



## Appeal Decision

Site visit made on 30 July 2024

**by Anne Jordan BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 19<sup>th</sup> September 2024**

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**Appeal Ref: APP/E2205/W/24/3345453**

**Chilmington Green, Land to west of Chilmington Green Road, Ashford, Kent, TN23 3DL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Hodson Developments Limited against the decision of Ashford Borough Council.
  - The application Ref is PA/2023/0715.
  - The development proposed is described as “proposed construction of a Wastewater Treatment Plant, associated landscaping, and proposed vehicular access from Chilmington Green Road”.
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### Decision

1. The appeal is allowed and planning permission is granted for the construction of a Wastewater Treatment Plant (WwTP), associated landscaping, and proposed vehicular access from Chilmington Green Road at Chilmington Green, Ashford, TN23 3DL in accordance with the terms of the application, Ref PA/2023/0715, and the plans submitted with it, subject to the conditions in the attached schedule.

### Application for Costs

2. An application for costs was made by Hodson Developments Limited against the decision of Ashford Borough Council. This is the subject of a separate decision.

### Preliminary Matters and Background

3. The description of development on the application form was “Construction of a Wastewater Treatment Plant with ancillary plant and equipment within a secure boundary, with vehicular access from Chilmington Green Road and a landscaped bund with proposed planting, together with wider landscaped areas”. The Council altered the description of development to “Proposed construction of a Wastewater Treatment Plant, associated landscaping, and a proposed vehicular access from Chilmington Green Road.” I am satisfied that this latter description of development accurately and more succinctly describes the development and so I have used this description in the determination of the appeal.

4. The site is located within open countryside to the north of the settlement of Stubbs Cross with the nearest residential properties within the village lying around 250m away. The site and the built form of the village are separated by a wastewater pumping station recently constructed by Southern Water, and by Stubb Cross Ancient Woodland to the south west of the site.
5. The site lies within the boundary of the Chilmington Green development and is identified as Ecologically Managed Farmland as part of Phase 4 of the development. Chilmington Green was granted outline planning permission in January 2017<sup>1</sup> for 5,750 dwellings, employment, commercial, community and leisure uses, and supporting infrastructure. The agreed wastewater strategy for the scheme entailed flows being pumped to a Southern Water WwTP at Bybrook, Ashford for treatment. Effluent from this WwTP flows into the River Stour catchment, which flows into the Stodmarsh Designated Sites. A subsequent reserved matters approval (later revised) was granted for 763 dwellings. Planning permission<sup>2</sup> has been granted for the Phase 1 Strategic Sustainable Urban Drainage System which includes a surface water outfall masterplan for Phase 1 development, foul drainage works, and the construction of the abovementioned Southern Water wastewater pumping station.
6. In July 2020, Natural England (NE) issued advice on nutrient neutrality for New Development in relation to Stodmarsh Designated Sites<sup>3</sup>. These are a nationally and internationally designated wildlife habitat that includes a Special Area of Conservation (SAC), a Special Protection Area (SPA) and a Ramsar Site. NE's advice seeks to avoid an increased level of nitrogen and phosphorus within the protected sites which are adversely affecting the integrity of the lake habitat. As NE's advice took effect after the grant of outline planning consent, the development did not include proposals which would achieve nutrient neutrality. Although it is understood that reserved matters approval granted before the point the advice came into force can be implemented, the further reserved matters approvals necessary to bring forward the remaining development will need to demonstrate nutrient neutrality.
7. Under the outline planning permission, reserved matters applications were required to be submitted 6 January 2023. Accordingly, a number has been submitted<sup>4</sup> and are pending determination. These require an Appropriate Assessment to be undertaken, confirming that they will achieve nutrient neutrality. A further application for outline permission<sup>5</sup> for 655 dwellings is currently the subject of an appeal. This is outside the Chilmington Green area, but I am advised it is also intended to be served by the WwTP proposed by this application.
8. In September 2022, the appellant submitted an Overarching Nutrient Neutrality Assessment and Mitigation Strategy (ONNAMS) in support of one of the above reserved matters applications. The key principle of the ONNAMS was the treatment of sewerage waste flows on-site at Chilmington Green by

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<sup>1</sup> Planning ref:12/00400/AS

<sup>2</sup> Planning ref:17/01334/AS, ref: 18/00395/AS, ref: 20/01806/AS

<sup>3</sup> Natural England Advice Note dated July 2020, updated in November 2020 and March 2022.

<sup>4</sup> Planning ref OTH/2022/3142, ref: OTH/2022/3169, ref OTH/2023/0018, OTH/2023/0030, 22/00024/AS and ref: 22/00024/AS

<sup>5</sup> Planning ref: 22/00571/AS or appeal ref APP/E2205/W/24/3345454

way of a WwTP and then discharging the effluent into the River Beult catchment. The River Beult does not discharge to the Stodmarsh Designated sites and so is not subject to the same restrictions in relation to nutrient neutrality. The Beult is a Site of Special Scientific Interest (SSSI) and is subject to agreed Common Standards Monitoring Guidance (CSMG) targets for water quality which seek to protect the Water Framework Directive (WFD) status of the Beult aimed at achieving favourable condition status of the River Beult SSSI.

9. NE and the Environment Agency (EA) have both confirmed that they have no objection in principle to the ONNAMS and the Council have confirmed that it represents a way forward for achieving nitrogen neutrality. However, as it forms part of the undetermined planning applications, it does not yet have formal approval.
10. An upgrade of the Southern Water WwTP at Bybrook is planned to take place by 2030. Once such upgrades are in place it is possible that the Chilmington Green development could connect to the Southern Water system. However, it is not clear that the upgrade would deliver full nutrient neutrality. Therefore, the WwTP may still be required post 2030 in order to achieve nutrient neutrality, and as a permanent permission is sought, I have also determined the appeal on the basis that the WwTP will be a permanent feature beyond 2030.
11. The Chilmington Green Foul Drainage Strategy<sup>6</sup> was submitted with the application for this development in March 2024 and takes on board comments from statutory consultees on the ONNAMS. The WwTP has been designed to have the treatment capacity to deal with up to 2,700 dwellings, but a discharge rate of 3 litres per second will need to be maintained to ensure no adverse impact on the local water network or the River Beult SSSI. The WwTP will be able to treat up to 980 dwellings without additional measures. To facilitate housing numbers over 980 dwellings measures will be required to store or reuse water on site, rather than going straight to discharge. These measures do not form part of the scheme before me.
12. As the development comprises a wastewater treatment plant that exceeds 1,000 square metres (sqm) it comprises Schedule 2 development under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended). The decision maker is therefore required to screen the development for likely significant effects on the environment and to determine whether an Environmental Impact Assessment (EIA) is required. Having regard to the indicative criteria I am satisfied that the scale and nature of the proposal would not be likely to result in significant environmental effects, alone or cumulatively with other development.
13. The appeal site is within the area covered by the Chilmington Green Area Action Plan (CGAAP), which sets out the policy framework for the development of up to 5,750 homes. As the CGAAP was adopted in July 2013 it makes no provision in respect to nutrient neutrality. The Ashford Local Plan 2030 (LP) was adopted in February 2019.

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<sup>6</sup> CD2.48

14. The scheme was amended during the course of the application. The height of the 3 TE-CYC tanks was reduced to 4.23m, and the tank diameters were increased to 18.785m. The height of the sludge holding tank was reduced to 3.53m, and the tank diameter was increased to 12.808m. I have determined the appeal on the basis of the revised plans including ref CHIL-TET-XX-XX-DR-C-0005 P01.4 Te-Cyc Plant Elevations.
15. The Council and appellant agree that the Council cannot currently demonstrate a five-year supply of housing land.

### **Main Issues**

16. Accordingly, the main issues for the appeal are:
  - the effects of the proposal on the character and appearance of the area, including landscape character;
  - whether the proposal would cause river and groundwater pollution and so have an adverse environmental effect on the river Beult and the river Beult SSSI;
  - the effects of the proposal on the living conditions of existing and future residential occupiers, and the effect on local businesses, as a result of potential odour arising from the development.

### **Reasons**

#### *Character and Appearance*

17. The appeal site comprises part of a largely flat, open field, located within a wider band of agricultural land which lies to the north of the village of Stubbs Cross. The land forms part of the site of the Chilmington Green development and the site is planned for use as ecologically managed farmland, which will form an open buffer between the village and the new development.
18. The WwTP would comprise a large, fenced compound within which a number of structures would be sited. A boundary fence would measure 2.4m high behind which would lie an earth bund on three sides, measuring 1.8m high, which would be landscaped with native scrubs and planting to a further 0.8 to 2m in height. Within the bund would lie the perimeter access road which would encircle the component structures. These would comprise 3 Te-Cyc Tanks measuring 4.23m high to the top of the tank, 5.73m to the top of the open gantries and 18.785m in diameter. An attenuation tank measuring 5.123m in diameter and 5.630m high and a sludge storage tank measuring 10m in diameter and 5.6m in height would be sited alongside. Other smaller structures within the compound would comprise a sludge dewatering kiosk, a motor control centre kiosk, four air blowers in acoustic enclosures and a ferric dosing kiosk. All the structures would be coloured dark green. A feed pump station, an inlet screen and a treated effluent sampling chamber would be located underground.
19. In addition, a Leylandii hedge of 5m in height is to be planted along the northern and southern boundary of the site which will obscure views of the equipment from the north and south. It is anticipated that the Leylandii

hedge would be removed once native planting has become established. Furthermore, land between the nearby Southern Water treatment works and Stubbs Cross Wood would be planted with native woodland as an extension to the existing wood. This will provide woodland to a minimum depth of 90m between the village of Stubbs Cross and the appeal site.

20. The site lies within the "Bethersden Farmlands Landscape Character Area" in the District Landscape Type BF5 "Chilmington Open Arable" as set out in the Ashford Landscape Character SPD (2011). This characterises the landscape as "large open prairie style arable fields with extensive loss of hedgerows particularly between Chilmington Green and Long Length leaving remnant hedgerow trees isolated in the middle of vast fields". From my observations on site, I consider this characterisation of the surrounding area to be accurate. Due to the generally level topography and sparsity of intervening features the new housing some distance away to the east at Chilmington Green and nearby woodland at Stubbcross Wood are notable features. As a result of the size and scale of the WwTP it would also be clearly visible in the receiving landscape.
21. The accompanying Landscape and Visual Impact Assessment (LVIA) identifies that although long distance views would be limited, the development would have an adverse effect in views from Tally-Ho Road, Criol Road, Chilmington Green Road, and stretches of Long Length and Magpie Hall Road. Pedestrian to the north and horse riders using public rights of way, including AW300 to the west and AW222 and AW297, would also experience slight to moderate adverse visual effects. In most views of the proposed development the existing Southern Water pumping station or the developing edge of Chilmington Green is also visible. However, I am mindful that in these identified views the proposed development at Chilmington Green would be a modifying feature. In this regard, although the proposal would be an intrusive and urbanising element, its effects would be diminished by the changing context of the site, and this effect would be intensified as development continues.
22. The Council have identified key views in and around the site which they consider would be negatively impacted by the scheme. The view from Coleman's Kitchen Wood and the view looking east from Criol Lane would both be negatively impacted in the Council's opinion. However, taking into account the extent to which the Chilmington Green development would alter these views, I consider these impacts to be overstated. Whilst I note that most of the development at the site has outline permission, and is currently stalled, I nonetheless take into account that large scale development is part of the development plan and the Council have not indicated that they consider the development will not go ahead.
23. I have considered the extent to which the development would diminish the openness of the planned gap and intrude upon enjoyment of open views along this corridor, which on completion would form an important part of the planned landscape for the development. Although the WwTP would be well landscaped, and the planted bunding has been designed to largely screen and so lessen the visual impact of the plant, it would still form a built feature in what was planned as an open and undeveloped buffer. In this regard it would lead to some harm to the character of the area.

24. Of the policies put to me by the Council I consider policy CG1 of the CGAAP and policy SP1 and ENV3a of the LP to be most relevant. These seek to protect the quality of the local landscape and to provide appropriate green infrastructure to ensure new development provides an attractive setting to the built form. As the proposal would have an adverse effect on the landscape and would erode the attractiveness of the setting it would fail to comply with these policies, and with the National Planning Policy Framework (the Framework), which has similar aims. Having regard to the extent of harm identified above, I attribute moderate weight to this harm.

#### *Pollution*

25. Residents have raised concerns regarding the potential effects the operation of the WwTP would have on the River Beult and as such, the Council's concern relates to the effects of the proposal on the SSSI. The Council were not assured that a permit would be granted and in light of this, raised concerns that the scheme would lead to environmental harm.
26. The EA are the regulatory body responsible for ensuring that discharges into ground and surface water do not harm water quality. Their licensing process will require assessment of existing and potential future flows as well as assessment of the quality and volume of discharge entering a water body. It is not possible, as part of the application or this appeal, to confirm that a licence will be issued. That decision lies with the EA, although I note that the EA, as a statutory consultee, did not indicate that a licence was likely to be withheld, or that planning permission should not be granted.
27. The WwTP could not operate lawfully without the appropriate Environmental Permit. Whilst planning guidance sets out that wherever possible, parallel processing of other consents should be encouraged to help speed up the process and resolve any issues as early as possible, it does not require that other consents are in place before planning permission is granted. Neither is it necessary to be certain that such consents will be granted before a planning application is determined.
28. If the EA considered that discharge to the catchment would impact water quality and so cause environmental harm, the Environmental Permit would not be issued and the WwTP would not be able to be brought into operation. I have no evidence to suggest that the operator would operate without or outside of such a permit, but if they did, the fact that a planning permission has been granted is not a legitimate defence where an environmental offence has been committed.
29. I have taken account of the hydrogeological statement which accompanied the foul drainage strategy and the ecological assessment<sup>7</sup> which identified that, provided flows from the plant did not exceed 3l/s at 'low flow' conditions (Q95), then the discharge from the plant would contribute approximately 12.6% of the overall flow at the top of the River Beult SSSI. This flow rate is within the acceptable flow variation of 10%-15%. No discharge is proposed to groundwater. In terms of the quality of the discharge to the Beult, Severn Trent Connect have confirmed that they have

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<sup>7</sup> "A Review of Potential Impacts of the River Beult SSSI" compiled by Corylus Ecology appended to the hydrogeological statement.



the process technologies available to respond to the water quality limits that the EA may look to impose.

30. Therefore, whilst I note the concerns of residents, and their fear that, particularly in the context of recent low flow levels on the river, discharge to groundwater and the River Beult would lead to environmental harm, I have no basis for concluding that the development would not be properly regulated through the Environmental Permitting regime, or that its operation would lead to a deterioration in water quality in the River Beult or the notified features of the SSSI. In this regard I take into account the comments of Natural England, as a statutory consultee, who have commented that, whilst they consider monitoring and assessment of the impacts on the Beult will need to be carried out, they are satisfied this can take place as part of the EA's consideration of the Environmental Permit.
31. I have considered whether granting permission for the development in the absence of the Environmental Permit may lead to other harm. The grant of planning permission would not influence the grant of a discharge licence, as the two regimes operate independently, and the EA's decision will be ultimately based on the likely impacts of the discharge on water flows and quality. Furthermore, as set out below, a condition preventing the construction of the WwTP before an Environmental Permit is issued would prevent visual harm occurring in the event that the WwTP cannot be put into operation.
32. The Council consider that the absence of an application for the outfall pipe necessary to implement the discharge adds uncertainty to how the scheme would be implemented. I do not consider this to be the case. Discharge Permits for WwTPs are only granted to undertakers who the EA consider appropriate to deliver the development – namely licenced water providers. Permitted Development Rights<sup>8</sup> are available to such undertakers to carry out such work, or for the work to be carried out on their behalf. If the licence is issued, the works can go ahead and whether or not an application has been made for the pipe or whether the works would be carried out under permitted development rights does not alter my consideration of this proposal.
33. Having regard to the advice of Natural England, who are satisfied with the principles in the ONNAMS, and provided discharge from the site is directed away from the River Stour, I am satisfied that the scheme would not have a likely significant effect on the qualifying features of the Stodmarsh Designated Site. As a precaution it would be necessary to require that surplus sludge removed from the WwTP is removed to outside the Stour catchment for treatment and disposal and as set out below I have imposed a condition in this respect. I am also satisfied that the construction of the plant and its operation within the limits defined by any Environmental Permit granted by the EA would not give rise to harm to any qualifying features of the SSSI.
34. Of the policies put to me by the Council, I consider CG21 of the CGAAP and ENV1 and ENV8 of the LP to be most relevant to the proposal. Together these seek to ensure that development is appropriately served by water and

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<sup>8</sup> Part 13 Class B

other infrastructure and that the development does not have an adverse effect on local ecology, including the integrity of the SSSI. I am satisfied that subject to the development being carried out in accordance with the necessary Environmental Permit for a discharge licence, no such harm to rivers or groundwater will occur. Accordingly, I find that the proposal would not conflict with the aforementioned policies, or with national policy in the Framework, which has similar aims.

### *Odour*

35. The Council refused the application because they considered that insufficient information had been provided to demonstrate that odour emissions from the proposed WwTP would not adversely affect nearby residents and businesses. Subsequent to this, the Council's Environmental Consultant has stated that odour effects are likely to be very low given the separation distance of circa 250m between the proposal and the existing properties to the south at Stubbs Cross. Having regard to the technical reports submitted in support of the application and the appeal<sup>9</sup> I see no reason to dispute this view. I have therefore taken the Council's concerns to relate to the effects of the proposal on future residents of Phase 4 of the Chilmington Green Development.
36. The Chilmington Green Development was granted outline approval in 2017. The approved plans include a Land Use Plan which reflects the land use strategy envisaged in the CGAAP. A Design Code has also been prepared for the development, which was a requirement of the outline consent, and this sets out the disposition of development areas, open space and landscaped setting for the future development. There is some dispute between the parties as to the distance future houses, as set out in the Design Code, would be located from the boundary of the WwTP. Although the Council originally stated this would be around 400m, they have subsequently estimated the distance at 25m. The appellant puts the distance at around 50m.
37. The appellant's odour impact assessments<sup>10</sup> were undertaken in accordance with the Integrated Pollution Prevention and Control (IPPC) Technical Guidance Note "H4 Odour Management", published by the EA, March 2011; Guidance on the assessment of odour for planning, published by Institute of Air Quality Management (IAQM) July 2018; and Odour Guidance for Local Authorities, published by DEFRA, March 2010 (now withdrawn).
38. Odour Impact Assessments predict the extent of odour from an activity and the extent it will be perceived by assessing odour concentration levels and dispersal rates. Odour concentration from a source, expressed in odour units, and a minimum exposure period, which is typically 2% of the time or the 98th percentile of hourly average concentrations in a given year for example, C98, 1-hour > 5 ouE/m<sup>3</sup>. The EA guidance sets out benchmark criteria to be applied in dispersion modelling. Any results that predict exposures above these benchmark levels, after taking uncertainty into

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<sup>10</sup> (the "August 2023 Report")  
CD2-24 Olfasense - Odour impact assessment study for a proposed sewage treatment works, Chilmington Green dated - xxx and CD2-56 Olfasense - letter ref 240503 dated 3<sup>rd</sup> May 2024



account, indicate the likelihood of unacceptable odour pollution. The benchmarks are: 1.5 odour units for most offensive odours; 3 odour units for moderately offensive odours; and, 6 odour units for less offensive odours. IAQM states that odours from a sewage treatment plant operating normally can be considered on par with 'moderately offensive' odours. For highly sensitive receptors, such as residential dwellings, odour concentrations between C98, 1-hour 3 and 5 ouE/m<sup>3</sup> are considered to correlate to a 'Moderate Adverse' impact. Odour concentrations below this level are considered to be either slight or negligible.

39. The submitted odour dispersion modelling was undertaken using a model that is well established and recognised by the EA as being appropriate for odour assessment based on local meteorological data. It found that emissions would mostly arise from the main treatment sections of the TE-CYC tanks with emissions also arising from the anoxic selector zones and sludge holding tanks. The model shows that even when the likely odour concentration levels are doubled for those elements of the processing most likely to give rise to odour, the sludge handling, odour levels above 3 are unlikely to arise outside the site boundary. Although I note some inconsistencies in the representation of the site boundary in the report, the profile shown would extend only marginally beyond the proposed development site. I therefore conclude that taking into account the precautionary nature of the modelling used, any odour perceived outside the site is likely to be at most "slight", which is considered by established guidance to be consistent with that considered acceptable in a residential area.
40. Following refusal of the application the Council commissioned an external consultant to support their reason for refusal. Extracts from the report have been submitted but not the recommendations of the report, or any assessment of whether the concerns raised could be addressed through the use of conditions. Nevertheless, in relation to those matters raised, having regard to the Council's comments and the appellant's response, I am satisfied that the emission rates, the assessment of comparable sites, the findings of the "sniff" tests and the assumptions on which these were arrived at are all soundly based and that the report provides an appropriately precautionary basis on which to reach a view on the effects of the development. I am therefore satisfied that odour from the development would be unlikely to have an adverse effect on existing homes or businesses, or upon future residents of Chilmington Green. Nor do I consider that enjoyment of the countryside for walkers or others would be significantly altered.
41. I note that the Council seeks an additional level of certainty with regard to the odour impact risk posed at the premises that would be built under Phase 4. Notwithstanding the above responses to the points raised by the Council, further certainty regarding odour impact risk could be gained by the implementation of odour mitigation measures at the WwTP, if this was found to be necessary, following the completion of odour survey and assessment work once the plant is in operation.
42. I note the view of the Council, that a greater separation distance should be provided as a precautionary measure. However, I am mindful that the

proposed WwTP will be in operation far in advance of the likely development date for Phase 4 of the Chilmington Green, which the developer anticipates will commence around 2037 or beyond. This will allow adequate time for the implementation of any necessary additional mitigation in the unlikely event that it proves to be necessary. In this regard I share the view of the Council's own Environmental Health Team who stated that although the odour assessment predicts very low nuisance, a post-installation assessment report will be needed as processes may need to be changed/adjusted if the plant does not meet the estimated levels.

43. Furthermore, I am mindful that should the Council consider that the WwTP represents a potential threat to amenity even after additional mitigation, it is entirely within the gift of the Council to require a modification to the ultimate layout of Phase 4 of the new development to facilitate a greater separation distance between the WwTP and the new housing. The reserved matters application for Phase 4 has not yet been submitted or approved and so it would be possible for such an application to take account of the need for a greater separation distance, if necessary, without compromising the ability to implement the other phases of development. I set out below my consideration of the potential impact of such measures on housing supply.
44. I therefore conclude that the proposal would not give rise to harm to local businesses or the living conditions of existing or future residents. The Council have referred to policies CG0 or CG1 of the CGAAP and policy SP1 of the LP. None of these directly refer to living conditions, but do refer to sustainable development and I find no conflict with them in that regard. The proposal would also not conflict with paragraph 101a of the Framework, which seeks to ensure that existing and new development is not put at unacceptable risk from air pollution.

### **Other Matters**

45. The location of the proposed development has been chosen due to its proximity to the strategic foul water network which runs from the A28 in the north, along The Avenue (where development is currently taking place) and down Chilmington Green Road to Stubbs Cross past the front of the site. I therefore see nothing illogical in its location and whilst I note that some residents are of the view that the proposal could and should be located elsewhere, I am required to consider the scheme on its own merits.
46. The proposed development would be accessed from Chilmington Green Road with an internal access road which would allow all vehicles to enter and leave the site in forward gear. Entry gates would be set back from the highway to prevent visiting vehicles needing to stop in the road before entering the site. Although the facility would be unmanned it would be visited on a weekly basis for maintenance and if the facility was operating to its capacity, sludge collection would take place every six days. Although the highways authority's view is that the number of vehicles visiting the site would be low they consider the proposed visibility splays to be inadequate for the speed vehicles are travelling on the road. I noted on site that the road had a 60mph limit and that vehicles appeared to be frequently travelling at this speed. The road appeared to be being used as a "rat-run" and so traffic was heavier and faster than would normally be anticipated for what is presently a

country lane. I therefore share the view of the highways authority and some residents that if the development comes forward, in the interests of highway safety, the speed limit in and around the site would need to be reduced. This could be secured by way of a Traffic Regulation Order (TRO) which would be secured by condition and put in place prior to the development coming forward. Subject to this mitigation I consider that the scheme would be acceptable in highway terms.

47. Some residents have expressed concern in relation to the effects of potential noise and vibration from the development. The scheme is supported by a noise survey<sup>11</sup> which estimates the effects of the proposal against background noise. I am satisfied that the report has been appropriately conducted and note that Environmental Health Officers have raised no concerns in this regard. The assessment finds that background noise levels have been found to be predominantly derived from traffic noise so I am satisfied that these are not artificially high due to construction activity. Noise arising as a result of the proposed plant has been calculated to fall at or below the previously established noise limits in all time periods at all locations, thereby indicating a low noise impact. I am therefore satisfied that, provided the initial mitigation measures proposed as part of the development are implemented, including a post-acoustic assessment to ensure the mitigation is effective, the scheme would not impact upon the amenity of existing or future residents.
48. Concern has also been raised in relation to the presence and potential for contamination. The site was last in agricultural use, so the potential for contamination is low. A Phase 1 geo-technical survey was submitted with the scheme which confirms this and a planning condition can be imposed to ensure the site is appropriately remediated if contamination is found during construction. In terms of the use giving rise to contamination, measures on site to prevent contamination include the use of low level bunds to contain any spillages, the segregation of storage tanks from the general surface water drainage systems and a chamber with control valves downstream of the filter drain to prevent contamination entering into the surface water drainage system. Further safeguards would also be put in place through the Environment Agency's permitting system. Taking into account the advice of the Council's Environmental Health Team I am satisfied that the use would not give rise to contamination.
49. Some disruption is an inevitable part of construction but the worst effects can be avoided with the provision and implementation of an appropriate construction management and delivery plan which can be secured by condition. This matter does not therefore weigh against the proposal. Furthermore, I have no reason to consider that the development would not be managed and maintained in an appropriate manner. Residents have also raised concerns regarding the potential for overlooking or loss of light as a result of the development, but having regard to the relative distances between the site and existing and proposed properties this is not a matter which I consider would arise.

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<sup>11</sup> CD2.19 – Acoustic Central - Chilmington Green Wastewater Treatment Plant - Planning Noise Assessment - 20230602-0 R1

50. Concerns have also been raised regarding the impact of the proposal on local ecology, including the ancient woodland at Stubbs Cross. In this regard I take account of the comments of the ecology adviser at Kent County Council, who is satisfied that subject to appropriate ecological mitigation, the long-term ecological interest of the site can be retained and so I find that subject to a condition to ensure appropriate mitigation, the proposal would not give rise to harm in this regard.
51. I have considered the potential impacts of the proposal in relation to light pollution. Limited lighting is proposed as part of the scheme, but given that inappropriate lighting levels have the potential to impact on wildlife, particularly bats in Stubbs Cross Wood, these should be controlled on site. Similarly, although the layout of future dwellings is not yet known, as a precaution lighting levels on site should be designed to take account of future residents' amenity. I am satisfied that harm in both regards could be avoided with measures achieved through an appropriate planning condition.
52. I note the concerns of residents, that the proposal could lead to flooding, in the form of run-off from the development and to flooding downstream due to increased discharge to the River Beult. I take into account the views of Kent County Council that, subject to measures secured by condition, the proposal would not lead to surface water flooding. I also note that the EA have not raised concerns in relation to flooding downstream. I am therefore satisfied that the proposal would be appropriately drained, and would not lead to flooding elsewhere.
53. There are two listed buildings in the vicinity of the site. Snailwood Farmhouse is around 500m to the south-west of the site and Bartlett Farmhouse, is around 500m to the north. Both are Grade II Listed. Given the origins of both buildings, the surrounding agricultural hinterland will contribute to their significance. Nevertheless, taking account of the degree of separation between the sites and the assets, which limits intervisibility, and the limited proportion of the overall hinterland that would be affected by the development, I consider that the proposal would not harm the setting or the significance of these assets. I am advised that the appeal site is in a sensitive location associated with Iron Age and Romano-British activity. It would therefore be necessary for archaeological investigations to be carried out prior to development, which could be secured by condition.

#### *Planning Balance*

54. The scheme would enable the construction of housing within the Borough. I am mindful that, without additional measures to limit discharge, the plant would not be able to work at full capacity and so may, in practical terms, assist in delivering only a proportion of the homes identified as being stalled. Nevertheless, it is also clear that in the absence of this scheme there does not appear to be another available means of serving new development in the short term, and some uncertainty as to the suitability of Bybrook in the medium to long term. The Borough does not currently have a five year supply of housing land. Chilmington Green is a key component of the Borough's long-term plan for housing delivery. Even in the absence of an approved plan to provide surface water storage to facilitate the plant to run at full capacity, I give significant weight to the benefits the proposal would

bring in assisting the delivery of the 980 homes <sup>12</sup> it can serve on construction.

55. I note the comments of the Council, that the developer seeks to use the development to serve proposed development outside Chilmington Green. Even if this were to be the case, it does not reduce the weight I attribute to the ability of the scheme to facilitate housing delivery.
56. Whilst I note that the layout of Phase 4 of the scheme may require alteration in the unlikely event that greater separation distances are needed to protect the amenity of future residents, I am not convinced that this would not be compensated for elsewhere in the layout, at least in part, and so would not lead to a significant reduction in the number of homes eventually delivered. Even if it did, I give greater weight to the benefit derived from the delivery of homes now than a potential reduction in delivery in the long term.
57. The proposal would give rise to some harm to the character and appearance of the area and so would conflict with the development plan. The other factors identified above are neutral factors and so carry no weight in the planning balance.
58. Section 38(6) of the Planning & Compulsory Purchase Act 2004 states that applications should be determined in accordance with the provisions of the development plan unless other material considerations indicate otherwise. As the Council cannot demonstrate a five-year supply of housing the presumption in favour of sustainable development applies. Although I give full weight to the policies identified above with which the development conflicts, I do not consider that the harm inherent in this conflict would significantly or demonstrably outweigh the benefits that the development would bring.
59. I therefore conclude that the proposal would comprise sustainable development and would accord with the development plan taken as a whole. Planning permission should therefore be granted.

## **Conditions**

60. In addition to conditions relating to the time limit for implementation and the approved plans a further condition is necessary to ensure that the development is not commenced until an Environmental Permit for the scheme to discharge to the River Beult has been secured. This is to ensure that visual harm arising from the construction of the WwTP does not occur without the benefits of the scheme being able to be realised. The Council have suggested conditions that require monitoring of flow levels of the River Beult in order to address any environmental impacts of discharge. However, as I have set out above, as these matters will be addressed most appropriately by the Environment Agency as the body responsible for ensuring water quality through the Environmental Permit, I do not consider it necessary or productive for this information to be supplied to the Local Planning Authority. For the same reason, and because the outfall pipe will be implemented under permitted development rights I do not consider it necessary to require planning conditions in relation to the construction and

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<sup>12</sup> Chilmington Green Foul Drainage Strategy March 2024, CD2-48.

adoption of the outfall pipe, or requiring the discharge is carried out in accordance with the Environmental Permit.

61. In the interests of ensuring an acceptable appearance for the development Further conditions are necessary to ensure that appropriate landscaping of the site is provided and maintained. Conditions are also necessary to ensure that hedgerows are protected on site during construction and as part of the development and to secure details of appropriate fencing at the development.
62. In the interests of highway safety conditions are necessary to secure appropriate access and visibility splays, and to secure measures to reduce the speed of vehicles travelling in the vicinity of the site. For the same reason conditions ensuring surface water is not discharged to the highway and to secure appropriate surfacing and reasonable and necessary.
63. To protect the living conditions of local residents during construction a condition securing a construction management plan is necessary. To ensure that the site is appropriately drained and does not give rise to flooding elsewhere a condition requiring the implementation and maintenance of an appropriate sustainable drainage strategy for the site is necessary.
64. To protect the living conditions of existing and future residents a condition requiring a lighting design strategy is required. For the same reason noise and odour mitigation schemes and a condition limiting noise levels arising from the site are reasonable and necessary. Post operative noise and odour assessments will also be necessary to ensure the effectiveness of mitigation works. In both cases, in order for the full impacts of the development to be properly assessed, this should be carried out within 6 months of the scheme coming into operation.
65. In order to protect the ecology of the site, and to ensure wildlife is not harmed during construction or through inappropriate lighting post development, a condition is necessary to secure ecological mitigation & enhancement measures. In the interests of ensuring that the qualifying features of the Stodmarsh SPA, SAC and Ramsar are protected from waste water pollution, I consider it necessary to impose a condition requiring that surplus sludge from the WwTP removed for treatment and disposal is removed to a location outside the river Stour catchment.
66. In order to ensure that potential archaeological remains are appropriately managed a condition is necessary to secure and implement a programme of archaeological investigation. Notwithstanding that the site is not considered to be contaminated, as a precaution conditions are necessary to ensure unexpected contamination, if encountered, is remediated appropriately.
67. Finally, in the interests of visual amenity I have imposed a condition to ensure decommissioning. To allow this to take place effectively I have required that details of this, along with a timetable for implementation, are provided if the works are not used for a period of a year.



**Conclusion**

68. For the reasons given above the appeal should succeed.

*Anne Jordan*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this decision.
2. The development shall be carried out in accordance with the following approved plans:
  - D0500\_003 A Location Plan 30 November 2023
  - CHIL-TET-XX\_XX-DR-C-0002 P01.8 Te-Cyc Plant Plan
  - CHIL-TET-XX-XX-DR-C-0005 P01.4 Te-Cyc Plant Elevations
  - CHIL-TET-XX-XX-DR-C-000 -P01.5 Overall Site Layout
  - D0500\_001\_E\_Landscape Proposals
  - D0500\_002\_D\_Planting Schedule
  - D0500\_004\_E\_Proposed Sections
  - D0500\_005\_B\_Stubbcross Wood Extension
  - VD21443-VEC-04-XX-SK-D-001 Proposed Pump Station Compound 6 April 2022
  - VD21443-VEC-03-XX-DR-D-1201 Rev A S278 Road Markings and Signage
  - Flood Risk Assessment and SUDS Strategy by Water Environment dated 03/11/2023, ref: 22074-FRA-RP-01/CD1
  - Planning Noise Assessment, dated 11/08/2023 by Acoustics Central, ref: 20230602-0 R1.
3. Prior to the commencement of the development, including any preparation works prior to building operations, a Construction and Transport Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Construction and Transport Management Plan shall include, but not be limited to the following:
  - a) Management of traffic visiting the site, including details of areas on site for loading and unloading of plant and materials; provision on-site for turning for delivery and construction vehicles including HGVs; details of temporary parking or holding areas; and, provision of off road parking and turning for all site personnel;
  - b) The location of temporary vehicle access points to the site during the construction works;
  - c) Details of the routing of construction and delivery vehicles to/from site;
  - d) A programme of works (including details of the timing of deliveries, measures for traffic management/signage);
  - e) Details of facilities, by which vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances;
  - f) Details of areas for the storage of plant and materials;
  - g) Details of the form and location of any proposed temporary works compounds/welfare facilities/temporary fencing/hoardings to be provided;
  - h) Measures to minimise the production of dust on the site;

- i) Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s);
- j) Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site;
- k) The arrangements for public consultation and liaison during the construction works.

The approved Construction and Transport Management Plan shall be adhered to throughout the duration of the site clearance and construction period.

The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites and IAQM guidance on controlling dust on construction sites unless previously agreed in writing by the Local Planning Authority.

4. Prior to the commencement of the development, including site clearance, site preparation and below ground works, the applicant, or their agents or successors in title, shall secure the implementation of the following:
  - i) archaeological field evaluation works in accordance with the Chilmington Green Scheme of Archaeological Resource Management (SARM) and a specification and written timetable which shall be submitted to and approved in writing by the Local Planning Authority; and
  - ii) Following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with the Chilmington Green SARM and a specification and timetable which shall be submitted to and approved in writing by the Local Planning Authority.
  
5. Prior to the commencement of the development (including site clearance, site preparation and below ground works) a Detailed Ecological Mitigation Strategy shall be submitted to and approved in writing by the Local Planning Authority. The Strategy shall include (but not be limited to) the following:
  - i. Updated preliminary ecological appraisal (if over 18 months old);
  - ii. Dormouse surveys;
  - iii. Species surveys recommended within the updated preliminary ecological appraisal;
  - iv. Overview of mitigation required, both during construction and post completion of the development;
  - v. Detailed methodology to achieve mitigation;
  - vi. Details of enhancement of the strategic off site mitigation area for ground nesting birds;
  - vii. Timings of works;
  - viii. Details of who will carry out the works.

The development shall thereafter be carried out in accordance with the approved Strategy.

All existing hedges and hedgerows shall be retained, unless shown on the approved drawings as being removed.

6. Prior to the commencement of the development (including site clearance, site preparation and below ground works) a BS5837:2012 compliant Arboricultural Method Statement and Hedge Protection Plan shall be submitted to and approved in writing by the Local Planning Authority describing how all hedges and hedgerows on and immediately adjoining the site shall be protected from damage for the duration of works on the site.

Any parts of hedges or hedgerows removed or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within five years following contractual practical completion of the approved development shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with plants of such size and species and in such positions as may be agreed in writing with the Local Planning Authority.

7. Prior to the commencement of the development (excluding archaeology, site clearance and site preparation works, but including below ground works) a detailed sustainable surface water drainage scheme for the site shall be submitted to and approved in writing by the Local Planning Authority.

The detailed drainage scheme shall be based upon the Flood Risk Assessment and SUDS Strategy by Water Environment dated 03/11/2023, ref: 22074-FRA- RP-01/CD1 and subsequent technical notes and shall demonstrate that the surface water generated by the development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of at 3.4l/s without increase to flood risk on or off-site.

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

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

The drainage scheme shall also provide details and drawings of the low level bunds designed to cater for the risk of spillages. The drainage scheme shall be implemented in accordance with the approved details.

8. Development shall not commence (including site clearance, site preparation and below ground works) until the Environmental Permit has been granted by the Environment Agency and a copy provided to the Local Planning Authority.
9. Prior to the commencement of the development (excluding archaeology, site clearance and below ground works) a detailed landscaping scheme for the site and a scheme for the early provision of all or part of the Stubbcross wood extension shall be submitted to and be approved in writing by the Local Planning Authority. Thereafter, the approved landscaping/tree planting schemes shall be carried out fully within 12 months of the completion of the development.
10. Prior to first operation of the Wastewater Treatment Plant a Landscape Management and Maintenance scheme, including details of the irrigation system for the landscaped bund and the removal of the temporary conifer screen shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved Scheme.
11. Any trees or other plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless the Local Planning Authority give prior written consent to any variation.
12. Prior to the commencement of the development (excluding archaeology, site clearance and below ground works) details of measures to prevent the discharge of surface water onto the highway shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approval details and retained and maintained as such thereafter.
13. Prior to the installation of the site boundary fencing and site compound fencing, details of this fencing shall be submitted to and approved in writing by the Local Planning Authority. The fencing shall be installed in accordance with the approved details prior to first operation of the Wastewater Treatment Plant.
14. Prior to first operation of the Wastewater Treatment Plant the site access, shown on approved plan CHIL-TET-XX-XX-DR-C-0001 P01.5, shall be constructed and brought into use and retained and maintained as such thereafter.
15. Prior to the site access being brought into use, the visibility splays, shown on approved plan VD21443-VEC-04-XX-SK-D-001, with no obstructions over 1.05m above carriageway level within the splays, shall be provided and thereafter shall be retained and maintained.

16. The Wastewater Treatment Plant shall not be brought into operation before a Traffic Regulation Order (with associated signage and roundels as shown on approved plan VD21443-VEC-03-XX-DR-D-1201 Rev A) for a reduction in the speed from 60mph to 40mph along the whole length of Chilmington Green Road has been implemented.
17. Prior to first operation of the Wastewater Treatment Plant, the first 15m of the site access from the edge of the highway shall be provided with a bound surface and retained and maintained as such thereafter.
18. Prior to first operation of the Wastewater Treatment Plant the noise mitigation measures (earth bund and acoustic shrouds) identified in the Planning Noise Assessment, dated 11/08/2023 by Acoustics Central, ref: 20230602-0 R1 to prevent noise disturbance to existing nearby residents shall be installed and thereafter retained and maintained.
19. Prior to first operation of the Wastewater Treatment Plant a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, shall be submitted to and approved in writing by the Local Planning Authority.

The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

20. Prior to the installation of any lighting on the site, a lighting design strategy shall be submitted to and be approved in writing by the Local Planning Authority. The Strategy shall provide details, including lux levels, of all lighting to be installed on the site and shall demonstrate how the lighting will ensure that light trespass from the lighting into the windows of nearby residential properties, both existing and future residents associated with approved planning consent(s), shall not have a Vertical Luminance greater than 5 Lux. The lighting shall thereafter be installed in accordance with the approved Strategy and retained and maintained as such thereafter.
21. Within six months of the Wastewater Treatment Plant being brought in to operation, a post operation odour assessment report shall be submitted to and approved in writing by the Local Planning Authority. The report shall provide the following:
  - i. results of an odour survey undertaken to assess the odour impacts on nearby residents, both existing and future residents associated with approved planning consent(s), of the WwTP when in operation;



- ii. identify any mitigation measures that may be required to prevent odour nuisance to existing residents and businesses, and to future residents associated with approved planning consent(s), including a timetable for implementation; and,
- iii. details of a programme of on-going monitoring to identify whether any further mitigation would be required in the future as the levels of waste water treated by the plant increase and new housing development is brought forward.

The mitigation measures identified shall thereafter be provided to the Local Planning Authority for approval and implemented in accordance with the approved timetable.

22. Within six months of the Wastewater Treatment Plant being brought in to operation, a post operation noise assessment report shall be submitted to and approved in writing by the Local Planning Authority. The report shall provide the following:

- i. results of a noise survey undertaken to assess the noise impacts on nearby residents, both existing and future residents associated with approved planning consent(s), of the Wastewater Treatment Plant when in operation;
- ii. identify any further mitigation measures that may be required to prevent noise nuisance to nearby residents, both existing and future residents associated with approved planning consent(s), including a timetable for implementation.

The mitigation measures approved by the Local Planning Authority shall be implemented in accordance with the approved timetable for implementation.

23. Prior to first occupation of any dwelling in Main AAP Phase 4 of the Chilmington Green development (granted under planning permission ref: 12/00400/AS) a post operation noise assessment report shall be submitted to and approved in writing by the Local Planning Authority. The report shall provide the following:

- i. the results of a noise survey undertaken to assess the noise impacts on future residents of Main AAP Phase 4 of the Chilmington Green development of the Wastewater Treatment Plant when in operation;
- ii. identify any further mitigation measures that may be required to prevent noise nuisance to future residents of Main AAP Phase 4 of the Chilmington Green development, including a timetable for implementation.

The mitigation measures approved by the Local Planning Authority shall be implemented in accordance with the approved timetable for implementation.

24. The rating level of noise emitted from the proposed plant and equipment to be installed on the Wastewater Treatment Plant site (determined using the guidance of BS4142:2014+A1:2019 'Methods for rating and assessing industrial and commercial sound' as amended) as measured at the identified sensitive receptors, shall not exceed the existing measured ambient noise level LA90, T during the night or day time periods. For the purpose of the assessment the day time period is given as 07:00-23:00 hours, and the night time period is given as 23:00 – 07:00 hours.
25. Surplus sludge removed from the Wastewater Treatment Plant for treatment and disposal shall be removed to a location outside the river Stour catchment.
26. Within one year of the Wastewater Treatment Plant no longer being in operation, a site decommissioning and reinstatement scheme, including a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The site shall be decommissioned and reinstated in accordance with the approved scheme and timetable.
27. If unexpected contamination is found at any time when carrying out the approved development it must be reported in writing to the Local Planning Authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Condition 28.
28. Following completion of the remediation scheme a verification report that demonstrates the effectiveness of the remediation carried out must be prepared and submitted for approval in writing by the Local Planning Authority.