



**Ministry of Housing,  
Communities &  
Local Government**

Tim Booth  
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Our ref: APP/A2280/W/17/3175461  
Your ref: PP-05441858

8 November 2018

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY GLADMAN DEVELOPMENTS LTD  
LAND AT TOWN ROAD, CLIFFE WOODS, KENT, ME3 8JL  
APPLICATION REF: MC/16/3669**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Matthew Nunn BA BPL LLB LLM BCL MRTPI, who held a public local inquiry on 28, 29 and 30 November, and on 5 and 6 December 2017 into your appeal against the decision of Medway Council to refuse your application for outline planning permission for up to 225 residential dwellings (including up to 25% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Town Road and associated ancillary works; all matters to be reserved with the exception of the main site access, in accordance with application ref: MC/16/3669, dated 31 August 2016.
2. On 13 September 2017, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed, and outline planning permission granted subject to conditions.
4. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

## **Matters arising since the close of the inquiry**

5. On 28 June 2018, the Secretary of State wrote to parties to afford them an opportunity to make representations on the judgment of the Court of Justice of the European Union (CJEU) in Case C-323/17 *People Over Wind and Sweetman v Coillte Teoranta* of 12 April 2018.
6. On 27 July 2018, the Secretary of State wrote to parties giving them the opportunity to make representations on the revised National Planning Policy Framework, published on 24 July 2018.
7. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
8. On 26 October 2018, Government published “Technical consultation on updates to national planning policy and guidance”, dealing with the calculation of local housing need and other matters, including the *People Over Wind and Sweetman v Coillte Teoranta* issue. While a number of the issues dealt with in that document are relevant to this case, given these remain the subject of consultation and may not be the final position, the Secretary of State has made his decision here based on existing policy.

## **Policy and statutory considerations**

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the saved policies of the Medway Local Plan, adopted May 2003. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR14-17.
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (‘the Framework’) and associated planning guidance (‘the Guidance’). The revised National Planning Policy Framework was published on 24 July 2018, and unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

## **Emerging plan**

12. The Secretary of State notes that the Council is currently preparing a new Local Plan, and a Neighbourhood Plan is at a very early stage. He further notes that no draft policies have yet been published for either.
13. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Given their very early stage of development the Secretary of State takes the view that no weight can be attributed to either of these emerging plans.

## **Main issues**

### Five-year housing land supply

14. The Secretary of State has given careful consideration to the Inspector's analysis of the five-year housing land supply at IR93 which reports that the parties do not dispute that the Council cannot demonstrate a deliverable 5 year supply of housing, and that the appellant believes it to be no better than 2.75 years, with the Council claiming it to be around 3 years.
15. However, as the Local Plan was adopted in 2003, the adopted housing requirement figure is more than 5 years old. Paragraph 73 of the Framework indicates that in that scenario, local housing need should be applied. The Secretary of State has applied the standard method set out in guidance, and has concluded that local housing need for Medway is 1,310.
16. He notes that under paragraph 73 of the Framework, a 20% buffer should apply where there has been significant under-delivery of housing over the previous three years. He further notes that the most recent Monitoring Report before the inquiry (December 2016) (IR23) shows that in 2015-16, there were 553 completions against a requirement of 1,000 dwellings. He considers that this is significant under-delivery. The Secretary of State has taken into account the fact that no evidence has been put forward in response to his reference back letter of 27 July 2018 to suggest that Medway (which accepted that it was a 20% authority under the old Framework – IR23) is not a 20% authority under the provisions of the revised Framework. He therefore considers that a 20% buffer should be applied. This gives an annual requirement of 1,572 dwellings. The Secretary of State further notes that no party has suggested in representations that the assessment of housing supply should change as a result of the change in definition of 'deliverable' in the revised Framework. Overall he considers that there is a housing land supply of 3.9-4.3 years.
17. While this means that the shortfall in housing land supply has reduced since the inquiry, there is still not a 5-year housing land supply. The Secretary of State considers that his conclusions on housing land supply do not alter the weight he assigns to the matters set out below, or his decision on the case as a whole. For this reason, he does not consider that it is necessary to refer back to parties on this matter before reaching his decision.

### Locational accessibility

18. The Secretary of State notes that the site is located close to the village of Cliffe Woods which has a range of shops, services and community facilities (IR101). He agrees with the Inspector (IR109) that residents are likely to travel further afield for larger food supermarkets, specialist shops, leisure, employment, and secondary schools, and that this is likely to generate trips by car.
19. The Secretary of State has carefully considered the Inspector's analysis of available public transport (IR102-104). He has taken into account that bus services do not operate in the very early morning or after early evening, that cycling is not a realistic option for most or an attractive option, and that the nearest train station is 2km away. He has further taken into account the proposals to improve accessibility of the scheme (IR105-7), and whilst he agrees that the proposed measures will go some

way to facilitating sustainable travel modes, given the uncertainty around the operation of the 'Arriva Click' service (IR106) he gives these measures limited weight.

20. The Secretary of State has further taken into account the Framework's statement in paragraph 103 that the opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and he agrees with the Inspector that given the rural character of the area, a realistic approach to the general travel method of residents is required (IR109). However, in the Secretary of State's judgement, the proposed development does not limit the need to travel or offer a genuine choice of transport modes, and is therefore in conflict with the Framework's policy on promoting sustainable transport (paragraph 103 of the Framework). His concerns are not overcome by the proposed mitigation. He therefore disagrees with the Inspector's conclusion that there is no intrinsic conflict with the requirement of Policy BNE25 that development should 'offer a realistic chance of access by a range of transport modes' (IR110). The Secretary of State considers that these conflicts carry substantial weight against the proposal.
21. The Secretary of State agrees that by introducing new market and affordable housing along with the associated economic benefits, the proposal would comply with paragraphs 83-84 of the Framework, which advocate supporting a prosperous rural economy.

#### Effect on character and appearance

22. For the reasons given at IR111-116, the Secretary of State agrees with the Inspector at IR116 that the appeal scheme would inevitably adversely affect the currently open and rural character of the landscape, and in terms of Policy BNE25(i) would not maintain or enhance the character, amenity and functioning of the countryside. He therefore considers it is in conflict with that aspect of the policy. He also considers it is in conflict with the development strategy set out in Policy S1, which seeks to prioritise development within the existing urban areas, and Policy S2, which implements that strategy.
23. For the reasons given at IR94-100, the Secretary of State agrees that Policy BNE25 read as a whole is not fully consistent with the Framework, that Policies S1 and S2 run counter to the objectives of the Framework to significantly boost the supply of homes, and that the weight that should be attached to conflict with Policies BNE25, S1 and S2 should be reduced (IR 97 and 100). Overall the Secretary of State considers that these development plan policies carry moderate weight, and that the conflict with them in terms of protection of the countryside also carries moderate weight.
24. He notes that the numbering and precise wording of the relevant parts of the Framework have changed on publication of the revised Framework; however, these changes do not alter his conclusions on these matters.

#### Benefits of the proposal

25. The Secretary of State agrees with the Inspector that the proposal would introduce much-needed market and affordable housing for local people; would create investment in the locality and increase spending in shops and services; and would result in jobs during the construction phase (IR127). Overall he considers that the

additional housing carries significant weight, and the economic benefits carry moderate weight in favour of the proposal. He further agrees with the Inspector that the creation of open space with play area, new planting and landscaping, the provision of a pond, new pedestrian routes would convey benefits to the wider population in addition to mitigating the adverse effects of the development (IR128). He considers that these benefits carry limited weight.

26. As set out in paragraph 19 above, the Secretary of State also considers that the improvements to public transport infrastructure carry limited weight in favour of the proposal. As no evidence has been put before him that the New Homes Bonus would be used to help make the proposal acceptable in planning terms, he has not given it any weight in the planning balance.

### Appropriate assessment

27. Following the reference back to parties exercise described in paragraph 5 of this letter, the Secretary of State has concluded that the screening assessment undertaken for the purposes of this appeal and presented to the inquiry is no longer legally sound.

28. Therefore, as competent authority for the purposes of the Conservation of Habitats and Species Regulations 2010, the Secretary of State has carried out a new screening. He has concluded on the basis of this screening that an appropriate assessment is required, and has carried out that assessment, consulting Natural England as the appropriate nature conservation body. Both the screening and appropriate assessment are attached to this decision letter at Appendix B. On the basis of his appropriate assessment, and for the reasons set out in that assessment, the Secretary of State considers that he can safely conclude that the proposed development would not adversely affect the integrity of any European site.

29. The Secretary of State notes that under paragraph 177 of the Framework, the presumption in favour of sustainable development does not apply where development requiring appropriate assessment is being determined.

### **Other matters**

30. The Secretary of State notes the Council's agreement that safe access to the site can be achieved, subject to various highway improvements being undertaken, and that these can be secured by condition (IR117). He considers that the evidence put forward does not suggest there would be an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network would be severe, and hence the development does not conflict with the provisions of the Framework at paragraph 109.

31. The Inspector considered further objections raised in relation to the loss of 2.6 hectares of best and most versatile (BMV) agricultural land. The Secretary of State agrees with the Inspector that the loss of agricultural land is not significant enough to be a determining issue in this case (IR120). He attaches limited weight to the loss of BMV land.

32. The Secretary of State has considered a number of other concerns raised in respect of local services, outlook and privacy, ecology and nature conservation, flood risk,

ground conditions/contamination and archaeology and heritage. For the reasons given in IR118, 119, 121 and 123-125, the Secretary of State considers that these matters do not weigh against the scheme.

### **Planning conditions**

33. The Secretary of State has given consideration to the Inspector's analysis at IR87-89, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

### **Planning obligations**

34. Having had regard to the Inspector's analysis at IR84-85, the planning obligation dated 13 December 2017, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR86 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, he does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

### **Planning balance and overall conclusion**

35. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies BNE25, S1 and S2 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
36. Although there is no 5-year housing land supply, the presumption in favour of sustainable development does not apply because of the effect of paragraph 177 of the Framework (as set out in paragraph 29 above).
37. The Secretary of State considers that the housing benefits of the proposal carry significant weight, and the economic benefits carry moderate weight. The provision of open space with play area, new planting and landscaping, the provision of a pond, new pedestrian routes and improvements to public transport infrastructure carry limited weight in favour of the proposal.
38. The Secretary of State considers that the conflict with the Framework and the development plan in terms of sustainable transport carries substantial weight, the conflict with development plan policies designed to protect the countryside and prioritise development within existing urban areas carries moderate weight, and the loss of BMV land carries limited weight against the proposal.
39. Overall, the Secretary of State considers that there are no material considerations that indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that planning permission should be refused.

## **Formal decision**

40. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your appeal and refuses planning permission for outline planning permission for up to 225 residential dwellings (including up to 25% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Town Road and associated ancillary works; all matters to be reserved with the exception of the main site access.

## **Right to challenge the decision**

41. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

42. A copy of this letter has been sent to Medway Council and Rule 6 parties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Maria Stasiak*

Maria Stasiak

Authorised by the Secretary of State to sign in that behalf

## Annex A

### SCHEDULE OF REPRESENTATIONS

<b>Party</b>	<b>Date</b>
Mr David Wolfson, SAVE Action Group	9 January 2018
Mr Roger Brown , Chair SAVE Action Group	15 July 2018
Gladman Developments Ltd	19 July 2018
Gladman Developments Ltd	10 August 2018
Medway Council	24 August 2018
Medway Council	28 August 2018
Natural England	27 September 2018



## **Annex B**

### **RECORD OF THE SCREENING ASSESSMENT AND HABITATS REGULATIONS ASSESSMENT UNDERTAKEN UNDER REGULATION 61 OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 (AS AMENDED) FOR AN APPLICATION UNDER THE TOWN AND COUNTRY PLANNING ACT 1990**

**Project Title and Location:** Recovered planning appeal: APP/A2280/W/17/3175461 Land off Town Road, Cliffe Woods, Kent, ME3 8JL

**Project description:** outline planning permission for up to 225 residential dwellings (including up to 25% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Town Road and associated ancillary works; all matters to be reserved with the exception of the main site access (Planning Application Ref: MC/16/3669, dated 31 August 2016).

**Completion Date:** 27 September 2018

#### **Project description – further information**

1. The appeal site and surroundings are described at paragraphs 9 – 13 of the Inspector's report arising from a public inquiry held into this appeal between 28 November and 21 December 2017. A copy of the inspector's report is attached to this assessment. The proposal description is set out in further detail in the planning application and other inquiry documentation in the Core Document List of the Inspector's report from p 34.

#### **Competent authority**

2. The above proposal, having been recovered by the Secretary of State for Housing, Communities and Local Government, is to be determined by him using his powers under section 78 of the Town and County Planning Act 1990. The Secretary of State is therefore the 'competent authority' for the purposes of the Conservation of Habitats and Species Regulations 2017.

#### **PART 1 – SCREENING**

3. In its letter dated 16 October 2016 Natural England confirmed to Medway Council that it considered that subject to appropriate mitigation the proposal could be screened out as not having a likely significant effect on the relevant designated sites i.e. Appropriate Assessment was not required. A judgment in the Court of Justice of the European Union (CJEU) in *People Over Wind and Sweetman and Coillte Teoranta* (12 April 2018) means this interpretation is no longer legally sound.

4. It will now fall to the Secretary of State to take a screening decision for this application, taking into account any relevant information. As part of this process, a reference back to parties was undertaken, to enable further relevant evidence to be addressed by parties to the Inquiry.

#### **Screening Assessment**

#### **Relevant documentation**

5. The Secretary of State has consulted with parties on the implications of the CJEU ruling in his letter of 28 June 2018 and has taken into account the documents supplied in

response, namely 'Town Road, Cliffe Woods, Kent Information for an Appropriate Assessment following CJEU People over Wind judgement (Case C-323/17)', dated 12 April 2018 and prepared for Gladman Developments Ltd ('IFAA') and 'Habitat Regulation Assessment Screening Matrix and Appropriate Assessment Statement' prepared by Medway Council in August 2018 ('SMAAS'). In this screening assessment, all references to sections, unless otherwise stated, are to the IFAA and SMAAS documents.

6. The Secretary of State has also taken into account comments submitted by SAVE Cliffe Woods, a Rule 6 party, in a letter of 15 July 2018, as well as a separate 'Appellant's note' provided for Gladman Developments Limited in addition to the IFAA.

7. The Secretary of State agrees with sections 1 to 4 of IFAA, which set out relevant background and context, and the legislative and policy background. The IFAA also sets out factual information about the Special Protection Area (SPA) and Ramsar sites concerning their relationship with the application site.

### **Consideration and conclusions**

8. In screening the proposals, the Secretary of State needs to conclude whether they would be likely to have a significant effect on the internationally important interest features of the site, either alone, or in combination with other projects.

9. The Secretary of State agrees with the relevant European designated sites identified in section 6.0 to 6.2 of IFAA:

- Thames Estuary and Marshes SPA/Ramsar
- Medway Estuaries and Marshes SPA/Ramsar

10. The conservation objectives for both the Thames Estuary and Marshes SPA and the Medway Estuaries and Marshes SPA are:

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and,
- The distribution of the qualifying features within the site.

11. The Secretary of State has paid close regard to IFAA sections 6.4 to 6.8 and the SMAAS 'Part 2 – HRA Screening Assessment'. For the reasons given at IFAA 6.6 the Secretary of State agrees that due to its close proximity, relatively convenient pedestrian links and resulting local population increase there would be potential for likely significant effects from the proposed development when considered alone in terms of impact on the Thames Estuary and Marshes SPA/Ramsar. He concludes that, in the absence of avoidance or mitigation measures, the development proposal would have the potential to contribute towards a significant disturbance effect on the interest features for which the

Thames Estuary and Marshes SPA and Ramsar site has been classified. Accordingly there is no need to go on to consider in combination effects with other plans and projects or the impact on Medway Marshes SPA/Ramsar at the screening stage.

12. Having regard to all the available information and the views of the Council and Applicant set out in the IFAA and SMAAS, the Secretary of State finds there is no evidence to indicate likely significant effects would occur as a result from the development proposals other than through the disturbance to the Thames Estuary and Marshes SPA/Ramsar.

### **Overall conclusions**

13. The Secretary of State has concluded that, in the absence of avoidance or mitigation measures, the proposal would have potential to contribute towards a significant effect on the interest features for which the Thames Estuary and Marshes SPA and Ramsar site has been classified.

14. Accordingly, as the competent authority in this case, the Secretary of State has gone on to carry out the required Appropriate Assessment in Part 2 of this document.

### **PART 2 – APPROPRIATE ASSESSMENT**

15. The Secretary of State has identified at the screening stage potential to contribute towards a significant effect on the interest features for which the Thames Estuary and Marshes SPA and Ramsar site has been classified and has determined that an Appropriate Assessment is required.

16. In accordance with the People Over Wind and Sweetman and Coillte Teoranta ruling, avoidance or mitigation measures can only be considered at this Appropriate Assessment stage. This Appropriate Assessment now needs to consider whether it can be concluded that the proposal will not adversely affect the integrity of the sites in question. In the event it is concluded that the mitigated project will adversely affect the integrity of the protected sites considered, the Appropriate Assessment will need to consider whether it can be demonstrated that there are no alternatives and that there are imperative reasons of over-riding public interest as to why it must proceed.

### **Relevant documentation**

17. The Secretary of State has had regard to the responses received following reference back to parties, particularly the IFAA and SMAAS. He has also had regard to documents considered at the public inquiry, listed at pages 33 to 37 of the Inspector's report, noting the relevance of Core Documents CD2.21 Ecological Appraisal December; 2.5 Ecological Appraisal; and 3.1–3.16 Consultation Responses.

18. The Secretary of State's Appropriate Assessment has not simply relied on and adopted the above information. Rather, the Secretary of State has considered all the evidence, including the views of Natural England, the Government's advisors on ecological issues, in reaching his conclusions on the Appropriate Assessment.

### **Consideration**

19. At the screening stage, the Secretary of State has already concluded that the application proposals would be likely to have a significant effect on the Thames Estuary and Marshes SPA and Ramsar site in respect of disturbance effects from additional recreational visits. There is no evidence of other direct impacts either during the construction or

operational phases of the development proposals. In contrast the IFAA does not indicate there to be a similar likelihood of significant impact on the Medway Estuaries and Marshes SPA/Ramsar. In terms of disturbance effects it is clear at IFAA 6.7 that a number of factors reduce likelihood of walking journeys from the site to this SPA/Ramsar. However, from IFAA 6.8 it is also apparent that occasional car-borne visits may occur and the SMAAS at 'Part 3 – Appropriate Assessment' concludes that additional dwellings result in additional activity, causing disturbance to protected bird species that over-winter or breed on these SPA and Ramsar sites. Therefore as the Medway Estuaries and Marshes SPA/Ramsar is also within the zone of influence from the site, it is also considered at this stage as is the in-combination effects of the proposal site alongside other planned development.

20. The Secretary of State has considered the proposed measures to avoid/mitigate the potential for significant impacts and is satisfied that these will reduce harm from the proposed development to both the SPA/Ramsar sites. The mitigation proposed is a financial contribution to the Strategic Access Management and Mitigation Strategy (SAMMS) detailed in the IFAA 7.6 to 7.10 as well as other measures that will be beneficial to reducing harmful effects on the SPA/Ramsar and which are set out at IFAA 7.2 to 7.5. He notes that the IFAA and SMAAS conclude that through the mitigation and additional measures the proposal will not adversely affect the integrity of either European Protected site, and that the Natural England agreed this as its position when consulted by Medway Council on the preparation of the SMAAS.

21. The Secretary of State has paid close attention the SAMMS function, setting out a strategy which includes a range of measures to resolve disturbance issues to wintering birds on the North Kent Marshes focusing on European protected/Ramsar sites as set out at SMAAS 'Part 2 – HRA Screening Assessment':

- Rangers to provide wardening and visitor engagement
- A North Kent Coast dog project to promote responsible dog ownership and encourage walking on lead in sensitive areas
- Codes of conduct developed in partnership with local groups and clubs to raise awareness of recreational disturbance in a variety of activities both on and off of the water
- Interpretation and signage
- New and/or enhanced infrastructure
- Enforcement and Monitoring

The measures are to be delivered through the Birdwise project ([www.birdwise.org.uk](http://www.birdwise.org.uk)), a partnership of local authorities and conservation organisations in North Kent, to ensure that development, considered in-combination, does not have an adverse effect on the integrity of the European sites. Monitoring is to be undertaken on recreational impacts at each of the European protected sites. IFAA 8.8 confirms the applicant agrees the financial contribution required for this. This is secured via a unilateral undertaking dated 13 December 2017 which provides for a payment of £50,305.50 for bird mitigation (paragraph 85 of the Inspector's report).

22. The Secretary of State has considered the multi-faceted approach of the SAMMS described at IFAA 7.8. He is satisfied that the SAMMS is sufficiently robust in setting a level of financial contribution per household (see IFAA 7.7) that will be sufficient to mitigate the SPA/Ramsar sites from development anticipated in the wider North Kent coastal area.

Overall this is agreed to mitigate the in-combination impact from plans and projects in the area including on the two European protected sites.

23. For the reasons given at IFAA 7.2 to 7.3, the Secretary of State considers that the provision of maintained open space and recreation on site, a circular walk around the application site and off-lead areas will reduce the frequency of dog walking away from the appeal site and support the diversion of visitors away from the designated sites. Furthermore, as explained at IFAA 7.4 to 7.5, information is to be provided in packs to emphasise the sensitivity of the areas concerned, give practical guidance on how households can lessen the impact on these and explain the recreational alternatives available. The Secretary of State considers that these measures, while not essential or part of the proposed mitigation, will usefully serve to further lessen the impact on both the Thames Estuary and Marshes and the Medway Estuaries and Marshes SPA/Ramsar sites.

24. For the reasons given at IFAA 6.9 to 6.15 the Secretary of State concludes that the provision of open space represents a suitable measure which will alleviate both existing and potential increased recreation at the SPA/Ramsar site. He recognises that this provision is an integral part of the scheme, and not a proposed mitigation measure intended to protect the SPA/Ramsar site.

25. The Secretary of State agrees that the proposed mitigation for this scheme is compliant with the SAMMS. He also agrees with the assessment of the impact of the potential effects on the integrity of the European protected sites set out both in the SMAAS and IFAA. He concludes that the application proposals would not adversely affect the integrity of the Thames Estuary and Marshes and the Medway Estuaries and Marshes SPA/Ramsar site when the development proposal is considered, either alone or in-combination with other plans or projects.

### **Natural England's advice**

26. This appropriate assessment concludes that the Secretary of State is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites mentioned above. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately secured in any permission given.

### **Consideration and conclusions**

27. Having concluded that the proposal will not adversely affect the integrity of either SPA/Ramsar site, and having given careful consideration to the advice of Natural England, the Secretary of State has considered how the proposed mitigation/avoidance measures needed to ensure the acceptability of the proposal are to be secured should the application be granted.

28. The provision of a financial contribution to SAMMS is to be secured through the unilateral undertaking dated 13 December 2017.

29. The provision of public open space is to be secured via planning condition 4, and the appellant's commitment to providing interpretation boards and resident's information packs is also noted.

30. Accordingly, the Secretary of State is satisfied that if the appeal proposal were granted outline planning permission, the mitigation and avoidance measures he has

deemed necessary to make the proposal acceptable could be secured. In the light of this conclusion, he has not needed to go on to consider whether it can be demonstrated that there are no alternatives and there are imperative reasons of over-riding public interest as to why it must proceed i.e. the derogation tests.

31. Copies of the technical information and correspondence referred to in this Assessment may be obtained by application to the address at the bottom of the first page of the decision letter.



# Report to the Secretary of State for Housing, Communities and Local Government

by Matthew Nunn BA BPL LLB LLM BCL MRTPI

an Inspector appointed by the Secretary of State

Date: 29 March 2018

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**TOWN AND COUNTRY PLANNING ACT 1990**

**MEDWAY COUNCIL**

**APPEAL BY**

**GLADMAN DEVELOPMENTS LTD**

Inquiry Opened on 28 November 2017

Land off Town Road, Cliffe Woods, Kent, ME3 8JL

File Ref: APP/A2280/W/17/3175461

**File Ref: APP/A2280/W/17/3175461**

**Land off Town Road, Cliffe Woods, Kent, ME3 8JL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Ltd against the decision of Medway Council.
- The application Ref MC/16/3669, dated 31 August 2016, was refused by notice dated 5 May 2017.
- The development proposed is described as 'outline planning permission for up to 225 residential dwellings (including up to 25% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Town Road and associated ancillary works; all matters to be reserved with the exception of the main site access.

**Summary of Recommendation: the appeal be allowed, and planning permission granted subject to conditions**

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**Preliminary Matters**

1. The Secretary of State recovered the appeal on 13 September 2017 and directed that he would determine it himself. The reason given was that the appeal involved a proposal for residential development of over 150 units on a site of over 5 hectares. This would significantly impact on the Government's objective to secure a better balance between housing demand and supply, and create high quality, sustainable, mixed and inclusive communities.
2. The Inquiry sat on 28, 29 and 30 November, and on 5 and 6 December 2017. In addition to my accompanied site visit on 6 December 2017, I made unaccompanied site visits on other occasions, before, during and after the Inquiry. The Inquiry was closed in writing on 21 December 2017 to allow time for the completion of a planning obligation. This took the form of a unilateral undertaking, dated 13 December 2017. I deal with this in the body of my report<sup>1</sup>.
3. The Cliffe and Cliffe Woods Parish Council sought 'Rule 6' status which was granted by letter dated 25 July 2017. Mr Chris Fribbins gave evidence to the Inquiry on behalf of the Parish Council.
4. The application is made in outline with all matters except for access reserved for subsequent determination. The proposal includes a Location Plan (7199-L-01 Rev A), an illustrative Development Framework Plan (7199-L-03 Rev E) showing an indicative layout, and a Proposed Access Arrangement (P16020-001-D)<sup>2</sup>.
5. The Council refused the application on 5 May 2017, citing two reasons for refusal<sup>3</sup>. However, the second reason was amended by the Council in September 2017 to exclude reference to a 'valued landscape' as per Paragraph 109 of the National Planning Policy Framework ('the Framework'). At the same time, references to Policies S1 and S2 of the Medway Local Plan were also deleted. The second reason now reads: '*The development, if permitted, would have an*

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<sup>1</sup> Inquiry Document (ID) 31

<sup>2</sup> CD 2.1, CD 2.1 & CD 2.18

<sup>3</sup> CD 5.2



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*adverse impact on the character and visual amenity of the local area, contrary to Paragraph 17 of the National Planning Policy Framework and Policy BNE25(i) of the Medway Local Plan 2003*<sup>4</sup>.

6. Following the appellant's request for a screening opinion under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended), the Council determined that an Environmental Impact Assessment (EIA) was not required on the basis the proposal did not constitute EIA development<sup>5</sup>.
7. An updated Statement of Common Ground, signed and dated 29 November 2017, was jointly agreed by the Council and appellant and provided during the Inquiry<sup>6</sup>.
8. The appellant's evidence in relation to landscape matters was originally prepared by Mr Phil Rech. Unfortunately, due to illness, he was unable to attend the Inquiry and landscape evidence was given by Mr Gary Holliday. An addendum was provided by Mr Holliday to be read in conjunction with Mr Rech's original proof.

### **The appeal site and surroundings**

9. The irregularly shaped appeal site comprises a group of three, generally flat, agricultural fields to the west of the built-up area of Cliffe Woods. Cliffe Woods is a village on the Hoo Peninsula in Kent to the north of Strood, Rochester and Chatham. The site area is around 11 hectares. A portion of a field further to the north is proposed to be used for a sustainable drainage scheme and pond. The northern, western and southern boundaries of the site abut open agricultural land. The eastern boundary is delineated by Town Road (B2000) and the residential properties of Mortimers Avenue and Ladyclose Avenue. A public footpath RS72 runs through the site, adjacent to the site's northern boundary. This footpath connects with Town Road to the east, running through an area of scrubland and rough grassland, and to the west runs across further fields connecting to Buckland Road. The field boundaries are defined by a mix of hedging and rows of poplar trees.
10. There are two Second World War pillboxes, one in the north eastern corner of the site, and the other on the south boundary. In the wider context, to the north are further arable fields, often with poplar shelter belts. The built-up area of the village is located to the east of the site on rising land. Further to the south are arable fields, with a small square reservoir enclosed by trees on the eastern side of Town Road. Land to the west comprises arable fields gently rising up to Cooling Hill.
11. The appeal site is not covered by any specific landscape designations. At the national level, the site is identified as falling within the 'North Kent Plain National Character 113'<sup>7</sup>. Its characteristics are an open, low and gently undulating landscape, with large arable and horticultural fields with regular patterns and rectangular shapes predominating. The national profiles are necessarily broad in their descriptions. At a county level, the site is identified as lying within the

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<sup>4</sup> CD 12.2

<sup>5</sup> CD 4.9 and 4.10

<sup>6</sup> ID 13

<sup>7</sup> Landscape and Visual Impact Assessment [CD 2.6]

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western part of the 'Hoo Peninsula' character area. It is noted that farmland is the predominant land use, although its character varies quite markedly. At a local level, the site is identified as within the 'Cliffe Woods Farmland' landscape character area. This is described as an undulating and complex mix of arable farmland and orchards, with poplar shelter belts being a dominant feature<sup>8</sup>. The description notes that there is a tranquil, rural feel away from roads, creating a distinctive landscape with few detracting features. However, it also notes that principal detracting features include the B2000 with heavy traffic, including lorries servicing the aggregate works and industrial estates, together with pylons to the north and the suburbanisation of village edges.

12. The site is reasonably close to a range of European and nationally designated sites. These include the Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar site; the Medway Estuaries and Marshes SPA and Ramsar site; the North Down Woods Special Area of Conservation (SAC); Peter's Pit SAC and Site of Special Scientific Interest (SSSI); Benfleet and Southend Marshes SPA; Queendown Warren SAC/SSSI; and Chattenden Woods and Lodge Hill SSSI<sup>9</sup>.
13. There is no relevant recent planning history at the appeal site.

### **Planning Policy Context**

14. The statutory development plan comprises the 'saved' policies of the Medway Local Plan ('The Local Plan') adopted in May 2003. The Council, in its original reasons for refusal, cited Policy BNE25(i), Policy S1 and Policy S2<sup>10</sup>. Although Policies S1 and S2 were removed from the amended second refusal ground, they were referred to during the Inquiry and relied on by the Council.
15. Policy BNE25 relates to development in the countryside, and criterion (i) states that development will only be permitted if it maintains, and wherever possible enhances, the character, amenity and functioning of the countryside, including the river environment of the Medway and Thames, and it offers a realistic chance of access by a range of transport modes. Criteria (ii) to (vii) impose further conditions on development. These are: that development should be either on a site allocated for that use; or is development essentially demanding a countryside location (such as agriculture, forestry, outdoor or informal recreation); or is a re-use or adaptation of an existing building that is, and would continue to be, in keeping with its surroundings; or is a re-use or redevelopment of the existing built-up area of a redundant institutional complex or other developed land in lawful use; or is a rebuilding of, or modest extension or annex to a dwelling; or is a public or institutional use for which the countryside location is justified and which does not result in volumes of traffic that would damage rural amenity. The policy states that the countryside is defined as that land outside the urban and rural settlement boundaries defined on the proposals map.
16. Policy S1 sets out a development strategy which is to prioritise re-investment in the urban fabric. This includes the redevelopment and recycling of under-used and derelict land within the urban area, with a focus on the Medway riverside areas and Chatham, Gillingham, Strood, Rochester and Rainham town centres.

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<sup>8</sup>See Mr Etchell's Proof, Paragraph 3.2.7 onwards & Mr Rech's Proof, Paragraph 3.12 onwards

<sup>9</sup> CD 2.5, Chapter 3

<sup>10</sup> CD 12.1

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Policy S2 sets out strategic principles. Of particular relevance is principle (i) which seeks to maintain and improve environmental quality and design standards; and principle (ii) which requires a sustainable approach to the location and mix of new development, to provide local communities with a range of local facilities (including transport measures to serve development and sensitivity in the use of energy and natural resources). Principle (iii) focuses on adopting a sequential approach to the location of major people and traffic attracting forms of development.

17. Policy H11 is not cited in the reasons for refusal, and the Council states that it is not relied on in this appeal and no weight should be placed on it<sup>11</sup>. It was referred to during the Inquiry. Essentially, the policy restricts housing development within the confines of the villages or settlements, unless the site is allocated for housing development in the Local Plan, or an exceptional justification can be made. Cliffe Woods is one of the villages listed within the Policy.
18. The Council is currently preparing a new Local Plan that will guide development up to 2035. This will be a single document, containing both strategic and development management policies, land allocations, minerals and waste, and a policies map. The emerging plan is at an early stage and no draft has yet been published. The latest Local Development Scheme does not anticipate adoption of the emerging plan until 2019. Hence, at this stage, there are no specific policies that can attract any weight.
19. Cliffe and Cliffe Woods Parish Council has submitted proposals to prepare a Neighbourhood Plan. The Council approved the neighbourhood plan area in June 2015 but no draft version has yet been produced. Thus there is no document to which any weight can be given.

### **Matters agreed between the Council and Appellant**

20. The appeal site is located outside, but partly adjacent to, the settlement boundary of Cliffe Woods. It is not allocated for any specific purpose in the Local Plan, nor subject of any designations, including those relating to environmental, historic environment, open space or landscape. It is not a 'valued landscape' in terms of Paragraph 109 of the Framework. Cliffe Woods is identified as a 'rural Settlement' under Policy H11 of the Local Plan.
21. Cliffe Woods contains a range of shops, services and community facilities which include: a community centre, the Cliffe Woods Social Club including the Woodpecker Bar; a Co-op convenience store, including a Post Office; a 'Premier' convenience store; a chip shop takeaway; an Indian takeaway; a health centre; pharmacy; a church; a day nursery; a recreation ground; a primary school; and recycling facilities<sup>12</sup>.
22. In terms of transport, the closest bus stop to the site lies around 450m to the east of the centre of the site, along View Road. The 133 bus route operated by Arriva is the main service in Cliffe Woods linking the village to Strood, Rochester, Chatham and St Mary's Island. Other services include routes 193, 417, 601 and

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<sup>11</sup> Council's Closing Submissions, Paragraph 80

<sup>12</sup> ID 13, Paragraph 5.4.1

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633. The nearest railway station is around 2 km from the site at Higham. Trains operate in each direction serving stations at Gillingham, Chatham, Rochester, Strood, Gravesend, Dartford, Woolwich Arsenal, Lewisham, London Bridge, London Waterloo East, and London Charing Cross<sup>13</sup>.
23. It is agreed that the Council is unable to demonstrate a deliverable five year supply of housing, as required by the Framework. The appellant is of the view that the supply is no better than 2.75 years whereas the Council says it is around 3 years. The Council also accepts that there has been a record of persistent under-delivery of housing in the past, and it is a '20%' authority for the purposes of assessing the requisite buffer. The most recent Monitoring Report (December 2016) shows that between 2013 and 2016 there were 2,180 completions against a requirement of 4,000, resulting in a deficit of 1,820 over that period<sup>14</sup>.
24. It is agreed that the 'tilted balance' of Paragraph 14 of the Framework applies which states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
25. There is no objection on highway grounds subject to the works set out in the Statement of Common Ground<sup>15</sup>. No objections are raised on arboricultural, archaeological, ecological, noise or contamination grounds subject to the imposition of appropriate conditions. There are no designated heritage assets within the site, although as already noted, there are two Second World War pillboxes along the site boundaries, which are non-designated heritage assets. Subject to the imposition of conditions, no objections are raised in respect of the effect on these non-designated heritage assets<sup>16</sup>.
26. It is agreed that the site falls within Flood Risk Zone 1, the area least at risk at flooding, and that the proposal would not result in any unacceptable impacts on flood risk and drainage, subject to appropriate conditions. In relation to the best and most versatile (BMV) agricultural land, a proportion of the site falls within the BMV 'Good' (Grade 3a) category, whilst the majority is within the BMV 'Moderate' (Grade 3b) category. It is agreed that the loss of agricultural land is not significant enough to be a determining issue<sup>17</sup>.

### **The Case for the Council**

27. The Council's full case is contained within the opening and closing statements made by Mr Robert Williams<sup>18</sup>, along with the submitted proofs of evidence, comprising Mr Sensecall's proof relating to planning matters, and Mr Etchell's proof relating to landscape matters. This is a summary of the Council's case.

#### *Locational Sustainability*

28. Cliffe Woods is not a sustainable location for residential development of this scale. It is a small village with a limited range of shops and limited employment and leisure facilities. There is no secondary school, no larger supermarket, no

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<sup>13</sup> ID 13, Paragraph 5.5.1 & 5.5.2

<sup>14</sup> ID 13, Paragraph 5.17

<sup>15</sup> ID 13, Paragraph 5.4.2

<sup>16</sup> ID 13, Paragraph 5.15

<sup>17</sup> ID 13, Paragraph 5.19.1

<sup>18</sup> ID 8 & ID 28

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public house, no library, no dentist, no sports centre and no bank. Walking and cycling would not be a realistic proposition for most trips. This is particularly the case for employment, most leisure and retail activities, entertainment and secondary education. Town Road (B2000), which is the most direct route to the main settlements and employment centres to the south, does not have a cycle lane, is predominantly unlit, hilly and is a route used by a large number of HGVs accessing the nearby Brett Aggregates site in Cliffe.

29. Except in respect of school services, the bus service to the village is poor. Although there is a service connecting the village with the centres of Strood and Chatham, it is relatively infrequent (particularly at weekends) and its operating hours severely restrict its utility, especially for commuters or those wishing to travel in the evenings. This is backed up by empirical evidence. The Method of Travel to Work (MTW) data demonstrates that virtually 70% of people within Cliffe Woods travel to work by car<sup>19</sup>. This increases to 75% when passengers and those using motorcycles are accounted for. This is over 10% higher than across Medway as a whole, 12.5% higher than the average across the south east (excluding London) and 16% higher than the average across England as whole.
30. Conversely, only 6.2% of commuter trips from Cliffe Woods are made by foot, cycle or bus, lower than the average across the Hoo Peninsula (8.9%), less than half of the average within Medway (14.9%) and less than a third of the average across England as a whole. The high dependency on private car travel, and the low take-up of sustainable modes of transport is illustrative of the lack of realistic opportunities to use sustainable modes of transport for commuters from Cliffe Woods, as well as the lack of employment opportunities in the village itself.
31. The proposal is a large scale residential development increasing the population of the village by over 20%. It would result in approximately 540 new inhabitants and would generate significant traffic movements, with the Transport Assessment recording an increase of over 15% in traffic movements on Town Road/Lillechurch Road in the AM and PM peaks<sup>20</sup>.
32. The scheme itself would not make Cliffe Woods a sustainable location. The appellant does not promote a *'mix of uses in order to provide opportunities to undertake day-to-day activities including work on site'*, as encouraged by Paragraph 38 of the Framework. It brings forward no retail, employment or other community uses. On the contrary, what is proposed is a single use, residential development which would fail in any material way to enhance the facilities, service or employment opportunities within Cliffe Woods.
33. In an attempt to bolster the sustainability credentials of the proposal (thereby acknowledging the weakness of the scheme), the appellant has indicated a willingness to fund a demand-responsive 'Arriva Click' bus service, through a planning obligation. This 'Click' service was suggested for the first time in the appellant's proof<sup>21</sup> relating to highways and transport. At no point has the Council been involved in any of the discussions with Arriva. Although the appellant originally offered to fund the service for two years, it is now prepared to do so for five. However, much uncertainty surrounds the operation of the

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<sup>19</sup> Mr Schumacher's Proof, Table 5.1

<sup>20</sup> Transport Assessment, Table 6.5 [CD 2.11]

<sup>21</sup> Mr Schumacher's Proof

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scheme, and it was increasingly clear during the Inquiry that the appellant has only a limited understanding of how it would operate in practice.

34. For example, it was suggested in evidence that the service could guarantee a waiting time of no more than 20 minutes, but this cannot be correct. If the minibus was heading away from Cliffe Woods to Strood station, there is simply no possibility of it making the drop-off and returning to Cliffe Woods within a 20 minute time-frame, especially in rush hour, notwithstanding the use of 'algorithms'. The provision of the service is also time limited to five years. After that, Arriva will have to make a commercial decision as to whether to retain the service.
35. The appellant accepted that the 'Click' service was still an embryonic service. As such, there can be no guarantees that the service would be self-financing in the long run. The appellant would cover the cost of only one twelve-seater minibus. Thus, at any one time, only 2.5% of the new residents of the proposed development could use the service. Only limited weight should be attributed to the benefits provided by the 'Arriva Click' service. In any event, the service cannot disguise the fact future residents would be highly dependent on car travel, and it cannot be relied upon to make Cliffe Woods a sustainable location for development.
36. The Inspector in the *Hoo* decision<sup>22</sup> concluded that the high degree of dependency on car travel and failure of that scheme to make the location sustainable was an 'enduring harm' which was 'significant'. The same conclusions apply here, albeit for different reasons. Cliffe Woods is not a sustainable location for a development of this scale and nature, and would not be made sustainable by the proposal. The resultant high degree of dependency on non-sustainable forms of transport is an enduring harm which is significant and which should weigh very heavily against the proposal.
37. Locating development in a village which is neither currently sustainable, nor would be made sustainable by the proposal, with the failure to offer '*a realistic chance of access by a range of transport modes*' (Local Plan Policy BE25(i)), let alone to '*make the fullest possible use of public transport, walking and cycling*' (Framework Paragraph 17), means that the development is contrary to both national and development plan policy.

#### *Effect on Character and Appearance - Landscape*

38. This would be a large and significant development in terms of character and visual amenity. There are open and rural views into and across the site from its northern and eastern boundaries, with more limited views from slightly further afield to the west and south, as well as medium to long range views from the east and south. The site and immediately surrounding area is assessed as of "medium" landscape quality, and "medium/high" sensitivity to the type of development proposed<sup>23</sup>.
39. The development would take place within a part-edge-of-settlement context, but would extend the built form out into open countryside on the west side of Town

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<sup>22</sup> APP/A2280/W/15/3132141 [Appendix D of Mr Sensecall's Proof]

<sup>23</sup> Mr Etchell's Proof, Paragraph 8.5

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Road (B2000) from the main part of the village. The site is influenced by the edge of the settlement to a degree, but the western edge of the village is reasonably well contained and vegetated, and is also low key in terms of height and density. The buildings to the west of the B2000 are predominantly bungalows, at most 1.5 storeys. The change to the local landscape would be highly visible and would be difficult to screen effectively, at least in the short term, and the development would lead to a significant urbanisation of what is currently a pleasant rural landscape.

40. The development would leapfrog the existing edge of the village and introduce new, taller buildings into an open and rural landscape. There would be a high degree of landscape change within the site as the existing fields would become a new housing estate. There would be 'moderate to high adverse' effects on the character and landscape around the site, and these effects would decrease slowly over time<sup>24</sup>. Effects would persist at a 'moderate adverse' level after 15 years and there would be long term significant harm to the local landscape<sup>25</sup>. There would also be some significant adverse visual effects, mainly for the properties to the east of the site, and for users of the public footpath that runs through the northern part of the site<sup>26</sup>.
41. As a consequence, there would be a clear conflict with the core planning principles set out in Paragraph 17 of the Framework. The scheme would harm the character and beauty of the countryside. There would also be a clear conflict with Local Plan Policy BNE25(i) as the development would neither maintain nor enhance, the character, amenity and functioning of the countryside. This weighs heavily against the proposal.

#### *Council's Planning Balance*

42. Turning to the planning balance, it is not disputed that there is a substantial need for new housing in Medway. It is accepted that the Council has a large shortfall against the requirement to demonstrate a five year supply of housing such that the 'tilted balance' in Paragraph 14 of the Framework is engaged. The Council recognises the need for new housing and has, where appropriate, granted permission for large scale residential developments where the adverse impacts do not significantly and demonstrably outweigh the benefits. In particular, in the last 12 months the Council has granted permission for over 2,000 dwellings on non-allocated sites alone<sup>27</sup>. It is also preparing a new Local Plan which will be designed to meet its objectively assessed housing needs in full.
43. The relevant legislation establishes a statutory priority in favour of the development plan. The proposal does not accord with the development plan. It conflicts with Policy S1 (Development Strategy) as the thrust of this policy has the objective of focusing new development within the urban area. It conflicts with Policy S2 (Strategic Principles) because of the adverse impacts on landscape and visual amenity, and because Cliffe Woods is not a sustainable location for new development. It would also conflict with Policy BNE25(i) as the scheme would fail to maintain the character and amenity of the countryside and because

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<sup>24</sup> Ibid, Paragraph 8.8

<sup>25</sup> Ibid, Paragraph 8.8

<sup>26</sup> Ibid, Paragraph 8.9

<sup>27</sup> For example, at Otterham Quay Lane, Ref MC/16/2051, granted Feb 2017 for a scheme of up to 300 homes [ID 9]

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the location of the development would not offer a realistic chance of access by a range of transport modes.

44. Significant weight can be given to Policy BNE25(i) and the harm it seeks to prevent because the protection of the countryside and promotion of sustainable transport are consistent with the Framework. The interests protected by BNE25(i) are separate to, and not based on, out-of-date settlement boundaries. It is perfectly appropriate to give weight to Policy BNE25 to the extent it does not derive from settlement boundaries that in turn reflect out-of-date housing requirements. Therefore the breach of that policy – in respect of harm to landscape character and promotion of sustainable transport modes - should carry significant weight. Disaggregation of policies is not inappropriate in principle: there is no reason why a decision-maker should not afford more or less weight to parts of a policy, particularly where (as here) the different parts reflect different objectives. The appellant's approach of reducing weight across the board, even where there is compliance with the Framework, risks 'throwing the baby out with the bathwater', by ignoring those elements of policies which continue to reflect national policy.
45. As to the strategic policies, the focus of Policy S1 is consistent with national policy, especially the core planning principle to '*encourage the effective use of land by re-using land that has been previously developed (brownfield land)*'. Similarly, the appellant does not dispute Policy S2(i) and (ii) are in broad accordance with the Framework<sup>28</sup>. It follows that the breach of these policies should also be afforded significant weight.
46. *Adverse impacts*: the harm caused by significant development coming forward in an unsustainable location, with the resultant high dependency on the private car, is a harm which should be given significant weight (as per the *Hoo* decision). In terms of landscape and visual impacts, the moderately adverse effects over time are significant and they should also weigh heavily against the proposal. There would be harm to the non-designated heritage assets (the pillboxes), albeit that harm would be less than substantial. This too should weigh against the proposal. Finally, there is the harm to the public interest in having plan-led planning decisions which necessarily arises from the grant of permission for development which is otherwise than in accordance with development plan.
47. *Benefits*: the provision of up to 225 dwellings, including a 25% affordable housing element, would be a significant benefit. The Council also accepts that the resultant positive effect on jobs and the economy from the provision of this level of housing would be beneficial. However, 'double-counting' must be avoided. For example, there is nothing unusual about the benefits to jobs and the economy from this particular housing development as compared to any other. Thus when significant weight is given to the provision of new housing, that is in part because of the economic (and other) benefits which ordinarily flow from the provision of new housing. The same applies in relation to the 'Vitality and Viability' that it is claimed the residents would bring to the village of Cliffe Woods.
48. Although local finance considerations, such as the New Homes Bonus, are capable of being a material consideration, it is only so far as the financial

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<sup>28</sup> Mr Booth's Proof, Paragraph 7.3.11 & 7.3.12



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considerations are material to the application<sup>29</sup>. As the Planning Practice Guidance (PPG)<sup>30</sup> makes clear, these can only be material considerations where it is shown that they would help to make the development acceptable in planning terms. This has not been done in this instance<sup>31</sup>. In terms of environmental features, much of what is claimed to be a benefit (planting, provision of green infrastructure) is in reality mitigation to reduce the landscape and visual effects. It is accepted that there is the potential for biodiversity benefits on the site and this should be given weight.

#### *Council's Overall Conclusions*

49. The development is in neither a sustainable location nor one which would be made sustainable. The failure to offer a realistic chance of access by a range of sustainable transport modes, and the adverse impacts which would be caused to the local landscape character and visual amenity - all of which result in breaches of the development plan - with the resultant harm to the public interest in having plan-led decisions, significantly and demonstrably outweigh the benefits of the scheme. The undeniably considerable benefits of the scheme are significantly and demonstrably outweighed by the adverse effects it would cause. Therefore, the presumption in favour of sustainable development in the Framework does not apply. There is no justification for departing from the development plan in this instance, and the appeal should be dismissed.

#### **The Case for the Appellant**

50. The appellant's full case is contained within the opening and closing statements made by Ms Thea Osmund-Smith<sup>32</sup>, along with the submitted proofs of evidence, comprising Mr Booth's proof relating to planning matters, Mr Rech's proof relating to landscape matters (together with the addendum provided by Mr Holliday), and Mr Schumacher's proof relating to highways and transport. This is a summary of the appellant's case.

#### *Locational Sustainability*

51. The site is a sustainable location for development and is well connected to Cliffe Woods. The scheme includes three points of access into the site in addition to the proposed new vehicular access along Town Road. There are realistic options for walking, public transport, and cycling for journeys to work, recreational activities, and to services and facilities in nearby settlements. Cliffe Woods is an attractive place to live and provides a range of facilities for day-to-day living. It is close to the Medway Towns, as well as the Medway City Estate, a major employment area.
52. The appeal scheme is within walking distance of key facilities within the village, including a primary school. Cliffe Woods is an active and well run local community with various social clubs and societies operating within the village, a number of which meet in the community centre. The shops in Cliffe Woods are capable of meeting day-to-day needs. For larger weekly shops, people would

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<sup>29</sup> s.70(2)(b) of TCPA 1990

<sup>30</sup> Paragraph: 011 Reference ID: 21b-011-20140612

<sup>31</sup> ID 28, Paragraph 105

<sup>32</sup> ID 7 & ID 30

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generally choose a car to travel in any event, given the number of bags to carry, even if walking was an option.

53. Mr Schumacher provides a comprehensive assessment of the sustainability credentials of the settlement, examining the bus routes, cycle routes and the availability for multi-modal access. He concludes that Cliffe Woods is a sustainable settlement. Bus stops are within walking distance of the site (less than 500 metres). There is an hourly bus service to Strood, Rochester and Chatham which allows for journeys to work and nearby secondary schools (Route 133). The service starts in the morning at 0651 hrs and the last returning service to Cliffe Woods is at 1745 hrs. This service would be perfectly adequate for commuters working in the Medway Towns between 0800 hrs and 1600 hrs or 1700 hrs. It is accepted that the bus service would not provide a viable option for evening / night time travel because, although it may be possible to use the bus for an outward journey, it would be necessary to get a taxi back.
54. The site is close to Higham Railway Station that connects to London Charing Cross with two trains per hour. Ample car parking is available there (around 100 spaces). Strood and Rochester stations are close by (around 6 kms). From there, connections can be made to Gravesend, Ebbsfleet, Stratford, St Pancras International, Maidstone, Gillingham, Ramsgate, Faversham, London Victoria and London Charing Cross. There is a network of routes that mean that cyclists can avoid using the B2000, although it is accepted that these are more likely to be used for recreational rather than commuting purposes. There is a cycling group in the village that meets twice a month for social rides.
55. It is not disputed that the private car would be the main mode of travel for commuting purposes. However, the Framework explains that the Government recognises different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas<sup>33</sup>. This is a pragmatic response which recognises the same level of public transport cannot be expected of a village such as Cliffe Woods as it would be for an urban area. Short car journeys to work should not be viewed as inherently unsustainable, and this has been accepted at other appeals<sup>34</sup>. Moreover, the private car represents the main mode of travel to work nationally, and it would not be reasonable to expect these proposals to break with the national trend. Even if public transport opportunities are provided, it does not always mean they will be taken up.
56. The appellant is proposing to fund an 'Arriva Click' service to be secured in the planning obligation. This is a demand-responsive service whereby users book a seat in advance and are picked up from a safe location. The funding would be for five years from occupation of the first dwelling, with £50 credit provided to each household to encourage the use of the service. It would operate Monday to Friday between 0630 hrs and 2200 hrs and on Saturday and Sunday between 0630 hrs and 2330 hrs serving Cliffe Woods and providing connections to Strood, Rochester and Chatham<sup>35</sup>.

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<sup>33</sup> Paragraph 29

<sup>34</sup> CD 10.4, Paragraph 25 & CD 10.7, Paragraph 31

<sup>35</sup> ID 30, Paragraph 66

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57. The service would function as a hybrid bus / taxi, with regular services to railway stations at peak times, and within a designated catchment. Arriva has indicated that the likely catchment would be Cliffe Woods, Wainscott, Strood, Medway City Estates, Rochester, Chatham and St Mary's Island. At the weekends, the service would extend to Bluewater Shopping Centre. It would therefore provide connectivity to a range of employment opportunities, education and local services including Medway City Estate<sup>36</sup>. The 'Click' service has already been tried and tested in Sittingbourne and has been in operation there since 2017<sup>37</sup>. Arriva consider that this sort of service represents the future of sustainable transport provision. Such a demand-responsive service avoids running empty buses which may occur with traditional services. It would also use low emission Euro VI vehicles.
58. The Council has not raised concerns in respect of highway safety issues, or congestion, and it is agreed that safe access to the site can be achieved, subject to various improvements. It is not alleged that residual cumulative transport impacts would be severe, as per Paragraph 32 of the Framework.
59. Although the Council suggests that the scheme should include a mix of uses to make it sustainable, there is no policy basis for this, nor is there evidence that certain uses, for example employment units, would be viable on this site. Nor could it be guaranteed that occupiers of the new housing would work in the employment units even if they were provided. The Council has not claimed that existing infrastructure within the village cannot cope with the development.
60. Although the Council relies on the *Hoo* appeal decision<sup>38</sup>, it is not comparable to the circumstances of this case. In that case the site was at some distance from, and poorly connected to, the services and facilities of Hoo. The boundary of the village was 'relatively impermeable'<sup>39</sup> and there was poor pedestrian connectivity. The village of Cliffe Woods is not impenetrable to the site: quite the opposite, and there is good pedestrian connectivity.

*Effect on Character and Appearance – Landscape*

61. In terms of landscape impact, it is accepted that there will be some harm arising from the development. That is almost inevitable when open countryside is built on (because green fields are perceived as more desirable than built development), but that does not, of itself, make the proposals unacceptable. In this instance, the Council now accepts that the landscape is not 'valued' in terms of Paragraph 109 of the Framework. It is not out of the ordinary, and it has no important or defining landscape features. It is not a rare landscape and has limited ecological value. It is not designated for its landscape beauty, nor has it ever been, in contrast to other parts of Medway<sup>40</sup>. It is affected by noise from Town Road (B2000), and the existing urban edge of Cliffe Woods. There is housing adjacent to the appeal site itself, which rises up the hill to the east of the site. Hence it has something of a 'settlement edge character'.

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<sup>36</sup> ID 30, Paragraph 67

<sup>37</sup> ID 18

<sup>38</sup> APP/A2280/W/15/3132141 [Appendix D of Mr Sensecall's Proof]

<sup>39</sup> Ibid, Paragraph 16

<sup>40</sup> For example, designated as Special Landscape Areas

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62. The site is considered to be of 'medium' overall landscape value<sup>41</sup>. In terms of the overall effect on the landscape character of the site itself and its immediate context, the initial 'moderate adverse' effect would reduce to 'moderate/minor' after ten years<sup>42</sup>. In terms of visual effects, the effects would initially be 'moderate adverse' reducing to 'moderate/minor adverse'<sup>43</sup>. There would be no 'major' or 'high' adverse effects. Over time, the scheme would be successfully assimilated into the landscape.
63. The site has limited lawful public access. In fact, the majority of the site is not accessible to the public and most of the appeal site has no formal recreational function<sup>44</sup>. Although the public footpath running along the northern boundary would be affected, it would only be for a limited length of around 300 metres. In practical terms, those walking along the footpath would have simply to walk further to access a countryside view<sup>45</sup>. In any event, the presence of the built-up area of Cliffe Woods is very obvious in existing views from the footpath, whether travelling east or west. New housing need not be unattractive and can create a pleasant environment. There are no designated viewpoints within or towards the site. Although the views from nearby residential properties might be regarded by residents as important, in general terms, the loss of a view cannot be a material planning consideration. The Council accepts that planting and green infrastructure would reduce the adverse effects of development. The Development Framework Plan proposes structural planting in the form of a 15 metre wide corridor alongside the footpath as well as an area of open space in the north east corner of the site<sup>46</sup>.
64. The scheme itself is landscape led, comprising nearly 4 hectares of green infrastructure (around a third of the site area). Significant new native planting could be introduced to reinforce the site boundaries. It is not alleged that the appeal site is important to the setting of Cliffe Woods. The rural setting of the village would remain if the scheme was permitted. The development would comprise a logical and natural extension to the existing settlement. In terms of night-time effects, the Council has not raised a specific objection, and a sensitive lighting scheme could be implemented to minimise any impacts. Lighting is already apparent, especially in housing that rises up the hill.
65. The landscape is not of the type that the Framework seeks to protect from development, sitting at the bottom of the landscape hierarchy in terms of its status. Paragraph 113 of the Framework states that protection should be commensurate with status. In areas where there is a housing supply deficit, development should be directed to areas of lesser environmental value.
66. To conclude on this issue, the proposals would not result in any unacceptable harm to the landscape, nor the wider countryside. The scheme could be developed in a way that leads to landscape enhancement, enabling the proposal to successfully assimilate with its surroundings.

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<sup>41</sup> Mr Rech's Proof, Paragraph 8.8

<sup>42</sup> Mr Rech's Proof, Paragraph 5.13

<sup>43</sup> Comparative Table [ID 1]

<sup>44</sup> Mr Rech's Proof, Paragraph 3.40

<sup>45</sup> As per the Gibraltar Farm appeal decision, Paragraph 217 (APP/A2280/W/16/3143600)

<sup>46</sup> Mr Rech's Proof, Paragraph 5.17

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## *Appellant's Planning Balance and Overall Conclusions*

67. The existing Local Plan, adopted in 2003, was only intended to guide development up to 2006. It is based on an out-of-date housing requirement figure that is not capable of delivering Medway's current housing needs. The latest Strategic Housing Market Assessment (SHMA)<sup>47</sup> that forms part of the evidence base for the emerging Local Plan identifies an objectively assessed need of 1,281 dwellings per annum (dpa). This is significantly higher than the annual requirement that the adopted Local Plan is predicated on (867 dpa) derived from the Kent Structure Plan. The figure from the SHMA may need to be increased before the new plan is adopted. The Council can only demonstrate a 2.75 year supply of housing<sup>48</sup> and is a '20%' authority because of persistent under-delivery of housing.
68. Although there is significant public benefit in maintaining a plan-led system, the policies of the Local Plan are incapable of meeting current housing requirements. This reduces the weight that can be attached to them. It is inevitable that greenfield sites outside the defined settlement boundaries will be required if the shortfall is to be addressed. In fact, the Council is already granting permission for sites outside the settlement boundary in conflict with the Local Plan<sup>49</sup>. In the Gibraltar Farm appeal decision, the Secretary of State agreed with the Inspector that greenfield land will need to be developed<sup>50</sup>.
69. Policy BNE25 imposes a 'blanket ban' on development of the sort proposed here, but that policy is intrinsically linked to out-of-date settlement boundaries, and does not reflect the Framework's objective to boost significantly the supply of housing. It is a policy formulated to protect the countryside for its own sake<sup>51</sup> but this is no longer a requirement of the Framework, which now advocates a hierarchical approach to protection. The Council seeks to only apply part (i) of the Policy, and to disapply (ii) to (vi), but the wording of the policy does not allow such an approach. It is not how the policy works. Part (i) of the Policy contains the words "*and is either*", and so is to be interpreted in the light of the exceptions that follow. Although there is a conflict with Policy BNE25, the conflict can only be given little weight.
70. Policies S1 and S2 are not mentioned in the amended reasons for refusal, but the Council seeks to rely on them. This is surprising given the Council's decision to delete reference to them. Although Policies S1 and S2 urge an 'urban focus', that should not be to the exclusion of rural development, nor does it mean the proposal is in conflict with them. Essentially, these policies are silent on the development proposal<sup>52</sup>.
71. In the 'Development Options' for the emerging Local Plan<sup>53</sup>, Cliffe Woods is earmarked for growth. At the very least, there will be some incremental expansion, and one option would see Cliffe Woods perform as an 'expanded

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<sup>47</sup> CD 9.2

<sup>48</sup> Mr Booth's Proof, Page 24

<sup>49</sup> Otterham Quay Lane [ID 9]

<sup>50</sup> CD 10.1, Paragraph 13 (& Inspector's Report, Paragraph 200)

<sup>51</sup> Medway Local Plan, Paragraph 3.4.71 [CD 7.1]

<sup>52</sup> ID 30, Paragraphs 113 & 114

<sup>53</sup> CD 8.1

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village'. Therefore, the village is already regarded as appropriate for some household growth.

72. There is no heritage reason for refusal, and thus no statutory duties relating to heritage assets are engaged. There are non-designated heritage assets and therefore Paragraph 135 of the Framework is engaged. This is not a 'restrictive policy' in terms of the Framework, but even without applying the Paragraph 14 'tilted balance', the negligible harm<sup>54</sup> to one pillbox (on the southern boundary<sup>55</sup>) is heavily outweighed by the benefits of the scheme<sup>56</sup>. No harm would be sustained to the other pillbox (on the north eastern boundary<sup>57</sup>). No harm would be sustained to a third pillbox, located outside the appeal site, around 200 metres to the south.
73. The scheme would make a valuable contribution to market and affordable housing. There are economic and social benefits to the scheme<sup>58</sup>. Local spending would increase, supporting local facilities and services<sup>59</sup>. The development would result in jobs during the construction phase<sup>60</sup>. The New Homes Bonus would bring additional resources to the Council<sup>61</sup>. The scheme would offer new recreational opportunities, including a trail around the site, past the pillboxes. There would be net gains in biodiversity with additional planting and provision of green space. The existing pillboxes would be converted to dedicated bat roosts, and there would be heritage benefits in securing their preservation for future generations.
74. The Council accepts that financial contributions towards health, education, the public realm and affordable housing mitigate the impacts of the scheme and meet the relevant policy requirements. To conclude, there are only very limited adverse impacts to be weighed against a number of very significant benefits, including the provision of market and affordable housing. There are also biodiversity benefits. The new residents of the scheme could contribute to Cliffe Woods and become active members of the community, enhancing the village. Therefore, the appeal should be allowed.

### **The case for Cliffe and Cliffe Woods Parish Council**

75. The Parish Council's case is summarised in the original 'Rule 6' submission and the statement provided at the Inquiry<sup>62</sup>. The Parish Council is disappointed to see that the decision of the Council is now subject of appeal. It wants to ensure that the views of local residents are presented to the Inquiry. The Parish Council has been engaged since the pre-application meetings took place, and has responded to both the pre-planning application consultation and application itself, and participated in the public meeting at the Cliffe Woods Community Centre in October 2016 called in response to residents' serious concerns, held jointly with Kelly Tolhurst MP and Medway Council Ward Councillors.

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<sup>54</sup> Mr Booth's Appendix 3 (Built Heritage Summary Statement for Appeal)

<sup>55</sup> Type 24 Pillbox TQ 77 SW 56

<sup>56</sup> ID 30, Paragraphs 124 - 127

<sup>57</sup> Type 24 Pillbox TQ 77 SW 59

<sup>58</sup> Mr Booth's Proof, Page 44

<sup>59</sup> Household expenditure from the new homes is estimated to be around £7.4 million per annum

<sup>60</sup> The build cost is estimated to be around £23.9 million with 212 jobs per annum created during construction

<sup>61</sup> Estimated to be around £2.1 million [Mr Booth's Proof Page 44]

<sup>62</sup> ID 27

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76. The Parish Council strongly supports the Council's reasons for refusal, relating to the sustainability of the site, and the effect on the landscape. The suggested financial contributions from the legal agreement do not cover the impacts that this scheme would have on facilities within the village. The development would impact on existing services: pre-school, primary school, doctors' surgery, the community centre and other community facilities. In particular, the primary school would be unable to satisfy the needs of this development – and provision will need to be provided elsewhere, leading to more traffic. There is already over-reliance on the private motor vehicle and other transport provision is poor. There are limited facilities and services in the locality – most are in Strood, Rochester, Chatham and Gravesend. The proposal does not address the additional problems that this development would create. The site, originally assessed as a 'valued landscape', has always been in agricultural use, and provides a natural boundary between Cliffe Woods and the boundary with Gravesham / Kent County Council.
77. The site is located on the west side of Town Road (B2000) and is separated from the village facilities by a busy main road with significant lorry movements to Cliffe (Salt Lane). The traffic survey commissioned by the Parish Council shows that significant numbers of lorries use the B2000. The proposed highway works, including the provision of a footpath between View Road and Tennyson Road, do not overcome the problems of crossing the road. The main access to the site is adjacent to the busy B2000 Town Road / View Road junction (a main route into the village for residents) with poor visibility from View Road towards the proposed new access. There are already traffic problems around the primary school at drop-off and pick-up times, which will be exacerbated by this scheme.
78. The suggestion that the 'Click' bus service would help reduce the need for a car has not been proven. The ability to pick up a customer within 20 minutes would be very difficult to achieve, especially in peak times, and would not be practical if Bluewater Shopping Centre were to be included as a destination. There is a lack of clarity as to how the service could be booked, and whether there would be a need for pre-booking and pre-paying via a smart phone.
79. The scheme fails to address the problems it would create and is unsustainable. There is little practical benefit being proposed for the village. The development is located on the 'wrong side' of the B2000. The Parish Council fully supports the reasons for refusal and requests that the appeal is dismissed.

### **Comments of Third Parties**

80. The Council's committee report advises that there were 332 letters of objection from local residents, as well as a petition comprising 198 signatures. A number of individuals spoke against the scheme at the Inquiry<sup>63</sup>. Objections to the proposals raise many points and include the following: the site is not identified in the Medway Local Plan nor Neighbourhood Plan; the site is not in a sustainable location with limited shops / services and public transport provision; the large scale of development is unacceptable, and will overload existing limited facilities and infrastructure in the village; it will cause increased pressure on schools, doctors surgeries, police, fire services etc; the financial contributions in the legal agreement are inadequate; and the provision of affordable housing is inadequate.

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<sup>63</sup> Listed as interested persons at the end of this report

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81. It will result in the loss of open countryside and the loss of the best and most versatile agricultural land – such land should be retained for food production, especially in the light of the decision to leave the European Union; development would have a significant environmental impact – including impacts on biodiversity, and local habitats, including nearby Special Protection Areas and Sites of Special Scientific Interest; it would have a harmful effect on the landscape character of the area and destroy the village environment; new housing development should take place on brownfield sites; there is no need for housing on this scale; the development would lead to urban sprawl and to Cliffe Woods becoming an extension of Strood and Rochester; the lack of a 5 year supply of housing is only temporary and does not outweigh the harm that this development would permanently cause; and there would be loss of amenity, outlook and views especially from properties in Ladyclose Avenue and Mortimers Avenue.
82. There would be increased light and air pollution; the indicative scheme layout is unacceptable; the land is potentially contaminated; there are potential subsidence issues in the locality; there are drainage concerns, including those relating to increased runoff causing flooding; there would be an increase in crime and antisocial behaviour; there would be an unacceptable impact on the highway network – the roads are already dangerous, especially the B2000 that has many HGV lorry movements; the increase in traffic would make the problem worse and the proposed access point has limited and poor visibility; and the application documentation is misleading and there has been poor pre-submission community consultation.

### **Other objections**

83. **Kelly Tolhurst (Member of Parliament for Rochester and Strood)** objects to the proposal, noting the substantial opposition from local constituents. In a letter dated 5 July 2017, she observes that a public meeting was attended by more than two hundred local residents who were unanimously opposed to the scheme. Specific concerns related to the increased pressure on local services, transport, emergency services, the primary school and GP practice. The proposal would also have an adverse effect on the environment, as well as causing increased pollution and traffic congestion.

### **Planning Obligation**

84. The appellant has provided a planning obligation dated 13 December 2017 in the form of a unilateral undertaking. The obligation secures the provision of affordable housing at the rate of 25%. It also secures various financial contributions towards: the provision of a bus service scheme comprising a 'Click' demand-responsive minibus service, including credit (£50) to pay for travel on the bus service; a bus season ticket for the first occupier of each dwelling; improvements to public transport infrastructure in the vicinity - for example upgrading the bus stop/shelter (£25,000); an education contribution towards nursery, primary, secondary and sixth form education (to be calculated using a formula); a healthcare contribution (up to £105,288.75); a school transport contribution (£5,000) towards the costs of safer roads to school initiatives and updating Cliffe Woods Primary School's travel plan.
85. The obligation secures a footpath contribution (£1,800) towards two 'kissing gates' to replace the stiles at each end of footpath RS72 on the northern



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boundary of the site, as well a contribution (£500) towards new footpath signage; and an outdoor open space contribution (to be calculated according to a formula). It also provides for bird mitigation (£50,305.50); and towards waste management (£85,686.30). The obligation provides for the establishment of a management company to maintain the open space (including the play area) in accordance with a scheme to be submitted to and approved in writing by the Council. The obligation provides for a public realm contribution (£55,125). It also provides for a monitoring fee (£2,700) towards the Council's costs of monitoring compliance of the obligations.

86. I have no reason to doubt that the formulae and charges used by the Council and County Council to calculate the various contributions are other than soundly based. In this regard, the Council has produced a Compliance Statement<sup>64</sup> which demonstrates how the obligations meet the relevant tests in the Framework<sup>65</sup> and the Community Infrastructure Levy Regulations<sup>66</sup>. The development would enlarge the local population with a consequent effect on local services and facilities. I am satisfied that the provisions of the obligation are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the Framework and the Community Infrastructure Levy Regulations. I have taken the obligation into account in my deliberations.

### **Conditions**

87. I have reviewed the suggested conditions in the light of the discussion at the Inquiry and advice in the PPG. Where necessary, I have reworded them for clarity and simplicity, and have also amalgamated some of the conditions to avoid duplication.
88. Commencement conditions are necessary to comply with the relevant legislation. A condition requiring compliance with the submitted plans and specifying the maximum number of dwellings is necessary for the avoidance of doubt. A condition specifying the scope of requirements in relation to reserved matters is necessary to ensure these matters are properly dealt with and to achieve a high quality scheme. These matters include the design and layout of dwellings and materials to be used; details of boundary treatments, hard and soft landscaping; details of retained trees and hedgerows; existing and proposed ground levels; internal road layouts, parking and pedestrian routes, including surfacing details; details of the public realm; details of refuse and recycling storage; measures to minimise the risk of crime; and an open space masterplan. A condition to ensure the replacement of any trees or plants that die, become diseased or are removed is required to ensure the effectiveness of the landscaping scheme.
89. A condition relating to lighting is necessary to ensure adequate illumination, whilst minimising light pollution and safeguarding ecological interests. Conditions relating to sustainable surface drainage, ecology, highway works, archaeology and contamination are required to ensure that these matters are appropriately addressed. A condition requiring a travel plan is required to minimise private car

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<sup>64</sup> ID 17

<sup>65</sup> Paragraph 204

<sup>66</sup> Regulation 122 & 123

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trips and encourage sustainable modes of transport. A condition requiring a construction management plan is necessary to minimise disturbance to local residents. A condition relating to the two pillboxes on the site is necessary to ensure these non-designated heritage assets are protected. A number of the conditions relate to pre-commencement activities. In each of these cases, the requirement of the condition is fundamental to make the scheme acceptable in planning terms.

## **Inspector's Conclusions<sup>67</sup>**

### **Main Issues**

90. In the light of all the evidence and submissions, I consider the main issues to be:

- i. the locational accessibility of the site, in terms of shops and services, and public transport;
- ii. the effect on the character and appearance of the area, including the landscape; and
- iii. in the absence of a five year supply of deliverable housing sites, whether any adverse impacts would significantly and demonstrably outweigh the benefits of the scheme.

### **Reasons**

#### *Planning Policy Context*

91. The relevant legislation<sup>68</sup> requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The statutory development plan comprises the Medway Local Plan ('the Local Plan') adopted in 2003. Only Policy BNE25 is now specifically cited by the Council in its refusal grounds. [5]

92. The Framework sets out the Government's planning policies and is a material consideration in planning decisions. The Framework does not change the statutory status of the development plan for decision-making, but provides guidance for decision-takers in determining planning applications. The Local Plan predates the Framework, although the Framework states that policies should not be considered out-of-date simply because they were adopted prior to the Framework's publication<sup>69</sup>. Nonetheless, the Local Plan is formally 'time expired', its end date being 2006. That said, the mere age of a plan does not mean that it loses its statutory standing as the development plan.

93. In this case, there is no dispute that the Council cannot demonstrate a deliverable five year supply of housing, as required by the Framework. The appellant is of the view that the supply is no better than 2.75 years although the Council says it is around 3 years. Either way, the shortfall in supply remains significant. The Council also accepts that the housing targets in the Medway

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<sup>67</sup> In this section, the numbers in square brackets [] refer to earlier paragraphs of this report

<sup>68</sup> Section 38(6) of the 2004 Act

<sup>69</sup> Paragraph 211

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Local Plan no longer represent the objectively assessed housing need for the district, and that the settlement boundaries were only designed to plan for growth up to 2006. There is no dispute between the Council and appellant that Paragraph 14 of the Framework is triggered. Indeed, the housing shortfall is sufficient, of itself, to trigger the second part of Paragraph 14. This so called 'tilted balance' states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole [23, 24, 42, 67].

94. There was disagreement at the Inquiry as to the weight to be given to Policy BNE25 [44, 69]. Given that Policy BNE25 is concerned with development in the countryside, both the Council and appellant were of the view that it should not be considered a policy for the supply of housing<sup>70</sup> particularly as case law has effectively narrowed the definition of such policies<sup>71</sup>. Nonetheless, I consider that Policy BNE25 in dealing with development in the countryside is intrinsically linked to settlement boundaries that in turn reflect out-of-date housing requirements. Furthermore, it is clear that its application is not leading to sufficient housing being provided in accordance with the Framework nor is it boosting the supply of housing<sup>72</sup>.
95. The Framework also advises at Paragraph 215 that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. In terms of Policy BNE25, Part (i) states that development will only be permitted if 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. This first part of the policy is subject to further criteria which restrict development to specific uses or circumstances set out at (ii) to (vii). In my judgement, the wording of the policy implies that criterion (i) should be read conjunctively and not disjunctively with the subsequent criteria. This is clearly conveyed by the words '*and is either*' at the end of criterion (i).
96. The Framework refers to the planning system performing various roles, including an environmental one. This involves contributing to protecting and enhancing the natural, built and historic environment<sup>73</sup>, as well as, amongst other things, taking account of the different roles and character of different areas, and recognising the intrinsic character and beauty of the countryside<sup>74</sup>. The Framework specifically states planning should contribute to conserving and enhancing the natural environment<sup>75</sup>. It also seeks to promote sustainable transport and give people a choice about how they travel<sup>76</sup>. To that extent, the first criterion of Policy BNE25 is not in fundamental conflict with the underlying aims of the Framework.

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<sup>70</sup> Council's Closing Submissions, Paragraph 85 (2)

<sup>71</sup> *Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council* [2017] UKCS 37

<sup>72</sup> Paragraph 49

<sup>73</sup> Paragraph 7

<sup>74</sup> Paragraph 17

<sup>75</sup> Paragraph 17

<sup>76</sup> Section 4

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97. All that said, Policy BNE25 read as a whole is not fully consistent with the Framework to the extent that it lacks a hierarchical approach requiring that landscape protection is commensurate with status, and it arbitrarily restricts proposals to various forms of development that meet certain specific criteria. That is not surprising given that the Local Plan was conceived at a time when national guidance sought to protect the countryside for its own sake, as acknowledged in supporting paragraph 3.4.71<sup>77</sup>. Indeed, the thrust of the Framework has moved away from a 'blanket protection' of the countryside, to a more hierarchical approach of consideration of landscape value, and it places no 'in principle' restriction on the type of development.
98. To sum up, I consider that the wording of the Policy BNE25 means that it was intended to be applied as a whole, rather than its individual elements selectively. Furthermore, whilst it remains legitimate to consider the impacts of development on the character and appearance of the countryside, the policy's approach to development in the countryside does not fully accord with the Framework's more hierarchical approach to landscape protection. In addition, it is clear that its application is not resulting in sufficient housing being provided. The Secretary of State in the *Gibraltar Farm* decision concluded that the policy 'clearly seeks to restrict housing growth'<sup>78</sup>. Overall, therefore, all these factors diminish the weight that can be accorded to any conflict with this policy.
99. At the Inquiry the Council also sought to rely on Policies S1 and S2 of the Local Plan, notwithstanding that these policies were deleted from the reasons for refusal<sup>79</sup> [5, 43, 45, 70]. Policy S1 sets out the development strategy for the plan area and seeks to prioritise development within the existing urban areas. Policy S2 is concerned with the implementation of the development strategy set out in Policy S1, with a focus on maintaining and improving environmental quality and design standards, and a sustainable approach to the location and mix of new development to provide local communities with a range of local facilities (including transport measures to serve development).
100. These principles are broadly consistent with the overall objectives of the Framework. Nonetheless, it is clear that the development strategy of the Local Plan and the application of Policies S1 and S2 are failing to provide sufficient housing in accordance with the Framework. This runs counter to the objectives of Paragraph 47 of the Framework which seeks to boost significantly the supply of housing. Again, this limits the weight that can be attached to any conflict with these policies.

### *Locational Accessibility*

101. The village of Cliffe Woods has a range of shops, services and community facilities [21]. There is a parade comprising a useful variety of outlets: a pharmacy, two convenience / grocery stores (including a post office), a fish and chip takeaway (which also sells burgers and kebabs), and an Indian takeaway. There is also a community centre and social club (including the Woodpecker Bar). There is a doctors' surgery/health centre, a church, a day nursery, a primary school and recreation ground. There is also a sizeable car park in the village

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<sup>77</sup> Page 79 of the Local Plan

<sup>78</sup> APP/A2280/W/16/3143600, Paragraph 11 [CD 10.1]

<sup>79</sup> CD 12.2

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centre where there are recycling facilities. These facilities are all close to the appeal site, and would be readily accessible to future residents.

102. The site is also accessible to public transport [22]. The closest bus stop to the site lies around 450m to the east of the centre of the site, along View Road. The 133 bus route is the main service in Cliffe Woods linking the village to Strood, Rochester, Chatham and St Mary's Island. However, whilst operating at reasonably regular intervals during the day, it does not operate in the very early morning or after early evening. Therefore, its timetable restricts the utility for commuters or those wishing to travel in the evenings for leisure purposes. The nearest railway station is not far away, at around 2 km from the site at Higham, where car parking is available. Trains operate in each direction serving stations at Gillingham, Chatham, Rochester, Strood, Gravesend, Dartford, Woolwich Arsenal, Lewisham, London Bridge, London Waterloo East, and London Charing Cross.
103. Although the village centre does provide a useful selection of outlets for essential shopping needs, residents of the village would need to travel further afield for a wider and more specialist range of shops. Although the use of internet shopping is growing, this does not obviate the need for shopping trips. Employment opportunities in the village are somewhat limited, as are leisure facilities. Although some residents may work from home, many would need to commute to larger centres. Also, there is no secondary school, library or bank in the village.
104. It seems to me that, notwithstanding the existing level of public transport, including both buses and train services, residents would be likely to rely on the private car for a number of trips. Although cycling may be an option for some residents, it is not a realistic option for most, especially those wishing to travel to Strood, Chatham or beyond for commuting purposes. Indeed, the appellant accepted that the possible options for cycling, utilising Town Road (B2000) and existing national and local cycle networks, were not particularly attractive to cyclists<sup>80</sup>. Town Road, which is the most direct route to the main settlements and employment centres to the south, does not have a cycle lane, is predominantly unlit and is heavily used by lorries.
105. Measures have been proposed by the appellant to improve accessibility of the scheme [56, 57]. As part of the planning obligation, the appellant has agreed to fund a bus service scheme for a period of five years. It is envisaged that this will operate as an 'Arriva Click' demand-responsive service. The planning obligation requires the details of the scheme be agreed, including specification of the vehicles to be used, the departure points, en-route stops, and the charging and fares to be employed.
106. It is clear that a degree of uncertainty exists as to how this service would operate in practice, particularly in order to guarantee the waiting times suggested by the appellant. Both the Council and Parish Council urged that only limited weight could be attributed to the benefits provided by this service, and it could not be relied upon to alter the dependency on the car for future residents [34, 35, 78]. I acknowledge that the bus scheme is still in its embryonic stages, and further liaison will be required to crystallise its exact details and mechanics.

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<sup>80</sup> This was accepted by Mr Schumacher in cross-examination.

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However, the scheme should not be discounted as potentially improving transport links and accessibility to the site.

107. The appellant also proposes a financial contribution of £25,000 towards the costs of public transport infrastructure improvements in the vicinity of the site including upgrades to the bus stop in View Road. The appellant proposes to offer a bus season ticket for a period of three months and 'bus service credit' of £50 to pay for travel on the 'click' service for future households of the development [84]. All these measures will go some way to facilitating sustainable travel modes, and improving the site's accessibility to sustainable transport.
108. The Council relies on the *Hoo* appeal decision<sup>81</sup>, where the Inspector found that a residential development was not in a sustainable location, and would be highly dependent on car travel [36, 60]. However, that decision is not directly comparable to the circumstances of this case. In that case, the site was at some distance from, and poorly connected to, the services and facilities of Hoo. The boundary of the village was 'relatively impermeable'<sup>82</sup>. The site although juxtaposed with the western boundary of Hoo, had little or no connection with it and there was poor pedestrian connectivity. By contrast, in this case, the site is in close proximity to the centre of Cliffe Woods, its associated shops and other facilities. Although separated by Town Road, the facilities are not impenetrable to the site and there is good pedestrian connectivity.
109. To sum up on this first issue, there is a range of essential shops and other services in Cliffe Woods that would be accessible to future residents of the scheme. Nonetheless, residents are likely to travel further afield for larger food supermarkets, specialist shops, leisure, employment, and secondary schools. This is likely to generate trips by car, notwithstanding the existing public transport services available in the locality. Importantly however, the Framework, although seeking to promote sustainable transport, recognises that different policies and measures will be required in different communities, and opportunities to maximise sustainable transport solutions will vary from urban to rural areas<sup>83</sup>. Parts of the Medway District are more rural in character, including the Hoo Peninsula and the village of Cliffe Woods. This means that options for public transport are more limited, as are the availability of shops, local services and facilities. This requires a realistic approach to the general travel method of its residents.
110. Moreover, residents of the appeal development would be in no different position to the existing residents of Cliffe Woods. Measures are proposed as part of the scheme to improve accessibility and encourage sustainable transport. I find no intrinsic conflict with the requirement of Policy BNE25 that development should '*offer a realistic chance of access by a range of transport modes*'. Weighing all the above in the balance, I am satisfied on the first issue that the proposal can be justified in this location. Furthermore, by introducing new market and affordable housing along with the associated economic benefits, the proposal would comply with the Framework, which advocates supporting a prosperous rural economy<sup>84</sup>.

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<sup>81</sup> APP/A2280/W/15/3132141 [Appendix D of Mr Sensecall's Proof]

<sup>82</sup> Ibid, Paragraph 16

<sup>83</sup> Paragraph 29

<sup>84</sup> Paragraph 28

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*Effect on Character and Appearance – Landscape*

111. The appeal site has no specific landscape designation or protection. At a local level the site falls within the 'Cliffe Woods Farmland' landscape character area. This character area is described as comprising undulating arable farmland and orchards, with poplar shelter belts being a dominant feature. Whilst the description notes that there is a tranquil, rural feel away from roads, it also accurately records that detracting features include the B2000 which carries heavy traffic (including lorries), together with pylons to the north and the suburbanisation of village edges [11].
112. In terms of scenic quality, the appeal site can be regarded as reasonably attractive, comprising open fields, but it is nothing out of the ordinary. It contains few landscape features of intrinsic value. Indeed, the Council specifically amended its second reason for refusal to omit reference a 'valued landscape'. Although currently open, its character is significantly affected by the urban development on its edges – in particular, the busy Town Road (B2000), the residential housing within Mortimers Avenue and Ladyclose Avenue as well as the larger urban expanse of Cliffe Woods on rising land to the east. Whilst I acknowledge the northern, western and southern boundaries abut open agricultural land, the site is largely perceived in the context of the nearby development. I do not consider the site to be an essential or intrinsic component of the wider open countryside. In terms of tranquillity, the locality is affected by the heavy traffic flows, including a significant number of lorries along Town Road.
113. Although I observed a number of walkers traversing the edges of fields, these are not formal public rights of way. Indeed, the majority of the site is not accessible to the public and most of the appeal site has no formal recreational function [63]. The open fields do, however, provide a setting for the public footpath running along the northern boundary. This footpath is clearly popular and locally valued, and is a route used by walkers, including those living in the village. The proposed coverage of the existing fields with housing would inevitably compromise views from this stretch of footpath. The introduction of built form would undoubtedly alter users' experiences: rather than walking past an open field, it would in effect become a walk past a housing estate. The development would create a substantially more suburban appearance. Most users are likely to find their experience and enjoyment of this section of footpath diminished by such changes to the landscape.
114. All that said, only a very limited section of footpath would be affected by the proposal. In practical terms, those walking along the footpath on the northern edge of the appeal site would simply have to walk further westwards to experience an open country view. In any event, views from the footpath are already affected by the properties of Mortimers Avenue and Ladyclose Avenue, as well as the built environs of Cliffe Woods rising up the hill. The Development Framework Plan proposes structural planting comprising a 15 metre wide corridor alongside the footpath as well as an area of open space in the north east corner of the site. These features would help mitigate the impact on the footpath [63].
115. Turning to views in the wider landscape, the site has a relatively restricted 'visual envelope'<sup>85</sup>. There are views from the north and east, but these are

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<sup>85</sup> Landscape and Visual Appraisal, Figure 7 [CD 2.6]

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filtered by the existing built development of Cliffe Woods. Views from the west are impeded because of the undulating landform and vegetation along the site's boundary. To the south, views are affected by intervening belts of vegetation, although during the winter months when deciduous trees lose their leaves, the site is more obvious. Limited views of the site are possible from the local lanes of Buckland Road to the west and Lillechurch Road to the south. Nonetheless, the effect of the development on the wider landscape could be mitigated by structural planting, as shown on the Development Framework Plan.

116. Drawing all these matters together, in terms of character and appearance, the appeal scheme would inevitably adversely affect the currently open and rural character of the landscape. It would result in the urbanisation of agricultural fields, although the impact of the scheme would reduce as the proposed structural planting and landscaping matures. In terms of Policy BNE25(i), the scheme would not maintain or enhance the character, amenity and functioning of the countryside, and so would not accord with that aspect of the policy. On the other hand, Paragraph 113 of the Framework states that landscape protection should be commensurate with status. This undesignated landscape is not of the type that the Framework seeks to protect from any forms of development, sitting at the bottom of the landscape hierarchy in terms of its status. In areas where there is a housing supply deficit, development should be directed to areas of lesser environmental value.

#### *Other Matters*

117. A number of objectors have raised concerns in relation traffic safety and congestion [77, 82]. The Council has agreed that safe access to the site can be achieved, subject to various highway improvements being undertaken. These include the provision of a new section of footway on the eastern side of Town Road between the junctions with Tennyson Avenue and View Road; the realignment of the existing carriageway and the provision of a 2 metre wide footway along the site frontage, including a pedestrian crossing island; the provision of a controlled pedestrian crossing to the south of the Town Road/Tennyson Road junction; and the provision of a traffic island at the existing speed limit terminal on Town Road to the south of Cliffe Woods, along with new carriageway surfacing. Such measures could be secured by condition. It is not alleged that residual cumulative transport impacts of the scheme would be severe, in terms of Paragraph 32 of the Framework. The evidence does not suggest that the scheme should fail on highway grounds.
118. Objectors have also raised concerns regarding the overburdening of local services, including education and medical [76, 80]. The appellant's planning obligation provides for financial contributions in respect of education and healthcare provision. The amounts have been calculated using the Council's own formula based on the anticipated need generated from future residents of the appeal site. There is no reason for the approval to be withheld based on these concerns.
119. Concerns have been raised regarding the impact on outlook and privacy at nearby properties, especially from the residents of Mortimers Avenue and Ladyclose Avenue [81]. The Development Framework Plan indicates that an undeveloped margin of around 15 metres would be retained along the boundaries adjacent to these properties. Detailed plans, when drawn up, would indicate the



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precise layout and positioning of dwellings, and ensure that there are no adverse effects in terms of privacy and overshadowing. Clearly, the outlook from these properties would change, but there is no reason to suppose the effect would be unacceptable.

120. Objectors have raised concerns in relation to the loss of best and most versatile (BMV) agricultural land [81]. The majority of the site is within the BMV 'Moderate' (Grade 3b) category although a proportion of the site falls within the BMW 'Good' (Grade 3a) category. Both the Council and appellant agree that the loss of agricultural land is not significant enough to be a determining issue in this case, and I see no reason to take a different view [26].
121. A number of other concerns have been raised in respect ecology and nature conservation interests, flood risk, ground conditions / contamination and archaeology [81, 82]. In terms of ecology, no part of the site is covered by wildlife designations. An Ecological Appraisal has been undertaken to determine the habitats present within the site<sup>86</sup>. The Appraisal concludes that the main body of agricultural land is considered to be of low ecological value, but that the hedgerows, ditches and trees on or near to the site boundaries are likely to provide opportunities for a range of local wildlife. No signs of badger activity were identified, nor were any bat roosting habitats identified within the developable area, with commuting and foraging habitats largely restricted to hedgerows and trees forming the site boundaries. Appropriate mitigation measures could be undertaken, secured by condition, to ensure there is no negative effect on nature conservation interests. There is also the opportunity for ecological enhancement and habitat creation through new open spaces proposed within the site.
122. The site is also reasonably close to a range of European and nationally designated sites [12], including SPAs, Ramsar sites, SACs and SSSIs. Such sites are susceptible to damage caused by increasing recreational pressure. However, Natural England (NE)<sup>87</sup> considers the proposal to be acceptable, subject to appropriate mitigation<sup>88</sup>, including in respect of birds, which can be secured by a planning obligation and conditions.
123. A Flood Risk Assessment has been prepared which confirms that the site falls entirely within Flood Zone 1 where there is a low probability of flooding. Flood and drainage matters can be appropriately dealt with by a condition requiring the submission of a sustainable drainage scheme prior to any development commencing [26].
124. In terms of ground contamination, the site has previously been used for agricultural activities with a low risk of contamination. With regards to archaeology, an archaeological desk based assessment has been carried out and the comments of the County Archaeological Officer sought<sup>89</sup>. In accordance with the advice received, both contamination and archaeological matters can be satisfactorily dealt with by suitably worded conditions [25].

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<sup>86</sup> CD 2.5

<sup>87</sup> CD 3.7 & 3.16

<sup>88</sup> As detailed in the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy

<sup>89</sup> CD 3.8

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125. There are Second World War pillboxes along the edge of the site. Paragraph 135 of the Framework requires any effects on the significance of a non-designated heritage asset to be taken into account. The Council has not raised any objections regarding the impact on these non-designated assets, subject to an appropriate condition being imposed and I see no reason to take a different view [25].

### **Planning Balance and Overall Conclusions**

126. The relevant legislation requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The Framework states that proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by economic, social, and environmental dimensions and the interrelated roles they perform. These dimensions give rise to the need for the planning system to perform a number of roles.

127. In this case, the additional housing would be a weighty benefit for the area, by introducing much needed private and affordable housing for local people. It would boost the supply of housing in accordance with the Framework, contributing up to 225 homes, of which up to 25% would be affordable. It would bring about additional housing choice and competition in the housing market. The scheme would bring about social and economic benefits. It would create investment in the locality and increase spending in shops and services. It would result in jobs during the construction phase. The New Homes Bonus would bring additional resources to the Council.

128. The scheme has other advantages, including the provision of open space with an equipped play area that could also be used by the general public. New planting and landscaping, as well as the provision of a pond as part of the sustainable urban drainage system, has the potential to enhance the ecology and biodiversity of the site. New pedestrian routes would be created across the site to supplement the existing public footpath. The obligation provides, amongst other things, for improvements to the public transport infrastructure, including the upgrade of the nearby bus shelter, and the provision of an on-demand responsive 'Click' bus service. Not only would these measures mitigate the adverse effects on the development, they would also convey benefits to the wider population.

129. The development would result in the loss of open agricultural land and would result in the urbanisation of the existing fields. However, the existing landscape is adjacent to, and perceived in the context of, the urban edge of Cliffe Woods. It contains few landscape features of intrinsic value and the Council does not contend that this is a 'valued landscape'. The impact of the scheme would significantly reduce as the proposed structural planting and landscaping matures. There is no reason why the development could not be adequately assimilated over time. Paragraph 113 of the Framework states that landscape protection should be commensurate with status. In areas where there is a housing supply deficit, development should be directed to areas of lesser environmental value.

130. Cliffe Woods is accessible to public transport, including bus and train services. Although provision is not comparable to that of a built-up urbanised area, there are opportunities for residents to use public transport. There is a range of essential shops and other local facilities, which are within walking distance.

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Residents of the new development are likely to travel further afield for a wider range of shops, services, leisure opportunities and employment, necessitating trips by private vehicles. That said, residents of the appeal development would be in no different position to other existing residents of Cliffe Woods.

131. The Framework, although seeking to promote sustainable transport, recognises that different policies and measures will be required in different communities, and opportunities to maximise sustainable transport solutions will vary from urban to more rural areas. Parts of Medway, including Cliffe Woods, are more rural in character with less generous provision of public transport and more limited facilities, compared with built-up urban areas. A realistic approach is required to the general travel method of residents, and this should not weigh against the development.
132. The Council refers to the public interest in having a plan-led system for the delivery of housing. However, it is a core planning principle of the Framework that plans should be kept up to date<sup>90</sup>. In addition, the Framework is clear that every effort should be made objectively to identify and then meet the housing needs of an area<sup>91</sup>. The Medway Local Plan, adopted in 2003, was only intended to guide development up to 2006. It is based on an out-of-date housing requirement. Its policies are incapable of meeting current housing requirements. In the *Gibraltar Farm* appeal decision, the Secretary of State agreed with the Inspector that greenfield sites outside the defined settlement boundaries would inevitably need to be developed. That situation has not changed.
133. In summary, there would be some conflict with Policy BNE25(i) of the Medway Local Plan in terms of the effect on the landscape. However, the development would offer access by a range of transport modes, as required by BNE25(i), although new residents may also rely on private vehicles. The scheme would be not be located within an existing urban area, as prioritised by Policies S1 and S2. Importantly, though, the Council cannot demonstrate a five year supply of housing. Moreover, Policy BNE25 is not fully compliant with the Framework, and, together with Policies S1 and S2, they are not delivering the necessary provision of housing. This diminishes the weight that can be attached to any conflict with these policies.
134. The significant ongoing housing shortfall attracts substantial weight in favour of granting permission for the proposals, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. I am satisfied that none of the reasons put forward for opposing the development establishes that the harm would be significant or would demonstrably outweigh the benefits. Therefore, notwithstanding any conflict with Policies BNE25, S1 and S2 of the Local Plan, I recommend that the appeal should succeed, subject to the imposition of conditions.
135. In reaching my recommendation, I have carefully considered the serious concerns voiced by many local residents, the Cliffe and Cliffe Woods Parish Council, the Ward Councillors and the Member of Parliament for Rochester and Strood. I appreciate that there is substantial opposition to the scheme.

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<sup>90</sup> Paragraph 12

<sup>91</sup> Paragraph 17, 3<sup>rd</sup> bullet

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However, in this case, I have judged the balance falls in favour of granting permission because the adverse impacts would not significantly and demonstrably outweigh the benefits.

### **Recommendation**

136. I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in the schedule at Annex A.

## **ANNEX A**

### **Schedule of Conditions**

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for the approval of the reserved matters shall be made to the local planning authority not later than 2 years from the date of this permission. The development hereby permitted shall begin no later than 12 months from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in general accordance with the following plans: Location Plan 7199-L-01 Rev A; Development Framework Plan 7199-L-03 Rev E; Proposed Access Arrangement P16020-001-D; and the number of dwellings shall not exceed 225.
- 4) Details of appearance, landscaping and layout required to be submitted and approved under Condition 1 shall include details of:
  - i. the design, layout and form of the dwellings, including details of the external surfaces and materials to be used;
  - ii. fencing, walling, boundary treatments and means of enclosure of the dwellings;
  - iii. a scheme of hard and soft landscaping, including additional planting along the boundaries of the site, the specification of trees, hedges, and shrub planting, and details of species, density and size of stock;
  - iv. all trees and hedgerows on the land and details of those to be retained and how they will be protected during construction;
  - v. existing and proposed ground levels;
  - vi. the internal road layout and car parking provision; and the layout of proposed pedestrian routes within the site, including details of the works proposed to existing Public Right of Way RS72;
  - vii. the public realm including the colour, texture and quality of surfacing of footpaths, roads, parking areas and other shared surfaces;
  - viii. refuse / recycling storage and collection points;

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- ix. measures to minimise the risk of crime; and
  - x. an open space masterplan for the site, including long term design objectives, management responsibilities and maintenance schedules.
- 5) The landscaping works shall be carried out in accordance with the approved details agreed by the local planning authority, and any trees or plants which within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority gives written approval to any variation.
  - 6) No dwelling shall be occupied until an external lighting strategy has been submitted to and approved in writing by the local planning authority. The strategy shall ensure adequate illumination of roads and paths and avoid unnecessary light pollution. The strategy shall: (i) identify areas and features on site that are particularly sensitive for bats, and (ii) provide details of how and where external lighting will be installed so that lit areas will not disturb and prevent bats using their territory, including breeding sites and resting places. The strategy shall be implemented and thereafter managed and maintained in accordance with the approved details.
  - 7) No development shall commence until a scheme for a sustainable surface water drainage strategy has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details.
  - 8) The dwellings shall not be occupied until a travel plan to promote and encourage the use of alternative modes of transport to the car has been submitted to and approved in writing by the local planning authority. The travel plan shall include raising awareness in respect of cycling, walking, car share initiatives, car clubs and provide details of a nominated travel plan co-ordinator. The scheme shall include, for the first occupier of each dwelling, the provision of a travel information welcome pack to raise awareness in respect of sustainable modes of transport.
  - 9) No development shall take place until a construction management plan has been submitted to and approved in writing by the local planning authority. The plan shall provide for: details of how construction traffic will access the site; the proposed hours and days of working; proposals to minimise disruption to the adjacent local area from ground works, construction noise and site traffic; the parking of vehicles of site personnel, operatives and visitors; loading and unloading of plant and materials; the contractors' site storage areas and compounds; vehicle wheel washing facilities; measures to guard against the deposit of mud or other substances on the highway; a strategy for the minimisation of noise, vibration and dust (including from any piling works); and site contact details in case of complaints. The approved details shall be adhered to throughout the construction period.
  - 10) No development shall commence until a detailed schedule of highway works (to be undertaken in general accordance with Plan P16020-001-D) has been submitted to and approved in writing by the local planning authority. The dwellings shall not be occupied until the works have been undertaken

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in accordance with the approved details, and they shall be permanently retained thereafter. The works shall include:

- i. the provision of a new section of footway on the eastern side of Town Road between the junctions with Tennyson Avenue and View Road;
  - ii. the realignment of the existing carriageway and the provision of a 2 metre wide footway along the site frontage, including the provision of a pedestrian crossing island;
  - iii. the provision of a controlled pedestrian crossing to the south of the Town Road/Tennyson Road junction;
  - iv. the provision of a traffic island at the existing speed limit terminal on Town Road to the south of Cliffe Woods, along with new carriageway surfacing; and
  - v. ensuring no obstruction, structure or erection exceeding 0.6 metres in height within the sightlines of the new site access with Town Road.
- 11) No development shall commence until an ecological management strategy has been submitted to and approved in writing by the local planning authority. The strategy shall include: details of objectives to achieve ecological enhancement of the site; details of measures for encouraging biodiversity within the site; review of site potential and constraints; details of works to achieve objectives; details of the body or organisation responsible for implementation; the timetable for implementation; details of aftercare and long term maintenance; details of monitoring and remedial measures; details of a legal and funding mechanism by which the implementation of the Strategy will be secured. The strategy shall be carried out as approved.
- 12) No development shall take place until a programme of archaeological work has been secured and implemented in accordance with a written scheme of investigation, which shall first have been submitted to and approved in writing by the local planning authority.
- 13) No development shall take place until a scheme relating to the two pillboxes on the site has been submitted to and approved in writing by the local planning authority. The scheme shall provide details for the protection of the pillboxes, and how they will be utilised in the future. The scheme shall be carried out as approved.
- 14) If during the course of development, contamination is found to be present on the site, then no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until the developer has submitted and obtained written approval from the local planning authority for a remediation strategy detailing how the contamination shall be dealt with. The remediation strategy shall be implemented as approved, verified and reported to the satisfaction of the local planning authority.

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## **APPEARANCES**

### **FOR THE COUNCIL**

Mr Robert Williams of Counsel, Instructed by Medway Council

He called

Steven Sensecall

Carter Jonas

John Etchells

John Etchells Consulting

### **FOR THE APPELLANT**

Ms Thea Osmund-Smith of Counsel, Instructed by Gladman Developments Ltd

She called

David Schumacher

PRIME Transport Planning

Tim Booth

Planning Director, Gladman Developments Ltd

Gary Holliday

FPCR Environment & Design Ltd

### **FOR CLIFFE AND CLIFFE WOODS PARISH COUNCIL**

Chris Fribbins

Clerk to the Parish Council

### **INTERESTED PERSONS**

Roger Brown Representative of SAVE Cliffe Woods Campaign & Local Resident

Ray Styles Local Resident

Greg Kitsell Local Resident

David Wolfson Local Resident

Josephine Brown Local Resident

Robert Norton Local Resident

David Johnson Local Resident

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## DOCUMENTS SUBMITTED AT THE INQUIRY

1. Comparison of Landscape and Visual Assessments of the Council and Appellant
2. Gladman Developments Ltd v Daventry DC [2016] EWCA Civ 1146
3. Bloor Homes East Midlands Ltd v SSCLG & Hinckley and Bosworth Borough Council [2014] EWHC 754 (Admin)
4. Extract of Planning Practice Guidance relating to Brownfield Registers and Permission in Principle
5. Note on admission arrangements for Cliffe Woods Primary School for September 2018
6. Detailed Access Plan showing trees to be retained
7. Opening Statement on behalf of the Appellant
8. Opening Statement on behalf of the Council
9. Council Committee Planning Report relating to land at Otterham Quay Lane, Rainham, Kent (Ref MC/16/2051)
10. Notes for a statement from SAVE (Save Agricultural Village Environment) by Mr Roger Brown
11. Note showing bookings at Cliffe Woods Community Centre
12. Historic Map of Cliffe Woods
13. Updated Statement of Common Ground, dated 29 November 2017
14. Submissions of David Wolfson
15. Extracts of various legal agreements relating to the provision of bus services
16. Department for Transport Note TAG Unit M1.2 Data Sources and Surveys
17. Planning Obligation Note: explaining provisions and compliance with CIL Regulations
18. Note about 'ArrivaClick'
19. Note regarding local activities in Cliffe Woods, by Mr Booth
20. Development Framework Plan (7199-L-03 Rev E) – annotated with dimensions
21. Submissions of Mr Robert Norton
22. Submissions of Mr David Johnson
23. Note of Dianne Foreman, Chair of Governors, Cliffe Wood Primary School
24. Map showing additional viewpoints of site
25. Schedule of suggested conditions



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26. Note by Arriva regarding 'Click Service'
  27. Closing Submissions on behalf of Cliffe and Cliffe Woods Parish Council by Mr Chris Fribbins
  28. Closing Submissions on behalf of Medway Council
  29. SSCLG & Reigate & Banstead Borough Council & Tandridge District Council v Redhill Aerodrome Ltd [2014] EWCA Civ 1386
  30. Closing Submissions on behalf of the Appellant
  31. Completed Planning Obligation dated 13 December 2017

### **Proofs of Evidence submitted by the Council**

Mr Steven Sensecall	Proof & Appendices (Planning)
Mr John Etchells	Proof & Appendices (Landscape)

### **Proofs of Evidence submitted by the Appellant**

Mr Tim Booth	Proof & Appendices (Planning)
Mr Phil Rech	Proof & Appendices (Landscape)
Mr Gary Holliday	Addendum to Mr Rech's Proof (Landscape)
Mr David Schumacher	Proof & Appendices (Highways and Transport)

### **Evidence submitted by Cliffe Woods and Cliffe Woods Parish Council**

Mr Chris Fribbins	Statement of Case & Appendices
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## **CORE DOCUMENTS LIST**

### **CD1 Original Planning Application Documents**

- 1.1 Planning Application Form and Notice Letters
- 1.2 Location Plan - Dwg No. 2013-076-100 (Superseded)
- 1.3 Development Framework Plan 7199-L-03 Rev D (Superseded)
- 1.4 Access Plan P16020-001B (Superseded)
- 1.5 Design and Access Statement (Superseded)
- 1.6 Ecological Appraisal (Superseded)
- 1.7 Landscape and Visual Appraisal (Superseded)
- 1.8 Arboricultural Assessment (Superseded)
- 1.9 Phase 1 Desk Based Site Investigation (Superseded)
- 1.10 Flood Risk Assessment (Superseded)
- 1.11 Foul Drainage Analysis (Superseded)
- 1.12 Transport Assessment (Superseded)
- 1.13 Travel Plan
- 1.14 Archaeological Assessment (Superseded)
- 1.15 Noise Screening Report
- 1.16 Air Quality Method (Statement)
- 1.17 Planning Statement (Superseded)
- 1.18 Statement of Community Involvement (Superseded)
- 1.19 Socio Economic Report
- 1.20 Heritage Statement

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1.21 Soils and Agriculture Report (Superseded)

**CD2 Post Application Documents**

- 2.1 Location Plan Rev A
- 2.2 Development Framework Plan Rev E
- 2.3 Access Plan Rev C
- 2.4 Design and Access Statement
- 2.5 Ecological Appraisal
- 2.6 Landscape & Visual Impact Assessment
- 2.7 Arboricultural Assessment
- 2.8 Phase 1 Site Investigation
- 2.9 Flood Risk Assessment
- 2.10 Foul Drainage Analysis
- 2.11 Transport Assessment
- 2.12 Archaeological Assessment
- 2.13 Planning Statement
- 2.14 Statement of Community Involvement
- 2.15 Soils and Agriculture Report
- 2.16 AADT Traffic Figure
- 2.17 Access Management Strategy
- 2.18 Access Plan Rev D
- 2.19 Air Quality Damage Costs
- 2.20 CGMS response to Historic England
- 2.21 Ecological Appraisal December
- 2.22 Trip Distribution Data
- 2.23 Stage 1 Road Safety Audit
- 2.24 Technical Note

**CD3 Consultation Responses**

- 3.1 Kent Police
- 3.2 PROW Team
- 3.3 Footpath Officer
- 3.4 Highways England
- 3.5 Southern Water
- 3.6 KCC Ecological Advice
- 3.7 Natural England
- 3.8 Archaeological Officer
- 3.9 Historic England
- 3.10 Southern Water
- 3.11 KCC Biodiversity
- 3.12 Friends of the North Kent Marshes
- 3.13 Parish Council
- 3.14 Highways
- 3.15 Highways England
- 3.16 Natural England 2

**CD4 Relevant Correspondence**

- 4.1 Email from Chris Butler regarding updated reports
- 4.2 Email from D Stoddart to Kevin Bown re: Technical Note
- 4.3 Email from D Stoddart to Chris Butler re: revised Access Plan
- 4.4 Email from D Stoddart to Chris Butler re: Stage 1 RSA
- 4.5 Email from K Bown to D Stoddart re: removal of highway objection
- 4.6 Email from D Harris to P Hilldrup re: outstanding consultee responses

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- 4.7 Email from P Hilldrup to C Butler re: planning committee dates
  - 4.8 Email from C Butler to P Hilldrup re: removal of Natural England objection
  - 4.9 Request for Screening Request
  - 4.10 Screening Request Response

#### **CD5 Decision Notice and Committee Report**

- 5.1 Committee Report
- 5.2 Decision Notice

#### **CD6 Plans for Determination**

- 6.1 Location Plan - Rev A
- 6.2 Development Framework Plan - Rev E

#### **CD7 Development Plan**

- 7.1 Local Plan Proposals Map
- 7.2 Medway Local Plan 2003
- 7.3 Medway Saved Policies

#### **CD8 Emerging Local Plan Documents**

- 8.1 Local Plan Development Options

#### **CD9 Development Plan SPG / SPD and Evidence Base**

- 9.1 December 2016 AMR
- 9.2 Medway SHMA Final Report
- 9.3 SLAA Report and Maps February 2017
- 9.4 Guide to Developer Contributions 2014

#### **CD10 Relevant Appeal Decisions**

- 10.1 Land at Gibraltar Farm, Ham Lane, Hempstead, Gillingham APP/A2280/W/16/3143600
- 10.2 Not required
- 10.3 Not required
- 10.4 Land off Lucks Lane Buckden APP/H0520/W/16/3159161
- 10.5 Land off Rusper Road, Ifield APP/Z3825/W/15/3019480
- 10.6 Land off Chapel Lane, Norton in Hales APP/L3245/W/15/3004618
- 10.7 Land off Banady Lane, Stoke Orchard APP/G1630/A/14/2223858
- 10.8 Tadgedale Quarry, Mucklestone Road, Loggerheads APP/P3420/W/16/3149399
- 10.9 Not required
- 10.10 Land off Chester Road Malpas APP/A0665/A/13/2193956
- 10.11 Land off Churton Road Farndon APP/A0665/A/13/2196893
- 10.12 Land off Gipping Road and Church Road Stowuplands APP/W3520/W/15/3139543
- 10.13 Land off Yatt Road North Lea APP/D3125/W/15/3136376

#### **CD11 Relevant Judgements**

- 11.1 SSCLG v Telford and Wrekin Council [2016]EWHC 3073 ( Admin)
- 11.2 Suffolk Coastal District Council [2017] UKSC 37
- 11.3 Phides Estates Ltd & Shepway District Council [2015] EWHC 827 (Admin)
- 11.4 SSCLG v Stroud District Council [2015] EWHC 488 (Admin)
- 11.5 SSCLG v Forest of Dean District Council [2016] EWHC 2429 (Admin)

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## CD12 Other Core Documents

- 12.1 Email from D Harris minor change to wording Reason for Refusal
- 12.2 Planning Committee minutes 25.10.17
- 12.3 Medway Village Infrastructure Audit January 2017
- 12.4 GLVIA 3
- 12.5 National Character Area Profile 113 ' North Kent Plain'
- 12.6 Landscape Assessment of Kent (October 2004)
- 12.7 Kent Historic Landscape Characterisation (May 2001)
- 12.8 Medway Landscape Character Assessment (March 2011)
- 12.9 Correspondence from Brendan Doyle June 2016 (from pre application discussions)
- 12.10 Illustrative Masterplan (extracted from CD2.4)
- 12.11 Gravesham Landscape Character Assessment (May 2009)
- 12.12 Email from Chris Butler providing update on S106 contributions
- 12.13 Developer contributions: Public Realm
- 12.14 Greenspace Services s106 Open Space
- 12.15 NHS Property request for contributions
- 12.16 Public Realm request for contributions
- 12.17 s106 Contributions – Chatham projects
- 12.18 s106 Contributions Rainham project
- 12.19 s106 Chatham Town Centre
- 12.20 s106 Rainham High Street
- 12.21 CLG Housing Need Consultation
- 12.22 Rochester Committee Report



# Ministry of Housing, Communities & Local Government

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## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.