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## Appeal Decision

Inquiry held on 23 to 26 and 29 February 2016

Site visit made on 29 February 2016

by **P W Clark MA MRTPI MCMi**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 April 2016

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**Appeal Ref: APP/E2205/W/15/3032575**

**Land South of Tilden Gill Road, Tenterden, Kent**

- 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 Gatefield Estates Limited against the decision of Ashford Borough Council.
  - The application Ref 14/01420/AS, dated 7 November 2014, was refused by notice dated 13 February 2015.
  - The development proposed is the erection of up to 100 dwellings, parking, landscaping, open space and associated works, with details of access.
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### Decision

1. The appeal is allowed and planning permission is granted in outline for the erection of up to 100 dwellings, parking, landscaping, open space and associated works at Land South of Tilden Gill Road, Tenterden, Kent in accordance with the terms of the application, Ref 14/01420/AS, dated 7 November 2014, as subsequently amended, subject to the nine conditions listed in an appendix to this decision.

### Procedural matters

2. The Inquiry sat on the days stated above but was held open to allow for the submission of closing submissions in writing and for the completion of a unilateral undertaking. Following the receipt of these documents, the Inquiry was closed in writing on 11 March 2016.
  3. The application is made in outline. Details of appearance, landscaping, layout and scale are reserved for later submission in the event of the appeal being allowed. Details of access were originally submitted for approval now but, by letter dated 14 January 2016, the appellant requested that this too be considered a reserved matter.
  4. By letter dated 4 February 2016, I was asked to consider the application on the basis of a reduced site area, excluding land which was in the Council's ownership. The appellant advised those who had been consulted by the Council on the original application of this and the earlier request to treat access as a reserved matter by letter dated 10 February 2016, giving little time for third parties to consider the implications of the change.
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5. Notwithstanding the abbreviated notice, nobody would be prejudiced by treating access as a reserved matter because it would reduce the matters to be determined now and so I make the decision on the basis that all details are reserved for later consideration. Revision of the site boundary would have meant that the site would have been incapable of being provided with adequate access from within the extent of the application site. Following discussion of the implications of this consequence during the Inquiry, the appellant withdrew the request to revise the boundary of the site.
6. All potentially interested parties had ample opportunity to consider the proposal in its original form and to make their considerations known. Notwithstanding the notice already given of the request to change the site boundary and despite the absence of any notice to reverse the request, I am satisfied that nobody would be prejudiced by dealing with the application on the basis of the originally proposed boundary line because the change to make access a reserved matter would give all interested parties a chance to comment further when details of the access are put forward.
7. A planning permission exists (reference 15/01187/AS) for the development of the land in the Council's ownership which forms part of the appeal site. The granting of that planning permission is being challenged in the courts. But, the appeal can be allowed and planning permission can be granted for land not in the appellant's ownership. Implementation of that permission or a failure to come to an arrangement with the owner of that land would both present impediments to the implementation of the proposal made in this appeal. However, those contingencies have little or no relevance to the question of whether this appeal should be allowed in the first place, other than to a consideration of the validity of conditions which might depend on rights over that land. This appeal stands or falls on its own merits and is considered on the basis that the appellant expects to be able to gain control over the land required to implement the appeal proposal.
8. The extreme eastern edge of the site lies within an Area of Outstanding Natural Beauty (AONB). Because of the small scale of the plan showing this designation, its precise boundary is unclear. I have taken it as lying along the centre line of the track which runs along the eastern side of the site.
9. During the Inquiry, both parties made reference to a considerable number of appeal decisions and some court cases. Each case is decided on its merits and so I have not specifically referred to any of these unless there is a need to distinguish the circumstances of this case.

### **Main Issues**

10. At the opening of the Inquiry, I identified the main considerations in this appeal to be as follows:
  - i. Whether the site can be provided with an acceptable means of access.
  - ii. The effect of the proposal on the character and appearance of the locality.
  - iii. The effect of the proposal on the significance of heritage assets.
  - iv. The effect of the proposal on the supply of housing and

- v. The effect of the proposal on local social infrastructure.
11. The appellant's decision, during the Inquiry, to withdraw the request to consider the appeal on the basis of a reduced site area reduces the scope of the first of these issues to a consideration of whether a second means of access is required. A Statement of Common Ground between the appellant and the County Highway Authority confirms that to serve 100 dwellings by an access off Priory Way will be in accordance with the Kent design requirements for a "Major Access Road". The Council presented no evidence on this point. It was pursued by a third party and so I deal with it as an other matter. A further issue, namely the effect of the proposal on protected species also fell away when the Council confirmed that it would not be presenting evidence on that issue. The fifth issue also fell away following agreement on a planning obligation.
  12. In his proof of evidence for the Council, Simon Cole suggests an additional main issue; whether the development on an unallocated site beyond the built confines for Tenterden would be acceptable in principle. To understand why development beyond Tenterden's built confines would be acceptable or unacceptable in principle requires an understanding of the reason behind Core Strategy policy CS6 which delegates housing allocations in Tenterden to the Tenterden and Rural Sites Development Plan Document, adopted October 2010 (the TRSDPD) and policy TRS2 of the TRSDPD, which would not permit new residential development outside the built up confines of Tenterden.
  13. Paragraph 7.11 of the TRSDPD refers to government guidance (then set out in now withdrawn PPSs 1 and 7, now superseded by the fifth bullet of paragraph 17 of the National Planning Policy Framework (the NPPF, or the Framework)), endorsed in paragraphs 6.30 and 6.37 of the Core Strategy adopted in July 2008. The passages in the Core Strategy make it clear that the purpose of the policy is to protect the countryside. In effect, the issue is an aspect of character and appearance, not a separate issue, and I have treated it as such.

## **Reasons**

### *Character and appearance*

#### *(i) Previous history*

14. The site is not included in any landscape character area defined in the Ashford Landscape Character Assessment of 2009 and is included in the "urban area" of the subsequent Landscape Character Area SPD of 2011. I do not draw from this any inference that the site has no landscape character; the more likely explanation for its inclusion in the "urban area" is because it was presumed at the time that it would become developed.
15. Certainly, the evidence suggests that there is unfinished business in the development of this area; comparison of the TPO drawing of 1994 with current day maps shows that the boundary between the site and the public open space to the north-west of the site associated with the development of Abbott Way cuts arbitrarily across what was formerly an undivided orchard. Similarly, the development of Tildengill Road subdivided an undivided field to leave undeveloped what is now the most northern part of the site. In consequence, the historic landscape pattern of fields and boundaries has already been

compromised by urban development along the northern and north-western boundary of the site.

16. The Inspector who reported on the Ashford Borough Local Plan in January 1999 bundled his observations on character and appearance together with those on historic assets. He recommended that the western half of this remaining northern field (then known as the s100/17 site) should be allocated for housing development as no significant harm would occur to the character or appearance of the immediate locality, the setting of the listed buildings or AONB and views of the countryside would be able to be retained.
17. What is now proposed covers a larger area but, in terms of effect on character and appearance, the considerations for the larger area are very similar to those which were taken into account in 1999. In examining the TRSDPD in 2010, the Inspector reported on site TENT13, very similar in extent to the current appeal proposal. Her observations also bundle together considerations of character and appearance with considerations of the setting of the listed buildings.
18. She observed that it would have a considerably greater effect than the 1999 proposal. It would remove an attractive area of open land and orchard between existing development and the cluster of Listed and other historic buildings near Belgar Farm, with resulting effect on their rural setting. She nevertheless concluded by writing that it could be developed as one or more smaller units but that there was no need for it at that time.
19. In this decision, I am dealing with the issue of character and appearance separately from that of heritage assets.

*(ii) The AONB*

20. At its eastern edge the site includes a small sliver of land which is within the designated area of the High Weald AONB. In exercising or performing any functions in relation to, or affecting, an AONB, one needs to have regard to the purpose of conserving and enhancing the natural beauty of the AONB. The NPPF advises that great weight be afforded to conserving landscape and scenic beauty in AONBs. Accordingly, I start with this consideration.
21. None of the illustrative drawings suggesting how the site could be laid out indicates that any development would actually occur within the designated AONB. It is severed from the rest of the site by the track which marks the boundary with the AONB and which provides the access to adjoining properties outside the site. Consequently, its shape and size is fixed. It does not lend itself to development potential and so, for the purposes of this appeal, I have taken the proposal to be for development which adjoins the AONB rather than development which lies within it.
22. There is a suggestion that, because the site shares some characteristics with the designated AONB, it should be treated as though it were AONB. Natural England is the government's adviser for the natural environment. Appendix 4, "Boundary setting considerations" of its no longer current March 2011 publication "Guidance for assessing landscapes for designation as National Park or Area of Outstanding Natural Beauty in England" pointed out that the boundary of an AONB should not be expected to be a sharp barrier between areas of differing quality. Often there will be a transition of natural beauty and opportunities for open-air recreation across a sweep of land. In those cases,

- the boundary chosen should be an easily identifiable feature within this transition. The boundary should be drawn towards the high quality end of the transition in a manner that includes areas of high quality land and excludes areas of lesser quality land; ie it should be drawn conservatively. Visual associations may also be used to help define the extent of land for inclusion in these circumstances.
23. Those principles can be seen to have been applied to the AONB designation in this case; all parties accept that there is a transition and the boundary chosen (the track) is easily identifiable. It follows that it may be deduced that the boundary chosen includes areas thought at the time to be of high quality land and excludes areas of lesser quality and may be taken to indicate that distinction. It may also be taken to indicate that the site, by its exclusion from the AONB, was thought not to be visually associated with it.
  24. The evidence of both the landscape experts, together with what I saw on my site visit, confirm that last expectation. Because of the rolling topography and existing screen lines of trees, the open views from the site across countryside which are claimed by the Council were seen but do not dominate its character.
  25. Nor were there extensive or prominent views of the site from the adjoining AONB, again because of the topography and characteristic hedgerows and tree lines. Simply being able to see the development from within the AONB does not necessarily mean an adverse effect; the quality and character of what is seen also counts and would be within the control of the local planning authority when considering detailed matters if this appeal were allowed. "Significant adverse" impacts on the landscape, the jargon used by the experts, would only be perceived at close quarters, in many cases only from within the site itself, and simply record the fact that it would change from undeveloped to developed land.
  26. For much the same reason, I am not convinced that the appeal site should remain undeveloped in order to retain a "buffer" to the AONB. Plans of the AONB in the vicinity of Tenterden show that it is commonplace for the AONB boundary to abut built development. Immediately to the north of the site the boundary of the AONB abuts partly screened built development. At close quarters it can be seen from the AONB but causes no harm to its enjoyment or to the natural landscape or scenic beauty of the AONB itself. The same would be true of development on the appeal site.
  27. National Planning Practice Guidance advises that in making planning decisions regard should be had to management plans for Areas of Outstanding Natural Beauty. I note that the Addendum dated 29 January 2015 to the appellant's Landscape and Visual Impact Assessment includes a tabulation of the expected effect of the proposal on the management objectives of the High Weald AONB. I also note that in response to this, the High Weald AONB Unit takes no issue with the document but confirms that it pays particular attention to the landscape and scenic beauty of the AONB and represents a genuine effort to eliminate and/or reduce adverse effects to a minimum. The High Weald AONB Unit is funded by local authorities and government to provide advice on the conservation of the High Weald AONB. I have no reason to disagree with their advice.
  28. For all the above reasons, I conclude that the purpose of conserving and enhancing the natural beauty of the adjoining AONB, to which great weight is

given, would not be harmed by this proposal. I now turn to consider the effects of the proposal on the landscape of the site itself.

*(iii) Landscape character*

29. The site itself is not homogenous, as the Site Landscape Character Areas report prepared on behalf of the Council demonstrates. Parts have great charm, reflecting the characteristics of National Character Area NA122 High Weald including the shaw which contains trees protected by a TPO around the gill stream in the western part of the site and the historic routeway on the eastern boundary of the site, both of which could be protected in any development, as the submitted illustrative drawings indicate.
30. But, as noted above, the field pattern has been compromised by previous development. As historic maps show, the northern field was formerly two smaller fields but its dividing hedgerow has been removed. The hedgerow remaining to the northern boundary is now anything but thick and has become quite domestic in parts. Parts of the site retain an intimate character and the western orchard retains a sense of remoteness but the presence of adjoining modern suburban development can be seen on all other parts of the site, even at the lower end of the field to the west of Belgar farmhouse. In consequence, it is not a first class example of the National Character Area in which it sits.
31. For all the above reasons I agree with the assessment of the site itself as one of moderate landscape quality. One of the government's twelve core planning principles is that planning should recognise the intrinsic character and beauty of the countryside. Another is that planning should encourage the effective use of land by reusing land that has been previously developed (NPPF paragraphs 17 and 111). The proposal represents a green field site. On both counts I conclude that its development should therefore be regarded as a loss to the character and appearance of the locality but only a moderate loss.
32. It would be a loss of moderate significance, contrary to those parts of policy CS1 of the Core Strategy, which, amongst other things, seek to protect the high quality natural environment of the Borough and its countryside. It would contravene policy GP12 of the Ashford Borough Local Plan adopted June 2000 (the Local Plan) which protects the countryside for its own sake. It would also be contrary to Core Strategy policy CS6 which delegates housing allocations to the TRSDPD and TRSDPD policy TRS 2 which in general would not permit new residential development outside the built-up confines of Tenterden.
33. Core Strategy policies CS9, CS10(C), TRSDPD policies TRS 17 and TRS 18 and Local Plan policy EN10 which are referred to in the reasons for refusal relate to matters of detailed design which are not for consideration in this outline proposal. The illustrative drawings suggest that they could be complied with and so are not reasons to dismiss this appeal. Policy GP10 in the Local Plan is concerned with the protection of the special character of the town of Tenterden which depends on its setting and intimate relationship with the surrounding countryside. Little or no information is provided to show how the current appeal proposal would affect that relationship and character and so this policy is not a reason for dismissing the appeal.
34. I finish this section of my decision by agreeing with the assessment of the visual impact of the site on landscape included in Appendix 4 of the Borough Council's 2009 SHLAA; "Not a particularly significant site in wider landscape

terms, although eastern end of the site lies in AONB – development here would be seen against the backdrop of the existing dwellings. Bigger issue is the role of this “buffer” area to Belgar Farm.” The assessment goes on to give its conclusion on that issue, to which I now turn.

*The significance of heritage assets*

35. The appeal site wraps around the curtilage of two designated heritage assets and a third, non-designated asset. The two designated assets are Belgar Farmhouse and Barn adjoining Belgar Farmhouse to south east. The latter is now converted and divided into two properties; Old Belgar Barn and Weavers Barn. The listing entry notes that the Farmhouse and Barn form a group.
36. A little to the north is Belgar Oast which is, as its name suggests, a former oast house. The *Kent Farmsteads & Landscape Project*, an unpublished document by Forum Heritage Services identifies all three buildings as Belgar Farmstead, describing it as a dispersed multi-yard type of farmstead in an isolated position, altered but with less than 50% of its original form lost.
37. Taken literally as written, the relevant reason for refusal makes no sense, referring to “removing in its entirety the open area between the listed properties of Belgar, Old Belgar Barn and Weavers Barn” as the cause of harm to the setting of these buildings. In fact, there is no open area between those two listed buildings other than the lane which provides them with access and the garden of the farmhouse itself, neither of which are within the appeal site area and so there is no element of the appeal proposal which would remove either.
38. However, the reference to the setting of the historic farm buildings complex is a reminder of the statutory duty to have regard to the desirability of preserving a listed building, its setting or any features of special architectural or historic interest which it possesses. In addition, government policy, set out in NPPF paragraph 129, is that the particular significance of any heritage asset (not restricted to designated assets) that may be affected by a proposal (including by development affecting its setting) should be assessed and taken into account so as to avoid or minimise conflict between the conservation of the asset and any aspect of the proposal.
39. Both parties’ experts confirm the evidential value and significance of the fabric of all three buildings. This would be unaffected by the proposal. Both agree that they have aesthetic value, in which its relationship with its surroundings plays a part, to which the Council adds communal value in its contribution to local character, beauty and distinctiveness in the countryside, which seems to be the same thing as its aesthetic value but using different words, and historic value as an illustration of how the farming community existed. In terms of both aesthetic/communal value and historic value, the dispute between the parties turns on the relationship between the buildings and the agricultural fields which surround them.
40. In some parts of the country, farm complexes are clustered into rural villages and may be located some distance from the fields which they farm. In other parts, as here, the farmsteads stand separate in the fields which they farm. The term isolated position is a technical categorisation but I’m not convinced that it is necessary for the farmstead to remain physically isolated from all other development in order either to continue to understand that it was once

the basis of an agricultural operation when little else remains as evidence to relate that function to these properties, or to ensure conservation of the asset which is now not used for farming but for residential purposes.

41. Each of the three buildings' relationship with the surrounding fields is different. The farmhouse itself is set fairly low within the topography of the area and is well screened from all the surrounding fields and from the oast house as though there was a clear desire for its domestic function to be shut off from the business operations which surrounded it. Other than from the field to the south which is not part of this proposal, it can only really be experienced at very close quarters as is demonstrated by the very constrained positions from which the experts have been able to photograph it. Development of the surrounding fields the subject of this appeal will not adversely affect the way it is experienced or appreciated.
42. The Barn is somewhat more prominent. It is possible that it might once have had a more direct relationship with the eastern field of the site, as one of Mrs Johnson's undated photos indicates, although the historic maps provided by both parties show several enclosures which separated it from that field. Another of Mrs Johnson's undated photographs shows an aerial view in which the barn is separated from the field by a more modern building and a cluster of trees. Now, it is separated both by somewhat more extensive domestic enclosures and by a very substantial evergreen hedge which reduces any contribution the open field makes to its setting.
43. Its roof remains a feature in views across the field and so adds interest to those views but, as the illustrative drawings show, the quantity of development proposed in this application is not so great that it would preclude the provision of amenity open land in views across which it can remain a feature. So, I am not convinced that it represents a reason to dismiss the appeal.
44. The oast is the most prominent of the three heritage assets. Its white painted weatherboarding and its cowl are very prominent features within the northern field because of its exposed position on relatively high ground (presumably to catch the breeze to provide the draught essential for its functioning). It adds interest to views across the field.
45. Originally, the field boundary passed close to its northern flank. Although a small domestic curtilage has been cut from the adjoining field to give space around the heritage asset, that understanding of the space required for its functioning might be compromised if development took place close to the boundary. However, once again the illustrative layout shows that the quantity of development proposed in this application is not so great that it would preclude the provision of amenity open land in views across which the oast can remain a feature and which would still allow an appreciation of the space required for the ventilation necessary for the drying of hops. So, I am not convinced that it represents a reason to dismiss the appeal.
46. The Inspector who examined the TRSDPD in 2010 concluded that development of this site, then known as TENT13, would have an effect on the rural setting of the heritage assets. That is true, in that it would be changed from an agricultural setting to a more suburban setting. But, having considered the effect of that change on the significance of these assets, I have found that the quantity of development proposed in this appeal would not be so great as to preclude a detailed layout which would result in no harm to their significance.



47. I conclude that, with suitably designed detailed layout, the proposal would have no effect on the significance of heritage assets. It would therefore comply with Core Strategy policy CS1 (B) which seeks the conservation and enhancement of the historic environment and built heritage of the Borough.

*Other matters*

48. Originally, one of the reasons given by the Council for refusing permission, consistent with comment from the local Highway Authority, was that the proposal fails to provide two means of access on to the public highway and that local road junctions could not safely accommodate the traffic generated by the development. Although the County Highway Authority subsequently reached agreement with the appellant on these matters and the Borough gave no evidence on the point, a third party pursued the first point at the Inquiry.

49. Paragraph 6.7.3 of the government's Manual for Streets records the advice of the Association of Chief Fire Officers that the length of culs-de-sac or the numbers of dwellings have been used by local authorities as criteria for limiting the size of a development served by a single access route. Authorities have often argued that the larger the site, the more likely it is that a single access could be blocked for whatever reason. The fire services adopt a less numbers-driven approach and consider each application based on a risk assessment for the site and response time requirements.

50. In this case, the relevant Fire Authority has made no adverse comment on the numbers of dwellings proposed to be served from the single access. In this light and in light of the Highway Authority's agreement reached with the appellant, this point is not a reason to dismiss the appeal.

51. The second point in the council's original reason for refusal was resolved by agreement being reached on the necessity of providing a roundabout at the junction of Ashford Road with Beacon Oak Road. This is not secured in the Unilateral Undertaking but can be secured by means of a "Grampian" condition. With this condition in place, the proposal would comply with Core Strategy policy CS15 which seeks the earliest possible implementation of highway schemes that would remove serious impediments to growth, requiring development proposals to provide for the timely implementation of all necessary infrastructure.

52. The site is known to provide shelter for such an exceptional population of reptiles that it was doubted that the site in its developed form could accommodate their displacement. Its effects on them were one of the matters raised in the many letters from third parties and were one of the Council's original reasons for refusal. In response to a question I raised before the commencement of the Inquiry information was provided which quantified the area of the site, the proportion which currently offers poor habitat, the proportion of the highest quality habitat which is to be retained and the proportion which is to be enhanced through a proposed Ecological Management Plan (EMP). This information is not contested. It suggests that the site has the capacity to be enhanced so as to accommodate the displaced reptiles.

53. The EMP was submitted on the first day of the Inquiry with an Ecology Statement of Common Ground agreed between representatives of the appellant and of the Council. This suggested a number of conditions through which ecological issues could be satisfactorily resolved. I consider these further,

below. With the appropriate conditions in place, I conclude that the proposal would comply with Local Plan policies EN30 and EN31 which would not permit adverse effects to any protected species or important habitats without offsetting mitigating measures and Core Strategy CS11 which requires development proposals to avoid harm to biodiversity and to restore or create semi-natural habitats and ecological networks to sustain wildlife.

54. The council gave no evidence in relation to its sixth reason for refusal concerning effects on social infrastructure because it had reached agreement with the appellant on a planning obligation intended to resolve the issue. The Inquiry was kept open for this to be refined, signed and sealed.
55. There is evidence within the Council's committee report and in the responses from its internal consultations and consultations with official bodies to demonstrate that all of the obligations would achieve the results necessary to make the development acceptable in planning terms, be directly related to the development and be fairly and reasonably related in scale and kind to the development, with the exception of the provision relating to a Carbon off-setting contribution.
56. Although the Council's Core Strategy Policy CS10 requires major developments to incorporate design features to reduce the consumption of natural resources and to help deliver the aim of zero carbon growth in Ashford, compliance or otherwise with the specific measures detailed in the policy could only be determined when details of reserved matters are submitted for approval. At this stage, when the application is in outline only, it is not possible to determine whether the proposals would, or would not comply with those specifications. All that can be done is to impose a condition requiring a scheme of energy efficiency to be submitted for approval before development commences.
57. The necessity for a financial contribution to enable residual carbon emissions to be offset elsewhere in the Borough cannot therefore be established at this stage. Furthermore, the provision in the Unilateral Undertaking is so vague about the matters on which the contribution would be spent that it is also not possible to ascertain that they would be necessary to make the development acceptable. I have therefore taken no account of this particular provision of the Unilateral Undertaking.
58. With that exception, I confirm that all the other provisions of the Unilateral Undertaking comply with regulation 122 of the CIL regulations. I have therefore taken them into account in reaching my decision.
59. I conclude that with the Unilateral Undertaking in place the proposal would comply with TRSDPD policy TRS19 which expects all developments to make provision to meet the additional requirements for infrastructure and community services and facilities arising from the development, with Local Plan policies CF19, CF21, LE5, LE6 and LE9 which require provision for health care facilities, education facilities and open space with children's play facilities and Core Strategy policies CS2, CS8 and CS18 which require infrastructure and facilities needed by new development including education and health provision, community and recreation facilities, amongst other matters, to be brought forward at the same time as the development they will serve. Although there is no specific certification of compliance with CIL regulation 123, the evidence

is clear that, in Tenterden, there is only one other major permission which could have made a contribution to the infrastructure provisions required.

*Housing supply*

60. Although, according to the Ashford Strategic Housing Market Area study (SHMA), the relevant housing market area is almost co-terminous with Ashford Borough Council's boundaries, the Council's Core Strategy does not set a single housing requirement for the Borough but instead sets two, each for different parts of the Borough. Land for about 16,770 new dwellings plus a contingency allowance of about 10% is to be identified for the Ashford Growth Area. In the rest of the Borough, subject to any amendments made in the TRSDPD, land for about 1,180 new dwellings (reduced to 1,005 after allowing for windfalls) will be identified by 2021. The TRSDPD, taking account of completions since the base year for calculation, duly amended the target to 865, of which 475 (in two phases) would be in Tenterden itself.
61. The Background to the Core Strategy explains that neither of these target requirements relates to previously existing population trends. That for the growth area is set well above the amount indicated by existing population trends. In the extensive rural area of the Borough, the emphasis is on continued small scale change designed to protect the quality of the Borough's environment and heritage, balanced with the need to help foster strong local communities with limited growth in the most suitable locations.
62. Both Core Strategy and TRSDPD were prepared well before the NPPF was issued in March 2012. Nevertheless, it is clear that the development plan for Ashford (comprising both Core Strategy and TRSDPD read together) meets the full objectively assessed needs for housing in the housing market area. Housing requirements are set which, as a matter of policy, would do far more than just meet needs but there is nothing in the NPPF which prohibits that. Indeed, it is inherent in the concept of the duty to cooperate that, as a matter of policy, some development plans will set requirements higher than objectively assessed needs, whereas others will set them lower. The development plans for Ashford are not inconsistent with the NPPF on that account.
63. NPPF paragraph 47 advises that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer to ensure choice and competition. Where there has been a record of persistent under delivery of housing, that buffer should be 20%. The target for the rural areas of the Borough has been met (though not in Tenterden itself where development has yet to start on the sole allocated site). But, although housing growth in Ashford during the recession has been twice that of surrounding areas, there has been significant (35%) under-delivery of housing overall (almost 4,000 units) between 2001 and 2013, as the SHMA records. In consequence, the Council agrees that the buffer for Ashford should be 20%.
64. Against the requirements set in its development plans, the Council cannot demonstrate a five-year housing land supply. Consequently, according to the advice in paragraph 49 of the NPPF, the relevant policies for the supply of housing should not be considered up-to-date.
65. That consideration introduces a circular paradox because the figures for housing requirements are set by the very policy which must now be considered

out of date. National Planning Practice Guidance (Guidance) advises that the starting point to establish the need for housing should be the government's household projections, adjusted in response to local demographic factors, the demand for labour, market signals and the need to deliver the required number of affordable homes. The council has carried out a SHMA on this basis which identifies an objectively assessed need (OAN) of about 720-730 dwellings per annum. Calculated thus, the Council claims (though the appellant disputes) that it can demonstrate a five-year housing supply and so its relevant policies for the supply of housing can be considered up-to-date (including therefore those against which the Council cannot demonstrate a five-year supply which set a housing requirement far greater than the OAN). The council cuts through this circularity by arguing that the housing targets for the growth area are not up to date but that those for limitations on growth in the rural parts are up to date. As the appellant points out, that is an argument for both having your cake and eating it.

66. In any event, I am not convinced that a five-year housing land supply can be reliably demonstrated on this basis because the SHMA has not been tested by examination (for example, I notice that it amends the migration profile to be consistent with trends since 2007-8 but those trends would have been depressed by the recession and so might not be thought to be reliable for a period of return to greater economic prosperity) and has not been adjusted for any policy considerations as a result of the duty to cooperate (for example, Ashford may decide to continue to be a growth area). Similarly the predictions of supply have not been tested. Without endorsing each and every criticism of the Council's calculations made by the appellant, it is clear that the Council has a sufficiently poor record of predicting delivery for me not to rely upon the predictions submitted to this Inquiry, yet the degree to which its calculations show that it can identify a five-year supply are so finely balanced that only a slight degree of inaccuracy will show an undersupply.
67. The Council also argues that the relevant growth policies should not be considered up to date because they derive from growth targets in the now cancelled South East Regional Plan. I am not so convinced by that argument because in the preparation for its forthcoming replacement for the Core Strategy the Council has taken no specific policy decision to the effect that Ashford should cease to be a growth area. In any event, if the growth targets are out of date on this basis, then so are the rural restraint policies, because the latter depend on the former as is clear from the reports of the Inspectors who examined both the Core Strategy and the TRSDPD<sup>1</sup>.
68. Overall, I incline to the view that both sides of the policy should be regarded as out of date. That does not mean that they cease to apply; as paragraph 2 of the NPPF advises, planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The government's policy to boost significantly the supply of housing is a material consideration. So, there is a balancing exercise to be made, which I now turn to consider.

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<sup>1</sup> For example, paragraph 4.185 of the Core Strategy examining Inspector's Report records; "Chapter 6 of the CS [Tenterden and the Villages] concentrates very largely on housing matters. Moreover, except in respect of affordable housing, even this appears to have been approached with little obvious analysis of the actual needs of the rural area and its residents. Instead the figures seem to have been derived very largely by subtracting the targets for the growth area given in higher level plans from those given for the borough as a whole." Paragraphs 2.14 and 2.15 of the TRSDPD Inspector's report specifically endorse the concerns of the Core Strategy Inspector.

*Balance and conclusions*

69. The quantity of development proposed is not so great as to make a significant dent in the shortfall in the Council's housing supply but the need for affordable housing in the rural area is particularly important, according to the TRSDPD. It is not contested that no new affordable housing has been provided in Tenterden in the last five years. Thirty-five percent of the proposal is intended to be affordable housing, which accords with Core Strategy policy CS12. As an outline proposal, implementation of which depends on the acquisition of an area of land not currently in the appellant's ownership, delivery would not be swift, so a realistic view needs to be taken of the benefit of providing housing. But, every little helps. To that extent it would contribute to the social role of sustainable development.
70. The location of the proposal, on the outskirts of Tenterden, the second largest settlement in the Borough, described in the TRSDPD as at the top of the sustainability hierarchy, means that it would be an appropriate location in terms of access to facilities. Through the submitted planning obligation it would make good any adverse impact it might have on the supply of those facilities. It would therefore comply with the accessible services element of the social role of sustainable development and to its economic role by supplying land of the right type in the right place.
71. The quantity of development proposed in relation to the size of the site is not such that it would preclude a layout which would cause no harm to the significance of the nearby designated and non-designated heritage assets. On the other hand, the development would have a moderately adverse effect on the character and appearance of an area. Although the proposal would contribute to protecting our built and historic environment, it would not completely fulfil the environmental role of sustainable development because it would not contribute to protecting and enhancing our natural environment.
72. Because it would not be fully sustainable development, there can be no presumption in its favour. There would be some adverse environmental harm but that is to be expected where Greenfield sites are necessary to boost housing supply as sought by the NPPF. Seen in the context of NPPF advice in the round, the proposal would make a particularly important contribution to the provision of affordable housing and would provide land for development of the right type and in the right place with only moderate harm to the environment. The balance is clearly in its favour.
73. Through its protection of the significance of heritage assets, its delivery of housing, particularly affordable housing, and its contributions to local infrastructure, it would comply with Core Strategy policies CS1(B), CS2, CS11, CS12, CS15, CS18, TRSDPD policy TRS19 and Local Plan policies CF19, CF21, LE5, LE6, LE9, EN30 and EN31. It would not comply with Core Strategy policy CS6, TRSDPD policy TRS2 or Local Plan policy GP12 which apply policies of restraint to rural areas. Those policies of restraint are justified by a balancing policy of extra growth in and around the town of Ashford itself, which the Council has not succeeded in delivering, so there is currently inadequate justification for continuing their application. When seen in the context of the development plan there is once again a balance of advantage clearly in favour of the proposal. Accordingly, I allow the appeal.

### *Conditions*

74. A draft list of suggested conditions was submitted to the Inquiry.<sup>2</sup> These have been considered with reference to the advice in national Guidance and by reference to the wording of the model conditions contained in the annexe to the otherwise cancelled Circular 11/95, *the Use of Conditions in Planning Permissions*, preferring the wording of the latter where appropriate. They mostly comprise requirements for the submission of details, such as energy efficiency, tree protection, drainage, street lighting and refuse storage which would not be captured through reserved matters but which are necessary to consider in order to achieve a satisfactory development.
75. Some of the suggested conditions, particularly those to do with ecology which derive from the agreement reached in the Statement of Common Ground, are more in the nature of informatives, giving information about the way the Council is likely to evaluate the detailed submission of reserved matters, of landscaping in particular, or of submissions required anyway through other conditions. Although useful as informatives, they are not necessary as conditions at this stage.
76. I have included the suggestion of an ecological mitigation strategy during construction within the condition requiring a construction method statement. The suggested condition requiring an ecological design strategy is unnecessary, although it is a useful informative about the way the Council is likely to evaluate any details of landscaping submitted as a reserved matter. The requirement for a Landscape and Ecological Management Plan is premature until details of landscaping are approved; it should be considered again at that stage. So too is a condition requiring completion of the access roads and parking areas until they have been approved through reserved matters applications.
77. I have included a condition requiring the submission and approval of a lighting scheme as that is not necessarily encompassed within the scope of reserved matters. I have added a condition requiring the implementation of the measures recommended in paragraph 2.3 of the Ecological Management Plan report.

*P. W. Clark*

Inspector

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<sup>2</sup> Inquiry document 17

## CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall commence until details of
  - 1) a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources
  - 2) both foul and surface water drainage
  - 3) any external lighting
  - 4) connections for telephone, internet, electricity and communal television services
  - 5) facilities for storage of refuse and recycling materials
  - 6) a travel planhave been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. The approved details shall be retained as operational thereafter. No building shall be occupied until its foul and surface water drainage and its facilities for the storage of refuse and recycling materials have been completed in accordance with the approved details. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 or any other or subsequent Order revoking or re-enacting that Order, no external lighting or connections for telephone, internet, electricity or communal television services shall be installed other than those approved in accordance with the approved details.
- 5) In this condition "retained tree" means an existing tree which is to be retained in accordance with the recommendations and particulars set out in the arboricultural report reference 14102(f2) by Duramen Consulting dated 6 November 2014; and paragraphs (i) and (ii) below shall have effect until the expiration of 1 year from the date of the first occupation of the last dwelling to be occupied
  - i) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).

- ii) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
  - iii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with plans and particulars to be submitted to and approved by the local planning authority before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i. The mitigation of ecological impacts upon reptiles, great crested newts, bats, badgers, breeding birds and harvest mice
  - ii. the parking of vehicles of site operatives and visitors
  - iii. loading and unloading of plant and materials
  - iv. storage of plant and materials used in constructing the development
  - v. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - vi. wheel washing facilities
  - vii. measures to control the emission of dust and dirt during construction
  - viii. a scheme for recycling/disposing of waste resulting from demolition and construction works
- 7) In the event that any unexpected contamination is found while implementing the development, any such incident shall be reported immediately in writing to the local planning authority. Development shall not continue thereafter (i) until an investigation and risk assessment has been undertaken and, (ii) if necessary, in accordance with a remediation scheme submitted to and approved in writing by the local planning authority.
- 8) No dwelling shall be occupied until the roundabout at the junction of Ashford Road and Beacon Oak Road, referred to in section 15 of the Statement of Common Ground agreed between the appellant and the Local Highway Authority, has been completed.
- 9) No dwelling shall be occupied until it has been provided with an information pack complying with paragraph 2.3 of the Ecological Management Plan by Corylus Ecology dated January 2016.



## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Miss Suzanne Ornsby QC, assisted by Miss Caroline Daly, of Counsel	Instructed by Juliet Gill, solicitor at Ashford Borough Council
She called	
Ms Helen Neve BSc MSc CMLI	Landscape Architect, Director of Land Management Services Ltd
Mr Allan Cox BA(Hons) GradDipCons(AA) RIBA IHBC	Heritage Consultant
Mr Simon Cole BA MA MRTPI	Head of Planning Policy and Economic Development, Ashford Borough Council

### FOR THE APPELLANT:

Gregory Jones QC	
He called	
Justin Packman MPlan MRTPI	Associate Director, Pro Vision Planning and Design
Jo Evans BSc(Hons) MRTPI IHBC	Associate Director, CgMs Consulting
James Cleary MA DipUD MRTPI	Director, Pro Vision Planning and Design

### INTERESTED PERSONS:

Tim Allen TPP MILT MIHT MIoD	Partner, Peter Brett Associates LLP, on behalf of Belgar Residents' Group
Roy Isworth	Tenterden Town Councillor
Mrs Johnson	Local resident

## **Additional DOCUMENTS submitted at Inquiry**

- 1 Landscape Statement of Common Ground
- 2 Heritage Statement of Common Ground
- 3 Ecology Statement of Common Ground
- 4 Ecological Management Plan
- 5 National Character Area Profile 122: High Weald
- 6 Planning Statement of Common Ground
- 7 Ashford Landscape Character Assessment June 2009
- 8 Mr Allen's statement
- 9 Planning Practice Guidance Paragraph 030 reference ID 3-030-20140306
- 10 Letter dated 19.12.2014 from Brandon Lewis to Simon Ridley
- 11 E-mail exchange dated 16 and 17 February 2016 between Simon Cole and James Cleary
- 12 Bundle of three site assessments from the SHLAA
- 13 Letter dated 14 January 2016 from Justin Packman to Simon Cole
- 14 Ashford BC Authority Monitoring Report 2014/2015 Housing Section

- 15 Ashford Borough Council and Wye with Hinxhill Parish Council Rural Economic Assessment Final Report July 2014
- 16 E-mail exchange dated 23 July 2015 between David Wiseman and Matt Hogben
- 17 Draft list of suggested planning conditions
- 18 Draft Unilateral Undertaking
- 19 Bundle of photographs submitted by Mrs Johnson

**Additional DOCUMENTS submitted by agreement after Inquiry sitting, before close of Inquiry**

1. Certified copy of completed Unilateral Undertaking dated 9 March 2016
2. Tenterden and Rural Sites Development Plan Document – Issues and Options Report
3. Decision on an application to apply for judicial review dated 8 March 2016
4. Renewal of an application to apply for judicial review dated 14 March 2016