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## Appeal Decision

Inquiry held on 4 February 2020

Site visit made on 5 February 2020

**by Martin Whitehead LLB BSc(Hons) CEng MICE**

an Inspector appointed by the Secretary of State

Decision date: 2<sup>nd</sup> March 2020

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**Appeal Ref: APP/V2255/W/19/3238171**

**Land west of Barton Hill Drive, Minster-on-sea, Kent ME12 3LZ**

- 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 SW Attwood & Partners against the decision of Swale Borough Council.
  - The application Ref 18/503135/OUT, dated 11 June 2018, was refused by notice dated 8 August 2019.
  - The development proposed is the development of up to 700 dwellings and all necessary supporting infrastructure including land for the provision of a convenience store / community facility, internal access roads, footpaths, cycleways and parking, open space, play areas and landscaping, drainage, utilities and service infrastructure works.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the development of up to 700 dwellings and all necessary supporting infrastructure including land for the provision of a convenience store / community facility, internal access roads, footpaths, cycleways and parking, open space, play areas and landscaping, drainage, utilities and service infrastructure works on land west of Barton Hill Drive, Minster-on-sea, Kent ME12 3LZ in accordance with the terms of the application Ref 18/503135/OUT, dated 11 June 2018, subject to the conditions in the attached schedule.

### Procedural and Preliminary Matters

2. I opened the Inquiry on 4 February, and it sat for 4 days, closing on 7 February. I conducted an unaccompanied visit of the area surrounding the site on 3 February between about 1500 hours and 1700 hours prior to opening the Inquiry and an accompanied site visit on 5 February between about 1445 hours and 1615 hours during an adjournment to the Inquiry.
3. The application was submitted in outline form with all matters of detail except access to Lower Road and to Barton Hill Drive reserved for subsequent determination. Prior to its determination by the Council, the description was changed from that of the application to the one given above. I have determined the appeal on this basis.
4. At the Inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

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### **Main Issues**

5. Prior to opening the Inquiry, the Council advised that it would not be defending its reasons for refusal 3, regarding affordable housing, or 4, regarding its impact on highways, and that its Planning Committee has resolved to withdraw these reasons for refusal. Consequently, the main issues are the effect of the proposal on the character and appearance of the surrounding area; and its effect on the setting of the Grade II listed Parsonage Farmhouse.

### **Reasons**

6. The appeal site includes a large part of the site that Swale Borough Local Plan-Bearing Fruits 2031 (SBLP) Policy A12 allocates for residential development for a minimum of 620 dwellings, landscape, open space and transport improvements. Three areas of the appeal site fall outside of the site allocation. These areas are located beyond the resulting settlement boundary and in the surrounding open countryside. Two of the areas are within an Important Local Countryside Gap (ILCG) between Minster, Halfway and Queenborough, which is identified in SBLP Policy DM25.

### ***Character and appearance***

7. The appeal site generally has a rural character and appearance, lying to the south west of the settlement of Minster. It is bounded to the north and east by built development. The A2500 Lower Road passes through the south part of the site, and includes a recently completed roundabout and associated works, together with a cycleway / footway. The part of the site on the south side of Lower Road has an agricultural use and lies to the north of open marshlands, separated from them by arable fields. The appeal site and surrounding area consist mainly of open rolling countryside, with some mature hedges and tree planting along the field boundaries, rising to a high point at the north west corner of the site. The site is not within a designated landscape, as defined under SBLP Policy DM24, but its character is identified in various studies.
8. The Landscape Assessment of Kent, 2004, locates the site within North Sheppey Local Character Area (LCA) and describes this LCA as having an exposed and open character as a result of the loss of hedgerows and orchards due to arable cultivation, Dutch elm disease and coastal exposure. The LCA is assessed as being in poor condition due to, amongst other things, lack of hedgerows and trees and its exposed open character. Its recommendations include encouraging urban planting within built development, creating urban edges which promote intermittent views of built development beyond, and delineating edges between marshes and higher land by enhancing inherent characteristics.
9. I have taken account of the three studies that have been referred to by the appellants as having been undertaken to assess the landscape impacts of residential development on the appeal site, including the Huskisson Brown Associates Landscape Statement, December 2016, which informed the decision to allocate much of the appeal site in the SBLP. SBLP Policy A12 requires development of the allocated site to provide a strong landscape framework, including substantial woodland planting on the southern and western boundaries to be provided as advance planting. The Policy is accompanied by a Concept plan which gives an indication of the location of development on the allocated site to enable compliance with the Policy.

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10. I have considered the impact of including the additional land in the appeal site to that of the allocation site. In this respect, the 'Harris Trust land' occupies part of a small plateau within a generally sloping site, and the appellant has suggested that its inclusion enables a preferable location of public open space within the site from that of the Concept plan. The additional area of land to the west forms a natural depression located within a small plateau area and the appellant has indicated that using this for a Sustainable Urban Drainage System (SUDS) would ensure that the existing surface water regime is mimicked and would respond better to the existing landform than the drainage areas indicated on the Concept plan. The additional area of land to the south of Lower Road includes a drainage basin for the roundabout that has recently been completed. It would be used for SUDS and the appellant has indicated that this would provide a transitional landscape zone and landscape buffer to separate Lower Road and the roundabout from the wider open landscape to the south, including the marshland.
11. The Concept plan shows a wide band of land kept free from built development north of Lower Road. However, the new roundabout and cycleway / footway has extended the area taken by the highway and the associated works on to this land and has given the road a more urban character and appearance, particularly as it includes street lighting and planted beds. Therefore, the importance of keeping this area of land free from built development has been reduced by these highway improvements. The appeal proposal is defined by a Site Parameters Plan, which identifies a 20m wide woodland buffer adjacent to Lower Road. This area of woodland would reflect that along Lower Road to the east of the roundabout between the highway and the 'Thistle Hill' residential development. As such, I find that it would provide sufficient landscaping to ensure compliance with Policy A12 with respect to the provision of a substantial woodland buffer on the southern boundary. It would also be in line with the landscape recommendations for North Sheppey LCA.
12. The proposal for the use of the area of land within the appeal site to the south of Lower Road for SUDS would be consistent with the use of some of this land for the drainage associated with the new roundabout. It would safeguard the land from built development and would enable it to be suitably landscaped in accordance with approved details. I am satisfied that, once established, this landscaping would ensure that the proposed use of the land would not have a significant adverse effect on the surrounding rural landscape. It would also offer the opportunity to enhance inherent characteristics, in line with recommendations for North Sheppey LCA. In addition, it would provide a transitional area of land between the urbanised Lower Road roundabout and the rural landscape to the south, down to the marshland.
13. With regard to the western boundary of the site, a 20m wide woodland buffer is shown on the Site Parameters Plan. Whilst this would not follow the existing mature hedgerow along the east boundary of the Harris Trust land, this hedgerow could still be retained within the site, in accordance with Policy A12 1 c, and the new boundary would be straighter than that shown on the Concept plan, by 'squaring it off'. As such, I consider that this would form a more logical edge of settlement. Even though the Harris Trust land is located on a small plateau, views of the edge of development from the west would not be significantly different from that of a development within the allocation boundary due to the sloping nature of the site. Furthermore, I find that the western SUDS area would not have a noticeable effect in these views due to

the existing hedgerow to the south of it, the level nature of that land and proposed planting and landscaping on it, once established. Therefore, I consider that the proposed additional development to the west would have a limited effect on the landscape character and appearance.

14. The Site Parameters Plan shows built development near to the north western corner of the site, where gradients are at their steepest, whereas the Concept plan identifies this area as open space provision. However, the proposed housing densities in this area are identified as being at their lowest and there would be space to provide landscaping to soften the appearance of the built development.
15. It is inevitable that the development of the site would result in a loss of the existing landscape character, but the allocation of a large part of the site in the SBLP indicates that this loss would be acceptable in accordance with SBLP Policy A12. I accept that there would be aspects of the appeal proposal that would potentially result in greater harm to the landscape, particularly the use of additional areas of arable land and built development on higher ground. However, there would also be benefits due to the proposed layout enabling greater use of landscaping within the site by keeping the SUDS areas separate from the residential development and enabling a well-defined settlement boundary to the west and south of the site. Taking account of the effect of these differences between the appeal proposal and the allocation, I find that the appeal proposal would not have a significantly greater adverse effect on the character and appearance of the area than a scheme that would be Policy A12 compliant.
16. Turning to the effect on the ILCG, SBLP Policy DM25 seeks to ensure that new development does not undermine any of the purposes of the ILCGs, which are given in accompanying paragraph 7.7.34. In terms of these purposes, I am satisfied that the Harris Trust land that would be included in the appeal site would not result in built development extending significantly nearer to Queenborough and Halfway than in the case of the allocated site. Nor would it increase the perception of the gap being closed, due to the proposed woodland buffer providing a well-defined edge of settlement. Also, the area of land to the west that would be used for SUDS would be able to be suitably landscaped to ensure that it would have no worse an impact on the purposes of the ILCG than some of the development that accompanying paragraph 7.7.35 to Policy DM25 suggests as uses that could be conducted in the ILCG.
17. Even though the SUDs would initially require engineering operations, I am satisfied that it would be possible to safeguard the open and undeveloped character of the area. Therefore, I find that the appeal proposals would not have any significant adverse effect on the purposes of the ILCGs, including maintaining the separate identities and character of Minster and Queenborough and preventing them merging, taking account of the effect of the allocated development.
18. I conclude on this main issue that the appeal proposal would have an adverse effect on the character and appearance of the surrounding area, but this would not be materially greater than a development that would comply with SBLP Policy A12. It would fail to accord with SBLP Policy A12, in so far as the site would include land that would be outside that shown on the Proposals Map, and it would fail to accord with SBLP Policy ST3 in that some of the site would be

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outside the existing allocation. It would accord with SBLP Policy DM25, as it would not undermine any of the purposes of the ILCGs.

### **Heritage**

19. I have considered the statutory duties under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which are to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. The National Planning Policy Framework (Framework) identifies in paragraph 190 that development within the setting of a heritage asset can harm its significance. In the case of this appeal, Parsonage Farmhouse is a Grade II listed building, of which its curtilage abuts the north east corner of the site.
20. The Site Parameters Plan shows dwellings within all three fields at the north east corner of the site, that records indicate previously formed one field, known as the 'Spring Field'. The 'overgrown orchard' to the west of the listed building is not included in the appeal site, whereas it is included as land to be retained and managed under the SBLP Policy A12 allocation.
21. Although Parsonage Farm has ceased to retain the function of a farm and its extensive curtilage to the south has a domestic character, with a tennis court, lawn and planted beds, part of its setting includes the fields to the south, as well as the orchard to the west. The fields are the remaining areas of land that connect it to its former agricultural use. However, their importance to the significance of the listed building is reduced as a result of the separation of the building from them by its curtilage and boundary planting, which limits views between the building and this land.
22. The orchard does not form part of the appeal site, but the Council would be able to control future development on that area of land. Although SBLP Policy A12 does not indicate that the safeguarding and maintenance of this land would be important in preserving the setting of the listed building, the Site Parameters Plan identifies an area of open green space to the south of it, which would act as a further buffer between the listed building and the proposed built development.
23. The Site Parameters Plan shows that the proposed built development would be set back from the southern boundary of Parsonage Farm curtilage, separated from it by an area of open space. Whilst this would not retain the agricultural use of the land, neither would it be retained under the development that is allocated on the fields under SBLP Policy A12. I am satisfied that the retention of an open green space and planting to act as a buffer between the built development and the curtilage of the listed building would ensure that the setting would be preserved.
24. SBLP Policy A12 1 e seeks to ensure that the allocated development conserves the setting of the listed building at Parsonage Farm. The accompanying Concept plan shows this by keeping an area of land to the south of the boundary with the building's curtilage as informal open space provision, which is shown to extend further south than that shown on the Site Parameters Plan. Paragraph 6.5.43 of the SBLP states: '*Adjoining the site is Parsonage Farm, a listed building, the setting of which should be conserved through use of landscaping and open space*'. In my opinion, this confirms that the proposed change of use of the land from agricultural to open space is not considered to

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cause any significant harm to the setting of the listed building. I am satisfied that the appeal proposal would provide a sufficiently wide area of open space to the south to achieve a similar function to that shown on the Concept plan of conserving the setting of the listed building.

25. For the reasons given above, I conclude on this main issue that the appeal proposal would preserve the Grade II listed Parsonage Farmhouse and its setting. It would accord with SBLP Policy A12 1 e, as it would conserve the setting of the listed building at Parsonage Farm and a Heritage Assessment, assessing any potential impact on heritage assets, has been undertaken by the appellant; and SBLP Policy DM32, as it would preserve the building's special architectural or historic interest and its setting.

### **Other Matters**

#### *Affordable Housing*

26. The Council has agreed the findings of the latest viability statement prepared by the appellant and has accepted that, taking account of the contributions that would be secured in the engrossed Section 106 Unilateral Undertaking (S106 UU) that the appellant has provided, the inclusion of affordable housing would make the proposed development not economically viable. The proposal would accord with SBLP Policy DM8, as the appellant has demonstrated that the impact of viability of the provision of affordable housing has not changed from the 0% sought under the Policy.

#### *Climate Change*

27. The Council's requirement to take account of the effect of the development on Climate Change is based on its Climate and Ecological Emergency declaration in June 2019. I am satisfied that this is a material consideration and is supported by development plan policies and national policies within the Framework. However, this matter would be addressed by appropriate planning conditions that meet the tests given in the Framework.

#### *Traffic and Transport*

28. A significant number of objections to the proposal have been based on its impact on traffic. However, the proposal would provide measures to encourage use of public transport, cycling or walking, including subsidies, new or improved bus stops and the provision of cycleways and footpaths. This would be a more sustainable solution than improving the highway network to accommodate the increased demand to travel by private car. I acknowledge the concerns expressed about the extent of the new cycleway / footway along Lower Road in that it would not be taken all the way to Neats Court. However, it would be an improvement, particularly when it would provide relatively safe access for bicycles to Queenborough railway station.
29. With regard to the impact of traffic generated by the proposed development on Junction 5 of the M2, Highways England has not objected subject to a planning condition limiting the number of houses to be occupied prior to the opening of a proposed Roads Investment Strategy scheme at that junction.
30. The impacts from the development on two main junctions: Barton Hill Drive / Minster Road mini roundabout and the Halfway Road / Minster Road / The Crescent signal junction, have been considered by the Council and Kent County

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Council (KCC), as the local highway authority. They have agreed that, with appropriate mitigation that would be secured by planning obligations and conditions, the proposal would be consistent with all local and national transport policies. KCC did not object to the proposal on highway grounds and the Council has withdrawn its objection on these grounds.

31. Based on the above, I am satisfied that the impact as a result of traffic that would be generated by the proposed development would be made acceptable by the imposition of planning conditions and obligations to secure appropriate mitigation measures.

*Habitat Regulations (HR) Assessment*

32. The proposal would result in a net increase of dwellings within 6km of the Medway Estuary & Marshes Special Protection Area (SPA) and Ramsar Site, Thames Estuary & Marshes SPA and Ramsar Site and The Swale SPA and Ramsar Site. They are classified in accordance with the European Birds Directive as sites that are important for bird species listed on Annex 1 of the European Directive, which are rare and / or vulnerable in a European context, and also sites that form a critically important network for birds on migration. All three sites are also listed as Wetlands of International Importance under the Ramsar Convention (Ramsar Sites).
33. A permanent likely significant effect on the SPA and Ramsar Sites due to an increase in recreational disturbance, as a result of the proposed development, would be likely to occur. The Council has carried out an Appropriate Assessment and put forward a package of measures in line with the agreed North Kent Strategic Access Management and Monitoring Strategy (SAMMS) and the Bird Wise North Kent Mitigation Strategy to avoid and mitigate any adverse effect on the integrity of the SPA and Ramsar Sites. Natural England (NE) has not objected subject to securing this mitigation to prevent harmful effects on coastal European Sites from increased recreational pressure. These measures would be secured by a planning obligation in the S106 UU.
34. Based on the above, I am satisfied that the measures, which have been agreed with NE and would be secured as a planning obligation, would be sufficient to ensure that there would be no adverse effect on the integrity of the SPA and Ramsar Sites in view of their conservation objectives. Therefore, in this regard, I agree to the proposal under Regulation 63 of the Conservation of Habitats and Species Regulations 2017.

*Omission of the 'Overgrown Orchard' from the appeal site*

35. The Rule 6 Party at the Inquiry did not indicate that they objected to the proposed development, but they did query the omission of the 'overgrown orchard' land from the appeal site, particularly as it has been included in the Policy A12 allocation. However, I am satisfied that its function identified in paragraph 6.5.38 that accompanies Policy A12 of being a 'Biodiversity Action Plan habitat' would not be needed to make the proposed development acceptable. In this respect, the proposal would not be able to ensure that the land would be appropriately managed, but measures would be taken on the adjoining land within the appeal site to mitigate any adverse impact on biodiversity and the proposal has identified that there would be a net gain in this respect. Therefore, I find that the omission of the 'overgrown orchard' land from the appeal site would not result in any significant adverse impact.

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#### *Other objections raised*

36. The concerns expressed by local residents about the impact of the proposed development on the local infrastructure, including Doctors, shops and schools, would be addressed by the measures that would be secured by planning conditions and obligations. These measures include making provisions for an on-site medical centre and shops, whereas the appellant indicated at the Inquiry that the 'Thistle Hill' development did not include such provisions. Concerns about the effect of the proposal on outlook from, and privacy at, adjoining residential properties, and in particular those at the end of Parsonage Chase, should be able to be addressed under the detailed design at the time of the submission of reserved matters. The Site Parameters Plan would allow sufficient flexibility in the design to enable any problems in this respect to be addressed.

#### **Planning Obligations**

37. After the close of the Inquiry, the appellant has submitted an engrossed S106 UU, dated 7 February 2020, based on that agreed with the Council and KCC at the Inquiry. I have considered the information given in the Community Infrastructure Levy Regulations 2010 (CIL) compliance statements provided by the Council and KCC in support of the planning obligations.
38. The obligations to secure contributions towards highway improvements at the Halfway Road junction and Darlington Drive / Parsonage Chase would be necessary to mitigate any adverse impacts on the local highway network of additional traffic that would be generated by the development. This money would be used to deliver traffic measures on local roads, including The Crescent and Lowfield Road, Darlington Drive and Parsonage Chase, to discourage rat running that could result from additional queuing due to increased traffic generated by the proposal at the Halfway / Minster Road signal junction and the Barton Hill Drive / Minster Road mini roundabout. The amount that would be provided has been calculated by KCC as being that which would deliver the appropriate traffic management measures.
39. The Queenborough Road contribution, the Wallend Cottages pedestrian and cycle link contribution and contributions towards Travel Plan incentives would be necessary to increase the attractiveness of using sustainable means of transport, including public transport, walking and cycling, and reduce the reliance on the private car by future residents of the development. The money would be targeted towards infrastructure that would be relatively close to the development and therefore likely to be used by its occupants.
40. The obligations to secure contributions towards education facilities would be necessary as KCC has provided details to demonstrate that the existing facilities are insufficient to cater for the additional demand from future occupants of the dwellings. The primary school contributions would go towards the construction of the proposed new Rushenden Primary School, which cumulatively with other contributions would enable its completion. KCC has indicated that the community learning contribution would go towards Sheerness Adult Education Centre, which is local to the appeal site. The secondary education contribution would be used towards expanding Highsted Grammar School for Girls and Borden Grammar School for Boys, which KCC has shown to be currently full. I am satisfied that the contributions sought would be necessary to make the development acceptable in planning terms;



directly relate to the development, as the future occupants would be likely to use the education facilities that would be provided through the contributions; and would be fairly related in scale and kind to the development.

41. The Youth Services contribution would go towards the local facility at Sheerness Youth Centre, which would need to cater for an increased demand as a result of future occupants of the proposed development. The Social Care contribution would be used towards the Changing Place Facility at Sheppey Healthy Living Centre in Swale to enable additional services to be provided to meet the requirements of future occupants of the proposed dwellings. These facilities are within easy reach of the appeal site and the contributions have been calculated based on the likely level of additional demand that would be generated by occupants of the proposed dwellings.
42. The contributions requested by KCC towards libraries would be used towards new stock and shelving at the local Minster-on-Sea Library. KCC has provided evidence to show that this library, which would be relatively near to the appeal site, is already under-provided. As such, there would be a need for additional library provision as a result of the proposed development. This provision would contribute towards the expansion of the facilities to enable the library to continue to provide a similar level of service for all users, including those generated by the development.
43. The obligations to secure on-site provisions towards open space, and a contribution towards new changing facilities at Sheppey Rugby Football Club, which has premises near to the site, would be necessary to mitigate increased demand for recreation and sports facilities that would be generated by the proposed development. The on-site open space provision and contributions towards its maintenance, including the land to be used for SUDS, would be necessary to ensure compliance with SBLP policy CP6, SBLP Policy A12 and SBLP Policy DM17, which all require the provision of open space in new development. It would also be needed to mitigate any ecological impact of the development. The off-site sports provision is necessary, as there would not be sufficient on-site sports pitch provision to meet the requirements of SBLP Policy A12 given in supporting paragraph 6.5.41. The amount is lower than the normal contribution that would be expected by the Council, to take account of the area of open space that would be provided on-site for informal use.
44. The Council has indicated that the NHS Healthcare contribution would be used to expand General Practice facilities at Minster Medical Centre, which is close to the appeal site and accessible by walking. Swale NHS Clinical Commissioning Group (CCG) has provided a formula approach to ensure that the contribution would be fairly and reasonably related to the scale of the development. The need for such facilities is set out in SBLP Policy A12 8, which identifies health provision as one of the infrastructure needs arising from the development of the allocation site.
45. The obligation to secure retail / community facilities is necessary to address the need identified by KCC local highway authority to help reduce the generation of journeys by private car from the development. Land for such facilities has been included in the appeal proposal and these facilities would be directly related to the development, being included in the description. Although they would potentially be used by more people than just future residents, which would help to maintain their financial viability, they would be of a scale

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necessary to mitigate the impact of the proposal on the local highway network. A contribution to assist with their delivery would be necessary, given the need to attract suitable businesses to use the premises.

46. In terms of the requested contributions towards waste bins, I am satisfied that they would be necessary to make the development acceptable in planning terms to prevent non-compliance with SBLP Policy CP6. They are based on the standard charges given in the Council's Developer Contributions Supplementary Planning Document. As such, they would be directly and fairly related to the development.
47. The SPA mitigation contribution would go towards mitigation measures to avoid adverse effects on the SPA and Ramsar Sites that have been identified near to the appeal site. Without such measures, which include a contribution towards North Kent SAMMS and the implementation of the Bird Wise North Kent Mitigation Strategy, the proposed development would result in an adverse effect on the integrity of the SPA and Ramsar Sites and would therefore fail to accord with the Conservation of Habitats and Species Regulations 2017. Therefore, this contribution, which I am satisfied would be fairly and reasonably related in scale and kind to the development, would be necessary to secure the mitigation that would make the development acceptable.
48. The contribution towards Great Crested Newt (GCN) mitigation is necessary as the GCN survey submitted by the appellant indicates that receptor areas within the appeal site are likely to be required. The sum that has been calculated would be reasonable to cover a 10-year maintenance period for the areas as part of the wider landscape and ecological mitigation strategy.
49. An obligation to secure a local employment scheme would be necessary to reduce the high levels of out commuting that the Council has suggested is experienced in the Borough and improve the level of local skills. This would accord with SBLP Policy CP1 which seeks, amongst other things, to ensure that new development encourages younger people to retain their skills within Swale, given the relatively large scale of the proposed development.
50. I have examined the evidence provided by the Council, KCC and Swale NHS CCG regarding the need for these contributions and compliance with CIL Regulation 122. Based on this, and for the reasons given above, I am satisfied that all the planning obligations in the UU would be necessary to mitigate the effects of the development and they meet the tests in CIL Regulation 122 and paragraph 56 of the Framework. I have therefore taken them into account in my determination of this appeal.

#### ***Planning Balance***

51. I have considered the following benefits of the proposed development. I agree with the Council and appellant that the provision of up to 700 dwellings carries substantial weight. The proposed development would also be likely to contribute towards the 5-year housing land supply, particularly as I have conditioned it to commence within 2 years of the reserved matters approval. I have given this moderate weight as the number of houses that would be likely to make such a contribution would be limited by the need for approvals, a developer to be engaged, and the need for advanced highway works to be completed.

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52. Other benefits include the delivery of the Rushenden Primary School, which the Council has not disputed is needed to help facilitate urban regeneration in a deprived area. Without the funding that would be provided through the S106 obligation, the appellant has claimed that the school would not be able to be delivered, even though contributions have been made from other development. Also, the proposal would provide a local centre, which would offer a benefit to existing nearby residents as it would be accessible to them; and additional health service facilities through the medical centre, which would cater for more patients than would be generated by the proposal, according to the letter from Swale NHS CCG. I have given these benefits moderate weight, as the school is necessary to mitigate the impact of the development and there is no guarantee that the medical centre would be occupied or that the shops would be taken up.
53. Most of the benefits of improvements to the A2500 Lower Road have already been realised by the completion of the roundabout and cycleway / footway. However, the appellant has indicated that the Phase 2 works would be carried out should the development take place and that these would offer further benefits. There would also be benefits from a biodiversity net gain of at least 10%, secured by a planning condition. This biodiversity net gain carries substantial weight.
54. With regard to paragraph 11 d) i of the Framework, I have concluded that the appeal proposal would preserve the setting of the Grade II listed Parsonage Farmhouse. However, even if that were not the case, the harm to the significance of the heritage asset would be less than substantial. In weighing this less than substantial harm against the benefits of the appeal proposal, as required in paragraph 196 of the Framework, I have taken account of the economic and social benefits of providing up to 700 dwellings. Whilst I have attached considerable weight to the desirability of preserving the heritage asset's significance, any harm found would only be small for the reasons that I have previously given. As such, this less than substantial harm would clearly be outweighed by the significant public benefits of the proposal.
55. Although there is a slight difference in the agreed housing land supply figures between the appellant and Council, with the Council indicating 4.1 years and the appellant 4.0 years, the Council has accepted that it cannot demonstrate a 5-year supply of deliverable housing sites, even when it takes account of windfall sites, which it has suggested would take it to 4.6 years. Therefore, relevant policies for the supply of housing should not be considered up-to-date. In such circumstances, paragraph 11 d) ii of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. I have considered the proposal in the context of the presumption in favour of sustainable development.
56. I have found that the proposal would have an adverse effect on the character and appearance of the surrounding area and would fail to accord with SBLP Policy A12 and SBLP Policy ST3. However, it would deliver up to 700 dwellings, most of which would be located on land that is included in the Policy A12 allocation. It would also comply with most of Policy A12, the main exception being that it would include land outside the allocation boundaries. In addition, I am satisfied that the proposal would be able to be designed to ensure that it

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would conserve the setting of Parsonage Farmhouse listed building and, as such, would comply with the relevant SBLP policies and the Statutory test. Based on this and taking account of the relatively recent date of adoption of the SBLP, I have given very little weight to the conflict with development plan policies.

57. For the above reasons, I find that the adverse impacts of the proposed development would not significantly and demonstrably outweigh its benefits, when assessed against the policies in the Framework taken as a whole. This would still be the case even if the proposal resulted in less than substantial harm to the significance of Parsonage Farmhouse listed building, as that harm would not be great. Therefore, the presumption in favour of sustainable development weighs in favour of the proposal.

### ***Planning Conditions***

58. I have considered the suggested conditions should the appeal be allowed that formed the basis of discussions at the Inquiry. It is necessary to impose the conditions regarding the time scale for submission of reserved matters<sup>1</sup> to ensure that development would be carried out expediently. I consider that conditions requiring the standard 2 year period for commencement of development following approval of reserved matters<sup>2</sup> are justified rather than the appellant's proposed 4-year period, to enable the development to be more likely to contribute to the 5-year housing supply, given that the appellant has indicated that there is currently no identifiable barrier to the development commencing. Conditions referring to the Phasing Plan, Site Parameters Plan and Landscape and Open Space Framework Plan<sup>3</sup> are necessary to provide certainty.
59. Conditions requiring the development to be designed to an approved Design Code and an approved site-wide strategy<sup>4</sup> are necessary to ensure a good quality design and in the interests of the character and appearance of the area. A condition to ensure that appropriate measures would be used to address, amongst other things, carbon emissions<sup>5</sup> is necessary to ensure that the development would be designed to ensure that it mitigates climate change impacts, taking account of the Council's Climate and Ecological Emergency Declaration, June 2019. I am satisfied that the condition would be flexible enough to take account of the relevant Building Regulations and planning policy requirements at the time of the construction of each phase of the development. The condition suggested by the Council is not supported by any national or local policies and is less flexible in its approach to the required standards to reduce carbon emissions.
60. A condition to ensure that the non-residential buildings would be constructed to at least BREEAM<sup>6</sup> 'Good' standard<sup>7</sup> is consistent with the current development plan SBLP Policy DM19 and there is no adopted policy support for the Council's requirement of an 'Excellent' standard. I am satisfied that this condition is necessary in the interests of promoting energy efficiency and sustainable

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<sup>1</sup> Conditions 1 and 2

<sup>2</sup> Conditions 3 and 4

<sup>3</sup> Conditions 5 and 6

<sup>4</sup> Conditions 7 and 8

<sup>5</sup> Condition 9

<sup>6</sup> Building Research Establishment Environmental Assessment Method

<sup>7</sup> Condition 10

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development and would allow design changes to be taken on board as a result of changes in national or local policies at the time of approval of details under reserved matters. A condition to control the water consumption rate of the development<sup>8</sup> is necessary in the interests of water conservation and sustainability.

61. Conditions to control the level and height of the development<sup>9</sup> and the materials to be used for the buildings<sup>10</sup>, to protect existing trees and hedges to be retained<sup>11</sup>, to secure the implementation of appropriate soft landscaping<sup>12</sup> and to safeguard the landscaping<sup>13</sup> are necessary to protect the character and appearance of the area. A condition regarding telecommunication infrastructure<sup>14</sup> is necessary to ensure that the required infrastructure and utility connections would be carried out and to accord with SBLP Policy CP6. A condition to control the use of the convenience store / community facility<sup>15</sup> is necessary to safeguard such a facility in the interests of sustainability and local amenity. A condition regarding noise and to secure the provision of any mitigation found to be necessary<sup>16</sup> is in the interests of residential amenity. I have not included all the detail that the Council has suggested as that is too prescriptive.
62. Conditions to control the level of development occupied until highway measures have been implemented at the M2 Junction 5<sup>17</sup>, Lower Road<sup>18</sup> and Halfway traffic signal junction<sup>19</sup> are necessary to prevent severe cumulative impacts on the road network. A condition to secure the implementation of a Construction Management Plan<sup>20</sup> is in the interests of highway safety and convenience and to protect local amenities. A condition to control the hours of working<sup>21</sup> is necessary to protect residential amenity. Conditions to secure the provision of a footway<sup>22</sup>, the provision of appropriate access to dwellings<sup>23</sup>, the provision of a Puffin Crossing on Barton Hill Drive<sup>24</sup> and the protection of space for parking and loading and unloading vehicles<sup>25</sup> and to ensure that the adopted highways would be constructed to the required standards<sup>26</sup> are necessary in the interests of pedestrian and highway safety.
63. Conditions to secure bicycle parking<sup>27</sup>, improved provision for buses<sup>28</sup> and a Travel Plan<sup>29</sup> are necessary to encourage the use of sustainable means of transport. Conditions to secure the completion of a pedestrian link to Lovell

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<sup>8</sup> Condition 11  
<sup>9</sup> Condition 12  
<sup>10</sup> Condition 14  
<sup>11</sup> Condition 42  
<sup>12</sup> Condition 43  
<sup>13</sup> Condition 44  
<sup>14</sup> Condition 13  
<sup>15</sup> Condition 15  
<sup>16</sup> Condition 16  
<sup>17</sup> Condition 17  
<sup>18</sup> Condition 18  
<sup>19</sup> Condition 19  
<sup>20</sup> Condition 20  
<sup>21</sup> Condition 21  
<sup>22</sup> Condition 22  
<sup>23</sup> Conditions 23 and 24  
<sup>24</sup> Condition 25  
<sup>25</sup> Condition 26  
<sup>26</sup> Condition 28  
<sup>27</sup> Condition 27  
<sup>28</sup> Condition 31  
<sup>29</sup> Condition 32

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Road and the installation of tactile paving<sup>30</sup> and a pedestrian link to Parsonage Chase<sup>31</sup> are in the interests of highway safety and to encourage walking and cycling to reduce the dependence on the use of the private car. A condition to ensure that electric vehicle charging points would be provided<sup>32</sup> is in the interests of climate change and reducing pollution.

64. Conditions regarding the provision and management of a sustainable surface water drainage system<sup>33</sup> and a foul drainage system<sup>34</sup> are necessary to protect against flooding and water pollution and ensure that the development would be appropriately drained. I have combined some of the suggested conditions. A condition to ensure that contamination is dealt with appropriately<sup>35</sup> is in the interests of health and safety and to prevent water pollution.
65. Conditions regarding ecology, including a site-wide strategy and detailed phased strategies and measures, and setting the target of at least achieving an overall biodiversity net gain of 10%<sup>36</sup>, are necessary to protect habitats and species and promote the government objectives given in the Framework paragraph 174 b) of achieving measurable net gains for biodiversity. I am satisfied that a separate condition to ensure that a biodiversity net gain of 10% is not necessary. However, I find that such a % gain is in line with national requirements and would be achievable for the development overall, given the findings of the appellant's ecological report.
66. A condition to secure the implementation of a Landscape and Ecological Management Plan<sup>37</sup> is necessary in the interests of biodiversity. A condition to ensure that sufficient open space and planting would be provided<sup>38</sup> is to protect the setting of Parsonage Farmhouse listed building. A condition suggested by the Council to provide an information board regarding the listed building is not necessary and is not supported by any policy. A condition to secure an archaeological assessment<sup>39</sup> is necessary to mitigate any adverse impact on archaeological remains. I am satisfied that all the conditions that I have included are reasonable and necessary, satisfy the tests given in the Framework and reflect the advice in the Planning Practice Guidance.

### **Overall Conclusions**

67. Although I have found that the proposal would not accord with the development plan as a whole, the other material considerations that I have given above outweigh this conflict with development plan policy. Therefore, for the reasons given and having regard to all relevant matters raised, I conclude that the appeal should succeed.

*M J Whitehead*

INSPECTOR

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<sup>30</sup> Condition 29

<sup>31</sup> Condition 30

<sup>32</sup> Condition 33

<sup>33</sup> Conditions 34, 35 and 36

<sup>34</sup> Condition 37

<sup>35</sup> Condition 38

<sup>36</sup> Conditions 39 and 40

<sup>37</sup> Condition 41

<sup>38</sup> Condition 45

<sup>39</sup> Condition 46

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## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

William Upton	QC, instructed by Swale Borough Council
He called	
Greg Chant-Hall	Chief Operating Officer, Carbon Free Group CIC
BSc(Hons) CEnv MCIQB	
FIEMA FRSA MCIWM	
ACIBSE	
Richard Pestell BSc	Director, Stantec UK Ltd
MPhil MRTPI	
For Round Table Session on Character and Appearance-	
John-Paul Friend	Director, LVIA Ltd
HND(LGD) BA(Hons)	
DipLA CMLI	
For Round Table Session on Heritage-	
Emma Rouse MCIFA MA	Consultancy Principal, Wyvern Heritage and
BA(Hons)	Landscape
For Sessions on Planning Obligations and Planning Conditions-	
Andrew Byrne	Officer, Swale Borough Council

### FOR THE APPELLANT:

Peter Village	QC, instructed by JB Planning Associates
He called	
Mike Axon BSc FCIHT	Director, Vectos traffic & transport consultants
John Boyd, BA (Hons)	Managing Director, JB Planning Associates
MRTPI	
For Round Table Session on Character and Appearance-	
Michelle Bolger CMLI	Michelle Bolger Expert Landscape Consultancy
DipLA BA PGCE BA	
For Round Table Session on Heritage-	
Dr Chris Miele RTPI	Senior Partner, Montagu Evans chartered
IHBC	surveyors
For Sessions on Planning Obligations and Planning Conditions-	
Paul Sharpe	Paul Sharpe Associates

### FOR THE RULE 6 PARTY:

Janice Steadman	Representing H Steadman, J C Read, J H Read and J C Newman
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### INTERESTED PERSONS:

Alan Bengall	Local Resident
Councillor Cameron Beart	Swale Borough Councillor
Councillor Mike Baldock	Swale Borough Councillor
Councillor Tim Valentine	Swale Borough Councillor
Alan Gilbert	Development Contributions, Kent County Council

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#### DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Updated Core Documents List, submitted by the appellant on 4 February
- 2 Signed Heritage Statement of Common Ground, submitted by the appellant on 4 February
- 3 Signed overarching Statement of Common Ground, submitted by the appellant on 4 February
- 4 Signed Transport Statement of Agreement and Disagreement between Swale Borough Council and the Appellant, submitted by the appellant on 4 February
- 5 Note and unsigned Statement of Common Ground on Viability, submitted by the appellant on 4 February
- 6 Draft S106 Unilateral Undertaking, submitted by the appellant on 4 February
- 7 Home Quality Mark One Technical Manual, submitted by the Council on 4 February
- 8 Statement of Councillor Cameron Beart, submitted by Councillor Cameron Beart on 4 February
- 9 Opening Submissions on behalf of the appellant, submitted by the appellant on 4 February
- 10 Statement of Alan Bengall, submitted by Alan Bengall on 4 February
- 11 Statement of Councillor Tim Valentine, submitted by Councillor Tim Valentine on 4 February
- 12 E-mail to the Council, dated 20 January, with a letter of objection from Christopher Clarke, submitted by the Council on 4 February
- 13 Statement of Councillor Mike Baldock, submitted by Councillor Mike Baldock on 4 February
- 14 Plan Ref MB Figure 26 showing alternative sites considered, submitted by the appellant on 4 February
- 15 Table of a comparison of sites areas between the allocated site and the appeal site, submitted by the appellant on 4 February
- 16 Appellant's position on draft conditions, submitted by the appellant on 4 February
- 17 Plans showing the location of the Council's area of open space and screening to preserve the setting of the listed Parsonage Farmhouse, submitted by the appellant on 4 February
- 18 Kent County Council CIL Compliance Statement, submitted by the Council on 5 February
- 19 Plans showing the location of open space and screening to preserve the setting of the listed Parsonage Farmhouse, submitted by the Council on 5 February
- 20 Ministerial letter to Swale Borough Council, dated October 2019, regarding climate change, submitted by the Council on 5 February
- 21 Revised draft S106 Unilateral Undertaking, submitted by the appellant on 5 February
- 22 Accompanied Site Visit itinerary, submitted by the Council on 5 February
- 23 Letters, dated 11 July 2018 and 21 June 2019, from Swale Clinical Commissioning Group, submitted by the Council on 6 February
- 24 Letter, dated 28 January 2020, from Swale Borough Council to the appellant regarding transport impacts and viability, submitted by the Council on 6 February
- 25 Signed Statement of Common Ground: Viability, submitted by the Council on 6 February



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- 26 Extract from Developer Contributions Supplementary Planning Document, November 2009, submitted by the Council on 6 February
- 27 E-mail from Kent County Council, dated 15 January 2020 agreeing to highway measures, submitted by the Council on 6 February
- 28 Swale Borough Council's allocation site areas, submitted by the Council on 6 February
- 29 Letter, dated 5 February 2020 from Barclays Bank with Form DS3 and plan, submitted by the appellant on 6 February
- 30 Extract from the superseded Planning Policy Statement 3 with a definition of 'Net dwelling density', submitted by the appellant on 6 February
- 31 Closing submissions for the local planning authority, submitted by the Council on 7 February
- 32 Closing Submissions on behalf of the appellant, submitted by the appellant on 7 February
- 33 Final unsigned copy of S106 Unilateral Undertaking, submitted by the appellant on 7 February

#### **DOCUMENTS RECEIVED AFTER THE CLOSE OF THE INQUIRY**

- 34 Final engrossed S106 Unilateral Undertaking, received from the appellant on 11 February
- C1 Costs application on behalf of the appellant, received from the appellant on 11 February
- C2 Response by the local planning authority to the costs application by the appellant, received from the Council on 12 February
- C3 Appellant's response to Council's reply to the appellant's costs application, received from the appellant on 13 February

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#### SCHEDULE OF CONDITIONS

- 1) Details of the layout, scale, appearance and landscaping (hereinafter called 'the reserved matters') within a phase of the development hereby permitted, shall be submitted to and approved in writing by the local planning authority before any development within that phase takes place and the development shall be carried out as approved.
- 2) The first application for approval of reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.  
  
The last application for approval of reserved matters shall be made to the local planning authority not later than 10 years from the date of this permission.
- 3) The development approved under the first application for approval of reserved matters shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved under the first application.
- 4) Each subsequent application for approval of reserved matters for any phase of the development shall take place not later than 2 years from the date of the approval of the last of the reserved matters to be approved for that phase.
- 5) The development shall be carried out in accordance with the Phasing Plan drawing No 1456.21 Version 10.
- 6) The reserved matters details shall accord with the Site Parameters Plan drawing No 1456.18 Version 10 and the Landscape and Open Space Framework Plan drawing No 1456.26 Version 02.
- 7) Prior to the submission of a reserved matters application for any phase, a design code for that phase of development shall be submitted to and approved in writing by the local planning authority. The design code shall be based upon the Site Parameters Plan drawing No 1456.18 Version 10, the Landscape and Open Space Framework Plan drawing No 1456.26 Version 02, and the Development Brief and Design and Access Statement, and shall include the following –
  - A design strategy for buildings, to include housing mix, density and massing, architectural treatment, the use of feature buildings in key locations, principles for the use of external materials, boundary treatments, and provision of car parking.
  - In relation to phase 3 (as shown on drawing No 1456.21 Version 10), a design strategy for buildings to the south and west of Parsonage Farm and measures to respond to the setting of this listed building.
  - Principles for establishing character areas.
  - Principles for road hierarchy, pedestrian and cycle connections in each phase, including the alignment, width, lighting and surface materials to be used.
  - A strategy for street tree planting.
  - Principles for the layout to accommodate and respond to existing landscape features within the site.

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- Design of the public realm, including principles for the design and layout of public open space, areas for play, lighting, street furniture and sustainable urban drainage.
- A strategy to provide open space, footpath and cycle linkages through each phase.

Subsequent applications for the approval of reserved matters shall be designed to accord with the approved Design Code.

- 8) Prior to the submission of any reserved matters application, a site-wide landform parameter plan shall be submitted to and approved in writing by the local planning authority. The plan shall provide a strategy for utilising the existing landform of the site, measures to minimise cut and fill operations, and measures to minimise or avoid over-engineered operations to deal with levels changes. The reserved matters applications shall accord with the approved site-wide strategy.
- 9) Prior to the construction of any dwelling in any phase details of the materials and measures to be used to increase energy efficiency and thermal performance and reduce carbon emissions and construction waste shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials and measures.
- 10) The non-residential buildings hereby permitted shall be constructed to a minimum of BREEAM new construction 'Good' Standard and prior to the first use of the building the relevant certification shall be submitted to the local planning authority for each individual non-residential building confirming that the required standard has been achieved.
- 11) The proposed residential development hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no residential unit(s) shall be occupied until details of the measures used to achieve the rate for that unit(s) have been submitted to and approved in writing by the local planning authority.
- 12) No development shall take place in any phase until details of the existing site levels, proposed site levels, and proposed finished floor levels for buildings in that phase have been submitted to and approved in writing by the local planning authority and the development shall be completed strictly in accordance with the approved levels.
- 13) Before development commences in any phase, details shall be submitted to and approved in writing by the local planning authority for the installation of fixed telecommunication infrastructure and High Speed Fibre Optic connections to multi point destinations and all buildings including residential, commercial and community buildings within that phase. The ducting shall provide sufficient capacity, including duct sizing to cater for all future phases of the development. The infrastructure shall be laid out in accordance with the approved details and at the same time as other services during the construction process.
- 14) No development beyond the construction of foundations shall take place in any phase until written details and samples of the materials to be used in the construction of the external surfaces of the building(s) in that phase have been submitted to and approved in writing by the local planning authority.

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The development shall then be implemented in accordance with the approved details.

- 15) The convenience store / community facility hereby permitted shall be used for purposes under classes A1, D1 and D2 of the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification, and for no other purpose, other than any residential units on the upper floors.
- 16) No development beyond the construction of foundations shall take place in phase 1 of the development as shown on drawing No 1456.21 Version 10 until an acoustic assessment has been submitted to and approved in writing by the local planning authority. The acoustic assessment shall set out predicted internal and external noise levels for dwellings in that phase, and if required shall provide a scheme of mitigation measures. The development shall be carried out in accordance with the approved details and mitigation prior to occupation of any dwelling.
- 17) No part of the development hereby permitted shall be occupied prior to the letting of a contract for the M2 Junction 5 Road Investment Strategy Scheme. Thereafter, no more than 100 dwellings shall be occupied until the M2 Junction 5 Road Investment Strategy Scheme has been certified as being practically complete.
- 18) No more than 160 dwellings shall be occupied until the Lower Road Widening Works as shown on drawing Nos 4068-PH2-SK-001 Rev A, 4068-PH2-SK-002 Rev A, 4068-PH2-SK-003 Rev A, 4068-PH2-SK-004 Rev A, 4068-PH2-SK-005 Rev A, and 4068-PH2-SK-006 Rev A have been completed.
- 19) No more than 570 dwellings shall be occupied until a scheme of highway improvements to the Halfway traffic signal junction, as shown on the Vectos drawing No 195003\_GA\_001, has been completed.
- 20) No development shall take place in any phase, including any engineering or levelling works, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The approved CMP shall be implemented and adhered to throughout the entire construction period. The CMP shall provide details of:
  - (a) the predicted numbers of construction and delivery vehicles and measures to manage routing of construction traffic to / from the site;
  - (b) means of access to the site during the construction process;
  - (c) parking and turning areas for construction and delivery vehicles and site personnel;
  - (d) timing of deliveries;
  - (e) provision of wheel washing facilities;
  - (f) temporary traffic management / signage;
  - (g) areas for the loading / unloading and storage of plant, materials and waste;
  - (h) measures to control the emission of dust and dirt during construction;
  - (i) a scheme for recycling / disposing of waste resulting from demolition and construction works; and

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- (j) the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate.
- 21) No construction work, including piling, in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the local planning authority.
- 22) The application for approval of reserved matters for phase 1, as shown on drawing No 1456.21 Version 10, shall include the provision of a footway on the development site frontage on the west side of Barton Hill Drive, and this shall be completed prior to the occupation of any dwellings in that phase.
- 23) No dwelling within phase 1, as shown on drawing No 1456.21 Version 10, shall be occupied until access from that dwelling to the roundabout at the junction of Barton Hill Drive and Lower Road has been completed.
- 24) No dwelling other than those within Phase 1, as shown on drawing No 1456.21 Version 10 shall be occupied until the highway works for the Barton Hill Drive access as shown on drawing No T-01 Rev P3 have been completed.
- 25) No more than 25 dwellings shall be occupied until a Puffin Crossing is open and available for public use on Barton Hill Drive at a location and specification that has first been submitted to and approved in writing by the local planning authority.
- 26) The details submitted for the approval of reserved matters shall show land reserved for the parking of cars in accordance with the currently adopted Kent County Council Vehicle Parking Standards where appropriate and for the loading and unloading of commercial vehicles where necessary. Such land shall be kept available for these purposes at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any order revoking or re-enacting that Order or not shall be carried out on such land or in a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the buildings / land hereby permitted.
- 27) The details submitted for the approval of reserved matters shall include details of covered secure cycle parking facilities for each dwelling and for communal parking at the local centre hereby permitted. The approved cycle parking shall be provided prior to the occupation of that dwelling / non-residential building and retained for that purpose thereafter.
- 28) Prior to the occupation of any dwelling or other building hereby permitted the following works between the dwelling or building and the adopted highway shall be completed in accordance with details that shall have been submitted to and approved in writing by the local planning authority:
- (a) Footways and / or footpaths, with the exception of the wearing course;
  - (b) Carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).
- 29) No more than 350 dwellings hereby permitted shall be occupied until the completion of the following off-site works, the detail of which shall have been submitted to and approved in writing by the local planning authority. –

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- i) The provision of a pedestrian / cycle link between the development site and Lovell Road, as shown by the yellow dashed line on the Site Parameters Plan drawing No 1456.18 Version 10.
  - ii) The installation of tactile paving at the crossing of Lower Road at its junction with Barton Hill Drive.
- 30) No more than 350 dwellings hereby permitted shall be occupied until a pedestrian / cycle link from the site to Parsonage Chase has been completed and opened for public use in accordance with a scheme that has been submitted to and approved in writing by the local planning authority. The scheme shall include details of surfacing for all weather conditions, and details of lighting.
- 31) No dwelling shall be occupied within the development until either:
  - a) Details for the provision of two bus flags and shelters within the layout of the development; or
  - b) A scheme for the provision and improvement of bus stops on Barton Hill Drive frontage to the site;have been submitted to and approved in writing by the local planning authority, together with a timetable for implementation. The development shall be carried out in accordance with the approved details and timetable.
- 32) Prior to the occupation of the development a Travel Plan shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall be prepared in accordance with the sustainable travel measures proposed as part of the development and the requirements of policy DM6 of the Swale Borough Local Plan. The approved Travel Plan shall be implemented in accordance with the measures set out therein.
- 33) The reserved matters for each phase shall include measures to provide electric vehicle charging and shall include –
  - a) Electric vehicle charging points for all dwellings with parking facilities within their curtilage.
  - b) Electric vehicle charging points to be provided to a minimum of 10% of all other residential parking areas within any phase.
  - c) Electric vehicle charging points to be provided to a minimum of 10% of all non-residential parking spaces within any phase.No dwelling / building hereby permitted shall be occupied until the electric vehicle charging points for that dwelling / building have been installed.
- 34) No development shall commence until a detailed sustainable surface water drainage system and strategy, including a phasing plan, has been submitted to and approved in writing by the local planning authority. The phasing plan shall demonstrate the provision of a drainage network to serve each phase of development prior to occupation of that phase. The development shall be carried out in accordance with the approved drainage scheme.
- 35) No building hereby permitted in any phase shall be occupied until an operation and maintenance manual for the sustainable surface water drainage system approved under Condition 34 has been submitted to and approved in writing by the local planning authority. The approved sustainable surface

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water drainage system shall thereafter be operated and maintained in accordance with the approved manual.

- 36) No building on any phase of the development hereby permitted shall be occupied until a Verification Report pertaining to the surface water drainage system approved under Condition 34, carried out by a suitably qualified professional, has been submitted to and approved in writing by the local planning authority. The Verification Report shall demonstrate the operation of the drainage system such that flood risk is appropriately managed and shall contain information and evidence, including photographs, of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as-built drawings; and a topographical survey of 'as constructed' features.
- 37) No development shall commence until details of foul sewerage for a particular phase have been submitted to and approved in writing by the local planning authority. The approved details shall then be implemented for the relevant phase before any of the dwellings in that phase are occupied.
- 38) No development in any phase shall commence until the following components of a scheme to deal with the risks associated with contamination of the site for that phase have been submitted to and approved in writing by the local planning authority:
- i) A preliminary risk assessment which has identified:
    - all previous uses;
    - potential contaminants associated with those uses;
    - a conceptual model of the site indicating sources, pathways and receptors; and
    - potentially unacceptable risks arising from contamination at the site.
  - ii) A site investigation, based on (i), to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - iii) A Remediation Method Statement (RMS) based on the site investigation results and the detailed risk assessment in (ii). The RMS shall give full details of the remediation measures required and how they are to be undertaken; a verification plan to detail the data to be collected in order to demonstrate that the works set out in the RMS are complete; and identify any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
  - iv) A Closure Report to be submitted upon completion of the works. The Closure Report shall include full verification details as set out in (iii). This shall include details of any post remediation sampling and analysis, together with documentation certifying quantities and source / destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean.
- 39) No development shall commence until a site-wide ecological mitigation strategy has been submitted to and approved in writing by the local planning authority. The strategy shall set out principles for ecological mitigation and measures to be adopted in each phase of development and shall demonstrate

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an overall biodiversity net gain of at least 10% above the baseline value of the site. The net gain calculation shall be undertaken using the DEFRA 2.0 Metric or equivalent that has first been submitted to and approved in writing by the local planning authority.

- 40) No development shall take place in any phase, including any ground works, site or vegetation clearance, until a detailed ecological mitigation strategy for that phase has been submitted to and approved in writing by the local planning authority. The strategy shall include measures that shall be based upon the site-wide mitigation strategy approved under Condition 39 and shall include:
- a) an updated Preliminary Ecological Appraisal;
  - b) updated specific species surveys as necessary;
  - c) the purpose and objectives for the proposed works;
  - d) detailed design(s) and / or working method(s) necessary to achieve stated objectives;
  - e) the extent and location of proposed works, including the identification of a suitable receptor site for reptiles and great crested newts, (if required for that phase and consistent with any licence issued by Natural England) shown on appropriate scale maps and plans;
  - f) a timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
  - g) details of persons responsible for implementing the works, including times during construction when specialist ecologists need to be present on site to undertake / oversee works;
  - h) the use of protective fences, exclusion barriers and warning signs;
  - i) initial aftercare and long-term maintenance (where relevant);
  - j) disposal of any wastes for implementing work; and
  - k) details of temporary management measures to be put in place prior to implementation of the site-wide ecological mitigation strategy.

Development shall be carried out in accordance with the approved detailed ecological mitigation strategy for each phase and shall thereafter be retained. The approved measures for each phase shall be completed prior to the first occupation of any dwelling within that phase or within the next seasonally appropriate period for implementation, whichever is the sooner.

- 41) No development beyond the construction of foundations shall take place in any phase until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall be updated at each phase and upon completion of the last phase shall provide a single LEMP for the entire development. The content of the LEMP shall include:
- a) a description and evaluation of features to be managed;
  - b) ecological trends and constraints on site that might influence management;
  - c) aims and objectives of management;
  - d) management options for achieving aims and objectives;



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- e) prescriptions for management actions, together with a plan of management compartments;
- f) preparation of a work schedule, including an annual work plan capable of being rolled forward over a five-year period;
- g) details of the body or organisation responsible for implementation of the plan;
- h) ongoing monitoring and remedial measures; and
- i) a timetable for the management plan review.

The LEMP shall be implemented and managed in accordance with the approved details and all features shall thereafter be retained.

- 42) No development in any phase shall take place until full details of all existing trees and / or hedges in that phase, details of any trees or hedges proposed for removal, and measures to protect any trees or hedges shown to be retained, have been submitted to and approved in writing by the local planning authority. Such details shall include:
- (a) a plan showing the location of, and allocating a reference number to, each existing tree and hedge on the site to be retained and indicating the crown spread of each tree, and extent of any hedge, and identifying those trees and hedges to be removed;
  - (b) details of the size, species, diameter, approximate height and an assessment of the general state of health and stability of each retained tree and hedge;
  - (c) details of any proposed arboricultural works required to any retained tree or hedge;
  - (d) details of any alterations in ground levels and of the position of any excavation or other engineering works within the crown spread of any retained tree; and
  - (e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree or hedge from damage before or during the course of development.

The development shall be carried out in accordance with the approved details and the approved protection measures shall be installed in full prior to the commencement of any development and retained for the duration of construction works. No works, access, or storage within the protected areas shall take place, unless specifically approved in writing by the local planning authority.

- 43) No development beyond the construction of foundations in phase 1 shall take place until a detailed scheme of advance soft landscaping has been submitted to and approved in writing by the local planning authority. This shall consist of a woodland buffer on the southern and western boundaries of the site as shown on the Site Parameters Plan drawing No 1456.18 Version 10 and shall be a minimum of 20 metres in depth. The scheme shall include proposed trees, shrubs and other features, planting schedules, noting species, plant sizes and numbers where appropriate, measures to prevent tree vandalism, and measures to protect the advance planting from construction on the remainder of the site for the duration of such works. No more than 50

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dwellings shall be occupied prior to the completion of the advance soft landscaping in accordance with the approved details.

- 44) Upon completion of the advance landscaping works, any trees or shrubs that are removed, die, become severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as approved in writing by the local planning authority, and within the next planting season.
- 45) The layout and landscaping of the reserved matters for phase 3 of the development, as shown on drawing No 1456.21 Version 10, shall be designed to maintain an area of open space and landscaping to the south and south west of the site boundary with Parsonage Farmhouse, such area to be no less in size than that shown on the Site Parameters Plan drawing No 1456.18 Version 10.
- 46) No development shall take place until the following has been secured:
  - i. archaeological field evaluation works in accordance with a specification and written timetable that has been submitted to and approved in writing by the local planning authority; and
  - ii. following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and / or further archaeological investigation and recording in accordance with a specification and timetable that has been submitted to and approved in writing by the local planning authority.



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## Costs Decision

Inquiry held on 4 February 2020

Site visit made on 5 February 2020

**by Martin Whitehead LLB BSc(Hons) CEng MICE**

an Inspector appointed by the Secretary of State

Decision date: 2<sup>nd</sup> March 2020

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### Costs application in relation to Appeal Ref: APP/V2255/W/19/3238171 Land west of Barton Hill Drive, Minster-on-sea, Kent ME12 3LZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by SW Attwood & Partners for a full award of costs against Swale Borough Council.
  - The Inquiry was in connection with an appeal against the refusal of outline planning permission for the development of up to 700 dwellings and all necessary supporting infrastructure including land for the provision of a convenience store / community facility, internal access roads, footpaths, cycleways and parking, open space, play areas and landscaping, drainage, utilities and service infrastructure works.
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### Decision

1. The application for an award of costs is allowed in part in the terms set out below.

### Preamble

2. The application is made based on the guidance given in the national Planning Practice Guidance (PPG).

### Summary of the written submissions for SW Attwood & Partners<sup>1</sup>

3. In support of the claim for a full award of costs, the appellant cited both procedural and substantive unreasonable behaviour by the Council. The Council acted unreasonably in imposing the reason for refusal based on the development not providing any affordable housing on a number of the grounds identified in the PPG, including a *'failure to provide evidence to substantiate each reason for refusal'* and *'not reviewing their case promptly following the lodging of an appeal against refusal of planning permission'*. Furthermore, it had no answer to the fact that policy required 0% affordable housing in this location.
4. The highways reason for refusal was withdrawn following a meeting on 27 January 2020. The basis for the withdrawal was that the appellant agreed to condition 19 and agreed to make a further contribution of £20,000 by way of traffic calming on Darlington Drive / Parsonage Chase. This behaviour was unreasonable by refusing planning permission on a planning ground capable of being dealt with by conditions or planning obligation.

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<sup>1</sup> Documents C1: Application for costs, and C3: Reply to the Council's response, listed in the appeal decision letter

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5. The issue of climate change was never raised as a reason for refusal, but it was raised through the Council's Statement of Case. Despite the Climate Change Emergency (CCE) declaration in June 2019, the Committee at the meeting on 23 July 2019 failed to identify climate change as a reason for refusal; nor was it added to the Decision Notice when that was issued in August 2019. It was unreasonable for the Council to seek to impose conditions which had no policy basis, either within the National Planning Policy Framework (Framework), PPG or, most importantly, the development plan.
6. The appellant incurred costs by reason of the unreasonable failure of the Council to adhere to timescales within the PINS guidance in relation to the provision of Statements of Common Ground (SoCGs) and to produce a full Statement of Case. The appellant was left substantially in the dark as to its case on each of the reasons for refusal, and incurred costs in seeking to second guess what lay behind the reasons for refusal. This conduct was unreasonable.
7. In terms of substantive unreasonable behaviour, two officers' reports recommended the grant of planning permission. The Council failed to take the balancing exercise in the Framework properly and its evidence of Ms Rouse and Mr Friend, on heritage and landscape, was based on vague and generalised assertions of harm. The Council failed to substantiate its case on the appeal. Mr Pestell failed to undertake the correct balancing exercise and his judgment on the planning balancing exercise was flawed. No expert witness could have professionally concluded that the harm significantly and demonstrably outweighed the benefits, even if he mistakenly believed the benefit was limited to an extra 80 additional market houses. The appeal scheme should never have been refused planning permission.
8. The unreasonable behaviour of the Council has caused the appellant to incur expense unnecessarily. The Council should therefore pay all the appellant's costs of the appeal.

#### **Summary of the written response for Swale Borough Council<sup>2</sup>**

9. The Council does not accept that it has behaved unreasonably and has submitted evidence to substantiate the reasons for refusal. Even if the Inspector should decide that permission should be granted on appeal, the Council considers that it has been reasonable for it to advance the case that it has and in the way that it has.
10. The reason for refusal on affordable housing was not pursued at the Inquiry. The appellant raised the issue of viability in its proof of evidence. At the Case Management Conference (CMC) the Council proposed to deal with affordable housing under the planning topic. The matter that the appeal scheme cannot make any contribution towards affordable housing was already agreed before the Council signed the topic specific SoCG on the third day of the Inquiry. No time was spent on this topic at the Inquiry and no time was wasted on it. It was not unreasonable behaviour, and considerable time was saved at the Inquiry in any event.
11. The Council provided expert evidence in support of the highways reason for refusal and justified why the Section 106 contribution and Grampian condition were required. Mitigation was identified, and the necessary contribution was

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<sup>2</sup> Document C2: Response to the application for costs, listed in the appeal decision letter

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agreed by the appellant, the local highway authority (Kent County Council) and the local planning authority (the Council). The appellant has not argued that it is not required. There was a substantial highways issue to resolve, which was the subject of detailed and substantial evidence. There has been no unreasonable behaviour, and no costs have been wasted.

12. It was agreed that climate change was a material planning consideration. The CCE indicates that development plan policies should be applied differently. At the Inquiry there was a reasonable disagreement over what conditions would be necessary and reasonable to address this matter. There has been no unreasonable behaviour.
13. The SoCGs on the different topics have proved useful and have saved considerable time at the Inquiry. If they were 'late' they have not caused unnecessary costs and expense. The Council's Statement of Case was supplemented following the CMC both on the climate change issue and more generally so that the appellant did know the case it had to meet by 13 December at the latest. The reasons for refusal are fairly fulsome and identify the relevant points, and the relevant policies, on landscape, highways and listed building matters.
14. In terms of substantive unreasonable behaviour, the planning witnesses have identified the correct planning tests about the tilted balance, and the normal balance for the heritage issues. The area of disagreement has been consistently set out in the draft and final versions of the SoCG. The opinions of both the Council's landscape and heritage witnesses were reasonable and soundly based and explained. These are matters of professional opinion. The Council has provided evidence to substantiate the remaining reasons for refusal, and why the appeal scheme should be refused.

#### **Reasons**

15. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
16. The Council refused planning permission for 4 reasons. The third reason for refusal on grounds of affordable housing contribution was withdrawn, with the Council suggesting that it informed the appellant on 18 December. However, this does not appear to me to have been conclusive as the Council pursued this matter with regard to the Section 106 planning obligation contributions. In this respect the appellant's evidence on viability that it provided for the Inquiry could have been avoided, even though the Council has claimed that it was related to the level of secondary education contributions. Therefore, I find that the Council acted unreasonably in refusing planning permission for this reason, which clearly was not supported by the evidence or development plan policies, and failing to produce evidence to substantiate this reason for refusal. As a result, the appellant incurred unnecessary expense in its preparation of evidence on affordable housing and viability for the Inquiry.
17. In terms of the fourth reason for refusal on highway grounds, the Council only withdrew it following a meeting on 27 January 2020. This was based on agreement to a planning condition and a planning obligation to secure mitigation. Kent County Council as the local highway authority had not supported the reason for refusal and, although it agreed to the mitigation

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measures, it did not object to the proposal on highway grounds. As such, the Council had gone against the expert advice of the local highway authority and its own planning officers, who recommended the grant of planning permission. Although it provided expert evidence to support this reason for refusal, this evidence was not examined at the Inquiry. In my opinion, this ground for refusal could have been resolved without the need for the appellant to provide evidence to contest it at the Inquiry and therefore the appellant has incurred unnecessary expense in providing this evidence.

18. With regard to climate change, although it was not given as a reason for refusal, the Council did raise it as a matter of concern in its Statement of Case and at the CMC. It did not pursue this matter as a reason for refusal but did call an expert witness at the Inquiry to support its proposed conditions to address this matter. Although the appellant has produced evidence for the Inquiry in this regard, it did not call an expert witness and I do not consider that the Council acted unreasonably in raising this matter, given the government's stance and development plan policies that deal with it. Whilst I have not agreed with the detailing of the suggested planning condition, I do not consider that the appellant has wasted any expense in dealing with this matter at the Inquiry, as it was necessary to address it by an appropriate condition.
19. The reasons for refusal on character and appearance and heritage are complete, precise, specific and relevant to the application. The Council's expert evidence on landscape, heritage and planning matters provided more than a vague and generalised assertion about the proposal's impact and were supported by objective analysis. I am satisfied that the Council has provided sufficient evidence at the Inquiry to demonstrate that it has applied the correct planning balance in determining the application.
20. Whilst I have not agreed with the weight that the Council has attached to the harm in the overall planning balance or the arguments to support the degree of harm that it has claimed that the development would cause to the landscape and listed building, I have found that the proposal would have an adverse effect on the character and appearance of the area and would fail to accord with development plan policy. As such, I do not consider it to be unreasonable to refuse outline planning permission on these grounds. Therefore, I find that the Council has not acted unreasonably in this respect.
21. The Council did not agree the SoCG or provide sufficient evidence in its Statement of Case in a timely manner. Whilst it did submit supplementary Statements of Case and agree topic based SoCGs, which were found to be useful at the Inquiry, these had not been agreed at the dates given in the timetable. However, the failure to agree the topic based SoCGs within the agreed timetable set at the CMC has not been shown to have been due entirely to the Council. Whilst I accept that the costs regime can be used to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case, I have insufficient evidence to demonstrate that the appellant incurred additional expense directly as a result of the Council failing to agree the overall SoCG or provide a sufficiently detailed Statement of Case on time.

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22. For the reasons given above, I find that the Council has not prevented or delayed development which should clearly be permitted. However, I consider that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated in respect of the reasons for refusal 3 and 4 on affordable housing and highways. I therefore conclude that a partial award of costs is justified in this respect.

**Costs Order**

23. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Swale Borough Council shall pay to SW Attwood & Partners, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the appeal on the grounds of reasons for refusal 3, regarding affordable housing and viability, and 4, regarding highway and traffic impacts; such costs to be assessed in the Senior Courts Costs Office if not agreed.

24. The applicant is now invited to submit to Swale Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*M J Whitehead*

INSPECTOR