IN THE MATTER OF

LAND AT POPE'S LANE, STURRY

PINS REF: APP/J2210/W/18/3216104

CLOSING SUBMISSIONS

ON BEHALF OF CANTERBURY CITY COUNCIL

Introduction

1. The main issues in this appeal were identified by the Inspector at the outset of the inquiry and are as follows:

   i) The effect of the development on traffic and highway safety;
   ii) The effect of the development on the character and appearance of the landscape and the area generally;
   iii) The effect of the development on heritage assets;
   iv) The effects of the development on agriculture;
   v) Whether the district has an adequate supply of deliverable land for housing development; and
   vi) Whether the appeal site is suitable for the proposed development, having regard to relevant local and national policies.

2. In summary, the Council's position is that the appeal scheme would have an unacceptable impact on highway safety and result in a severe cumulative impact on the road network through Sturry; it would harm the character; appearance and visual amenity of the appeal site and surrounding area; cause less than substantial harm to the heritage assets at Sweech farmstead; result in the unjustified loss of best and most versatile agricultural land and would be contrary to the spatial strategy at the core of Canterbury's Local Plan (adopted in 2017). It would not accord with the development plan, read as a whole.

3. Canterbury is able to demonstrate a housing supply in excess of five years. There is simply no reason to countenance such harmful development that conflicts with the development plan.

4. There are two strong and statutory presumptions which militate against this development, namely s.38(6) of the Planning and Compulsory Purchase Act 2004 and s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. There are no material considerations of sufficient weight to rebut those presumptions and justify the grant of permission.

The effect of the development on traffic and highway safety

5. The Local Plan tells us in its introduction (page 5, paragraph (vi)) that "*One of the main issues facing the District is traffic congestion and the delivery of new key infrastructure to help relieve this. For many years there has been severe traffic congestion and other highway problems associated with traffic movements north south from Herne Bay to Canterbury, passing through the villages of Herne and Sturry."*

6. The Local Plan identifies severe traffic congestion and highway problems already affecting Sturry. This is a problem that has been widely recognized for many years, with previous Local Plans seeking to provide solutions that have not come to fruition[1].

7. Mr Jackson would have you believe that there are no severe problems affecting Sturry's roads. His view is out of kilter with the adopted Local Plan, as endorsed in 2017 by the LP Inspector, and is wrong.

8. The NPPF recognises (at paragraph 109) that refusal of permission may be justified where a development would give rise to "*an unacceptable impact on highway safety"* or where "*the residual cumulative impacts on the road network would be severe".* There is no guidance or policy explaining what types of highway safety impact will be "*unacceptable"* or when residual cumulative impacts should be considered "*severe".* Both of those questions require the exercise of planning judgment by the Inspector.

[1] Local Plan, page 5, paragraph (vi)

9. By adding further traffic movements onto a road network that is already experiencing severe congestion and other highway problems, the residual cumulative effect of this development on the road network would be severe such that refusal of permission on highway grounds is justified. The effect of the development would be to make a bad situation worse.

10. Even before Local Plan allocations are taken into account, the effect of this development on the existing (2018) road network would be:

    i) At Junction 2 (Pope's Lane/A291) to increase the Ratio to Flow Capacity ("RFC") from 0.81 to 0.94[2]. The evidence from the highway authority is that junctions reach their effective capacity at 0.85 RFC. After that point, junctions begin to experience problems with queueing and increased risk-taking by drivers. The effect of the development would be to push this junction from an RFC of below 0.85 to 0.94. It would more than double the existing queue at that junction from 3.4 vehicles to 7.5 vehicles and increase driver delay from 35.20 seconds to 63.89 seconds.

    ii) At junction 7 (A291/A28/Sturry Crossing) to exacerbate the existing traffic associated with the operation of the level crossing. It is not possible to accurately model the operation of this junction as it is heavily influenced by the level crossing which cannot accurately be factored into the model. However, it is clear that the junction currently suffers from severe problems associated with the operation of the level crossing. During the AM peak hour, four trains are scheduled to arrive at Sturry station (at 07.48; 08:19; 08:25 and 08:31) with the level crossing closing for up to 4mins 40 seconds with each train arrival. The report produced by AMEY in 2016[3] describes the problems at this and other junctions in Sturry and is testament to the severe traffic congestion in the area. It reports queue lengths at Junction 2 often exceeding 150 metres[4]. Even on Mr Jackson's figures, the development would add 19[5] additional vehicles to the Sturry crossing junction in the AM peak when current queues in that period are

[2] Revised TA (CD 12.14), Table 6
[3] AMEY report, Appendix B to Mr Finche's proof
[4] AMEY report, paragraph 3.3.4
[5] Jackson proof, paragraph 6.3.4.1, pages 45 - 46

up to 66[6] vehicles long (northbound) and up to 144 vehicles long (southbound) and an additional 17[7] vehicles in the PM peak hour when current queues are up to 214 vehicles long (northbound) and 59 vehicles long (southbound)[8].

iii) At Junction 8 (A291/Sweechgate) even without the proposed development the RFC is 0.97. The impact of the development will be to increase the RFC to 0.99 in the AM peak on the A291 and to increase driver delay to an average of 89 seconds (from the current 74s delay). In the PM peak it will increase the RFC from 0.90 to 0.96 (left turn) and from 0.83 to 0.93 (right turn) at Sweechgate[9] and increase delay from 51 seconds to 68 seconds (left turn) and from 70 seconds to 98 seconds (right turn)

iv) At junction 9 (Sweechgate/Shalloak Road), even without the proposed development, the RFC is already 1.08 in the PM peak. The effect of the development would be to push it to 1.13. It will increase queues from 23 vehicles to 30 and increase delays from 98 seconds to 123 seconds[10].

11. The Appellant does not propose any mitigation that would materially address its impact on these junctions. Taking account of the existing baseline and the impact of the proposed development, the residual cumulative impact on the roads and junctions in Sturry will be severe and will result in increased risk as driver delay causes frustration and incautious driver behavior. There are already clusters of accidents at these junctions[11] which are indicative of the problems of congestion and delay giving rise to increased risk. The AMEY report[12] identifies particular safety problems through the Broad Oak "rat run" (which vehicles use to avoid the Sturry crossing). The proposed development will further increase the risk and give rise to unacceptable impact on highway safety.

[6] Jackson proof, paragraph 3.2.4.3, page 23
[7] Jackson proof, paragraph 6.3.4.1, pages 45 - 46
[8] Jackson proof, paragraph 3.2.4.5, page 24
[9] Revised TA, Table 13 (CD 12.14)
[10] Revised TA, Table 15 (CD 12.14)
[11] Mr Jackson reported 3 accidents at J2 in a five year period; 6 accidents at J7 and 7 accidents at J8
[12] Paragraphs 3.6.5 and 5.1.2 of the AMEY report, Appendix B to Mr Finch's proof,

12. There is no modelling of the cumulative impact on the road network in 2031 (or any year leading up to 2031) in the event that the Sturry Link Road does not come forward. The Appellant relies on the delivery of that Link Road to show that the junctions will be able to operate effectively once the Local Plan allocations and associated traffic is taken into account. The problem with that is that the Appellant has no control over the delivery of the Sturry Link Road and proposes to make no contribution to it. Of course, everyone (not least the highway authority and local planning authority) hopes that the Sturry Link Road will be delivered, because it is needed to resolve the severe impact of traffic through Sturry, but there can be no certainty that it will.

13. The High Court recognised in Manor Oak Homes Ltd v SSHCLG [2019] EWHC 1736 (Admin)[13] that an Inspector had been entitled to dismiss an appeal on highways grounds where she was not certain that the necessary road improvement works would be delivered. The appellant and highway authority agreed in that case that with an identified highway improvement scheme, the effect of the development would be acceptable, and they agreed that the appellant would make a contribution to the scheme, secured through a s.106 obligation. However, the delivery of the scheme also relied on contributions from other sites. The Inspector could not be certain that the road improvement scheme would come forward because it relied on contributions from other sites which did not yet have permission and so she could not be certain that there would be no severe impact on transport network[14]. While all parties accepted that the other sites were likely to come forward (indeed, they were included as deliverable sites in the LPA's five year housing land supply), the Inspector found that the delivery of the highway infrastructure had to be beyond sensible doubt if the scheme was to be acceptable. It was not enough that the highway works were "*more likely than not or probable or even very probable or highly likely"*[15].

14. In this case, the Appellant relies on the delivery of the Link Road to show that by 2031 the cumulative impact on the road network will be acceptable. It does not propose any contribution to the Link Road. While there is a realistic prospect of the Link Road

[13] Inquiry Document C1
[14] Manor Oak judgment, paragraphs 9 and 11
[15] Manor Oak judgment at paragraph 33

being delivered, it is not beyond sensible doubt and there is no certainty about when it would be delivered.

15. Without the Link Road in place, there is little evidence before the inquiry about the cumulative impact on the road network in 2031. The Appellant has not provided any modelling of that scenario. However, the AMEY report[16] contains some modelling of the position in 2031 without the Link Road in place.

16. Section 4 of the AMEY report assesses the traffic implications of a number of scenarios, including the 2031 position with the Herne Bay Golf Club and the Strode Farm developments in place. Those developments are not tied to the delivery of the Sturry Link Road. Instead, the Local Plan requires them to make contributions to the Herne Relief Road to resolve the severe congestion problems through Herne village. That is the overarching solution to Canterbury's severe traffic problems that has been identified through the Local Plan process and it means that notwithstanding the additional traffic they would generate through Sturry, those schemes are acceptable because they will be part of the solution to another major problem area in Canterbury's road network.

17. In the event that just the Herne Bay Golf Club and Strode Farm developments came forward, and without the appeal scheme in place, at junction 8[17] (A291/Sweechgate) in 2031 the RFC would be 1.2 in the AM peak, with maximum queues of 84 vehicles (A291 right turn)[18]; and in the PM peak the RFC would be 1.35 (Sweechgate to A291 (North)) and 1.32 (Sweechgate to A291 (South)) with maximum queues of 70 and 25 vehicles respectively. Plainly the functioning of other junctions in Sturry will also be affected by the addition of traffic from the Local Plan allocations and the addition of the appeal scheme's traffic would only make things worse.

18. Both at the present time and in future, until the Link Road is in place, the roads and junctions in Sturry will continue to experience the severe congestion and associated safety risks identified in the Local Plan. The residual cumulative impact on the road

[16] AMEY report, Appendix B to Mr Finch's proof
[17] The AMEY report does not assess the 2031 position at other the other junctions of concern to KCC
[18] AMEY report, Table 3, page 26, at Appendix B to Mr Finch's proof

network will be severe and there will be unacceptable safety conditions. The appeal scheme will exacerbate those problems.

19. In the event that the Link Road comes forward, that is likely to resolve some of the issues in Sturry but unless and until it does come forward the residual cumulative impact of traffic in Sturry will be severe and the highway safety conditions unacceptable.

20. Without a Grampian condition preventing the occupation of the dwellings until the Relief Road is in place, the Inspector cannot be sure that the necessary mitigation will be in place. To grant permission in the hope that the Link Road may come forward at some point in the future would be to authorise a severe and unacceptable impact on the road network. The residual cumulative impact on the road network through Sturry would be severe. It would give rise to unacceptable road safety impacts. The only appropriate response is to refuse permission.

The effect of the development on the character and appearance of the landscape and the area generally

21. The appeal site is an agricultural field outside the built confines of Sturry. It is in the countryside, as Ms Richardson eventually accepted. It has a pleasant rural character and is crossed by two well-used footpaths, one of which leads into an area of ancient woodland and a local nature reserve.

22. The proposed development would result in a striking and obvious change to the landscape of the appeal site itself and the visual amenity of the area, particularly from the footpaths and from Pope's Lane. Both will be markedly changed for the worse. Open views across the site will be lost forever.

23. Ms Gruner's evidence sought to downplay the effect of the development, claiming repeatedly that it was inevitable that greenfield development would cause harm to the site itself. Perhaps as a result of her numerous appearances for the same developer client, Ms Gruner seems to have bought into the falsehood that landscape harm to the site itself can be somehow discounted. It cannot. There is nothing inevitable about the

harm that the appeal scheme would cause to the site. It can and should be protected from harm by the dismissal of this appeal.

24. The NPPF invites decision makers to recognise the intrinsic character and beauty of the countryside. The government recognises that all of the countryside has an intrinsic value that is worthy of recognition and protection, including sites with no landscape designation.

25. Ms Richardson flatly denied that the policy imperative to recognise the intrinsic character and beauty of the countryside involved a protective or safeguarding response to that recognition. Her advice to you is contrary to the law.

26. In De Souza v SSCLG[19] the High Court rejected a submission that there was a material difference between the previous requirement in PPS7 to 'safeguard the countryside' and the NPPF. The High Court held "*The difference between 'safeguarding the countryside' and 'recognising its intrinsic character and beauty' is very unclear. 'Recognising intrinsic character' must involve some response to that recognition which is inherently a protective or safeguarding one. The inherent beauty or character of the countryside does not presuppose some areas of the countryside have intrinsic beauty but other areas have none. The very concept of intrinsic character and beauty recognises that all countryside will have some such qualities. The contrast propounded by Mr Clay [for the Claimant] is not there".*

27. The effects of the appeal scheme will be felt beyond the site itself. Both landscape experts agree that it will also harm the adjoining townscape, albeit they disagree on the extent of the harm. Mr Etchells considers that it will cause moderate harm while Ms Gruner says the harm will be slight. The Council invites you to prefer the evidence of Mr Etchells which was balanced and non-partisan. Either way, it is agreed to be a harmful development that will adversely affect the character of the village.

28. The erection of up to 140 dwellings on a developable area of 4ha will give rise to a high density of development that is out of kilter with the existing northern edge of Sturry. The density of the existing houses to the north of Pope's Lane is 17dph. The appeal

[19] [2015] EWHC 2245 (Admin), paragraph 32

scheme will be more than double that density, at 36dhp. It will be materially higher than the housing to the south of Pope's Lane, which is less than 30dpa. That difference will be further accentuated by the height of the proposed new houses. Some of the existing houses along Pope's Lane are 1 ½ storeys high, with the remainder at 2 storeys. The appeal scheme proposes buildings of 2 and 2 ½ storeys. While the DAS claims the majority will be 2 storeys in height, the plan on page 45 of the DAS shows the majority of houses at 2 ½ storeys and no condition has been proposed to limit the heights of the buildings. The proposed development would appear as an isolated and incongruous area of taller and denser development extending into the countryside.

29. As a result of the harm it would cause to the landscape character and visual amenity of the area, the development would not be of a size, scale, character or location appropriate to the character and built form of Sturry. Even if policy SP4 were capable in principle of providing support to development in the countryside (as to which, see further below), this scheme would conflict with the policy for the reasons described by Mr Etchells[20]. It would also conflict with policy DBE3 given that it would not protect and enhance the distinctive character of the area and would harm the character, setting and context of the site and local townscape character. It would conflict with policy LB4 as it would not be sympathetic to the landscape character of the locality and would not "*reinforce, restore, conserve or improve"* that character. It would further conflict with paragraph 170 of the NPPF as it would fail to enhance the natural and local environment and would harm the intrinsic character and beauty of the countryside.

The effect of the development on heritage assets

30. It is agreed that the appeal scheme will result in less than substantial harm to at least one designated heritage asset. That harm alone triggers a strong presumption that the appeal should be dismissed.

31. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires decision makers to pay special attention to the desirability of preserving listed

[20] Etchells' proof, page 36

buildings and their setting. "Preserving" means doing no harm to the listed building or its setting[21]. It is agreed that this scheme would harm a listed building and its setting.

32. The judgment of the House of Lords in South Lakeland applies equally to development that would harm a listed building of its setting as it does to development that would harm a conservation area. It makes it clear that "*...planning decisions in respect of development proposed to be carried out in a conservation area* [or affecting a listed building or its setting] *must give high priority to the objective of preserving or enhancing the character and appearance of the area* [or the listed building and its setting]. *If a proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission, though, no doubt, in exceptional cases the presumption may be overridden in favour of development which is desirable on the ground of some other public interest."*[22]

33. There are no such exceptional circumstances justifying this development.

34. It is agreed that the appeal site forms part of the setting to the listed buildings at Sweech farmstead, and that it contributes to their significance. The proposed development would harm and undermine their significance. It would remove the agricultural land that assists in understanding the historic context of the buildings. It would extend the settlement of Sturry to the very boundary of the farmstead, effectively subsuming it into the settlement. This would reduce the connection of the existing farmstead and listed buildings to the rural hinterland and obscure its separation from the settlement of Sturry.

35. Ms Stoten would have you believe that the only element of harm will be the loss of crop from the appeal site itself. That cannot be right. The housing, roads and associated infrastructure on the developed part of the site, together with the introduction of a football pitch, trim trail equipment, changing rooms and lighting in the north-west will fundamentally alter the character of the site from its present agricultural setting to that of a housing estate. The noise and activity from the housing estate will mean that the

[21] South Lakeland District Council v Secretary of State for the Environment [1992] 2 AC 141, per Lord Bridge at page 150

[22] See the quote at paragraph 20 of the Court of Appeal judgment in Barnwell Manor Wind Energy Ltd v East Northamptonshire DC (CD 11.01)

settlement of Sturry is noticeably closer. The farmstead, which currently derives part of its significance from the presence of the agricultural land on the appeal site, would instead become part of the settlement.

36. Currently, there are views of the farmstead from the footpaths within the appeal site, where it can be seen in its agricultural context. Those views would be lost as a result of this development.

37. Where a scheme causes *any* harm to a listed building or its setting, the decision-maker is not free to give that harm any weight he chooses in the planning balance. He is obliged by statute to give the harm considerable importance and weight[23] and to refuse permission unless there is a clear and convincing justification for allowing harm to an irreplaceable heritage asset[24]. Given that the Council can demonstrate a housing land supply exceeding five years, there is no justification for allowing this harmful development.

The effects of the development on agriculture

38. The appeal scheme will result in the loss of best and most versatile agricultural land and is contrary to Local Plan policy EMP12. Ms Richardson's advice to the Inspector that the policy is not relevant in determining this appeal is plainly wrong.

39. Policy EMP12 explains that "*The City Council will seek to protect the best and most versatile farmland for the longer term".* That is the policy objective: protecting BMV land. The way in which that objective is achieved is by requiring "*significant development of unallocated agricultural land"* to satisfy certain criteria. The Appellant accepts that the appeal scheme constitutes a significant development and that it is on unallocated agricultural land, yet through some inexplicable contortion, seeks to persuade you that the policy is not engaged. It is obviously engaged.

40. Where significant development of unallocated agricultural land is proposed, policy EMP12 provides that planning permission should only be granted (a) where there is a need for the development and (b) where a suitable site within the urban area or on

[23] Forge Field Society v Sevenoaks DC [2014] EWHC 1895 (Admin) (CD 11.06)
[24] NPPF paragraphs 193 and 194

poorer quality land cannot be identified. In this case, there is no need for the development because the Council is able to demonstrate a housing land supply in excess of five years and the Local Plan contains policies to address the affordable housing need (which, it should be noted, there is no policy or statutory requirement to meet in full) in the way considered most appropriate by the Local Plan Inspector. The Appellant has not demonstrated, or even attempted to demonstrate, that there is no suitable site available in the urban areas or on poorer quality agricultural land.

41. The only reasonable conclusion available to the Inspector is that the appeal scheme conflicts with policy EMP12.

Whether the district has an adequate supply of deliverable land for housing development

Housing requirement

42. The calculation of five year housing land supply should be based on the housing requirement in policy SP2 of 2,500 (500dpa) for the first five years of the Plan period (2011 – 2016) and 4,500 (900dpa) thereafter.

43. Paragraph 73 of the NPPF says "*Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies."* The only strategic policy that sets out Canterbury's housing requirement is SP2.

44. The PPG reiterates that advice[25], explaining that "*Housing requirement figures identified in adopted strategic housing policies should be used for calculating the 5 year housing land supply figure where the plan was adopted in the last five years…".* At paragraph 68, the PPG poses the question "*How is 5 year land supply measured where authorities have stepped rather than annual average requirements?"* The answer

[25] PPG ID 68-005-20170922

given in the PPG is that "*Five year land supply is measures across the plan period against the specific stepped requirements for the particular 5 year period".*[26]

45. In calculative the housing delivery test, the government has recognised that Canterbury's Local Plan contains a stepped requirement and has measured its performance against that requirement. Canterbury scored 117% in the housing delivery test: it is delivering more houses at a faster rate than the Plan requires.

46. The Appellant seeks to persuade you that there is no stepped housing requirement in the Local Plan and that Canterbury's housing strategy is failing. In cross-examination, Mr Dunlop invited you to ignore SP2 in identifying the housing requirement and suggested that you should discount the housing delivery test calculation on the basis that the government had got it wrong[27]. The Council invites to you read the plain words and figures of policy SP2 and to accept that the government was right to use the stepped requirement set out in that policy.

47. If you agree that SP2 contains a stepped housing requirement, then Mr Dunlop accepts there could be no justification for adopting a Sedgefield approach to any shortfall, rather than the Liverpool approach endorsed by the Local Plan Inspector. Plainly that is right, because the completions have exceeded the housing requirements over the plan period to date. By 2017/18 the Council has delivered a surplus of 283 dwellings. That is hardly indicative of a Council that is failing to deliver housing.

<u>Housing supply</u>

The Council's approach to assessing deliverability

48. In calculating the housing land supply position in Canterbury, the Council invites you to use the latest information set out in the draft 2018/19 Housing Supply Statement. Ms Rouse explained that the figures in that statement have all been checked and collated and while the explanatory text may be updated (to record the changes to the PPG, for example) the figures will not change in the final document.

[26] PPG ID: 68-026-20190722
[27] XX Desmond Dunlop

49. The Appellant is content to rely on the up-to-date information in the 2018/19 statement when it suits its case to do so but at the same time it suggests that you should ignore the parts of the updated statement that do not suit its purposes. Plainly that approach would be quite wrong. It would take account of slippages on some sites while failing to record additional completions that were not envisaged in the earlier assessment.

50. The monitoring of housing supply has improved dramatically in Canterbury over recent years. So much so that Canterbury has recently been selected by the Department for Housing, Communities and Local Government and the Planning Advisory Service to take part in a Housing Delivery Test pilot group and deliver training to local authorities who have performed badly in the HDT.

51. The Council has established a Housing Delivery Group which includes representatives from developers, agents, house-builders, Homes England, SME house-builders, affordable providers, highway officers and utility providers[28]. All of the strategic site allocations are represented on the HDG. The aim of the HDG has been to identify barriers to housing delivery and to gain first-hand knowledge and experience of lead-in times and build-out rates in Canterbury. That work led into the production of the Council's Phasing Methodology to help inform the annual assessment of deliverable housing supply. The Methodology was subject to consultation with the HDG and adjustments were made to reflect the feedback received by the Council. The Phasing Methodology assists the Council in assessing the deliverability of sites and the likely lead-in times and build-out rates in the local housing market.

52. The process for assessing the housing supply is robust. In addition to the Phasing Methodology, it involves visits to every site; sending out detailed questionnaires to applicants/agents/housebuilders, followed up by telephone calls from Council officers; discussion with case officers and continuous monitoring of the planning record database.[29]

Clear evidence

[28] Ms Rouse's proof, paragraph 85
[29] Ms Rouse's proof, page 20, paragraph 81

53. As a result of those processes, the Council has obtained clear evidence to supports its assessment of the deliverability of housing sites.

54. The NPPF requires local planning authorities to demonstrate a five year supply of 'deliverable' sites. The glossary to the NPPF defines deliverable sites as those which are "*available now, offer a suitable location for development now and [are] achievable with a realistic prospect that housing will be delivered on the site within five years."* That definition has not changed.

55. Mr Dunlop made it clear in cross-examination that the only dispute between us was whether the sites in the Council's supply have a realistic prospect of delivery within the next five years. As Mr Dunlop agreed, that does not require the Council to show with certainty, or beyond reasonable doubt that sites will be delivered as forecast. Plainly that would be impossible. The Council is not more able than anyone else to predict the future with certainty.

56. To show that allocated sites or sites with outline permission are 'deliverable', the Council should provide clear evidence that housing completions will begin within five years. The PPG was amended in July 2019 to make clear the type of "clear evidence" that would suffice to show a site was deliverable. It explains that the evidence will include current planning status, timescales and progress towards detailed permission.[30]

57. The Council's Housing Supply Statement[31] contains just that clear evidence. It shows realistic and evidence-based assumptions in respect of each of the allocated sites sufficient to satisfy you that there is a realistic prospect of housing completions within the five year period. The assessment takes account of conditions to be discharged; delays caused by legal challenge; infrastructure requirements; lead-in times and build-out rates. The Council commends it to you as a thorough and robust assessment of each of the sites in dispute.

58. By contrast, Mr Dunlop has adopted a blanket approach of suggesting that 8 of the strategic allocations will deliver zero houses over the next five years. His approach is unduly pessimistic and simply not credible.

[30] PPG IS 68-014-20190722

[31] Appendix A to Ms Rouse's rebuttal

Conclusion on 5 year housing land supply

59. The 2017/18 Housing Supply Statement shows a housing land supply equivalent to 6.57 years. If you accept the Council's case that there is a stepped housing requirement and that the Liverpool approach should be adopted to address any shortfall, the Appellant would have to knock out 1,450 houses from the Council's housing land supply[32].

60. The 2018/19 Housing Supply Statement shows a supply equivalent to 6.72 years. To bring that down below 5 years, the Appellant would have to knock off 1,654 dwellings from the Council's supply[33]. The Council stands by its assessment.

61. Even if the Inspector considers some minor modifications should be made to the Council's Housing Supply Statements, in light of the robust and thorough assessment carried out by the Council, any reduction could not come close to knocking off 1,450 houses from the supply, still less 1,654 houses.

Whether the appeal site is suitable for the proposed development, having regard to relevant local and national policies.

62. The statutory presumption in favour of the development plan is the cornerstone of our planning system. It promotes the coherent development of a planning authority's area, allowing for development to be directed to the most appropriate places within that area. It is not in the public interest that planning control should be the product of an unstructured free-for-all based on piecemeal consideration of individual applications for planning permission[34]. Absent considerations of sufficient weight to rebut the statutory presumption, there is no reason to grant permission for development outside that envisaged in the development plan.

63. Parliament has delegated to local planning authorities the duty of identifying housing needs and deciding how best to meet them in their local areas. The appeal scheme is contrary to the strategic objectives of the recently adopted Local Plan. It has long been,

[32] See Mr Dunlop's proof, page 27, paragraph 4,.24
[33] Appendix B to Ms Rouse's rebuttal, table A
[34]Court of Appeal judgment in Gladman v Daventry [2016] EWCA Civ 1146 at [6]

and remains, a major part of the Council's strategic vision to identify a settlement hierarchy, with development focused on allocated sites and in urban areas. It is perfectly clear, reading the Local Plan as a whole, that in rural settlements such as Sturry, housing development will only be supported if it is within the built up area of the village and is of a size, design, scale, character and location appropriate to the character of the area. At the bottom of the hierarchy, the Local Plan adopts a restrictive approach to housing development in the countryside. The appeal scheme offends that spatial vision first because it is not within the built up area of Sturry but rather in the countryside, and second because it is harmful by reason of its size, scale, character and location.

64. Policies in the Local Plan must be read and interpreted as a whole and in context. The context includes the Plan's spatial vision, other policies in the plan and the explanatory text[35]. Reading the plan as whole it is clear beyond any reasonable doubt that the appeal scheme is in the countryside. It is outside the settlement of Sturry and is contrary to the spatial vision of focusing development within the built confines of the urban areas and villages and protecting the countryside from housing development.

Policy SP4

65. The appeal scheme finds no support in policy SP4. Housing development in locations other than those explicitly supported by policy SP4 will conflict with the plan because they will be contrary to the comprehensive strategy for housing development embodied in that policy. That principle was accepted by the Court of Appeal in Gladman v Canterbury CC (CD 11.08 at paragraph 34).

66. The Appellant recognises the pivotal role of SP4 in the determination of this appeal and seeks to persuade you that the scheme accords with the spatial strategy embodied in that policy. It is wrong to do so. Unfortunately, Ms Richardson's evidence to the inquiry was highly partisan. She clung resolutely to her claim that the appeal scheme was in accordance with policy SP4 even when that proposition became untenable. Her evidence sought to further her employer's case rather than to assist the Inspector with

[35] Gladman v Canterbury CC (CD 11.08) at paragraph 22

an impartial assessment of the policy position. The Inspector should approach her evidence with caution for it would lead him into legal error.

67. Read as a whole, the following parts of the Local Plan are relevant in understanding the restrictive policy approach to housing development in the countryside outside the built confines of the village of Sturry:

i) **The introduction to the Local Plan**, at page 5, describes the district as comprising three urban areas (Canterbury, Herne Bay and Whitstable); 35 villages and attractive countryside. Sturry is one of the 35 villages. The appeal site must fall into one of the one of the categories identified in the Plan. Eventually, Ms Richardson accepted that the appeal site is not within the settlement of Sturry and that it is in the countryside.

ii) **The objective of the Local Plan,** identified on page 237, paragraph 10.1 as follows: "*One of the City Council's objectives is to protect and enhance the countryside, acknowledging its own intrinsic value, the diversity of its landscapes, heritage and wildlife and recognizing that a high quality rural environment contributes to the economic, social and cultural well-being of the District".* The objective is to protect and enhance all of the countryside and not just those with a landscape designation. It accords with paragraph 170 of the NPPF which acknowledges that *all* countryside has intrinsic character and beauty worthy of recognition.

iii) **Policy SP4 and its explanatory text,** on pages 33 – 34 of the Plan, and in particular the following:

a. Paragraph 1.48 of the explanatory text explains that the Local Plan continues the previous settlement hierarchy, with new housing primarily <u>in</u> the urban centres and with new development <u>in</u> the rural settlements limited, proportionate in their scale and position to the settlement hierarchy. Plainly the text envisages housing development within rather than outside rural settlements such as Sturry.

b. Paragraph 1.50 of the text says that new housing sites in rural settlements should reflect the settlement patters. Again, the explanatory text envisages housing development within the rural settlements, including Sturry, and not outside them.

c. Para 1.51 explains that infilling may not always be acceptable because open spaces may contribute to the character of the village. It then says "*Development needs to be considered in context within the size and character of the village it is planned for. For example, a proposed development of a vacant site with five to ten homes within a larger village (such as the rural service centre of Sturry or one of the local centres) might be considered acceptable development*". The text again reinforces the Local Plan's objective to locate new housing development within the rural centres and local centres and it gives an indication of the scale of development that may be appropriate within those settlements. That text is relevant in interpreting the policy wording in SP4 and it indicates that development in this location and of this scale would not accord with the Plan.

d. Para 1.52 says that the Council does not identify the built confines of villages by a line on the Proposals Map as to do so would infer that any vacant plot within the boundary was suitable for development, which may not be the case. The development plan explains that the absence of a settlement boundary is intended to protect undeveloped land within the built confines of the settlement and not to facilitate development outside them. Ms Richardson pointed to the Local Plan Inspector's report as suggesting that the absence of village boundaries was intended for a different purpose, but she accepted that you must give more weight to the adopted development plan that to the LP Inspector's report. The Council agrees.

e. Policy SP4 itself applies to sites other than those allocated in the development plan. The focus of additional 'windfall' sites is said to be the urban areas. They are at the top of the hierarchy created by SP4. Notwithstanding the focus of new housing in those urban areas, the policy wording says that housing should be in the urban areas: development outside

but adjacent to urban areas would conflict with the policy. Sturry and the local centres fall in the second rung of the hierarchy and are therefore expected to accommodate less development that the urban areas. One would expect a stricter approach in those rural settlements than in the urban areas. It would not make sense for the policy to apply a more lenient approach to housing outside the villages than it does to housing outside urban areas, which are to be the focus for new housing development.

f. The Appellant relies on the absence of the word "in" in policy SP4(2) to suggest that housing outside those villages would be in accordance with the policy. Their approach is to interpret the policy wording as though it was a statute or contract, which is not the correct approach[36]. The correct approach is to seek to discern the intention of the policy and to give effect to that intention. Plainly the intention is to allow for development within the rural settlements and to restrict development outside of them.

g. Unlike the previous Local Plan, the 2017 Local Plan contains express policies that are restrictive of development in the countryside, namely policy SP4(5) and HD4. Ms Richardson accepts that the appeal site is in the countryside. The Appellant is wrong to suggest that there is any distinction drawn in the Local Plan between the "countryside" and the "open countryside" mentioned in policy SP4(5). The Local Plan uses the phrases interchangeably (see, for example, paragraph 2.63 of the Local Plan which refers to both the "countryside" and the "open countryside" and draws no distinction between them). Its objective is to protect all of the countryside from inappropriate housing development such as that proposed in this appeal.

iv) **Policy HD3 and its explanatory text,** on pages 56 – 58 of the Local Plan and in particular the following:

a. The policy wording explains that rural exception sites are those sites on unallocated land outside the boundary of the urban areas and/or outside the built confines of villages. Ms Richardson accepted that the reference in

[36] Gladman v Canterbury CC (CD 11.08), at paragraph 22

policy HD3 to development outside the built confines of village applies to the village of Sturry. The policy makes it clear that housing development outside the built confines of villages will only be allowed where the requirements in HD3 are met. It is common ground that they are not met in this case.

b. Paragraph 2.51 of the explanatory text explains that "*The rural exceptions policy HD3 enables land which would not ordinarily be acceptable for housing development in rural areas to be made available for low cost housing".* Policy HD3 allows, in exceptional circumstances, for development on sites that would not normally be acceptable in policy terms, namely on sites that are outside the boundaries of urban areas and outside the built confines of villages. If policy SP4(2) already allowed housing development outside the built confines of Sturry and the other villages mentioned in that policy, then there would be no need for a policy such as HD3.

c. Paragraph 2.54 of the explanatory text explains that "*Assuming there are no other overriding planning objections, the City Council may reach agreement with an applicant and grant planning permission for the development on the basis that it is an exception to normal planning policy justified by an identified local need".* Again, the text makes it clear that housing schemes may be permitted outside the built up areas of villages as an exception to the general rule set out in SP4. The general rule must therefore be that development outside the built confines of villages such as Sturry will <u>not</u> be acceptable.

v) **Policy HD4 and its explanatory text**, on pages 59 – 60 of the Local Plan, and in particular:

a. The policy is entitled "New Dwellings in the Countryside". Ms Richardson accepts that the appeal site <u>is</u> in the countryside. This policy must therefore be engaged. It explains that new dwellings in the countryside will only be permitted in certain specified circumstances, none of which apply here.

b. Paragraph 2.58 explains that "*The City Council considers that development within existing villages that is appropriate to the size and character of the village is generally acceptable in principle, and the provision of housing development within some villages is likely to continue, thus adding to the existing housing stock in the rural area."* The text draws a distinction between housing development within the villages, which is generally acceptable, and housing development outside the villages, in the countryside, where housing will only be permitted if the HD4 criteria are met.

vi) **Policy HD5 and its explanatory text,** on pages 61 – 62 of the Local Plan, and in particular:

a. The explanatory text appears under the sub-heading "*Residential Reuse of Buildings in the Countryside".*

b. Paragraph 2.61 explains that the reuse of existing buildings in the countryside is preferred to new building development. Plainly, the Plan takes a more restrictive approach to new dwellings in the countryside than it does to the reuse of existing buildings in the countryside. Yet even conversions of existing buildings will be subject to "strict control", according to paragraph 2.63 of the explanatory text. New dwellings in the countryside must be subject to even stricter control. On the Council's interpretation, that strict control is provided through policies SP4 and HD4. On the Appellant's interpretation there is no such control on new dwellings in the countryside because SP4(2) would be permissive of development on the countryside fields surrounding Sturry, Barnham, Blean, Bridge, Chartham, Hersden and Littlebourne. That interpretation flies in the face of the Plan, read as a whole.

c. Para 2.63 explains that residential conversions in the open countryside will only be allowed in exceptional circumstances. Again, it uses the phrases 'countryside' and 'open countryside' interchangeably. There is no distinction in the Plan between the approach to housing in the "countryside" or in the "open countryside".

d. Para 2.64 explains that conversions of buildings in the countryside will need to comply with the criteria in policy HD5 and policy HD5 and then talks of conversions in the 'open countryside'. Those phrases are used interchangeably. The Local Plan draws no distinction between them.

e. The policy wording in HD5 refers to rural conversions in the "open countryside", yet the explanatory text refers to conversions in the "countryside". Again, the phrases are used interchangeably. They are not intended to encourage a different approach to development in the "countryside" from development in the "open countryside".

vii) **Policy OS6 and its explanatory text,** on pages 276 – 277 of the Local Plan. In particular,

a. Paragraph 11.43 of the explanatory text explains that "*There are national objectives that restrain built development outside the urban areas and in the countryside which is supported by the Council. The allocation of green gaps on the proposals map…supplements these."* The Council's support of the national objective to restrain development in the countryside is embodied in policies SP4 and HD4.

b. Paragraph 11.44 of the explanatory text explains that historically, some development has occurred outside the urban areas and led to the erosion of the open countryside and coalescence between built up areas. It goes on to say "*The City Council is concerned that this gradual coalescence between existing built up areas not only harms the character of the open countryside, but is having an adverse impact on the setting and special character of villages."* To address that concern, the Council has designated the field adjacent to the appeal site as a Green Gap. Plainly the Local Plan treats that field as part of the "open countryside". If that site, which Ms Gruner insisted was not part of the countryside in landscape terms, is considered by the Council to form part of the "open countryside", there is no reason to suggest that the appeal site is not. There is nothing to distinguish between them in terms of their "open countryside" credentials.

c. Paragraph 11.46 of the explanatory text explains that the Green Gaps are critical to the objective of retaining separate identities of settlements but makes it clear that other sites in the countryside are also worthy of protection. It says "*Existing development constraint policies remain the most important means of countryside restraint and this will remain unchanged outside the urban areas. It is therefore important that there is not a perceived tiering of countryside location".* It is clear from the context that the "urban areas" referred to in the text include towns and the built up areas of villages. The text explains that development constraint policies are the most important means of "countryside" (note, not "open countryside") protection. Those policies of restraint protecting the countryside are found in policy SP4 and HD4. They apply to the countryside generally and not only to some sub-category of "open countryside".

68. Reading the Plan as a whole, it cannot possibly be right to say that it is permissive of new housing development outside the built confines of Sturry. This scheme conflicts with the fundamental spatial strategy for Canterbury district and its approval would be contrary to the plan-led system enshrined in s.38(6) and the NPPF.

69. The scheme also conflicts with policies HD4, DBE3, LB4 and EMP12. Notwithstanding the fact that it accords with some policies in the Plan (such as the affordable housing policy in HD2; the biodiversity policy in LB9, and the open space policy in DBE8), Ms Richardson accepted that conflict with policy SP4 alone meant the scheme did not comply with the development plan, read as a whole.

70. In the event that you find the Council is unable to demonstrate a five year supply of housing land, there is a question about the effect of policy SP1. The Appellant argues that if the tilted balance in policy SP1 is engaged and the adverse impact of the development do not significantly and demonstrably outweigh its benefits, the scheme will accord with the development plan as a whole. That is not right. The one appeal decision[37] relied upon by the Appellant to support that proposition is clearly distinguishable from the present case. In that case the scheme accorded with the

[37] The Langton Road appeal decision (CD 10.13)

locational policies of the development plan[38] and the conflict with other policies was "*fairly inconsequential*"[39]. It was in those circumstances that policy SP19 (which is akin to Canterbury's policy SP1) was found to be decisive.

71. In this case, the appeal scheme is contrary to the policy on the location if housing. Even if the scheme were to comply with the single policy in SP1, it would still be contrary to the Canterbury's spatial strategy for meeting its housing need. Policy SP4 is fundamental to the Plan. A scheme that finds no support in policy SP4 cannot be said to accord with the development plan.

The Planning Balance

72. It is notable that in the Appellant's statement of case and in Ms Richardson's proof, the Appellant argued (i) that the appeal scheme was in accordance with the development plan and/or (ii) that in the absence of a five year supply of housing land, the adverse impacts of the development did not significantly and demonstrably outweigh the benefits. It was no part of the Appellant's case that permission should be granted if the development was found to conflict with the development plan in circumstances where the Council has a five year housing land supply.

73. Ms Richardson argued in cross-examination that it was open to her to raise a new argument in her oral evidence. She sought to suggest for the first time in her oral evidence that even if the scheme did not accord with the development plan and the Council has a five year supply, nonetheless the appeal should be allowed because the conflict with the plan was outweighed by other material considerations. That is not an argument open to the Appellant. There was no application under rule 16(10) of the Town and Country Planning Appeals (Determination by Inspectors)(Inquiries Procedure)(England) Rules 2000 to amend the Appellant's statement of case (as required under rule 6) and their case is confined to that set out in the statement of case of October 2018.

[38] Ibid, paragraphs 53, 73 and 83
[39] Ibid, paragraph 84

74. As with any planning application, there is a duty to have regard to the development plan and to make a decision in accordance with that plan unless material considerations indicate otherwise. As Ms Richardson accepted, "other" material considerations will be matters other than those addressed in the development plan. Many of the benefits that she relied upon amounted to no more than compliance with particular development plan policies. Those fall to be assessed in determining the first question, namely whether the appeal scheme accords or conflicts with the plan. They should not be double-counted again in considering the second question, namely whether conflict with the plan is outweighed by "other material considerations".

75. Of the benefits she identifies on pages 51 – 52 of her proof, some are not benefits at all (eg. the alleged townscape benefits, in circumstances where both landscape experts agree that the development will harm the townscape; and the alleged compliance with the spatial strategy when the scheme is plainly contrary to policy SP4), many amount to no more than compliance with particular development plan policies (eg the provision of affordable housing, the net biodiversity gain and the provision of open space) and some are simply mitigation for the harmful effects of the appeal scheme (eg the offsite highway works and PRoW upgrades and provision of parking bays to make up for the loss of on-street parking). The alleged benefits have been overstated by the Appellant.

76. The NPPF is a material consideration in determining the appeal. However, as a policy document, it ought not to be treated as if it had the force of statute. It does not, and could not, displace the statutory presumption in favour of the development plan[40].

77. The Council is able to demonstrate a five year housing land supply so the tilted balance in paragraph 11(d) is not engaged. Rather, the approach in paragraph 12 of the NPPF should be appplied: "*Where a planning application conflicts with an up-to-date development plan…permission should not usually be granted".*

78. Even if there were no five year supply, such that paragraph 11(d) is engaged, great weight should be given to the preservation of heritage asserts[41] and this scheme will not preserve the listed buildings at Sweech Farmstead: it is common ground that it will

[40] Suffolk Coastal v SSCLG [2016] EWCA Civ 168, paragraph 42
[41] NPPF para 193

harm the significance of the listed farmhouse itself. That harm is not outweighed by public benefits and paragraph 196 of the NPPF provides a clear reason for refusing permission, such that the tilted balance should be dis-applied.

79. The Council accepts that there will be some benefits to the development, not least the delivery of housing and affordable housing, the creation of temporary construction jobs. However, these benefits would arise wherever houses were built and do not justify harmful development in the wrong location. The benefits are tempered by the fact that the Council can demonstrate a five year housing supply without this inappropriate and harmful scheme on sites that have been found to be acceptable for housing. The benefits identified by the Appellant do not outweigh the conflict with the development plan or the harm that would result from this development. In fact, the reverse is true in that the harms significantly outweigh the benefits.

Conclusion

80. For the reasons summarised above, the Council respectfully invites the Inspector to dismiss this appeal.

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