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## Appeal Decision

Inquiry held 1 to 4 October 2013

Site visit made on 11 October 2013

by **S J Papworth DipArch(Glos) RIBA**

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

**Decision date: 29 October 2013**

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**Appeal Ref: APP/T2215/A/13/2195591**

**Land to the north of Hedge Place Road, Stone, Dartford, Kent**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Fairview Homes against the decision of Dartford Borough Council.
  - The application Ref DA/12/01150/FUL, dated 17 September 2012, was refused by notice dated 20 February 2013.
  - The development proposed is erection of 56 dwellings comprising 33 x 3 bedrooms and 11 x 4 bedroom houses and 12 x 2 bedroom flats together with associated landscaping works, parking and infrastructure works.
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### Decision

1. I allow the appeal and grant planning permission for erection of 56 dwellings comprising 33 x 3 bedrooms and 11 x 4 bedroom houses and 12 x 2 bedroom flats together with associated landscaping works, parking and infrastructure works at Land to the north of Hedge Place Road, Stone, Dartford, Kent in accordance with the terms of the application, Ref DA/12/01150/FUL, dated 17 September 2012, subject to conditions 1) to 23) on the attached schedule.

### Procedural Matters

2. The Inquiry sat for the four days noted above with closing submissions in writing after the event, the Inquiry being closed by letter dated 14 October 2013. In addition to the accompanied site inspection on 11 October, unaccompanied visits were made during the day on 26 September and, at the request of residents, at 1730hrs on 3 October and 0730hrs on 4 October.

### Main Issues

3. These are the effect of the development on;
  - The living conditions of future occupiers with regard to amenity space.
  - The living conditions of future occupiers with regard to privacy and outlook.
  - Parking, highway safety and the free flow of traffic.
  - Landscape features and biodiversity.
  - The aims of policy on accessible and sustainable development.
  - The aims of the Windfall Site Practice Note.

## Reasons

### *Policy Background and Density*

4. The Development Plan includes the saved policies of the Dartford Local Plan 1995 and the Core Strategy adopted in September 2011.
5. Saved Local Plan Policy B1 states factors that will be taken into account in considering development; proposals should include parking provision in accordance with the Council's adopted standard. The Council refers to Local Plan Appendix 9 which sets out guidelines for the layout and design of new housing developments, including separating distances for facing windows of 25m for two storeys, rear gardens and private communal amenity space for flats at 35m<sup>2</sup> for up to 2 habitable rooms and 50m<sup>2</sup> for 3 and more. However, there is doubt over whether Appendix 9 to the Local Plan is extant. It may well have been saved when Policy H10 was saved by Direction of the Secretary of State dated 25 September 2007, as there are cross references between the Policy and the Appendix. However, Appendix 4 of the Core Strategy lists Policy H10 as being replaced on the adoption of that document. Since it appears that H10 was the only policy that directed readers to Appendix 9 it is reasonable to assume that it is no longer extant.
6. Core Strategy Policy CS10 sets the housing provision, and windfall sites will be considered for their sustainability, whether the benefits outweigh disbenefits, the capacity of infrastructure or the ability of the site to provide for the requirements it generates. A Windfall Sites Practice Note has been published including a questionnaire to test the performance of sites. Policy CS14 1e seeks the protection of priority habitats and species and states that biodiversity enhancements will be focussed on the Biodiversity Opportunity Areas. Policy CS15 states that in order to reduce the need to travel, minimise car use and make the most effective use of the transport network, the council will develop a car parking Supplementary Planning Document with standards taking account of availability of alternative means of transport and the need to support the requirements of family life through provision of visitor parking. In advance of that Supplementary Planning Document the Kent County Council standards would have applied. Policy CS17 requires that the criteria identified as locally important are addressed in the design of homes, and these include that usable private amenity space, usually provided as a garden in family houses and a balcony, patio or roof garden in flats. Section 4c details broad indications of appropriate densities in dwellings per hectare, rural village sites below 40, town centres and selected places over 50, and in other urban sites 35-55. The appeal site falls to be considered in this last category.
7. The Supplementary Planning Document '*Parking Standards*' was adopted in July 2012 following the gathering of evidence and public consultation and from that date, as stated in Policy CS15, superseded the Kent County Council standards.
8. The National Planning Policy Framework sets out at paragraph 14 the presumption in favour of sustainable development, as well as addressing in subsequent sections the supply of housing, design, biodiversity and other matters relevant to this appeal.
9. In order to reach a preliminary finding on density Policy CS17 will be looked at in more detail. The supporting text states the purpose of development as being, first and foremost, about ensuring a good quality of life for all residents

and creating the right conditions for communities to flourish. It goes on to say that the Council believes that design criteria which determine the quality of residential layout, rather than density standards, should guide development of sites. In that light it is clear that the stated 'broad indications of appropriate densities' of policy section 4c cannot be taken as being 'standards' to be passed or failed, and that it is the effect of any given density that matters. Whether measured to the red line boundary as asserted by the Council, or the centre of the road as preferred by the appellant, the density is above the 55 dwellings per hectare of the broad indications but that is not determinative of the appeal and the following main issues will consider the effects of the location, design and layout proposed.

*Living Conditions; Amenity Space*

10. The Council's objections concern the flats at plots 45 to 56. Firstly with regard to communal space they calculate from Appendix 9 that the 12 flats should each be provided with 35m<sup>2</sup> of private communal amenity space, totally 420m<sup>2</sup>. Communal space would not be private between the fellow occupiers of flats, but should be away from public, non-occupier gaze. These figures, which are guidelines only, are not taken forward into the Core Strategy where Policy CS17 requires at section 1b that criteria identified as locally important are to be addressed, including high quality communal open space. The significance of the phrase 'identified as locally important' is unclear, other than the reference in section 2 to as-yet unpublished further policies and guidance. Nevertheless, the policy requirement is to address these matters, and the appellant points to the large area of open space close-by to the north-east of the block of flats. These dwellings are among the closest to this amenity and the arrangement of the on-site provision, including the landscaping and enclosure would be of a high quality. Together these spaces would provide a choice of seclusion and privacy, or open space and interaction with the wider local population.
11. The second concern is over the lack of private amenity space where Policy CS17 section 1b requires usable private amenity space, usually provided in the case of flats as a balcony, patio or roof garden. With the choice of either the on-site space communal to the flats or the large parkland and play area nearby at Waterstone Park, the occupiers would have ready access to a significant amount of high quality space and similar comments as have been expressed above regarding the wording of the Policy and the guideline nature of the Appendix, including doubts over its ongoing status, apply here.
12. In conclusion on this main issue, there is a lack of private space and a lower square area of communal space than now sought by the Council notwithstanding the previous Officer's view that the scheme was acceptable. However, having mind to the nature and wording of the policy and guidance and the proximity, size and quality of the Waterstone Park open space, the provision of communal open space is considered to be of a suitable quality and usable area and the overall provision for the flats is acceptable

*Living Conditions; Visual Amenity and Privacy*

13. There are places within and around the development where the separation between dwellings is below the 25m distance stated in Appendix 9. Apart from this figure being in a document that is described as guidelines, and doubts over its status, all as commented on in the preceding main issue, there is evidence of the Council's recent use of a 20m rear-to-rear distance from the 2004 Draft

Local Plan Review. The reason why this figure had not been used in this appeal was not adequately explained but 20m is a commonly used distance and even then, this may be varied according to the circumstances. The Appendix 9 figure took no account of whether the relationship was rear-to-rear, front-to-front across a street, or towards a side wall, but did relate to opposing windows rather than blank walls.

14. Looking at each of the areas of concern;

- *Flats 45, 46 and 47* face buildings on Waterstone Park at more than 20m separation, across their own front landscaped area, the service road, another strip of landscaping and the main north-south footpath. Being front-to-front and with the landscaping between, this relationship is acceptable.
- *Houses 33 to 30* face houses 40 to 43 by an increasing separation distance due to being at an angle to each other. It is the case that 33 and 40 are less than 20m apart, but both being at the end of the terrace there is open space to the side of each as seen from the other and the relationship is angled which would reduce the risk of overlooking. The landscaping drawing, FNH399/LS03A shows a plum tree on plot 40, between the houses which, although deciduous, would filter some upper floor to garden overlooking. The relationship of these two pairs of four dwellings is acceptable.
- *Houses 5 and 6* on the west side of the access road face houses 15, 14 and 13 to the east side with distances of 8.6m between. This is a front-to-front relationship and with the block containing only 15, 14 and 13 being isolated in otherwise open land, there is light to both sides in the outlook from the western properties. The appellant has put forward townscape reasons why this 'pinch-point' has been designed in, and it is clearly a deliberate feature rather than a failing in layout. The private garden space to the rear would not be affected and in the circumstances the arrangement is acceptable.
- *House 12* faces the flank wall to house 13, at a distance in the order of 7m at the least across its rear garden. There is no threat to privacy as the flank wall of house 13 has only obscure glazed windows that can be secured and retained by condition, and the isolated nature of house 13 with light and air to either side would prevent the occupiers of house 12 feeling hemmed in or having an overbearing outlook. The appellant has supplied further information to the Appeal showing that the sunlight and daylight reaching house 12 would meet relevant standards. This relationship is therefore acceptable.
- *Houses 10, 11, 17 and 18* would back onto the side boundaries of the rear garden to houses 13 and 15 at either end of the short terrace. However this is not an unusual arrangement at the turn in a road, and the landscaping drawing FNH399/LS02A shows various crab apple and pear trees between and, as with houses 33 to 30 and 40 to 43, although deciduous, these would filter views in an already acceptable layout.

15. To conclude on separation distances, the arrangement proposed would accord with the aim of Policy CS17 to achieve living communities that enrich the quality of life and provide the conditions for communities to flourish and where

the separation appears somewhat close, the layout of the built form sufficiently mitigates the effects.

#### *Parking and Highways*

16. The appellant had based their parking provision on the Kent County Council standards and on discussion with the County Council as highway authority. It is clear from Policy CS15 j) that these were the correct ones prior to the adoption of the Borough Council's Supplementary Planning Document '*Parking Standards*' in July 2012. It is clear also that even after that adoption the County Council remain of the view that the parking provision is sufficient, and appropriate, as set out in the Highways Statement of Common Ground. That view carries considerable weight insofar as the effect on the highway is concerned as they, as highway authority, would need to be satisfied that the parking provision would not cause problems on the highway outside the site.
17. It does appear to be the case that there is a variance between the evidence within the background paper that should have informed the standards, and the adopted Supplementary Planning Document with regard to the need for van parking and provision generally. It appears that the consultation process influenced the final standards, but it is unclear how representative that consultation was, although the attendance at a particular workshop was submitted. Also unclear is the extent to which the standards reflect differing locations and their access to public transport and propensity to own a car. Be that as it may, the Supplementary Planning Document does not require adherence to the stated numerical standards where it can be shown that the amount of parking will be adequate, so there is scope for tailoring the provision to need, having regard to alternative transport.
18. The appellant points to Castle ward as having a low car ownership rate, and that may well be explained at least in part by the close proximity of much of the existing housing in the ward to Greenhithe station with its good train and bus connections. The site is adjacent to but not in Castle ward but would share much of the characteristics of that ward in terms of access to alternative transport. By far the most direct and attractive walking route would be by Waterstone Park to London Road bus stops or further to Greenhithe station, and any delay in driving the counter-intuitive route via Hedge Place Road and the traffic lights would add to the likelihood of walking being the preferred choice.
19. The low car ownership figure in Castle ward should however be treated with caution, as the ward is very small so the statistical accuracy may be low, there is little information solely for areas further from the station, other than the problems with parking at Waterstone Park, and the Council state that there is evidence of a tendency for car ownership in new developments to grow over time. Nevertheless, the appellant is not proposing only the amount of parking generated by this ownership figure but a greater amount with informal parking available also along Hedge Place Road, which may alleviate the stated pressure elsewhere. Added to that is the likelihood that the rented accommodation would generate less parking. In all, the parking provided appears to be more than is indicated by the census data and provides a buffer against upward movement in the demand such as through distance from the station and visitors.

20. The parking standards include a specific requirement for van parking that did not feature on the County Council standards. Some residents could bring work vans home, or work from home using a van. What is not so certain is the likely size of such vans although it is clear from evidence at the Inquiry that 'transit' style vans can vary from a large car to a small lorry in size. The evidence base for the parking standards does not provide the information. The consultation document lists two areas; trip generators such as DIY suppliers is clearly not applicable here, but the second entry refers to safe/overlooked provision either in the form of secure communal areas, designated on-street provision or on-plot. This does appear to be applicable to a residential environment rather than a commercial one, but the lack of information in the evidence base reduces the weight that can be attached to this aspect of the guidance.
21. Also unclear is the degree to which use of a van would obviate the need for that worker to operate a car; a car would not be needed to gain access to work and it is possible that instead of being additional to the general car parking requirements, the van would replace one car in the family. That still leaves the matter of size, but on that basis it would not make best use of land to allocate oversized bays where they are not needed. The provision of the 'buffer' amount of spaces as determined previously would allow for oversized van parking in parallel parking areas, and this, together with other unknown eventualities are better dealt with by a parking management strategy secured by condition than by trying to design for every eventuality.
22. There were representations to the Appeal over existing parking stress. The first is that on Hedge Place Road, which is narrow in parts and has a fully developed residential frontage. At the time of the site inspections there were vehicles parked on the extended footway at the corner with St James Lane, as well as on other available hard areas and front driveways. The evidence is that the development of the site with the opening up of the additional length of Hedge Place Road would not be likely to cause displacement of new occupiers' vehicles onto the existing road, but could provide some alleviation of the existing situation.
23. With regard to Stonechat Mews, there does appear to be a problem, and the appellant states that this is due to an inflexible allocation of spaces, whether the need is there or not, and the specific arrangement of garages backing onto the Mews from dwellings on The Boulevard. This points to the benefit of there being a more flexible regime by way of the parking management strategy as proposed for the appeal site, and the lack of garages here would avoid the temptation to use it for storage, thus displacing the car into another space.
24. Local residents have expressed concern over the additional traffic. As stated above, regardless of the locally set parking standards, the County Council retain their responsibilities as highway authority and they have given due consideration to the traffic generation and its effect on the local road network. A later main issue will look at the accessibility and sustainability of the site and the policy aim of reducing the need to use a car, but based on the trip generation figures it appears that the addition of the proposed development should not cause harm to highway safety and the free flow of traffic. Alternatives have been put forward in order to address the lack of footway along a short section of Hedge Place Road and a Travel Plan secured by condition would have an aim of reducing use of the car.

25. The conclusion is that with conditions to require a parking management strategy and a travel plan, there is sufficient justification for the proposed alternative to the adopted Supplementary Planning Document parking figures and the development would not be likely to have an adverse effect on highway safety and the free flow of traffic. Nevertheless, the existing occupiers would experience an increase in traffic in the *cul-de sac*, as although that status will not change, more dwellings would be served. That effect will be considered as part of the overall planning balance.

#### *Landscape and Biodiversity*

26. It appears that the hedge along the Hedge Place Road frontage is important through being more than 30 years old and through the discovery of two common lizards. There is a presumption in favour of its retention. The appeal proposal involves the removal of the hedge and this has some positive effects with regard to the character and appearance of the area, once the principle of development of the site as proposed is accepted. On that assumption for the time being, the removal of the hedge would integrate the site with the townscape established by the existing development to the east and west, by forming a street frontage.
27. The same applies to the proposal to use the road as a single-directional part of the vehicular circulation, as the present use as a pedestrian only route is not an attractive one, with encroaching vegetation and an inability to see far ahead, leading to a possible fear of crime in an area that is not subject to passive surveillance. The hedge does not add greatly to the character and appearance of the area and the limited role it plays would be covered by the bank of vegetation that would remain between the road and the cliff edge to the Bluewater shopping centre site.
28. That hedge, as a landscape feature of limited value, would be replaced with frontage planting including trees that would, with the dwellings and other features, introduce a suitable frontage whilst maintaining the height and depth of vegetation to the south to provide a backdrop in views from London Road and the greater distance of the Queen Elizabeth II Bridge. As part of the development of the site the proposed landscaping would be an enhancement of the site and would provide an attractive setting for the built form.
29. There was conflicting evidence over the ecological value of the hedge and the diversity of the flora. The hedge was examined at the site inspection and the species named by the appellant, without dissent. Those seen were predominantly dog rose, old man's beard, elder, ash, bramble, ivy, field maple and butcher's broom. Much of the green colour and appearance of vigour was provided by the ivy and other invasive species such as the old man's beard, which cloaked the other specimens. In particular, the remains of the ash trees were poor specimens. The contribution of the hedge to fauna species will be considered next but its contribution to flora biodiversity and the landscape of the area is limited and can be readily mitigated, together with some enhancement in the form of new landscape features and a more sustainable planting scheme that will be maintained.
30. Policy CS14 sets out the action to be taken to implement a multi-functional, high quality, varied and well managed Green Grid including by protecting and enhancing existing open spaces as well as priority habitats and species. Paragraph 118 of the Framework states that when determining planning

applications, the aims should be to conserve and enhance biodiversity by applying the following principles: if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

31. It is reasonable to see the Policy CS14 1e aim as being delivered through development management, among other ways. In this case there is the evidence of common lizards on site, detected by a thorough and repeated process, and a single specimen of a stag beetle. This latter sole specimen is not explained but its finding is an accepted fact and the appellant has taken steps to ensure its continued survival as a species on the site. In the case of both the lizard and the beetle alternative habitats and transfer will be provided and in relation to the numbers found and the nature of the existing habitat, this is an enhancement. Similarly there is no argument that bats and birds make use of the site and its landscape features, but boxes can be secured by condition that would enhance their habitats whilst the proposed diversity of flora would be an enhancement for foraging and would assist other species such as bees. The lack of a bat activity survey is not a major shortcoming with their presence being acknowledged and catered for.
32. The feasibility of moving stag beetle larvae was questioned, and there is a difference of opinion between interested organisations such as Bug Life and the Kent Wildlife Trust. However, it appears that this is something that has been done successfully in the past and there is no reason to consider, with the numbers apparently involved, that the appeal site is likely to present insurmountable difficulties.
33. Having mind to the amount of new planting, the areas designated as being new habitat for relocated species, and the bat and bird boxes that would be provided, set against the limited value of the hedge and the extent of priority species found, it is reasonable to conclude that the result of the development would represent an enhancement of habitats and biodiversity so that the aims of Policy CS14 would be furthered and the proposal would conform with the principles set out in the Framework.

#### *Accessibility and Sustainable Development*

34. There is an overlap with the evidence regarding car ownership, the access to alternative transport and the resulting parking provision. There is a choice of transport modes available to the site as follows;
  - *Stone Crossing station* is accessible by way of Hedge Place Road and across the London Road, or according to ground conditions, by way of the footpath from Hedge Place Road to London Road and another by Stone Church. However, the train service from that station is not as good as from Greenhithe.
  - *Greenhithe station* is on the same North Kent Line, is accessible by hard footpath and highway footways through the Waterstone Park development, and has a frequent service to Dartford and London by way of south-east London suburban areas, and to Medway and east Kent.
  - *Ebbsfleet International station* is accessible from the site by walking and then bus and is on the High Speed 1 line giving fast access to Stratford



International, St Pancras International, Ashford International and the European rail network.

- *London Road bus stops* provide access by conventional bus routes to Dartford and further west, and to Gravesend.
  - *Fastrack buses* run on two routes, 'A' runs from the Bluewater shopping centre via Greenhithe station to Dartford by way of various employment, education and leisure areas, and 'B' runs from both Bluewater and Greenhithe station to Dartford in one direction and Ebbsfleet International station and Gravesend in the other, again by way of various employment, education and leisure areas. The routes run in part on dedicated rights of way.
35. The proximity to transport is only part of the consideration, as in order to be an attractive proposition over use of the car the service needs to be reliable, preferably frequent, and of good quality, in addition to serving the places of interest, which is the case here. In this respect the difference between the 'inclusive mobility' figure and the TfL figure for distances to bus stops is of limited importance. The High Speed 1 total journey time to London as an example is comparable to that by the North Kent Line and would be attractive to commuters as an alternative according to the area of London required. The need to change transport modes between walking, bus and train at Ebbsfleet may be off-putting though and builds in some waiting time and uncertainty.
36. There is a risk of the car being used for Ebbsfleet or Greenhithe either as 'kiss and ride' or parked all day, although the former may be associated with another journey and the latter is still preferable to a longer distance car-only journey. Access by car to Greenhithe or Ebbsfleet would be circuitous due to the need to exit onto London Road from the west end of Hedge Place Road or onto the A296 by St James Lane, with the risk of the congestion at peak times referred to in representation.
37. It is a fact that, with ready access to London, the site would be attractive to commuters, as is the wider area. At the same time, even if employment and residential areas were in close proximity, which is in any event the case here, there is no certainty of only the shortest commute being made. It would be unreasonable to criticise the location of the site on this basis, as it is a location closely shared with the recently developed Waterstone Park.
38. The Fastrack bus routes are attractive for their frequency, speed and the limited likelihood of being affected by other traffic, and serve a good range of destinations. The nearest stops at present appear to be Bluewater and Greenhithe Station, although both routes pass along St Clement's Way. There was evidence that proposed development at St Clement's would bring the appeal site within a closer distance of a Fastrack stop. However even at present, the positive attributes of the service would be likely to outweigh the additional walking distance to the stops as compared with the conventional bus services. There is presently a limited use of buses in Castle ward although it is a small ward and nowhere is far from a good train service. The appeal site would be closer than some parts of the ward. Other statistics appear to indicate a high car usage, but there is also a high level of employment, and yet the proportion of car drivers is low with only town centre wards being lower.

39. It is possible to walk to various facilities and service providers such as doctor's local convenience shops and the like. Bluewater shopping centre is within walking distance. Being between two established residential areas, the site should not be regarded as isolated or as being in an unsustainable or inaccessible location.
40. On the matter of sustainable development, paragraph 7 of the Framework, sets out three dimensions;
- *An economic role*, where the development would be on land of the right type, which is available, and in the right place and at the right time to support growth generally.
  - *A social role*, through the meeting of needs for present and future generations, assisting through the support that this will bring for the use of services, and the social life of the area, and through integrating two separated residential areas. The provision of affordable housing among market housing will foster social cohesion which would help provide a balanced community.
  - *An environmental role* has been set out previously and the net result of the development would be beneficial, with housing placed in an accessible location, allowing access to transport and services other than by car, assisting in a general movement towards a low carbon economy.
41. The proposal would therefore further the aims of promoting sustainable forms of development, and that of Policy CS15 in managing transport demand and reducing the need to travel, minimising car use and making the most effective use of the transport network, and significant weight attaches to this.

#### *Windfall Site Practice Note*

42. The Windfall Site Practice Note was published in September 2012 and the Introduction explains that it sets out the Council's approach to windfall sites and how Policy CS10 section 4 of the Core Strategy is to be applied in the assessment of these sites. The Note is intended to provide consistency in the application of the policy, help applicants understand what information is used in the assessment and understand how the decision is made. The information to be used in assessing a site is set out in the Windfall Site Questionnaire at Appendix 2. The Note is not part of the Development Plan nor is it a Supplementary Planning Document.
43. A windfall site is defined as being one which has not previously been identified by the Council as having development potential. The definition section goes on to say that the Framework defines windfall sites as *'sites which have not been specifically identified as available in the Local Plan process. They normally comprise previously developed sites that have unexpectedly become available.'* This is not to say that to be a windfall site it has to be previously developed land, only that this is the experience of what is normally the case. The appellant surmised at the Inquiry that the appeal site was not previously identified as it was thought to be a landfill site. Whether that is the reason or not, the agreed fact is that the site was not used for landfill, although areas of Pit 9 and Pit 10 to the north and west were used, and the consequences of this will be considered in relation to conditions.

44. With regard to evaluation using the questionnaire, paragraph 3.3 states that as with the Core Strategy testing, an equal weighting for each of the issues is not appropriate as some objectives have greater importance and significance than others. It goes on to say that to be considered acceptable in principle, a proposed windfall site will be required to meet the following tests in the evaluation;
- *Brownfield land is normally a requirement* – the site is not previously developed land but the wording 'normally' is noted.
  - *High weighting in the assessment will be attached to the availability of local public transport services with a useful range of destinations, availability of local community services* – there is ready access to public transport and a range of destinations and services all as set out in the fifth main issue.
  - *A positive relationship with local landscape, townscape and heritage characteristics* – the fourth main issue has concluded positively on this aspect.
  - *There should be no overriding sustainability constraints that cannot be mitigated* – the fifth main issue has also concluded that the site is in a sustainable location and that the proposal represents sustainable development as detailed in the Framework.
45. A copy of the Questionnaire has been completed by the Council in order to inform their view, and in addition to the tests in paragraph 3.3 of the Note it contains references to affordable housing being to the policy requirement with an acceptable mix, the matter of the parking provision which has been addressed earlier in this Decision, biodiversity and the hedge which has been found acceptable. In all, the site is suitable for development as a windfall site.
46. One further area requires attention. There is no argument that the Council can demonstrate a five year supply of specific deliverable housing sites, as required by paragraph 47 of the Framework and therefore under paragraph 14 the proposals fall to be considered in relation to the Development Plan under section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. Paragraph 14 goes on to say that the presumption in favour of sustainable development means approving development proposals that accord with the Development Plan without delay.
47. The Council can achieve the 70/30 mix of houses and flats without the appeal development. There has been a slow-down in the delivery of housing, and affordable housing in particular, and the dates coincide with the downturn in economic activity. House sales appear to be climbing back now to previous levels. Conversely, there is no harm identified to supply by the development of this site and no competing house builders have commented on a risk of over-supply affecting their sales. The appellant claims that they are ready to develop quickly and that their market differs from the higher-end developments such as at nearby Ingress Park. Lastly, if there were more adverse effects on infrastructure provision, they could have been addressed either as a request for contributions, or by adding this as a reason for refusal.

48. The site's performance against the matters set out in the Windfall Site Practice Note and the accompanying Questionnaire do not call into question either the principle of development or the detailed design and layout of the development.

### Conditions

49. The appellant claims, as a benefit of granting permission, that housing can be delivered quickly. The conditions attached to the Officer's Committee Report contained a two year commencement condition, varied from the standard three years. The Council's suggested condition presented at the Inquiry varied the time for commencement yet again, to one year and the appellant objected to this. Having heard submissions from both sides, it appears that one year is likely to be too short a time to carry out habitat works which are also dependent on seasons. The originally proposed two years is a reasonable balance between speed and feasibility.
50. As stated in the sixth main issue, there is an area of land to the north and west of the site that was used for landfill, noted as Pit 9 and Pit 10, and venting stacks were seen on the site inspection. The Council of the London Borough of Bexley have a historic interest and a representative was present at the Inquiry and had taken part in discussions outside the Inquiry to agree the position and devise a suitable condition requiring a scheme to protect receptors. Part of the proposal was a condition removing permitted development rights, in order to retain control over construction methods so that future works incorporate the same necessary protection as the original buildings. Both conditions are necessary and reasonable in the circumstances.
51. Other conditions were discussed, and as a result it was agreed that;
- *Suggested Condition 4)* on drainage of parking areas is duplicated by Condition 20) and that the latter can be deleted.
  - *Suggested Condition 9)* on the timing of tree and shrub removal is not needed as that is covered by the Wildlife and Countryside Act 1981.
  - *Suggested Condition 10)* should be reworded to be the commencement of development rather than building operations.
  - *Suggested Condition 12)* on piling should be attached although the use of piling is unlikely.
  - *Suggested Condition 16)* concerning boundary enclosure should refer to being in place before the relevant units are occupied, not the whole development.
  - *Suggested Condition 18)* is not needed as the landscaping of the site, including the apartment block, is fully specified on drawings FNH399/LS02A and 03A.
  - *Suggested Condition 19)* should be reworded so that the point at which the obscure glazing is necessary is occupation of the relevant units, and not the whole development.
  - *Suggested Condition 22)* it is not reasonable to delay occupation of relevant units awaiting the completion of all parking provision. However, as the proposal does not rely on allocated spaces, it is not possible to link units to spaces. The Parking Management Strategy secured under suggested

Condition 24) should be used to set out the terms for completion of areas of parking as units are completed.

- *Suggested Condition 25)* providing for the submission of a Travel Plan, is required to encourage sustainable methods of transport, that being a matter to which weight has been attached in the third and fifth main issues.

52. In addition, conditions are required as follows;

- *Archaeological works* as recommended by Kent County Council Archaeology, based on experience at the nearby Waterstone Park development.
- *Reptile and stag beetle mitigation strategies and monitoring schemes*, the provision of bird and bat boxes, and control of street lighting through submission of a strategy, in order to mitigate the effect on bats, all being as discussed in the fourth main issue.
- *Materials* should be subject to submission of details and samples to ensure the quality of the scheme.
- *A Construction Code of Conduct* should be submitted to avoid or mitigate adverse effects of construction on the surrounding area and occupiers.
- *Hours of work* should be stipulated to protect the living conditions of nearby residents.
- *Unforeseen contamination* should be provided for in the interest of safety and amenity.
- *Landscaping implementation* to ensure the quality of the development
- *Cycle and bin storage* at the apartment block to ensure that facilities are available at the right time.
- *The drawings to which this permission relates should be listed* for the avoidance of doubt and in the interests of the proper planning of the area.

53. The resulting conditions satisfy the six tests of Circular 11/95 'The Use of Conditions in Planning Permissions' being necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.

### **Undertaking**

54. A signed and dated Unilateral Undertaking was presented, making agreed provision for the affordable housing, to which weight has been attached in the Decision; an education contribution as requested, to mitigate the effects of additional primary school-age residents in the area; for similar reasons an adult social services and youth services contribution; highway works to include options for the addition of a footway on Hedge Place Road where none is in place at present; and a contribution to the Strategic Transport Infrastructure Programme which is a joint initiative between the Council, Kent County Council and the neighbouring Gravesham Borough Council.

55. The provisions of the Undertaking satisfy the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010, being necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

### **Planning Balance and Conclusions**

56. The development accords with the Development Plan, delivering benefits to townscape and the integration of communities, with adverse aspects capable of being acceptably mitigated and enhanced as appropriate, and assisting in boosting the supply of housing, and affordable housing in particular, in an accessible location. Existing residents will experience change with more people living at the end of Hedge Place Road and their traffic having to make use of that road. However, measures can be put in place through conditions to limit the effects and there would be benefits to existing residents in the improvement to safety of the pedestrian only part of the road and the addition of footways, assisting access on foot.
57. The proposal is sustainable development and permission is to be granted for such development in line with the presumption stated in the Framework. The planning balance lies in favour of the development proceeding and the benefits outweigh the disbenefits. For the reasons given above it is concluded that the appeal should be allowed.

*S J Papworth*

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Caroline Bolton  
she called; of Counsel

Paul Nicholls BA(Hons) DipTP MRTPI Senior Development Control Planner  
Dartford Borough Council

Teresa Ryszkowska BSc(Hons)  
MPhil MRTPI Planning Policy Manager  
Dartford Borough Council

FOR THE APPELLANT:

Timothy Corner  
he called; of Queen's Counsel

Amanda Reynolds BArch MA  
RIBA FNZIA Principal ar Urbanism

Margaret Theobald BSc(Hons)  
DipHT MIHT Technical Director – Head of Transport  
Planning URS

Mark Cooper BA(Hons) DipLA MLI MCA Landscape Architects

James Patmore BSc(Hons) CEnv  
CIEEM CBiol MSB Head of Ecology ADAS

Martin Friend BSc(Hons) MTP MRTPI Managing Director Vincent and Gorbings

INTERESTED PARTIES

Madeleine Cross Resident  
Lee Nye Resident  
Peter Love Resident  
Mr & Mrs Tibby Resident  
Philip Williams Representing London Borough of Bexley

## DOCUMENTS

### Submitted by Council;

Document	DBCAD1	Travel to work census 2011
Document	DBCAD2	Travel to work census 2001
Document	DBCAD3	Map of Dartford ward boundaries
Document	DBCAD4	Planning Policy Statement 3 " <i>Housing</i> " extract
Document	DBCAD5	Parking Standards SPD – Consultation Statement
Document	DBCAD6	DfT ' <i>Inclusive Mobility</i> ' Guidelines 2005
Document	DBCAD7	TfL ' <i>Measuring Public Transport Accessibility Levels</i> ' April 2010 extract
Document	DBCAD8	Transit van lengths
Document	DBCAD9	Housing capacity coming forward in tandem with Hedge Place Road (if allowed)
Document	DBCAD10	Affordable housing capacity coming forward in tandem with Hedge Place Road (if allowed)
Document	DBCAD11	Update to Table 5.3 p41 Martin Friend Proof of Evidence (as corrected by DBC)
Document	DBCAD12	Notification letter dated 20 August 2013
Document	DBCAD13	Map showing Biodiversity Opportunity Area
Document	DBCAD14	2001 Census by ward, Train+bus+bicycle+walk and bicycle+walk
Document	DBCAD15	Housing/flat mix for housing development to January 2015 and Housing/flat mix completion 2012/13 to be read with DBCAD11
Document	DBCAD16	Draft conditions
Document	DBCAD17	Closing Submissions

### Submitted by appellant;

Document	A1	Parking Standards Background Paper
Document	A2	Photographs of existing and proposed views from London Road
Document	A3	Report to Development Control Board 19 January 2012 regarding Rolex Site
Document	A4	Note from Margaret Theobald on St Clements Way development
Document	A5	Note on sunlight and daylight Plot 12
Document	A6	Opening Submissions
Document	A7	Statement on behalf of Ian Marychurch, Director Card Geotechnics Limited
Document	A8	e-mail from Martin Friend re control of parking by condition
Document	A9	Method of Travel to Work 2001 and 2011 Census by ward
Document	A10	Statement of Agreed Issues with London Borough of Bexley
Document	A11	Closing Submissions
Document	A12	Unilateral Undertaking signed and dated 9 October 2013

### Submitted by interested parties

Document	3/1	Letters from Peter Love
Document	3/2	Speaking notes Madeleine Cross
Document	3/3	Letters from London Borough of Bexley



### Schedule of Conditions

- 1) The development hereby permitted shall begin not later than two years from the date of this decision.
- 2) No development or site clearance works shall commence until the implementation of a programme of archaeological work has been completed in accordance with a written specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.
- 3) No development shall commence until a scheme for protection of properties from landfill gas has been submitted to and approved in writing by the Local Planning Authority in accordance with section 10.2 of the Geoenvironmental and Geotechnical Interpretative Report by CGL dated August 2012. Details shall be provided of but not be exclusive to the following;
  - 1 Fully suspended and ventilated ground floor slab;
  - 2 A proprietary gas-resistant membrane across the whole floor slab;
  - 3 A basal gas-resistant membrane at the bottom of the sub-floor void within the area designated Worst Case CIRIA Characteristic Situation 3 on Figure of the CGL Ground Gas Summary Report – Revision 5, dated April 2013;
  - 4 Construction of roads, paved areas and hardstandings;
  - 5 Patio construction;
  - 6 Slab construction suitable for sheds or greenhouses;
  - 7 Services and soakaways;

The installation of the gas protection measures at the site shall be carried out by specialists, where appropriate and each element of the measures will be subject to validation by independent environmental consultants approved by the Local Planning Authority prior to the commencement of the work to be validated. The validation shall be carried out in accordance with paragraph 12.1 of the Geoenvironmental and Geotechnical Interpretative Report by CGL dated August 2012 and will be submitted to the Local Planning Authority for agreement prior to the occupation of each dwelling. The Local Planning Authority shall be given 10 days notice of the installation of the gas resistant membranes and the opportunity to monitor the installation of the remedial measures as they are carried out. The details shall be implemented prior to occupation of each dwelling hereby approved and thereafter retained in accordance with the approved details.

- 4) No development shall commence until details of the surface water drainage system for the development, including drainage of the parking areas, have been submitted to and approved in writing by the Local Planning Authority. No infiltration of surface water drainage into the ground is permitted other than with the written approval of the Local Planning Authority, where it can be demonstrated that there is no resultant unacceptable risk to controlled waters. The details shall be implemented as approved prior to first occupation of the development.
- 5) Prior to any clearance works, delivery of machinery or building operations on site details of a Reptile Mitigation Strategy and monitoring scheme (to include a programme of implementation) shall be submitted to and approved in writing by the Local Planning Authority. The Reptile Mitigation Strategy shall also include details of the programme for landscaping the

- receptor site in accordance with the approved landscape details and the protective fencing details to ensure the receptor area is not impacted on by construction working. The Reptile Mitigation Strategy and monitoring scheme shall be implemented in accordance with the approved details and programme.
- 6) Prior to the removal of the southern and eastern hedgerow a Stag Beetle Mitigation Strategy and monitoring scheme including a detailed method statement for the removal of the hedge; the collection and retention of stag beetle habitat and larvae; and to include a programme of implementation shall be submitted to and approved in writing by the Local Planning Authority. The Stag Beetle Mitigation Strategy shall also include details of the programme for landscaping for the receptor sites and the protection of the stag beetle habitat during construction works and landscaping works. The Stag Beetle Mitigation Strategy and monitoring scheme shall be implemented in accordance with the approved details and programme.
  - 7) No development shall commence until details of bird boxes and bat boxes to be fixed to buildings or trees have been submitted to and approved in writing by the Local Planning Authority and the bird boxes and bat boxes shall be implemented prior to the occupation of the dwellings in accordance with these details. The boxes shall be maintained in accordance with the approved details.
  - 8) No development shall commence until details and samples of all materials to be used externally have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
  - 9) No development shall commence (including demolition and delivery of associated machinery or materials) until tree and hedge protection measures have been erected around all retained/protected hedges and trees in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The protection measures shall be retained in place throughout the construction of the development.
  - 10) No development shall commence (including demolition and delivery of associated machinery or materials) until a Construction Code of Conduct has been submitted to and approved in writing by the Local Planning Authority. The site clearance works, provision of infrastructure and all construction work shall take place in strict accordance with the agreed Code of Conduct and this shall include:
    - 1 measures to regulate disturbance and disruption to local communities caused by construction activities;
    - 2 measures to minimise the noise impact of construction activities;
    - 3 details of construction lighting together with measures to minimise light pollution and impact on foraging bats in the area;
    - 4 details of dust suppression measures to prevent the deposit of mud on the highway;
    - 5 method of access for larger vehicles and delivery vehicles and provision of on-site turning area;
    - 6 method of access and parking of construction vehicles and employees vehicles, and;

- 7 location of site offices.
- 11) There shall be no piling on site unless the methodology is first agreed in writing with the Local Planning Authority, and any piling is to be carried out in accordance with the approved methodology.
  - 12) No construction work shall take place on the site outside the hours of 0800 to 1800 Mondays to Fridays inclusive, and 0800 to 1300 on Saturdays with no working on Sundays, Public and Bank Holidays, unless otherwise agreed in writing with the Local Planning Authority.
  - 13) If during any works contamination is encountered which has not previously been identified, then no further development shall be carried out (unless otherwise agreed in writing with the Local Planning Authority) until the developer has submitted to and received written approval from the Local Planning Authority for an assessment of this unsuspected contamination together with an appropriate remediation scheme and the remediation scheme is to be implemented as approved.
  - 14) Prior to the installation of any street lighting on the site a lighting strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall seek to reduce the light spillage on the hedges in the area and the impact on foraging bats. The street lighting shall be implemented only in accordance with the details approved in the strategy.
  - 15) Prior to the occupation of the development hereby approved, details of all boundary enclosures shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out so that residential units are not occupied until the relevant boundary enclosures are in place, and the boundary enclosures are to be thereafter retained in accordance with the approved details.
  - 16) The soft landscaping and biodiversity details as shown on drawing numbers FNH399/LS03A and FNH399/LS02A hereby approved shall be implemented, at the latest, during the first planting season (between October and March inclusive) following completion of the development and shall thereafter be maintained for a period of five years. Any trees, shrubs or grassed areas which die, are diseased or vandalised within this period shall be replaced within the next planting season.
  - 17) Prior to occupation of the relevant parts of the development hereby approved the windows in the flank elevations of units 13, 15 and 40 and in the eastern elevation of apartment types SA40 shall be obscure glazed with a minimum obscurity level of 3 as referred to in the Pilkington Textured Glass Range leaflet, or nearest equivalent as may be agreed in writing by the Local Planning Authority. The obscured glazing shall be retained as such thereafter.
  - 18) Prior to occupation of the apartments hereby approved, on site facilities shall be provided within the curtilage of the site for the secure and weatherproof storage of bicycles in accordance with details to have been submitted to and approved in writing by the Local Planning Authority beforehand. Such facilities shall be retained thereafter.
  - 19) The car parking spaces, turning areas and means of access shown on the approved plans shall be provided prior to occupation of the dwellings hereby approved served by those spaces, areas and access and shall be kept available for such use at all times and no development, whether permitted by the Town and Country Planning (General Permitted Development) Order 1995

or not, shall be carried out on that area of land or to preclude vehicular access thereto. The Parking Management Strategy to be provided under Condition 21) shall be used to determine which dwellings are served by the spaces, areas and access.

- 20) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order) no extensions, alterations or other form of enlargement to the residential development hereby permitted, nor erection of porches, outbuildings, hardstandings, storage tanks, gates, fences, walls or other means of enclosures, shall take place without the prior written permission of the Local Planning Authority.
- 21) No development shall take place before a Parking Management Strategy has been submitted to and approved in writing by the Local Planning Authority including full details of the implementation of the Strategy. The Parking Management Strategy shall thereafter be implemented and maintained in accordance with the agreed details.
- 22) Prior to occupation of the development hereby approved, a Travel Plan is to be submitted to and approved in writing by the Local Planning Authority and shall cover the following issues: Travel Plan co-ordinator; Travel surveys; Measures to be taken to encourage walking, cycling, use of public transport and reduce car travel by residents; Monitoring and review; Programme for implementation. The approved travel plan shall be implemented in accordance with the approved implementation programme.
- 23) The development hereby permitted shall be carried out in accordance with the following approved plans as listed in Sections 5 and 6 of the Appeal Documentation March 2013: FNH399/P/300, 301B, 310B, 311A, 312A, 313, 314, 320A, 321, 322A, 330B, 331, 332B, 333, LS02A and LS03A.