



Appeal Decision

Site visit made on 2 December 2025

by **I A Dyer BSc (Eng) FCIHT**

an Inspector appointed by the Secretary of State

Decision date: 15 December 2025

Appeal Ref: APP/A2280/W/25/3371188

Land West of Lower Featherby Road, Gillingham, Medway, Kent, ME7 2XS

- 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 HRF Properties Ltd against the decision of Medway Council.
 - The application Ref is MC/24/1823.
 - The development proposed is demolition of existing dwelling and buildings and erection of 14no. dwellings with associated access, parking, infrastructure, landscaping and ancillary works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The parties have entered into an Agreement under Section 106 of the Town and Country Planning Act 1990 (the Section 106 Agreement) which secures two homes as First Homes, and financial contributions to mitigate effects on infrastructure and Protected Sites. There is no dispute between the parties that the Section 106 Agreement fulfils the tests stipulated by the National Planning Policy Framework (the Framework) and both parties are content with the wording. Although it will be seen that I have returned to the matter of Protected Sites, I have no reason to disagree with these conclusions. I have therefore taken this document into account in my consideration of the proposal.
3. The Council has published its Medway Local Plan 2041 (the Reg 19 Local Plan). However, this plan has yet to be examined and found sound. Given the early stage in the examination process of the Reg 19 Local Plan it carries limited weight in my deliberations.

Main Issues

4. The Council has confirmed, in its Statement of Case, that the submission of the Section 106 Agreement addresses its concerns in regard to the fifth and sixth reasons for refusal as set out in their Decision Notice. Whilst no dispute remains between the parties in the matters referred to in these reasons for refusal, the sixth relates to the effects of the Proposal on Protected Sites.
5. Notwithstanding the agreement of the main parties on these matters, the Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage. This responsibility now falls to me within this appeal.

6. The main issues in this appeal are, therefore: -

- Whether the site is a suitable location for the proposal, having regard to local policy for the provision of housing;
- The effect of the proposal on the character and appearance of the site and the surrounding area;
- The effect of the proposal on the provision of gypsy and traveller sites; and: -
- The effect of the proposal on Protected Sites.

Reasons

Location

7. There is no dispute between the parties that the site lies outside the rural settlement boundary as set out in the Medway Local Plan (2003) (the LP) and is within open countryside for planning purposes.
8. Policy S1 of the LP prioritises re-investment in the existing urban fabric, focussing on existing population centres. The policy seeks to restrict outward peripheral expansion of development onto fresh land, and the land to the north and east of Gillingham, where the site is located, is specifically identified for protection. Policy S2 seeks to achieve a sustainable approach to the location and mix of new development, to provide local communities with a range of facilities that can be reached by more sustainable transport options.
9. Policy BNE25 of the Local Plan seeks to restrict development in the countryside unless it maintains, and wherever possible enhances, the character, amenity and functioning of the countryside and it offers a realistic chance of access by a range of transport modes unless it is one of a number of identified exceptions. No argument has been put forward to demonstrate that the proposal is a type identified in Policy BNE25 as an exception.
10. Overall, these policies seek to co-locate new development where it can be provided with sustainable access whilst recognising the intrinsic character and beauty of the countryside and accord closely with the aims of the Framework.
11. Having regard to accessibility to more sustainable modes of transport, the site fronts onto Lower Featherby Road which is a single carriageway road with street lighting and a footway along the site frontage connecting to Lower Rainham Road. Both roads are lit and subject to a 30MPH speed limit. From the junction there are footways leading to bus stops on Lower Rainham Road.
12. The closest bus stops, those on Lower Rainham Road, have just one bus service per weekday and none on weekends. Other bus stops lie within walking distance which have more frequent services and could be used to reach Gillingham, Chatham and Walderslade which are settlements that could provide the day-to-day services and facilities that the occupiers of the proposal would need. Services also travel to other facilities, such as the Chatham Waters Asda convenience store.
13. However, the shortest pedestrian route to those at Grange Road, served by more frequent services, crosses a dual carriageway, Yokosuka Way, carrying 50 MPH traffic and there is no continuous footway or lit route. Indeed, the dual carriageway,

where the route from the site along Grange Road meets the dual carriageway, has an unbroken crash barrier across the desire line.

14. The route to other nearby bus stops, at the Hastings Arms and beyond, would also involve crossing Yokosuka Way. However, there is a controlled crossing point beyond the roundabout from the site, once the pedestrians have crossed Lower Rainham Road.
15. At the time of my visit there were diversions operating on Lower Rainham Road and this may have affected traffic flows. Nonetheless Lower Rainham Road is a single carriageway road, lit and subject to a 30MPH speed limit. It is likely that able-bodied persons would be able to cross the road at that point.
16. However, the frequency and speed of traffic on Yokosuka Way and the need to cross Lower Rainham Road would be likely to deter some pedestrians, particularly when accompanied by children, carrying heavy shopping or those with disabilities, the elderly, or others with reduced mobility.
17. Whilst the edge of the built-up area of Rainham is a short distance away, as the crow flies, the services and facilities that future occupiers of the development will need on a day-to-day basis lie further away, within the settlement. There is a convenience store at the junction of Grange Road and Woodlands Road. This carries a range of goods, but would not cater for all of the day-to-day needs of future occupiers of the development. The store lies to the west of Yokosuka Way, and this would, for the reasons given above, provide a degree of deterrence to walking. There are some facilities available at Twydall Green. However, there is no continuous, lit footway on that route and the services lie at a distance that would deter many pedestrians.
18. There is a farm shop on Grange Road, east of Yokosuka Way. The range of goods on sale there is very limited and, although able to provide for some, it would certainly not cater for all of the day-to-day needs of future occupiers of the site.
19. There is a railway station in Gillingham, which would give access to the main rail network, but, again, this is west of Yokosuka Way, and it would take just under an hour to walk to. Rainham Precinct, with shops and services is a similar distance. Given the distance it is unlikely that many people would walk there from the site. These facilities are, however, cyclable and there are cycling facilities alongside Yokosuka Way from the roundabout and a National Cycle Route, Route 1, running along the estuary is within convenient reach, across Lower Rainham Road. The intervening roads are relatively level, lit and subject to a 30MPH speed limit. Whilst the need to cycle on carriageway along parts of the route would be likely to deter cycling with children, a competent cyclist should be capable of reaching the nearest convenience store, station and precinct.
20. In summary, whilst there is some scope for travel by cycle and on foot, and this would reduce the reliance upon the private car by occupiers of the proposed development, the need to cross Yokosuka Way provides a deterrent. It is, therefore, likely that the future occupiers of the site will be largely, though not totally, reliant upon the private car to meet their day-to-day transport needs.

21. My attention has been brought to two appeal decisions¹, at Lower Bloors Lane and 309 Lower Rainham Road. The transport connectivity of a site relates to its specific location and neither site lies in such close proximity to the proposal to be directly comparable. I have, therefore, considered this case on its own merits.
22. The appellant has brought to my attention a planning permission for two dwellings², on land adjacent to 112 Lower Rainham Road, which lies to the north of the appeal site. Whilst the appellant has provided copies of the two Decision Notices relating to the applications concerned, I have little other information about the cases. I am not, therefore, able to ascertain the factors that went into any planning balance for those decisions. As set out above, I have, in any case, determined this appeal on its own merits.
23. It will be seen, below, that I have found that the proposal would have an adverse effect on the intrinsic character and beauty of the countryside.
24. I therefore find that the site is not a suitable location for the proposal, having regard to local policy for the provision of housing. It would, therefore, be contrary to Policies S1, S2 and BNE25 of the LP in as much as these, together, amongst other things, seek to co-locate new development where it can be provided with sustainable access whilst recognising the intrinsic character and beauty of the countryside.

Character and appearance

25. I have identified above that Policy BNE25 of the LP seeks to protect the character, amenity and functioning of the countryside, including the river environment of the Medway and Thames.
26. It will also be seen above that I have found that the proposal would be contrary to the aims of Policy BNE25 of the LP, in as much as the proposed development is not of a type that satisfies the exception criteria set out within the policy.
27. The Council have designated the area in which the appeal site lies an Area of Local Landscape Importance (ALLI), specifically the Gillingham Riverside Area.
28. Policy BNE34 of the LP seeks to protect the landscape character and function of the area unless the economic and social benefits of a development are so important that they outweigh the local priority to conserve the area's landscape.
29. The Medway Landscape Character Assessment (2011) (the MLCA) identifies the land as being Landscape Character Area 21 Lower Rainham Farmland (the LRF) within the North Kent Fruit Belt Character Area, where there is a need to resist further built development and creeping suburbanisation into this area and a need for positive landscape management systems, including the restoration of fields to appropriate and sensitive rural land uses, in order to reverse the decline in condition of landscape and reinforce rural characteristics. Whilst the site is not actively used for arable crops and has only the last vestiges of an orchard within it, this does not preclude its return to arable or orchard agriculture. The LRF forms a buffer between the developed urban areas to the south and west and Landscape Character Area 5 Riverside Marshes.

¹PINS Refs: APP/A2280/W/24/3355647 and APP/A2280/W/21/3266477

² Council Refs MC/17/2512 and MC/20/1409

30. The site is currently a grassed field, used for the grazing of alpacas. It has, by virtue of its undeveloped spaciousness, verdancy and tranquillity, an overtly, rural character and appearance, in direct contrast to the visibly suburban character and appearance of the built-up areas nearby, to the west, across Yokosuka Way and to the south, across the railway. Whilst well-screened by existing planting to the west, the sites boundaries are more open to the east and south, with views into the site that allow passers-by to appreciate the bucolic nature of the site. Given the height of the proposed dwellings there would be some, limited, views of the proposal from the north-west to passersby on Lower Rainham Road.
31. Whilst the locality does have some urbanising features, including street lighting and a footway on the Lower Featherby Road frontage, these do not overwhelm the basic rurality of the area, and do not justify the further erosion of its rural features. Indeed, the thrust of local policy is to prevent further undermining of the landscape character.
32. In the wider area of the LDF, built form is typically residential ribbon development with a direct presence and access onto the road. Occasionally there are buildings behind the dwellings, such as at 92 Rainham Road, but these are typically low outbuildings, sometimes associated with a farmhouse to the front. 92 Rainham Road also has, to its rear, a mobile home for gypsy and traveller accommodation, but this is not typical of the area.
33. The ALLI is identified as a rural landscape of orchards and arable fields with country lanes. Functionally, it serves as a green buffer separating the built-up areas from areas of international importance for nature conservation and recreation along the Medway estuary. Further, it provides residents from urban areas access to an attractive, rural landscape and a green backdrop when viewed from the Medway estuary. Its orchards, mature hedgerows and farm groups complement and augment the Riverside Country Park.
34. The proposal would introduce a significant amount of built form into an otherwise open field, infilling the gap between the dwellings on Grange Road, to the south, and Lower Rainham Road to the north. Other than the dwellings facing onto these roads, buildings in this gap are generally low and single storey of modest proportion.
35. I recognise the intent of the appellants to achieve an agricultural appearance to the development, reminiscent of a group of farm buildings around their yard. Nonetheless the appearance of many of the proposed dwellings would be distinctly urban, and the farmyard concept is undermined to resemble a modern, suburban layout. Further, the proposal would introduce hard landscaping features on boundaries more in keeping with an urban setting than a rural one.
36. This, together with the domestic paraphernalia and activity associated with the dwellings, would harmfully undermine the character and appearance of the site, and, thereby, the rurality of its setting. The proposal would extend built form out from the urban settlement of Gillingham into its rural hinterland, eroding the buffer of open land between Gillingham and Rainham.
37. The appellant has drawn my attention to a cluster of dwellings east of Copperhouse Lane, which The Council identifies as Walnut Tree Farm. These are well set back off Lower Rainham Road. I note that this lies in Landscape Character

Area 5 Riverside Marshes, rather than the LRF and so does not inform its character.

38. Whilst the proposal includes boundary planting, which screens the proposal to a degree, this would not, effectively screen the site from the east and south. Thus, the changes to the land would be readily apparent from Lower Featherby Road and its junction with Grange Road.
39. Planting may provide mitigation to the changes to the appearance of the site through reinforced screening. However, such planting would take time to establish, and I cannot be certain that it would be effective. Thus, the provision of landscaping through a condition to mitigate the visual effect of the proposal would be inappropriate.
40. The appellants have again brought my attention to the appeal decision at 309 Lower Rainham Road, as they consider it relevant to the matters in dispute at this appeal. However, that proposal continued an existing built form of ribbon development, which I have identified as being a feature locally. The proposal before me would infill an open field and I note the Inspector's conclusion in the 309 Lower Rainham Road appeal that "the dwellings would appear as a natural continuation of the row of properties to the east and would not intrude into obvious countryside." I do not, therefore, consider the proposals comparable to such a degree that the permission granted at 309 Lower Rainham Road would justify the proposal before me.
41. The proposal would permanently alter the character and appearance of the site, undermining its rurality and the contribution that it makes to the safeguarded landscape area. This harm would be substantial. The proposal would provide economic and social benefits through the provision of an additional fourteen permanent homes, two of which would be first homes. However, for reasons that I will go into later in this decision the benefits are not sufficient to outweigh the harm to the landscape.
42. I therefore conclude that the proposal would have a significant harmful effect on the character and appearance of the site and the surrounding area and would be contrary to the aims of Policies BNE1 and BNE34 of the LP in as much as these, together, seek to protect visual amenity and the landscape character and function of the area without sufficient justification.

Gypsies and Travellers

43. The appeal site includes a parcel of land that has permission (the 2004 permission) for a change of use to mixed residential and stables, stationing of one mobile home for a Traveller family. The permission was granted following an appeal³. At that time, the Inspector imposed a condition on the permission that occupation of the pitch was restricted to a particular person and his immediate family.
44. Following the 2004 permission a Lawful Development Certificate was granted for "Replacement of single unit and movement to new position within existing permitted area" at appeal⁴. This did not remove or change the occupancy restriction. There is no dispute between the parties that the occupier of the pitch by

³ PINS Ref: T/APP/A2280/A/97/288513/P7

⁴ PINS Ref: PP/A2280/X/04/1150784

the current occupier complies with that condition. To comply with that condition, the use of that part of the appeal site as a gypsy and traveller pitch would cease on its vacation by the occupants.

45. The proposal would remove the current caravan and so its use as accommodation for a gypsy or traveller family would cease. The appellant asserts that the occupants of the pitch wish to move on. However, no evidence has been provided to support that assertion.
46. The Council state that they have had no enquiries regarding new pitches, nor requests to remove the Gypsy and Traveller status of the site.
47. The Council has identified that the pitch in question has been included in their Gypsy and Traveller Accommodation Assessment (2024) as a private site with permanent permission for gypsy and traveller accommodation. They assert that, due to a shortage of Gypsy and Traveller sites within the Borough, the lack of sites coming forward and, as a pitch already used by a Gypsy Family, they would seek to retain this pitch for Gypsy and Travellers irrespective of the current occupancy restriction. However, there is no permission in place to allow unrestricted occupancy and the pitch is not, therefore, permanent.
48. Policy H13 of the LP sets out various criteria for assessing the suitability of traveller's pitches. It does not, however, set out any policy for the retention of existing sites.
49. Whilst Policy T10 of the Reg 19 Local Plan states 'to meet the identified need for gypsy and traveller and travelling showpeople's accommodation, existing sites will be protected and intensification or expansion sought' the occupancy of this pitch is restricted and would cease at some unspecified time in the future, when it is no longer required by the family, unless a subsequent permission is granted.
50. Paragraph 63 of the National Planning Policy Framework (the Framework) identifies a requirement for local authorities to meet an area's identified housing need including the housing needed for different groups. The scope of this requirement extends to travellers.
51. The Government, as set out in the Framework and the PPTS, considers it important that the needs of gypsies and travellers are addressed. The proposal would remove an existing pitch used by a Gypsy family in an area where there is considerable unmet demand for such accommodation. Whilst the pitch is not a permanent one, it is reasonable to conclude that the displacement of the family will lead to additional demand for a pitch elsewhere. The PPTS sets out an expectation, in Paragraph 22, that, for major development projects, such as this, "Local planning authorities are entitled to expect the applicant to identify and provide an alternative site, providing the development on the original site is authorised." There is no evidence before me to demonstrate that an alternative site has been identified.
52. Bringing these matters together, I conclude that the proposal would result in the loss of a temporary Gypsy pitch. However, as there is no development plan policy to safeguard against such a loss, there would be no conflict with LP policies, including Policy H13 of the LP. Nonetheless, it is the clear intention of the Framework and the Planning Policy for Traveller Sites (PPTS) to provide for the residential needs of travellers.

The Protected Sites

53. There is no dispute between the parties that the site is located within the zone of influence (Zol) of the Medway Estuary and Marshes Special Protection Area (SPA) and RAMSAR site, which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitat Regulations). Within the Development Plan the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) incorporates strategic mitigation measures to be delivered to avoid adverse impacts.
54. Had I been minded to allow the appeal, it would have been necessary for me to seek additional information from the parties and consult Natural England in order to undertake the AA. The AA is required on a case-by-case basis to determine whether or not the project will adversely affect the integrity of the site. It would also have required a consideration of whether or not any proposed mitigation would be adequate, effective, could be appropriately secured and delivered in a timely manner. However, as I am dismissing the appeal for other reasons, I do not need to consider the matter further as it would not change the outcome of this appeal.

Other Matters

55. There is no disagreement that the Council is unable to demonstrate a five year supply of housing land in line with Government expectations. The Council's demonstrable supply of future housing land stands at about 3.1 years. Furthermore, there has been a history of under delivery of housing. This amounts to a significant shortfall of housing. Therefore, both the past trend and future prospects indicate that the housing supply situation in Medway is bleak. In the future the Reg 19 Local Plan should address this shortfall in available land. The adoption of the Reg 19 Local Plan is, however, some way off. In the meantime, fourteen dwellings, two of them secured as first homes by a planning obligation, would go a modest way towards making up for past failings.
56. The Framework supports the development of windfall sites and of under-utilised land and this weighs in favour of the proposal.

Final Balance

57. I have found that the proposal would have adverse impacts on the character and appearance of the area, fail to promote the use of sustainable modes of transport and result in the loss of a travellers' pitch, albeit that that pitch is not permanent and such loss is not contrary to any identified policy in the development plan. There would be conflict with Policies S1, S2, BNE1, BNE34 and BNE25 of the LP. The proposal would therefore not accord with the development plan as a whole.
58. The LP pre-dates the Framework and is of some considerable age. However, the Framework sets out that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. I have identified that the aims of Policies S1, S2 and BNE25 accord closely with those of the Framework, which recognises the intrinsic character and beauty of the countryside and the need to provide more sustainable choices for transport solutions. Similarly, Policies BNE1 and BNE34 of the LP seek to achieve well-designed places that conserve and enhance the natural environment. Therefore, these policies still carry significant weight in my considerations and the conflict with

the development plan is a matter that counts significantly against allowing the appeal.

59. However, the Government's objective is to significantly boost the supply of homes. In Medway future supply is insufficient and there is a backlog in terms of delivery. Because of this, paragraph 11d) of the Framework is engaged.
60. The policies in the Framework seek to both deliver a sufficient supply of homes, achieve well-designed places, conserve and enhance the natural environment and move to a more sustainable transport system.
61. The proposal would provide an additional fourteen permanent homes to boost local housing supply whereas the Council has a historic shortfall in housing delivery and lacks an identified future land supply for housing. Nonetheless the development is of modest size and so this is a benefit carrying moderate weight in favour of the proposal.
62. There would be benefits from the support of local shops, businesses and social groups in the area, and the increase in activity within the building sector, which provide limited weight in favour of the proposal.
63. The Framework and the PPTS, in combination, seek to provide adequate housing for all, including travellers. The loss of a traveller's pitch, albeit temporary, has potential to increase demand for pitches where there is already an existing shortfall. The loss of the travellers pitch weighs moderately against the proposal.
64. There are local facilities and access to public transport in the nearby settlement, and the proposal would have some potential for future occupiers to carry out everyday trips using more sustainable modes. The Framework accepts that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Future occupiers would, nonetheless, be largely reliant on the use of the private car for their day-to day travel needs. This would not prioritise sustainable transport in the way envisaged in paragraph 115 of the Framework
65. Whilst the short distances which future occupiers would have to travel to access facilities limits the harm arising from reliance on the private car, the site is not in a location which provides any reasonable opportunity to maximise the use of sustainable transport, and this carries moderate weight against the proposal.
66. The creation of high quality places and the protection of the natural environment are fundamental to what the planning and development process should achieve. For the reasons set out above, that would not be achieved here and the harm that I have found to the character and appearance of the area carries significant weight.
67. Whilst the issue of the effect of the proposal on Protected Sites remains unresolved the effects could only be, at best, neutral in my considerations.
68. Therefore, the adverse impacts of the proposal would 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. As a result, the application of the presumption in favour of sustainable development is not a material consideration that supports the proposal.

Conclusion

69. As required by the public sector equality duty (PSED) under the Equality Act 2010, I have had due regard to the three aims identified in the Act – to eliminate discrimination, advance equality of opportunity and foster good relations. The site encompasses a temporary pitch occupied by Gypsies, which is an ethnic minority, and they have the protected characteristic of race under section 149(7) of the 2010 Act. Therefore, the PSED is engaged, and my decision must be proportionate to achieving legitimate planning aims. However, as I am dismissing the appeal my decision will not result in the loss of the temporary Gypsy pitch and my decision is therefore proportionate.
70. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. The appeal is, therefore, dismissed.

I A Dyer

INSPECTOR