LAND NORTH OF POSSINGHAM FARMHOUSE, ASHFORD ROAD, GREAT CHART, KENT

APPEAL BY HODSON DEVELOPMENTS LTD

APP/E2205/W/24/3345454

LPA ref. 22/00571/AS

CLOSING SUBMISSIONS

ON BEHALF OF ASHFORD BOROUGH COUNCIL

Abbreviations:

- ABC: Ashford Borough Council
- KCC: Kent County Council
- FT: Faye Tomlinson
- MH: Matthew Hogben
- ID: Ian Dix
- NT: Neil Tully
- JC: John Collins
- AAP: the Chilmington Green Area Action Plan (adopted July 2013)
- ALP: the Ashford Local Plan 2030 (adopted February 2019)
- CG: Chilmington Green

1. These closing submissions will deal with the two reasons for refusal on which ABC has called evidence, before moving to planning matters, benefits and the planning balance.

Reason for refusal 1

2. Reason for refusal 1 is a fundamental objection to the excessive amount and scale of development proposed in this scheme. The objection has a number of aspects: the scheme's density, height, urban form, absence of adequate landscape buffers, and resultant harm to the landscape character of the area and the character of the carefully and comprehensively planned neighbouring Chilmington Green development. It is not simply a subjective judgment: there

is precise development plan policy and guidance on these matters for the directly adjacent CG area.

3. Nor can it be said that these design and character issues must give way to housing need, or are somehow secondary to meeting housing need. That is not national policy and it is not development plan policy.

4. National policy is that "*Good design is a **key aspect** of sustainable development"* (NPPF para 131), and that "*The creation of high quality, beautiful and sustainable buildings and places is **fundamental** to what the planning and development process should achieve*" (NPPF para 130).

5. The NPPF further explains that "*Plans should, at the most appropriate level, set out a clear design vision and expectations, so that applicants have as much certainty as possible about what is likely to be acceptable*" (para. 132). That is exactly what ABC has done. It has been seen to be sufficiently important to include in the CG AAP, which is part of the adopted development plan.

6. The NPPF further explains that "*Design policies should be developed with local communities so they reflect local aspirations, and are grounded in an understanding and evaluation of each area's defining characteristics*" (para. 132). Again, that is what has been done in the AAP.

7. The NPPF provides that "*To provide maximum clarity about design expectations at an early stage, all local planning authorities should prepare design guides or codes consistent with the principles set out in the National Design Guide and National Model Design Code, and which reflect local character and design preferences*" (para. 133). ABC has also done this, with the Chilmington Green Design Code 2016 adopted as an SPD.

8. The Appellant has relied on the statement in the NPPF that "*Planning policies and decisions should support development that makes efficient use of land, taking into account: …"* (para. 128)[1]. That policy provides no support for the Appellant's case:

[1] XX of FT (day 1).

(a) First, NPPF para. 128 expressly requires various factors to be taken into account, which include "*character and setting*" (para. 128(d)) and "*the importance of securing well-designed … places*" (para. 128(e)). Accordingly, the desire to make efficient use of land is not to override design considerations.

(b) Secondly, the development plan is the starting point, and it provides specific policy on the balance to be struck between optimising the capacity of sites and ensuring acceptable and high quality design, including density and scale.

9. This is not a Local Plan examination into what the policy framework for Ashford's area should look like, or to make strategic decisions about how to expand settlements should that be required. It is a s.78 appeal that is not being decided in a policy vacuum but must be determined on the basis of adopted policy and guidance.

10. The tilted balance in NPPF para. 11 applies because of the 4.39 years land supply, but that does not disapply the development plan. The shortfall in land supply means that the policies which are most important for determining the application are deemed "out of date" for the purposes of NPPF para 11(d), but the Appellant has accepted that the substance of the development plan is up to date.[2]

11. With that important context in mind, this closing turns to the various aspects of RfR1.

Density

12. Policy SP1(d) of the ALP requires that development "*responds to the prevailing character of the area*". Policy SP6 of the ALP requires consideration of and a positive response to character and sense of place, and that development proposals should "*show how they have responded positively to the design policy and guidance, including national and local design guidance*".

[2] Appellant opening statement para. 15 (ID1), and JC proof para 5.1.3, noting also that the Appellant has not subsequently made any other case to the inquiry.

13. The development plan provides express and specific policy on density in this local area in the CG AAP. One of the "*key development principles"* in Policy CG1 of the AAP is "*to create well-designed edges to the new development at appropriate densities that relate well to the open countryside"*. Policy CG2 then provides greater detail: "*The density of residential development shall be consistent with the average density bands shown on Strategic Diagram 3"*. The density bands in Strategic Diagram 3 which Policy CG2 incorporates are therefore development plan policy.

14. The policy applies to the CG area, as defined in the AAP. Part of the appeal site is within that area, i.e. the 'overlap land', to which AAP policy directly applies. The remainder of the site is directly adjacent to the CG area boundary. The Appellant's justification for developing the appeal site is that they consider it to be a "*natural extension"* to CG (also a "*logical extension"* and "*direct extension"*[3]). Given that the appeal site is directly adjacent to the CG boundary and the appeal scheme is intended to form an extension to CG, CG AAP policy on density is highly material. In order to comprise a 'natural' and 'logical' extension to CG, it is essential that any development of the appeal site abides by density policy in the AAP. Unless development of the appeal site abides by AAP policy on density, there will be breach of SP1 and SP6.

15. The CG Design Code SPD also provides guidance in respect of density on CG. Development at CG has to accord with that Design Code SPD, as required by condition 39 on the CG outline planning permission (CD15-3). For the same reason, any development of the appeal site needs to comply with that guidance.

16. As to that policy and guidance on density, the residential density diagram in the AAP (pdf p.141), which AAP policy CG2 makes mandatory, shows a clear and coherent approach to density across the CG area. Higher densities appear around the district centre, which is the heart of the development. Some higher densities, albeit to a lesser extent, appear around the two local centres.

[3] E.g. JC proof 5.3.2, 5.4.2, 5.5.2, 8.3.1 including Table 5.2.

Outside these areas, the densities taper down. The tapering is particularly pronounced in the southern half of the CG area. In this area there are a number of 'fingers' of development extending south, with fingers of green space in between them. The density of development throughout this area is generally low, with the exception of an area around the southern local centre. The density becomes very low on the edge of these area, at less than 10dph on the southern fringe.

17. The approach is explained in the AAP explanatory text, especially at para 4.4(vii), which states that "*A range of residential density is needed across the development from higher density development around the district and local centres (to help support their service provision role) to a far lower density housing stock on the southern periphery of the development creating a more sympathetic transition into the surrounding countryside".*

18. Most relevant of these is the finger of development nearest to the appeal site: it is 10dph on the southern edge, then 21dph further up and along the whole of the western side of that finger, 33dph in the centre of the finger, and only rising to 43dph towards the top of the finger.

19. Also highly relevant is the density for the overlap land in the AAP density diagram. It is 21dph. This is notwithstanding it being close to the A28 and the new access to CG at the roundabout Access C. It is also notwithstanding it being close to the secondary school (noting that the built form of the secondary school is located to the north of the school site, and the vast majority of the school site is open sports facilities).

20. What is proposed on the appeal scheme simply has no regard to these densities. The Appellant's parcel densities parameter plan rev J[4] shows:

    (a) Highest densities at parcel A (north east area) of 53dph.

    (b) High densities throughout parcels B, C, E, F, G and H of 40-49dph, with four of these being right at the top of that range at 49dph. NT gave the

[4] CD13-3. N.b. the Appellant has revised the application version of this plan (rev H), so as to be consistent with the CG AAP approach to density.

following description of the area shown in his Viewpoint 05, which looks towards Parcel H which has a density of 47dph: "*The density of proposed development here is high"* (para. 7.1).

(c) Parcels D, I, K and L are 30 – 39dph. Only the smallest parcel (Parcel J) is 20-29dph.

(d) The two parcels closest to the southern boundary, Parcels K and L, are 39dph.

21. Those densities are significantly in excess of what is shown in the AAP density diagram. The vast majority of the appeal scheme development, with the exception of the two small parcels I and J, is 38 – 53dph, and much of it towards the higher end of that range.

22. FT summarised the appeal scheme density as being broadly <u>double</u> what is required by the AAP density diagram, i.e. by reference to the 21dph on the adjacent overlap land, and the principal densities for the western finger of development being 'less than 10dph', 21dph, and 33dph.[5] As FT explained, the density across the whole scheme is unacceptable.

23. Applying that analysis, FT agreed that in terms of density and scale, development on the appeal site which accorded with the AAP density requirements would lead to around 300 dwellings, i.e. roughly half the 655 proposed by appeal scheme.[6] That is a completely different scale of development to what is proposed.

24. FT was asked by the Inspector whether human receptors would notice the difference between 300 and 655 homes without going into the appeal scheme itself. FT's answer was emphatically yes, that people who viewed the development from the A28 and also from the multiple public rights of way on the east and south side of the appeal scheme (as shown for example on the landscape parameter plan CD2-18) would appreciate the difference.

[5] FT evidence in chief.
[6] FT in cross-examination.

25. Mr Harwood suggested to FT that the difference between 300 and 655 dwellings on the site "*doesn't matter"* in design and visual terms. FT again emphatically disagreed. That obviously accords with the adopted development plan, which mandates densities for CG and provides that areas of density close or adjacent to the appeal site are to be less than 10dph, 21dph, and 33dph. The development plan plainly considers that density does matter. The Appellant's approach simply ignores policy.

26. It was also put to FT in cross-examination that if the difference between 300 and 655 homes on the appeal site, i.e. 355, are not to be provided on the appeal site, but there remains a need for them, such need will have to be met elsewhere. That however is precisely what policy provides for. Policy on density strikes a balance between meeting housing need in any particular place, and meeting the important objectives (as set out in the NPPF) of achieving high quality design and respecting a site's context. It is not the role of this s.78 appeal to re-strike that balance, which has already been carefully considered and codified in development plan policy.

27. In addition to the AAP density diagram which has the force of development plan policy under Policy CG2, the appeal scheme also conflicts with other aspects of the AAP. The AAP identifies a Southern Fringe Character Area, which covers the majority of the southern boundary of the AAP area (fig. 9, pdf p.51). Again there is adopted development plan policy in respect of this area – Policy CG6 – which expressly deals with density and character, providing that development here is to "*be comprised of low density residential uses of no more than 10 dph typically of larger, irregularly placed properties in generously sized plots"* (pdf p.53). Explanatory text likewise explains that in this location:

> "*5.69 To soften the transition of the built development into the countryside, low density housing (or no more than 10 dph) should be delivered along the southern boundary, between 2 and 2.5 storeys in height with variety in roof heights and forms, so that the scale and built form is integrated sensitively into the landscape."*

28. The appeal scheme does not get close to delivering development according with that policy and explanatory text. The density in the two southern parcels

(L and K) of the appeal site is 39dph[7]. That is a long way above 'less than 10dph' – indeed it is around four times the density in the AAP.

29. The Appellant produced a new plan with JC's proof of evidence, which within the southerly Parcel L shows an additional small inset area at 16-25dph (CD13-4). That is not part of any parameter plan and so would not be controlled by the planning permission which the Appellant is seeking. If the Appellant did reduce the density in this area, it follows from the Appellant's density parameter plan which shows an average 39dph density in Parcel L that the rest of Parcel L would need to increase in density, presumably to above 40dph, further exacerbating the inappropriately high density. In any event, the new inset area is only a small isolated area and does not materially affect the overall picture.

30. The Clague Approach to Density Statement dated August 2024, appended to NT's proof, does not engage in any detail with the densities required by the CG AAP. In fact the only detailed reference in that short statement is an error. Clague say that "*In general, the southern tip of the development 'fingers'* [in CG] *is the more lower* [sic] *density terminating in a range of approx. 10-25 dwellings per hectare depending on which Parcel it is in"* (third paragraph). In fact, the southern tip of all the southern development fingers in CG terminate in a density of "*10d/Ha or less"*.[8]

31. The density of the appeal scheme is also contrary to the CG Design Code SPD. The appeal development lies adjacent to the Orchard Village character area, which is to:

> *"provide a sensitive transition from the compact urban grain of Chilmington Rise* [character area] *in the north east to the settlement's countryside edge in the south west. Along this edge very low density development with detached homes in large plots will have a rural character and overlook areas of managed wetland and woodland. The urban grain will gradually loosen in the areas closest to the countryside edge with plots becoming larger and streets taking on the character of*

[7] See density parameter plan rev J CD 13-3.

[8] AAP residential density diagram, CD7-3 pdf p.141.

rural lanes rather than suburban streets." (section 5.2, pdf p.31, CD7-15; also see further text regarding density on pdf p.32)

32. The Design Code only envisages higher density development in Orchard Village around the local centre (see density plan at Design Code pdf p.75). That is some way from the appeal site, and the appeal site does not create any local centre of its own. The Design Code density plan also shows the overlap land and the facing boundary of the western finger of development as "*low density suburban*", and the southern end as "*rural edge"*.

33. Indeed, it is important to appreciate the full significance of there already existing a CG design framework, when considering the appeal scheme. The density in the Orchard Village tapers down at its edges in accordance with the AAP and Design Code approach, so it is 21dph on the overlap land, and 21dph and less than 10dph on the edges of the western CG finger of development. The appeal scheme seeks to join on to the edge of CG. To cohere with the adopted CG design framework, the appeal scheme needs to knit into that design framework, including the established low density at its edges.

34. This issue is simply not addressed in the appeal scheme. The appeal scheme has densities in its two most northerly parcels of 53dph and 49dph, well over double that on the overlap land of 21dph. The appeal scheme Design and Access Statement[9] provides no rationale of why densities of 53dph / 49dph have been proposed next to an area which the adopted development plan states should be developed at 21dph, or how that can possibly be acceptable in design terms. As FT stated in oral evidence, it will lead to an overbearing relationship.

35. Policy on density in the AAP and guidance in the Design Code has been translated into what has been granted planning permission under the CG outline planning permission: see the CG outline planning permission density parameter plan (CD15-10), which accords with the AAP density diagram (CD7-3, pdf p.141) and the Design Code density plans (CD7-15, pdf p.75-76).

[9] CD2-4 Part 3, pdf p.6 – Section 4 Building Density.

Reserved matters applications for CG are required to comply with the CG parameter plans, including the density parameter plan.[10]

36. For the first time in oral evidence, JC and NT both made suggestions to the effect that 'matters have moved on' since the CG AAP was adopted in 2013. That has no support in their written evidence, and notably neither witness suggested that the AAP was out of date in terms of its substance. JC referred to para. 1.18 of the AAP which states that the AAP is intended to be reviewed every five to seven years. That has occurred, with a review undertaken in 2018, and a report taken to, and approved by, Cabinet which concluded that "*The review concludes that no revisions to the AAP are needed now and the AAP is not 'out of date' with the NPPF"* (summary box on p.1, ID41). NT pointed to the AAP stating that it "*has been drafted with flexibility in mind"* (AAP para. 1.15). Indeed, the AAP density diagram talks about 'average' densities in various parcels. But the Appellant's approach is not to seek to work within that flexibility, it is simply to propose a different approach entirely. Further, it needs to be recognised that since the AAP was adopted, an outline planning permission has been granted for CG which fixes the position with parameter plans with which reserved matters applications must comply.

37. NT when challenged on this comprehensive failure to accord with policy and guidance repeatedly fell back on a suggestion that it could all be acceptably worked out in detailed design: "*the devil is in the detail"*, he said in cross-examination. That is a fundamentally flawed approach. The development plan policy and guidance on density is there for a reason. It cannot simply be brushed aside on the basis that there is a further detailed design stage down the line. Any outline permission sets the parameters for the development, and if policy and guidance on density is ignored at that stage (and other design matters, notably height and typology), which with respect is effectively what the Appellant is asking the inquiry to do, it will allow development to come

[10] I.e. CD15-10: see condition 14 on the outline planning permission CD15-3[10].

forward which does not comply with policy and guidance, regardless of the detailed design approach.

Height

38. Height is obviously related to density and many of the points made above in respect of density also apply in respect of height. There are some further points to be made also.

39. The Design Code SPD contains specific guidance on height, providing that in Orchard Village buildings are limited to 2.5 storeys, while 3 storeys are permitted in other areas, and 4 storeys around the local centre (pdf p.32 CD7-15).

40. The CG outline planning permission height parameter plan (CD15-11) shows the overlap land at 2.5 storeys, the south and the western flank of the CG finger of development to the east at 2.5 storeys, and all other nearby CG development at 3 storeys.

41. For the appeal scheme, the building heights parameter plan (CD2-15) has 2.5 storeys along the western side of the appeal scheme, which in itself is not objectionable, but the entire eastern side of the appeal scheme is a completely different matter. That side is all either 3 or 4 storeys, and there is more 4 storey development in the centre of the scheme. That is in direct conflict with the established parameters for CG directly to the east, which is 2.5 storey, rising to 3 storey further into CG. It is contrary to the approach on the overlap land, and the result of the appeal scheme is that there would be 3 and 4 storey development on the appeal scheme right up against 2.5 storey development on the overlap land. The 4 storey heights are heights which are found in the CG development around the district and local centres.

42. The appeal scheme Design and Access Statement[11] is entirely silent on why these 3 and 4 heights have been proposed in light of the 2.5 storey densities established in the Design Code and CG outline parameter plan for the nearest

[11] CD2-4 Part 3, pdf p.6 – Section 4 Building Density.

area of CG (the overlap land) and the facing area to the east, or how it can be acceptable in design terms.

43. JC in his proof sought to introduce, for the first time, a rationale based on the heights and density along other areas of the A28. The rationale does not bear scrutiny. In particular:

    (a) The buildings relied on by JC are in the north of the AAP area. They are in the Chilmington Rise character area in the CG Design Code SPD, rather than the Orchard Village character area. The Design Code says that the Chilmington Rise character area will be "*the 'front door' of the new development as it includes the main access from the A28"* (section 5.1, pdf p.27 CD7-15). The Chilmington Rise character area contains the district centre. The CG AAP provides that the district centre will provide "*a heart for the development"* (para 5.6, pdf p.34, CD7-3) and that it will contain high density (50-70dph) residential amongst other development, with a gradual transition to lower density development away from the district centre (paras 5.29 and 5.35, pdf p.39).

    (b) NT in cross-examination (not in his written evidence) suggested that the appeal scheme "*very much relates to the Chilmington Rise character area"*. That has no basis whatsoever in the established masterplan for CG. The appeal site is to the south of, and adjoins, the Orchard Village character area. It is not adjacent or close to the Chilmington Rise character area. It does not contain the District Centre, unlike Chilmington Rise. It does not contain the 'front door' to CG, unlike Chilmington Rise; rather, the Orchard Village access to the A28 (i.e. the Access C roundabout on the overlap land) is surrounded by low density 16-25dph and low rise 2.5 storey development in marked contrast to Chilmington Rise. NT's position on this simply flies in the face of any sensible understanding of what the CG masterplan requires.

(c) The approved development in parcels relied on by JC which show higher densities are all adjacent or close to the district centre.[12] Other parcels indicated on that plan have been submitted for planning but do not have approval yet, so provide no indication of what is considered acceptable.

(d) The AAP density diagram shows higher densities in this area around the district centre: av. 43 and 62dph (CD7-3, pdf p.141).

(e) It is clear that the AAP does not propose a design approach that development should be denser and higher on the A28 corridor. Such a suggestion is directly contradicted by the fact that the overlap land, adjacent to the appeal development, is low density at 21dph on the AAP density diagram (CD7-3, pdf p.141). At the other end of the CG area, at the far north, similarly there are areas of '15dph or less', and 21dph adjoining the A28.

Typology

44. Development of the density and height proposed on the appeal site has resulted in buildings of a form which is also in conflict with the established framework for CG.

45. The appeal scheme DAS shows that, other than at the far south of the site, the scheme includes terraced housing and for much of the northern half of the site apartment buildings are included (CD2-4, Part 4, pdf p.10 (paginated p.52)). This is to be contrasted with the typologies established for the surrounding areas of the CG scheme: on the overlap land, and throughout the vast majority of the facing western finger of CG, the prescribed building types are only detached houses, semi-detached houses, and flats over garages, with no terraced housing and no apartment blocks[13].

[12] Parcels A & E, B, C1, C2 (ranging from 45 – 59dph) (overall masterplan CD13-5).
[13] See CG DAS CD15-2 Part 2 pdf p.6-7 (paginated p.102-103). The plan at pdf p.7 is the building parameters plan for CG (CD15-6) which with which reserved matters applications for CG need to comply, by reason of condition 14 of the CG outline planning permission (CD15-3).

Landscape buffers

46. Development of the density proposed has also significantly limited the area available for landscape buffers, and the resultant inadequate buffers are a further basis of unacceptability. Policy HOU5(f)(iii) contains a development plan policy requirement for "*an appropriately sized and designed landscape buffer to the open countryside"* (CD7-1, pdf p.231).

47. For a significant part of the eastern boundary of the scheme, in the north east of the site, there is almost no landscape buffer at all: see land use parameter plan (CD2-16), which shows the two north-east residential parcels hard against the site boundary. NT indicates that the buffer in that area could be 5m (proof appendix 04, fig 23, section G-G); while it is difficult to tally that with the parameter plan which shows virtually no gap, in any event it is insufficient to provide meaningful buffering between the high density development in this location (up to 53dph, at 3 and 4 storeys) and the open space directly to the east in the CG area.

48. On the western edge of the appeal scheme, there is only a narrow landscape buffer at the north of the scheme between the scheme and the A28, as shown on the same land use parameter plan (i.e. the most northerly parcel on the land use parameter plan (CD2-16)).

49. That is to be contrasted with the established framework for the overlap land directly adjacent to the north, where there is to be a much deeper area of green space between the A28 and any buildings.[14] The same is seen in the AAP strategic diagram (CD7-3, pdf p.133). It appears that the design for the appeal scheme has simply had no regard whatsoever to what is proposed on CG in this respect. This means that not only does the appeal scheme not provide an adequate buffer opposite the open countryside, but the appeal scheme also does not fit into, or align with, the CG proposals. There is a clear mismatch. This is obviously unsatisfactory and indicative of the pervasive design shortcomings in the appeal scheme. NT suggested in cross-examination that

[14] See CG open space parameter plan, green space Parcel G11 (CD15-9).

the northern parcel of the appeal scheme will not "read with" the overlap land, and the disconnect between the very pinched landscape buffer at the north of the appeal scheme and the wide landscape buffer on the overlap land will not be perceived. That is wholly unconvincing: the two areas are directly adjacent and receptors will obviously notice the conflict in the approach to density and buffering on each.

50. On the southern boundary adjoining Possingham Farmhouse, and also the south-eastern boundary, there is a large development parcel and only a narrow gap between that parcel and the southern and south-eastern boundary. The Appellant makes much of the wider landscape buffers that appear on parts of the western boundary of the appeal site, but these only serve to illustrate the lack of adequate buffer in other areas of the appeal site. It is important to recognise that the appeal scheme sits as a finger of development extending south of Ashford into the open countryside, exposed on three out of four sides, not just the western side. There is the open countryside along its long western boundary beyond the A28, open countryside and the sensitive setting of the sensitive Possingham Farmhouse listed on its southern boundary, and the natural open space proposed as part of the CG area on its long eastern boundary.

<u>Public amenity space: informal natural greenspace</u>

51. ABC's concerns in respect of playspace have now been addressed on the provision of further information by the Appellant.

52. ABC's objection in respect of insufficient informal natural greenspace remains. It is a substantive objection to the scheme that is a symptom of the overdevelopment of the appeal site.

53. Policy COM2 of the ALP requires compliance with the Public Green Spaces and Water Environment SPD (CD7-7). The SPD requires 2.0ha of informal / natural

greenspace per 1000 persons, which is agreed to amount to 3.144ha on the appeal site.[15]

54. The Appellant was silent on this matter until proof of evidence stage, at which point JC in his proof asserted that the appeal scheme "*exceeds requirements"* but provided no figure.[16] Notwithstanding that FT continued to challenge this matter in her proof, JC did not provide a rebuttal proof. On day 1 of the inquiry, the Appellant provided a new plan (rev G of the landscape parameter plan) which revision for the first time stated "*Green Space (3.231ha, including accessible areas of Long and Open Grassland)"* (ID-11). No further explanation was provided until the evidence in chief of NT, who stated that this 3.231ha figure included: Green Space; around 30% of the Long and Open Grassland; woodland belt; and areas identified on the plan as "*Flood Attenuation, Lagoons and Swales"* (i.e. SUDS areas). Notably this further explanation was provided <u>after</u> FT gave her evidence, leaving her no chance to respond. To the extent that Mr Harwood suggested that FT accepted the adequacy and sufficiency of the informal natural greenspace provision in cross-examination, that is incorrect – rather she only accepted what the SPD legitimately allowed to be included as informal natural greenspace and she expressly qualified any acceptance of the adequacy on the basis of what the label on the plan said (she said "*if the label is correct"*).

55. The information that has now been provided shows that there is non-compliance with policy and guidance. In particular:

    (a) First, in respect of SUDS areas, the SPD requires that:

> *"4.28 The provision of SUDS, where genuinely useable for the types of green space required by the development for most of the year, can be counted towards meeting the green space requirements set by this SPD. Site area, topography and frequency of flooding will all be considerations in assessing whether the provision can be included, which will be carried out on an individual site basis. …"*

[15] Agreed in JC proof para. 13.2.36.
[16] JC proof para. 13.2.41.

There is no evidence that the SUDS areas in question are genuinely useable as recreational green space for most of the year. The Flood Risk Assessment identifies them as 'ponds', which implies they are generally wet. Further they are between 1 and 1.5m deep, with steep sides. That topography further weighs against them being taken into account as informal natural greenspace, in accordance with the SPD. NT explained that slightly less than 25% of his entire Green Space figure of 3.231ha was made up of the SUDS areas. When reliance on them is removed, as it must be, the deficit is therefore significant.

(b) Secondly, the SPD provides:

> *"6.21 The shape of space provided should allow for meaningful and safe recreation."*

Much of the Green Space indicated on the plan in the present case comprises narrow areas around development parcels, fragmented across the site, which will be highly constrained in terms of its usability and attractiveness.

(c) For completeness, ABC also had concerns about the 3.231ha relying on the Long and Open Grassland, which is identified in the Appellant's ecology evidence as required for ecology mitigation. However, on provision of further information on 15 October 2024, ABC do not maintain an objection on this point. It does not however avoid the first and second points above, which individually and cumulatively mean that the informal natural greenspace provided is not policy compliant.

56. NT in oral evidence suggested that the 3.231ha figure was 'generous' and in fact the figure might be closer to 4ha. That further example of the Appellant's case being a moving feast should be given no weight – it was unevidenced, only appeared orally, contradicts the written figure, and hence was impossible to test. But even if it is taken into account, it still does not address the two points above.

57. For all those reasons, there is insufficient informal natural greenspace, leading to conflict with policy and guidance.

Harm

58. The above issues – density, height, typology, landscape buffers, and informal natural greenspace – need to be identified separately, but their impact needs to be considered as a whole.

59. The appeal scheme would result in a harmful, over-dense and urban form of development, which would not respect its countryside context and its location in the setting of CG.

    (a) The appeal scheme is right at the southern edge of the approach to Ashford and would appear as a high density development at odds with the countryside setting. FT was clear in answer to questions that the scheme's high density would be obvious to receptors viewing the scheme from the A28 and the PRoWs around the site, and it was not only the case that the high density would become apparent to receptors standing within the scheme. Mitigation screening is proposed, but the Appellant does not suggest that the appeal will not be visible, which is common sense given this is a large scheme of 655 dwellings ranging from 2.5 – 4 storeys. The mitigation screening is also limited by the narrowness of the landscape buffers in many areas.

    (b) NT's written evidence is that at Viewpoint 5 on the eastern boundary of the site, "*There is likely to be a direct, permanent effect on the visual amenity of the view of major-moderate adverse magnitude and moderate adverse significance following the implementation of mitigation measures, …"* (section 7.1, p.8). He states that the effect will reduce in the longer term, but confirmed in cross-examination that it would remain major-moderate. Notably, Viewpoint 5 is looking across the vegetated swale in the appeal scheme, such that the houses are 41m away or so (see NT Appendix 04 Figure 23 Section F-F). Just to the north of this, there is essentially no buffer between the PRoW on the east of the appeal site and the built form; at Section G-G, NT suggests it might be 5m, which looks an 'at most' figure having regard to the parameter plans. In any event, the effects here will necessarily be even

more adverse than at Viewpoint 5, as NT accepted. The same can be said for viewpoints further south on the eastern boundary of the appeal scheme.

(c) FT fairly accepted that the landscape and visual impacts were localised, but made clear that they were not limited. The fact that they are felt only in the local area does not diminish their significance. Given the shape of the site as a long finger of development protruding into the open countryside, the impacts will be felt throughout the local area surrounding the site, from open countryside, from the approach to Ashford, and from CG.

(d) As to the setting of CG, the failure of the appeal scheme to cohere with the established design framework for CG is harmful and inappropriate. The scheme is jarring in its context, in a way which is obviously harmful and undermines the design principles for CG despite the appeal scheme being proposed as an extension to CG. There will be 3 and 4 storey, high-density development on the eastern boundary of the appeal scheme facing 2.5 storey, low density development on the western finger of CG; a similar conflict on the northern boundary with the overlap land, creating an overbearing relationship with the overlap land; and density of development across the appeal site overall which is roughly double what is envisaged in the nearest parts of CG and up to 1.5 storeys higher.

60. The Appellant's repeated refrain of 'where's the harm' is to playdown and ignore the central importance which policy gives good design. It ignores the real and significant adverse impacts from developing the appeal site in a way which obviously does not respect its setting or cohere with the design requirements adopted in policy and guidance.

Consequences of development being proposed on the appeal site when Chilmington Green is stalled

61. There is also a further objection to the appeal scheme. The appeal scheme is expressly advanced as a "*natural and sustainable extension*" to CG in design and landscape terms.[17] CG, however, is stalled. The Appellant expressly accepts that CG has stalled: see JC proof, where he explains that "*the delivery of units and associated community infrastructure has stalled"*.[18]

62. For all the reasons set out above, ABC consider that the appeal scheme would be significantly harmful in design and character terms even if CG came forward. But in addition to those numerous objections, CG is not currently coming forward. Even on the Appellant's case, the acceptability of the appeal scheme in design terms depends on CG coming forward. The fact that CG is not currently coming forward, and the absence of any reliable prospect that it will be unlocked any time soon (which is dealt with in more detail in the Planning Matters, Benefits and Planning Balance section of these closing submissions), is a further and fundamental objection to the appeal scheme. It needs to be recognised that, with CG stalled, the consequence of the appeal scheme would be a large, isolated 655 home development in the countryside, divorced from the southern edge of Ashford.

63. NT accepted in cross-examination that he did not suggest that the appeal scheme was acceptable in design terms without CG. His visualisations expressly relied on CG (and not just those limited parts currently being built out).

64. JC suggested in cross-examination that the limited parts of CG Phase 1 which are currently being built, plus the secondary school, would provide sufficient connection in design terms to Ashford, so as to prevent the appeal site being divorced from Ashford. That is not a credible position. No more than 400 homes in CG can currently be occupied, because the CG s.106 prevents more

[17] NT proof para. 8.2.
[18] Para. 15.3.16.

occupations until a bond has been provided for the A28 dualling, which has not been provided. The secondary school building is at the far north end of the secondary school site, and the majority of the site comprises largely open sports facilities. Then there is the overlap land, again part of the stalled CG. Only then do you get to the appeal site. Without CG coming forward in full or at least in large part, the appeal site will obviously be unacceptable in design terms. To use NT's phrase, it will not be a "*natural … extension"* to anything (proof para. 8.2).

65. The Appellant's case simply ignores this issue. But it cannot be ignored: it is a necessarily material matter, to which the Appellant appears to have no answer.

Conclusion

66. As a result of all the above RfR1 issues, there is conflict with policies SP1(b), (d) and (e), SP6(a) and (f), HOU5(e) and (f), ENV3a(e), COM1 and COM2 of the Local Plan, the Public Green Spaces and Water Environment SPD, and national policy in the NPPF paras 97(a), 102, 128(d), 130 and 135(a), (b), (c), (e) and (f).[19]

Reason for refusal 2

67. Policy at all levels is clear that development should not be brought forward in isolation from the infrastructure, of all forms, which is needed to support it. In respect of CG, the AAP explains:

> "*one of the key principles of the AAP is that each phase of the development of Chilmington Green is sustainable in its own right. This requires that properly planned infrastructure delivery is achieved alongside the development of new housing and that any significant gaps or shortfalls in provision are avoided."* (para. 11.30, CD7-3)

68. As a purported extension to CG, the appeal scheme must follow the same approach. ABC says that the appeal scheme is clearly not locationally sustainable.

[19] See FT proof paras. 4.79 – 4.88 for further itemised treatment of the conflict with relevant policies.

Distance to facilities: not a walkable neighbourhood

69. The scheme provides no day-to-day services or facilities on site, despite being a large development of 655 homes, and being nearly 1km from its southern to northern tip. It is put forward as relying entirely on the facilities and services planned for CG, but that does not make the site sustainable.

70. The services currently existing or soon to exist on CG principally comprise a primary school, a temporary community facility in a single storey temporary portacabin-style building of 170sqm, and a secondary school due to open in 2025. The Appellant has also proposed a Grampian condition preventing occupation prior to delivery of a supermarket in the district centre.

71. All those facilities are beyond 800m from the centre of the appeal site[20]. The distance from the southern end of the appeal site will be several hundred metres more. ID records the entrance to the secondary school as being 1090m from the centre of the appeal site, which is closer albeit still beyond 800m, but it is the only one which gets anywhere near 800m. The primary school is c.1.5km away; the district centre is again c.1.5km; the temporary community building is nearer 2km.

72. The Appellant placed some reliance on proposed shared use arrangements at the secondary school. That does not materially change the position. Condition 24 on the planning permission for the secondary school requires that prior to occupation, a community use agreement shall be submitted to an approved in writing by the LPA in consultation with Sport England (CD14-1). FT when asked about this in cross-examination confirmed that no such community use agreement had yet been submitted or agreed (noting also that consultation with Sport England is required). She also pointed to the AAP which observes that whilst ABC will encourage dual use, school provision "*is only available in non-school hours and when school clubs do not want to use the facilities"* (paras. 6.22 – 6.24, CD7-3). Given that no community use agreement has been submitted let alone assessed and agreed, it is highly uncertain what use – in

[20] See ID proof Appendix ID2, p.6, Table 2.1 pdf p.115.

terms of timing or quantification – the community might be able to make of the facilities at the secondary school, noting that the pupils will get first priority. It does not materially enhance the sustainability credentials of the appeal site at present.

73. It is important to be realistic. The proposed supermarket on Mr Dix's calculation is 1753m by foot, and 1440m by bike, from the centre of the appeal site. It is unrealistic to suppose that many occupants of the appeal scheme are going to walk well over a mile each way to get to a food shop.

74. The 800m figure is not a fixed figure, or a cut-off. But policy and guidance is clear that it is a figure which national policy and guidance gives importance to and considers to be representative of a walkable neighbourhood. In particular:

    (a) The Government's Manual for Streets states that "*Walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes' (up to about 800 m) walking distance of residential areas which residents may access comfortably on foot. However, this is not an upper limit and PPS13 states that walking offers the greatest potential to replace short car trips, particularly those under 2 km"* (para 4.4.1, CD9-10). ABC does not ignore the qualification about "*under 2km"*, but just as that qualification cannot be ignored, so it would also be wrong to ignore the preceding text about 800m and 10 minutes' walk.

    (b) Further, the appeal scheme is proposed as an extension to CG, which is a sustainable urban extension to Ashford. Achieving the sustainability objectives of CG weighs strongly in favour of requiring a genuinely walkable neighbourhood in the present case, with a good number of facilities within around 800m, and recognising the harm if that is not provided.

    (c) The Chartered Institution of Highways and Transportation's 2015 guidance Planning For Walking similarly provides that "*Most people will only walk if their destination is less than a mile away. Land use patterns*

most conducive to walking are thus mixed in use and resemble patchworks of "walkable neighbourhoods", with a typical catchment of around 800m or 10 minutes' walk" (para. 6.3, CD9-11). When this was put to ID in cross-examination, he focused on the reference to "*less than a mile away"*, but to do so in isolation as ID does is to ignore the 800m / 10 minutes' walk guidance in same text. In the context of a sustainable urban extension such as CG, it is plainly appropriate to be use 800m as the benchmark, rather than any greater figure which might be appropriate in more remote locations where shorter distances are simply unachievable.

(d) ID in cross-examination for the first time made reference to the concept of 20 minute neighbourhoods, although he did not provide any specific reference and none is provided in his written evidence. The Council's understanding, however, is such guidance concerns a 20 minute round trip, i.e. 10 minutes each way, which is entirely consistent with the 800m guidance referred to above. Certainly the Appellant has produced nothing to suggest that the focus in policy and guidance on 800 / 10 minutes' walk is anything other than current and up-to-date. The Council, having checked the position, is clear that it is.

75. 800m is the aim of the development plan, as set out in the supporting text to HOU5 in the Local Plan: "*Basic day to day services such as a grocery shop, public house, play / community facilities and a primary school should be within a generally accepted easy walking distance of 800 metres in order to be considered sustainable, although the specific local context may mean a higher or lower distance would be a more appropriate guide*" (para. 6.58, CD7-1).

76. In the context of CG, there is no justification for a higher distance. CG has been planned to provide for walkable neighbourhoods. The CG AAP notes that the local centres, which along with the district centre are located to mean that all residents of CG are close to one of them, are "*within easy walking distance of home for the residents of Chilmington Green"* (para. 5.1, CD7-3). The CG DAS

notes the same point under the heading of 'walkable neighbourhoods'[21]. Later on it is even clearer:

> "*The quantity and mix of land uses are designed to create a sustainable urban extension based on the principle of walkable neighbourhoods. Mixed uses are clustered around a District Centre and two Local Centres that will provide facilities within a short walk of all homes. The secondary school is adjacent to the principal access road, the A28, and close to the District Centre which should benefit from additional patronage as a result. The four primary schools are located within walking distance of homes to encourage walking to school and are also close to the District & Local Centres"* (section 6.1, CD15-2 Part 1 pdf p.13, paginated p.79).

77. The central and southern half of the appeal site is remote from the district and local centres in terms of easy walking distance. The appeal site incorporates no local centre of its own. If the CG boundary had included the appeal site, CG would have had to be masterplanned differently, so as to bring facilities closer to the appeal site. The appeal scheme makes no attempt to overcome the sustainability issues created by it being brought forward separately from the 2017 CG outline planning permission. It is also relevant that we are not talking about a small number of houses: the appeal scheme is large at 655 homes, and is equivalent to around half of one of the four CG phases (which are each around 1500 homes). It is unacceptable and harmful in sustainability terms for one substantial part of what is to become CG (on the basis that the appeal is an extension of CG) to be so much less sustainable in locational terms than the rest of CG. It is another way in which the appeal scheme fails to cohere with or achieve the policy requirements of CG and the development plan.

78. FT made clear in her written and oral evidence that this failure to provide for a walkable neighbourhood was one strand of objection under reason for refusal 2. FT cited all the guidance regarding 800m and walkable neighbourhoods, and concluded that "*the site is not within easy walking distance of basic day to day services"*[22]. Contrary to the apparent suggestion in

[21] Section 6.1, CD15-2 Part 1, pdf p.10 (paginated p.76).

[22] See FT proof paras. 5.3 – 5.8 (citing all the 800m and walkable neighbourhood guidance), and 5.21 – 5.30 (e.g. 5.21: "*the site is not within easy walking distance of basic day to day services in the nearest settlement"*).

cross-examination, this objection is articulated in her proof, it was articulated orally and the Appellant has obviously had a chance to seek to respond to the point, but has been unable to provide any cogent response.

79. Indeed, ID frankly admitted that he "*disagrees with the 800m"*[23]. That needs to be recognised for what it is: a disagreement with national policy and guidance (in MfS and CIHT Planning for Walking), the development plan (in the Local Plan and the AAP), and in the established framework for CG (in the CG DAS). Those are the policy and guidance documents against which this appeal should be determined, not the personal views of the Appellant's expert.

Uncertainty over delivery of facilities at CG

80. There is also a separate strand of objection under reason for refusal 2. Even setting aside the fact that all the day to day services and facilities are well beyond 800m, both the services themselves, and sustainable walking and cycling links to them, do not in the main currently exist and it is highly uncertain when they will come forward. Policy in HOU5(a) of the Local Plan requires development to be proportionate to the level, type and quality of day to day service provision "*currently available"*. ABC accept that regard can properly be had to services that will be available within the near future, when occupations would begin on the appeal site, as acknowledged by FT in her written and oral evidence.[24] The Appellant's apparent suggestion that the reference in reason for refusal 2 to "*a presently unsustainable location"* means that ABC have asked the wrong question is obviously incorrect: the language of 'presently' reflects the wording of 'currently' in the development plan, and as FT explained ABC has not left future provision out of account. But the issue is that the future provision is not remotely clear or certain in timeframe.

81. In particular, although the primary school is now open, there is currently no safe or convenient way for pedestrians or cyclists to access it. The Appellant proposes conditions requiring the delivery of walking and cycle links to the

[23] In cross-examination.
[24] FT proof para 5.20 and in cross-examination.

school before first occupation of the appeal scheme, but those routes will go through or alongside development parcels in Phases 1 and 2 of CG, where major development may be taking places for decades to come, noting that the Appellant's anticipated end date for Phase 2 is currently 2033[25], which may of course slip especially given all the slippage at CG to date. ID said that the disruption could be managed, but no matter how careful the management, the reality is that walking or cycling through or alongside development parcels for many years to come will not be attractive or conducive to active travel. There is a further objection that ID relies on cycling along Mock Lane[26]. Mock Lane is a narrow rural lane which, for a significant stretch north from the junction with Chilmington Green Road, does not have any segregated walking or cycling provision, and is unlit. It is plainly not suitable for cycling by primary age school children. ID stated in evidence in chief that it was "*not ideal but you could use it if you were a confident cyclist"*. That is hardly appropriate for primary age school children.

82. JC said in evidence in chief that attractiveness of cycling and walking routes is as important as distance. But that is to make the Council's case: not only will the distances be in excess of 800m, they will be unattractive routes through or alongside construction sites and the unsuitable Mock Lane.

83. The secondary school is due to open in 2025, but again relies on pedestrian and cycling links that do not exist yet and will be through or alongside development parcels.

84. The temporary community building currently in existence does not make a significant contribution to sustainability, given it is only 170m2 and a temporary portacabin style structure. FT explained in oral evidence how its limitations meant that it could not be used for nursery or Brownies or Cub Scouts provision.

[25] CD13-5 overall masterplan with legend showing anticipated dates of Phases 2, 3 and 4.
[26] See Mr Dix proof appendix ID3, pdf p.140.

85. A supermarket has the potential to contribute to sustainability, but leaving aside the distance point mentioned above, the delivery of the foodstore is highly uncertain in terms of timing. The current trigger in the CG s.106 agreement for the delivery of the foodstore is occupation of 1250 dwellings at CG[27]. As of 31 July 2024, only 360 homes had been occupied at CG.[28] Reserved matters approval has been granted for 763 homes in total (and even these have not been built out yet, notwithstanding that they are not affected by nutrient neutrality), the first primary school and the secondary school.

86. The Appellant during the inquiry appeared to lay the blame, at least in part, for the non-delivery of CG at the door of FT. That is wholly unjustified and unfair. It is directly contradicted by the fact that this developer has not even delivered the 763 for which ABC have granted reserved matters approval. Nor has the developer even delivered the CG bus service, despite that being a legal obligation in the CG s.106 at 100 occupations. This is a developer, who in seven and a half years after the grant of outline planning permission in January 2017 for 5,750 homes, has only managed to deliver 360 occupations. It does not inspire confidence.

87. Based on past delivery rates, the Council's recent 5YHLS statement anticipates only a further deliverable supply of 327 from Chilmington Green over the period 2024 – 2029 (CD14-6, p.27), i.e. still under the 763 for which reserved matters permission has been granted.

88. Based on that timeframe, 1250 dwelling occupations at CG is unlikely to be reached until well into the 2030s. A reserved matters application has been made for the foodstore but not determined yet and no appeal against non-determination has been made. As FT explained, the RM application includes housing so is bound up with the NN issues. Even once the RM application is approved, the Appellant has produced no written evidence whatsoever from

[27] Sch 15, para. 1.2, pdf p.156 CD15-13.
[28] Faye Tomlinson proof para. 5.14. The Council's 5YHLS statement further explains that there have been 382 completions and 247 units are under construction (CD14-6, para. 3.70).

any foodstore operator as to their interest in opening a store in this location, or in what timeframe.

89. ID suggests that 2,623 dwellings could be delivered by 2032-2033. But that looks highly unlikely, and is certainly not a reliable basis on which to grant planning permission. ID is suggesting that notwithstanding that only 360 have been delivered in the last 7.5 years, over 2200 will be delivered in the next 8 years or so.

90. Compounding this timing issue is the Appellant's proposals under the s.106B appeal. The Appellant was a signatory to a s.106 agreement dated 27 February 2017 in respect of CG. It contains various triggers for the delivery of infrastructure at CG, based on the occupation of numbers of dwellings. The Appellant is now seeking to vary the s.106 agreement to delete obligations and / or to move triggers back. The changes are sought on, inter alia, viability grounds. The Appellant is currently pursuing an appeal under s.106B of the Town and Country Planning Act 1990 in respect of the variations sought (ref. APP/WW275/Q23/3333923 and 3334094). An 'exploratory meeting' was held on 1 October 2024[29] in respect of the appeal by the appointed Inspector, but no start letter has yet been issued.

91. Of course, the present appeal cannot seek to anticipate the outcome of the s.106B appeal. The merits of the s.106B appeal are not for the present appeal. However, the Appellant's proposals to push back the triggers for delivery of CG infrastructure, and the fact that these are being pursued through the s.106B appeal, are necessary material considerations for the present appeal. They cannot be left out of account and it would be an error of law to do so. The appeal scheme is being advanced as relying on CG infrastructure. The Appellant has publicly stated in the s.106B appeal that it considers much of that infrastructure cannot viably be delivered in accordance with the current

[29] In the hard copy of these closing submissions handed up on 16 October 2024, the date of this exploratory meeting was incorrectly stated as 24 September 2024. 1 October 2024 is the correct date. No other amendments have been made to the version handed up.

CG s.106 triggers. That fundamentally undermines the Appellant's reliance on those CG s.106 triggers in this appeal. The disconnect is obvious.

92. ID's evidence failed to have proper regard to this. He explained in cross-examination that his timings for delivery of CG infrastructure relied on the current triggers in the CG s.106 and he repeatedly refused to answer any questions about how the Appellant's proposals under the s.106B appeal might affect delivery of that infrastructure.[30] He has shut his eyes to what the Appellant is expressly proposing to do. He said that the current CG s.106 triggers can be relied upon, but that is wrong. There is a mechanism by which they can be changed, i.e. the s.106B appeal, which the Appellant is currently pursuing, and the Inspector in the present appeal has no control over what may be decided in the s.106B appeal.

93. So, for example, the trigger for delivery for the district centre would be pushed back from 1250 occupations in the currently worded s.106 agreement to 2700 occupations, and the floorspace size requirement for the proposed supermarket in the district centre would be deleted.[31] On current delivery rates, 2700 occupations at CG could be decades away.

94. Similar considerations arise in respect of the Appellant's bus proposals. ID accepts that the proposed bus service is "*a key element of the accessible transport strategy to provide a connection to employment opportunities and other services*" (proof para. 4.42). The Appellant has provided no evidence whatsoever to show that a bus service would be viable or feasible, or that any bus operator would be interested in providing it. As both FT for ABC and MH for KCC stated,[32] that is evidence which the authorities would expect to see at this stage. The need for such evidence is brought into sharp focus by looking at what has happened at CG. For CG also, the s.106 provided that a bus service had to be provided prior to the occupation of 100 dwellings[33]. Despite that

[30] In cross-examination by both ABC and KCC.
[31] FT proof para 5.13; CD15-14, Sch. 14, para. 1.1 and 1.2 (pdf p.170).
[32] MH proof para 4.2; FT proof 3.2.
[33] CG s.106, Sch. 20, para. 1.3, pdf p.208, CD15-13.

legal obligation, at least 360 dwellings have been occupied at CG, and no bus service has been provided.

95. Furthermore, the Appellant is seeking to push the trigger for the CG bus service back under the s.106B appeal. Initially, the Appellant proposed that the trigger be pushed back from 100 occupations to 1501 occupations, stating that the bus services in the current CG s.106 "*cannot be provided within Main Phase 1 as they are wholly unviable and unfeasible"* (CD15-20, pdf p.54). The Appellant's revised position under the s.106B appeal is even more extreme: it seeks that the bus service trigger is pushed back to occupation of 2,684 dwellings.[34]

96. It is entirely inconsistent of the Appellant to advance the appeal scheme on the basis that a bus service no later than 100 occupations will help make the site sustainable, despite providing no operator or viability evidence to that effect, when right next door on CG it is saying that a bus service is wholly unviable and unfeasible before 1501 or even 2,684 dwellings.

97. The Appellant has boldly stated to this inquiry that none of this matters. It was put to FT in cross-examination, and re-iterated by ID, that planning conditions and or a s.106 agreement can provide the necessary control to ensure that development does not happen until sustainability infrastructure is in place, such that when or if the infrastructure actually comes forward does not matter. That is a fundamentally flawed approach. It is not sensible or appropriate, as a matter of planning judgement, to permit a scheme which is entirely dependent on social and transport infrastructure which does not exist yet and in respect of which there is no clear evidence as to when or if it might be delivered, or whether such infrastructure is viable and feasible.

98. Conditions should only be imposed where they meet the NPPF para. 56 tests, including that they are reasonable (NPPF para. 56). It is not reasonable to impose conditions based on such a significant amount of highly uncertain supporting infrastructure, both in terms of timescale and whether it is

[34] CD15-14, Sch.20, para. 1.3, pdf p.227.

delivered at all, without which the appeal scheme would clearly be unacceptable.

99. The Appellant has referred to para. ID21a-009 of the PPG which provides that Grampian conditions "*should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission"*. That is to conflate separate matters. If there is at least some prospect of the action in question being performed, it may in theory be possible to lawfully impose such a condition. But it is a separate question as to whether planning permission should be granted based on such conditions which rely so heavily on the delivery of highly uncertain infrastructure.

100. The same point applies for other facilities planned for CG at some point in the future. For example, ID refers to the permanent community hub and doctor's surgery at CG. But the trigger for the permanent community hub, including doctor's surgery, is 1,800 occupations in the current CG s.106 agreement, and the Appellant is now proposing under the s.106B appeal to deliver it under two phases at 3,250 and 4,250 occupations (FT proof table p.46). The CG bus service which runs closest to the appeal site in Phase 3 (although still beyond 500m) would not be triggered until 4,107 and 5,348 under the current CG s.106 and under the s.106B proposals respectively (FT proof table p.46).

Conclusion

101. For all the above reasons, the appeal scheme is not locationally sustainable, either now or in a reasonable timeframe having regard to the potential delivery timetable for the appeal scheme. There is conflict with Local Plan Policies HOU5(a), (b) and (d), SP1(a), (e) and (f), SP2, TRA4, TRA5, and TRA6, along with NPPF paragraphs 74, 96, 109, 114, 116 and 128.[35]

[35] See FT proof paras. 5.21 – 5.30 for the policy conflict fully itemised.

Planning matters, benefits and the planning balance

102. The appeal scheme is unacceptable in principle. Policy HOU5 of the Local Plan is a criteria based policy to determine acceptability in principle. For the design, character and sustainability reasons set out above, there is conflict with numerous criteria in that policy. Therefore the scheme is unacceptable in principle. The Appellant has sought to suggest otherwise, pointing to FT's agreement that in design and character terms, it might be possible to achieve 300 houses on the appeal site. That is obviously not an acceptance to the principle of development for 655 houses. Further, even 300 would only be acceptable on the basis that CG actually comes forward, whereas CG is currently stalled. Further, the acceptance of the possible scope for around 300 dwellings only relates to design and character matters, and not sustainability matters.

103. The Appellant was incorrect to suggest that this is a location where the Local Plan supports development (JC proof 1.3.6). It is not. It is not an allocated site, with the CG AAP boundary having been drawn so as to exclude the site. That it is adjacent to that boundary only serves to highlight that it is not within the boundary. Rather, to find support in the Local Plan, the scheme needs to comply with HOU5, which it does not.

104. Further, as stated above, the Appellant's whole case to this inquiry depends on CG coming forward. But CG has stalled (JC proof para. 15.3.16). If CG remains stalled, then the appeal scheme would be unacceptable in planning, landscape, design, character and sustainability terms. It would be a large, isolated scheme in the countryside, not integrated into the southern edge of Ashford.

105. The Appellant seeks to suggest that the WWTP, having now been granted planning permission, will help to enable CG to come forward. But JC acknowledges that the CG s.106 requirements also need to be addressed (proof para. 15.3.16). A major one of those is that the CG s.106 prevents occupation of more than 400 dwellings until a bond has been provided to

enable the dualling of the A28.[36] MH explains that "*The A28 dualling bond and subsequent Section 106 contribution has been calculated based on the updated scheme cost of £38,705,000 based on a 2025 start date"*. Although other schemes in the locality could also need to contribute to this sum, it gives an idea of the scale of funding required. No bond has yet been provided and this obligation has not been complied with (MH proof 13.4). This is a firm legal barrier to CG proceeding.

106. In short, the present stalled state of CG makes the present appeal scheme unacceptable. Hence planning permission should be refused.

107. The Appellant seeks to suggest that the appeal scheme will help unlock CG, advancing that as a suggested benefit of the appeal scheme. That is unevidenced assertion. It is not a benefit to which any material weight can be attached. It does not provide any evidential basis to conclude that CG will be unlocked. In particular:

(a) The Appellant provides no analysis of how and whether any net revenue from the appeal scheme might be sufficient to 'unlock' CG. No net revenue figures for the appeal scheme are provided. No analysis of the scale of the CG funding deficit is undertaken. Without that analysis, there is no basis whatsoever to conclude that any net revenue might be sufficient to unlock any or all of CG.

(b) All we know is that the funding required for CG is very significant: see for example MH reference to c.£38m for the A28 above, and JC's reference to around £8m for the WWTP (evidence in chief). There is also all the other infrastructure associated with CG. There is no evidence to identify that the appeal scheme could produce sufficient revenue to fund any of this.

(c) In addition, the Appellant offers no mechanism to make sure that any appeal scheme net revenue does in fact contribute towards making up

[36] See CG s.106, Sch.28 ("*A28 Improvement Works*") at para. 1 (CD15-13, pdf p.185).

the CG funding deficit. There is no obligation on the Appellant to use any proceeds from the appeal scheme to do that.

(d) The Appellant's suggestion that the appeal scheme will 'unlock' CG and that this is a benefit of the scheme is a type of 'enabling development' argument, common from the heritage context. But in the present case there is no evidential basis to conclude that anything will be enabled or unlocked. There is no financial analysis to show that any funds generated would be sufficient to enable CG, nor is there any mechanism to legally oblige the Appellant to actually use any funds in that way.

108. It is accepted that new market and affordable housing is a benefit attracting significant weight. JC is wrong to suggest that the appeal scheme would contribute to delivering ABC's spatial strategy and that this should attract significant weight. The appeal site, as an unallocated site outside of the CG AAP, is not part of the Local Plan's spatial strategy, and because it does not comply with HOU5, the scheme does not accord with the Local Plan.

109. The Council is currently unable to demonstrate a five year supply of housing land: the position in the recently published Five Year Housing Land Supply Update 2024-2029 is 4.39 years (CD14-6). It should be noted, however, that the latest Housing Delivery Test result for the Borough was 107%, i.e. it was passed. That needs to be taken into account in assessing the weight to further housing. Further, the Appellant's recognition that even on its case the appeal scheme would need to be subject to Grampian conditions relating to the prior delivery of infrastructure which is uncertain in timescale places into significant doubt the scale of contribution (indeed if any) which it can be reliably said that the appeal scheme would actually make to the 5YHLS position.

110. The fact that the scheme is in outline with reserved matters approval needing to be obtained compounds this issue. Further, rather than the standard time limits for applying for reserved matters approval and then commencing development of 3 years and 2 years respectively (s.92 TCPA

1990), the Appellant has sought a condition providing for extended time limits of 3 years for first RM application, 5 years for last RM application, and then commencement 2 years from the date of last RM approval, which is wholly inconsistent with any suggestion that the appeal site is going to assist with the 5YHLS position.

111. The Appellant accepts that certain other benefits attract only moderate weight: self-build / custom plots; contribution to economy; New Homes bonus (JC proof Table 3.1, p.16).

112. JC's suggested further benefits (JC proof Table 3.1 p.16) in terms of high-quality development, ecological and landscape benefits, improved bus service, footpath and cycleway connections, and new playspace and open space, attract only limited weight at most in light of their limited nature, the fact that some are mitigation (e.g. the playspace), and some are not made out (e.g. the scheme would not be of high-quality design due to its fundamental design failings, and the scheme would cause landscape harm overall not benefits).

113. As to the application of the tilted balance, the social and environmental disbenefits set out above in respect of reasons for refusal 1 and 2 are extensive and carry significant weight. The harm set out in detail there is significant and wide-ranging: fundamental failures in respect of design, character, and sustainability matters. The harm becomes even more acute when it is recognised that the appeal scheme can come forward largely in isolation from CG which is stalled, leaving the appeal scheme as a large, isolated development in the countryside.

114. There is conflict with the development plan as a whole, the harms significantly and demonstrably outweigh the benefits, and planning permission should be refused.

S.106 obligations and conditions

115. ABC relies on the position and evidence set out in its CIL compliance statement dated 27 September 2024 (CD1-9A), in addition to that

submitted by the County Council (CD1/9B), as supplemented by evidence provided orally at the s.106 and conditions roundtable session, in respect of the s.106 obligations and conditions sought by ABC, without prejudice to its case that the appeal should be dismissed. This includes ABC's Update Note on Mechanisms for Securing Nutrient Neutrality Mitigation dated 14 October 2024 (ID28). The Council says that the s.106 obligations and conditions sought are properly evidence and policy-based, and satisfy the requirements in reg.122 of the CIL Regulations and the policy tests in the NPPF.

Conclusion

116. For all the above reasons the Council invites the Inspector to dismiss the appeal.

HUGH FLANAGAN

16 October 2024

Francis Taylor Building

Temple, London

EC4Y 7BY