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## Appeal Decision

Hearing held on 16 and 17 December 2025

Site visit made on 17 December 2025

**by J P Longmuir BA(Hons) DipUD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 April 2026

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### Appeal Ref: APP/E2205/W/25/3368725

#### Land Adjacent to the Bull Inn, Bethersden, Ashford, TN26 3LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Esquire Developments Ltd against the decision of Ashford Borough Council.
  - The application Ref is PA/2024/1442.
  - The development proposed is outline planning permission (with all matters reserved except 'means of access') for the erection of up to 32 dwellings including access from Bull Lane, parking, landscaping, open space and associated infrastructure and earthworks.
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### Decision

1. The appeal is allowed, and planning permission is granted for outline planning permission (with all matters reserved except 'means of access') for the erection of up to 32 dwellings including access from Bull Lane, parking, landscaping, open space and associated infrastructure and earthworks at Land Adjacent to the Bull Inn, Ashford, TN26 3LB in accordance with the terms of the application, Ref. PA/2024/1442, subject to the conditions in the attached schedule and to the section 106 agreement including the clauses set out in paragraph 91 below.

### Preliminary Matters

2. The application was submitted as outline with all matters reserved except for the access. A 'Parameter Plan' showing the extent of development, the range of building heights and extent of open space is also submitted for consideration at this stage.
3. A section 106 agreement was submitted by the Appellant on 15 January 2026 and makes provision for matters including affordable housing, custom/self-build housing, waste management, health, ecology, and social infrastructure.
4. The Council refused the application on grounds of landscape and visual impact, heritage impact, residential amenity, highway and pedestrian safety, and absence of a legal agreement. However the Council subsequently resolved only to contest the first issue. In terms of heritage, they found that the less than substantial harm arising would be outweighed by the planning benefits of the scheme.
5. The site visit included the interiors of Fairview and Graylin, which are homes opposite the appeal site.

6. On the 16 December the Government published a consultation<sup>1</sup> on proposed changes to the National Planning Policy Framework (the Framework). I have given this consideration but do not find any of the changes as significant here.
7. The Parish Council's closing statement was submitted belatedly but reflected the earlier content of the Hearing and the Appellant was given the opportunity to consider it and comment, which they duly did. Accordingly in these particular circumstances, I have taken it into account.

## **Main Issues**

8. The effect of the proposal on the character and appearance of the area, including the setting of the village, is a main issue.
9. Whilst the Council as noted above found the harm to the Bull Inn was outweighed by the benefits of the proposal, I nonetheless still have a duty to consider it under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This duty also extends to other nearby listed assets: The Bull Inn Stables, Bridge Farmhouse and the Weatherboarded Barn. The settings of these assets is therefore a main issue.
10. I therefore consider the main issues as:
  - the effect of the proposal on the character and appearance of the area, with particular regard to the local landscape and the setting of Bethersden; and
  - the effect of the proposal on the settings of designated Grade II listed buildings: The Bull Inn, The Stables of the Bull Inn, Bridge Farmhouse and Weatherboarded Barn to South West of Bridge Farmhouse.

## **Reasons**

### *Character and appearance*

11. The site lies outside the settlement boundary, but Policy HOU5 of the Ashford Local Plan 2030, adopted February 2019, allows for development close to the existing built confines, subject to criteria including: if the scale is proportionate and development conserves and enhances the natural environment. Another criterion is the consistency with local character and built form, including scale, bulk and materials, which are largely aspects for any reserved matters consideration.
12. Policy ENV3a requires all proposals demonstrate consideration to landform, topography, trees and woodland, the pattern and distribution of settlements, roads and footpaths as well as existing features that are important to and contribute to landscape character. Policy ENV4 seeks to control light pollution and promote dark skies.
13. Both main parties agree that the site is not a valued landscape as defined in the National Planning Policy Framework (the Framework). Similarly it is agreed that the site is not within a national landscape nor forms part of any setting as such.
14. The site and surroundings have been included in a Special Landscape Area, designated by the Council. It was evident at the Hearing that this identification is

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<sup>1</sup> Consultation closes on 10 March 2026

no longer applicable although the Council consider the supporting landscape analysis still has merit.

15. The site is within the 'National Character Area Low Weald' which is characterised by tree cover, water courses and open farmland. These aspects are shown by the site and the surroundings but not so other characteristics. Both parties agreed that the proposal would not harm the National Character Area, as it is extensive and the relative size of the development would be small.
16. The site is characterised as 'Bethesden Farmlands'. This is a varied landscape with blocks of undulating farmland and woodland. The parties disputed the extent and significance of the contribution of the appeal site to the character of the 'Bethesden Farmlands' landscape.
17. Both parties agree that the site is on the edge of the settlement, between the A28 Ashford to Tenterdean Road and an offshoot, Bull Lane. The Bull Inn is at the junction of these roads and there is also a scattering of other buildings along the roads, whilst the rest of the village is to the north.
18. The site is in two parts. One is for a biodiversity improvement area, which lies adjacent to a stream, the other involving in part the development, is adjacent to Bull Lane, where both parties agree that the site is on the edge of the settlement. This area is on sloping ground.
19. The parties undertook their own Landscape and Visual Appraisals. The Appellant's geographic area was significantly wider than the Council's and it was suggested that this led to differing conclusions on the sensitivity of the site and the impact of the development. I have considered the analysis of both in reaching my conclusions below.
20. Whilst both parties agree that the site is not visible from long range views, it's extent of visibility from the immediate surroundings is disputed.
21. The site is partly enclosed by trees and scrubland, and several buildings also limit the inward visibility. Nonetheless, at least in winter when I visited, it is possible to see across the site: the adjacent buildings were evident. However the existing vegetation provides substantial filtering of the views and in summer I would expect more obscuring particularly at low levels.
22. The A28 is a busy road with several bends on the approach to Bethersden. Whilst in some respects this discourages drivers from experiencing the adjoining countryside, it means that a large number of drivers do get a fleeting impression and more so their passengers. The A28 lacks pedestrian pavements here and so largely limits the range of viewers to cyclists and motorists.
23. From the A28 the views towards the appeal site are not distinctive being largely of sky, scrub, hedgerow and scattered indistinct trees. There is no notable open view, and the aspect is largely one of deferential countryside which changes to a frontage of buildings beside the appeal site.
24. Bull Lane is quieter than the A28. The verges narrow after the appeal site, and the lane becomes very rural. A field gate into the appeal site allows an open view where it is experienced with the surrounding countryside beyond. I find this is representative of the Low Weald landscape. The rest of the appeal site frontage with Bull Lane is a mature hedgerow and scrub interspersed with some trees.

25. The Parameter Plan shows provision of open space on the eastern part of the site, which is nearest the A28, and the houses would be set back<sup>2</sup> 42.7m into the site. It also shows the dwellings would step down to one storey height on that side of the development. This would limit the visibility of the houses and even then they would also be seen in the context of the existing houses and buildings on the A28.
26. The density within the development area would be modest at 21.6dph<sup>3</sup>, which would give a rural appearance and allow for landscaping within plots and the roads. I therefore find that from the A28 the development would have very limited impact.
27. From Bull Lane the development would be discernible, although the hedgerow would filter much of the views. The houses would be more apparent through the new access, which would be a narrow viewing corridor, but part of the expansive view would be lost.
28. In addition to the above, the development would lead to the loss of part of the field itself, which does contribute to the rural setting of the village. However 1.412ha open space would be provided which would help offset the 1.476ha development area.
29. The extent of the development would be modest in relation to the existing size and extent of the village and would not be perceived to be overwhelming. The Council agreed that the development would be proportionate to the size of the settlement<sup>4</sup>.
30. The village historically had a broadly linear shape, but this has changed to a nucleated form. The proposal would continue that form and would not appear harmful as a result.
31. The Council state that there are approximately 650 homes within Bethersden and 25 further with planning permission<sup>5</sup>. The additional 32 would be proportionate. The extent of the development would also be modest in relation to the existing extent of the village.
32. The A28 impairs the tranquillity on that side of the site, whereas the other side is quieter countryside. The movements associated with the 32 houses would undermine the tranquillity, but I do not find this would be significant bearing in mind the scale of the proposal and size of the site.
33. The Council and third parties commented that the new pedestrian pavements to Bull Lane would harm its rural character by creating an overly engineered road. However the footpaths would be short, and the effect would be experienced close to the A28. Moreover Bull Lane only narrows after the appeal site access to a 'lane'. Consequently I find this impact would be limited.
34. Notwithstanding the Council's concern of the principle of the development, no problems were foreseen about the potential prospects of achieving a quality detailed design of the houses themselves in any reserved matters. Policy SP6 provides appropriate criteria.

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<sup>2</sup> Annotated Parameters Plan 18 December

<sup>3</sup> E-mail 18 December

<sup>4</sup> Statement of Common Ground paragraph 5.3.1

<sup>5</sup> As confirmed in e-mail 18 December

35. The southern area of the appeal site would be dedicated to creating and supporting ecological habitats. This would be expected to include indigenous tree and shrub planting, and the space would be attractive.
36. I find that the proposal would result in limited harm easing slightly as landscaping matures. Accordingly It would conflict with HOU5 as it would not conserve and enhance the natural environment. It also conflicts with ENV3a as the field contributes to the landscape setting of the village and continuity of the surrounding Bethesdan Farmlands landscape.
37. Policy ENV4 was not referenced in the reason for refusal but is relevant in terms of external lighting. However the only such evidence before the Inquiry was in relation to potential street lighting in Bull Lane, which I find would be insignificant. A condition is proposed to control spillage, aimed at avoiding disturbance to bats, but this would also protect the dark skies. I therefore find that the proposal would not conflict with Policy ENV4.

*The effect of the proposal on the setting of heritage assets.*

38. Policy ENV13 supports the protection of listed buildings and their settings.
39. Historic England's 'The Setting of Heritage Assets' Good Practice Advice states<sup>6</sup> the importance of setting lies in what it contributes to the significance of the heritage asset or to the ability to appreciate that significance. The definition of setting in the Framework also refers to the setting as the surroundings in which the asset is experienced. The Planning Practice Guidance on 'Historic environment' highlights that the extent and importance of setting includes visual factors as well as experiences including the historic relationship. The Court of Appeal case involving Kedleston Hall<sup>7</sup> shows that historical, social and cultural matters are relevant to the definition of settings, and that a direct physical or visual connection is not always necessary to form part of a setting.
40. The Bull Inn<sup>8</sup> is the nearest historic asset to the appeal site and lies adjacent. The list description suggests it dates back to circa eighteenth century. Its significance and special interest is derived from its position beside the A28 to serve travellers. Its architecture is important too with tall chimneys at both ends of the ridgeline, hipped dormers in the clay tiled roof also add to the roofscape. At ground level a pair of bay windows is under a projecting roof canopy. The building has had some alterations particularly to the rear, which sadly detract from its original character.
41. The front elevation facing the A28 has elaborate detailing at the eaves and Gothick heads to the first floor windows, which together with the pronounced roofline and ground floor projecting canopy appear to address the A28.
42. At the rear the roofline simply falls to a single storey and modern addition. This would face the appeal site, which the Appellant suggests contributes to lack of impact. Whilst I concur that this elevation is less important than the frontage, as the Council quite rightly pointed out at the Hearing, the building is nonetheless experienced as a whole.

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<sup>6</sup> Paragraph 9

<sup>7</sup> *Catesby Estates Ltd v Steer* [2018] EWCA Civ 1697

<sup>8</sup> List entry: 1070806

43. I find its setting is formed by its garden/grounds, roads, houses opposite as well as the appeal site as there are glimpses across the A28 into the appeal site at least during winter.
44. The appeal site makes a visual contribution to the setting by asserting a rural character, albeit that it is limited, particularly due to the presence of the intervening car park. There was no evidence before the Hearing of any historical, social or cultural association between the appeal site and the Inn.
45. Some of the houses, particularly their roofs, would be perceived and whilst they would attract attention away from the listed building, being set back the effect would be limited. There would also be a partial loss of the grass field and as such rurality, but this would be slight due to the A28 road. I therefore find that the proposal would lead to limited harm.
46. The Stables of the Bull Inn<sup>9</sup> are opposite the side of the A28 road, which is a curious siting rather than more typically expected at the rear of a historic inn. This contributes to their significance and special interest as well as providing and enhancing the setting for the Inn itself. Its modest functional detailing and stone construction also contribute to its interest.
47. Similar to the setting of the Inn, the appeal site makes a contribution to the setting of the Stables by its grass field extending the swath of countryside to the A28 frontage, albeit this is a limited contribution. The effect of the proposal would also be similar by eroding its rural setting, thereby leading to limited harm.
48. Bridge Farmhouse<sup>10</sup> has medieval origins and later additions, with earthy red brick walls and tiled roof. The Weatherboarded Barn to South West of Bridge Farmhouse<sup>11</sup> is notable for its scale. The significance and special interest of the Farmhouse and Barn are also derived from their materials and age. I find their settings are formed by the surrounding countryside. The appeal site makes a contribution to their settings as the field extends the continuity of the surrounding countryside, albeit it is limited due to the distances involved. The effect of the proposal would reduce the rural setting, but the resulting harm would be marginal.
49. I therefore find that the proposal would cause less than substantial harm and a low point within that spectrum.
50. The Council had no concern about the effect of the proposal on the setting of the Conservation Area. I note that it is approximately 300m away from the site<sup>12</sup>. There is no apparent cultural or historic connection with the appeal site. I find the proposal would not be harmful in respect of the setting of the Conservation Area.
51. The Council confirmed at the Hearing that no non-designated heritage assets would be effected.
52. Policy ENV13 states where proposals would lead to less than substantial harm to the significance of heritage assets or their settings that harm will be weighed against the public benefits of the proposal. I return to this balance below.

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<sup>9</sup> List entry: 1070807

<sup>10</sup> List entry: 1362911

<sup>11</sup> List entry: 1362970

<sup>12</sup> Mr Cox Hearing Statement

## Other Matters

53. The occupier of Fairview raised concern about the impact of vehicles on their living standards, including light spillage from vehicles exiting the site. Reference was made to the low cill heights of the windows and the main aspect being to the front which faces the appeal site. I saw on my site visit that living rooms and a study/ dining room face the appeal site as well as two bedrooms above. An outbuilding to the side functions as a home office.
54. The proposed access is shown on the submitted plans as directly opposite the gap between the outbuilding and the main house. Particular concern was raised about left exiting (westward) vehicles sweeping light spillage across the front of the house.
55. The Transport Assessment shows the proposal would generate 15 vehicles/ hour in the a.m. peak and 16 in the p.m. peak which would be infrequent and even less so at most times. Additionally vehicles turning left would be expected to be less than half of this figure as right turning vehicles would use the A28 main through route.
56. The above situation is not unusual. As another example the Appellant highlights the house opposite the Wissenden Lane junction in the centre of the village, which directly faces the through route to Pluckley. I noted substantial windows facing this junction with an open frontage.
57. The occupiers may have to use blackout curtains and keep curtains closed for longer later than currently. I acknowledge that this would be a nuisance and diminish the aspect from these habitable rooms.
58. The noise and disturbance from accessing vehicles was also raised as a concern however this would be small in proportion to the vehicles generally using Bull Lane. Moreover the vehicles would also be using the access at slow speeds and therefore generating less noise than through vehicles.
59. I therefore find that there would be some harm to the frontage rooms, which would be regrettable, but would not make them unusable. In this respect the proposal has some tension with Policy HOU5 which seeks to protect residential amenity.
60. The sitting room windows of Graylin have an open view across the appeal site and the countryside beyond. These face the proposed area for the new houses. However an area of landscaping is shown in between, but more importantly, the detailed design as considered in any reserved matters could place windows to avoid overlooking. Whilst the outlook would be lost, thereby hindering the enjoyment of the sitting room, the planning system does not protect the right to a view, and this is not an aspect I can give weighty consideration.
61. The Parameter Plan shows there would be sufficient separation between the proposed development and Graylin to avoid significant overbearing or overshadowing effects in any reserved matters scheme.
62. The proposal would provide a new footpath along Bull Lane, where it follows the bend in the A28, it would narrow to 1.2m width (by Toll Cottage). The Parish Council expressed concern about such a width. However this would be only for a short section where there is clear visibility. Manual for Streets does allow for a 1m

width for a 6m length of footpath. Moreover the width would easily accommodate the size of a wheelchair or buggy.

63. A kerb would demark the extent of the footpath and the area is well within the 30mph limit, which would be supported by new traffic calming. A Stage 1 Safety Audit found the arrangement safe, the Highway Authority similarly had no objection and based upon the evidence before the Inquiry I concur.
64. Concern was raised by the Parish Council about the maintenance of the footpath especially the management of the adjacent hedge. However it is on highway land, and its cutting back would be an obligation of the Highway Authority. It is readily accessible and would not be expected to be onerous to trim. If it was not within a maintenance programme, it would be seen and would be expected to be reported to the Highway Authority.
65. The proposed access off Bull Lane would have visibility splays to the required standard for a 30mph area. In addition it would be sufficiently distanced from the Bull Lane/A28 junction to avoid conflicting manoeuvres. Traffic calming measures are also proposed to support the 30mph limit. The submitted Transport Assessment considered the traffic generation and found that the road network had sufficient capacity, which was accepted by the Highway Authority. I similarly concur.
66. The village has 2 pubs, a post office/grocery, an artisan butchers, primary school and hair salon, all of which are within walking distance of the appeal site. The village is on the Ashford and Tenterdeen bus route with services during the main daytime in both directions. The nearest bus stops are approximately 400m away from the appeal site, near the school. Both main parties agreed that the appeal site is in an accessible location<sup>13</sup>. I similarly concur.

## Planning Obligations

67. The Community Infrastructure Regulations (CIL) and paragraph 58 of the Framework provide the legal and policy tests for obligations. These tests require that planning obligations should only be sought where they are: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development. Paragraph 98 of the Framework states decisions should take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community. Paragraph 101 of the Framework states significant weight should be placed on the importance of new, expanded or upgraded public service infrastructure when considering proposed development. The Planning Practice Guidance<sup>14</sup> (PPG) provides an overview of the CIL tests.
68. Policies SP1, COM1, COM2 and IMP1 seek to ensure that new development is supported by the necessary social, community, physical and e-technology infrastructure, recreation facilities and open space. They require development makes provision for additional infrastructure demands arising, whilst making reference to CIL Regulations. These policies are the basis for the Kent County

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<sup>13</sup> Statement of Common Ground paragraph 5.5.3

<sup>14</sup> Planning obligations September 2019

Council Developer Contributions Guide 2023, wherein contributions are explained and justified with reference to the criteria in the CIL Regulations and above PPG.

69. Both the County and Borough Councils provided CIL Compliance Statements covering their particular responsibilities. The County Council was not represented at the Hearing and relied upon written submissions. They seek contributions which are not supported by the Appellant and are the subject of Blue Pencil clauses<sup>15</sup>. The Appellant questioned whether the obligations meet the CIL tests.
70. Paragraph 2.6.1 of the section 106 agreement sets out that SEND, integrated children services and waste disposal contributions are disputed. The agreement anticipates this appeal decision will determine whether they are compliant and binding.
71. SEND places are currently 1% overly subscribed in Ashford Borough, and the County has a duty under the requirements of the Children and Families Act 2014. The Act protects the special educational needs and disabilities from birth to the age of 25 where appropriate, giving children, young people and their parents/carers greater control and choice in decisions and ensuring their needs are properly met.
72. I note the County Guide<sup>16</sup> has a threshold of 10 or more dwellings where contributions may be sought. Nonetheless the County Council's modelling for SEND pupil generation is 0.011 per house and 0.0027 per flat<sup>17</sup>. The up to 32 dwellings proposed here would not be likely to generate the need for one whole place rather a fraction of one. Either the development will lead to the necessity for a new place, or it won't; indeed the above multiplier suggests that the generation would be likely to be significantly less than one whole place. There was no evidence before the Hearing how a shared or pooled contribution, and then provision, would reasonably relate to this development. Accordingly, I find that this particular contribution in this appeal fails the CIL tests.
73. The County Council quote a 2025 appeal decision<sup>18</sup> which supported contributions for SEND and adult care. However that proposal was for up to 655 dwellings, which is not comparable to the up to 32 here.
74. In terms of integrated children services the Borough Council acknowledge that a specific project has not been identified. However it would go to Kent Youth and Early Years Services, and the County Council has such responsibilities under the Education Act 1996. Provision simply has to be made, and the contribution is therefore necessary. The contribution would be subject to 10 year payback clauses if the monies were not spent, which supports the CIL tests.
75. The County CIL Statement notes there is no opportunity for expansion of the existing Ashford waste transfer facility as 'it is surrounded by commercial development and the railway line'. The County Council has to transport household waste from its collections to a tip shared with the adjoining Folkestone and Hythe Council. This has substantial queues and another facility is being created to increase capacity. Potentially £142.13 per dwelling would go to a new waste

<sup>15</sup> This enables an Inspector to determine which obligations are appropriate and to confirm that any obligation in the Section 106 Agreement that are not compliant with Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) or Paragraph 57 of the National Planning Policy Framework.

<sup>16</sup> Paragraph 3.8.3

<sup>17</sup> Education and Land Contributions (appendix 2a to submissions)

<sup>18</sup> APP/E2205/W/24/3345454

transfer facility. Whilst that new facility is outside Ashford Borough, it would nonetheless free up capacity and indeed is the subject of an agreed service arrangement. The Borough Council question whether this would be directly related to the development, but nonetheless the effect would be to remedy the circumstances at the Ashford facility which is accessible to the site.

76. I therefore find that in consideration of paragraph 2.6.1 of the section 106 agreement, the SEND contribution is not shown to meet the CIL tests, but the integrated children services and waste contributions are so demonstrated.
77. Additionally paragraph 2.6.2 of the agreement sets out there are differing figures for adult social care, the learning contribution, libraries, primary and secondary schools. This appeal decision is anticipated to determine whether these differing figures, termed A or B, are compliant and if they should be binding. The principle of these contributions was not disputed.
78. The County Council's modelling calculates that ten new library users would be likely to be generated by the proposal. The number of borrowers exceeds capacity and the book stock in Ashford Borough being 583 items per 1000 population is well below the national standard of 1532 items. There is also a shortage of recommended floor space. Additional capacity could be met by more stock, re-configuration at Ashford Gateway and Tenterden libraries and the mobile service. I note that the above appeal decision found insufficient evidence to support the libraries contribution, but I find that it is evidenced in this appeal.
79. The County Council provides community learning and skills facilities for young people/adults to prepare them for work to overcome social isolation and encourage community cohesion. Two additional users would be likely to be generated, and the funding would go towards equipment located at Ashford Gateway, Homewood School in Tenterden and outreach venues.
80. The existing adult social care facilities are at capacity. This contribution would meet the needs of the additional residents, particularly for safeguarding facilities, at Adult Education Centres and outreach provision, including Ashford Gateway and Homewood School. The above measures would ensure that the expected additional three people would have access to services which are necessary for their well-being and their participation in the wider community.
81. The proposal would be expected to generate nine new primary school children and six secondary, which warrants appropriate contributions to expand capacity.
82. The County Council rely upon the 2023 Guide to justify the quantum and indexation for education, adult social care, community learning and libraries. Their CIL Compliance Statement notes<sup>19</sup> that all contribution rates are based at Quarter 1 in 2022 and are indexed using the BCIS All-In Tender Price Index.
83. It is essential that the contributions cover the actual future cost of delivering the infrastructure which echoes the intention of the County Guide<sup>20</sup>. Being the provider they have the best knowledge to quantify the costs. Similarly they are best placed to make a judgment of the costs with indexation. Moreover bearing in mind economic pressures such costs are more likely to have been rising since the first quarter of 2022. Consequently I concur with their conclusions.

<sup>19</sup> Kent County Council CIL Compliance Statement v1 – 2 December 2025 page 7

<sup>20</sup> Paragraph 3.8.3

84. I therefore find in respect of paragraph 2.6.2 of the agreement, the adult social care, libraries, primary and secondary schools and the County learning contributions should accord with the County Council figures.
85. Both County and District Councils requested monitoring fees, based on their own calculations for their particular responsibilities in each obligation within the agreement as outlined in their respective obligations guidance. The obligations PPG<sup>21</sup> allows for monitoring costs if proportionate and reasonable. The obligations would have to be checked by the Councils' staff throughout the progress of the development and payments would need to be requested, received, and actioned. Both Councils have particular responsibilities for overseeing the obligations and the funding. I therefore find that the monitoring fees are necessary and reasonably related to the proposal.
86. The obligation makes provision for 40% of the development to be affordable housing which is necessary to ensure the housing mix is appropriate.
87. The agreement makes provision for two serviced plots to be provided for custom/self-build housing. This would comply with Policy HOU6 and paragraph 71 of the Framework and would contribute towards that specific need. The agreement also confirms that 20% of the dwellings would be accessible and adaptable to accord with Policy HOU14.
88. The agreement makes provision for contributions for off-site recreation measures which would ensure that the facilities have capacity for the needs of the new residents. The procedures for management and maintenance of the on-site open space are also provided. There is also provision for ecological measures to ensure that a biodiversity net gain is achieved.
89. The agreement includes a health care contribution towards refurbishment or new premises for general practice, which would help meet the increased needs arising from the development.
90. The agreement has a Local Government Reorganisation clause, which would retain the obligations in any such event. Whilst the Borough Council did not feel that it is necessary, I find it would safeguard that eventuality.
91. I therefore conclude that in terms of paragraphs 2.6.1 and 2.6.2, the integrated children services and waste contributions are binding but not the SEND contribution and in terms of the contributions for adult social care, community learning contributions, libraries, primary and secondary schools, the contributions in PART B are binding. Based on the evidence before this particular appeal, I am satisfied that these contributions would meet the tests in that they are all necessary to make the development acceptable, directly related and fairly and reasonably related in kind and scale. Provision is also necessary to accord with Policies SP1, COM1 and IMP1 and the Developer Contributions Guide.

## **Planning Benefits**

92. Both parties agreed that the Housing Land Supply is 3.27 years, following a recent appeal decision<sup>22</sup>. I find this is a considerable shortfall. In terms of future prospects, the Local Plan is being reviewed but it is only at Regulation 18 Stage

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<sup>21</sup> Paragraph 36

<sup>22</sup> APP/E2205/W/25/3360094

and will take time to be completed and allocate development. The Stodmarsh SAC/SPA has been a constraint on development for several years, but the Council is putting in place the 'Stour Environmental Credits' system to resolve water neutrality, although it is likely to be a while before all these stalled sites pick up momentum. Overall I find that the prospects are encouraging but the shortfall will take time to address.

93. These 32 houses would be likely to be deliverable. The appeal site is greenfield, thereby only requiring minimal site clearance and without any particular constraints. The Appellant is also a locally orientated house builder, and 32 houses would not be expected to be onerous to complete.
94. The Council's evidence base to the currently adopted Local Plan shows an affordable housing need of 368 dwellings per year. Moreover in 2022/23 only 114 homes were delivered and in 2023/24 this fell to 98, which shows delivery is challenging. This proposal is for 40% affordable housing, which would be very significant towards the need and delivery. The proposal would also provide for self and custom build housing. Similarly 20% of the dwellings would be accessible and adaptable. Bearing in mind the above, the new homes would help meet the widespread needs of the community.
95. The Statement of Common Ground<sup>23</sup> notes that the proposals can demonstrate a 23.71% increase in habitat units and a 27.16% increase in hedgerow units, thereby exceeding the 10% Biodiversity Net Gain requirement. This is therefore a significant benefit.
96. I therefore find that collectively these benefits would be substantial.

### **Heritage Balance**

97. As I have found above the proposal would harm the designated heritage assets, contrary to section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
98. Whilst the harm arising would be a low point on the less than substantial spectrum; however, paragraph 212 of the Framework advocates great weight to the asset's conservation. I therefore give considerable importance and weight to the harm I have identified in my balancing judgment below. In addition, Paragraph 213 of the Framework emphasises that any harm to, or loss of, the significance of a designated heritage asset, should require clear and convincing justification. Paragraph 215 states where a development will lead to less than substantial harm to the significance of an asset, the harm should be weighed against the public benefits, including securing its optimum viable use.
99. Taking the public benefits together as a whole I conclude that they would be of sufficient weight to outweigh the identified harm to the character and appearance of the designated heritage assets.
100. The Council finds that the proposal accords with heritage orientated Policy ENV13 of the Local Plan<sup>24</sup>. I similarly concur.

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<sup>23</sup> Paragraph 5.10.6

<sup>24</sup> Paragraph 5.11.5 Statement of Common Ground

## **Development Plan and Planning Balance**

101. HOU5 and ENV3a are some of the most important Local Plan policies for consideration. I found earlier the proposal would conflict. However, I give these conflicts little weight as overall a suitably designed development could be accommodated on the site with only limited landscape harm.
102. Considering the Local Plan collectively, there is some accordance but also some conflicts with the Development Plan policies which are the most important in this appeal. When taken as a whole, I find that the proposal would be contrary to the Development Plan.
103. The policies in the Emerging Plan do not lead me to a particular decision, being at such an early stage, and no party made any such specific reference.
104. As I noted above there is a shortfall in Housing Land Supply and in such circumstances paragraph 11(d) of the Framework is triggered. Paragraph 11(d) criterion (ii) requires consideration of whether any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
105. Paragraph 7 of the Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development. In order to achieve this paragraph 8 of the Framework provides three overarching objectives: economic, social and environmental.
106. In terms of the economic objective the proposal would provide up to 32 dwellings which would have benefits from their construction. The Housing Land Supply shortfall is considerable, and paragraph 61 of the Framework confirms the Government's objective of significantly boosting the supply of homes.
107. In terms of the social objective, the Framework refers to the need to provide sufficient number and range of homes to meet the needs for present and future generations. Bearing in mind the shortfall in sites for housing there is a pressing need to increase supply from deliverable sites. The proposal would provide a range of 32 new houses. Conversely the proposal would impair the aspects of two adjoining dwellings albeit this would be limited in planning terms.
108. The affordable housing would also contribute to the social objective, particularly as 40% of the dwellings would be affordable which is a significant proportion and reflects paragraph 61.
109. In terms of the environmental objective the proposal would cause limited harm to the character and appearance of the area. The occupants of the dwellings would be close and accessible to facilities without being wholly reliant upon car use, thereby helping towards low carbon living as advocated within this criterion of paragraphs 8 and 110. Additionally, the proposal would improve biodiversity, which would be a benefit. Conversely the proposal would cause very low harm to the settings of the heritage assets.
110. In the light of the above, I therefore conclude that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal therefore benefits from the presumption in favour of sustainable development. The benefits of the proposed development and presumption in favour of sustainable

development in the context of the paragraph 11(d) balance therefore lead me to conclude that the appeal should be approved not in accordance with the Development Plan as material considerations indicate a decision otherwise is appropriate.

## **Conditions**

111. Paragraph 57 of the Framework and the Planning Practice Guidance, Use of planning conditions, provide the tests for the imposition of conditions. The Framework is clear that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning, and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have assessed the suggested conditions accordingly.
112. A condition is needed to specify the submission of the particular reserved matters in the interests of clarity. Similarly, a condition on approved plans is warranted, which also confirms the status of the Parameter Plan.
113. I also impose a condition limiting the development to 32 dwellings in the interests of clarity, reflecting the description of development.
114. The condition for the submission of reserved matters is suggested by both parties as 2 years rather than 3, to demonstrate deliverability. This reinforces my earlier finding.
115. Conditions are needed to ensure the implementation of the access, off site highway works, surfacing, timing of implementation, parking, site roads and their associated footways, in the interest of safety.
116. An archaeological investigation condition is necessary to ensure that any significant remains are properly recorded, to inform the heritage interest of the area.
117. The condition requiring 'Secure by Design' details would deter crime thereby promoting the well-being of the new residents.
118. The conditions requiring submission and approval of a Construction Management Plan and working hours would avoid unreasonable disturbance to those living nearby and using the surrounding roads. Conditions on potential remediation of any land contamination and pollution are needed to protect the health of new residents.
119. Conditions are needed on the new planting and maintenance thereafter in the interests of the appearance of the area. Similarly conditions are needed on tree protection to retain the significant specimens. The condition on materials is necessary to ensure a satisfactory appearance.
120. Conditions are needed on lighting, biodiversity enhancement measures, reptile measures and sensitive construction management in the interest of ecology.
121. The electric car charging condition is suggested by the Council as providing more detailed criteria than the Building Regulations regime. On this basis I accept that it is necessary.
122. Conditions are needed on surface and foul water arrangements to ensure that this basic infrastructure is provided for the living standards of residents. Similarly conditions are needed on noise measures and precautionary measures for any

land contamination. A condition on bin storage is also necessary to ensure that provision is made for this rudimentary service.

### **Conclusion**

123. I therefore conclude that the Appeal should be allowed subject to the conditions in the conditions annexe below and the section 106 agreement including clauses as set out in the paragraph 91 above.

*John Longmuir*

INSPECTOR

### **Appearances**

#### Appellant

Christian Hawley, Counsel, No.5 Chambers

Lucy Wilford BA(Hons) DipTP MRTPI Director DHA Planning

Andrew Cox CMLI, Dip LA, BSc Director of Lloyd Bore Ltd.

Edward Hawkins MSc IHBC MCIfA Technical Director RPS TetraTech

Paul Lulham BA(Hons) MA(Oxon) MSc FCILT DHA Director DHA Transport

#### Council

Benazir Kachchhi BArch MA MSC MRTPI Development Management Team Leader

Nick Harper BA(Hons) DipLA CMLI Partner Harper Landscape Architecture LLP

#### Third parties

Mike Peters BA(Hons) MRTPI (Retd) Vice chairman Bethersden Parish Council

Alexander Walters local resident

Paul Hanham interested party

Alan Pickering Borough Councillor

Jessamy Blandford Borough Councillor

## **Documents submitted during the Hearing**

Appellant opening

Council opening

Appeal Ref: APP/X1118/W/23/3318751

Appeal Refs: APP/P2935/W/23/3320677 and APP/P2935/Y/23/3320679

Appeal Ref APP/E2205/W/25/3368725

Annotated parameters plan

Clarification note: density, open space and section 106

Council closing

Appellant closing

Parish Council closing

## **Conditions Annexe**

1. Approval of the details of the layout, scale, appearance, and landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced and the development shall be carried out as approved.

2. Applications for the approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 2 years from the date of this permission.

3. The development hereby permitted shall be begun not later than the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.

4. The development hereby permitted shall be carried out in accordance with the following approved drawings and documents, insofar as they relate to the details approved at outline stage:

- Parameter Plan (Drawing No. 0005 Rev P3, ON Architecture Ltd, dated June 2024)
- Proposed Access Plan (Drawing No. DHA/18172/01 Rev D)

5. Prior to the commencement of above-ground works, a statement detailing how the development will achieve "Secured by Design" principles shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented prior to the occupation of each dwelling.

6. No development shall take place, including any site clearance, until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority in consultation with the Local Highway Authority. The Plan shall include details of:

- a) Parking and turning areas for construction and delivery vehicles and site personnel;
- b) Temporary access arrangements and visibility splays for any construction access;

- c) Vehicle routing to and from the site;
- d) Provision for and the use of wheel washing facilities;
- e) Measures to prevent the discharge of surface water or debris onto the highway;
- f) Timing of deliveries, avoiding network and school peak hours; and
- g) Hours of working and contact details for the site manager.

The approved Plan shall be implemented and adhered to throughout the construction period.

7. Prior to commencement of development, detailed drawings for the site access, internal road layout, footways, junctions, visibility splays, street lighting, drainage, signage, and off-site works (including footway widening along Bull Lane, Drawing Ref. 32891-H-02 P4) shall be submitted to and approved in writing by the Local Planning Authority. The roads, footways, footpaths, verges, drains, and visibility splays shall thereafter be laid out and constructed in accordance with the approved details.

8. No dwelling shall be occupied until the following works between that dwelling and the adopted highway have been completed to the satisfaction of the Local Highway Authority:

- a) Carriageways (excluding final wearing course) including turning facility and highway drainage;
- b) Footways and/or footpaths (excluding final wearing course);
- c) Visibility splays;
- d) Street lighting, signage and nameplates.

The final wearing course shall be completed within 12 months of the occupation of the final dwelling.

9. Details of vehicle parking and turning areas for each dwelling shall be submitted as part of the reserved matters. The approved parking and turning areas shall be provided prior to the occupation of the corresponding dwelling and permanently retained thereafter for such use, with no permanent obstruction preventing their intended use.

10. Prior to the occupation of each dwelling, a minimum of one active Electric Vehicle (EV) charging point shall be installed to Mode 3 (7 kW) standard and SMART-enabled (Wi-Fi connectivity). The charging point shall thereafter be retained available, in a working order for the charging of electric vehicles.

11. Details of secure, covered cycle parking shall be submitted and approved as part of the reserved matters. The facilities shall be provided prior to the occupation of the corresponding dwelling and thereafter maintained.

12. The visibility splays shown on Drawing Ref. 32891-H-02 P4 shall be provided prior to the first use of the access and maintained thereafter with no obstruction exceeding 1.05 metres above carriageway level within the splays, or 0.6 metres where the footway crosses the access.

13. The off-site highway improvement works to widen the existing footway along Bull Lane, as shown on Drawing Ref. 32891-H-02 P4, shall be fully implemented prior to the occupation of the first dwelling, unless an alternative phasing plan has been agreed in

writing with the Local Planning Authority in consultation with the Local Highway Authority.

14. The first 5 metres of the access from the edge of the carriageway shall be constructed of a bound surface material prior to the first use of the access and maintained thereafter.

15. The Reserved Matters application shall be accompanied by samples of external materials to be used in the construction of the dwellings to be approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved samples.

16. The access and associated works shall be completed prior to the first occupation of the development and thereafter maintained free of obstruction.

17. Details of bin storage and collection points shall be submitted at the reserved matters stage. The approved facilities shall be provided prior to the occupation of the relevant dwelling and retained thereafter.

18. No dwellings shall be occupied until confirmation has been provided that the necessary network reinforcement works identified by Southern Water have been completed and the foul water connection to the public sewer has been made.

19. Development shall not begin in any phase until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall be based upon the FRA and Drainage Strategy (June 2024) and Drainage Addendum (Nov 2024) by DHA and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site.

The drainage scheme shall also demonstrate (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

20. No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

21. Details of the landscaping of the site shall be submitted as part of the reserved matters and shall include:

- a) existing trees, hedgerows, and other landscape features to be retained and measures for their protection during construction;
- b) proposed new planting, including species, size, spacing, and planting density;
- c) details of boundary treatments, hard surfacing materials, and means of enclosure; and

22. All planting, seeding, or turfing comprised in the approved details shall be carried out in the first available planting season following the occupation of the final dwelling or completion of the development, whichever is the sooner. Any trees or plants which, within a period of five years from the completion of the development, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

23. Prior to the commencement of development above foundation level, a scheme for protecting the dwellings / development hereby approved from noise from A28 shall be submitted to and approved in the Local Planning Authority. The approved protection measures shall thereafter be completed before the approved dwellings / development are occupied and thereafter shall be retained as effective protection.

24. Prior to first use of the approved development, a lighting plan which has been designed to minimise impacts on biodiversity shall be submitted to and approved in writing by the Local Planning Authority. The plan shall show how and where external lighting will be installed and provide commentary regarding how the Bat Conservation Trust/Institute of Lighting Professional's 'Guidance Note 08/23: Bats and Artificial Lighting at Night' have been considered in the lighting design. It shall be downward facing and on motion sensors. It shall clearly demonstrate that areas to be lit would not impact protected species. All external lighting shall be installed in accordance with the specifications and locations set out in the plan and be maintained thereafter.

## 25. Part 1

If unexpected contamination is found at any time when carrying out the approved development it must be reported in writing to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Part 2.

## Part 2

Following completion of the remediation scheme a verification report that demonstrates the effectiveness of the remediation carried out must be prepared and submitted for approval in writing by the Local Planning Authority.

26. No dwelling shall be occupied until arrangements for the installation of high-speed fibre optic broadband have been submitted to and approved by the Local Planning Authority.

27. Prior to commencement of works (including site clearance), a construction environmental management plan (CEMP) will be submitted to and approved in writing by the local planning authority. The CEMP will be based on the recommendations in the

Preliminary Ecological Appraisal, PJC, Nov 24 and Reptile Report, PJC, Jul 24 and include the following:

- Risk assessment of potentially damaging construction activities;
- Identification of 'biodiversity protection zones';
- Detail and scheduling of pre-construction ecological surveys (e.g. badger)
- Practical measures (both physical measures and sensitive working practises) to avoid or reduce impacts during construction to trees, hedgerows, bats, birds, badgers, dormice, GCN, (may be provided as a set of species or habitat-specific method statements);
- Reptile mitigation methodology;
- The location and timing of sensitive works to avoid harm to biodiversity features;
- The times during construction when specialist ecologists need to be present on site to oversee works;
- Responsible persons and lines of communication;
- The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person, and;
- Use of protective fences, exclusion barriers and warning signs.

The approved CEMP will be adhered to and implemented throughout the construction period in accordance with the approved details.

28. Within three months of works commencement, a detailed plan showing how the development will enhance biodiversity, will be submitted to, and approved in writing by, the Local Planning Authority. This will include a detailed landscaping plan, to include reptile enhancements, detail on ownership and responsibilities of the outlined management measures to achieve the proposed habitat target conditions, native and wildlife-friendly planting, and integrated durable bat and bird boxes aimed at species of conservation concern. The approved measures will be implemented and retained thereafter.

29. The development shall proceed in strict accordance with the District Level Licensing Impact Assessment and Conservation Payment Certificate (IACPC) issued by Natural England. Evidence of the completed conservation payment shall be submitted to and approved in writing by the Local Planning Authority prior to commencement.

30. The approved development shall be carried out in accordance with the precautionary reptile mitigation strategy submitted within the Reptile Survey (PJC, July 2024), including habitat manipulation, phased vegetation clearance and provision of refugia.

31. No development shall take place until the Appellant, or their successors in title, have secured:

- i. Archaeological field evaluation works;
- ii. Further investigation, recording and reporting as determined by the evaluation; and

iii. A programme of post-excavation assessment and publication all in accordance with a specification and timetable submitted to and approved in writing by the Local Planning Authority.

32. No development shall take place (including site clearance) until a detailed Tree Protection Plan and Arboricultural Method Statement, in accordance with BS5837:2012, have been submitted to and approved by the Local Planning Authority. The approved measures shall be implemented throughout construction.

33. The development shall not exceed 32 houses.

*End of conditions*