
Appeal Decisions

Inquiry held on 1, 2, 3, 8, 9 & 22 November 2016

Site visit made on 4 November 2016

by Roger Clews BA MSc Dip Ed DipTP MRTPI

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

Decision date: 9 January 2017

Appeal A – Ref: APP/V2255/W/15/3067553 London Road, Newington, Kent ME9 7NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Gladman Developments Ltd against Swale Borough Council.
 - The application Ref 15/500671/OUT is dated 26 January 2015.
 - The development proposed is described on the application form as: *Residential development of up to 330 dwellings plus 60 units of Extra Care (including a minimum of 30% Affordable), an allocated ¼-acre of serviced land for potential doctor's surgery, demolition of farm outbuildings, planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road and associated ancillary works.*
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Appeal B – Ref: APP/V2255/W/16/3148140 London Road, Newington, Kent ME9 7NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Gladman Developments Ltd against Swale Borough Council.
 - The application Ref 15/510595/OUT is dated 23 December 2015.
 - The development proposed is described on the application form as: *Residential development of up to 140 dwellings plus 60 units of Extra Care (including a minimum of 30% Affordable), an allocated ¼-acre of serviced land for potential doctor's surgery, demolition of farm outbuildings, planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road and associated ancillary works.*
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Decisions

Appeal A – Ref: APP/V2255/W/15/3067553

1. The appeal is dismissed and planning permission is refused for the development which is the subject of planning application Ref 15/500671/OUT, dated 26 January 2015.

Appeal B – Ref: APP/V2255/W/16/3148140

2. The appeal is dismissed and planning permission is refused for the development which is the subject of planning application 15/510595/OUT, dated 23 December 2015.

Procedural matters

Rule 6 party

3. The Kent branch of the Campaign to Protect Rural England [CPRE Kent] appeared at the inquiry as a Rule 6 party.

Planning obligations

4. I made arrangements to allow the appellants to submit two executed unilateral undertakings, one for Appeal A and one for Appeal B, after the close of the inquiry. Each is dated 1 December 2016. I consider their contents further below.

Reserved matters

5. The applications which are the subject of Appeal A and Appeal B were both made in outline, with all detailed matters apart from access reserved for future consideration. I shall consider the appeals on the same basis.

The appeal sites

6. The Appeal A site is made up of three adjacent rectangular fields, each over 300m in length and around 125m-135m wide, lying just to the south of the A2 London Road. The fields are separated by shelterbelts running roughly at right-angles to the road. For convenience I shall call the eastern field Field A, the middle one Field B and the western one Field C. Fields B and C are currently used for intensive apple-growing while Field A is planted with blackcurrant bushes. A group of farm outbuildings at the north-western corner of Field A is also part of the Appeal A site. The Appeal B site comprises Fields A and B, but excludes Field C and the farm outbuildings.

Description of the Appeal A proposals

7. During the inquiry the appellants submitted a letter requesting that the access details submitted as part of the Appeal B proposals should also apply to the Appeal A proposals, replacing the original Appeal A access details. Neither the Council nor CPRE Kent objected to this substitution. Since interested persons were able to comment on the Appeal B access details during the appeal process, in my view no-one's interests would be prejudiced by the change. I shall therefore consider Appeal A on that basis.
8. Consequently it is necessary to revise the description of the Appeal A proposals to take account of the replacement access details. It is also necessary to move the words "(including 30% Affordable)" so that they qualify the proposed dwellings as intended, and not the extra care accommodation; and to make three further minor adjustments, which do not materially alter the proposals. These are to add the word "accommodation" after "Extra Care" for clarity; to change "¼ acre" to "0.1ha" to ensure consistency in the use of metric units; and to change "doctor's surgery" to "healthcare facility" to more accurately reflect the terms of the unilateral undertaking (see below). The parties to the inquiry agreed to all these changes.
9. I shall therefore consider the **Appeal A** proposals on the basis of the following description:

Residential development of up to 330 dwellings (including a minimum of 30% Affordable) plus 60 units of Extra Care accommodation, an allocated 0.1ha of serviced land for potential healthcare facility, demolition of farm outbuildings, planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road including the widening and realignment of the A2, and associated ancillary works.

Description of the Appeal B proposals

10. While the Appeal B application was still before the Council, it was amended to remove the proposed demolition of the farm outbuildings and to reduce the maximum number of dwellings to 126. Those revised proposals were considered by the Council on 26 May 2016, when they resolved against officers' recommendations that they would have refused planning permission if they still had jurisdiction over the application. Interested persons have had the opportunity to make representations on the revised proposals during the appeal process.
11. In my view, therefore, no person's interests would be prejudiced by my considering Appeal B on the basis of the revised proposals. For consistency, it is also necessary to make the same further changes to the description of the Appeal B proposals as are set out in paragraph 8 above for the Appeal A proposals. The parties to the inquiry agreed to these changes.
12. I shall therefore consider the **Appeal B** proposals on the basis of the following description:

Residential development of up to 126 dwellings (including a minimum of 30% Affordable) plus 60 units of Extra Care accommodation, an allocated 0.1ha of serviced land for potential healthcare facility, planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road including the widening and realignment of the A2, and associated ancillary works.

Withdrawn appeal for listed building consent

13. Originally a third appeal, Ref APP/V2255/Y/15/3067567, was to be considered the inquiry. It was a listed building consent appeal submitted alongside Appeal A. However, it subsequently emerged that the outbuildings at Pond Farm to which the appeal – and the earlier refused listed building consent application – applied are not in fact listed buildings. Hence listed building consent is not required for their demolition. On that basis the appellants withdrew the third appeal by letter dated 31 October 2016.

Main issues

14. At the opening of the inquiry I identified 10 main issues for both appeals and, following representations from CPRE Kent, I agreed to consider an eleventh. In the Reasons section below I consider each main issue in turn before reaching my overall conclusions on each appeal. In some cases I have modified my original definition of the main issue in the light of the evidence I heard at the inquiry.

Reasons

First main issue – Whether or not the Council can demonstrate a current five-year supply of housing land and, if not, what is the extent of the shortfall?

15. The development plan for the area comprises the *Swale Borough Local Plan 2008* [SBLP], adopted in February 2008, and the *Kent Minerals and Waste Local Plan 2013-2030* [KMWLP], adopted in July 2016. It is common ground between the Council and the appellants that the SBLP does not provide a robust and up-to-date objectively-assessed housing need figure, and there is no evidence that leads me to take a different view.
16. The emerging *Swale Borough Local Plan: Bearing Fruits 2031* [ELP] is at examination. Initial hearings were held in November 2015 and the inspector subsequently issued her Interim Findings. In them she supported the Council's proposal that the ELP should be based on a Plan period of 2014-2031 with an objectively-assessed housing need figure of 776 dwellings per annum [dpa]. While there are outstanding representations to the ELP examination that the figure should be different, the Council and the appellants agreed that it represents an appropriate basis against which to measure housing land supply for the purposes of this inquiry.
17. A different objectively-assessed housing need figure may yet be arrived at through the ELP examination. But at this stage 776 dpa represents the most authoritative assessment of that figure, having been discussed at the initial examination hearings and endorsed by the inspector in her Interim Findings. Based on that figure, the Council and the appellants agree that the current housing land supply in Swale borough, based on figures in the latest available Housing Information Audit 2014/15, amounts to some 3.8 years' worth. No substantive evidence supporting any different need or supply figure was put to me and so I shall consider the appeals on that basis.
18. NPPF paragraph 49 advises that housing applications should be considered in the context of the presumption in favour of sustainable development, and that relevant policies for the supply of housing should not be considered up-to-date if a five-year supply of deliverable housing sites cannot be demonstrated. I shall consider the implications of this when dealing below with relevant policies.
19. I conclude on the first main issue that the Council cannot demonstrate a current five-year supply of housing land and that the shortfall amounts to about 1.2 years' supply.

Second main issue – Whether or not granting planning permission for either appeal proposal would undermine the plan-making process to the extent that the appeal should be dismissed on grounds of prematurity

20. Guidance on the circumstances in which refusal of planning permission on grounds of prematurity might be justified is given in the national *Planning Practice Guidance* [PPG] at ref 21b-014-20140306. They are likely, the PPG says, to be limited to situations where the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan, and where that emerging plan is at an advanced stage. While the PPG is careful to emphasise that those

circumstances are not exclusive, the evidence before me specifically on this issue did not seek to go beyond them.

21. The ELP is at a relatively advanced stage, since initial hearings have been held and Interim Findings issued by the inspector. Newington is identified in ELP policy ST3 as one of the Rural Local Service Centres. These form the third tier of the ELP's settlement hierarchy. Development is to be focussed at a tertiary scale, supporting each settlement's role as the primary focus for the rural area. This contrasts with the settlement hierarchy defined in SBLP policy SH1, in which Newington is identified as a fourth-tier settlement. The examination inspector concluded in her Interim Findings that the ELP settlement hierarchy is soundly based and consistent with national policy, subject to the allocation of additional sites and clarification of the monitoring approach. It is reasonable therefore to consider it unlikely that the settlement hierarchy, and Newington's position in it, will have changed substantially by the time the ELP is adopted.
22. On the other hand, over 400 main modifications to the ELP have been published for consultation in response to the inspector's Interim Findings. The proposed main modifications include an uplift of over 2,000 in the housing requirement, new site allocations and increases in existing allocations. Some 2,220 representations have been made on the main modifications and will need to be considered by the inspector. Further hearings are also to be held before she completes her report and recommendations. As a result, substantial uncertainty remains about exactly which site allocations will appear in the adopted ELP and at what scale.
23. As the larger of the two schemes before me, the Appeal A proposal for 330 dwellings would represent about 2.5% of the total objectively-assessed need figure for Swale over the ELP period. It is true that the proposed main modifications to the policy ST3 reasoned justification envisage only 1.3% of the total housing requirement being provided at Newington. But even with the addition of the Appeal A proposal figure, the proportion assigned to Newington would remain comfortably within the range envisaged for the Rural Local Service Centres as a whole. (The range set out in the proposed main modifications is from less than 1% at three of the settlements to 4% at Teynham and 6% at Iwade.)
24. From the above points I make the following findings. The Appeal A proposal can be seen as substantial in the context of the ELP, representing about 2.5% of its overall housing requirement. But in respect of the overall scale of development at Newington the proposal would conform to the emerging settlement hierarchy, which the examination inspector has endorsed. Therefore granting planning permission for it at this stage would not prejudice the plan-making process, in which final decisions are in any case yet to be made on many site allocations. The same applies to the smaller Appeal B proposal.
25. I am aware that the proposed reasoned justification to policy ST3, at paragraph 4.3.35.3, qualifies the role of Newington and the other Rural Local Service Centres as the primary focus for the rural area by saying that this role must be achieved *without harm to their character and separation with* [sic] *other settlements*. But that qualification is not a reason to conclude that granting permission for either appeal proposal would undermine the plan-making

process. Rather it draws attention to certain other considerations which I will deal with under the third main issue.

26. I conclude on the second main issue that granting planning permission for either appeal proposal would not undermine the plan-making process. Neither appeal should therefore be dismissed on grounds of prematurity.

Third main issue – The effect of the appeal proposals on landscape character and on the form of Newington

27. Of the SBLP policies that are relevant, in whole or part, to this main issue, I regard policies SP5, TG1, SH1, E6, E7 and H2 as policies for the supply of housing in the terms of NPPF paragraph 49. This is because, by promoting development within defined settlement limits and restricting it in the countryside outside those limits, their effect is to confine housing development to a level that broadly equates to the SBLP requirement. That requirement, however, is significantly below what the Council and the appellants agree (for the purposes of this appeal) is the current objectively-assessed need. In the current situation where the Council has a supply of only 3.8 years' worth of housing land, those policies would inevitably prevent the Council from demonstrating a five-year supply of deliverable housing sites and they must therefore be regarded as therefore as out-of-date.
28. That is not to say that setting development boundaries is unsound in principle, and indeed ELP policy ST3 proposes to retain that policy designation. But it is evident from the process of the ELP examination to date that neither its overall housing requirement nor the current five-year housing land requirement could be met if the SBLP's development boundaries and Strategic Gaps were retained in their current form. Consequently, although the appeal sites lie outside a development boundary and within a Strategic Gap defined in the SBLP, the policy conflicts resulting from this carry very limited weight in these appeals. In this context I note that the appeal sites do not lie in any of the Important Local Countryside Gaps defined in ELP policy DM25, which has been endorsed by the examination inspector.
29. Although revised development boundaries are defined in the main modifications to the ELP, they, and the consultation representations on them, are subject to consideration by the examination inspector. Thus it cannot be assumed that they will survive unchanged and so they also carry very limited weight in the appeals.
30. SBLP policies E1, E9(a)-(e) and E19 are not policies for the supply of housing. Instead they set out general development management criteria that apply to development both in the countryside and in rural settlements (in the case of E9(a)-(e)) or to all development in Swale (E1 and E19). The criteria are relevant when considering the effect of the appeal proposals on landscape character and on the form and setting of Newington. These policies generally accord with national policy in the NPPF and therefore carry their full statutory weight. ELP policy DM24, the soundness of which has been endorsed by the examination inspector, has similar objectives to E9. Also specifically relevant are NPPF paragraph 17, bullet point 5, which requires recognition of the intrinsic character and beauty of the countryside, and paragraph 109 which advises that valued landscapes should be protected and enhanced.

31. At a national level, the appeal sites lie in the North Kent Plain landscape character area, as defined by Natural England. Natural England's character area profile, published in 2015, describes its key characteristics as including *an open, low and gently undulating landscape ... dominated by agricultural land uses. [...] Orchards and horticultural crops characterise central and eastern areas, and are often enclosed by poplar or alder shelter belts and scattered small woodlands. [...] Large settlements and urban infrastructure ... are often visually dominant in the landscape.*
32. The 2004 *Landscape Assessment of Kent* [LAK], prepared for the County Council [KCC], places the appeal sites in the Fruit Belt Landscape Character Area, which it describes as *... predominantly a rural, agricultural landscape characterised by a complex landscape pattern of orchards, shelterbelts, fields of arable and pasture and horticultural crops, and divided by small blocks of woodland. [...] The A2 and A249 route corridors, and associated ribbon development, run through the area and have a localised urbanising effect.*
33. At the local level, the *Swale Landscape Character and Biodiversity Appraisal and Guidelines* [SLCBA&G], produced for the Council in 2011, defines a Newington Fruit Belt extending west and south-west from Newington itself. The appeal sites lie right at the north-eastern edge of this area. The document comments that *It is surprising within the local vicinity to find that this function [fruit production] and the integrity of the landscape structure are very much intact and in good condition. It is a small-scale, enclosed landscape with a strong and regular field pattern. Mature and over-mature hedgerows of mixed native species and mature statuesque shelterbelts of poplar and alder emphasise the landscape pattern and intimated [sic] nature of this area. [...] Along the A2 over large commercial buildings are poorly designed and not well screened. These features have a major impact on the quality of the landscape and the A2 corridor.*
34. In making my assessment of the landscape quality of the appeal sites, as well as referring to these character area appraisals, it is helpful also to consider the *Range of factors that can help in the identification of valued landscapes*, set out in Box 5.1 of the Landscape Institute's *Guidelines for Landscape and Visual Impact Appraisal*, 3rd edition (2013). Neither the sites nor their zone of visual influence are subject to any landscape designations, nor do the sites have any known associations with public figures or historical events. Nonetheless, in themselves they are fully representative of key characteristics of the landscape character area in which they lie, whether that is considered at the national, county or borough level. They are a very good example of a small-scale orchard and horticultural landscape, with a strong and regular field pattern enclosed by poplar and alder shelterbelts.
35. The fact that landscape of this type is not rare in the local area does not lessen its potential value, in my view. On the contrary, it derives value from the fact that it is representative of the typical local landscape character. Indeed, a landscape type that is locally rare could hardly be characteristic of an area. The fields are used for commercial fruit-growing, and not managed as traditional orchards like the one next to the village church that I saw during my site visit. But in itself that does not mean they cannot constitute a valued landscape.

36. A more significant consideration is the context in which the appeal sites are set. Along the busy London Road there are urbanising elements, particularly the continuous strip of mostly residential development that runs along the north side of the road, the car sales premises opposite the sites and the continuous street lighting. But rural elements, including the tall, evergreen roadside hedge to Fields B and C with its grass verge to the roadside, the open grassed area in front of the agricultural outbuildings and the adjacent former Pond Farmhouse, are equally prominent. The big glasshouses opposite the north-western corner of Field C are a further rural element, while the industrial estate to the west does not significantly impinge on views from London Road close to the appeal sites due to boundary screening and a difference in levels.
37. There are views over the appeal site fields from the north, along the public footpath which climbs over Mill Hill. While the edge of development in Newington, along the eastern edge of Field A, is clearly seen from the footpath, the buildings on the north side of London Road are almost entirely concealed by the topography and by a belt of trees along the railway line that runs parallel to the road. From this viewpoint the appeal site fields appear as an integral part of the rural landscape to the west and south-west of Newington. There are scattered groups of buildings in this landscape but they are subsidiary features in the predominantly rural scene.
38. Another public footpath runs from London Road across the north-western corner of Field B and Field C. Once one is behind the boundary hedge the traffic noise begins to recede and the fields are experienced as an almost entirely rural landscape, heavily enclosed by the closely-spaced rows of apple trees and the surrounding shelterbelts.
39. During my site visit it was difficult to obtain clear views into the appeal sites from other nearby public viewpoints. However, it is reasonable to suppose that when the leaves are off the surrounding hedges, there are filtered views into the sites from London Road and from the sports field to the south. From both these viewpoints the sites would be seen in the context of neighbouring development.
40. Drawing all these points together, I find that the scenic quality of the appeal site fields is not substantially diminished by the presence of predominantly residential development along London Road to the north and Playstool Road to the east, or by the proximity of London Road itself. Certainly these are urbanising factors in the overall landscape, but they do not significantly detract from the intrinsically attractive rural character of the fields themselves. Indeed, in views from the public footpaths over Mill Hill and across the appeal site the reduced prominence of urbanising factors enables the fields' attractive rural character to be experienced all the more.
41. In itself, this intrinsic attractiveness would not lift the appeal sites out of the category of ordinary countryside. The more important consideration is that, as I have shown, they constitute a very good example of the small-scale orchard and horticultural landscape that is a key characteristic of the area. In combination, I find that these considerations justify regarding the appeal sites as constituting a valued landscape that should be protected and enhanced, in the terms of NPPF paragraph 109.
42. In reaching this view I have taken account of the assessment, in the SLCA&G, of the landscape sensitivity of the Newington Fruit Belt as "low". That change

from the “moderate” ranking it was given in the corresponding 2005 assessment is explained as being due to urbanisation along the A2 and the expansion of the settlement of Hartlip interrupting the landscape pattern more significantly than previously considered. But I have shown why, in the specific context of the appeal sites, urbanising factors do not significantly detract from their landscape character and value. Indeed the deterioration in the assessed sensitivity of the area underlines the importance of the SLCBA&G’s objective of reinforcing the surviving elements of its typical landscape character.

43. I have also taken account of the “moderate” ranking that the SLCBA&G gives to the landscape in the Newington Fruit Belt as a whole. Again, it appears that it is urbanising factors that are seen as the main degrading features. Against that, the assessment records that *the strong network of mature field boundaries provides visual coherence and largely screens any discordant buildings*, a finding which accords with my assessment of the appeal sites. The LAK’s description of the landscape condition of the Fruit Belt Landscape Character Area as “very poor”, with an incoherent pattern of elements, applies to a very much larger and more diverse area than the Newington Fruit Belt. In my view it is not an accurate description of the character area to the south and south-west of Newington identified in the SLCBA&G.
44. The Appeal A proposals would result in most of the three appeal site fields being taken up with built development. Only the north-western part of Field C is shown as open space on the indicative development framework plan. The trees and hedges along the southern and western boundaries would be retained, as would the shelterbelts separating the three fields, albeit that the latter would need to be broken through in places to create access ways. However, almost all of the tall hedge along the frontage of Fields B and C would be removed, together with its grass verge, to create the new vehicular access and visibility splays. There would also be substantial widening of London Road to create a right-turn lane into the access with ghost islands to east and west.
45. The effects of these changes on the appeal site fields would be clearly seen from the public footpaths over Mill Hill and within the appeal site. They would take away both the locally typical, small-scale orchard and horticultural landscape characteristics of the appeal sites and their intrinsically attractive rural character. In views from London Road, the changes would have the effect of extending and reinforcing urbanisation along the A2, which is identified as having an important negative impact on landscape quality in both the LAK and the SLCBA&G.
46. The Appeal B proposals would directly affect only Fields A and B, leaving Field C undeveloped except for a short length of the vehicular access from London Road. The indicative development framework plan shows a substantial area of open space to the east and west of the farm outbuildings and a wide landscaped strip next to the southern site boundary. Nonetheless, most of Fields A and B would be taken up with development, and the same amount of hedgerow removal and road widening on the London Road frontage would take place as for the Appeal A scheme.
47. These changes, which would be evident from the public footpaths over Mill Hill and across part of Field B, would take away almost all the locally typical, small-scale orchard and horticultural landscape characteristics of Fields A and B

together with their intrinsically attractive rural character. In views from London Road the changes would have a similarly harmful urbanising effect as the Appeal A proposals. The retained areas of landscaping and open space, including a small proposed community orchard, and the replacement frontage hedgerow would not overcome these effects, as they would be experienced in the context of the new housing development rather than as part of a wider rural landscape. Even if Field C were retained in fruit production, it would appear as an isolated remnant of the existing, coherent enclave of fruit fields separated by shelterbelts.

48. A green infrastructure strategy for each appeal proposal could secure the creation of additional landscaping features, including a replacement frontage hedgerow for the Appeal A scheme. But they would not compensate for the loss of a very good surviving example of exactly the local landscape characteristics that the SLCBA&G seeks to reinforce. Both appeal proposals would therefore conflict with SBLP policies E1 and E9, in that they would fail to safeguard landscape elements that contribute to the distinctiveness of the locality and the natural environment more generally. They would also conflict with national policy in NPPF paragraph 109, as they would fail to protect or enhance a valued landscape.
49. Were planning permission to be granted for either of the appeal proposals in spite of these policy conflicts, I am sure that a residential development consistent with the design requirements of SBLP policy E19 could be created. With the Appeal B scheme in particular there is potential to provide a softer and more satisfactory western edge to Newington than the rather stark edge currently provided by rear boundaries along Playstool Road. That would be rather more difficult to achieve with the Appeal A scheme because of the proximity of the industrial estate to the western boundary of Field C.
50. Nonetheless, I conclude on the third main issue that, while there could be some modest benefit in respect of settlement form, both appeal proposals would cause substantial harm to landscape character.

Fourth main issue – The effect of the appeal proposals on the significance of the Grade II listed Pond Farmhouse and on the adjacent farm outbuildings which are non-designated heritage assets

51. The Grade II listed Pond Farmhouse, which probably dates from the late 18th century, stands between London Road and the northern boundary of Field A. The farm outbuildings, most of which were built in the mid-19th century to replace earlier buildings, stand at the north-western corner of Field A, a short distance away from the former farmhouse. Pond Farmhouse used to be part of the same farmstead as the outbuildings and the appeal site fields, but has been in separate ownership since 1963 and now has its own residential curtilage, separated from the fields and outbuildings by a wall, hedge and fence. Neither appeal proposal involves any works to Pond Farmhouse or within its curtilage, but the Appeal A development involves the demolition of the outbuildings. Under the Appeal B proposals they would be retained.
52. SBLP policy E14, which is not a policy for the supply of housing, is specifically relevant to this main issue. It states that proposals affecting a listed building and/or its setting will only be permitted if the building's special architectural or historic interest and its setting are preserved. This is similar to, albeit somewhat more stringent than, the statutory requirement that I should have

special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses¹.

53. Also directly relevant are NPPF paragraphs 132 to 135, which set out a structured approach to the consideration of development proposals affecting the significance of heritage assets. This requires an assessment of the scale of any harm that a development may cause to the significance of a designated heritage asset. Different responses are then prescribed, according to whether any harm will be substantial or less than substantial. Because SBLP policy E14 is expressed in absolute terms, and does not allow for this more fine-grained assessment process, the weight I can accord to any conflict with it is reduced. I shall therefore follow the NPPF approach in my consideration of this main issue.
54. In the absence of any direct effect on the physical fabric of Pond Farmhouse, it is the appeal proposals' effect on the house's setting, and any resulting harm to its significance, that fall to be assessed. The house's symmetrical two-storey façade, built in a classical idiom typical of the late 18th and early 19th centuries, faces London Road. It stands out from the rest of the houses along this stretch of London Road, virtually all of which date from the 20th century, because of its age, its size and its fine proportions. Its prominence is enhanced by the wide gaps that separate it from the neighbouring houses to either side.
55. To the west of the former farmhouse, separated from it by a hedge and fence, is a flat grassed area with a post-and-wire boundary fence to the road. Behind that grassed area, and also clearly visible from the footway on the northern side of the road, is the front range of the farm outbuildings. It is built in a simple vernacular style with brick walls, timber doors and window frames, and weatherboarding to the upper parts of the taller western end. Immediately behind that taller section, but not clearly visible from the road, is the circular brick wall of a former oast building, but the distinctive cowl which would have stood on top of the wall is missing.
56. The building range is poorly maintained, with shabby paint on the woodwork, patchy whitewash on the walls and corrugated metal and asbestos sheeting on the roofs, presumably in place of the original tiles. All this considerably reduces any intrinsic attractiveness it might possess. Nonetheless, I regard it as an important element in the setting of Pond Farmhouse. Even though there is no longer any functional relationship between them, its proximity to the listed building enables one to appreciate the historical function of the former farmhouse, and indeed the reason why the farmhouse was built in this location at all. Without the presence of these functional outbuildings to complement the more elegant farmhouse, such an appreciation would be much more difficult, if not impossible.
57. In taking this view I acknowledge that the list entry for Pond Farmhouse, made in 1967, refers only to its external architectural details and makes no mention of the outbuildings or of any historical significance it may have. Indeed, by the time of the listing the outbuildings and the former farmhouse were already in separate ownership. But those facts do not relieve me of the responsibility of assessing its historical significance and the role its setting plays in establishing that. Without doing so I would be unable to meet the statutory duty of "special regard" or to carry out the assessment process set out in the NPPF.

¹ *Planning (Listed Buildings and Conservation Areas) Act 1990, s.66(1)*

58. Clearly the 20th-century development along London Road also contributes to the setting of Pond Farmhouse. But the ensemble created by the former farmhouse, the front range of the outbuildings and the grassed area in front of them has a historic agricultural character quite distinct from that surrounding development. The section of gravel track in front of the outbuildings does not create any significant sense of separation between them and the farmhouse. Without the outbuildings the listed building might well appear as just an unusually attractive older residence among all the other dwellinghouses. With them, its historical *raison d'être* is plain to see.
59. There is a stand of tall trees behind the group of outbuildings that, in combination with the shelterbelts, cuts off views of them and Pond Farmhouse from most parts of the appeal site fields. Views of the rear of the farmhouse can be obtained from the eastern edge of Field A, but the backs of the houses in Playstool Road are a far more prominent visual influence in this location. Moreover, this part of the field is not publicly accessible. From the public footpath that crosses the north-western corner of Fields B and C only the roof of the farmhouse can be seen, and from the Mill Hill footpath the farmhouse is almost completely hidden by the topography and foreground vegetation.
60. Because of the very limited intervisibility between them, I find that the appeal site fields are not a significant element in the setting of Pond Farmhouse. From the point of view of assessing the contribution its setting makes to the listed building's significance, therefore, its setting is confined to the surrounding development and other features along this part of London Road. While the surrounding 20th-century development, including the prominent car sales outlet opposite, has a negative impact on Pond Farmhouse's special historic interest and significance, this is far outweighed by the positive contribution made by the adjacent front range of outbuildings and the grassed area in front of them.
61. Because they would involve the demolition of all the farm outbuildings, I consider that the Appeal A proposals would result in substantial harm to the historic significance of Pond Farmhouse. In reaching this view I have taken into account the possibility that a condition could require new buildings very similar in form and design to the outbuildings to be built in their place, as part of the new residential development. But even if it were possible to replicate the historic appearance of the existing buildings, it is difficult to see how their functional character – which is an essential part of their contribution to the historic significance of the former farmhouse – could realistically be preserved in view of the likely desire of future residents to domesticate both the buildings themselves and the area around them.
62. However, Pond Farmhouse's historic significance is only part of its overall significance as a designated heritage asset. Its equally, if not more, important architectural qualities would be unaffected by the proposals and so I find that the demolition of the outbuildings would cause less than substantial harm to its significance overall.
63. Turning to the effect of the Appeal A proposals on the farm outbuildings as non-designated heritage assets, as I have already made clear the front range is in a fairly poor condition overall. If anything the rear range is in a worse condition: while its brickwork and roof retain more of their original appearance and materials, it has suffered fairly extensive fire damage. Neither building range appears to contain evidence of any noteworthy building techniques or

- historic agricultural innovations. The other, smaller outbuildings are more modern blockwork structures of no obvious architectural or historic value.
64. In my view, therefore, the farm outbuildings have very limited significance as non-designated heritage assets in their own right. Considered purely in this context, therefore, their demolition as part of the Appeal A proposals would not lead to any material harm. However, because their demolition would cause less than substantial harm to the significance of Pond Farmhouse, the proposals would conflict with SBLP policy E14 and with the more general requirement in policy E1 to protect the built environment.
65. Because the farm outbuildings are retained under the Appeal B proposals, those proposals would not affect the significance of the listed former farmhouse or the outbuildings themselves and so no policy conflicts would arise.
66. I conclude on the fourth main issue that the Appeal A proposals only would cause less than substantial harm to the significance of the Grade II listed Pond Farmhouse. There would be no other harm to any heritage asset.

Fifth main issue – The effect of the appeal proposals on the availability of best and most versatile agricultural land

67. The appeal sites (apart from buildings and tracks) are made up entirely of Grade 1 and Grade 2 agricultural land –amounting to around 12.9ha in all three fields and around 8ha in Fields A and B. These are the top two grades and they put the sites into the category of best and most versatile (BMV) land.
68. NPPF paragraph 112 advises that local planning authorities should take into account the economic and other benefits of BMV land. Where significant development of agricultural land is demonstrated to be necessary, they should seek to use areas of poorer quality land in preference to that of a higher quality.
69. The NPPF does not define what is “significant” development of agricultural land. Natural England must be notified of any developments leading to the loss of more than 20ha of BMV land², but although that threshold has been accepted in some appeal decisions as a yardstick to measure significance, in others it has not. Natural England themselves advise that *The [BMV] land protection policy is relevant to all planning applications, including those on smaller areas, but is for the planning authority to decide how significant the agricultural land issues are.* That is the approach I shall follow.
70. While BMV land is ultimately a national if not an international resource, in assessing the significance of any loss it is relevant, in my view, to consider how prevalent BMV land is in the local area. Indeed, to some extent this is implicit in the NPPF’s advice, since it effectively requires local planning authorities to assess the relative availability of poorer and higher quality land when significant development is necessary.
71. In this context, there is persuasive evidence that the appeal sites are typical of a belt of predominantly high-quality agricultural land stretching all the way from Gillingham to Faversham. Overall, the ELP indicates that some 70% of the 23,000ha of agricultural land in Swale borough is BMV land. While there are of course variations in this general picture, it means that it would probably

² By the *Town and Country Planning (Development Management) (England) Order 2015*

be difficult to find large developable sites of lower-quality land not only around Newington but around Sittingbourne as well. This is borne out by the fact that greenfield development sites around both settlements that are proposed for allocation in the ELP contain substantial areas of BMV land.

72. Drawing these points together, it is self-evident that in absolute terms both appeal proposals would lead to a loss of BMV land. However, the respective site areas of 12.9ha and 8ha of BMV land would represent a very small proportion of the extensive resources of BMV land in this part of Kent. Moreover, it seems likely that finding alternative sites of lower-quality land in the local area for developments of the scale required to meet the objectively-assessed need for housing would be difficult. Against this background, I find in these particular cases that the loss of BMV land could not be said to be significant.
73. I conclude on the fifth main issue that, although the proposals would lead to the loss of BMV land, that loss would not be significant when assessed against national planning policy.

Sixth main issue – The effect of the appeal proposals on the supply of brickearth

74. The appeal sites lie in a Mineral Safeguarding Area [MSA] defined in the KMWLP under policy CSM 4 because of its resources of brickearth. KMWLP policy DM 7 states that in MSAs, planning permission for non-minerals development that is incompatible with minerals safeguarding will only be granted in certain circumstances. These include where the mineral is not of economic value or its extraction would not be viable or practicable. Unsurprisingly, given their recent adoption date, these policies are consistent with national policy in NPPF section 13 and so carry their full statutory weight.
75. KCC are considering a planning application for extraction of brickearth on an extensive area of land at Paradise Farm, to the west and south of the appeal sites. The applicants are Wienerberger, who own the only remaining brick manufacturing plant in the county, Smeed Dean at Sittingbourne.
76. From the land levels on the appeal sites, it seems clear that brickearth has been extracted from Fields A and B in the past. In April 2016 the appellants invited Wienerberger to assess the likely quality of the remaining brickearth on the sites. Wienerberger reported that *we have carried out sample boreholes and confirm there are very little brickearth deposits remaining ... [and] there is a lot of chalk present which is not suitable for our process. They added that the material was cross contaminated with flint so not only was the seam very thin it is also unusable in our process due to the presence of flint.*
77. At the inquiry Cllr Wright argued that Wienerberger had failed to investigate the parts of the sites, including Field C, where most brickearth is likely to be present, and that other brickmakers could use the material despite it containing chalk and/or flint. Cllr Wright's family owned the Sittingbourne brickworks prior to its purchase by Wienerberger and he has substantial knowledge of brick-making. However, he did not suggest any particular alternative brickmaker that might make use of the brickearth.
78. As Wienerberger are the only brickmakers in the area I consider it most unlikely that any other firm would come forward to extract the material. They were invited to assess all three appeal site fields and although they did not dig

any boreholes in Field C, it is clear from their responses that they do not consider the brickearth here to be suitable for their process. On the evidence before me I therefore find that it is unlikely to be of economic value and that its extraction is unlikely to be viable. The appeal proposals would not conflict with KMWLP policies CSM 4 or DM 7.

79. I conclude on the sixth main issue that the appeal proposals would have no materially harmful effect on the supply of brickearth.

Seventh main issue – The effect of the appeal proposals, including any proposed mitigation measures, on the use of sustainable forms of transport and on the safe and efficient operation of the road network

80. The appeal sites are within walking distance of the shops and other amenities in the centre of Newington. Newington Primary School is further away, at the northern end of the village, but it would still be feasible for parents and children to walk there – though of course parents might choose to drive instead. The access proposals for both appeal schemes include a new footway along the site frontage and widening of the footway on the northern side of London Road, with pedestrian crossing facilities (a refuge and a puffin crossing) on each side of the site access. The appellants also propose to provide tactile paving at the junction of London Road and Wykeham Close, and localised carriageway narrowing at the junction of Church Lane and High Oak Hill to control vehicle speeds near the school. The existing public right of way across parts of Fields B and C would be retained.

81. Newington has good public transport links to Sittingbourne, the Medway towns, eastern Kent and London. It is possible to travel by bus or train to all those places for work, shopping, leisure and other purposes. Existing bus stops and the railway station are within walking distance of the appeal sites, and the appellants propose to provide new bus stops and shelters closer to the site access and additional cycle parking spaces at the station.

82. Either appeal scheme, if permitted, would also be subject to a Travel Plan. This would involve the appointment of a co-ordinator to promote and monitor the use of sustainable modes of transport by residents, with the aim of reducing peak hour vehicle use below a prescribed target level.

83. All these measures, which could be secured by means of conditions and the unilateral undertakings, would benefit those residents of the new developments reliant on sustainable modes of transport and would encourage the use of those modes by other residents. Some of the measures would also benefit existing residents of Newington. The proposals would therefore comply with the guidance in section 4 of the NPPF on maximising sustainable transport solutions and giving people a real choice about how they travel.

84. The vehicular access arrangements for both appeal schemes would provide visibility splays appropriate to the existing 40mph speed limit along this section of London Road. A new eastbound right-turn lane, protected by ghost islands, would be provided for vehicles waiting to enter the site access. The access design has been subject to safety audit and has been approved by KCC, the local highway authority.

85. The impact of traffic generated by the new developments on key junctions in the surrounding area has been assessed using a methodology approved by KCC

and Highways England (HE). It found that there would be adequate spare capacity at all junctions where the development traffic would have a significant impact, apart from the junction between the A2 and A249 at the eastern end of Keycol Hill. Here the modelling showed that the junction would operate significantly over capacity in the assessment year, even without the addition of traffic from the proposed developments. The addition of that traffic would lead to further deterioration in performance.

86. Accordingly the appellants have agreed with KCC and HE that no more than half the dwellings proposed under Appeal A may be occupied until a defined scheme of improvements to the junction has been completed. For Appeal B, a financial contribution to the same junction improvement scheme has been agreed. These measures, which could be secured by condition and unilateral undertaking respectively, are proportionate to, and would provide the necessary mitigation of, the impact of traffic from each appeal proposal on the A2/A249 junction. They would thereby accord with SBLP policy T2.
87. During the inquiry I was made aware of the high degree of local concern about highway safety and congestion on local roads, and especially on the A2 through Newington. Tragically, the father of one person who spoke had been killed in an accident on London Road near the appeal sites some years ago. I do not underestimate the scale of these concerns, and indeed I saw for myself that London Road is very busy at most times of day. I have no doubt that when exceptional events occur, such as the closure of the M2 or the implementation of Operation Stack on the M20, congestion along it becomes very severe. Moreover, where the A2 passes through the centre of Newington there are choke points that can cause temporary delays to the passage of vehicles.
88. However, I am satisfied from the evidence before me that, with the implementation of the measures I have described, neither proposed development would materially worsen any existing congestion on the highway network or lead to a material deterioration in highway safety. Both appeal proposals would therefore comply with the safe access requirements of SBLP policy T1 and with relevant guidance in section 4 of the NPPF.
89. I conclude on the seventh main issue that the appeal proposals, including any proposed mitigation measures, would have a positive impact on the use of sustainable forms of transport and would not materially detract from the safe and efficient operation of the road network.

Eighth main issue – The effect of the appeal proposals, including any proposed mitigation measures, on air quality, particularly in the Newington and Rainham Air Quality Management Areas

90. SBLP policy SP2, which is not a policy for the supply of housing, is relevant to this issue. Among other things, it states that adverse environmental impact of development will be avoided, but where there remains an incompatibility between development and environmental protection, and development needs are judged to be greater, the Council will require adverse impacts to be minimised and mitigated. NPPF paragraph 120 requires the effects of pollution and the potential sensitivity of the area to its effects to be taken into account in planning decisions. Paragraph 124 advises that any new development in Air Quality Management Areas (AQMAs) should be consistent with the local air quality management plan.

91. National air quality standards, based on a 2008 European directive, are set out in the *Air Quality Standards and Objectives Regulations 2010*. They include a limit value of 40 micrograms per cubic metre ($\mu\text{g}/\text{m}^3$) for the annual mean concentration of nitrogen dioxide (NO_2). Limit values are also set for particulate matter and other pollutants. The Government is responsible for ensuring that these limit values are met. In practice, most of the actions necessary to achieve this are devolved to local authorities. They are required to carry out regular reviews and assessments of air quality to identify areas where the limit values are, or are likely to be, exceeded. They must declare AQMAs and prepare action plans to improve air quality in such areas.
92. Added emphasis to the urgency of meeting the limit values for air pollutants was given by the decision of the High Court in November 2015³ quashing the Government's 2015 Air Quality Plan. The court found that the plan should have sought to achieve compliance by the earliest possible date rather than selecting 2020 as its target date. It also found that the Government had adopted too optimistic a model for future vehicle emissions.
93. An AQMA was declared along a section of London Road and High St in Newington in 2009 because the annual mean NO_2 objective was exceeded. Another AQMA has been declared in High St, Rainham, some 3km west of Newington in the adjacent Medway Council area, for the same reason. The latest available monitoring data, from 2015, shows that the annual mean objective of $40\mu\text{g}/\text{m}^3$ for NO_2 was exceeded at two monitoring sites on the High St in the centre of Newington and at one site in Rainham High St.
94. The appellants' evidence to the inquiry includes an assessment of the air quality impacts of each appeal proposal, carried out in September 2016. These assessments supersede earlier work done by the same consultants. Each assessment models five main scenarios for the Newington and Rainham AQMAs: "without development" scenarios for the base year (2015) (Scenario 1) and for an assumed opening year for the development (2020) (Scenario 2) and a "with development" scenario for the opening year modelling the impact of the development traffic (Scenario 3). The impact of the development traffic taking into account the cumulative effect of other nearby proposed developments is then assessed using the same methodology (Scenarios 4 & 5).
95. For both appeal schemes, both Scenarios 3 & 5 find "moderate adverse" impacts at only one of the 16 receptor sites that were assessed – this is located in the centre of Newington a short distance from the monitoring site at which the highest annual mean NO_2 concentrations were recorded in 2015. Two other receptor sites, also in Newington High St, receive "slight adverse" impacts while the other 13 show "negligible" change.
96. However, it is noteworthy that the "without development" scenario for the opening year (Scenario 2) forecasts a substantial reduction in annual mean NO_2 concentrations compared with the 2015 base year. For example, NO_2 concentrations at receptor site ES4 are shown as falling from $48.85\mu\text{g}/\text{m}^3$ in 2015 to $37.43\mu\text{g}/\text{m}^3$ in 2020. Reductions almost as great are predicted at many of the other receptor sites in Newington.
97. It is true that annual mean NO_2 concentrations in Newington reduced significantly between 2010 and 2014 – by around $6\mu\text{g}/\text{m}^3$ across all monitoring

³ [2016] EWHC 2740 (Admin)

- sites combined. But most of that reduction occurred between 2010 and 2012: from 2012 to 2014 the reduction was only around $1\mu\text{g}/\text{m}^3$. Against that background, it seems optimistic on the face of it to expect that NO_2 concentrations will fall by the substantial amounts predicted in Scenario 2.
98. In the light of this, sensitivity versions of scenarios 2 to 5, in which the “without development” and “with development” scenarios are based on emission factors that remain unchanged between 2015 and 2020, were modelled for both the stand-alone and cumulative effects of the proposals. These show that for both appeal schemes in both “with development” scenarios there would be “substantial adverse” effects at three receptor sites in Newington. There are also “moderate adverse” and “slight adverse” effects at between three and five other receptor sites in each of these scenarios. In each case the limit value for annual mean NO_2 concentrations would be exceeded at five receptor sites, in some cases by a considerable amount.
99. The sensitivity scenarios are probably too pessimistic: as the appellants’ witness pointed out, tightening of emission standards for new vehicles should, over time, bring about substantial further reductions in NO_2 emissions from traffic. But I was given no firm data on the rate at which this is likely to occur. In the absence of any conclusive evidence on this point, I consider it would be unsafe to rely on emission levels falling between 2015 and 2020 to the extent that informed the modelling of original Scenarios 2 to 5. My view is reinforced by the High Court’s finding on the excessive optimism of future emissions modelling. This means that original Scenarios 3 and 5 cannot be taken as reliable projections of the likely impacts of the appeal proposals on air quality.
100. In my view the likelihood is that the impacts of the appeal proposals will fall somewhere between the best case original Scenarios 3 and 5 and the worst case sensitivity versions of those scenarios. Without further modelling it would be unwise to try to assess those impacts too precisely, but it seems safe to say that the possibility of “substantial adverse” impacts on receptors in Newington cannot be ruled out, and that “moderate adverse” impacts and exceedence of the limit value at a number of receptors in both Newington and Rainham are almost certain. This would be the case whether or not the cumulative impacts of other developments are factored in.
101. It might well be that, on this analysis, the limit values for NO_2 concentration levels would be exceeded in Newington and Rainham in 2020 even without the proposed developments. But this would not justify the further worsening of air quality that the modelling indicates would arise were either development to go ahead.
102. Both “moderate adverse” and “substantial adverse” impacts are considered likely to have a significant effect on human health, according to the 2015 publication *Land-Use Planning & Development Control: Planning for Air Quality*⁴. In accordance with guidance in that publication, the appellants propose to fund measures to mitigate the adverse impacts of the developments on both the Newington and Rainham AQMAs. Contributions to fund those measures are calculated using the DEFRA Emission Factors Toolkit and secured by the unilateral undertakings.

⁴ Produced by Environmental Protection UK and the Institute of Air Quality Management

103. However, the level of contribution for each appeal scheme is based on 2020 emission factors. As I have found, on the evidence before me it would be unsafe to rely on emission levels falling between 2015 and 2020 to the extent assumed in the modelling of original Scenarios 2 to 5. Consequently the contributions may well not reflect the true impacts of the developments.
104. Proposed mitigation measures are outlined in the unilateral undertakings and the final mitigation scheme is subject to the approval of the Council. The proposed measures include electric vehicle charging points for each dwelling, green travel measures and incentives to encourage the use of walking, cycling, public transport and electric or low emission vehicles. No specific evidence has been provided, however, to show how effective those measures are likely to be in reducing the use of private petrol and diesel vehicles and hence in reducing forecast NO₂ emissions.
105. Drawing all this together, I find that it is more probable than not that both appeal proposals would have at least a moderately adverse impact on air quality in the Newington and Rainham AQMAs, and thus a significant effect on human health. While measures are proposed to mitigate those adverse impacts, there is no clear evidence to demonstrate their likely effectiveness, and it may well be that the contributions to fund the measures fail to reflect the full scale of the impacts.
106. I therefore conclude on the eighth main issue that, even after taking into account the proposed mitigation measures, the appeal proposals are likely to have an adverse effect on air quality, particularly in the Newington and Rainham AQMAs. I reach this conclusion for the reasons set out above, notwithstanding that the Council raise no objection to the proposals on air quality grounds. Both proposals would thereby conflict with the guidance in NPPF paragraphs 120 and 124.

Ninth main issue – Whether or not the appeal proposals make adequate provision to mitigate the effects of the proposed developments on the Thames Estuary & Marshes, Medway Estuary & Marshes and The Swale Special Protection Areas and RAMSAR sites

107. The unilateral undertaking submitted for each appeal provides for a contribution to be made, if planning permission is granted, towards the implementation of the *Thames, Medway and Swale Estuaries Strategic Access and Monitoring Strategy*. In each case the contribution would be proportionate to the scale of the proposed development and would provide adequate mitigation for the effects of each proposed development on the Thames Estuary & Marshes, Medway Estuary & Marshes and The Swale Special Protection Areas and RAMSAR sites. Neither appeal proposal therefore conflicts with SBLP policy E12, which seeks to protect sites designated for their importance to biodiversity.

Tenth main issue – Whether or not the appeal proposals make adequate provision for the infrastructure necessary to support the developments proposed

108. I have considered transport infrastructure provision under the seventh main issue. For each appeal proposal, the unilateral undertakings also make provision for contributions towards education, youth services, library services, social care, healthcare, and provision of recycling and waste containers. I am satisfied that these contributions are necessary to make each development

acceptable in planning terms, and that they are directly related and fairly and reasonably related in scale and kind to each development. The Council have confirmed that none would breach the "pooling" limit contained in the *Community Infrastructure Levy Regulations 2010* (as amended).

109. The unilateral undertakings provide for the laying out, management and maintenance of the public open space within each appeal scheme. The provision of adequate sustainable drainage, estate roads and parking spaces, foot- and cycle-paths and other on-site infrastructure could be secured by conditions if planning permission were granted for either scheme. Accordingly there is no substantial evidence of any unmet infrastructure requirements that would arise as a result of the proposals.
110. I conclude on the tenth main issue that the appeal proposals would make adequate provision for the infrastructure necessary to support the developments proposed.

Eleventh main issue – What benefits would arise from the appeal proposals?

111. The appeal proposals would provide up to 330 and 126 dwellings respectively, of which at least 30% would be affordable housing. These represent very substantial benefit in a situation where the Council can demonstrate a housing land supply of only 3.8 years' worth and where there is a pressing local need for affordable housing. Newington is a strong housing market area without the risk factors that apply to some of the sites proposed for allocation in the ELP. On the evidence I heard there is no reason to doubt that the appeal sites could begin to deliver housing within two years of a grant of outline permission, thereby making a valuable contribution to the five-year housing supply.
112. The provision of 60 units of extra-care housing would also be a valuable benefit in the context of an acute and growing shortage of such accommodation in Swale and forecast growth of 46% in the number of residents over 65 years of age in the borough during the ELP period. On the other hand, I see only limited benefit in the proposed allocation of land for the provision of an on-site healthcare facility, as there is no clear evidence that any healthcare provider would actually come forward to develop the facility.
113. Both schemes would generate substantial economic benefits in terms of construction jobs (at least 300 full-time equivalent (FTE) for six years for Appeal A or at least 150 FTE for five years for Appeal B); additional spending by the new residents which would benefit the borough's economy (£8.7 million for Appeal A or £3.3 million for Appeal B); employment opportunities at the extra-care housing; a substantial increase in the local labour force; additional Council tax revenue of some £4.8 million over 10 years (Appeal A) or £1.8 million over 10 years (Appeal B); and New Homes Bonus payments of about £3.1 million over six years (Appeal A) or £1.2 million over six years (Appeal B). The full implementation of improvements to the A2/A249 junction in connection with the Appeal A scheme would have positive economic benefits over a wider area.
114. As noted under the seventh main issue above, some of the transport measures to be provided in connection with the appeal schemes would also benefit existing residents of Newington and encourage the wider use of sustainable forms of transport. Those measures include new and improved

pedestrian footpaths, bus stops and shelters and crossing facilities on London Road, additional cycle parking at the railway station, and proposed traffic-calming measures near Newington Primary School.

115. Finally, the public open space in each appeal scheme would be available for use by the general public, not just the scheme's residents.

Overall conclusions on Appeal A – Ref: APP/V2255/W/15/3067553

116. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* requires that I determine the appeal in accordance with the development plan unless material considerations indicate otherwise. The Appeal A proposals would conflict with SBLP policies SP5, TG1, SH1, E6, E7 and H2 because they involve residential development outside a development boundary and within a Strategic Gap, both defined in the SBLP, and none of the policy exceptions that would permit such development apply. The proposals would also conflict with SBLP policies E1 and E9 because of the substantial harm they would cause to landscape character, and with SBLP policies E1 and E14 because they would fail to preserve the special historic interest and the setting of the listed Pond Farmhouse.
117. I have found no conflict with SBLP policies E12, E19, T1 or T2 or with KMWLP policies CSM 4 or DM 7. Although SBLP policy E15, dealing with Conservation Areas, is mentioned in the Council's putative reasons for refusal it is not relevant to this appeal. SBLP policies SP1 and SP2 also feature among the Council's putative reasons for refusal. Neither is a policy for the supply of housing: instead they deal with the broad issues of sustainable development and the impact of development on the environment.
118. SBLP policy SP2 requires a judgment to be made as to whether development needs are greater than the interests of environmental protection. The shortfall of 1.2 years' worth of housing land in the Council's current five-year supply undoubtedly creates a pressing need for additional housing development, including affordable housing, and the rapidly growing number of older people in the borough means there is also a strong need for housing for that age group in particular. The development proposals would make a substantial contribution to meeting each of those categories of need. But I consider that this contribution would be outweighed by the harm that the proposals would cause to the visual, historical and atmospheric environments of the borough, through their effects on landscape character, on the significance of Pond Farmhouse and on air quality. That harm could not be adequately minimised or mitigated and so there would be conflict with policy SP2.
119. Policy SP1 requires a broader balance to be drawn between positive and negative aspects of the proposals. In the terms of this policy the proposed development would provide for physical, social and community infrastructure, provide a very substantial number of new dwellings in a mix and range of housing types, including affordable housing, support existing local services and provide opportunities to reduce the need to travel by car. But in my judgment those benefits would be outweighed by the detrimental impact that the proposals would have on areas of environmental importance and on human health and well-being. Therefore, while the proposals would increase local self-sufficiency and satisfy human needs for housing, their greater weight that I give to their adverse environmental impact means that they would conflict with policy SP1.

120. Thus the Appeal A proposals would conflict with the development plan as a whole. That said, their conflicts with SBLP policies SP5, TG1, SH1, E6, E7 and H2 carry very limited weight in my decision because those policies are out of date for the reasons given under the third main issue above. Their conflict with policy E14 also carries limited weight because that policy is not consistent with guidance in the NPPF.
121. Where relevant development plan policies are out of date, NPPF paragraph 14 advises that permission should be granted unless **either** any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF's policies as a whole (Limb 1); **or** specific NPPF policies indicate that development should be restricted (Limb 2). Having reached a conclusion on those tests, it is also necessary to consider whether there are other material considerations that would lead to a different conclusion (footnote 10 to NPPF paragraph 14).
122. That whole process, to which I now turn, leads to an outcome which reflects the presumption in favour of sustainable development that lies at the heart of the NPPF. Although not all the relevant development plan policies in this case are out of date, I shall conduct the paragraph 14 process as if they were in order to ensure that the presumption is robustly applied.
123. Policies relating to designated heritage assets are specifically listed in the NPPF's footnote 10 as indicating that development should be restricted, and so Limb 2 of paragraph 14 applies to the Appeal A proposals. I have found that the proposals would lead to less than substantial harm to the significance of the listed Pond Farmhouse. NPPF paragraph 134 requires that harm to be weighed against the proposals' public benefits. There would be substantial benefits from the supply of a large amount of new housing, including affordable housing and housing for older people for which there is a high level of need, in the context of a significant shortfall in the Council's five-year housing land supply. There would also be substantial benefits to the borough's economy, and some benefits to non-residents from transport infrastructure and open space provision.
124. I find that, in combination, these benefits of the proposals would outweigh the harm the proposals would cause to the significance of the designated heritage asset. Thus the Limb 2 test does not indicate that permission should be refused.
125. I shall structure the broader Limb 1 assessment by assessing the benefits and adverse impacts of the Appeal A proposals in terms of the three dimensions of sustainable development. Substantial **social** benefits would arise from the delivery of 330 new dwellings and 60 extra-case housing units, beginning in about two years from the grant of planning permission. This would make a significant contribution to meeting demonstrated needs for market, affordable and older persons' housing and to addressing the shortfall of 1.2 years in the housing land supply for the borough. It would provide support for local businesses and services in the village and help to rebalance its ageing demographic profile. Housing development at the scale proposed would accord with the settlement hierarchy in the ELP, which is unlikely to be altered. All this would accord with NPPF paragraphs 28, 47 and 50.
126. The proposed development would be well served by means of transport other than the car and residents would have a genuine choice when deciding

how to travel to a wide range of destinations. Additional benefits would accrue to non-residents from the transport infrastructure provided in association with the development – most notably including the full implementation of improvement works to the A2/A249 junction. In these ways the proposals are consistent with section 4 of the NPPF.

127. The public open space and retained public right of way within the development would be available to non-residents and so would contribute to their health and well-being in accordance with NPPF paragraph 73. Provision of land for an on-site healthcare facility would be consistent with the objectives of NPPF paragraphs 69 and 70, but because there is considerable uncertainty over whether the facility would actually be delivered, this benefit carries only limited weight.
128. Against all these social benefits, however, must be set the strong likelihood that, notwithstanding the proposed mitigation measures, the appeal proposals would contribute to at least “moderate adverse” impacts on air quality in both the Newington and Rainham AQMAs. Thus they would be likely to have a significant adverse effect on human health. These effects of the proposals would conflict with the guidance in NPPF paragraph 124.
129. I have set out the substantial **economic** benefits of the Appeal A proposals under the eleventh main issue. While there would also be some loss of BMV land, that loss would not be significant when assessed against national planning policy, and the proposals would have no materially harmful effect on the supply of brickearth. Thus the economic impacts of the proposals are strongly positive and carry significant weight in accordance with NPPF paragraphs 18 and 19.
130. Turning to the **environmental** dimension, the Appeal A proposals would have no harmful consequences for ecology or flood risk. Indeed there is the potential for some on-site biodiversity enhancement in accordance with NPPF paragraph 118.
131. For the reasons I have given under the third main issue, however, and notwithstanding any potential benefit they might have in respect of settlement form, the proposals would cause substantial harm to landscape character. By failing to protect or enhance what I have found to be a valued landscape they conflict with NPPF paragraph 109.
132. The proposals would also cause less than substantial harm to the significance of the listed Pond Farmhouse. Although I found in applying the Limb 2 test that, in itself, that harm is outweighed by the benefits of the appeal proposal, it is nonetheless a negative factor to be considered in the overall Limb 1 balance.
133. Drawing all this together, I conclude on the Limb 1 assessment that, even after considerable weight is given to the social, economic and environmental benefits that I have set out above, the substantial harm that the appeal proposals would cause to the character of a valued landscape and their likely significant adverse effect on human health would significantly and demonstrably outweigh those benefits. The less than substantial harm the proposals would cause to the significance of the listed Pond Farmhouse adds a small amount of additional weight to the negative side of the balance but does not affect the overall outcome of the assessment.

134. No other material considerations that would lead me to a different conclusion in respect of the NPPF paragraph 14 assessment or in any other respect have been drawn to my attention. I find therefore that there are no material considerations which indicate that Appeal A should be determined other than in accordance with the development plan. Accordingly, I conclude that Appeal A should be dismissed.

Overall conclusions on Appeal B – Ref: APP/V2255/W/16/3148140

135. I shall follow the same assessment process for the Appeal B proposals as for Appeal A. The Appeal B proposals would conflict with SBLP policies SP5, TG1, SH1, E6, E7 and H2 because they involve residential development outside a development boundary and within a Strategic Gap, both defined in the SBLP, and none of the policy exceptions that would permit such development apply. The proposals would also conflict with SBLP policies E1 and E9 because of the substantial harm they would cause to landscape character. There would be no conflict with SBLP policies E12, E19, T1 or T2 or with KMWLP policies CSM 4 or DM 7.

136. The shortfall of 1.2 years' worth of housing land in the Council's current five-year supply creates a pressing need for additional housing development, including affordable housing, and the rapidly growing number of older people in the borough means there is also a strong need for housing for that age group in particular. The development proposals would make a significant contribution to meeting each of those categories of need. But I consider that this contribution would be outweighed by the harm that the proposals would cause to the visual and atmospheric environments of the borough, through their effects on landscape character and on air quality. That harm could not be adequately minimised or mitigated and so there would be conflict with SBLP policy SP2.

137. In the terms of SBLP policy SP1 the proposed development would provide for physical, social and community infrastructure, provide a significant number of new dwellings in a mix and range of housing types, including affordable housing, support existing local services and provide opportunities to reduce the need to travel by car. But in my judgment these benefits would be outweighed by the detrimental impact that the proposals would have on an area of environmental importance and on human health and well-being. Therefore, while the proposals would increase local self-sufficiency and satisfy human needs for housing, the greater weight that I give to their adverse environmental impact means that they would conflict with policy SP1.

138. Thus the Appeal B proposals would conflict with the development plan as a whole. That said, their conflicts with SBLP policies SP5, TG1, SH1, E6, E7 and H2 carry very limited weight in my decision because those policies are out of date for the reasons given under the third main issue above.

139. Although the other relevant development plan policies in this case are not out of date, I will conduct the NPPF paragraph 14 process as if they were in order to ensure that the presumption in favour of sustainable development is robustly applied.

140. The Limb 2 test does not apply to the Appeal B proposals. I shall structure the Limb 1 assessment by assessing the benefits and adverse impacts of the Appeal B proposals in terms of the three dimensions of sustainable

development. Significant **social** benefits would arise from the delivery of 126 new dwellings and 60 extra-case housing units, beginning in about two years from the grant of planning permission. This would make a valuable contribution to meeting demonstrated needs for market, affordable and older persons' housing and to addressing the shortfall of 1.2 years in the housing land supply for the borough. It would provide support for local businesses and services in the village and help to rebalance its ageing demographic profile. Housing development at the scale proposed would accord with the settlement hierarchy in the ELP, which is unlikely to be altered. All this would accord with NPPF paragraphs 28, 47 and 50.

141. The proposed development would be well served by means of transport other than the car and residents would have a genuine choice when deciding how to travel to a wide range of destinations. Some additional benefits would accrue to non-residents from the transport infrastructure provided in association with the development. In these ways the proposals are consistent with section 4 of the NPPF.
142. The public open space and retained public right of way within the development would be available to non-residents and so would contribute to their health and well-being in accordance with NPPF paragraph 73. Provision of land for an on-site healthcare facility would be consistent with the objectives of NPPF paragraphs 69 and 70, but because there is considerable uncertainty over whether the facility would actually be delivered, this benefit carries only limited weight.
143. Against all these social benefits, however, must be set the strong likelihood that, notwithstanding the proposed mitigation measures, the appeal proposals would contribute to at least "moderate adverse" impacts on air quality in both the Newington and Rainham AQMAs. Thus they would be likely to have a significant adverse effect on human health. These effects of the proposals would conflict with the guidance in NPPF paragraph 124.
144. I have set out the substantial **economic** benefits of the Appeal B proposals under the eleventh main issue. While there would also be some loss of BMV land, that loss would not be significant when assessed against national planning policy, and the proposals would have no materially harmful effect on the supply of brickearth. Thus the economic impacts of the proposals are strongly positive and carry significant weight in accordance with NPPF paragraphs 18 and 19.
145. Turning to the **environmental** dimension, the Appeal A proposals would have no harmful consequences for ecology or flood risk. Indeed there is the potential for some on-site biodiversity enhancement in accordance with NPPF paragraph 118.
146. For the reasons I have given under the third main issue, however, and despite the benefit they could provide in respect of settlement form, the proposals would cause substantial harm to landscape character. By failing to protect or enhance what I have found to be a valued landscape they conflict with NPPF paragraph 109.
147. Drawing all this together, I conclude on NPPF paragraph 14 assessment that, even after considerable weight is given to the social, economic and environmental benefits that I have set out above, the substantial harm that the

appeal proposals would cause to the character of a valued landscape and their likely significant adverse effect on human health would significantly and demonstrably outweigh those benefits.

148. No other material considerations that would lead me to a different conclusion in respect of the NPPF paragraph 14 assessment or in any other respect have been drawn to my attention. I find therefore that that there are no material considerations which indicate that Appeal B should be determined other than in accordance with the development plan. Accordingly, I conclude that Appeal B should be dismissed.

Roger Clews

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr W Upton, of Counsel <i>He called</i>	instructed by Mid-Kent Legal Services
Mr D Huskisson DipLA CMLI	Principal, Huskisson Brown Associates
Mr S Algar BA MSc MRTPI	Design & Conservation Manager, Swale Borough Council
Mr R Lloyd-Hughes BScEstMan MRICS	Director, Rural Planning Ltd
Mr M Goddard BA DipTP DMS MRTPI	Director, Goddard Hester Planning Practice
Mr K Bown BSc MPhil MRTPI	Spatial Planning Manager, Highways England

FOR KENT CPRE:

Mr R Knox-Johnston <i>He called</i>	instructed by CPRE Kent
Ms J Barr BSc LLM PGCert MA MRTPI	Planner, CPRE Kent
Cllr J Wright	Swale Borough Councillor
Ms E Rouse MCIfA MA BA	Principal, Wyvern Heritage and Landscape
Mrs M Milsted-Williamson	Swale Local Footpaths Officer, Ramblers' Association
Cllr S Harvey	Chair of Planning Committee, Newington Parish Council
Cllr M Baldock	Kent County and Swale Borough Councillor
Prof S Peckham	Director, University of Kent Centre for Health Service Studies

FOR THE APPELLANTS:

Mr P Cairnes, QC <i>He called</i>	instructed by Gladman Developments Ltd
Mr P Rech BA BPhilD CMLI	Director, FPCR Environment & Design Ltd
Mr J Clemons BA MA MSc MRTPI IHBC	Director and Head of Built Heritage, WYG
Mr S Helme BEng MSc CIHT	Director, Ashley Helme Associates Ltd
Mr A Walton BSc DipAc&NC MCIEH AMIOA	Technical Director & Principal Environmental Scientist, Wardell Armstrong LLP
Mr J Mackenzie BSc DipTP MRTPI	Planning & Development Manager, Gladman Developments Ltd

INTERESTED PERSONS:

Mr M Buttle	Resident of London Road, Newington
Mr R Palmer	Resident of Station Road, Newington
Mr Harrington	Resident of Playstool Road, Newington
Mrs C Buttle	Resident of London Road, Newington
Mrs A Fagg	Resident of London Road, Newington
Mr N Hudson	Resident of Bull Lane, Newington

DOCUMENTS SUBMITTED DURING AND AFTER THE INQUIRY

- 1 Letter from Mr Mackenzie to PINS case officer, withdrawing the listed building consent appeal
- 2 Draft Unilateral Undertaking for Appeal A
- 3 Draft Unilateral Undertaking for Appeal B
- 4 Signed Statement of Common Ground on heritage issues between the Council and the appellants
- 5 Opening Statement for Gladman Developments Ltd (Mr Cairnes)
- 6 Swale Borough Council Core documents:
 - CDS1 Adopted Swale Borough Local Plan
 - CDS2 Emerging Swale Local Plan, Bearing Fruits, Main Modifications June 2016
 - CDS3 Inspector's Interim Findings on Swale Local Plan, Parts 1, 2 & 3
 - CDS4 SBC/PS/115: Summary of main issues arising from consultation on main modifications, October 2016
- 7 Peter Brett Associates October 2016 OAN Advice Note
- 8 Supplementary Statement on Best & Most Versatile Agricultural Land (Mr Lloyd-Hughes)
- 9 Rebuttal of Evidence – Planning (Ms Barr) with two attached appeal decisions
- 10 Appeal decision Ref APP/G2435/W/15/3005052
- 11 Secretary of State appeal decision Ref APP/R0660/W/15/3136524
- 12 CPRE Kent Opening Statement (Mr Knox-Johnston)
- 13 Appendices A-E to Councillor Wright's evidence
- 14 Anonymous response written on reverse of A4 leaflet entitled "Wake Up Newington"
- 15 1976 Soil Survey Land Use Capability classification table and plan of Newington and surrounding area
- 16 Agricultural Land Classification and Soil Resources report for Persimmon Homes site at Land north of High St, Newington (April 2015)
- 17 Signed Statement of Common Ground on highways matters between Kent County Council & Ashley Helme Associates Ltd
- 18 Design & Access Statement and site layout plan for Persimmon Homes site at Land north of High St, Newington
- 19 Kent Minerals & Waste Local Plan, policies CSM 4 & DM 7
- 20 Page of additional information on air quality monitoring 2015-16 and plan of air quality monitoring points in Newington
- 21 Signed Statement of Common Ground on planning issues between the Council and the appellants
- 22 Signed Statement of Common Ground Supplementary No 1 on highways matters between Highways England, Kent County Council & Ashley Helme

- Associates Ltd
- 23 School roll figures for Newington CE Primary School, 7 November 2016
- 24 Judgment in *Client Earth (No 2) v SoS for Environment, Food & Rural Affairs and others* [2016] EWHC 2740 (Admin)
- 25 Extract from *Guidelines for Landscape and Visual Impact Assessment*, including Box 5.1
- 26 DCMS, *Principles of Selection for Listing Buildings*
- 27 *Kent Farmsteads Guidance, Part 1 – Farmsteads Assessment Framework*
- 28 *Further observations on air quality following the High Court judgement 2nd November 2016* (Prof Peckham)
- 29 Lists of draft conditions for Appeal A & Appeal B
- 30 Letter from Mr S Barker of Gladman to PINS requesting that the Appeal B access arrangements should also apply to Appeal A
- 31 Table and plan showing Correlation of Swale Borough Council monitoring locations with Existing Sensitive Receptors modelled by Mr Walton
- 32 Highways England, *Information regarding the Government's Road Investment Strategy as it relates to M2 junction 5*
- 33 Extract from Ricardo Energy & Environment. *Kent & Medway Air Quality Monitoring Network*, p60, Figures 49 & 50
- 34 Track-changed version of draft Unilateral Undertaking for Appeal A showing comments from the Council
- 35 Track-changed lists of draft conditions for Appeal A & Appeal B showing comments from the Council and the appellants
- 36 SBLP Implementation and Delivery Schedule 2016/17
- 37 Council's note and tables regarding proposed developer contributions
- 38 Email correspondence between the appellants and Kent County Council regarding education contributions, with attached tables
- 39 Closing Statement for CPRE Kent (Mr Knox-Johnston)
- 40 Closing Submissions for the Council (Mr Upton)
- 41 Closing Statement for Gladman Developments Ltd (Mr Cairnes)
- 42 Email exchange between Mr Mackenzie and the Council, dated 30 November and 1 December 2016, setting out agreed wording for a proposed affordable housing condition
- 43 Certified copy of executed Unilateral Undertaking for Appeal A
- 44 Certified copy of executed Unilateral Undertaking for Appeal B
- 45 Email from Kent County Council dated 6 December 2016 concerning the executed Unilateral Undertaking for Appeal A
- 46 Email from Kent County Council dated 6 December 2016 concerning the executed Unilateral Undertaking for Appeal B

PLANS SUBMITTED DURING THE INQUIRY

- A Drawing No 6363-SK-01 rev A: *Proposed Redevelopment of Pond Farm Outbuildings – Indicative Sketch*
- B Kent Minerals & Waste Local Plan, plan showing Mineral Safeguarding Areas in Swale
- C Plan showing suggested accompanied site visit itinerary