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Ministry of Housing,
Communities &
Local Government

Mr Paul Burley
Montagu Evans LLP
5 Bolton Street
London
W1J 8BA

Our ref: APP/V2255/W/19/3233606
Your ref: 17/505711/HYBRID

29 April 2021

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY QUINN ESTATES LIMITED AND MULBERRY ESTATES
(SITTINGBOURNE) LIMITED
LAND AT SOUTH-WEST SITTINGBOURNE/WISES LANE, SITTINGBOURNE
APPLICATION REF: 17/505711/HYBRID**

1. I am directed by the Secretary of State to say that consideration has been given to the report of S R G Baird BA (Hons) MRTPI, who held a public inquiry for nine days beginning on 26 November 2019, closed in writing on 23 December 2019, into your client's appeal against the failure of Swale Borough Council to give notice within the prescribed period of a decision on the hybrid application for up to 675 dwellings to include: outline planning permission for up to 595 dwellings including affordable housing; a 2-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq. m GIA and up to 560 sq. m GIA of "flexible use" floorspace that can be used for one or more of the following uses – A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse/community building up to 375 sq. m GIA, 3 standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street/A249; allotments: and formal and informal open space incorporating SUDS, new planting/landscaping and ecological enhancement works; and full planning permission for the erection of 80 dwellings including affordable housing, open space, associated access roads vehicle parking, associated services, infrastructure, landscaping and associated SUDS, in accordance with application ref. 17/505711/HYBRID, dated 30 October 2017.
2. On 13 August 2019, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed, and planning permission granted.

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4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the environmental information submitted before the inquiry. Having taken account of the Inspector's comments at IR1.11-1.22, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising since the close of the inquiry

6. On 6 March 2020 the Secretary of State received details of an appeal decision in respect of Land west of Barton Hill Drive, Minster-on-sea, Kent which was allowed against the decision of Swale Borough Council.
7. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.
8. On 12 Nov 2020 the Secretary of State wrote to the main parties to afford them an opportunity to comment on the matter of conditions relating to tackling climate change, namely the Council's proposed conditions SC11, SPCC12 and SC14. These representations were circulated to the main parties on 30 November. He also sought views on the proposed precommencement condition on landscaping, SPCC42.
9. The Secretary of State has considered the representations received below in paragraphs 32-36, and his conclusions on them are set out there and at paragraph 45. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
10. On 12 January 2021 the Council wrote to the Secretary of State stating that it could now demonstrate a Housing Land Supply of 5.02 years. On 12 February 2021 the Council wrote again, stating that it was not yet in a position to be able to demonstrate a five year housing land supply. The Secretary of State has proceeded on that basis.
11. An application for a full award of costs was made by Quinn Estates Limited and Mulberry Estates (Sittingbourne) Limited against Swale Borough Council (IR1.10). This application is the subject of a separate decision letter.

Policy and statutory considerations

12. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

13. In this case the development plan consists of The Swale Borough Local Plan, adopted in July 2017 and the Kent and Medway Minerals Waste Local Plan adopted 2016. The Secretary of State considers that relevant development plan policies include those set out at IR4.2-4.5.
14. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), including the new Swale Borough Council guidance for complying with the climate change planning condition to reduce operational carbon of new dwellings in Swale by 50% (June 2020), as well as those documents set out at IR4.10.
15. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

16. The Swale Borough Local Plan Review 2022–2038 will set the vision and framework for development and needs for the whole of Swale Borough area from 2022- 2038.
17. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. As the Local Plan Review is at an early stage, has not been through examination and unresolved objections to it remain, he affords it limited weight.

Main issues

Highways

18. For the reasons given at IR11.1-11.11, the Secretary of State agrees with the Inspector at IR11.11 that subject to the implementation of mitigation measures, the appeal scheme would not have an unacceptable impact on highway safety or the free flow of traffic on the local or strategic road network contrary to Policy DM6. The Secretary of State notes (IR11.11) that the LPA accepted that it provides no evidence that, either the scheme's residual cumulative impacts would be severe, or its highway safety impacts would be unacceptable. As such he concludes that the proposal is in line with paragraph 109 of the Framework. The Secretary of State notes at IR11.146 that the creation of a link between Borden Lane and Chestnut Street with access onto the southbound A249 has been identified to provide benefits. These include mitigating congestion on the A2 and the provision of an alternative route which, the Key Street/A249 and the Key Street roundabout and the Link would contribute to improving air quality along this key route into and out of Sittingbourne. The Secretary of State agrees with the Inspector that these benefits attract substantial weight (IR11.146).

Effect on the character and appearance of the area

19. The Secretary of State has considered the Inspector's analysis at IR11.12-11.33 and agrees for the reasons given that the appeal scheme would have a significant landscape and visual effect overall, albeit that a significant area is already allocated for development.

He agrees with the Inspector (IR11.32) that whilst those effects would reduce over time, particularly through the proposed extensive landscaping proposals, they would not disappear, and the degree of harm would be at the moderate adverse level and would be significant.

20. He further agrees that whilst the proposal would not result in the merging of settlements, the extent of separation between Sittingbourne and Chestnut Street would be significantly eroded through a permanent loss of open land within the gap (IR11.32). The Secretary of State agrees with the Inspector (IR11.33) that there is conflict with Policies DM 14, 24 and DM 25 and that significant weight should be given to this harm (IR11.154). However, for the reasons given at IR11.20, he also agrees (IR11.33) that there would be no adverse impact on the character or appearance of the Local Green Space, and as such the proposal would be compliant with Policy DM18.

Implications for the supply of Best and Most Versatile Agricultural Land

21. For the reasons given at IR11.34-11.37 the Secretary of State agrees with the Inspector that the development would result in the loss of best and most versatile agricultural land outside of the allocated site (IR11.35). However, for the reasons given the Secretary of State (IR11.155) agrees that as the proposal would not adversely affect the viability of the remaining holding or result in the accumulated loss of Best and Most Versatile agricultural land, the proposal would not conflict with Policy DM 31. The Secretary of State agrees with the Inspector that this is neutral in the planning balance (IR11.155).

5-year Housing Land Supply

22. On 12 February 2021 the Council wrote to the Secretary of State, saying that it was not yet in a position to be able to demonstrate a five year housing land supply. The Secretary of State has proceeded on that basis. The Secretary of State notes (IR11.135) the parties agree that the absence of a 5-year HLS engages the Framework paragraph 11(d) "tilted balance" save potentially for issues including relating to heritage (footnote 6 of the Framework). The Secretary of State agrees. His consideration of heritage issues is set out below.

Meeting housing need including affordable housing

23. For the reasons given at IR11.38-11.44 and IR11.143-11.145, the Secretary of State agrees that a scheme with a greater number of smaller units would not be viable. He notes that the dwelling mix is driven by a viability appraisal which has been independently assessed and not been challenged (IR11.41). The Secretary of State notes (IR11.42) that the appellant accepts that the proposed dwelling mix departs from Policies CP 3 and MU 3 and would attract negative weight.
24. For the reasons given at IR11.43-11.44 the Secretary of State agrees that whilst the proposals would not provide a level of affordable housing consistent with a strict application of Policy DM 8 it would provide 25 more than would be achieved on the allocated site. He notes that the S106 Agreement provides for an Affordable Housing Viability Review (IR11.43), with the potential for additional affordable housing up to a

Policy DM 8 policy compliant level. Nonetheless the proposed provision of affordable housing would conflict with Policy DM 8 (IR11.44).

25. The Secretary of State agrees for the reasons given at IR11.143-11.145 that overall the contribution of the scheme in relation to the provision of housing attracts significant weight (IR11.45).

Impacts on heritage assets

26. The Secretary of State agrees with the Inspector's approach as set out at IR11.45-11.51. For the reasons given he agrees (IR11.51) that without a quantitative measure of the magnitude of traffic, the degree of harm asserted by the Council is unreliable and should be treated with caution.

The Street CA and associated Listed Buildings

27. For the reasons given at IR 11.45-11.57 Secretary of State agrees that the impact of traffic on the Street Conservation Area (CA) and associated listed buildings is such that the effect would be neutral (IR11.57). He further agrees with the Inspector (IR11.58) that given the degree of separation from the development and the scale of proposed boundary screening context, the development would not affect the setting and significance of either the CA or Borden Hall (IR11.58).

Harman's CA and associated Listed Buildings

28. The Secretary of State has considered the Inspector's reasoning at IR11.59 - 11.61. He agrees with the Inspector for the reasons given that development would not affect the setting and significance of either the CA or any of its Listed Buildings (IR11.61).

Hearts Delight CA and associated Listed Buildings

29. The Secretary of State has considered the Inspector's reasoning at IR11.62-11.64. He agrees that given the substantial separation between the appeal site and the Hearts Delight CA, the development would not affect the setting and significance of either the CA or the associated Listed Buildings (IR11.64).

Chestnut Street CA and associated Listed Buildings

30. The Secretary of State agrees, for the reasons given at IR11.68-11.76 that there would be very minor changes to the setting of the Conservation Area and associated Listed Buildings, and that for the link road and roundabout there would be slight changes to the key significant features of the HAs and slight change to the significant components of their settings. He agrees with the Inspector (IR11.80) for the reasons given that this would amount to less than substantial harm, though at the lowest end of that scale.

Other Listed Buildings

31. For the reasons given at IR11.77-11.78, the Secretary of State agrees that there would be no impact on Cryalls Farmhouse. However, he also agrees, for the reasons set out at IR11.79, that there would be a material change to the character of the setting of Riddles

Farmhouse, amounting to less than substantial harm, but at the lowest end of that category (IR11.80).

Heritage conclusions

32. The Secretary of State agrees with the Inspector's conclusions at IR11.150-11.151 that the proposals would result in conflict with Policies DM 32 and 33. In line with the Framework para. 196, the 'less than substantial harm' to Riddles Farmhouse and the Chestnut Street CA needs to be weighed against the public benefits of the proposals. The Secretary of State agrees with the Inspector at IR11.151 that the finding of less than substantial harm to the designated HAs in conflict with Policies DM 32 and 33 attracts substantial negative weight. The Secretary of State's conclusions on this test are set out below.

Implications for biodiversity and climate change

Climate change

33. The Secretary of State has considered the Inspector's conclusions on Climate Change and the imposition of planning conditions at IR11.81-11.99.
34. For the reasons given at IR11.89-93, he agrees with the Inspector that the development meets the energy efficiency standards required by current BRs and would be compliant with Policy DM19 (IR11.93). He notes that the estimated reduction in carbon dioxide emissions would be 2% for Phase 1a and 2% for the Masterplan site, and that the primary school would achieve a BREAM Performance Rating of Very Good (IR11.88).
35. The Secretary of State has carefully considered the case put forward by the Council. He notes their view that the appellants have done the bare minimum and have not pushed the design process beyond the standard estate layout (IR11.93). He has taken into account the Council's commitment to meeting the climate change challenge, including their Climate Change Declaration, adopted in June 2019, which sets out the intention of making the Borough carbon neutral by 2030 (IR11.86). This is set against a background in which there is a national commitment to carbon neutrality by 2050 (IR11.96). The Council considers that all local and national policy and guidance needs updating and the decision maker should not apply the current set of standards (IR11.95). The Secretary of State has further considered the Council's representations of 26 November and 8 December 2020. In particular he notes that the Council's publication of 'Guidance for complying with the climate change planning condition to reduce operational carbon in new dwellings in Swale by 50%' of June 2020. The Council is therefore seeking much higher reductions via proposed conditions SC11 and SPCC12 (IR11.97).
36. The Secretary of State has also carefully considered the Inspector's analysis and has taken it into account. He agrees that the scale and urgency of the climate change emergency is such that tackling climate change is a material consideration to which significant weight should be attached (IR11.99 and IR11.96). He further agrees with the Council's representation of 26 November 2020 that the need for housebuilding to become greener, warmer and more energy efficient has become more urgent.
37. However, overall the Secretary of State agrees with the appellant's case that under the plan-led system it is not possible or desirable to predict what policies might apply in the future and apply them now (IR11.95). While noting the Council's guidance of June 2020 (paragraph 34 above) he considers that it amounts to guidance only, which has not gone

through a public examination process, rather than planning policy, sufficient to justify the imposition of conditions. As such he further agrees with the appellant that there is no existing or emerging LP policy base for proposed conditions SC 11, SPCC12 (IR10.4). Notwithstanding the high-level national commitment to carbon neutrality, and the significant weight attaching to tackling climate change, these conditions also go beyond current and emerging national policy. He therefore considers that the proposed conditions cannot be said to be either reasonable or necessary. They therefore fail to meet the tests set out at paragraph 55 of the Framework and the Secretary of State considers they should not be imposed. However, given that Policy DM19 provides a policy underpinning for the 'Very Good' BREEAM performance rating (IR11.164), the Secretary of State considers that it is reasonable and necessary to impose revised condition 14.

Biodiversity

38. For the reasons given at IR11.100-11.109, the Secretary of State agrees that the proposal is likely to result in a material increase in biodiversity.

Special Protection Areas

39. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017 and for the reasons set out at IR11.110-11.114 he agrees with the Inspector that he is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of any affected European site in view of each site's conservation objectives. Those sites are the Medway Estuary and Marshes Special Protection Area and Ramsar Site, The Swale Special Protection Area and Ramsar Site and the Thames Estuary and Marshes Special Protection Area and Ramsar Site. The Secretary of State agrees with the assessment and findings in the Inspector's Annex D. He therefore adopts Annex D as the necessary Appropriate Assessment in his role as the Competent Authority on this matter and agrees that there would be no adverse effect on the integrity of the designated sites.

Conclusion on biodiversity

40. For the reasons set out at IR11.100-11.114 the Secretary of State agrees at IR11.115 the scheme would not have an adverse effect on biodiversity and on the balance of probabilities would result in a biodiversity net gain. As such the development would not conflict with the objectives of Policy DM 28 and Policy MU 3 and national policy.

Other matters

41. For the reasons given at IR11.116-11.121 the Secretary of State agrees with the Inspector that the proposals make acceptable provision for community infrastructure and that there would be no conflict with policy CP6 (IR11.158).

42. For the reasons given at IR11.122-11.131 and IR11.159, the Secretary of State agrees with the Inspector that the proposal would not result in a worsening of air quality, and with the implementation of the Link Road, off-site highway improvements and the damage mitigation measures would result in an overall improvement in air quality. As such the proposal would not conflict with Policy DM6 (2d) and the matter is neutral in the planning

balance (IR11.159). In reaching this conclusion, the Secretary of State has taken into account that he is not imposing conditions SC11 and SPCC12

43. For the reasons given at IR11.132-11.134 the Secretary of State agrees that the layout plan for Phase 1a shows adequate separation between the proposed dwellings on Phase 1a and the existing dwellings such that there would be no loss of privacy or light. He further considers that the remainder of the land to the east and south of Dental Close forms part of the outline application. He agrees with the Inspector that as part of a reserved matters application, the LPA could ensure adequate separation to avoid adverse effects on existing residents. He agrees with the Inspector's conclusion at IR11.134 that there would be no adverse effect on the living conditions of adjoining residents.
44. For the reasons given at IR11.137-11.142 the Secretary of State agrees with the Inspector that whilst the construction period would generate short to medium term economic benefits, whilst allowing for the caveats raised by the Local Planning Authority, the total economic benefits would have a positive effect on the local economy and attracts substantial weight.
45. The Secretary of State agrees with the Inspector at IR11.147 that the provision of facilities for Sittingbourne Rugby Football Club provides for positive social benefits. Further he agrees with the Inspector's conclusion at IR11.148 that when taken all together the economic and social benefits should be accorded substantial weight.

Planning conditions

46. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.20, IR11.163-169 and IR11.170—11.172, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. His conclusions on conditions SC11 and SPCC12 are set out in paragraphs 33-37 above. The Secretary of State agrees (IR11.171) that the revised wording of Condition 41 achieves the Council's and appellant's objectives for this condition, and notes that the appellant has agreed to the condition. While he notes that the Council does not agree to the revised wording of the condition (representation of 24 November 2020), the Secretary of State does not consider that The Town and Country Planning (Pre-commencement Conditions) Regulations 2018 supports this as a reason for not imposing the revised condition. The Secretary of State is satisfied that the other conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.

Planning obligations

47. Having had regard to the Inspector's analysis at IR10.21-10.31, the planning obligation, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR11.169 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

48. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies CP 5, DM 8, 14, 24, 25, 32 and 33 of the development plans, and is not in accordance with the development plan overall. He has gone on to

consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

49. As the Council cannot demonstrate a 5-year supply of housing, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
50. The material considerations which weigh against the proposal are the harm to landscape and visual impacts, and harm to the setting and significance of heritage assets. The Secretary of State affords the landscape and visual harm significant negative weight, and the finding of less than substantial harm to the designated HAs is conflict with Policies DM 32 and 33 attracts substantial negative weight.
51. The provision of open market housing and affordable housing carries significant weight in favour of the scheme. The economic benefits, the highway improvements, and the relocation of the Rugby Club each carry substantial weight in favour of the scheme.
52. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the heritage assets identified is outweighed by the public benefits of the proposal. Overall the Secretary of State agrees with the Inspector at IR11.137-11.151 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of heritage assets. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal.
53. The Secretary of State thus considers that there are no protective policies which provide a clear reason for refusing the development proposed. Further he considers that any adverse impacts would not significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole. As such he concludes that the presumption in favour of sustainable development applies.
54. For the reasons given above the Secretary of State now considers that there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. The Secretary of State therefore concludes that the appeal be allowed subject to conditions.

Formal decision

55. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex A of this decision letter for up to 675 dwellings to include outline planning permission for up to 595 dwellings including affordable housing; a 2-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq. m GIA and up to 560 sq. m GIA of "flexible use" floorspace that can be used for one or more of the following uses – A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse/community building up to 375 sq. m GIA, 3 standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street/A249; allotments; and formal and informal open space incorporating SUDS, new planting/landscaping and ecological enhancement

works; and full planning permission for the erection of 80 dwellings including affordable housing, open space, associated access roads vehicle parking, associated services, infrastructure, landscaping and associated SUDS, in accordance with application ref. 17/505711/HYBRID, dated 30 October 2017.

56. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

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

58. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

59. A copy of this letter has been sent to Swale Borough Council and Borden Residents Against Over Development, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Phil Barber

Authorised by the Secretary of State to sign in that behalf

Annex A Schedule of representations

Annex B List of conditions