - (f) Temporary traffic management / signage.

The Construction Management Plan shall thereafter be implemented in accordance with the approved details throughout the course of construction.

8. The areas shown as vehicle parking spaces on the Parking and Cycle Storage Plan Drawing No. DE476-11F shall be provided, surfaced and drained prior to the first occupation of the buildings they serve. Thereafter the spaces (including the garages) shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.
9. The secure cycle storage for each dwelling as shown on the Parking and Cycle Storage Plan Drawing No. DE476-11F shall be provided prior to the first occupation of the dwelling it serves and shall thereafter be maintained and retained in accordance with the approved details.
10. Prior to either the occupation of the first dwelling or the nursery coming into use, whichever is the first, the access as shown on submitted plans (drawing number: 05806-TR-005-P10 titled Preliminary Site Access Design) shall be constructed, in accordance with the approved details together with the associated visibility splays which shall have no obstructions over 0.6 metres above carriageway level within the splays. At least the first 5 metres of the access from the edge of the highway shall also be constructed with the use of a bound surface and thereafter retained and maintained.
11. No development shall take place other than as required as part of any relevant approved site investigation works until the following have been submitted to and approved in writing by the Local Planning Authority:
  - a) results of the site investigations (including any necessary intrusive investigations) and a risk assessment of the degree and nature of any contamination on site and the impact on human health, controlled waters and the wider environment. These results shall include a detailed remediation method statement informed by the site investigation results and associated risk

assessment, which details how the site will be made suitable for its approved end use through removal or mitigation measures. The method statement must include details of all works to be undertaken, proposed remediation objectives, remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site cannot be determined as Contaminated Land as defined under Part 2A of the Environmental Protection Act 1990 (or as otherwise amended).

The submitted scheme shall include details of arrangements for responding to any discovery of unforeseen contamination during the undertaking hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority in writing of the presence of any such unforeseen contamination along with a timetable of works to be undertaken to make the site suitable for its approved end use.

- b) prior to the commencement of the development the relevant approved remediation scheme shall be carried out as approved. The Local Planning Authority should be given a minimum of two weeks written notification of the commencement of the remediation scheme works.
12. Following completion of the approved remediation method statement, and prior to the occupation of the relevant phase, a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level shall be submitted for the information of the Local Planning Authority.

The report shall be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the Local Planning Authority for written approval and shall be fully implemented as approved.

Thereafter, no works shall take place such as to prejudice the effectiveness of the approved scheme of remediation.

13. The development hereby approved shall be carried out in such a manner as to avoid damage to the existing trees to be retained as approved under Condition 14, including their root system, or other planting to be retained as part of the landscaping scheme by observing the following:
- (a) All trees to be preserved shall be marked on site and protected during any operation on site by a fence erected at 0.5 metres beyond the canopy spread;
  - (b) No fires shall be lit within the spread of the branches of the trees;
  - (c) No materials or equipment shall be stored within the spread of the branches of the trees;
  - (d) Any damage to trees shall be made good with a coating of fungicidal sealant;

- (e) No roots over 50mm diameter shall be cut and unless expressly authorised by this permission no buildings, roads or other engineering operations shall be constructed or carried out within the spread of the branches of the trees;
  - (f) Ground levels within the spread of the branches of the trees shall not be raised or lowered in relation to the existing ground level.
14. a) Before the development hereby permitted is commenced, other than the demolition of any buildings, removal of hardstanding, ground investigations or site surveys, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- A timetable for the implementation of the hard landscaping;
  - The details of existing trees to be retained;
  - Size, species/cultivar, planting heights, densities and location of new habitats and positions of any soft landscaping.
- b) All work comprised in the approved scheme of soft landscaping shall be carried out before the end of the first planting and seeding season, following occupation of any part of the buildings or completion of the development, whichever is sooner, or in accordance with an agreed timetable.
- c) Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.
15. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved in writing by the Local Planning Authority. The works undertaken thereafter shall be in strict accordance with the details approved.
16. Prior to the installation of any external lighting, a lighting design plan for biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall include the following:
- The identification of areas/features on-site where disturbance could occur to bat (or any other sensitive ecological receptor as determined by a suitably qualified ecologist) roosting/nesting sites and/or foraging/commuting routes;
  - The provision of an appropriate plan(s) to show how and where external lighting will be installed;
  - The provision of technical specifications for the external lighting;

- The provision of lighting contour plans to show expected lux levels on both the horizontal (and vertical planes as required), so that it can be clearly demonstrated that areas to be lit will not disturb wildlife activity.

The external lighting shall be installed and maintained in accordance with the approved lighting design plan for biodiversity.

17. No development, including any site clearance and below ground works, shall take place until an Ecological Design Strategy (EDS) has been submitted to and approved in writing by, the Local Planning Authority. The content of the Strategy shall include the mitigation, compensation and enhancement measures in the FPCR (21st August 2024) Ecological Appeal Statement (K:\8700\8719\ECO\Hearing), FPCR (21st August 2024) Ecological Impact Assessment (K:\8700\8719\ECO\EcIA) section 6 and the Define (16th October 2023) Landscape Masterplan. The EDS shall include the following:

- Purpose and conservation objectives for the proposed works and habitat management;
- Review of site potential and constraints (including a description and evaluation of features to be managed and including updated species/habitat surveys as recommended by suitably qualified ecologist (e.g., preliminary ecological appraisal, bats, badgers, breeding birds, including turtle dove, great crested newts, reptiles, and any others as required));
- Detailed design(s) and/or working method(s) to achieve stated objectives, including the extent and location/area of proposed works on appropriate scale maps and plans. This shall include:
  - Full details of the proposed ecological features. For habitat boxes this shall include numbers, make and model, locations to include height, aspect and mounting location shown on scaled landscaping plans suitable for construction. For hibernacula, this shall include numbers, size (including length, width and height), locations, and materials shown on scaled landscaping plans suitable for construction;
  - Full details of on-site mitigation and compensation measures for reptiles, bats, breeding birds, great crested newts and hedgehogs and any other protected and/or priority species as determined by a suitably qualified ecologist.
- Reference to any necessary mitigation licences or other relevant documents;
- Timetable for implementation demonstrating that works are aligned with the proposed timetable of development;
- Persons responsible for implementing the works and details of the body or organisation(s) responsible for implementation of a long-term management plan;

- Details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery;
- Details of initial aftercare and preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period);
- Appropriate management prescriptions for achieving aims and objectives for the lifetime of the development (including sensitive management for amphibians, reptiles, bats, breeding birds, hedgehogs, hedgerows and any other habitats/species as determined as necessary by a suitably qualified ecologist);
- Details of ongoing monitoring and remedial measures.

The EDS shall be implemented and managed in accordance with the submitted and approved details thereafter.

18. No development shall be undertaken (including any site/vegetation clearance) before a construction ecological management plan (CEMP - biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP - biodiversity shall include the mitigation and compensation measures in the FPCR (21st August 2024) Ecological Appeal Statement (K:\8700\8719\ECO\Hearing), FPCR (21st August 2024) Ecological Impact Assessment (K:\8700\8719\ECO\EcIA) section 6. The Plan shall include the following:

- Purpose and objectives for the proposed works:
- Risk assessment of potentially damaging construction activities. This shall include reference to the results of updated species/habitat surveys as advised by a suitably qualified ecologist;
- The identification of biodiversity protection zones and the use of protective fences, exclusion barriers and warning signs;
- Extent and location of proposed works shown on appropriate scale maps and plans for all relevant species and habitats;
- Detailed design(s) and/or detailed working method(s) necessary to achieve stated objectives (including the location and timing);
- Reference to any relevant and necessary protected species licences (e.g., great crested newt) and any relevant mitigation measures required;
- Reference to a detailed arboricultural method statement to protect retained trees/hedgerows;
- Reference to or inclusion of a minimum 10-year Japanese knotweed management and removals plan;

- Persons responsible for implementing and monitoring the works, including times during construction when specialist ecologists need to be present on site to undertake / oversee works;
- The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; and
- Details of the disposal of any wastes required to implement works.

The approved CEMP - biodiversity shall be adhered to and implemented throughout the construction period in accordance with the approved details.

19. No development shall be undertaken (including any site/vegetation clearance) before a biodiversity gain plan has been submitted to and approved in writing by the Local Planning Authority. The Biodiversity Gain Plan shall be prepared in accordance with FPCR (21st August 2024) Ecological Impact Assessment (K:\8700\8719\ECO\EcIA) section 6, as well as sections 6 and 7 of FPCR (13th August 2024) Biodiversity Net Gain Report (K:\8700\8719\ECO\EcIA\Appendices\Appendix I – BNG Report\8719 BNG Report.docx). The biodiversity gain plan shall include:
- Information about the steps taken or to be taken to minimise the adverse effect of the development on the biodiversity of the onsite habitat and any other habitat;
  - The pre-development biodiversity value of the onsite habitat;
  - The post-development biodiversity value of the onsite habitat;
  - Any offsite biodiversity gain allocated to the development and the biodiversity and the biodiversity value of that gain in relation to the development;
  - Timetable for the implementation of the measures; and
  - Any biodiversity credits purchased for the development.

The biodiversity plan shall thereafter be implemented in accordance with the approved details.

20. No development, other than the demolition of any buildings, removal of hardstanding, ground investigations or site survey works, shall take place until a drainage strategy setting out the method in which foul sewage resulting from this development proposal is to be managed in accordance with the hierarchy of drainage options as set out in the National Planning Practice Guidance: Flood risk and coastal change has been submitted to and approved in writing by the Local Planning Authority. The dwellings shall not be occupied unless and until the foul drainage method detailed in the drainage strategy has been implemented in accordance with the approved details which shall thereafter be retained and maintained.
21. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended or any Order revoking

or re-enacting that Order with or without modification), the nursery shall not be used for any other use falling within Class E of Part A of Schedule 2, Article 3 of the Town and Country Planning (Use Classes) Order 1987 without the prior written consent of the Local Planning Authority.

22. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) no development falling within Class B of Part 1 of Schedule 2, Article 3 of the said Order shall be carried out without the prior consent in writing of the Local Planning Authority.
23. Prior to the first occupation of the development a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include details of:
  - (a) A comprehensive survey to be issued to all users of the development;
  - (b) How new residents will be involved in the implementation of the Travel Plan;
  - (c) Targets set in the Plan to reduce car journeys to the site;
  - (d) How the Travel Plan will be regularly monitored and amended shall be submitted, and all relevant reports designed to monitor the effectiveness of the Travel Plan shall be submitted to and approved in writing by the Local Planning Authority.

The Travel Plan shall thereafter be implemented in accordance with the approved details.

24. Prior to the installation of broadband services, details shall be submitted for the installation of fixed telecommunication infrastructure and gigabit-capable (minimal internal speed of 1000mbps) connections to multi-point destinations and all buildings including residential, commercial and community. The infrastructure shall be installed in accordance with the approved details during the construction of the development, capable of connection to commercial broadband providers and maintained in accordance with approved details. The development should comply with any statutory or non-statutory guidance extant at the time a decision on the application for planning permission is made.
25. Prior to commencement of works above slab level, a specification for the play equipment as shown on Landscape Masterplan Drawing No. DE476-020G and a timetable for its provision, shall be submitted to and approved in writing by the Local Planning Authority. It shall then be implemented in accordance with the approved specification and timetable and thereafter retained as such.
26. Prior to commencement of works above slab level, a timetable for the installation of boundary details as shown on Boundary Treatment Plan Drawing No. DE476-14F, shall be submitted to and approved in writing by the Local Planning Authority. The approved boundary treatment shall then be implemented in accordance with the approved timetable.

## **ANNEX B - APPEARANCES**

### FOR THE APPELLANT:

Hashi Mohamed, of Counsel	Instructed by David Maher BA, MA PLAN, MRTPI, on behalf of Dandara South East Ltd
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He called:

Andrew Williams BA (Hons) DipLA DipUD CMLI	Director, Define
Richard Dennis BA (Hons)	Senior Design Manager, Dandara South East Ltd
Lucy Wilford BA (Hons) DipTP MRTPI	Director, DHA Planning
Annie Gingell BSc (Hons) MSc MRTPI	Associate Director, Turley
David Maher BA, MA PLAN, MRTPI (for contributions during consideration of planning issues and the planning obligations/ conditions round table discussion (RTD))	Head of Planning, Dandara South East Ltd
J Warwick and C Parker	Saplings Bursery

### FOR THE LOCAL PLANNING AUTHORITY:

Asitha Ranatunga, of Counsel	Instructed by Joy Ukadike, Head of Legal Services, Tonbridge & Malling Borough Council
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He called (to participate albeit not presenting  
formal evidence):

Susan Field BSc MA MRTPI	Senior Planning Officer, Tonbridge & Malling Borough Council
Jon Etchells MA BPhil CMLI	Director, Jon Etchells Consulting Limited

### FOR KENT COUNTY COUNCIL (KCC):

Nick Abrahams (for planning obligations RTD)	Assistant Director of Education at KCC
Richard Kidd (for planning obligations RTD)	Development Investment Team at KCC
Sarah Bonser (for planning obligations RTD)	Solicitor at KCC

**INTERESTED PARTIES:**

Steve Crisp	Borough Councillor for Hadlow
Sarah Hudson	Borough Councillor and County Councillor representing Hadlow
James Lark	Borough Councillor for Hadlow
Mrs P Cox	Local resident

**ANNEX C - INQUIRY DOCUMENTS (IDs)**

1. Tenure Plan Ref DE476-13I.
2. Appellant's list of appearances.
3. Appellant's opening statement.
4. Council's opening statement.
5. Statement made by Steve Crisp
6. Agreed Draft Conditions, January 2025 v6 (agreed by the Appellant and Council in the event of the appeal being allowed).
7. Pre-commencement conditions statement - v2.
8. Appellant's closing statement.
9. Council's closing statement.
10. Statement made by Mrs P Cox.