



## Appeal Decision

Inquiry Held between 30 July and 7 August 2019

Site visits made on 29 July and 2 August 2019

**by John Felgate BA(Hons) MA MRTPI**

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

**Decision date: 3<sup>rd</sup> September 2019**

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**Appeal Ref: APP/J2210/W/18/3216104**

**Land off Popes Lane, Sturry, Kent CT2 0JZ**

- 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 Limited against the decision of Canterbury City Council.
  - The application Ref 18/01305, dated 22 June 2018, was refused by notice dated 24 September 2018.
  - The development proposed is the erection of up to 140 Dwellings, with public open space, landscaping, sustainable drainage system, and vehicular access.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

#### *General*

2. The appeal proposal is for outline permission with all details reserved except for access. In so far as the submitted Framework Plan includes details of other elements, including the type and disposition of the proposed open space and planting, it is agreed that these details are illustrative.
3. During the inquiry, a Section 106 planning agreement was completed. The agreement secures the provision of affordable housing and the proposed on-site open space and sustainable urban drainage (SUDs) system, and a system of travel vouchers for future house purchasers. It also provides for financial contributions to schools, libraries, community learning, healthcare, adult social care, youth services, highways, cycle routes, public rights of way, traffic regulation orders (TROs), and ecological mitigation.
4. In the light of these provisions in the S.106 agreement, the Council withdrew Refusal Reasons (RRs) Nos 6, 7 and 8, relating to housing tenure, infrastructure, and the effects on a designated Special Protection Area (SPA). In addition, the Council withdrew RR5, relating to air quality, in the light of further information submitted prior to the inquiry.

#### *Matters relating to internationally designated sites*

5. The SPA contribution provided for in the S.106 agreement relates to mitigation measures for recreational disturbance to the Thanet Coast and Sandwich Bay SPA, for which the Council has established a mitigation scheme in consultation

with Natural England (NE). NE was consulted on the original application and raised no objection subject to this contribution. Subsequently, the appellants prepared a Shadow Appropriate Assessment. The Council has expressed itself to be satisfied with that Assessment.

6. At the inquiry, a copy was produced of a letter from NE regarding certain other proposed developments within the Sturry area. In that letter, NE raised issues relating to possible impacts on water quality at another protected site, the Stodmarsh Special Area of Conservation (SAC), which is also a Ramsar Site and a Site of Special Scientific Interest (SSSI). In the light of this letter, the Council wrote to NE, inviting any further comments regarding the present appeal proposal. NE's reply, dated 16 August 2019 and therefore received after the inquiry had finished sitting, indicates that similar concerns are now considered applicable to this appeal site.
7. In the circumstances, it seems to me that, without further information as to the potential impacts on the Stodmarsh site, planning permission for the appeal proposal could not be granted without contravening the relevant provisions of the Conservation of Habitats and Species Regulations 2017. This is because, in the light of NE's stated position, I cannot be certain that the development could be carried out, either individually or cumulatively, without adversely affecting the protected site's integrity. If in other respects the balance of the evidence had pointed towards granting permission, I would have been minded to allow the appellants some further time to address this new issue before making my decision. However, having fully reviewed all the evidence, I find that is not the case. I have therefore proceeded to my decision, on the evidence that is already before me.

### **Relevant Development Plan Policies**

8. The development plan policies relevant to the appeal are contained in the Canterbury District Local Plan (the CDLP), adopted in July 2017. Policy SP2 sets out the overall housing requirement for the District, of 16,000 dwellings over the period 2011-31.
9. Policy SP3 identifies twelve strategic housing site allocations. One of these comprises land at Sturry and Broad Oak, which is allocated for 1,000 dwellings, business floorspace, local shopping and community facilities. The allocation is also intended to help deliver a new Sturry Relief Road, by-passing the centre of the village. The present appeal site is not included in any of the strategic allocations.
10. Policy SP4 sets out the overall spatial strategy, including the settlement hierarchy. Sturry is identified as a rural service centre, within the hierarchy's second tier.
11. Policy SP1 broadly reflects the presumption in favour of sustainable development in the National Planning Policy Framework (the NPPF). Where other relevant policies are out of date, planning permission is to be granted, unless material considerations indicate otherwise, taking account of whether the adverse impacts would significantly and demonstrably outweigh the benefits, and whether specific NPPF policies indicate that development should be restricted.
12. Other policies relating to particular issues in the appeal are identified elsewhere in this decision, where relevant.

## **Main Issues**

13. Having regard to all the submissions before me, I consider the main issues in the appeal to be as follows:
- whether the district has an adequate supply of deliverable land for housing;
  - the effects of the proposed development on the highway network and safety;
  - the effects on the character and appearance of the area and its landscape;
  - the effects on the setting of nearby listed buildings;
  - the effects on 'best and most versatile' agricultural land;
  - and whether the appeal site is a suitable location for the proposed development, having regard for the CDLP's policies for the location of housing.

## **Reasons for Decision**

### ***Housing land supply***

#### *Base data*

14. The evidence prepared for the inquiry by both parties, including the agreed Statement of Common Ground (SCG), was based on the Council's 'Housing Land Supply Statement 2017/18'. That document has a base date of 1 April 2018, and looks to a 5-year period of 2018-23 (the 2018 HLSS). Shortly before the inquiry, the Council produced a draft version of the annual update, with a base date of 1 April 2019, and a 5-year period of 2019-24 (the 2019 HLSS). The 2018 HLSS identifies a requirement for 4,611 dwellings, including a 5% buffer, and a supply of 6,059 dwellings, giving a surplus of 1,448. In the 2019 version the requirement, based on the same method, is 4,801 units, whilst the supply is 6,455 units, and the surplus 1,654.
15. The 2019 document has some limitations, in that it has not yet been subject to final checking and internal approval, and is not yet publicly available. Nor did the appellants have a great deal of time to appraise the contents, before the inquiry. But nonetheless, the information within it is more up to date, and provides a basis for a forward view spanning almost five full years from now. In the circumstances, whilst I have had regard to both of the HLSSs, I have based my calculations principally on the 2019 version.

#### *The housing requirement*

16. In both versions of the HLSS, the 5-year housing requirement figures are based on the broad phasing indicated in CDLP Policy SP2, which shows a stepped annual requirement, starting from 500 dwellings per annum (dpa) in 2011-16, and then 900 dpa in each of the subsequent phases of the plan period. I accept that elsewhere in the Local Plan, and in the Examining Inspector's report, there are statements or other indications which appear to support a flat rate of 800 dpa across the plan period. But in the event of any contradiction, it is the policies that must prevail over the supporting material. In the present case, that means using the phasing set out in Policy SP2.

17. I acknowledge that in another appeal<sup>1</sup> (in which I was the inspector), in February 2018, the land supply calculations were based on a flat rate approach. But each decision must be based on the evidence given at the time. In the present appeal, the Council's approach differs from that advanced in the earlier case. But this inconsistency does not change my view as to the merits of the two approaches, as set out above.
18. The Council's approach to the housing requirement in the present appeal is based on the 'Liverpool' method, whereby any past shortfall in delivery is to be made up over the remainder of the plan period. I accept that, in general, the advice in the Planning Practice Guidance (PPG) favours the alternative 'Sedgefield' method, of seeking to make up the deficit within the next five years. But the PPG also advises that a Liverpool-type approach may be acceptable, provided that approach is put forward and accepted through the Local Plan examination process. In the case of the CDLP, the Liverpool method was expressly endorsed by the Examining Inspector in 2017. I agree that this does not mean that the methodology can never be reviewed, but having regard to the reasons given by the Inspector at that time, I see no compelling argument for departing from the approach that was agreed only two years ago.
19. For my calculations therefore, I have primarily addressed the requirement figure of 4,801 dwellings, and the period 2019-2024, which are contained in the 2019 HLSS.

#### *Deliverability*

20. The NPPF requires that sites which are to be included in the 5-year supply should be deliverable, within the terms of definition set out in the Glossary. To come within that definition, amongst other things, sites should be available now, and be achievable, with a realistic prospect that housing will be delivered on the site within five years. Sites for major development, without detailed planning permission, will only be counted as deliverable where there is clear evidence that completions will begin within that period. In addition, the PPG gives examples of some types of evidence which may be relevant.
21. In the present case, the Council's 5-year supply relies heavily on sites in this category, having only outline permission or no permission at all. In the 2019 HLSS, sites of this kind account for 3,923 units, representing some 60% of the claimed supply for the 5-year period. The evidence before me, in so far as it relates to the 2019 supply schedules, focuses on eleven such sites which are disputed by the appellants<sup>2</sup>. In considering this evidence, I am keenly aware that part of the reason that the Council is reliant on sites of this type is because the CDLP seeks to achieve a rapid increase in the rate of housing delivery, and that process is still in the early stages. However, the NPPF makes it clear that the planning system should aim to ensure continuity in the housing supply in the short term, as well as planning for the longer-term future, and it seems to me implicit that this is what the 5-year supply test is primarily designed to achieve.

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<sup>1</sup> Land at Old Thanet Way, Whitstable

<sup>2</sup> In the Table in the Housing SCG, the disputed sites that are relevant to the 2019 supply are Nos 1-7, 9, 11, 12 and 17. Sites Nos 8 and 13-16 are not forecast in the 2019 HLSS to produce any completions in the relevant period, so are no longer relevant to my consideration. Site No 10 is now under construction, and is no longer disputed.

22. In the light of these considerations, I have given close attention to the nature of the evidence which the Council has produced to demonstrate the disputed sites' deliverability. In this regard, I fully appreciate the efforts that Officers have gone to, to introduce new systems for liaising with developers and landowners, and monitoring progress, particularly through the establishment of the Housing Delivery Group, and the preparation of the Phasing Methodology. I have no doubt that these systems are designed to enable housing delivery forecasts to be accurate, robust, flexible and up to date. But nevertheless, it is clear from the NPPF and PPG that, until sites achieve detailed planning permission, they should not be treated as deliverable, unless the evidence clearly demonstrates that this status is justified.
23. For a number of the disputed sites, the Council's evidence is founded on site-specific SCGs which have been agreed with the developer or landowner of the site in question. I appreciate that the PPG refers to SCGs as an admissible type of evidence, and I have had full regard to that advice. But nevertheless, the evidential value of any particular SCG in this context is dependent on its content. In a number of cases, the SCGs produced by the Council primarily record the developer's or landowner's stated intentions. Without any further detail, as to the means by which infrastructure requirements or other likely obstacles are to be overcome, and the timescales involved, this type of SCG does not seem to me to demonstrate that the development prospect is realistic. In addition, most of the site-specific SCGs are undated, thus leaving some uncertainty as to whether they represent the most up-to-date position.

#### *Disputed sites*

24. Only one of the disputed sites has any kind of planning permission. That site is Strode Farm (Site No 4 on the disputed sites list), which has outline permission for 800 dwellings. In the 2019 HLSS, the Council forecasts 190 dwelling completions within the relevant 5-year delivery period, 2019-24. A legal challenge to the outline permission has only recently been resolved, and to that extent it is not surprising that there has been no apparent progress towards an application for reserved matters. But even so, there is no clear evidence of any other kind to show deliverability. An SCG has been agreed with the site's promoter, but it appears that a development partner is to be appointed, and there is no indication that that party has been involved in the SCG. The timings and build rates suggested are not supported by any detailed programme, or explanation of how the timing would be achievable. The development is apparently to include major road infrastructure, both on-site and offsite (albeit now reduced from what was originally sought), and there is no evidence as to how this may affect the timing or viability. The evidence therefore does not demonstrate that the site is deliverable within the terms of the NPPF definition.
25. Five of the disputed sites are the subject of current outline or hybrid applications or appeals. One of these is the site known as South Canterbury (Site No 1). The overall outline scheme, supported by an allocation in the CDLP, is for 4,000 dwellings. The Council resolved in 2016 to grant a hybrid permission, including full permission for the first 140 dwellings, and outline for the remainder. In the 2019 HLSS, the site is forecast to produce 550 completions in the relevant delivery period. However, the permission has not yet been granted. Since 2016, further environmental information has been submitted, which has not been the subject of any further resolution. In

addition, Kent County Council (KCC) has requested an increase of over £7m in the education contribution. There is no information as to what effect this will have. The development also requires major infrastructure works, including on- and off-site highway works, sewer diversions, and the removal of pylons. Conditions relating to archaeology and contamination, amongst others, are proposed. The SCG from the site promoter contains no programme to show how the timescales for all the necessary approvals, advance works and site preparation can be accommodated. At the inquiry, the Council's witness admitted that the Council does not have this information. Without that kind of detail, on a site of such a scale and complexity, the SCG is unconvincing. I have little doubt that the necessary permission is likely to be granted at some point, but the critical factor is likely to be the lead-in time after that occurs, and on this the evidence is entirely lacking. On the evidence submitted therefore, the South Canterbury site cannot realistically be counted as deliverable at this stage.

26. In the same category is the allocated site known as Sturry/Broad Oak (Site No 2). This site is currently the subject of two planning applications, by different developers, totalling 1,106 dwellings. One of these is a hybrid, which seeks full permission for some of the dwellings. The Council forecasts 440 dwellings in the 5-year period. However, no decisions have yet been made on the current applications. As noted earlier, Natural England has raised an objection relating to the effects on the Stodmarsh SAC. The development as a whole is bound up with the proposed Sturry Relief Road, and although contributions to this have been agreed in principle, further funding is needed and is yet to be fully secured. KCC is said to be considering the phasing of the housing in relation to the new road, but this has not yet been agreed. The potential effects of this phasing on the scheme's overall viability are not yet known. From the evidence available, it is not clear how this may affect the scheme. The development also involves the provision of other local infrastructure, but there is no evidence of any binding agreement between the various parties as to how the costs are to be apportioned. Nor is there evidence of any detailed programme for the necessary approvals, site works and other works necessary prior to any house completions. In the face of so many unresolved issues, it seems to me that the prospect of any housing completions on the Sturry/Broad Oak site within the relevant 5-year period is far from certain. The site therefore cannot be classed as deliverable.
27. The next site in this category is Land at Hillborough (Site No 3), which is allocated in the CDLP for 1,300 dwellings, and is in three parcels. Two of the are the subject of current applications totalling 1,080 units. In the 2019 HLSS, the site is forecast to deliver 195 dwellings in the relevant 5-year period. However, the applications are undetermined. The Council's evidence highlights the complex nature of the issues relating to access and road infrastructure, and the apportionment of costs between the owners or developers of the different land parcels. In addition, it appears that these costs may now rise as a result of recent decisions which have reduced the amount that will be contributed by the Strode Farm site. It is said that discussions about viability and costs are continuing. However, there is no evidence as to how the admitted complexities can be overcome, or within what timescale. None of the evidence produced amounts to clear and realistic evidence that the site will deliver housing completions within five years.

28. The site known as Greenhill (Site No 5) has no planning permission, but is the subject of a current outline application. The site is said to have no major infrastructure requirements, and the Council expects it to produce 150 dwellings in the relevant 5-year period. However, the current planning application is for 450 dwellings, which exceeds the CDLP allocation for 300 units, by some 50 per cent. The principle of the site being developed on this scale is therefore unsupported by the Local Plan, and it cannot be regarded as certain that the current application will be found acceptable. Nor can it be assumed that an alternative, policy-compliant scheme would necessarily come forward within the relevant timescale. There is therefore no certainty as to whether any permission will be forthcoming to allow the development to proceed in its present form. As such, the development cannot currently be regarded as deliverable.
29. The only other site with a current proposal awaiting determination is the site known as Grassmere (Site No 9), where there is a current appeal for a hybrid scheme of 300 dwellings. The site is allocated in the CDLP, and is expected by the Council to produce 70 completions, in the 2019 HLSS. At the time of the present inquiry, the Council hoped to be able to withdraw its opposition to the appeal scheme, but had not done so yet. As long as the appeal is contested by the Council, there is clearly no certainty as to the outcome. If the appeal is dismissed, it may still be possible for an acceptable alternative scheme to come forward within the relevant five-year period, but there is no evidence to show that this would be likely, let alone that such a scheme would qualify as a realistic prospect. Consequently, while the appeal remains undetermined, the site cannot be treated as deliverable.
30. None of the other disputed sites is the subject of any current planning application. The largest of these other sites is Land North of Hersden (Site No 7), which is allocated in the CDLP for 800 dwellings, and has been the subject of pre-application discussions. The Council sees it as delivering 160 completions in the relevant 5-year period. But there is no evidence of any firm progress towards a planning application, or any site assessment work. Contractual negotiations between the landowners and the prospective developer appear to be still on-going. The site is likely to be required to make a contribution in excess of £5m to the Sturry Relief Road. The SCG, although involving the developer, contains no details of how the development would be delivered within the relevant timescales, or whether the required contribution would be viable. The evidence does not demonstrate a realistic prospect of completions being achieved within the five years, and the site therefore does not come within the definition of deliverable.
31. The disputed sites at Canterbury West Station (Site No 11), and Rosemary Lane car park (Site No 12), have been allocated for housing since the previous Local Plan, in 2006. Between them, these two small sites are forecast in the HLSSs to deliver a total of 40 dwellings in the relevant 5-year period. But both are currently in active use as Council car parks. Although they may be freed up from that use in February 2020, when a new multi-storey park is completed, this means that they are not available now. From the evidence presented, it also seems that no formal decision has yet been taken by the Council regarding any future development. The sites are therefore not currently deliverable.
32. The site known as Land at Rough Common Road (Site No 17) was likewise allocated in the 2006 CDLP, and is now forecast to produce 16 dwellings in the

relevant period. Pre-application discussions have been held. But there is no evidence of any further progress towards the submission of an application. The site therefore does not qualify as deliverable.

33. The final disputed site is Land North of Thanet Way (Site No 6), which has outline permission for 400 dwellings, and a current reserved matters application for 138 of these units. In the 2019 HLSS the site is forecast to deliver 297 completions in the relevant five years. The site is not challenged by the appellants on grounds of deliverability, but on timing and build rates. Given the involvement of a Registered Provider as lead developer, I consider the forecast in the 2019 document reasonable. I therefore make no further adjustment in respect of this site.

#### *Conclusion on housing land supply*

34. In the light of the above, I conclude that the disputed sites numbered 1, 2, 3, 4, 5, 7, 9, 11, 12 and 17 should all be excluded from my assessment of the deliverable supply. In all these cases, this is because there is insufficient clear evidence to show that they meet the NPPF's definition of deliverable. Sites which are not deliverable cannot be counted as part of the supply for the purposes of meeting the 5-year requirement.
35. In total, these 10 non-deliverable sites are relied on in the 2019 HLSS to deliver 1,811 housing completions in the period 2019-24. The effect of excluding these sites is that the supply for that period is reduced to 4,644 units, which represents a shortfall of 157 against the Council's requirement figure of 4,801 units. On this basis, the deliverable supply is 4.8 years.
36. For completeness, if the calculations were instead based on the 2018 HLSS, the effect of deleting the same sites from the Council's supply figures for 2018-23 would be to reduce the supply for that period by 1,760 units. The result in terms of the years' supply would then be very slightly lower, at just under 4.7 years. However, for the reasons that I have explained, I consider the use of the 2019-based figures to be more appropriate. In any event, the difference in the outcome is not significant.
37. For the reasons set out above, I conclude that the Council has been unable to demonstrate a 5-year supply of deliverable housing land. In the circumstances, the provision of up to 140 dwellings in the appeal proposal, including 30% affordable, would be a substantial benefit of the scheme.

#### **Traffic and highway safety**

##### *Existing traffic conditions*

38. Even though the inquiry took place during the summer holiday period, I was able to see on my visits to Sturry that the village suffers from a combination of factors that make it particularly prone to traffic problems. The coming together of the A28 and A291, at the centre of the village, funnels traffic from two main routes into one. The sharp bend, and the lack of signal controls, makes it difficult for traffic from the A291 to emerge at the uncontrolled junction. The gated railway crossing, directly adjacent, causes extensive queuing on the A28, which blocks the road junction and compounds the problems. The only practical alternative route involves a network of minor roads and narrow lanes, which are unsuited to through traffic.



39. The evidence of both parties confirms the scale of the existing problems. On the A28, the appellants' traffic counts show average 24-hour weekday flows of around 19,000 vehicles. In the morning and afternoon peaks, the average 2-way flow is over 1,400 vehicles an hour, with one-way flows in the busier direction of around 850 and 780 vehicles respectively. These latter figures exceed the link capacity for a road of this type, as advised in the DMRB<sup>3</sup>, even without taking account of the level crossing, which further restricts that capacity.
40. The Sturry level crossing is said to be amongst the 'top ten' busiest crossings in Network Rail's national database. On average, the barriers close five times per hour, halting traffic flows for a total of about 12 minutes out of every hour, thus losing about 20% of the total time available. Some of the individual closure periods last for 4-5 minutes or more. The appellants' surveys show queue lengths during the barrier closures averaging 79 vehicles on the southbound side in the AM peak, and 115 vehicles northbound in the PM peak. The maximum lengths during the longer closures reached 144 vehicles and 215 vehicles respectively. Even on the less busy side of the crossing in each case, average queues were around 30-33 vehicles, with maxima of up to twice these numbers. Further queuing also takes place on the southbound A291, where the exit onto the A28 becomes blocked during these periods.
41. There is no disagreement that this congestion in the village centre is responsible for large numbers of vehicles diverting onto minor roads. To the west of the A291, on the rat-running route via Sweechgate, Shalloak Road and Broad Oak Road, the evidence indicates 2-way flows of over 700 vehicles an hour in the AM peak and only slightly less in the PM period. Over a full day, the Sturry and Herne Highway Capacity Study (the SHHCS) reports traffic flows of 7,000 vehicles on Shalloak Road. To the east of the A291, it is clear that some traffic from the A28 connects to this route, via Babs Oak Hill, Hawe Lane and Popes Lane. For much of their length, these circuitous rat-runs comprise narrow, winding lanes, with sharp bends and poor forward visibility. Their use by high volumes of through traffic is a cause for justified concern.
42. Some of the junctions along these routes, under existing conditions, are at or approaching their practical capacity. At the A291/Sweechgate junction (Junction SJ8), on the appellants' figures, the current RFC<sup>4</sup> value for the right-turn movement into Sweechgate in the AM period is 0.97, with a queue length of 16 vehicles. At this point the A291 is only wide enough for one lane in each direction, so all southbound traffic is held behind the vehicles that are waiting to turn. In the PM period, the RFCs on Sweechgate are 0.90 for the left-turn and 0.83 for the right-turn, and again in practice most of the turning vehicles on this arm are combined into a single queue, with the Council's survey showing that this can reach 150m. At the Broad Oak/Vauxhall Road roundabout (SJ 10), the RFCs on all three arms are between 0.92 - 0.95 in either one or both of the peaks. At SJ9, Shalloak Road/Mayton Lane, the RFC in the PM peak reaches 1.08. All of these RFCs indicate that these junctions are operating at, or very close to, their limits. Given the range of daily variation which is evidenced in the traffic counts, it seems likely that on some days their capacities will be exceeded.

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<sup>3</sup> Design Manual for Roads and Bridges (Mr Finch's Appendix C)

<sup>4</sup> Ratio of flow-to-capacity

43. The evidence identifies a high number of accidents in the Sturry area, with 108 recorded in a 5-year period in the village as a whole. Although the A291 has been downgraded from the highest risk category in the 'EuroRAP' system, it is apparently still classified as medium-high risk, and the A28 as medium risk.
44. The difficulties of the existing traffic conditions in Sturry, together with those at Herne village, a little further along the A291, are recognised and indeed highlighted in the CDLP. Moreover, it is the need to address the traffic problems of these two villages that has clearly dictated a large part of the plan's spatial strategy, as a significant number of the largest housing allocations have been chosen at least partly for their ability to contribute to a comprehensive highway solution for the A291 corridor.
45. Overall, it seems to me that the evidence adds up to a picture of a local road network in and around Sturry that is under considerable strain, and where delays, inconvenience, unnecessary extra mileage, and potential safety hazards are evidently part of the everyday experience of local residents and other road users. Clearly, none of these problems are of the appellants' making, and refusing permission for the present proposal will not in itself bring any improvement. But nonetheless, the development does have the potential to make the situation worse. The extreme difficulty of the existing traffic conditions in Sturry is a material consideration to which I attach considerable weight in this case.

*Committed developments and the Sturry Relief Road*

46. The appellants' Transport Assessment (TA) models the impact of the appeal proposal in relation to two scenarios, relating to 2018 and 2031 respectively. The 2018 assessment is based on the observed traffic flows at that date, with no changes to the network, and no other new developments apart from the appeal proposal. The 2031 scenario takes account of known housing commitments, and also assumes the completion of the Sturry Relief Road. The modelled scenarios therefore do not include any assessment of the appeal scheme in a situation where some or all of the other committed developments may have been completed, but not the Relief Road.
47. From the evidence of Mr Finch, on behalf of Kent County Council (KCC) as the Highway Authority, the earliest date envisaged for the completion of the southern section of the Relief Road is in the year 2023/24, and the time lag between this and the northern section is expected to be around four years. The earliest date for the completion of the whole Relief Road is therefore likely to be about 2027/28. These dates have not been challenged. Although the road is designed to be constructed in these two phases, it is self-evident that it can only start to serve its main purpose of bringing traffic relief to the village, when the whole route is complete.
48. KCC is evidently keen to start work on the southern section as soon as possible, and the above programme reflects this aim. Nevertheless, it is equally clear that the Authority is unlikely to start any part of the construction work until they can be confident that the whole of the road can be delivered. As a minimum, this is likely to mean having all the necessary approvals in place, and full funding secured. As things stand, that position seems some way off. Neither of the two planning applications for the road itself have yet been approved, and objections are said to remain outstanding, including that from

Natural England. Planning permission for the northern section is also bound up with the applications for housing on the Sturry/Broad Oak site. Discussions regarding some aspects of these, and the terms of the permissions that might be granted, are evidently still on-going. With regard to funding, contributions are required not only from these two developments, but also from the North of Hersden site. None of these contributions can be regarded as certain until the relevant planning permissions have been granted. Partial funding is said to have been secured from the LEP<sup>5</sup>, but this appears to be to some extent conditional on the timing. Ultimately, it seems more likely than not that all the necessary approvals and funding arrangements will fall into place. But nonetheless, substantial hurdles remain. At the present time therefore, neither the timing nor indeed the actual delivery of the Relief Road are yet assured. Having regard to the terms of the judgement in *Manor Oak Homes*<sup>6</sup>, the delivery of the road in this case is not beyond sensible doubt.

49. The seven committed housing developments identified in the TA amount to a total of over 5,200 dwellings. The assessment carried out for the SHHCS in 2016 estimated that the traffic generation from five of these sites, those that were known at that time, would add 1,084 additional peak-hour trips to the road network through Sturry. Since that assessment, some 150 or so of the dwellings at the Herne Bay Golf Course site have now been built and occupied, and thus may be accounted for in the appellants' traffic counts. But these are partly balanced out by the Sturry/Broad Oak scheme, where the overall number of proposed dwellings has now grown by about 100, with the current applications totalling 1,106 dwellings compared to the 1,000 units originally allocated. The other sites identified in the SHHCS, at Strode Farm, Hillborough and North of Hersden, are all unchanged. The two additional sites identified in the TA, at Hoplands Farm and Chislet Colliery, amount to 620 dwellings. The traffic from these two sites will therefore be over and above that which was anticipated in the SHHCS.
50. The developments at Herne Bay Golf Course, Strode Farm, Hoplands Farm and Chislet Colliery all have planning permission and are unrestricted in terms of their timing or phasing in relation to the Sturry Relief Road. Although the allocated sites at Hillborough and North of Hersden are not yet permitted, the Council made it clear at the inquiry that it does not anticipate imposing any such restrictions. In the case of the Sturry/Broad Oak applications, the Council will be seeking to agree limits on the number of dwellings to be occupied before the Relief Road is completed, but those numbers have not yet been decided. KCC is currently testing a phasing limit of 350 units for the Sturry part of the scheme, and is also to consider a separate allowance for the Broad Oak part. It is fairly clear from this that the combined limit for the site as a whole is likely to exceed 350 dwellings. Indeed, given that this is the development that will have to contribute the most to the new road, not only financially but also in physically delivering part of it, it would not be surprising if the number of dwellings allowed in advance were to increase further.
51. In any event therefore, the Sturry/Broad Oak development is the only one of the committed sites that is likely to be subject to any timing or phasing restrictions in relation to the Relief Road, and even there a significant part is

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<sup>5</sup> Local Enterprise Partnership

<sup>6</sup> *Manor Oak Homes v SoS & Aylesbury Vale DC* [2019]EWHC 1736 (Admin)

likely to be unrestricted. All of the other dwellings in the TA's list of commitments are free to come forward ahead of the new road. Although a number of these developments are not yet far enough advanced to be classed as deliverable for the purposes of the 5-year housing supply, they are all potentially capable of being developed, either wholly or largely, prior to the opening of the Relief Road, even if the road is delivered by its earliest date of 2028. If this timing were to slip by as little as two or three years, then the evidence suggests that all of the unrestricted dwellings could be completed in full.

52. All of these committed developments are expected to have an impact on traffic in Sturry. This is evident from the fact that they are identified in the TA and taken account of in its 2031 scenario, albeit that this is the scenario that includes the completed Relief Road. Having regard to the traffic generation figures identified previously in the SHHCS, it seems probable that the numbers of dwellings at Sturry/Broad Oak which will be subject to phasing restrictions will roughly balance the number of units added in the new sites at Hoplands and Chislet Colliery, which were not included in the SHHCS assessment. In round figures therefore, the SHHCS's estimate of about 1,000 additional vehicles through Sturry, from committed developments, probably remains broadly applicable.
53. To my mind it seems likely that the addition of these extra 1,000 traffic movements to the 2018 base model, without the benefit of the Relief Road, is likely to result in some further deterioration in the performance of the network, especially given the number of key junctions which have been shown to be already at or close to capacity. In my view, this likely further deterioration forms part of the context within which the impact of the appeal scheme should be viewed. In the TA however, none of the committed developments is taken into account in any modelled scenario except that which also includes the Sturry Relief Road. Consequently, in so far as the existing network is concerned, the cumulative effect of the appeal scheme together with these other relevant developments is untested.
54. I appreciate that there is a high degree of optimism that the Relief Road will be achieved, but the prospect remains of a lengthy period before it is completed, and indeed there is as yet no certainty about the road at all. This latter scenario is not so remote that it can be disregarded. I appreciate that the scoping for the TA was agreed in advance with the Highway Authority, but this does not change the fact that the necessary testing and modelling, of what in my view is a critical alternative scenario, is conspicuously lacking. To my mind, this flaw significantly weakens the case now advanced by the appellants with regard to traffic impact.

#### *Traffic impact of the appeal scheme*

55. The proposed development is forecast to generate 79 traffic movements in the AM peak hour, and 72 in the PM peak. These are not large numbers. But in a situation where some junctions are already under pressure, a relatively small increase may be significant, especially where the effect would be to push some junctions closer to their capacity, or beyond. And in any event, the NPPF makes it clear that traffic impacts should be considered on a cumulative basis, and that a severe cumulative impact may amount to grounds for refusal of permission.

56. At the junction of Popes Lane with the A291 (Junction SJ2), on the appellants' 2018-based figures, the appeal scheme is forecast to add 71 vehicles to the existing AM peak traffic flow on the Popes Lane approach, an increase of 8.7%. As shown in the TA, the effect of this would be to increase the RFC value significantly, from 0.81 to 0.94, with queue lengths and delay times approximately doubled. This sharp increase in the RFC indicates that the junction would, within the space of 4-5 years, come to within a few vehicles of the 'absolute' capacity level of 1.0, and significantly in excess of the 0.85 threshold which is often cited as 'practical' capacity. Furthermore, in so far as these figures indicate that the junction would still have any reserve capacity left at all, the TA records a daily variation of 41, indicating that on some days this reserve would be further reduced by that number of additional vehicles. And in any event, as already noted, these figures exclude any traffic from the other committed developments that are expected. It is common ground that when and if the Sturry Relief Road is built, the level of through traffic on Popes Lane will fall, and the junction's performance will improve. But without the new road, the evidence of the TA indicates that it will be overloaded.
57. A large proportion of the traffic at Junction SJ2 currently turns right onto the A291, heading for the rat-run route via Sweechgate, and in the absence of the Relief Road, this is likely to continue. At this point the A291 has a speed limit of 40mph, and the daily flow is said in the SHHCS to be around 7,500 vehicles. The junction has some recent history of accidents, albeit not a large number. In this type of situation, there seems a strong possibility that the increase in queuing time would result in drivers exiting from Popes Lane taking more risks. I accept that the installation of a toucan crossing on the A291 could potentially help, by creating gaps in the traffic flow. But this would depend on the amount of use. Apart from the Broad Oak Village Stores, there is nothing to attract pedestrian trips to this semi-rural section of the road. I am therefore not convinced that the toucan crossing would improve the safety of the junction to any significant degree.
58. To my mind, the development's potential impact on Junction SJ2, without the Relief Road, gives justified cause for concern. Even without any other development, the effect of the appeal scheme alone would be to significantly increase pressure on the junction, pushing it towards the limits of safe operation. Cumulatively with the other planned developments, the development would be likely to go beyond those limits.
59. Elsewhere on the network, at the already overloaded junctions identified in the TA, the proposed development would lead to further significant deterioration. At SJ8 (A291/Sweechgate), in the AM peak, the RFC on the A291 southbound would be elevated to 0.99. The queue of right-turning vehicles on the main carriageway would extend to over 19 vehicles. In the PM period the Sweechgate arm would reach 0.96 and 0.93, for the left and right turns respectively, with a further lengthening of queues and delay times. This junction has a significant accident history, and this record combined with the high RFC levels suggests that the risk of further accidents would be increased. At SJ9 (Shalloak Road/Mayton Lane), in the PM peak period the queue length would extend to 30 vehicles, with an RFC of 1.13, indicating a junction significantly beyond its capacity. Again, there is no dispute as to the fact that both of these junctions are expected to improve considerably if and when the Sturry Relief Road is available, but for the reasons already given, I consider that the interim situation must also be taken into account.

60. At all of these locations, the RFC values presented in the TA show that the proposed development would depend on these junctions being able to continue to operate under the pressure of congestion levels even worse than those suffered now. And in all cases, when the development is considered cumulatively with the other developments already committed, the RFCs, queue lengths and delay times associated with these junctions would be likely to be higher than those shown in the TA. Even though the TA does not quantify the impacts of those other commitments, the other evidence before me indicates that they would be significant. Where the network is already under strain, it seems to me that these cumulative effects, taking account of the appeal scheme and the other committed developments, would amount to a severe impact on the highway network.
61. The appellants point to the fact that in some cases the incremental effect of the appeal scheme would be less than the existing daily variation in flows. But the scheme's impact would be additional to that daily variation, not in place of it. Just like the base flows, the cumulative impact would vary from day to day. This means that there would be some days when the impact would be less than indicated in the TA, but equally there would be others when it was worse. The argument therefore has little merit.

#### *Mitigation*

62. The highways contribution in the S.106 agreement would cover part of the cost of converting Junction SJ10 (Broad Oak Road/Vauxhall Road) to a full-size roundabout. If this improvement were carried out, then Junction SJ10 would function better with the proposed development than it does currently without it. But the proposed contribution would not cover the full cost of the improvement; indeed it would leave something in the order of £1m still to be raised from other sources. There is no evidence as to where this balance could be found, and therefore no apparent prospect at present that the improvement could be realised. And even if it were, an improvement to this single junction, well away from the appeal site, would not remove the adverse effects on the three others that I have identified, which are all closer to it.
63. Various other transport-related mitigation measures are proposed by the appellants, including the toucan crossing, improvements to pedestrian routes and cycleways, and a travel plan which would include a travel voucher scheme. But although these measures would be potentially beneficial in their own ways, there is no evidence to suggest they would reduce traffic impacts that have been identified. Indeed the TA makes it clear that measures of these kinds were taken into account when the trip generation and distribution rates for the development were decided.
64. During the inquiry, the possibility was mooted of a 'Grampian' condition, restricting the development until the Sturry Relief Road is in place. But neither party appears to support such a condition. In any event, given the degree of uncertainty over the road, and the likelihood that it will not become available within the normal 3-year life of an outline planning permission, I consider that a condition along these lines would not be reasonable.

#### *Conclusion on traffic impact*

65. For the reasons explained above, I conclude that the proposed development would have an unacceptably severe cumulative impact on traffic flows, and on

the operation of the highway network, and on highway safety. In all these respects, the scheme would be contrary to paragraph 109 of the NPPF, which provides for permission to be refused in these circumstances. It would also conflict with CDLP Policy T1, which amongst other things seeks to control the level of vehicular traffic and its impacts.

***Effects on the character and appearance of the area and the landscape***

66. The appeal site is essentially a flat, rectangular arable field. Although the trees and woodland on two of its boundaries provide a pleasant backdrop to outward views, the site itself is featureless. These trees separate the appeal site from the surrounding countryside, so that the site is seen only as a discrete compartment rather than as part of any wider landscape context.
67. If the site were developed with housing and open space as now proposed, the main change would be the loss of its openness. With that loss would go the close-range views from Popes Lane, and from the two public footpaths which cross the site. The medium-range views across the site from a short section of the A291 would also be altered, although to a lesser extent. The site itself would change in character from semi-rural to suburban. These impacts would result in some harm to the area's appearance and visual amenity, but the degree of that harm would be no more than minor. The change to the wider landscape would be insignificant.
68. In order to accommodate 140 dwellings, given the constraints of the gas pipeline that crosses the site, the density would be higher than that of most of the other nearby housing. But those existing areas are not necessarily an appropriate guide for new development. And in any event, the site has ample space for structural planting and open space, to create a strong landscape framework. The height of the buildings could also be controlled by condition, if thought necessary.
69. Overall, I conclude that the harm that the development would cause to the area's character and appearance, including any effects on the landscape, would be so minor as to be insignificant. In the light of this conclusion, I find no conflict in this respect, either with Policy DBE3 or with any other policy in the CDLP, nor with the relevant provisions of the NPPF.

***Effects on nearby listed buildings***

70. The significance of the Grade II listed Sweech Farmhouse lies primarily in its evidential and illustrative value as a 15<sup>th</sup> century hall house. Some value also derives from its later use as a farmhouse, at the centre of a farmstead with a group of ancillary buildings, including the listed stables and the former listed barn. The stables has some evidential and illustrative value derived from this functional relationship. Although the barn is no longer standing, there is apparently permission for its reinstatement, and although there seems some uncertainty as to what its status would then be, it is likely that it would retain some heritage value, as part of this group.
71. It is an agreed matter that the appeal site lies within the setting of at least the Farmhouse, and in my view it must therefore also form part of the setting of the whole group. But to my mind, its role in the setting is a limited one. The site is separated from the building group by trees and vegetation. There is

little intervisibility. Although the roof and chimneys of the Farmhouse can be made out from the appeal site, the views from this direction are not important ones, and do not assist in the appreciation of any of the buildings. It is believed that the appeal site can be seen from the Farmhouse's upper windows, but such views would be heavily filtered by the trees. In views from further south on the A291, the buildings and the appeal site can be seen as part of the same panorama, but only at some distance. In the more important views, facing the front of the house and the group as a whole, the appeal site cannot be either seen or sensed. There is no evidence of any historic functional relationship between any of the buildings and the appeal site.

72. The site's contribution to the buildings' setting is therefore confined to its role in illustrating the relative isolation that the farmstead would once have had from any nearby settlements. But in so far as that quality may have been important to the buildings' significance at one time, it has now been eroded by other developments, particularly the 20<sup>th</sup> century housing at Broad Oak, and the modern A291 which runs immediately in front of the building group. In addition, although there are differing accounts of the various planning applications within the Sweech Farm site, it appears that permissions have been granted for up to three new dwellings, as well as for the residential conversion of the Stables. Whilst the details of these developments are not before me, it seems likely that they would have the effect of further emphasising the former farmstead's continuing evolution, away from its one-time agricultural role, and back to its original purely residential function. Having regard to this historical and present day context as a whole, it seems to me that the appeal site makes a very limited contribution to the buildings' significance as heritage assets.
73. If the appeal site were developed as now proposed, the glimpsed views of the Farmhouse from within the site would either be lost or would be seen from within a much-changed context. The same change of context would also be evident in the sideways view from the A291. Housing sited as shown in the Development Framework plan would be well away from the boundary of the listed buildings. Although lighting within this area might be discernible from the Farmhouse and parts of the former farmyard, at night this would not be readily distinguishable from that associated with the existing development in Popes Lane. Any lighting or built development in the part of the site closest to the listed buildings could be adequately controlled by conditions. If a mini sports pitch was located in this part of the site as suggested, there could be some noise, but the development could take place without this facility if required.
74. Overall therefore, I consider that the harm to the setting of the listed buildings would be minor. Given also the limited role that this part of the setting plays in contributing to the buildings' significance, it follows that the harm to their significance would also be minor. To my mind, the characterisation of this by the appellants' heritage witness as being 'at the lower end of less than substantial' is a reasonable way of describing the extent of the harm in this case. Notwithstanding that the effect is agreed to amount to harm, in these circumstances it seems to me that the harm identified would be so minor that, to all intents and purposes, it would be inconsequential.
75. In coming to my conclusion on this issue, I have had full regard to the desirability of preserving listed buildings' settings, and the need to give due



weight to any harm in that respect. I have also taken account of the NPPF's advice that great weight is to be given to the conservation of heritage assets, and that less than substantial harm is to be weighed against any public benefits. In this case, I have found only minor harm to the setting, and to the assets' significance. Given the low level of this harm, even when great weight is attached to it, I consider that in the present case the harm would be outweighed by the benefit of providing the proposed housing, as well as the other benefits identified elsewhere in this decision.

76. In the light of the above, I conclude that the harm identified would be so minor as to involve no significant conflict with CDLP Policy HE1, which seeks to protect, conserve and enhance all historic assets, or with Policy HE4, which has similar aims and is targeted specifically at listed buildings.

### ***Effects on best and most versatile land***

77. The appeal site is said to comprise 9.36 ha of agricultural land, of which about 5.06 ha is classed as best and most versatile (BMV) land. CDLP Policy EMP12 states that BMV land will be protected, but permission for significant development on agricultural land may be granted, including BMV land, where the development is shown to be necessary, and where no sites within the urban area or on poorer quality agricultural land are available.
78. I accept that the amount of BMV land in the appeal proposal would be significant. But in view of my findings with regard to the housing land supply, it is evident that some additional housing development is necessary, and also that the available sites on urban and poorer quality land are insufficient to meet the need.
79. As part of its aim to contribute to and enhance the natural and local environment, NPPF paragraph 170 advocates recognising the economic and other benefits of BMV land. But this aim seems to me to be reflected in Policy EMP12, and thus needs no further response beyond compliance with that policy.
80. In the circumstances, I find no conflict with Policy EMP12, and no conflict with NPPF paragraph 170. I conclude that the loss of BMV land in this case would not be unacceptable.

### ***Whether the scheme would accord with the CDLP's locational policies***

81. The principal CDLP policy relevant to the location of housing on unallocated sites is Policy SP4. The policy states that the main focus for development is to be at the three larger urban areas, together with development at the rural service centres, of which Sturry is one, and also at the local centres. In relation to Sturry and the local centres, paragraph 2 of the policy goes on to say that, in addition to the plan's allocations, the provision of new housing of a size, design, scale, character and location appropriate to these villages' character and built form will be supported, provided the proposal is not in conflict with certain other policies. Under paragraph 5 of SP4, development in the open countryside will be permitted for agriculture and forestry. In addition, Policy HD4 sets out in more detail the circumstances in which new dwellings in the countryside may be permitted, none of which apply to the appeal scheme.

82. Policy SP4 therefore gives some encouragement to development at Sturry and the local centre villages, as settlements where development is to be focussed, and also allows for some sites to come forward over and above those already allocated. Nothing in this part of the policy requires sites to be within the existing built confines, and in the absence of a defined boundary, it seems to me that the policy permits some flexibility with regard to sites on the village edge. In this context, I note that 'flexibility' was the term used by the Examining Inspector in explaining the need for the modifications that he recommended to the policy<sup>7</sup>, and I consider that his comments in this regard are helpful in understanding the way the policy is designed to operate.
83. In the present case, the appeal site is adjacent to Sturry's main built-up area, and relates reasonably well to the existing development pattern. Although its size would be substantial, the settlement itself is a large village, and the development would not be out of scale with it. Design is a reserved matter, and the final criterion, character, is largely a function of the others. None of these criteria therefore seem to rule out the proposed scheme from being supported within the terms of SP4's second paragraph.
84. With regard to Policy SP4's fifth paragraph, I agree that there is a clear inference that development in open countryside that is not for the specified purposes will not normally be permitted, and this approach is reinforced by Policy HD4. In the case of Sturry, with its lack of a defined boundary, this leaves unanswered the question of whether a particular site falls within open countryside, or within the ambit of SP4's second paragraph. But to my mind this is part and parcel of the same flexible approach that is inherent in that paragraph as a whole. I therefore find nothing in either Policy SP4 or Policy HD4 that specifically requires the appeal site to be treated as countryside.
85. In coming to this view, I accept that the CDLP is to be read as a whole, and I have had regard to all the various paragraphs that I have been directed to, including the explanatory text supporting Policies SP4 and HD4, and Policy HD3 relating to exception sites, and also page 237 which refers to the plan's objectives for the countryside. However, nothing in these seems to me to be conclusive, and I have therefore drawn my interpretation of Policy SP4 from the words of the policy itself. I have also noted the Inspector's reasoning in the recent appeal relating to a site in Westbere. But Westbere is defined as a hamlet, in the lowest tier of the settlement hierarchy, where a different policy approach applies, under another part of Policy SP4.
86. I fully agree with the Council that Policy SP4 cannot have been intended to permit development on each and every site around the fringes of Sturry, or the other paragraph 2 villages. Rather, it seems to me, the policy allows decisions on proposals at these settlements to be made on a case-by-case basis, having regard to the policy's own criteria, together with the nature of the particular site, and the circumstances at the time. Different and more restrictive approaches for the lower tiers of the settlement hierarchy are set out in Policy SP4's other paragraphs, and it seems to me that the greater flexibility given to Sturry and the local centres is clearly intended to complement that approach.
87. For completeness, I note that the final proviso in Policy SP4's second paragraph, regarding compliance with other CDLP policies, is relevant to the

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<sup>7</sup> Inspector's Report on the CDLP Examination, paras 55 and 97

appeal, as I have already found the proposal to conflict with Policy T1 with regard to traffic impact. However, that matter is taken into account elsewhere in this decision, and does not affect my conclusion as to the policy's locational aspects.

88. In the circumstances of this case, I find that the appeal proposal falls within the type and scale of development that could be accepted within the terms of the second paragraph of Policy SP4. As a result, it follows that Policy HD4 is not relevant in this case. The proposal is therefore not in conflict with either of these policies.

### **Other Matters**

#### *The Section 106 agreement*

89. The provisions of the S.106 agreement relating to the provision of 30% affordable housing are needed for compliance with CDLP Policy HD2. This provision, amounting to up to 42 affordable units, has no mitigatory role and would therefore represent a substantial public benefit.
90. The provisions relating to the proposed on-site open space, including an equipped play area, a proposed mini pitch and a trim trail, and also the SUDs drainage system, are all needed to ensure a high standard of development and future maintenance. The quantity of the proposed open space exceeds policy requirements, but is necessary because of the large amount of land within the site that is sterilised by the pipeline. The open space would be available to the public and would therefore be a general benefit, to which I give some weight.
91. The agreed contributions to the Canterbury-Herne Bay cycle route, surfacing and improvements to public footpath CB59, and the provision of travel vouchers for new residents, are all necessary to manage travel demand and mitigate the development's transport impacts to the levels assumed in the TA, in accordance with relevant policies. The first two of these items would also have benefits for the general public, carrying a small amount of weight.
92. The contributions to primary and secondary education, community learning, healthcare, adult social care, libraries, youth services, and the SPA, are all needed to mitigate the development's impacts on these services, in accordance with the relevant CDLP policies. The contribution for TROs is needed, to allow for the introduction of waiting restrictions on Popes Lane, in order to mitigate any impact on safety in connection with the proposed site access.
93. All of the above obligations have been demonstrated to be necessary to make the development acceptable, and to be relevant to the development and reasonably related in scale and kind. I have therefore taken these into account, and where I have identified that these would involve public benefits, I have given weight to those benefits accordingly.
94. The proposed contribution to highway works at Junction SJ10, Broad Oak Road/Vauxhall Road, would help to relieve congestion at that junction. It would thus have potential benefits for the general public, assuming that the balance of the cost could be raised from another source, and the improvement scheme could then be implemented. However, the junction is remote from the appeal site, and is not one of those where the impact of the proposed development would be most severe. Nor would the improvement to this junction, if carried out, make the development acceptable, in terms of its

overall traffic impact. In the circumstances, the proposed contribution does not meet the necessary legal tests, and I have therefore not taken the potential benefit of this obligation into account.

*Other benefits of the development*

95. In addition to the benefits already identified above, the development would have significant benefits for the local and national economy. The overall construction spend is estimated by the appellants at £16.3m. Over the construction period, it is estimated that 140 full-time equivalent direct jobs, and 152 indirect jobs, would be created. The gross value added is put at £5.4m. The development's future residents are estimated to generate a total household expenditure of £4.17m, and the Council would benefit from Council Tax receipts and New Homes Bonus payments totalling around £3.2m. The appellants' figures for these items have not been challenged. These beneficial economic effects would be additional to the District's other committed housing sites. I consider that the economic benefits carry moderate weight.
96. In addition to the contributions in the S.106 agreement, improvements are also proposed by the appellants to existing pedestrian routes between the site and the village centre<sup>8</sup>. These improvements could be secured by condition. Although minor in nature, they would have some benefits for existing residents as well as future occupiers at the development itself. These carry modest weight.
97. The creation of new and enhanced wildlife habitats, and other biodiversity gains, could also be secured through conditions, likewise attracting some modest weight.
98. Although new public parking bays are proposed in Popes Lane, these would merely replace the on-street spaces lost due to the necessary TROs. As such, this would represent mitigation rather than a net benefit.

**Planning Balance and Overall Conclusions**

99. For the reasons set out in this decision, I find that the proposed development would fit acceptably well with the CDLP's spatial strategy, embodied in Policy SP4. I also find no serious adverse consequences for the area's character and appearance, or for the nearby listed buildings, or for agriculture. Having regard to all of the above matters, I find no significant conflict with the development plan in respect of any of these matters.
100. However, in the light of the development's impact on the road network and highway safety, there would be a serious conflict with Policy T1. Numerically, this conflict is with only one policy compared to the larger number where I have found no such conflict in relation to other issues. But nevertheless, the conflict with Policy T1 is in my view so substantial that it is not outweighed merely by causing no harm in those other respects. In the context of this particular scheme therefore, I find Policy T1 to be the most important development plan policy in the appeal. The proposal before me is in clear conflict with that policy.

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<sup>8</sup> Shown on Plan no. 1592/13, Revision A

101. Weighing against this conflict with Policy T1, and in favour of the appeal, are the benefits that I have identified. Given the Council's failure to demonstrate a 5-year supply of housing land, the most significant of these benefits is the provision of up to 140 dwellings, and especially the 30% which would be affordable. I have therefore given the benefits of providing housing substantial weight. The other benefits, in order of weight, are firstly the economic effects, particularly the construction jobs and investment; then the on-site public open space, including the proposed play and leisure facilities; the improvements to pedestrian and cycle routes; and also the opportunity for gains to biodiversity. But in my view, given the seriousness of the traffic impacts that I have identified, even when these benefits are all added together, they do not outweigh the harm to the road network and safety.
102. I have had regard to Policy SP1, and paragraph 11 of the NPPF, which both embody a presumption in favour of sustainable development, including a 'tilted balance' to be applied where relevant policies are out of date. But in this case the most relevant policy, T1, is not out of date. Nor is it made out of date simply by the shortfall in the housing supply. The NPPF's policy towards developments which would have a severe impact on the road network, or an unacceptable impact on highway safety, is very clear. Policy T1 supports that aim and is consistent with it. Consequently, despite the need that I have found for additional short-term housing land in the District, I do not see any basis for reducing the weight given to these important national and local transport policies.
103. I therefore do not consider that the tilted balance provisions of either the NPPF or Policy SP1 should be applied in this case. But in any event, even if the tilted balance were to be applied, I consider that the harm that I have identified, due to the scheme's impacts on traffic and safety, significantly and demonstrably outweighs the benefits. In these circumstances, the appeal scheme does not constitute sustainable development, and should be refused.
104. I have had regard to all the other matters raised, but none alters or outweighs these conclusions. The appeal is therefore dismissed.

*J Felgate*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Isabella Tafur	Of Counsel (instructed by the Principal Solicitor to the Council)
She called:	
Ms Shelley Rouse MA MRTPI	Principal Planner
Mr John Etchells MA BPhil CMLI	Consultant Landscape Architect
Ms Elizabeth Johnson BA MSc IHBC(Affiliate)	Senior Heritage Officer
Mr Colin Finch BTech MIPROW	Principal Transport and Development Officer, Kent County Council
Mr Chris Pragnell LLB	Principal Planning Officer

### FOR THE APPELLANT:

Mr John Barrett	Of Counsel (instructed by Ms Richardson of the appellants)
He called:	
Mr Desmond Dunlop BA(Hons) MRTPI	D2 Planning
Ms Silke Gruner Ba(Hons) LArch CMLI	CSA Environmental
Ms Gail Stoten BA(Hons) MCIFA FSA	Pegasus Group
Mr Benjamin Jackson BEng(Hons) MSc MCIHT	Ashley Helme Associates
Ms Diana Richardson BA(Hons) MA MRTPI	Gladman Developments Ltd

### INTERESTED PERSONS:

Ms Ann Davies	Local resident and Sturry Parish Councillor
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## **DOCUMENTS TABLED DURING THE INQUIRY**

### DOCUMENTS TABLED BY THE COUNCIL

- C/1 Manor Oak Homes v SoS and Aylesbury Vale DC [2019]EWHC 1736 (Admin)
- C/2 Opening submissions
- C/3 Email dated 1 August 2019 from R Hill, Regeneration Programme Manager, re Station Road West and Rosemary Lane car park sites
- C/4 Email from Persimmon Homes, dated 2 August 2019, re land north of Hersden
- C/5 Email dated 2 August 2019 from L Barden, Streetworks Co-Ordinator, re S.74 roadworks charge
- C/6 List of appearances for the Council
- C/7 CIL compliance statement by KCC Highways
- C/8 Closing submissions

### DOCUMENTS TABLED BY THE APPELLANTS

- AP/1 List of appearances for the appellants
- AP/2 Opening submissions
- AP/3 Email from BDW Homes, dated 18 July 2019, re Broad Oak housing site
- AP/4 Table comparing 2018 and 2019 housing site trajectories (Mr Dunlop)
- AP/5 The Council's land supply evidence to Old Thanet Way inquiry, 2018
- AP/6 Letter from KCC, dated 12 June 2019, re South of Canterbury site – education contributions
- AP/7 Note re land north of Hersden – land ownerships
- AP/8 'Yotta' highways works record sheets
- AP/9 Location plans relating to appeal site at Staines Hill, Westbere
- AP/10 Closing submissions
- AP/11 Executed S.106 agreement, dated 15 August 2019
- AP/12 Email from D Richardson dated 27 August 2019 in response to Natural England comments

### OTHER DOCUMENTS

- GEN/1 Jointly suggested site visit route plan
- GEN/2 Letter from Natural England dated 28 June 2019, re Sturry/Broad Oak housing sites
- GEN/3 Housing Delivery Test: 2018 measurement results
- GEN/4 Main Modifications to the Canterbury District LP, April 2017
- GEN/5 Agreed joint note on Habitat Regulations Assessment
- GEN/6 Policies Map 2017, extract
- GEN/7 Plan of the proposed A28 Sturry Link Road
- GEN/8 Draft conditions and comments, based on list tabled on 24 July 2019 (including appellants' agreement to pre-commencement conditions)
- GEN/9 Further comments on draft conditions, tabled on 6 August 2019
- GEN/10 (not used)
- GEN/11 Consultation letter from Council to Natural England, dated 10 December 2018
- GEN/12 Notification letter from Council to Natural England, dated 9 July 2019
- GEN/13 Consultation email from Council to Natural England, dated 6 August 2019
- GEN/14 Email from Natural England dated 16 August 2019, Habitat Regulations Assessment