

**APPEAL BY GLADMAN DEVELOPMENTS LTD  
LAND AT THE HILL, LITTLEBOURNE**

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**CLOSING STATEMENT ON BEHALF OF THE APPELLANT**

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**Introduction**

1. This is an Appeal which need not have taken place. Had Canterbury City Council ('the Council') adopted the position during the application process that it adopted at this Inquiry, outline planning permission would have been granted last year.
2. Indeed, the position that the Council has adopted at this Inquiry is even starker than the position it adopted when councillors resolved not to defend any of the reasons for refusal ('RFR') or adduce any evidence: the Council's opening statement went further than this, stating (emphasis added): 'CCC's case for the appeal is that **planning permission ought to be granted by the Inspector**, subject to a 106 agreement<sup>1</sup>. That is a fair and reasonable stance to adopt.
3. Gladman Developments Ltd ('the Appellant') and the Council are therefore in complete agreement as to the decision that the Inspector is being invited to take at this Inquiry: the Appeal should be allowed and outline planning permission should be granted.
4. The Council's decision to abandon its RFRs and not adduce any evidence must be seen in the context of what it now accepts:
  - a. it accepts that it is unable to deliver a five-year housing land supply<sup>2</sup>;
  - b. it accepts that in the most recent Housing Delivery Test it achieved only 67 per cent<sup>3</sup>;

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<sup>1</sup> See [2] in the Council's Opening Statement (ID 3).

<sup>2</sup> See [4.16.3] in the Statement of Common Ground (CD 6.04).

<sup>3</sup> Ibid at [4.15.1].

- c. it accepts that there ‘is a clear evidenced need for housing, including affordable housing’ in Canterbury<sup>4</sup>;
  - d. it accepts that the tilted balance in paragraph 11(d)(ii) of the National Planning Policy Framework (‘NPPF’) is engaged<sup>5</sup>; and
  - e. it accepts that there are no footnote 7 policies that would disengage it<sup>6</sup>.
5. In that context, the Council’s decision not to defend the RFRs is perhaps unsurprising.
  6. As the Appellant said in opening, this Appeal must also be viewed in the context of ‘the most acute housing crisis in living memory’<sup>7</sup>. In that context, the Appeal Scheme would deliver up to 300 new homes, including 30 per cent affordable housing, on a site that is now a draft allocation in the Council’s emerging Local Plan.
  7. The Appellant’s case is that there are no material considerations that would warrant refusal of the Appeal Scheme. Indeed, the tilted balance means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Plainly, the limited harms that have been identified during the course of the Inquiry come nowhere near to reaching this high threshold.
  8. On that basis, with no five-year housing land supply, a failed Housing Delivery Test, an accepted need for new market and affordable housing, a draft allocation in the emerging Local Plan, limited planning harm and significant planning benefits, including the delivery of housing which the Council agrees is a ‘very significant benefit’ and delivery of affordable housing which the Council agrees is ‘also a very significant benefit’<sup>8</sup>, the Appeal should be allowed. The Council accepts this and indeed commended this course of action to the Inspector in its opening.
  9. Accordingly, the Appellant invites the Inspector to allow the Appeal.

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<sup>4</sup> Ibid at [4.3.3].

<sup>5</sup> Ibid at [4.17.1].

<sup>6</sup> Ibid at [4.17.2].

<sup>7</sup> Written Ministerial Statement, Building the homes we need, 30 July 2024 (CD 6.05).

<sup>8</sup> See [4.4.1] and [4.4.4] in the Statement of Common Ground (CD 6.04).

## **The Development Plan**

10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that planning applications should be determined in accordance with the adopted development plan unless material considerations indicate otherwise.
11. It is common ground that for the purpose of this Appeal, the adopted development plan comprises the Canterbury District Local Plan ('the Local Plan') which was adopted in July 2017<sup>9</sup>. However, with the application of the tilted balance, the most important policies for determining the Appeal are out-of-date<sup>10</sup>.
12. The Council's now withdrawn RFRs alleged conflict with the following policies in the Local Plan<sup>11</sup>: Policy T1 – Transport Strategy; Policy QL12 – Potentially Polluting Development; Policy EMP12 – Agricultural Land; and Policy LB4 – Landscape Character Areas. These are addressed below under the relevant section within the assessment of material considerations.
13. As Mr Tait explained, the most important policies for the purpose of this Appeal are Policy SP1 – Sustainable Development, Policy SP4 – Strategic Approach to the Location of Development, and Policy HD4 – New housing in the countryside.

### **Policy SP1 – Sustainable Development**

14. As set out in the Local Plan, Policy SP1 is 'largely based on the Planning Inspectorate model policy to provide a presumption in favour of "sustainable development"'<sup>12</sup>. It operates in a similar way to paragraph 11 of the NPPF, including the titled balance. As Mr Tait explains, the Policy SP1 'is important here where the Council cannot demonstrate a 5 year supply of land for housing and as such where policy should be considered to be out of date, engaging this tilted planning balancing exercise'<sup>13</sup>.

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<sup>9</sup> CD 6.02.

<sup>10</sup> See [3.48] in the Proof of Evidence of Jason Tait.

<sup>11</sup> CD 5.03.

<sup>12</sup> See [1.39] in CD 6.02. Policy SP1 is on p.21.

<sup>13</sup> See [3.6] in the Proof of Evidence of Jason Tait.

Policy SP4 – Strategic Approach to the Location of Development

15. Policy SP4 sets out the Council’s strategic approach to the location of new development<sup>14</sup>. It provides the criterion against which new development that is not allocated in the Local Plan will be assessed. As Mr Tait explains, it does this by reference to the settlement hierarchy which identifies the broad tiers of settlement in the District based on the size of settlements and the range of services that they possess<sup>15</sup>.
16. Criterion two of Policy SP4 provides (emphasis added):
- ‘Provision of new housing that is of a size, design, scale, character and location appropriate to the character and built form of the rural service centres of Sturry and the local centres of Barham, Blean, Bridge, Chartham, Hersden and Littlebourne will be supported provided that such proposals are not in conflict with other local plan policies** relating to transport, environmental and flood zone protection and design, and those of the Kent Downs AONB Management Plan, where applicable’.
17. As Mr Tait notes, it is evident from Policy SP4 ‘that it gives some support to development at a local centre village such as Littlebourne, over and above that allocations’ in the Local Plan<sup>16</sup>.
18. Mr Tait further notes that ‘in the absence of a formal settlement boundary... this requires some element of judgment, but given the location of the site immediately adjoining built elements of the village and its settlement pattern, the site is not within the built confines and logically forms open countryside adjoining the village’<sup>17</sup>.
19. Mr Tait notes that the Local Plan ‘states that Local Centres can support a greater level of development than other lower category settlements’ and that the development of the Appeal Site ‘would not be contrary to the strategic approach to the location of development set out in Policy SP4’<sup>18</sup>. He concludes that the ‘proposals can be seen to

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<sup>14</sup> Policy SP4 is on p.34 in CD 6.02.

<sup>15</sup> See [3.7] in the Proof of Evidence of Jason Tait.

<sup>16</sup> Ibid at [3.8].

<sup>17</sup> Ibid at [3.9].

<sup>18</sup> Ibid at [4.2].

accord with the strategic approach to the location of development within this policy’ of the Local Plan<sup>19</sup>.

#### Policy HD4 – New housing in the countryside

20. Mr Tait does identify some conflict with Policy HD4<sup>20</sup>. However, he says that overall, whilst these are all important policies, they must be regarded as out of date in the absence of a five-year housing land supply and the most recent Housing Delivery Test. On that basis, Mr Tait concludes that ‘to the extent to which conflict with policy arises here, then such conflict is rightly considered in the planning balance but should be attributed only limited weight’<sup>21</sup>.
21. As such, whilst the Appeal Site is not allocated in the Local Plan, it is in a sustainable location, adjoining a local centre village in the settlement hierarchy where the Local Plan recognises some development over and above what is allocated can take place<sup>22</sup>.

#### Canterbury District Draft Local Plan 2040

22. The Council is currently developing a new Local Plan to cover the period to 2040 (‘the emerging Local Plan’)<sup>23</sup>. Under draft Policy R7 – The Hill, Littlebourne – the Appeal Site would be allocated for approximately 300 dwellings<sup>24</sup>.
23. The Appeal Site has been recognised as being a suitable site for development in multiple iterations of the emerging Local Plan: the Regulation 18 draft of the Canterbury District Local Plan 2045 under draft Policy R15 (October 2022); the current emerging Local Plan to 2040 under draft Policy R7 (March 2024); and the most recent Regulation 18 focused consultation (September 2025).
24. In the context of a number of the comments made by third parties at the Inquiry concerning public transport connections and amenities, it is worth quoting from the emerging Local Plan to understand the Council’s own view of Littlebourne’s suitability as a location for new development. It states:

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<sup>19</sup> Ibid at [4.2].

<sup>20</sup> Ibid at [3.10] and [4.3].

<sup>21</sup> Ibid at [4.5].

<sup>22</sup> Ibid at [4.2].

<sup>23</sup> CD 6.03.

<sup>24</sup> See pp.124-126 in CD 6.03.

‘Littlebourne is located to the east of Canterbury, on the A257 road to Sandwich. There are regular bus connections to Canterbury and Sandwich, and a wide range of local services including a primary school, GP surgery, local convenience store and post office’<sup>25</sup>.

25. The Council therefore clearly considers that Littlebourne is a suitable location for new housing development, comprising a range of amenities and transport connections.
26. Furthermore, the Appeal Site was initially assessed as part of the Council’s Strategic Land Availability Assessment (‘SLAA’) in 2022, where it was identified as being suitable, available and achievable for the development of circa 302 dwellings<sup>26</sup>.
27. These considerations have informed the inclusion of the Appeal Site in the emerging Local Plan, and have in turn informed the Appellant’s approach to the Appeal Site.
28. With regard to housing need, the Canterbury Housing Needs Assessment Update (July 2025) provides that the standard method Local Housing Need figure for Canterbury is 1,215 dwellings per year, equating to 23,085 dwellings over the plan period of 2024-2043. There is therefore a significant housing need identified for Canterbury.
29. Whilst the emerging Local Plan can only be afforded limited weight<sup>27</sup>, it provides helpful context and highlights the substantial housing need that the Council will be required to meet<sup>28</sup>, to which the Appeal site would make an important contribution. Moreover, it is common ground that the Appeal Site’s identification in the SLAA and inclusion as a draft allocation demonstrates ‘the Council’s direction of travel with regards to the suitability of the site’<sup>29</sup>.

### **National planning policy**

30. It is common ground that the NPPF is an important material consideration in the determination of this Appeal<sup>30</sup>.

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<sup>25</sup> See [5.15] in CD 6.03.

<sup>26</sup> See [3.17] in the Proof of Evidence of Jason Tait; Appendix C of the SLAA (CD 6.10).

<sup>27</sup> See [49] of the NPPF.

<sup>28</sup> See [3.18] in the Proof of Evidence of Jason Tait.

<sup>29</sup> See [3.3.3] in the Statement of Common Ground (CD 6.04).

<sup>30</sup> Ibid at [3.4.1].

31. It is the Appellant's case that the Appeal Scheme would broadly accord with the NPPF's three objectives that should be pursued to achieve sustainable development: economic, social and environmental<sup>31</sup>. As Mr Tait explains:

- a. the Appeal Scheme would contribute to a strong, responsive and competitive economy and will provide significant jobs during the construction phase, in addition to delivering increased local expenditure<sup>32</sup>;
- b. the Appeal Scheme would support a strong, vibrant and healthy community by providing a range and choice of house types – including affordable housing – in a high-quality environment with access to services and infrastructure and significant new areas of public open space<sup>33</sup>; and
- c. the Appeal Scheme would protect and enhance the best of the local natural environment, enhancing biodiversity, providing new areas of public open space, promoting active travel and providing an opportunity to deliver landscaped planting and open space for the benefit of new and existing residents<sup>34</sup>.

32. Mr Tait concludes that the proposals do represent sustainable development<sup>35</sup>.

33. Under paragraph 78 of the NPPF the Council is required to demonstrate a five-year housing land supply, and it is common ground that it is unable to do that. Whilst the Appellant has not tested the Council's evidence, the Council's own, most up to date Annual Monitoring Report (published December 2025<sup>36</sup>), which post-dates the figure recorded in the Statement of Common Ground, states a five-year supply of only 3.62 years. This is a shortfall of 2,016 dwellings, a substantial shortfall against the five-year requirement of 7,290 dwellings. This level of shortfall is a level which the parties agree is significant<sup>37</sup>.

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<sup>31</sup> See [3.21]-[3.23] in the Proof of Evidence of Jason Tait.

<sup>32</sup> Ibid at [3.21].

<sup>33</sup> Ibid at [3.22].

<sup>34</sup> Ibid at [3.23].

<sup>35</sup> Ibid at [3.23].

<sup>36</sup> Table 4.1 in Section 4 of CD 6.07.

<sup>37</sup> See [4.17.3] in the Statement of Common Ground (CD 6.04).

34. As such, the most important policies for determining the appeal are out of date and the tilted balance in paragraph 11(d)(ii) of the NPPF is engaged. Importantly, as is set out above, this approach is also reflected in Policy SP1 of the Local Plan<sup>38</sup>.

### **Main Issues**

35. Prior to assessing the main raised by the Council's now withdrawn RFRs and by third parties at the Inquiry, it is important to note that:

- a. the Inquiry heard evidence from the Appellant's witnesses on each of the Council's previous RFRs: landscape and visual matters; flood risk and drainage; ecology (including the impact on the Chalk Stream); highways and sustainable transport; and planning. The Inquiry heard no evidence from the Council, nor was the Appellant's evidence tested by the Council;
- b. the Council has accepted that there are no RFRs that would warrant the refusal of outline planning permission. The Council's officers had already recognised this in recommending that outline planning permission be granted; councillors came belatedly to agree with this view in resolving not to defend the RFRs; and
- c. in the context of the tilted balance which the Council accepts is engaged, planning permission should be granted and should only be refused where any adverse impacts 'significantly and demonstrably outweigh the benefits', when assessed against the policies in the NPPF as a whole. This is clearly a high threshold and one that the Appellant says comes nowhere near to being met.

36. In that context, the Appellant has set out below its case on each of the material considerations, in the order in which the Inquiry heard the Appellant's evidence.

### **Landscape and visual impact**

37. Whilst harm to the landscape was one of the Council's now withdrawn RFRs (RFR 5), it was notable that it was not something raised by many third parties at the Inquiry.

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<sup>38</sup> See Appendix 1 in the Proof of Evidence of Jason Tait.

38. The Appellant adduced evidence from Mr Jackson<sup>39</sup>. Prior to considering his evidence, it is worth highlighting at the outset the matters on which the parties are agreed:
- a. it is agreed that ‘the site is visually well-contained and mostly screened to accommodate a well-designed and considerate development which would not have any unacceptable landscape and visual effects’<sup>40</sup>;
  - b. it is agreed that the Appellant’s Landscape and Visual Appraisal (‘LVA’) <sup>41</sup> was prepared in accordance with the relevant guidance and ‘is a fair representation of the impact of the proposals in landscape and visual terms’<sup>42</sup>; and
  - c. it is agreed that landscape harm should only be attributed limited weight in the planning balance<sup>43</sup>.
39. In regard to the Appeal Site’s context, Mr Jackson explained that the LVA confirmed there are no statutory landscape designations that cover the site or are situated adjacent to it. The Kent Downs National Landscape (or ‘Area of Outstanding Natural Beauty’) is approximately 2.6 km south-west of the Appeal Site and the topography and nature of the landscape results in no intervisibility between the Appeal Site and this National Landscape<sup>44</sup>.
40. On landscape character, Mr Jackson explained that there was a national, county and district context. At a very broad national level, the Appeal Site sits within the North Kent Plain. At a county level, the Appeal Site is located within the North Kent Fruit Belt character area and at a district level the Appeal Site is located within the LCTH: central Mixed Farmlands and LCA H6: Littlebourne Fruit Belt. Mr Jackson provided an overview of the key characteristics of each of these<sup>45</sup>.
41. Mr Jackson explained the characteristics, constraints and opportunities that had informed the Development Framework Plan<sup>46</sup>. He noted that it was a fairly simple

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<sup>39</sup> See Proof of Evidence of Timothy Jackson.

<sup>40</sup> See [4.13.1] in the Statement of Common Ground (CD 6.04).

<sup>41</sup> CD 2.36. Timothy Jackson explained in his evidence that whilst he did not personally conduct the LVA he adopted its conclusions.

<sup>42</sup> See [4.13.2] in the Statement of Common Ground (CD 6.04).

<sup>43</sup> Ibid at [4.13.3].

<sup>44</sup> Timothy Jackson Evidence-in-Chief; see [4.19] in CD 2.36.

<sup>45</sup> See [4.5]-[4.18] in the Proof of Evidence of Timothy Jackson.

<sup>46</sup> CD 2.46.

medium to large arable field, with a relatively short straight ditch at a fold in the middle and existing planting of moderate or low quality to the perimeter. He said that there were limited landscape constraints on the Appeal Site<sup>47</sup>; it “tilts” towards the settlement in topography terms.

42. Mr Jackson said that the landscape value of the Appeal Site had been assessed as ‘medium’<sup>48</sup>. He confirmed that in his professional opinion, he does not consider that the Appeal Site and its immediate context constitute or lie within a ‘valued landscape’ as defined in paragraph 187(a) of the NPPF<sup>49</sup>.
43. In regard to the zone of visual influence, Mr Jackson confirmed that the Appeal Site is visually well contained as the Council accepts, and that existing views of the Appeal Site from properties or other receptors or positions within Littlebourne are confined to a small number of properties, limited sections of public rights of way and stretches of The Hill and Bekesbourne Lane. He said where the Appeal Site was visible, development would generally be seen alongside or in conjunction with the existing settlement edge<sup>50</sup>.
44. Mr Jackson explained the principal features of the landscape proposals by reference to the Development Framework Plan<sup>51</sup>. Notably, he said that 45 per cent of the Appeal Site would be dedicated to landscape and green infrastructure, which he described as ‘a lot more than most in terms of that balance and provision of green space’<sup>52</sup>. His evidence states that this is likely to comprise in excess 5,000 new native trees, shrub, scrub and hedgerow planting<sup>53</sup>. Mr Jackson described the proposed green space on the Appeal Site as a ‘notable, albeit localised benefit’<sup>54</sup>. It would be underpinned by a long-term management plan to ensure the successful establishment and maturing of all the planting and habitats<sup>55</sup>.

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<sup>47</sup> Timothy Jackson Evidence-in-Chief.

<sup>48</sup> See [3.12] in the Proof of Evidence of Timothy Jackson and [4.33]-[4.44] in the LVA (CD 3.36).

<sup>49</sup> Timothy Jackson Evidence-in-Chief and [8.11] in the Proof of Evidence of Timothy Jackson.

<sup>50</sup> Ibid.

<sup>51</sup> CD 2.46.

<sup>52</sup> Timothy Jackson Evidence-in-Chief.

<sup>53</sup> See [9.10] in the Proof of Evidence of Timothy Jackson.

<sup>54</sup> Timothy Jackson Evidence-in-Chief.

<sup>55</sup> See [9.10] in the Proof of Evidence of Timothy Jackson.

45. Notably, the Council's Tree Officer said the 'significant planting of trees' was 'welcome and will also benefit biodiversity along with the green infrastructure linkages'<sup>56</sup>.
46. Overall, Mr Jackson said that he was 'extremely confident' that the landscape proposals would help the Appeal Scheme to assimilate within the surrounding environment<sup>57</sup>. It is capable of being an "exemplar" scheme.
47. Mr Jackson said that the landscape effects on the Appeal Site and the immediate context would be moderate adverse upon completion, reducing to minor / moderate adverse over time. The wider landscape effects would be minor adverse or less. Overall, Mr Jackson concluded that there would be minor / moderate adverse residual landscape effects and that visual effects would be both 'limited and localised'<sup>58</sup>.
48. In regard to the policies that formed part of the Council's now withdrawn RFR, Mr Jackson said that in his view the Appeal Scheme 'very much accords' with paragraph 135(c) of the NPPF. In regard to Policy LB4 of the Local Plan, he said that the Appeal Scheme 'does not get close' to the threshold described in the policy, which requires development not to 'significantly adversely effect' the landscape character<sup>59</sup>.
49. As set out above, the parties agree that any landscape harm should only be attributed limited weight in the planning balance<sup>60</sup>.

#### Highways and sustainable transport

50. The Inquiry heard evidence from Ms Eggleston on behalf of the Appellant in regard to highways and sustainable transport<sup>61</sup>. She provided an overview of the significant engagement that has taken place with Kent County Council as the highways authority ('KCC HA') on the Transport Assessment<sup>62</sup> and Travel Plan<sup>63</sup>. The Transport Assessment has also been subject to pre-application scoping discussions with KCC HA.

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<sup>56</sup> See p.11 in the May Officer's Report to Planning Committee (CD 5.01).

<sup>57</sup> Timothy Jackson Evidence-in-Chief.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> See [4.13.3] in the Statement of Common Ground (CD 6.04).

<sup>61</sup> See Proof of Evidence of Vanessa Eggleston.

<sup>62</sup> CD 1.21.

<sup>63</sup> CD 1.22.

51. Ms Eggleston provided a chronology of the Appellant's discussions with KCC HA, noting that detailed responses had been sent to comments in July 2023<sup>64</sup> and again in September 2023<sup>65</sup>. In that regard, it is important to note that all matters are agreed with KCC HA, and indeed with the Council's Transport team<sup>66</sup>. Ms Eggleston confirmed that there are no outstanding areas of dispute between the Appellant and KCC HA<sup>67</sup>.

52. Ms Eggleston explained the package of transport measures that had been agreed with KCC HA<sup>68</sup>. In particular, she highlighted:

- a. a puffin crossing on The Hill to enable residents to walk to the existing facilities in Littlebourne and to enable existing residents to access the new on-site facilities<sup>69</sup>. Ms Eggleston said that she was 'very confident' that this would provide a successful crossing for residents<sup>70</sup>;
- b. tactile paving at the junction of The Hill / Jubilee Road<sup>71</sup>;
- c. a financial contribution of £30,000 towards upgrading public rights of way within Littlebourne, encouraging the use of walking to access local facilities;
- d. direct pedestrian connections to the existing bus stops on The Hill adjacent to the Appeal Site and an extended waiting area at the westbound bus stop;
- e. a financial contribution of £18,000 towards cycle parking at Bekesbourne Station;
- f. a travel voucher of £400 per dwelling for new residents, which could be used to purchase bus tickets or a bicycle to encourage sustainable transport;
- g. the provision of six electric vehicle ('EV') car club spaces within the Appeal Site. Whilst some third parties questioned whether a scheme of this nature

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<sup>64</sup> CD 2.02.

<sup>65</sup> CD 2.14.

<sup>66</sup> See the Transport Statement of Common Ground (CD 7.01).

<sup>67</sup> Vanessa Eggleston Evidence-in-Chief.

<sup>68</sup> See [2.5.12] in the Proof of Evidence of Vanessa Eggleston.

<sup>69</sup> CD 2.31.

<sup>70</sup> Vanessa Eggleston Evidence-in-Chief.

<sup>71</sup> See Appendix 3.A of CD 2.14.

would work on the Appeal Site in this location, Ms Eggleston confirmed that in her professional opinion there was no reason why it would not<sup>72</sup>;

- h. the implementation of a Travel Plan to encourage sustainable travel practices amongst future residents; and
- i. on-site measures including cycle parking, EV charging and networks of pedestrian and cycle routes, encouraging sustainable travel.

53. Ms Eggleston confirmed that in her professional opinion, the delivery of the proposed transport strategy reflected the vision-led approach set out in the NPPF and would assist in prioritising sustainable travel through reducing the need to travel and encouraging active and sustainable modes of travel. She confirmed that in her view the Appeal Scheme was in conformity with paragraph 115(a) of the NPPF<sup>73</sup>.

54. On the sustainable accessibility of the Appeal Site, Ms Eggleston referred to the definition of sustainable transport modes in the glossary of the NPPF, which provides: ‘Any efficient, safe and accessible means of transport with overall low impact on the environment, including walking and cycling, ultra-low and zero emission vehicles, car sharing and public transport’<sup>74</sup>. On this, Ms Eggleston’s evidence was:

- a. the Appeal Site is well-located in proximity to a wide range of facilities within Littlebourne, all of which are within a 15-minute walk or a three to four minute cycle ride away<sup>75</sup>;
- b. on-site facilities will contribute towards the development of a walkable neighbourhood<sup>76</sup>;
- c. there is a good network of footways and public rights of way within Littlebourne<sup>77</sup>;

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<sup>72</sup> Vanessa Eggleston Evidence-in-Chief.

<sup>73</sup> Ibid and [2.5.13] in the Proof of Evidence of Vanessa Eggleston.

<sup>74</sup> P.79 in the NPPF.

<sup>75</sup> Vanessa Eggleston Evidence-in-Chief and Table 2.1 and [2.3.8] in the Proof of Evidence of Vanessa Eggleston.

<sup>76</sup> Ibid and [2.3.9] in the Proof of Evidence of Vanessa Eggleston.

<sup>77</sup> Ibid and [2.3.1] in the Proof of Evidence of Vanessa Eggleston. See also figure 2.1 in CD 7.01.

- d. Littlebourne is defined by the Council as a Rural Service Centre<sup>78</sup> and as having a good frequency of bus service<sup>79</sup>. The emerging Local Plan defines Rural Service Centres as ‘highly sustainable settlements where residents can meet most of their-day-to-day needs within the settlement itself’<sup>80</sup>. Ms Eggleston said that Littlebourne has each of the ‘key services’ set out in the definition<sup>81</sup>;
- e. there are extensive facilities in Canterbury and Sandwich which can be accessed from the Appeal Site via an existing bus service which operates a half-hourly service Monday to Saturday and an hourly service on a Sunday<sup>82</sup>. The majority of residents would live within 400m (a five minute walk) of existing bus stops on The Hill<sup>83</sup>; and
- f. although concerns were expressed from some third parties that buses were at capacity and unreliable, Ms Eggleston noted that Stagecoach, which operates the existing bus services, has confirmed that there is sufficient capacity to accommodate new development and that no financial contribution was requested from the Appellant. In addition, the Appeal Scheme would result in additional demand for the service which would support its commercial viability<sup>84</sup>. Ms Eggleston said that the existing bus service represents ‘a very good level of service for a rural village such as Littlebourne’<sup>85</sup>.

55. Overall, Ms Eggleston concluded that the Appeal Site offers a sustainable location for residential development<sup>86</sup>.

56. There was some suggestion from third parties at the Inquiry that there was no safe and suitable access to the Appeal Site. However, access is now a Reserved Matter, so is not something that is before the Inspector for determination.

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<sup>78</sup> Ibid and [2.2.7] in the Proof of Evidence of Vanessa Eggleston.

<sup>79</sup> Ibid and [2.2.11] in the Proof of Evidence of Vanessa Eggleston.

<sup>80</sup> P.111 of the emerging Local Plan (CD 6.03).

<sup>81</sup> Vanessa Eggleston Evidence-in-Chief.

<sup>82</sup> See Table 2.1 and [2.4.13] in the Transport Statement of Common Ground (CD 7.01).

<sup>83</sup> Ibid at [2.4.14].

<sup>84</sup> See p.4 of the July Officer’s Update report to Planning Committee (CD 5.02).

<sup>85</sup> Vanessa Eggleston Evidence-in-Chief.

<sup>86</sup> Ibid.

57. Whilst now a reserved matter, access was initially included as part of the outline planning application and Road Safety Audits and Design Team Responses were submitted to KCC HA<sup>87</sup>. Ms Eggleston confirmed that those assessments had demonstrated that T-junctions were capable of accommodating the forecast development and background traffic levels.
58. In addition, Ms Eggleston said that a further Road Safety Audit and Design Team Responses were undertaken for the proposed puffin crossing, with no significant safety issues identified. She confirmed proposed condition 15 would require existing on-street parking that would be displaced by the crossing to be replaced within the Appeal Site<sup>88</sup>.
59. Overall, Ms Eggleston concluded that safe and suitable access could be provided to the Appeal Site, with the details to be confirmed at the Reserved Matters stage<sup>89</sup>.
60. The traffic impacts of the Appeal Scheme are set out in detail in the Transport Assessment<sup>90</sup> and summarised by Ms Eggleston in her evidence<sup>91</sup>. She confirmed that the trip generation rates and distribution had been agreed with KCC HA as part of scoping discussions, and that the assessment had taken account of several committed developments in the area, also agreed with KCC HA. The assessment study area included Littlebourne, the A257 corridor and junctions within Canterbury<sup>92</sup>.
61. Ms Eggleston said that the assessment concluded that the overall impact of the Appeal Scheme along the A257 corridor / Canterbury was between two per cent and six per cent. She said the provision of a new link road through the Appeal Site, as required by draft Policy R7 in the emerging Local Plan, would have a positive impact on the A257 / Bekesbourne Lane junction, particularly for pedestrians and cyclists using the junction<sup>93</sup>. This is common ground with KCC HA<sup>94</sup>.
62. In addition, Ms Eggleston said that the impact of the Appeal Scheme on Bekesbourne Lane would be negligible, with 10 additional vehicles in the AM peak and seven

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<sup>87</sup> See Appendix 3.D of the Transport Assessment (CD 1.21).

<sup>88</sup> Vanessa Eggleston Evidence-in-Chief.

<sup>89</sup> Ibid.

<sup>90</sup> CD 1.21.

<sup>91</sup> See [4.7] in the Proof of Evidence of Vanessa Eggleston.

<sup>92</sup> Vanessa Eggleston Evidence-in-Chief.

<sup>93</sup> Ibid.

<sup>94</sup> See [2.3.3 x] in the Transport Statement of Common Ground (CD 7.01).

additional vehicles in the PM peak<sup>95</sup>. Furthermore, it is common ground with KCC HA that there are no safety concerns that would be exacerbated by the Appeal Scheme<sup>96</sup>.

63. Ms Eggleston said that no highway mitigation had been required by KCC HAA beyond the delivery of the new link road through the Appeal Site.

64. Overall, Ms Eggleston confirmed that the analysis undertaken for the Transport Assessment concluded that the impact of the Appeal Scheme on the surrounding highway network was not significant or severe<sup>97</sup>. KCC HA has confirmed that the highways impacts of the Appeal Scheme would be acceptable and not severe<sup>98</sup>.

65. Ms Eggleston also responded to some of the concerns raised by third parties. In so far as they have not already been addressed above, her evidence is set out below.

66. In respect of the concern that facilities are remote from the Appeal Site and on the ‘wrong’ side of The Hill, with insufficient footway widths, Ms Eggleston said:

- a. some facilities would be on-site and therefore very easily accessible;
- b. the proposed new puffin crossing would allow residents living on the Appeal Site to cross The Hill and access the footway on the northern side of that road, enabling access to the shop, post office, community building and playing facilities in the centre of Littlebourne and the school, nursery, GP surgery and allotments to the north<sup>99</sup>;
- c. the footways are consistent with Kent Design Guide requirements, with narrower sections throughout Littlebourne consistent with its historic character<sup>100</sup>;
- d. improvements to public rights of way would be made to several routes through section 106 contributions; and

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<sup>95</sup> Vanessa Eggleston Evidence-in-Chief.

<sup>96</sup> See [2.5.3 x] in the Transport Statement of Common Ground (CD 7.01).

<sup>97</sup> Vanessa Eggleston Evidence-in-Chief.

<sup>98</sup> See [2.5.4] in the Transport Statement of Common Ground (CD 7.01).

<sup>99</sup> See also Figure 2.2, Key Facilities in Littlebourne in the Proof of Evidence of Vanessa Eggleston.

<sup>100</sup> See [5.12]-[5.17] in the Proof of Evidence of Vanessa Eggleston.

- e. as set out above, facilities beyond Littlebourne in Canterbury and Sandwich are accessible by bus.

67. As to the suggestion that Bekesbourne Lane is dangerous for pedestrians and cyclists, Ms Eggleston said:

- a. there are few facilities along Bekesbourne Lane so it is not anticipated that the Appeal Scheme would generate a significant number of trips from residents;
- b. it is not anticipated that a significant number of residents living on the Appeal Site would walk to Bekesbourne Station<sup>101</sup>;
- c. Bekesbourne Station is within cycling distance of the Appeal Site, and the Appellant would provide a financial contribution of £18,000 towards cycle parking at the station<sup>102</sup>. Although some third parties suggested few cyclists use these roads, one resident suggested it was a route used by recreational cyclists, often in quite significant numbers, particular in the summer months<sup>103</sup>; and
- d. the Appeal Scheme would only add between seven and 10 vehicles to Bekesbourne Lane during peak hours, with fewer at other times<sup>104</sup>. As such, Ms Eggleston confirmed that this would not have a detrimental impact on pedestrians or cyclists using the route<sup>105</sup>. She said the Appeal Scheme would have a ‘negligible impact on the operation of Bekesbourne Lane’<sup>106</sup>.

68. In regard to the suggestion that the Appellant had overestimated the benefits of the new link road, Ms Eggleston said that this had been identified by the Council in its draft Local Plan, so is clearly viewed as a benefit. Furthermore, KCC HA has requested it be designed as a Local Distributor Route / Major Access Road, ensuring that it is capable of accommodating bus movements through the site<sup>107</sup>.

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<sup>101</sup> Ibid at [5.6].

<sup>102</sup> Ibid.

<sup>103</sup> Oral statement of Stephen Plunkett.

<sup>104</sup> See [5.8] in the Proof of Evidence of Vanessa Eggleston.

<sup>105</sup> Ibid at [5.10].

<sup>106</sup> Vanessa Eggleston Evidence-in-Chief.

<sup>107</sup> See Appendix 2.A of the Transport Assessment (CD 1.21).

69. Ms Eggleston said that the purpose of estimating the potential transfer of traffic away from the centre of Littlebourne and onto the new link road through the Appeal Site was to ensure it is designed to an appropriate standard to accommodate traffic volumes – not as a means of quantifying the benefits of the route<sup>108</sup>.
70. Notwithstanding that, Ms Eggleston confirmed that the 2025 updated traffic survey showed that approximately 100 peak hour vehicles could potentially transfer to the new link road<sup>109</sup>. The level of additional traffic passing through the junction as a result of the new development would be approximately 45 vehicles<sup>110</sup>, based on the over-estimate of residential traffic as outlined in the Transport Assessment<sup>111</sup>. As such, there would be a net reduction in traffic using the junction<sup>112</sup>. She said that the proposed link road was a ‘very significant benefit’ of the Appeal Scheme<sup>113</sup>.
71. In responding to the safety of roads in Littlebourne, Ms Eggleston confirmed that the accident data showed that there had been eight accidents across the main routes within Littlebourne between 2020 and 2025<sup>114</sup>. Of these, three were on the A257 and four were on Bekesbourne Lane, but only one was serious in nature. Ms Eggleston said this did not indicate a significant safety problem and that KCC HA had confirmed there are no underlying safety concerns which would be exacerbated by the Appeal Scheme<sup>115</sup>.
72. Overall, it is the Appellant’s case that the Appeal Scheme site is sustainably located and accords with Policy T1 of the Local Plan<sup>116</sup>. Moreover, in this regard it is particularly important to emphasise the lack of an objection from KCC HA. The High Court has considered the question of the weight to be given to the view of a highway authority<sup>117</sup>. Referring to the relevant case law, the court noted that the approach that decision-makers should give to the view of statutory consultees was ‘great’ or ‘very

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<sup>108</sup> See [5.37] in the Proof of Evidence of Vanessa Eggleston.

<sup>109</sup> Ibid at [5.45].

<sup>110</sup> See Figure 4.1 in the Proof of Evidence of Vanessa Eggleston.

<sup>111</sup> CD 1.21.

<sup>112</sup> See [5.46] in the Proof of Evidence of Vanessa Eggleston.

<sup>113</sup> Vanessa Eggleston Evidence-in-Chief.

<sup>114</sup> See Appendix G in the Proof of Evidence of Vanessa Eggleston.

<sup>115</sup> See [2.5.3 xi] in the Transport Statement of Common Ground (CD 7.01).

<sup>116</sup> See [5.17(ii)] in the Proof of Evidence of Jason Tait.

<sup>117</sup> Per Neil Cameron QC (sitting as a Deputy High Court Judge) at [65] in *Visao Limited v Secretary of State for Housing, Communities and Local Government* [2019] EWHC 276 (Admin).

considerable’<sup>118</sup>. At [65], Neil Cameron QC (sitting as a Deputy High Court Judge) confirmed that the view of a highway authority is ‘highly material’ and that it should be viewed in ‘the same category’ as other statutory consultees<sup>119</sup>. As such, this requires the view of KCC HA to be given ‘great’ or ‘very significant’ weight and departure from its view would require ‘cogent and compelling reasons’. Clearly, there are no cogent or compelling reasons in this case, so highways and sustainable transport is not a matter that would justify refusal of the Appeal Scheme.

### Flood risk and drainage

73. The Inquiry heard evidence from Mr Whittingham on behalf of the Appellant concerning flood risk and drainage<sup>120</sup>. His evidence was supported by a Flood Risk Assessment, which he confirmed was prepared in accordance with national policy and guidance and which remains robust in light of updated datasets<sup>121</sup>.
74. The Appeal site is situated wholly within Flood Zone 1 and is at low probability of fluvial flooding. Mr Whittingham said that the Flood Risk Assessment concluded that flood risk from all sources – fluvial, surface water, groundwater, sewer and artificial sources – was low<sup>122</sup>.
75. Mr Whittingham provided an overview of the surface water drainage strategy and runoff control, explaining that the Appeal site comprises two watersheds, with approximately three-quarters of the site draining towards the existing culvert under The Hill and the other quarter discharging over Bekesbourne Road. Mr Whittingham said that only the culvert under The Hill would be used as a point of discharge for surface water, which the Appellant has agreed with Kent County Council in its role as the Local Lead Flood Authority (‘KCC LLFA’).
76. Significantly, Mr Whittingham explained that the Appellant had agreed to a reduced greenfield discharge rate (11 litres per second) from the agreed run off rate for the Appeal Site (16 litres per second) in discussions with KCC LLFA. This represents a

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<sup>118</sup> Ibid at [23] referring to *Shadwell Estates Ltd v Breckland District Council* [2013] EWHC 12 (Admin) at [72].

<sup>119</sup> Ibid at [65]. In addition to *Shadwell*, Neil Cameron QC referred to *R (on the application of East Meon Forge and Cricket Ground Protection Association) v East Hampshire DC and others* [2014] EWHC 3543 (Admin).

<sup>120</sup> See Proof of Evidence of Colin Whittingham.

<sup>121</sup> CD 2.50.

<sup>122</sup> Colin Whittingham Evidence-in-Chief.

betterment of the existing situation and will reduce the runoff entering the downstream Chalk Stream. Mr Whittingham said that any runoff in excess of this would be retained within two on-site attenuation basins that would be designed for all storm events up to the one in 100-year plus climate change storm. Furthermore, there would be no increase in flood risk elsewhere as infiltration is not proposed due to the ground conditions. As such, far from exacerbating any existing issues, the Appeal Scheme should result in an improvement to the existing situation<sup>123</sup>.

77. In regard to water quality and the protection of the Chalk Stream, Mr Whittingham explained that foul water and surface water were being considered in isolation, with two separate systems being employed. As such, no foul water would be discharged into the surface water system.

78. Mr Whittingham referred to section 8.5 of the Flood Risk Assessment<sup>124</sup> which explains how the Sustainable Drainage Systems ('SuDS') strategy will manage and improve water quality. He confirmed the Appellant's approach was an industry standard approach for residential schemes of this nature, which considers the pollution hazard potential for various land uses including roofed areas, low traffic roads, private driveways and all other roads which provide access to the development.

79. Mr Whittingham explained that just two of the proposed SuDS features would provide sufficient pollution removal potential. He confirmed that the full details of the proposed drainage strategy could be secured through proposed planning conditions 11 and 13<sup>125</sup>.

80. Mr Whittingham explained that the Appellant has engaged in extensive discussion with statutory consultees on the drainage proposals. These discussions have resulted in the following position:

- a. the Environment Agency no longer objects to the Appeal Scheme, confirming that further information submitted by the Appellant 'satisfactorily addresses our earlier concerns'<sup>126</sup>;

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<sup>123</sup> Ibid.

<sup>124</sup> CD2.50

<sup>125</sup> Colin Whittingham Evidence-in-Chief and [8.5] in the Flood Risk Assessment (CD 2.50).

<sup>126</sup> CD 3.45.

- b. KCC LLFA no longer objects to the Appeal Scheme subject to the imposition of conditions requiring detailed design at the Reserved Matters stage<sup>127</sup>; and
- c. Southern Water has identified that additional foul flows may require network reinforcement works to ensure capacity and avoid foul flooding risk. It confirmed that the reinforcement would be delivered by the undertaker and that occupation should align with delivery of upgrades<sup>128</sup>. This is considered below.

81. Mr Whittingham confirmed that in his professional view, the Appeal Scheme aligns with and complies with Policy CC4, Policy CC5 and Policy CC11 of the Local Plan<sup>129</sup>.

### Ecology and impact on the Chalk Stream

82. Ms Mansfield gave evidence on ecology on behalf of the Appellant<sup>130</sup>. She explained that her involvement with the Appeal Site had started in 2020, with significant engagement with Kent County Council Ecology, the Environment Agency and Kent County Council Flood and Water Management. She said that there had been an iterative process which had resulted in no objections from any of these statutory bodies<sup>131</sup>. Again, it is important that there are no objections from statutory consultees on this matter; great weight should be given the agreement reached with bodies responsible for conserving and enhancing the natural environment, managing flood risk and improving water quality.

83. In regard to Natural England, Ms Mansfield explained the evolution of its position on Preston Marshes, a SSSI which is located 3.3km north-east of the Appeal Site. She confirmed that Natural England had stated that no further consultation was required because the Appeal Site no longer fell within the Stodmarsh catchment<sup>132</sup>. Furthermore, she confirmed that a Habitats Regulations Assessment was no longer required<sup>133</sup>.

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<sup>127</sup> CD 3.46.

<sup>128</sup> CD 3.51.

<sup>129</sup> Colin Whittingham Evidence-in-Chief.

<sup>130</sup> See Proof of Evidence of Suzanne Mansfield.

<sup>131</sup> By way of example, see responses sent to Kent County Council Ecology on 9 May 2023 (CD 3.11), 25 May 2023 (CD 3.20), 23 September 2023 (CD 3.32), 14 February 2024 (CD 3.42) and 5 September 2024 (CD 3.44).

<sup>132</sup> See [3.4] in the Proof of Evidence of Suzanne Mansfield and the Preston Marshes Ecology Technical Note (CD 6.18).

<sup>133</sup> See [6.6] in the Proof of Evidence of Suzanne Mansfield.

84. With regard to the Chalk Stream, Ms Mansfield explained that whilst Chalk Streams are important habitats which are capable of supporting rich biodiversity, the Little Sour itself did not have a single overarching national or international wildlife designation<sup>134</sup>. She said that factors which caused particular problems for Chalk Streams were over abstraction, which affects the condition of Chalk Streams, and pollution from agricultural run off, which affects the water quality. She said that nutrient and chemical pollution arising from excess nutrients, particularly phosphates and nitrates from agricultural fertilisers and pesticides, cause harm to Chalk Streams<sup>135</sup>.
85. In response to comments from third parties concerning the Water Framework Directive, Ms Mansfield said that the Little Stour was currently acknowledged to be achieving poor status. She confirmed that the Environment Agency is responsible for managing, monitoring and assessment of this and it is the Environment Agency which classifies water bodies and confirms their status. Importantly in this regard, the Environment Agency has raised no objection regarding impact on the Little Stour<sup>136</sup>.
86. Ms Mansfield said that there are two ways in which the Appeal Scheme could impact the Little Stour: surface water flooding and foul drainage.
87. In regard to surface water flooding, Ms Mansfield said that by managing the run off from the Appeal Site there would be a betterment to the existing position, given the harm caused by uncontrolled agricultural run off<sup>137</sup>. She explained that the use of SuDs would 'strip out' the materials that would be harmful to a sensitive water course, notably silts, hydrocarbons and metals. She further confirmed that there would not be any deterioration under the Water Framework Directive as the run off would be managed according to best practice and this usually meant it was far better than on older development sites where there might be uncontrolled discharges<sup>138</sup>.
88. Impact from microplastics was cited in the Council's now withdrawn RFRs (RFR 2), Ms Mansfield said that whilst this was something which the government was increasingly exploring ways to address, it was at present a 'more novel pollutant' and

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<sup>134</sup> See [6.9] in the Proof of Evidence of Suzanne Mansfield.

<sup>135</sup> Ibid at [6.15].

<sup>136</sup> Suzanne Mansfield Evidence-in-Chief.

<sup>137</sup> Ibid and [8.47] in the Proof of Evidence of Suzanne Mansfield.

<sup>138</sup> Ibid.

one for which there is no policy context for understanding the issue. The policy, she confirmed, was focused on removing silts, hydrocarbons and metals, which the proposed use of SuDs would do<sup>139</sup>. Microplastics are ubiquitous in the environment – there may be (in due course) a means of assessing and mitigating the issue, but at present, there is no evidence of harm arising as a result of the scheme on that particular issue.

89. In regard to foul water, Ms Mansfield confirmed that she had considered this from an ecological perspective and had reviewed the available information. She said that as there was a separation between foul and surface water<sup>140</sup>, the foul water would not influence the Little Sour<sup>141</sup>.

90. On Biodiversity Net Gain ('BNG') and the landscape proposals, Ms Mansfield said that it was evident that the Appeal Site at present was 'very much influenced by its arable management regime' and that 'habitats are poorly represented', with 'relatively low numbers' of wildlife. In this context, the landscape proposals which would deliver complementary habitats, wetlands, 5,000 new trees, grassland and hedgerows would be a significant benefit<sup>142</sup>. This is common ground between the parties<sup>143</sup>.

91. Ms Mansfield confirmed that in her professional view, the Appeal Scheme complied with Policy LB7<sup>144</sup>, Policy LB13<sup>145</sup> and Policy QL12<sup>146</sup> of the Local Plan.

#### Foul water drainage

92. It is common ground between the parties that the Water Industry Act 1991 provides a legal mechanism for additional foul drainage infrastructure to be provided by the relevant sewerage undertaker, in this case Southern Water<sup>147</sup>.

93. Mr Tait gave evidence on behalf of the Appellant and confirmed that in correspondence, Southern Water had made clear that any reinforcement works required to mitigate the

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<sup>139</sup> Ibid.

<sup>140</sup> Colin Whittingham Evidence-in-Chief.

<sup>141</sup> See [8.51] in the Proof of Evidence of Suzanne Mansfield.

<sup>142</sup> Suzanne Mansfield Evidence-in-Chief.

<sup>143</sup> See [4.8.1] in the Statement of Common Ground (CD 6.04).

<sup>144</sup> See [9.4]-[9.5] in the Proof of Evidence of Suzanne Mansfield.

<sup>145</sup> Ibid at [9.17].

<sup>146</sup> Ibid at [9.18]-[9.20].

<sup>147</sup> See [4.9.2] in the Statement of Common Ground (CD 6.04).

impact of the Appeal Scheme on the sewerage network would be undertaken by Southern Water, and that modelling would be carried out only *after* planning permission is granted and an application is made for a connection to the system<sup>148</sup>.

94. Mr Tait explained that the NPPF provides that the ‘focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions...’ and that it should be assumed when making planning decisions that ‘these regimes will operate effectively’<sup>149</sup>. As such, Mr Tait said that this is not a matter which should prevent planning permission from being granted as a planning condition would provide the appropriate controls on the occupation of development linked to the foul drainage proposals as requested by Southern Water<sup>150</sup>.

95. Proposed condition 12 provides:

‘No development shall commence in any phase of development until details of the proposed means of foul sewerage disposal including maintenance arrangements and a timetable for provision for that phase of development, have been submitted to, and approved in writing by, the Local Planning Authority. The dwellings in each phase of development shall thereafter be only occupied in accordance with the approved details and timetable.’

96. This provides two safeguards: a restriction on commencing development until details of the sewerage disposal have been submitted to and approved by the Council, and a restriction on occupation in accordance with an approved timetable.

97. Whilst third parties have questioned the value of such a condition and expressed a view that Southern Water is unlikely to undertake the improvement works, the House of Lords has held that the mere fact that a desirable condition attached to a grant of planning permission appears to have no reasonable prospect of fulfilment does not mean that planning permission must necessarily be refused, and that something more would be required before that can be the correct result<sup>151</sup>.

98. The suggestion of third parties that it would not be in the Appellant’s interest to secure planning permission *before* a foul water solution has been agreed similarly provides no

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<sup>148</sup> See [4.61]-[4.62] in the Proof of Evidence of Jason Tait.

<sup>149</sup> See [201] in the NPPF.

<sup>150</sup> Jason Tait Evidence-in-Chief and [4.63] in the Proof of Evidence of Jason Tait.

<sup>151</sup> Per Lord Keith of Kinkel in *British Railway Board v Secretary of State for the Environment* [1993] WL 963747.

reason for refusal. Whilst not a directly analogous situation, the House of Lords also addressed this point, stating (emphasis added): ‘A would be developer may be faced with difficulties of many different kinds, in the way of site assembly or securing the discharge of restrictive covenants. **If he considers that it is in his interests to secure planning permission notwithstanding the existence of such difficulties, it is not for the planning authority to refuse it simply on their view of how serious the difficulties are**’<sup>152</sup>.

99. Indeed, the High Court recently considered a challenge on very similar facts to the present case<sup>153</sup>. Ground three alleged that the planning officer’s report was significantly misleading, irrational, insufficiently investigated, failed to refer to material considerations and was inadequately reasoned. Under this ground there were a number of criticisms made of the officer’s advice to councillors, the first of which was that advice was ‘mistaken and irrational in advising that condition 13 could be discharged in time to enable the development to be occupied, as the timeline and funding for the upgrades to Buckingham WRC were not known’<sup>154</sup>. Condition 13 provided<sup>155</sup>:

‘The details to be submitted for approval in writing by the Local Planning Authority in accordance with Condition (1) above shall include a foul water drainage scheme for the site. The scheme shall include a waste water treatment capacity assessment to identify the need for any infrastructure upgrades and a programme for carrying out the works to inform site delivery.

No part of the development shall be occupied until confirmation has been provided to the local planning authority that the scheme and programming of any wastewater upgrades required to accommodate the additional flows from the development have been agreed with Anglian Water; and all wastewater upgrades required to accommodate the additional flows have been completed. The development shall be carried out in accordance with the approved details.’

100. In dismissing the challenge, Lang J held that the statutory duties in the Water Industry Act 1991 ‘extend beyond connection and include any extensions that may be required to accommodate an increase in foul water flows’<sup>156</sup>. In *Wildfish*, Anglian Water, the statutory undertaker, had confirmed that it was obligated to accommodate

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<sup>152</sup> Ibid.

<sup>153</sup> *R (on the application of Wildfish) v Buckinghamshire Council* [2025] EWHC 3060 (Admin). This was heard jointly with *R (on the application of Wood) v Buckinghamshire Council*.

<sup>154</sup> Ibid at [172 (i)].

<sup>155</sup> Ibid at [11].

<sup>156</sup> Ibid at [184].

the additional foul water flows<sup>157</sup>; Lang J held conclusively that ‘the Council was entitled to rely on Anglian’s assurances, and it was rational for it to do so’<sup>158</sup>.

101. Referring to condition 13, Lang J stated that there was ‘no prospect of people occupying the Site and discharging their sewage into the Buckingham WRC unless or until the Buckingham WRC had been expanded’<sup>159</sup> and that the planning officers and councillors ‘were entitled to take the view that there was no need for the Council to undertake further inquiries pursuant to the *Tameside* duty... [they were] entitled to proceed to make a decision on the RMA application on the basis that adequate capacity could be provided in due course’<sup>160</sup>. Lang J concluded that ‘it was rational for the Committee to accept... [the planning officer’s] advice and conclude that there was a real prospect that the upgrades would take place to enable the development to be occupied’<sup>161</sup>. Furthermore, she held that there were ‘no exceptional circumstances which required reasons to be given’<sup>162</sup>.

102. Ground three of *Wildfish* is analogous to the Appeal Scheme. The Appellant and the Council are entitled to rely on the assurances given by Southern Water, and it is perfectly rational to do so. There is no requirement to undertake any further inquiries; the letter from Southern Water is sufficient to conclude that there is a real prospect that the necessary works will take place to enable the development to be occupied.

103. For those reasons, foul water drainage is not a reason to refuse planning permission with the imposition of proposed condition 12, which will ensure development will not commence until details have been approved by the Council. Following *Wildfish*, the Inspector is entitled to rely on the assurances of Southern Water in concluding that there is a real prospect that the works will take place.

#### Best and Most Versatile agricultural land

104. Mr Tait gave evidence on behalf of the Appellant in which he confirmed that the Appeal Site comprises Grade 3a and 3b agricultural land: the majority (62 per cent) is

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<sup>157</sup> Ibid at [186].

<sup>158</sup> Ibid at [187].

<sup>159</sup> Ibid at [190].

<sup>160</sup> Ibid at [191].

<sup>161</sup> Ibid at [193].

<sup>162</sup> Ibid at [194].

sub-grade 3b with the remainder (38 per cent) comprising BMV grade 3a agricultural land, the lowest end of the BMV classification scale<sup>163</sup>. He said that the quantity of the loss of BMV agricultural land is relatively modest and would not be seen as significant in the context of the housing need. In this respect, it is important to note that Natural England was consulted and did not object to the Application or raise any specific concern about the loss of BMV agricultural land<sup>164</sup>.

105. There was some criticism from third parties of the Appellant's Agricultural Quality of Land report<sup>165</sup>. In this regard, it is constructive to look at how the Council dealt with it in its two reports to the Planning Committee.

106. In the May Officer's Report to Planning Committee, the Council passed no comment on the report, simply stating that the Appeal Site 'is made up of Grade 3a and 3b agricultural land, as confirmed by an Agricultural Land Classification submitted with the application'<sup>166</sup>. The conclusions of the report were accepted by the Council.

107. In the July Officer's Update Report to Planning Committee, BMV agricultural land was one of the matters on which an update was provided to councillors. After referring to national maps produced in the 1980s which had identified land within the area as Grade 1, the report stated that they were 'not accurate enough to establish the quality of land on any given site' and that for this, 'a site-specific survey' was required. The report confirmed the Appellant had 'instructed Dr R E Leverton, an independent soil specialist, to undertake an assessment of the quality of the agricultural land, based on the criteria set out by the government'<sup>167</sup>. Again, no criticism of the report was made by the Council.

108. As such, in the absence of any evidence from the Council or third parties, the only evidence that is before the Inquiry on BMV agricultural land is that set out in the Agricultural Quality of Land report.

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<sup>163</sup> See [4.33] in the Proof of Evidence of Jason Tait.

<sup>164</sup> Ibid at [4.35].

<sup>165</sup> CD 1.13.

<sup>166</sup> See [30] in the May Officer's Report to Planning Committee (CD 5.01).

<sup>167</sup> See [10(b)] in the July Officer's Update Report to Planning Committee (CD 5.02).

109. Policy EMP12 of the Local Plan allows for planning permission to be granted on BMV agricultural land where it is demonstrated to be necessary to meet a housing, business or community need. Mr Tait's evidence was that, in the context of the need for housing, the relatively small scale of the loss of BMV agricultural land is something that should be afforded limited weight in the planning balance<sup>168</sup>.

### **Planning benefits**

110. Mr Tait gave evidence on the significant planning benefits that the Appeal Scheme would deliver. In summary, he said that he considered these to be:

- a. the delivery of up to 300 new homes in a sustainable location;
- b. the delivery of 30 per cent on-site affordable housing to address an identified housing need, and provision of older person's accommodation;
- c. provision of a community hub and facilities benefitting both new and existing residents;
- d. the delivery of 7.145 hectares of public open space;
- e. surface water management and water quality improvements;
- f. local highway and connectivity improvements which, again, benefit existing and new residents alike;
- g. the delivery of a 20 per cent biodiversity net gain<sup>169</sup>; and
- h. significant economic benefits including:
  - i. construction spend of circa £36 million;
  - ii. supporting 654 full-time equivalent direct and indirect construction jobs per annum over a six-year build period;
  - iii. an estimated resident gross annual expenditure of circa £10.7 million;and

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<sup>168</sup> Jason Tait Evidence-in-Chief

<sup>169</sup> The parties agree that this is a significant benefit. See [4.8.1] in the Statement of Common Ground (CD 6.04).

iv. additional Council Tax receipts of £590,000 per annum.

111. In the context of the national housing crisis that the government has identified, the delivery of up to 300 new homes and 30 per cent affordable housing are both plainly very significant benefits of the Appeal Scheme.
112. In regard to market housing, Mr Tait said that the weight to be given to this is further endorsed by the 2024 version of the NPPF and the July 2024<sup>170</sup> and December 2024<sup>171</sup> Written Ministerial Statements, which the Appellant cited in its opening<sup>172</sup>.
113. It would be wrong, however, to characterise the need for new housing as a central government ambition that is not reflected at a local level. In Canterbury itself, there is a very acute need for more housing, with an identified shortfall of 1,040 homes between 2011 and 2025 against the Local Plan requirement, a period in which the Council has only met its annual requirement in two out of 14 years. As Mr Tait notes, the Council has failed to meet its identified requirement over many years<sup>173</sup>.
114. Furthermore, the new Standard Method to calculate housing need increases the Council's annual requirement by 415 dwellings per annum, a 52 per cent increase on the Local Plan's annual requirement. As Mr Tait says, this will require a 'step change' in the delivery of homes by the Council<sup>174</sup>.
115. Furthermore, as already set out above, the Council is unable to demonstrate a five-year housing land supply with a significant shortfall, and achieved just 67% on its most recent Housing Delivery Test.
116. On affordable housing, Mr Tait's evidence confirms that the significant shortfall in market housing has a knock-on effect on the delivery of affordable homes, with potentially 310 fewer affordable homes being delivered between 2011 and 2025. As he rightly says, 'these are all real homes for people in need of a home'<sup>175</sup>. Furthermore, the Council recognises that affordability is a key problem in Canterbury, with a ratio of

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<sup>170</sup> CD 6.05.

<sup>171</sup> CD 6.06.

<sup>172</sup> See [4.9] in the Proof of Evidence of Jason Tait.

<sup>173</sup> Ibid at [4.11].

<sup>174</sup> Ibid at [4.13].

<sup>175</sup> Ibid at [4.16].

house prices to earnings of 9.8 to 1 and 2,312 households on the housing needs register<sup>176</sup>.

117. Plainly then, there is a very clear and very acute need for more market and affordable housing in Canterbury, both of which would be delivered by the Appeal Scheme.

118. Mr Tait's evidence was that the delivery of new housing and affordable housing are both 'very significant' in their own right<sup>177</sup>. Perhaps unsurprisingly given the context outlined above, the Council agrees that the delivery of housing would be 'a very significant benefit'<sup>178</sup> and that the provision of the scale of affordable housing 'is also a very significant benefit'<sup>179</sup>.

119. Overall, Mr Tait said that the benefits are cumulatively 'very significant'.

### **Planning balance**

120. In the overall planning balance, Mr Tait's evidence was that the benefits of the Appeal Scheme are cumulatively very significant, with both the delivery of market and affordable housing being very significant in their own right. In addition, he gives significant weight to the economic benefits, moderate weight to the provision of new green space, play space and community space, moderate weight to water quality improvements and moderate weight to landscaped green infrastructure and biodiversity gain<sup>180</sup>.

121. Set against these significant benefits, Mr Tait assesses the adverse impacts as comparatively minor: he attributes moderate weight to the landscape impacts, limited weight to the loss of BMV agricultural land and limited weight to the less than substantial harm to the setting of heritage assets<sup>181</sup>.

122. In the context of the national housing crisis, the government has confirmed that 'where it applies, the presumption in favour of sustainable development must have real

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<sup>176</sup> Ibid at [4.17].

<sup>177</sup> Ibid at [5.15].

<sup>178</sup> See [4.4.1] in the Statement of Common Ground (CD 6.04).

<sup>179</sup> Ibid at [4.4.4].

<sup>180</sup> See [5.15] in the Proof of Evidence of Jason Tait.

<sup>181</sup> Ibid at [5.15]. Mr Trait addresses the planning and heritage balance at [4.73]-[4.75].

teeth’, stating that amendments to the NPPF in 2024 were made to ‘ensure that the presumption carries real weight, acting as a significant adjustment to the decision-making balance in favour of approving development’<sup>182</sup>.

123. The application of the tilted balance means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole. This is also reflected in Policy SP1 of the Local Plan. Furthermore, it is common ground that there are no policies in footnote 7 of the NPPF which would provide a strong reason for refusing the Appeal Scheme and disengaging the tilted balance<sup>183</sup>.

124. None of the adverse impacts could even be described as outweighing the benefits, let alone doing so ‘significantly and demonstrably’ as the tilted balance would require in order to justify refusal of planning permission. As such, the planning balance clearly weighs in favour of granting planning permission in the application of paragraph 11(d)(ii) of the NPPF and in accordance with Policy SP1 of the Local Plan<sup>184</sup>.

### **Draft section 106 agreement**

125. The Appellant, the Council and Kent County Council have agreed a draft section 106 agreement which was discussed at the Inquiry at the section 106 roundtable session.

126. Subject to the Inspector allowing the Appeal and granting outline planning permission, the Appellant invites the Inspector to make the following decisions on the section 106 agreement and to include explicit reference within his Decision Letter:

- a. at [3.1.2], the Inspector is invited to expressly state in the Decision Letter that “the planning obligations contained therein are all CIL compliant”;
- b. at [3.1.3], the Inspector is invited to expressly state in the Decision Letter that “all contributions that are listed in paragraph 3.1.3 identifiable as being payable towards and infrastructure type or project which may be funded wholly or partly

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<sup>182</sup> Written Ministerial Statement, Building the homes we need, 12 December 2024 (CD 6.06).

<sup>183</sup> See [4.18.1] in the Statement of Common Ground (CD 6.04).

<sup>184</sup> See [5.19] in the Proof of Evidence of Jason Tait.

through CIL pursuant to the CIL Charging Schedule, and as a result the Council should ringfence CIL monies.”<sup>185</sup>; and

- c. at [5.7] of Schedule 2, the Inspector is invited to expressly state in the Decision Letter that “clauses [5.8]-[5.13] of Schedule 2 should apply in respect of the Affordable Housing provisions”.

127. The Council confirmed that it had agreed the section 106 agreement in its entirety and did not pursue its late and surprising suggestion that what the Appellant was inviting the Inspector to do at [5.7] of Schedule 2 was ‘unlawful’. For the avoidance of doubt, it is not; it is a standard clause in numerous section 106 Agreements. The Council no longer pursues the point. The provisions relating to affordable housing contained within Schedule 2 operate to provide flexibility in the delivery of affordable housing without the section 106 agreement being required to be amended, subject to the review mechanism at [5.12.1]. The Council retains ultimate control over the Housing Mis and Tenure of the Affordable Housing.

### **Conclusion**

128. For the reasons set out above, the Appellant invites the Inspector to allow the Appeal and grant outline planning permission.

**THEA OSMUND-SMITH**

**TOBIN BYERS**

**NO5 BARRISTERS’ CHAMBERS**

**Birmingham – London – Bristol**

**19 February 2026**

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<sup>185</sup> CD 6.21.