



Ministry of Housing,  
Communities &  
Local Government

Vic Hester  
VLH Associates  
93 Whitstable Road  
Canterbury  
Kent  
CT2 8EE

Our ref: APP/J2210/W/15/3141444

6 August 2018

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY HOLLAMBY ESTATES (2005) LTD  
LAND AT STRODE FARM, LOWER HERNE ROAD, HERNE, KENT CT6 7NH  
APPLICATION REF: CA/15/01317/OUT**

1. I am directed by the Secretary of State to refer to his letter of 23 March 2018 and to the report enclosed with that letter of the Inspector, Diane Lewis BA(Hons) MCD MA LLM MRTPI, who held a public local inquiry, which opened on 10 January 2017, into your client's appeal against the failure of Canterbury City Council to determine your client's application for full planning permission for the demolition of existing dwelling house in Conservation Area and two other dwellings, change of use of lagoon to allotments, ecological habitat and footpath link and improvements along Bullockstone Road; and application for outline planning permission for the development of a new mixed use neighbourhood with up to 800 dwellings, commercial and community development within a local centre, spine road, estate roads, other means of access, pedestrian and cycle links, improvements to existing footpath, sustainable urban design drainage measures, landscaped noise bund/earthworks and boundary treatments, public open space, highway related and utilities infrastructure; and approval for means of access from Canterbury Road and Bullockstone Road, in accordance with application ref: CA/15/01317/OUT, dated 16 June 2015.
2. A copy of the Secretary of State's letter of 23 March 2018 is enclosed at Annex A and forms part of the decision in this case. All paragraph references are to that letter, unless prefixed by IR, in which case they are references to the Inspector's Report.
3. In his letter of 23 March 2018, the Secretary of State noted revisions to the original application at paragraphs 5 -7. He also notes that a change of use of the lagoon area to recreational and leisure use was originally provided for, however, it was subsequently confirmed that there would be no material change of use involved (IR4.5).

4. He further notes that the description of the proposal was amended by the appellant in response to these changes and that the Council raised no issue on the matter. The amended description now states: “Hybrid application for the development of Strode Farm. The full element comprises the demolition of an existing dwelling house in the Conservation Area and two other dwellings, the provision of a footpath link and improvements along Bullockstone Road. The outline element comprises the development of a new mixed use neighbourhood with up to 800 dwellings, commercial and community development within a local centre, spine road, estate roads, other means of access, pedestrian and cycle links, improvements to existing footpath, sustainable urban design drainage measures , landscaped noise bund/earthworks and boundary treatments, public open space, the provision within an existing lagoon area for allotments and ecological enhancement, highway-related and utilities infrastructure with all matters reserved apart from means of access from Canterbury Road and Bullockstone Road” (IR4.7-4.8).
5. The Secretary of State considers that no prejudice would be caused by determining the appeal on the basis of the amended proposals and has proceeded on that basis.

### **Inspector’s recommendation and summary of the decision**

6. The Inspector recommended that the appeal be dismissed. For the reasons set out in his letter of 23 March 2018, the Secretary of State indicated he was minded to disagree with the Inspector’s recommendation subject to the appellant addressing the concerns he raised in paragraphs 15, 16, 22, 25, 35 and 39 of that letter relating to the affordable housing tenure split, the robustness of the planning obligation in securing 30% affordable housing, the provision of the necessary infrastructure to an acceptable timescale, and the provision of a proportionate contribution. Subject to these concerns being satisfactorily addressed, he was minded to allow the appeal and grant planning permission. If agreement could not be reached between the appellant and the Council, the Secretary of State would consider whether to dismiss the appeal and refuse permission. The Secretary of State also stated that he did not regard his letter of 23 March 2018 as an invitation to any party to seek to re-open any of the other issues covered in it.

### **Matters arising since the Secretary of State’s letter of 23 March 2018**

7. Following his letter of 23 March 2018 the Secretary of State has received a number of pieces of correspondence listed at Annex B.
8. The Secretary of State has noted, from the letter dated 17 May 2018 from Vic Hester, that the ownership of the land has changed since the Legal Agreements that accompanied the appeal were submitted.
9. The new National Planning Policy Framework was published on 24 July 2018. However, the Secretary of State does not consider that there is anything in the new Framework that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal and he is satisfied that no interests have thereby been prejudiced. Any references to the Framework in this letter are to the new Framework, except where specified.

## **Main issues**

### ***Meeting local housing needs***

10. In paragraph 15 the Secretary of State agreed with the Inspector that there was no sufficient justification for the proposed 70:30 split in favour of shared ownership and that failure to achieve the 70:30 split in favour of affordable rent would impact most on vulnerable members of the community.
11. The letter of 17 May 2018 from Vic Hester confirms that the Bi-lateral Agreement of the same date with Canterbury City Council makes provision for an affordable housing tenure split of 70:30 in favour of affordable rent. The Secretary of State is of the view that this satisfies his concerns in this matter.
12. In paragraphs 16 and 35 the Secretary of State agreed with Inspector that success in this appeal would result in an outline planning permission for up to 800 units and that the planning obligation should be based on that fact, rather than the premise of 728 dwellings net. Like the Inspector he therefore concluded that the planning obligation was not sufficiently robust to secure 30% affordable housing on the development described.
13. The letter of 17 May 2018 from Vic Hester confirms that the Bi-lateral Agreement of the same date with Canterbury City Council makes provision for 30% affordable housing up to 800 dwellings. That Agreement also makes provision for 30% affordable housing in each phase of the development. Any reference to affordable housing mix based on 731 dwellings has been deleted. The Secretary of State is of the view that this satisfies his concerns in this matter.

### ***Highways Infrastructure***

14. The Secretary of State concluded in paragraph 22 that the completion of the spine road by the 410<sup>th</sup> dwelling was required to avoid the development having a severe impact on the capacity of the A291 and reducing highway safety for a significant period of time during construction. The Secretary of State has noted that the appellant agrees that a suitably worded condition (drafted as proposed condition 35, but numbered 34 in Annex C to this letter) could be imposed to require the spine road to be completed by the 410<sup>th</sup> dwelling.
15. In paragraph 25 the Secretary of State considered that the proposal would not deliver the Herne Relief Road (HRR) at an acceptable stage in the development by reason of the phasing programme and the timing of the contribution to the Kent BRIS.
16. In the letter from Vic Hester of 17 May 2018, the Unilateral Undertaking of the same date to Kent County Council is stated to secure a developer financial contribution of £2,311,000 (being the proportionate contribution as agreed in the Statement of Common Ground between the local authorities and the Herne Bay strategic site developers) towards the Kent BRIS by the first occupation of the 250<sup>th</sup> dwelling. It is also stated to

reflect the potential for changes in the base cost of the Kent BRIS scheme by the Strode Farm owner covenanting to cover 51% of any increase in base cost above the current Strode Farm proportionate contribution upon notification of any increase by Kent County Council.

17. The Secretary of State has, however, noted that this Unilateral Undertaking is not acceptable to Kent County Council and the County Council's position is supported by Canterbury City Council. In a letter of 2 May 2018 Kent County Council set out their position that the total cost of the KCC (Kent) BRIS is £7.692m. £3.1112m has already been secured from the Herne Bay Golf Course site through a Section 106 agreement. The proposed contribution from the Strode Farm development is not the full outstanding balance which stands at £4.581m. The letter also states that without a legal agreement securing the full outstanding balance there is no guarantee that the KCC BRIS would be built leaving the County Council with a funding shortfall and that it has been made clear to developers that the HRR should be built at no additional cost to the County Council. Furthermore that the Secretary of State stated that the HRR was required even without the Hillborough development coming forward. The County Council stated they were prepared to sign up to an obligation to pass on any contributions towards the KCC (Kent) BRIS secured from the Hillborough development through their respective Section 106 agreements back to the appellant.
18. In his letter of 23 March 2018, the Secretary of State also agreed with the Inspector that there was strong justification for Hillborough to contribute to the Kent BRIS and that it would be disproportionate to require the appellant to commit to pay all the outstanding balance now with no enforceable mechanism in place to ensure the Hillborough share is secured. The Secretary of State has considered the response from Kent County Council and Canterbury City Council to the Unilateral Undertaking, but does not consider that there is an enforceable mechanism in place to ensure that the Hillborough share is secured. He concludes that this is a factor that weighs against allowing the appeal.

### ***Other matters***

19. In his letter of 23 March 2018 the Secretary of State stated that he did not regard the letter as an invitation to seek to open up any of the other issues in it. In his letter of 17 May 2018, Vic Hester has referred to the harm to heritage assets and the weight to be applied in the planning balance. The Secretary of State has reviewed paragraph 39 of his letter and considers that the issues raised do not affect his decision.
20. The Secretary of State also received correspondence from Canterbury City Council stating that Herne Village has now been designated as an Air Quality Management Area. The Secretary of State is of the view that the issue of Air Quality was considered in paragraph 22 of his letter and that the issues raised do not affect his decision.

### **Conditions**

21. The Secretary of State was minded to attach proposed condition 35 (now numbered 34 in Annex C to this letter) and has received confirmation that this is acceptable. The Secretary of State has noted that should condition 35 be imposed then the wording of condition 6 would also need re-visiting because the phrasing of the development would

change. He has considered the wording proposed by the appellant and is content that the amended condition 6 should be attached to any grant of planning permission.

22. The Secretary of State has noted that there is a proposed change in wording to condition 8 by Canterbury City Council but that this is disputed by the appellant. In his letter of 23 March 2018 the Secretary of State was satisfied that conditions 1-32 as recommended by the Inspector complied with the policy tests set out in paragraph 206 of the previous Framework and that these should form part of his final decision. The Secretary of State has considered the matter carefully and concludes that there is no reason to amend condition 8.
23. The Secretary of State is also satisfied that condition 33 as recommended by the Inspector complies with the policy test set out in paragraph 46 of the Framework and that this should form part of his final decision.
24. A full list of conditions (with revised numbering) can be found at Annex C to this letter.

### **Planning obligations**

25. In the light of his comments above, and having regard to the Inspector's analysis at IR10.16-10.45 and IR11.161-11.163, paragraphs 54-57 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended the Secretary of State is satisfied that the planning obligation on affordable housing complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.
26. His conclusions in paragraph 27 of his letter on obligations in respect of the Special Protection Area, the provisions on education and learning, open space and PROWs have not changed. He also notes that the planning obligation in respect of the travel plan monitoring payment which he concluded was not necessary to make the development acceptable in planning terms has been removed.
27. The Secretary of State has noted that Kent County Council were prepared to sign up to an obligation to pass on any contributions towards the KCC (Kent) BRIS secured from the Hillborough development through their respective Section 106 agreements back to the appellant. He has considered this offer against the tests at paragraph 56 of the Framework and he is not convinced that such an obligation would be directly related to the development and fairly and reasonably related in scale and kind to the development. Therefore he considers such an obligation, as suggested, might not comply with all the tests at paragraph 56 of the Framework.
28. The Secretary of State has carefully considered the submitted Unilateral Undertaking dated 17 May 2018 from Lower Herne Developments Ltd to the Kent County Council in respect of financial obligations to Highways Infrastructure, paragraphs 54-57 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended. The Secretary of State is satisfied that the Unilateral Undertaking, as submitted, complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. See also paragraphs 29-32 below.

## Overall conclusion

29. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies SP3, HE4, HE6 and T13 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
30. Weighing in favour of the proposal is the fact that the site is allocated in the development plan and would make a significant contribution to the district's housing land supply. The Secretary of State gives this significant weight. He also gives significant weight to the scheme's contribution to delivery of affordable housing, as well as the benefit of accommodating the route of the HRR, a priority road scheme. Furthermore the Secretary of State gives significant weight in favour to the earlier completion of the spine road and the earlier financial contributions towards the HRR than were originally proposed.
31. Weighing against the proposal, there is no enforceable mechanism in place to ensure that the Hillborough share of the Kent BRIS is secured to which the Secretary of State gives significant weight. He gives moderate weight to the under-provision of employment land and limited weight to the loss of BMV land. The Secretary of State considers that the proposal would cause less than substantial harm to the Herne Conservation Area. He gives this harm considerable importance and weight against the proposal. In accordance with paragraph 134 of the Framework, the harm to heritage assets must be weighed against the public benefits of the development. The Secretary of State considers that the combination of public benefits set out above clearly outweighs the less than substantial harm to the significance of heritage assets. The Secretary of State also considers that there is harm to the setting of a listed building and affords this harm significant weight.
32. For the reasons given above the Secretary of State now considers that the balance weighs in favour of the scheme. He also notes that an application for development on the Hillborough site was validated by Canterbury City Council on 16 August 2017 and considers there is a reasonable prospect of this coming forward. The Secretary of State, therefore, considers that there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan and he therefore concludes that planning permission should be granted subject to the conditions set out at Annex C.

## Final decision

33. Accordingly, for the reasons given above, the Secretary of State hereby grants planning permission subject to the conditions set out in Annex C of this decision letter for full planning permission for the demolition of existing dwelling house in Conservation Area and two other dwellings, change of use of lagoon to allotments, ecological habitat and footpath link and improvements along Bullockstone Road; and application for outline planning permission for the development of a new mixed use neighbourhood with up to 800 dwellings, commercial and community development within a local centre, spine road, estate roads, other means of access, pedestrian and cycle links, improvements to existing footpath, sustainable urban design drainage measures, landscaped noise bund/earthworks and boundary treatments, public open space, highway related and utilities infrastructure; and approval for means of access from Canterbury Road and

Bullockstone Road, in accordance with application ref: CA/15/01317/OUT, dated 16 June 2015 as amended (see paragraph 4 of this letter).

34. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

36. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

37. A copy of this letter has been sent to Canterbury City Council, Kent County Council and Herne and Broomfield Parish Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Richard Watson*

**Authorised by Secretary of State to sign in that behalf**

## Annex A – SECRETARY OF STATE’S LETTER OF 23 MARCH 2018



### Ministry of Housing, Communities & Local Government

Vic Hester  
VLH Associates  
93 Whitstable Road  
Canterbury  
Kent  
CT2 8EE

Our ref: APP/J2210/W/15/3141444

23 March 2018

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY HOLLAMBY ESTATES (2005) LTD  
LAND AT STRODE FARM, LOWER HERNE ROAD, HERNE, KENT CT6 7NH  
APPLICATION REF: CA/15/01317/OUT**

38. I am directed by the Secretary of State to say that consideration has been given to the report of Diane Lewis BA(Hons) MCD MA LL.M. MRTPI, who held a public local inquiry, which opened on 10 January 2017, into your client’s appeal against the failure of Canterbury City Council to determine your client’s application for full planning permission for the demolition of existing dwelling house in Conservation Area and two other dwellings, change of use of lagoon to allotments, ecological habitat and footpath link and improvements along Bullockstone Road; and application for outline planning permission for the development of a new mixed use neighbourhood with up to 800 dwellings, commercial and community development within a local centre, spine road, estate roads, other means of access, pedestrian and cycle links, improvements to existing footpath, sustainable urban design drainage measures, landscaped noise bund/earthworks and boundary treatments, public open space, highway related and utilities infrastructure; and approval for means of access from Canterbury Road and Bullockstone Road, in accordance with application ref: CA/15/01317/OUT, dated 16 June 2015.
39. On 27 June 2016, this appeal was recovered for the Secretary of State’s determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

#### **Inspector’s recommendation and summary of the decision**

40. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State disagrees with the Inspector’s recommendation. He has decided to

Ministry of Housing, Communities and Local Government Tel: 0303 444 3736  
Richard Watson, Decision Officer Email: PCC@communities.gsi.gov.uk  
Planning Casework Unit  
3rd Floor Fry Building  
2 Marsham Street  
London SW1P 4DF



give the appellant the opportunity to address the concerns he has raised in paragraphs 15, 16, 22, 25, 35 and 39 below relating to the affordable housing tenure split, the robustness of the planning obligation in securing 30% affordable housing, the provision of the necessary infrastructure to an acceptable timescale, and the provision of a proportionate contribution. Subject to being satisfied that these concerns can be satisfactorily addressed, he is minded to allow the appeal and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Environmental Statement**

41. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR1.6-1.7, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

### **Procedural matters**

42. The Secretary of State notes at IR1.9 and IR4.6 that the appellant made a planning application for an alternative road improvement scheme supported by Kent County Council (referred to as Kent Bullockstone Road Infrastructure Scheme – Kent BRIS). The Council granted permission for this scheme on 4 April 2017. As a consequence, the appellant withdrew its original proposed improvement scheme for Bullockstone Road, with a view to narrowing the matters in dispute regarding highway infrastructure. A schedule of amended plans was agreed with the main parties.

43. The Secretary of State notes at IR1.10 that proposal was also revised from around 15% to 30% affordable housing.

44. For the reasons given at IR1.11-1.13, the Secretary of State agrees with the Inspector that no prejudice would be caused by determining the appeal on the basis of the amended proposals and has proceeded on that basis.

### **Matters arising since the close of the inquiry**

45. On 10 November 2017, the Secretary of State wrote to the main parties to afford them an opportunity to comment on your correspondence dated 15 September 2017 about an application submitted for development at the Hillborough site. A list of representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 6 December 2017. The Secretary of State has carefully considered all of the representations received in his determination of this case. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

### **Policy and statutory considerations**

46. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

47. In this case the development plan consists of the Canterbury District Local Plan 2017 (the CDLP) adopted on 13 July 2017. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR3.2-3.17.
48. The Secretary of State has also considered the relevant Council strategies, as set out at IR3.18-3.22. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework'), associated planning guidance ('the Guidance') and those draft strategies and plans in IR3.23-3.26.
49. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.
50. In accordance with section 72(1) of the LBCA, the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

### **Main issues**

51. The Secretary of State agrees with the Inspector that the main issues are those set out at IR11.5.

#### Meeting local housing needs

52. The Secretary of State has given careful consideration to the Inspector's analysis at IR11.6-11.39. He notes the policy direction on tenure in Policy SP2 and the Council's Housing Strategy (IR11.15), where the proportion sought is 70% for rent and 30% shared ownership, a split which is in response to and fully supported by the housing needs of the District. In addition, local needs housing is an objective of the Strode Farm SSA in Policy SP3. The Secretary of State agrees with the Inspector that all these development plan policy and related considerations support the Council's position on tenure split applicable to the Strode Farm proposal. He agrees with the Inspector at IR11.38 that there is no sufficient justification for the proposed 70:30 split in favour of shared ownership and that failure to achieve the 70:30 split in favour of affordable rent would impact most on vulnerable members of the community.
53. The Secretary of State agrees with Inspector at IR11.11 that success in this appeal would result in an outline planning permission for up to 800 units and that the planning obligation should be based on that fact, rather than the premise of 728 dwellings net. Like the Inspector at IR11.37, he therefore concludes that the planning obligation is not sufficiently robust to secure 30% affordable housing on the development described.
54. Overall, the Secretary of State agrees with the Inspector at IR11.39 that the proposed amount and type of affordable housing is not an adequate and reasonable contribution to meeting local housing needs and therefore concludes that the proposal is not in accordance with that objective of SP3. The Secretary of State also considers that, as a result of deficiencies in the unilateral undertaking that the proposal would not ensure the delivery of 30% affordable housing in a timely manner (IR11.13-11.14 & IR11.141). The Secretary of State concludes, therefore, that the proposed development does not accord with Policy HD2 overall and is also not in accordance with SP2.

### Highway Infrastructure

55. The Secretary of State has given careful consideration to the Inspector's analysis at IR11.40-11.77. He notes at IR11.42 that the principal matters in dispute between the main parties are timing and funding for the Herne Relief Road (HRR).
56. With regard to capacity, for the reasons given at IR11.45-11.60, the Secretary of State agrees with the Inspector at IR11.61 that there would be a capacity objection even without the Hillborough development and that completion of the HRR would be necessary in advance of the proposed timescale.
57. With regard to highway safety, for the reasons given at 11.62-11.68, the Secretary of State agrees with the Inspector that the HRR would improve highway safety on the A291 through Herne (amounting to a moderate benefit), while the delay in providing the HRR would have a small negative effect.
58. The Secretary of State has given careful consideration to the Inspector's analysis on public transport at IR11.69-11.77. Like the Inspector at IR11.70, the Secretary of State considers that on current evidence the spine road and the Kent BRIS both need to be in place to ensure a bus service operates through the site. He notes that the phasing programme put forward by the appellant would not deliver completion of the spine road until the final phase of the development, which could be some 8 years or more from commencement of development (IR11.74).
59. Overall, like the Inspector at IR11.84, the Secretary of State concludes that the completion of the spine road by the 410th dwelling is required to avoid the development having a severe impact on the capacity of the A291 and reducing highway safety for a significant period of time during construction. He agrees with the Inspector that to delay the ability for residents to have good access to public transport and more particularly a bus service would be contrary to policy objectives to give people a real choice about how they travel and to reduce social exclusion. For the reasons given by the Inspector at IR11.78-11.83, the Secretary of State agrees with the Inspector at IR11.84 that in the centre of the village increases in traffic would make the pedestrian environment inhospitable and delay securing improvements in air quality, amenity would deteriorate, and overall there would be a severe impact on the community.
60. For the reasons given at IR11.84-85, the Secretary of State agrees with the Inspector that the phasing of the development has not been satisfactorily addressed contrary to a requirement of SP3; that insufficient account has been taken of the principles of the Transport Strategy in Policy T1; and that the intent of T13 would be undermined.
61. The Secretary of State has given careful consideration to the Inspector's analysis on funding for highway infrastructure at IR11.86-11.97. For the reasons given at IR11.92–11.94 he agrees with the Inspector that the planning obligation fails to ensure the necessary infrastructure is provided in an acceptable timescale and that a proportionate contribution is secured. Consequently there is a failure to comply with Policies SP3 and T13. He also agrees with the Inspector that there is strong justification for Hillborough to contribute to the Kent BRIS (IR11.95) and that it would be disproportionate to require the appellant to commit to pay all the outstanding balance now with no enforceable mechanism in place to ensure the Hillborough share is secured (IR11.96).
62. Overall, like the Inspector at IR11.100-11.101, the Secretary of State considers that the proposal would not deliver the HRR at an acceptable stage in the development by reason of the phasing programme and the timing of the contribution to the Kent BRIS. He agrees

that safe and suitable access to the site would not be achieved for all and the residual cumulative impact of the development would be severe through the construction phase.

### Employment floorspace

63. The Secretary of State has given careful consideration to the Inspector's analysis at IR11.102–11.108 and IR11.143. For the reasons given by the Inspector, he considers that the proposed land use content would not meet the primary objectives for the SSA Site 5 and the employment component would not adequately contribute to the supply of land for employment. Thus he concludes that the proposed development fails to comply with Policy SP3 of the CDLP (IR11.108).

### Effect on environment and social and physical infrastructure

64. The Secretary of State has given careful consideration to the Inspector's analysis at IR11.109-11.138. For the reasons given at IR11.09-11.112 he agrees with the Inspector that the development offers an opportunity to achieve a net gain in the biodiversity/nature conservation value of the site and to enhance the value and character of woodland and hedgerow networks.

65. For the reasons given at IR11.113-11.115, the Secretary of State agrees with the Inspector on the justification for an approved masterplan based on garden city principles before submission of reserved matters.

66. For the reasons given at IR11.116, The Secretary of State agrees with the Inspector that the loss of some 15ha of best and most versatile land does not weigh significantly against the development because the CDLP process has shown that not all the housing needs of the district can be met by re-using brownfield land or poorer quality agricultural land.

67. For the reasons given at IR11.117-11.123, the Secretary of State agrees with the Inspector that the proposal would result in less than substantial harm to significance of Herne Conservation Area and thus fails to comply with Policy HE6 (IR11.120). He considers that the setting of the Grade 2 listed building 'Downtops' would not be preserved and that there would be conflict with Policy HE4 (IR11.122). He gives the harm to both these assets considerable importance and weight.

68. For the reasons given at 11.124-11.131, the Secretary of State agrees with the Inspector that the proposal makes adequate provision for social infrastructure to meet an objective of the SSA and to contribute to the quality of life of the new community as required by the CDLP. However, like the Inspector at IR11.131, he considers that there may be inadequate health facilities for a temporary period, which means that a requirement of Policy QL8 is not fully met.

69. For the reasons given at IR11.132-11.136, the Secretary of State agrees with the Inspector that the proposal makes reasonable provision for open space and public rights of way.

### *Human Rights*

70. The Secretary of State has given careful consideration to the analysis of human rights at IR11.148-11.152 and agrees with the Inspector's conclusions at IR11.150 and IR11.152 that in both cases the interference would be justified and no violation of the residents' rights would occur.

## **Planning conditions**

71. The Secretary of State has given consideration to the Inspector's analysis at IR10.1-10.15 and IR11.153-11.160, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that conditions 1-32 as recommended by the Inspector, comply with the policy test set out at paragraph 206 of the Framework and that these should form part of his final decision. He notes that there was a clear difference of opinion on conditions related to highway infrastructure (IR11.158-11.159). Considering that the main parties have discussed proposed conditions at length, and bearing in mind the Inspector's conclusion set out in paragraph 22 above, the Secretary of State is minded to attached proposed condition 35 (IR page 107) to any grant of planning permission. He is however, willing to receive views on this approach, in the context of this decision.

## **Planning obligations**

72. Having had regard to the Inspector's analysis at IR10.16-10.45 and IR11.161-11.163, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State shares the Inspector's concern about obligations on affordable housing and highways infrastructure (IR11.161). The Secretary of State, like the Inspector, concludes, for the reasons given at IR11.169-11.172 that the obligation for affordable housing is not robust enough and the obligation for highways infrastructure is not acceptable. For the reasons given in IR11.162 the Secretary of State also agrees with the Inspector that the travel plan monitoring payment included in the section 106 agreement is not justified and is not necessary to make the development acceptable in planning terms.

73. Having had regard to the Inspector's analysis at IR11.161 the Secretary of State agrees with the Inspector that the planning obligations in respect of the Special Protection Area, the provisions on education and learning, open space and PROWs comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.

## **Planning balance and overall conclusion**

74. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies SP2, SP3, HD2, QL8, HE4, HE6, T1 and T13 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

75. Weighing in favour for the proposal is the fact that the site is allocated in the development plan and would make a significant contribution to the district's housing land supply. The Secretary of State gives this significant weight. He also gives significant weight to the scheme's potential contribution to housing (including affordable), as well as the benefit of accommodating the route of the HRR, a priority road scheme.

76. Weighing against the proposal, the Secretary of State gives significant weight to the delay in completing the spine road and the delay in the financial contributions towards the HRR. He gives moderate weight to the under-provision of employment land and limited weight to the loss of BMV land. The Secretary of State considers that the proposal would

cause less than substantial harm to the Herne Conservation Area. He gives this harm considerable importance and weight against the proposal. In accordance with paragraph 134 of the Framework, the harm to heritage assets must be weighed against the public benefits of the development. The Secretary of State considers that the combination of public benefits set out above clearly outweighs the less than substantial harm to the significance of heritage assets. The Secretary of State also considers that there is harm to the setting of a listed building and affords this harm significant weight.

77. In paragraphs 15, 16, 22, 25, 35 and 39 above, the Secretary of State has set out a number of concerns relating to the affordable housing tenure split; the robustness of the planning obligation in securing 30% affordable housing; the provision of the necessary infrastructure to an acceptable timescale; and the provision of a proportionate contribution. On the basis of the material before him, he considers that these matters carry very significant weight against the appeal proposals.
78. However, before making his final decision, he wishes to give the appellant the opportunity to address these concerns via submission of a revised and agreed planning obligation. Subject to being satisfied that these concerns can be satisfactorily addressed, he is minded to allow the appeal and grant planning permission.
79. The Secretary of State proposes to allow 6 weeks from the date of this letter i.e. Tuesday, 8 May 2018 (allowing for a Bank Holiday) for the appellant to address these issues. He then intends to proceed to a final decision as soon as possible. It should therefore be noted that he does not regard this letter as an invitation to any party to seek to re-open any of the other issues covered in it. If agreement cannot be reached between the appellant and the Council, the Secretary of State will consider whether to dismiss the appeal and refuse permission.

Yours faithfully

*Richard Watson*

**Authorised by Secretary of State to sign in that behalf**

**Representations received in response to the Secretary of State's letter of 10 November 2017**

<b>Party</b>	<b>Date</b>
Monica Blyth, Herne and Broomfield Parish Council	30 November 2017
Steve Musk, Canterbury City Council	1 December 2017
Vic Hester, VLH Associates	1 December 2017
Vic Hester, VLH Associates	11 December 2017
Steve Musk, Canterbury City Council	13 December 2017

## Annex B: SCHEDULE OF CORRESPONDENCE

### Correspondence in response to the Secretary of State's letter of 23 March 2018

<b>Party</b>	<b>Title/content</b>	<b>Date</b>
Vic Hester	Submitted letter to the Secretary of State	17 May 2018
	Planning Obligation by Deed of Agreement with Kent County Council: Financial contributions, Education and Highways Obligations	17 May 2018
	Planning Obligation by Deed of Agreement with Canterbury City Council: Affordable Housing and Financial Contributions	17 May 2018
	Planning Obligation by Unilateral Undertaking to Kent County Council: Financial Contribution to Highways Infrastructure	17 May 2018
Steve Musk – Canterbury City Council	Email regarding Unilateral Undertaking with Kent County Council. Included attached letter from Kent County Council to Canterbury City Council dated 2 May 2018 on the Unilateral Undertaking.	21 May 2018
Steve Musk – Canterbury City Council	Email with attached Draft Air Quality Action Plan 2018-2023	30 May 2018

## **Annex C: SCHEDULE OF PLANNING CONDITIONS**

- 1) For each phase of the development details of the access (with the exception of the permanent means of vehicular access into the development from Canterbury Road and the vehicular access from Bullockstone Road), appearance, landscaping, layout and scale (hereinafter called "the reserved matters"), shall be submitted to and approved in writing by the local planning authority before any part of that phase of development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters for the first phase of development shall be made to the local planning authority not later than 3 years from the date of this permission. The commencement of development of that phase shall be begun not later than 2 years from the date of approval of the last of the reserved matters to be approved for that phase.
- 3) The final application for the approval of the reserved matters for the final phase of the development (as shown on the phasing plan approved under condition 6) shall be submitted to the local planning authority not later than 10 years from the date of this permission.
- 4) The commencement of each phase of development shall be begun not later than 2 years from the date of approval of the last of the reserved matters to be approved for that phase.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Application site boundary: AA4453/1.1/1013 Rev G
  - Land use parameter plan: AA4453/1.1/1051 Rev D
  - Access parameter plan (main site): AA4453/1.1/1052.1 Rev D
  - Access parameter plan (Bullockstone Road): AA4453/1.1/1052.2 Rev E
  - Density parameter plan: AA4453/1.1/1053 Rev D
  - Building heights parameter plan: AA4453/1.1/1054 Rev D
  - Key frontages and focal points parameter plan: AA4453/1.1/0155 Rev D
  - Potential alternative signal controlled access layout at A291: F13105/36
  - Potential relief road improvement scheme (Area G): F13105/08 Rev D
- 6) The development hereby permitted shall be carried out in accordance with the phasing arrangements and plans set out on pages 144 and 145 in the Design and Access Statement June 2015 save for the spine road which shall be delivered in accordance with the provisions of condition 34.



7) The land use content of the development hereby approved shall comprise not more than 800 dwellings and a local centre with up to 3,400 sq m gross floorspace of development falling within Use Classes A1/A2/A3/A4/A5 and B1(a) and up to 600 sq m gross floorspace of development within Use Class D1.

8) Before the submission of any reserved matters, a Masterplan shall have been submitted to and approved in writing by the local planning authority. The Masterplan shall demonstrate how the development would achieve “garden city” principles (set out in Appendix 1 of the Canterbury District Local Plan), reduce energy demand and promote energy efficiency and comprehensively apply the principles established in the parameter plans hereby approved. The reserved matters submissions shall thereafter be in accordance with the approved Masterplan.

9) Before the submission of any reserved matters a Design Code shall have been submitted to and approved in writing by the local planning authority. The Design Code shall develop the vision, design concept and principles established in the Design and Access Statement June 2015, describe how the principles and parameters shall be implemented and shall address issues including enhancement of the public realm, use of external materials, approach to parking provision, community safety, recycling and servicing and external lighting. The reserved matters submissions shall thereafter be in accordance with the approved Design Code.

10) No development shall commence unless and until an Open Space Strategy has been submitted to and approved in writing by the local planning authority. The Open Space Strategy shall be in accordance with the Masterplan approved under condition 8 and shall:

- Demonstrate the quantum of open space to be provided on site as set out in the Environmental Statement Addendum No. 3 dated 16 March 2017 at Table 14.27 on page 32 (namely a total of 16.65 ha comprising Parks 4.16 ha, green corridors and amenity greenspace 4.47 ha, play areas 0.49 ha, natural and semi-natural space 5.93 ha and allotments 1.6 ha);
- Identify the approximate location of the main areas of formal and informal open space to be provided within the development and set out a proposed programme for its delivery linked to the development phases;
- Outline the local play space and the distribution of play areas within the development and set out a proposed sequence for their delivery linked to the development phases;
- Set out (i) a proposed programme for delivery of the area of allotments on land north of Thanet Way (A299) linked to the development phases, and (ii) proposals for future management of the allotment area.

Development and delivery of open spaces shall be carried out in accordance with the approved Open Space Strategy.

11) No development shall commence unless and until an Ecological Mitigation and Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall include:

- i) A statement of purpose and objectives;
- ii) Measures, informed by ecological survey work, to achieve the stated objectives;
- iii) Details of the extent and location of proposed mitigation works (including biodiversity protection areas) shown on plans of an appropriate scale;
- iv) Details of the nature and extent of habitat creation for all habitat types to include the specification of native seed mixes and species for tree/shrub planting;
- v) Habitat enhancement measures for species, to include the specification and location of features such as bat and bird boxes/bricks and reptile hibernacula;
- vi) Ecological design considerations for the proposed sustainable drainage system;
- vii) Habitat management practices to promote biodiversity within the retained areas of woodland, scrub and grassland habitat and within new areas of habitat creation;
- viii) Means of implementation of the plan, including persons responsible and provision for specialist ecologist(s) to be present on site to oversee works;
- ix) Programme of and arrangements for monitoring against stated and measurable objectives;
- x) Procedure for the identification, agreement and implementation of contingencies and/or remedial actions where the monitoring results show objectives are not being met;
- xi) A management plan and maintenance plan for the lifetime of the development and details of the body/organisation(s) responsible for implementation of the plan.

Development and future management shall be carried out in accordance with the approved Ecological Mitigation and Management Plan.

12) No development shall commence on the first phase of development until details of the ecological enhancement measures within the lagoon area north of the A299, excluding the proposed area of allotments, have been submitted to and approved in writing by the local planning authority. The measures shall include enhancement to Plenty Brook, habitat diversification through the creation of a mosaic of habitats and scrapes/ponds, a timetable for implementation and a management plan. The ecological enhancement measures shall be carried out and the area shall be managed thereafter in accordance with the approved details and timetable.

13) No development shall take place, including any works of demolition, until a site-wide Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include and provide for:

- i) the management and routing of construction traffic, including: the location of access points for site traffic, routes within the site to be kept free of obstruction, parking of construction vehicles and vehicles of site operatives and visitors, wheel washing facilities, a scheme for the prevention of surface water discharges onto the highway, a travel plan for construction workers, directional signage on and off site;
- ii) loading and unloading of plant and materials;
- iii) the location and size of site compounds and areas for storage of plant and materials to be used in constructing the development;
- iv) the location and form of temporary buildings and temporary lighting, details of the erection and maintenance of security hoardings;
- v) details for the safe storage of any fuels, oils and lubricants;
- vi) a scheme to control surface water run-off, prevent pollution and manage flood risk;
- vii) details of proposed temporary sewerage systems;
- viii) a scheme for the handling and storage of topsoil;
- ix) measures, including the construction of exclusion zones, to prevent soil compaction in large scale planting areas and measures to remediate soil compaction;
- x) details of measures to protect trees, hedgerows and water features;
- xi) a scheme for the protection of areas of ecological interest and mitigation of any harm to such areas, including timing of works and precautionary work practices;
- xii) measures to control the emission of dust and dirt during construction;
- xiii) measures for the control of noise and vibration during construction, including delivery, demolition and construction working hours;
- xiv) a scheme for recycling/disposal of waste resulting from demolition and construction works;
- xv) details of temporary pedestrian and cycle routes;
- xvi) procedures for maintaining good public relations, including complaint management procedures, community consultation and liaison;
- xvii) a scheme (a) to offer and carry out a schedule of condition of existing properties adjacent to the construction access point(s), (b) to assess the impacts of construction on neighbouring dwellings, and (c) to provide details of the implementation of any recommended protection /remediation works.

The approved site-wide CEMP shall be adhered to throughout the construction period for the development.

14) In connection with each phase, no development, including any works of demolition, shall commence until a Construction Environmental Management Plan (CEMP) for that phase has been submitted to and approved in writing by the local planning authority. The CEMP for each phase shall demonstrate how the measures agreed in the site-wide CEMP approved pursuant to condition 13 shall be implemented in relation to the phase of development. During each phase of development the approved CEMP shall be adhered to throughout the construction period for that phase.

15) Within each phase, no development shall commence unless and until a Landscape and Open Space Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The Plan shall provide for:

- i) a description and evaluation of features to be managed;
- ii) the precise location and boundaries of the areas of formal and informal open space to be provided within the phase and timetable for their delivery (which shall be substantially in accordance with the approved masterplan);
- iii) a detailed specification for any equipped plan area to be provided in accordance with the approved masterplan/open space strategy;
- iv) aims and measurable objectives of management and maintenance;
- v) appropriate management responsibilities and prescriptions and maintenance schedules for achieving those aims and objectives;
- vi) details of the body or organisation(s) responsible for implementation of the Plan.

The development shall be carried out in accordance with the approved details. The public open spaces shall be laid out and implemented in accordance with the agreed timetable and shall be retained thereafter in accordance with the management plan and used for public amenity purposes only.

16) No development shall commence until a surface water drainage strategy based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the local planning authority. The scheme shall:

- identify methods to manage surface water runoff up to the 1:100 year event plus climate change;
- set out the proposed methods to delay and control the surface water discharged from the site in order to mitigate the risk of surface water flooding on the site, avoid increasing the flood risk downstream and prevent pollution of the receiving groundwater and/or surface waters;

- outline a management and maintenance plan, which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout the lifetime of the development.

17) Within each phase no development shall commence until a detailed surface water drainage scheme for that phase has been submitted to and approved in writing by the local planning authority. The scheme for each phase shall be in accordance with the site-wide strategy approved under condition 16 and shall include details of:

- the location, design and capacity of proposed sustainable drainage systems within the phase;
- a timetable for implementation of the scheme, ownership, adoption, monitoring arrangements and responsibilities; and
- a management and maintenance plan, which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation of the sustainable drainage system throughout the lifetime of the development.

Within each phase of development the surface water drainage system shall be implemented and thereafter managed and maintained in accordance with the approved details.

18) No alterations to the land levels in the lagoon area to the north of the A299 shall take place until a scheme with details of any proposed changes to ground levels have been submitted to and approved in writing by the local planning authority. The scheme shall include details of existing and proposed ground levels of the area, shall demonstrate that any works within this area of the site shall not reduce its flood storage capacity and a timetable for implementation. Development shall be carried out in accordance with the approved scheme and timetable.

19) No development shall commence until a scheme for the proposed means of disposal of foul water discharge from the development and a timetable for its implementation have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme and details.

20) If, during the course of construction of the approved development, contamination not previously identified on the site is found to be present the occurrence shall be reported immediately to the local planning authority. Development on that part of the site affected shall be suspended. A risk assessment shall be carried out and submitted for the written approval of the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted for the written approval of the local planning authority. No development or relevant phase of development shall be resumed or continued until the risk assessment and, if required, remediation and verification schemes have been approved by the local planning authority and the schemes carried out in full accordance with the approved details.

21) No demolition/development shall commence until the following components of a scheme for the archaeological evaluation of the site shall have been submitted to and approved in writing by the local planning authority:

- i) a Written Scheme of Investigation (WSI), to be submitted a minimum of fourteen days in advance of commencement of fieldwork, for the purpose of determining the presence or absence of any buried archaeological features and deposits and to assess the importance of the same;
- ii) a report summarising the results of the investigations to be produced on the completion of fieldwork, in accordance with the requirements set out in the WSI;
- iii) details of any further mitigation measures shown to be necessary as a result of the archaeological investigations in order to ensure preservation in situ of important archaeological remains and/or further archaeological investigations and recording in accordance with a specification that has been submitted to and approved in writing by the local planning authority;
- iv) if shown to necessary by the archaeological investigations and if requested by the local planning authority, a programme of post excavation assessment, analysis, publication and conservation.

Fieldwork, including further mitigation works and post excavation work, shall be completed in accordance with the approved details and programme timings and the local planning authority shall be notified a minimum of fourteen days in advance of the commencement of any fieldwork.

22) No site clearance, preparatory work or development shall take place unless and until a tree survey report has been submitted to and approved in writing by the local planning authority. The report shall contain a schedule and plan(s) showing the position of every tree and hedgerow on the site and on land adjacent to the site (including street trees) that could influence or be affected by the development, indicating which trees and hedgerows are to be removed and which trees are to be retained.

23) Within each phase of development no development shall commence unless and until a tree protection scheme shall have been submitted to and approved in writing by the local planning authority. The tree protection scheme shall identify the retained trees and where excavations, changes to ground levels or underground works are proposed that might affect the root protection area the scheme shall detail the appropriate working methods (the arboricultural method statement) in accordance with British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced). The scheme for the protection of the retained trees shall be carried out as approved.

In this condition “retained tree” means an existing tree or hedgerow which is to be retained in accordance with the plans and particulars approved under condition 22.

24) Within each phase of development if any retained tree is cut down, uprooted or destroyed or dies within 5 years of the completion of development of that phase, the tree/hedgerow shall be replaced by a tree/hedgerow of a similar type and species in the next planting season after the damage or loss.

In this condition “retained tree” means an existing tree or hedgerow which is to be retained in accordance with the plans and particulars approved under condition 22.

25) Within each phase of development no development shall commence unless and until an Energy Strategy for that phase has been submitted to and approved in writing by the local planning authority. Each Energy Strategy shall be in accordance with the principles contained within the Energy and Sustainability Statement June 2015 and shall include details of the strategy to increase energy efficiency, reduce energy consumption and carbon emissions. The development shall be carried out in full accordance with the approved Energy Strategy for each phase.

26) No development shall commence on each phase of the development unless and until a noise mitigation scheme for the phase has been submitted to and approved in writing by the local planning authority. The noise mitigation scheme shall provide details of proposed measures to mitigate road traffic noise impacts on the residents of the new dwellings and /or plant noise from retail and employment units on nearby existing and proposed housing. The measures shall include, as appropriate, a noise bund/barrier adjacent to the A299, use of external/internal layout, siting and design of dwellings, noise insulation, specifications of glazing performance requirements, window sizes and means of ventilation. The approved mitigation measures shall be implemented before the first occupation of any dwelling in that phase, first occupation of an employment/retail unit or in accordance with a timetable agreed in writing by the local planning authority.

27) At the same time as the submission of the first reserved matters application for development of phase A, a scheme for the proposed provision of utilities and media infrastructure to serve the commercial or community buildings shall be submitted to the local planning authority for its approval. The scheme shall include details of how the service infrastructure provision will be connected to the proposed buildings and the programme of provision. The approved scheme shall be implemented in full in accordance with the approved timetable and shall thereafter be maintained in accordance with the approved details.

28) No development shall commence unless and until full details of the pedestrian improvement scheme, comprising a footway along Bullockstone Road to link the western end of the development with an existing public footpath on the southern edge of Greenhill, has been submitted to and approved in writing by the local planning authority. The footway works shall be constructed in accordance with the approved details and the footway shall be available for public use prior to the first occupation of any dwelling within the development hereby approved.

29) Prior to the occupation of any phase of the development, save for the second phase of the development (as shown on the phasing plan approved under condition 6), either the site access signal junction on the A291 shall be fully implemented in accordance with plan F13105/36 or a scheme shall have been submitted to and approved in writing by the local planning authority which shall contain:

- i) Details of the provision of a temporary access junction on the A291 to serve the development site;
- ii) Evidence to demonstrate that the proposed temporary access junction would facilitate the development proposed in phase A of the masterplan;
- iii) Details of the timetable for the decommissioning of the temporary access;
- iv) Details of any remedial works and a timetable for their implementation.

Any alternative temporary access scheme shall be implemented in full in accordance with the approved details prior to the occupation of any phase of the development, save for the second phase of the development (as shown on the phasing plan approved under condition 6). The decommissioning and remedial works shall be carried out in accordance with the approved details and timetable.

30) No phase of the development shall be first occupied unless and until details of the proposed improvement to the Old Thanet Way/Eddington Way junction shall have been submitted to and approved in writing by the local planning authority. The junction improvement works shall be carried out in full accordance with the approved details prior to the first occupation of the 200th dwelling within the development hereby approved.

31) Prior to the first occupation of any dwelling within the second phase of the development (as shown on the phasing plan approved under condition 6) the site access junction on Bullockstone Road shall be implemented in full in accordance with the details on plan F13105/08 Rev D.

32) No dwelling and no building within the local centre shall be first occupied unless and until a travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall identify opportunities for the effective promotion and delivery of sustainable transport initiatives and include measures to reduce the demand for travel by less sustainable modes. The travel plan shall include details of required outcomes, modal share targets, measures to ensure the modal share targets are met, future monitoring and management arrangements, sanctions in the event outcomes/targets/processes are not adhered to or met and a timetable for implementation. The travel plan shall be implemented in accordance with the approved details and timetable.

33) At the same time as the submission to the local planning authority of the first reserved matters application for each phase of development a pedestrian/cycling strategy shall be submitted to the local planning authority. The strategy shall enable the occupiers of the dwellings within that phase to access on foot or cycle the nearest bus stops to the site. The



strategy shall include details of the proposed routes for pedestrians and cyclists, details of how these routes would link with other routes and phases of development, specify the surface materials to be used in the construction of the routes and the means of enclosure and lighting, and a programme for their implementation, retention or removal as each phase is developed and occupied. The strategy and implementation programme shall be carried out in accordance with the approved details.

34) No development shall take place until the details of the spine road through the site linking Bullockstone Road with Canterbury Road have been submitted to and approved in writing by the local planning authority. No more than 410 dwellings within the site shall be first occupied until the spine road shall have been constructed in accordance with the approved details and to an adoptable standard.





The Planning Inspectorate

---

# Report to the Secretary of State for Communities and Local Government

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

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

Date: 25 September 2017

---

**TOWN AND COUNTRY PLANNING ACT 1990**

**CANTERBURY CITY COUNCIL**

**APPEAL BY HOLLAMBY ESTATES (2005) LTD**

Inquiry opened on 10 January 2017

Land at Strode Farm, Lower Herne Road, Herne, Kent CT6 7NH

File Ref: APP/J2210/W/15/3141444

---

<https://www.gov.uk/planning-inspectorate>

## CONTENTS

	Page No
Introduction and Procedural Matters	1
The Site and Surroundings	5
Planning Policy	7
The Proposals	13
Common Ground	21
The Case for Canterbury City Council	26
The Case for Hollamby Estates (2005) Ltd	40
The Case for Herne and Broomfield Parish Council	56
Written Representations	59
Planning Conditions and Obligations	60
Inspector's Conclusions	68
Recommendations	97
Appendix 1: Schedule of planning conditions	98
Appendix 2: Appearances	108
Appendix 3: Document List	109

## LIST OF ABBREVIATIONS

AQMA	air quality management area
ARCADY	Assessment of Roundabout Capacity and Delay
BCIS	Building Cost Information Service
BRIS	Bullockstone Road Improvement Scheme
CIHT	Chartered Institution of Highways and Transportation
CIL	Community Infrastructure Levy
CDLP	Canterbury District Local Plan 2017
CDTS	Canterbury District Transport Strategy 2014-31
CEMP	Construction and Environmental Management Plan
CRF	Congestion Reference Flow
DAS	Design and Access Statement
DMRB	Design Manual for Roads and Bridges
dw/ha	dwelling per hectare
dpa	dwelling per annum
EIA	Environmental Impact Assessment
EIM	Emerging illustrative masterplan
ES	Environmental Statement
EuroRAP	European Road Assessment Programme
FOG	flat over garage
GDV	gross development value
GP	General Practice
ha	hectares
HBGC	Herne Bay Golf Course
HCA	Homes & Communities Agency
HGV	Heavy goods vehicle
HRR	Herne Relief Road
IDP	Infrastructure Delivery Plan
KCC	Kent County Council
km	kilometre
m	metre
MM	Main Modification ( <i>to the Canterbury District Local Plan Publication Draft</i> )
PROW	Public right of way
RFC	Relation of Flow to Capacity
RP	Registered Provider
SAC	Special Area of Conservation
SAMM	Strategic Access Management and Monitoring
SCG - HRR	Statement of common ground – Herne Relief Road
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SPA	Special Protection Area
SPD	Supplementary Planning Document
sq m	square metres
SSA	Strategic Site Allocation in the CDLP
SSSI	Site of Special Scientific Interest
TA	Transport Assessment
The Framework	National Planning Policy Framework
UAP	Urban All-Purpose Road

**File Ref: APP/J2210/W/15/3141444**

**Land at Strode Farm, Lower Herne Road, Herne, Kent CT6 7NH**

- 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/full planning permission.
- The appeal is made by Hollamby Estates (2005) Ltd against Canterbury City Council.
- The hybrid application Ref CA/15/01317/OUT is dated 16 June 2015.
- The development proposed, as described on the planning application form, is:  
Full: Demolition of existing dwelling house in Conservation Area and two other dwellings, change of use of lagoon to allotments, ecological habitat and footpath link and improvements along Bullockstone Road.  
Outline: Development of a new mixed use neighbourhood with up to 800 dwellings, commercial and community development within a local centre, spine road, estate roads, other means of access, pedestrian and cycle links, improvements to existing footpath, sustainable urban design drainage measures, landscaped noise bund/earthworks and boundary treatments, public open space, highway related and utilities infrastructure. Approval is sought for means of access from Canterbury Road and Bullockstone Road.

**Summary of Recommendation: That the appeal be dismissed.**

---

**1. INTRODUCTION AND PROCEDURAL MATTERS**

- 1.1 The appeal is against the Council's failure to determine the planning application within the prescribed period. On the 1 March 2016 the Council resolved that it would have refused planning permission for seven reasons. In summary the reasons were: the likelihood of a severe adverse impact on the highway network, inadequate and unsafe works to Bullockstone Road, the absence of planning obligations to mitigate the impacts on the local infrastructure, a failure to justify the proposed 4% level of affordable housing, a failure to demonstrate an acceptable impact on air quality, conflict with the Habitat Regulations, and non-compliance with the development plan<sup>1</sup>.
- 1.2 The appeal was recovered by the Secretary of State for his own decision by a Direction dated 27 June 2016. The reason for the Direction is that 'the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities'.
- 1.3 A pre-inquiry meeting was held on 2 June 2016. A potential amendment to the proposal, prematurity and adequacy of information were amongst the matters discussed<sup>2</sup>.
- 1.4 The inquiry sat for 10 days at The Guildhall, Canterbury on 10 to 13 January, 17, 18 and 20 January and 26 to 28 April 2017. The inquiry was closed in writing on 31 July 2017. In addition to the appellant and the Council, representatives of Herne and Broomfield Parish Council attended throughout the inquiry. The accompanied site visit took place on Thursday 27 April 2017, timed to enable observation of morning peak hour traffic conditions in the centre of Herne village. I also made unaccompanied visits to the area and walked the length of Bullockstone Road.

---

<sup>1</sup> SCG.3 paragraph 1.5 (*Footnote references are to documents listed in Appendix 3*)

<sup>2</sup> GEN.3

- 1.5 The following paragraphs set out the changes in circumstances and the evidence that occurred during the inquiry process, related to the Environmental Impact Assessment (EIA), the proposal, planning obligations and the development plan.

*Environmental Impact Assessment*

- 1.6 The proposed development is subject to an EIA under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, SI 2011 No.1824 (EIA Regulations 2011). An Environmental Statement (ES), comprising a Main Report, Technical Appendices and Non-Technical Summary, were submitted alongside the planning application. The Council carried out consultation and publicity<sup>3</sup>. Comments from statutory consultees have been included in the documentation. In March 2017 the appellant formally submitted three Addendums to the ES and an updated Non-Technical Summary. This 'other information' was publicised<sup>4</sup>. No representations were received. In accordance with the EIA Regulations 2011<sup>5</sup> planning permission cannot be granted unless all the environmental information, which includes the written and oral evidence to the inquiry, has been taken into consideration.
- 1.7 On 16 May 2017 the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations 2017) came into force. Regulation 76 of the EIA Regulations 2017 includes transitional arrangements for qualifying applications and appeals. I consider that the appeal meets the requirements of the transitional arrangements. Therefore the EIA Regulations 2011 will continue to apply to this appeal, as relevant.

*The Proposed Scheme*

- 1.8 In broad terms, highway infrastructure and affordable housing were the two main areas of dispute between the appellant and the Council. During the course of the appeal process the scheme was amended with a view to overcoming objections raised by the Council.
- 1.9 In March 2016 Hollamby Estates made a planning application for an alternative road improvement scheme supported by Kent County Council (referred to as the Kent BRIS). On 10 January 2017 the Planning Committee deferred a decision and sought further information on a range of details. A reason for the adjournment of the inquiry on 20 January was to allow time for these matters to be progressed. On 4 April the Planning Committee resolved that planning permission be granted subject to conditions and the decision notice was issued on 11 April 2017<sup>6</sup>. As a consequence the appellant withdrew its proposed improvement scheme for Bullockstone Road (the BRIS) with a view to narrowing the matters in dispute regarding highway infrastructure<sup>7</sup>.
- 1.10 At the start of the inquiry the appellant proposed 15% (rounded) affordable housing with a tenure split of 30% affordable rent housing and 70% shared ownership housing. During the January to April adjournment the proposal was

---

<sup>3</sup> CCC/IQ/21

<sup>4</sup> ES.20

<sup>5</sup> Regulation 3(4)

<sup>6</sup> CCC/IQ/16, CCC/IQ/20, HE/IQ/34.

<sup>7</sup> HE/IQ/42 paragraph 4

revised to 30% affordable housing, with the same tenure split. This amendment was reflected in Addendum No 3 to the ES<sup>8</sup>.

- 1.11 The appellant submitted that no party alleged or could allege prejudice from the changes and that the public interest is served by the Secretary of State considering the appeal in the revised form. Attention was drawn to the fact that the changes were the subject of public consultation, including through the public notice of additional environmental information. The intention to withdraw its own proposals for BRIS, once the Kent BRIS received approval, was made clear throughout the history of the appeal. The affordable housing offer was raised to a policy compliant level and was universally welcomed.
- 1.12 The Council did not object to the amendments primarily because the Council endorsed the Kent BRIS and the 30% affordable housing narrowed the area of disagreement to tenure split.
- 1.13 In my view the withdrawal of an element of the appeal scheme is a matter for the appellant. The alternative Kent BRIS, on which the appellant now relies, was subject to full consultation and its purpose in facilitating major housing development was clear. The Kent BRIS has planning permission and therefore the planning merits have been determined and approved. It does not form part of the application to be determined in this appeal. The amended proportion of affordable housing was publicised as part of a package of 'other information' in relation to the ES. The content of the proposed mixed use neighbourhood remains unchanged. I consider that no prejudice would be caused by determining the appeal on the basis of the amended proposals.
- 1.14 The appellant's evidence, especially in respect of the transport and highways assessment, includes a lot of material on the now withdrawn BRIS. The technical evidence on that scheme was not considered in any detail at the inquiry and I will not refer to it in my report. Attention focussed on the timing and funding of the Herne Relief Road (HRR), comprising the Kent BRIS and the proposed spine road through the Strode Farm site, including the new junctions with the existing highway network.
- 1.15 The detailed evidence on viability based on a 15% affordable housing content was examined during the inquiry in January. The appellant's viability appraisals in support of that level of affordable housing were to an extent superseded by a revised Appraisal 27A and short statement<sup>9</sup>.

#### *Planning Obligations*

- 1.16 Section 106 planning obligations address matters including the delivery of highway infrastructure, affordable housing and community facilities. On the adjournment of the inquiry in January, I requested that the documents be in their final form by the time the inquiry resumed on 26 April but in the event they were in draft. On the intended final sitting day of the inquiry an issue arose on the proposed transfer of land for a primary school from the appellant to Kent County Council (KCC). A timetable was agreed for resolving the issue by 30 June. That proved achievable and certified copies of a section 106 unilateral

---

<sup>8</sup> ES.17 paragraph 14.6.4

<sup>9</sup> HE/INQ/32 and HE/IQ/32A



undertaking and a section 106 agreement were submitted shortly afterwards by the appellant<sup>10</sup>. A unilateral undertaking to the Council was completed on 12 May 2017<sup>11</sup>.

- 1.17 I allowed the main parties the opportunity to comment on the significance, if any, of a small number of points regarding the recital and definitions in the planning obligation documents<sup>12</sup>. As a result certified copies of two Supplemental Deeds dated 21 July 2017 were submitted<sup>13</sup>.

#### *Development Plan*

- 1.18 A new Local Plan was under preparation when the planning application was made and during the course of the appeal process. The schedule of Main Modifications to the Publication Draft June 2014 and the further changes indicated by the Inspector in December 2016 were available to inform the evidence and the inquiry in January and April 2017. The Inspector's Report on the Examination of the Canterbury District Local Plan was issued on 15 June 2107. The Council adopted the Canterbury District Local Plan (the CDLP) on 13 July 2017<sup>14</sup>.
- 1.19 In view of this significant change in policy the completion of the inquiry process was agreed with the parties. No request was made to resume the inquiry. The appellant, the Council and the Parish Council each submitted an addendum to their closing submissions to address the change in development plan policy. The respective cases set out later in this report reflect the development plan position in April 2017 and conclude with the recent update post adoption of the CDLP. This format has been followed in order to ensure an accurate account of the parties' cases. After receipt of the final response from the appellant the inquiry was closed in writing on 31 July 2017.

#### *Human Rights Act 1998*

- 1.20 I alerted the main parties that I would consider the Convention rights of those residents directly affected by the proposed demolition of three dwellings and the works during the construction period.

#### *The Report*

- 1.21 The opening sections are primarily factual in describing the site and surrounding area, the planning policy context and the proposals for the development of Strode Farm. A summary of the three statements of common ground on planning, highways and viability is followed by the main points of the cases presented on behalf of the Council, the appellant and the Parish Council. A summary of the written representations precedes section 10 which covers planning conditions and the content of the section 106 planning obligations. My conclusions and recommendation follow. A schedule of planning conditions, inquiry appearances and a list of documents form Appendices 1 to 3. Footnotes provide references to documents and points of information and clarification.

---

<sup>10</sup> UU.2, DA.1

<sup>11</sup> UU.1

<sup>12</sup> GEN.13

<sup>13</sup> HE/IQ/49, UU.2A, DA.1A

<sup>14</sup> CCC/IQ/29 paragraph 1

## 2. THE SITE AND SURROUNDINGS

- 2.1 Strode Farm is located to the south of Herne Bay, to the north and west of the village of Herne and some 9 kilometres (km) north of Canterbury. The site originally comprised three distinct areas covering approximately 45 hectares (ha). The area which extended along Bullockstone Road southwards to its junction with Canterbury Road A291 no longer forms part of the site following the grant of planning permission for the Kent BRIS. The net developable area, excluding the Bullockstone Road improvements, was confirmed to be 44.3 ha.<sup>15</sup>
- 2.2 The main area of the site is agricultural land bounded by Thanet Way (A299) to the north, Bullockstone Road to the west and Lower Herne Road and Canterbury Road to the south and east, where the boundary is irregular to exclude the frontage residential properties. A group of farm buildings on the western part of the land has been demolished but the land is still actively farmed under licence. Three dwellings remain - two are occupied whilst one of the cottages has undergone refurbishment prior to re-letting<sup>16</sup>. Strode Farm Bungalow is within Herne Conservation Area, where a finger of the designated heritage asset extends across Lower Herne Road. A small part of the Conservation Area also extends into the main body of the site further to the north. A public right of way (CH23) from Lower Herne Road crosses the land and passes under Thanet Way to link Canterbury Road with the former Herne Bay Golf Course<sup>17</sup>.
- 2.3 A smaller parcel of land lies to the north of Thanet Way, where a purpose built flood retention lagoon is enclosed by engineered earth bunds. The lagoon acts as an attenuation area for the Plenty Brook<sup>18</sup>. A tributary of the Plenty Brook passes south east to north west through the eastern portion of the main site before passing under the A299 Thanet Way. The tributary is designated as a main river and the land immediately to either side is within the higher risk Flood Zones 2 and 3. The greater area of the appeal site is in Flood Zone 1, having a low probability of fluvial flooding<sup>19</sup>.
- 2.4 An agricultural land survey was undertaken of the 41 ha of land north and south of Thanet Way<sup>20</sup>. Soils across the majority of the fields, comprising 22.8 ha or 61% of the land, are clayey and slowly permeable. Agricultural use is restricted to grassland or autumn sown combinable crops and the agricultural quality is subgrade 3b. A slightly raised area south of Thanet Way (9.1 ha or 24%) has moderately freely draining silty soils suitable for a wide range of crop production and is grade 2 land. A fringe of subgrade 3a land (5.8 ha or 15%) separates these two areas.
- 2.5 The village of Herne lies to the east and south east of the main site. Modern residential development has spread out from the historic core<sup>21</sup>. The Herne Community Centre and car park and the Herne Church of England Junior and

---

<sup>15</sup> HE/INQ/26

<sup>16</sup> HE/IQ/28 provides further information on occupation and tenancies. TR.4 has photographs of Strode Farm Bungalow (Plate 5) and Strode Farm Cottages (Plate 6).

<sup>17</sup> ES.3 Appendix 11.2 Figure 11.2 identifies landscape and townscape designations.

<sup>18</sup> PA.2 page 133 provides a bird's eye view of this area.

<sup>19</sup> ES.10 Figure 1 and paragraphs 7.1.1 to 7.1.2

<sup>20</sup> HE.1.C Appendix 3

<sup>21</sup> PA.2 pages 33-37 provide photographs of the site and its surroundings.

Infant Schools are located on School Lane. Herne Conservation Area covers much of Strode Park and extends south and east to encompass the historic cores and environs of Herne and Herne Common. A number of listed buildings are clustered in the historic centre of the village around the junction of Herne Street and School Lane, including the Grade 1 listed Church of St Martin. Herne Windmill, a Grade 1 listed building in Herne Windmill Conservation Area, is an important local landmark on high ground approximately 500 m to the east of the site<sup>22</sup>.

- 2.6 A Grade II listed building called Downtops'l Cottage is sited just to the north west of the junction of Lower Herne Road and Bullockstone Road. Its prime significance is associated with its age and good preservation as a rural cottage. The pair of 17<sup>th</sup> century two storey red brick cottages now appears in use as one cottage<sup>23</sup>.
- 2.7 The land south of Lower Herne Road rises towards Bullockstone Hill and is characterised by agricultural fields interspersed with hedgerows and clusters of trees and small pockets of woodland. To the north of Strode Farm a residential led mixed use development has commenced on the former Herne Bay Golf Course (the HBGC site). Hillborough and Greenhill are strategic sites for housing on the edge of Herne Bay<sup>24</sup>.
- 2.8 Bullockstone Road, to the south of the bridge over Thanet Way, follows a route where Blean Woods, a designated area of high landscape value,<sup>25</sup> lies to the west and Herne Conservation Area lies to the east. Frontage development occurs near to its junction with Lower Herne Road and just north of the junction with the A291. The road has quite a curving alignment and in places is enclosed by boundary vegetation and earth banks.
- 2.9 There are no designated areas of nature conservation interest within the Strode Farm site. However within a radius of 5 km are West Blean and Thornden Woods Site of Special Scientific Interest (SSSI), the Blean Complex Special Area of Conservation (SAC) and the East Blean Woods SSSI. Along the coast are located Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar site<sup>26</sup> and Thanet Coast SSSI, together with Tankerton Slopes and Swalecliffe SAC<sup>27</sup>. As set out in its statutory consultation response, Natural England was satisfied that, subject to mitigation, the proposals would be unlikely to have a significant effect on these sites<sup>28</sup>.
- 2.10 The A299 Thanet Way, together with the A28, forms the Primary Route network in the Canterbury district<sup>29</sup>. Further A and B roads connect the main urban areas, complemented by a network of minor roads and streets<sup>30</sup>. The A291

---

<sup>22</sup> ES.1 paragraphs 11.4.11 to 11.4.21

<sup>23</sup> ES.1 paragraphs 11.4.17, 12.5.6 and PA.1 paragraph 5.31

<sup>24</sup> HE/IQ/7

<sup>25</sup> CDLP.1 paragraph 10.12 and Policy LB2

<sup>26</sup> Listed Wetland of International Importance under the Ramsar Convention

<sup>27</sup> ES.2 Appendix 10.9 Figure 10.1 shows the location of the designated sites.

<sup>28</sup> GEN.4 page 2

<sup>29</sup> CDTS.1 paragraph 1.29

<sup>30</sup> ES.1 paragraphs 7.3.1 and 7.3.2 identifies the study area for the Transport Assessment. The junctions and links are identified on Figures ES 7.1 and ES 7.2.

connects Canterbury with Herne Bay. The route passes through the village of Herne and rural areas towards Sturry, where the A291 joins the A28 at a priority junction opposite Sturry railway station. The nearby level crossing on the A28 is a recognised cause of queuing on both the A291 and the A28. Bullockstone Road provides access to Herne Bay and Greenhill to the north and the A291 Canterbury Road to the south.

- 2.11 Herne is served by the Triangle bus route which links Canterbury, Whitstable and Herne Bay with a regular 10-15 minute service<sup>31</sup>. Herne Bay, on the high speed route to St Pancras International, is the nearest rail station to the site. Public rights of way (PROW) enable access to the surrounding countryside and within Herne are a number of footpath links through the residential areas<sup>32</sup>. Along the A291 are three pedestrian crossing points and footways are of variable quality<sup>33</sup>.
- 2.12 At a monitoring point on Herne Street (A291) in the centre of the village the annual mean nitrogen dioxide concentrations exceeded air quality objectives between 2011 and 2014<sup>34</sup>.

### **3. PLANNING POLICY**

#### ***The development plan***

- 3.1 The Canterbury District Local Plan 2017 (the CDLP) was adopted by full Council on 13 July 2017<sup>35</sup>. The CDLP sets out a spatial strategy and vision for the District for the period from 2011 to 2031. It replaces the Canterbury District Local Plan first review adopted in 2006 and the policies that were saved in 2009 under Schedule 8 to the Planning and Compulsory Purchase Act 2004 (the former Local Plan). The Council and the appellant agreed a list of CDLP policies relevant to the appeal<sup>36</sup>.
- 3.2 In relation to the strategy, Policy SP1 states that the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the Framework. Policy SP2 sets out the broad phasing and land allocations to meet the identified development requirements and guidelines. In relation to housing, the requirement is for 2,500 units 2011-16 and then 4,500 units over each five year period from 2016 to 2031 to give a total of 16,000 units. The policy also states that "The mix of housing types and tenures will be expected to meet the proportions set out in the Council's Housing Strategy".
- 3.3 The position on housing supply is set out in detail in paragraphs 2.17 to 2.30 of the CDLP. A development requirement of 800 dwellings per annum (dpa) is identified. Table H1 details the housing land supply over the plan period 2011-2031 and shows a 5.34 years supply for the five year period 2015/2016-2019/2020. The shortfall in meeting the housing requirements in the early part

---

<sup>31</sup> CDTS.1 paragraph 1.12

<sup>32</sup> ES.3 Figure 11.2

<sup>33</sup> HE.2.F pages 1301 to 1308

<sup>34</sup> ES.1 paragraphs 9.4.1 to 9.4.3 and Table 9.11; CDLP.1 paragraph 12.48

<sup>35</sup> CDLP.1

<sup>36</sup> CDLP.5. The policy number in the adopted plan has not changed from the policy number in what was the emerging Local Plan (for example emerging Policy SP3 is now adopted Policy SP3). The wording of the policy or the supporting text may have been modified.

of the plan period is recovered over the remainder of the period to 2031 and a 5% buffer has been applied to the calculation.

- 3.4 Policy SP3 identifies twelve strategic site allocations (SSA) to be brought forward in the plan period to 2013, which would be the focus for a significant part of new development needed in the area. The land is located in or on the edge of existing settlements. Four sites are in the Herne Bay area - Hillborough (site 3), HBGC (site 4), Strode Farm is site 5<sup>37</sup> and Land at Greenhill (site 6). The parameters set out in the policy are the primary objectives for these sites.
- 3.5 In terms of the parameters for Strode Farm, the land use content amounts to 800 dwellings, 15,000 sq m of employment floorspace and local shopping provision. Other development relates to community facilities, including a new parish hall and local needs housing, with the necessary provision of and contributions to primary and secondary education and health care. In terms of infrastructure, the policy states "Provision of new highway through the site linking Thanet Way to Bullockstone Road and improvements to Bullockstone Road, as indicated on the Proposals Map; new footpath cycle path to be provided in conjunction with site 4 (HBGC) to link sites 4 and 5".
- 3.6 The policy also requires a comprehensive masterplan to accompany planning applications for development of all or part of a SSA. The masterplan shall address such matters as the proposed phasing of development, the physical and social infrastructure and detailed design proposals incorporating garden city principles<sup>38</sup>.
- 3.7 Policy SP5 of the CDLP confirms that the Council will prepare an Infrastructure Delivery Plan for the allocations set out in the plan, identifying the scope of the infrastructure to be provided, the phasing of such infrastructure linked to development and the mechanisms by which the Council considers the infrastructure would best be delivered. The text confirms that an assessment of the viability of the strategic sites concluded that all are viable and can deliver 30% affordable housing overall and the necessary supporting infrastructure.
- 3.8 The aim of Policy SP6 is to prevent development having an adverse effect on the integrity of the coastal SPAs and Ramsar sites alone or in combination with other plans or projects through an increase in recreational disturbance on the over-wintering bird populations for which the sites are designated. The strategic development sites, and any other developments, within the identified Zone of Influence which would lead to an increase in recreational disturbance are required to fund in perpetuity access management and monitoring measures to mitigate these impacts. Policy LB5 confirms that sites of international nature conservation importance must receive the highest levels of protection.
- 3.9 In the Chapters on specific types or aspects of development, Policy HD2 seeks provision of 30% affordable housing on all residential developments consisting of 11 or more units<sup>39</sup>. Where the proposed provision is below this requirement a financial appraisal is required to justify a reduced provision.

---

<sup>37</sup> Site 5 as shown on the Proposals Map (CCC/IQ/5 Inset Map 3) does not include the parcel of land to the north of the A299 (the lagoon area).

<sup>38</sup> CDLP.1 Appendix 1

<sup>39</sup> A different approach applies in Areas of Outstanding Natural Beauty

- 3.10 The principles of the Transport Strategy are set out in Policy T1. In support of the policy a hierarchy of transport modes is proposed, in order of priority (highest first) walking, cycling, public transport, park and ride and the private car. The plan text refers to the headline aims, the four strands of the Transport Strategy and the supporting objectives.
- 3.11 Policy T13 requires the provision of an A291 Herne Relief Road (HRR) as an integral part of new development as set out in Policy SP3. A purpose of the policy is also to safeguard the route. Contributions to the relief road may be sought from appropriate developments. A road safeguarding area is shown on the Proposals Map and indicates a route through the Strode Farm allocation and south along Bullockstone Road. The supporting text (paragraphs 5.52 and 5.53) states that the current traffic using the A291 through the centre of Herne causes congestion and high levels of pollution. Any new development sites allocated in Herne Bay which would create additional traffic would be required to fund a HRR. The City Council will enter into legal agreements with the relevant site owners/agents to ensure the HRR is delivered at an appropriate point with fair and proportionate contributions from all relevant developments<sup>40</sup>.
- 3.12 The CDLP refers to the links with other strategies<sup>41</sup>. Relevant to transport infrastructure an aim of the Corporate Plan 2016-2020 is to enable the building of a HRR. In KCC's Local Transport Plan 4 (2016-2031) overarching policies include economic growth and minimised congestion, affordable and accessible door to door journeys and safer travel. The priorities for Canterbury include the HRR.
- 3.13 Policy DBE1 requires that all development shall respond to the objectives of sustainable development and reflect the need to safeguard and improve the quality of life for residents, conserve resources, reduce/minimise waste and protect and enhance the environment. Strategic housing sites should demonstrate how the proposals comply with this requirement and have had regard to the sustainable design and construction measure checklist. Policy DBE3 is directed at ensuring all new development achieves the highest standards of design, complemented by Policy DBE5 which requires the highest standards of accessibility and inclusion. On strategic sites the policy expectation is that 20% of homes will meet the accessibility and adaptable dwellings requirements in the Building Regulations. The design and layout of the public realm are stated to have a direct bearing on the success of a development in terms of functionality, visual appearance and sense of place. Policy DBE7 sets out expectations in this respect. Policy DBE8 is directed at ensuring that functional, visually successful public open space is created with a strong sense of place as part of new development.
- 3.14 Policy HE1 is concerned with conserving and enhancing the significance of heritage assets and their settings. Policy HE4 is specific to listed buildings and Policy HE6 sets out the policy requirements in relation to development within or adjoining a conservation area. Policies to conserve and enhance biodiversity are not restricted to designated sites. Policy LB8 is directed at landscape scale biodiversity networks. New development has to show how it will support the

---

<sup>40</sup> CDLP.1 paragraphs 5.52, 5.53

<sup>41</sup> CDLP.1 paragraphs 5.10, 5.15 and 5.16

creation of coherent ecological networks through both rural and urban areas, retain ecological features and protect opportunities for improving connectivity of habitats. Policy LB9 states that all development should avoid a net loss of biodiversity/nature conservation value and actively pursue opportunities to achieve a net gain. Policy LB10 recognises the opportunity for new development to enhance the value and character of woodland and hedgerow networks and their contribution to improving the landscape and biodiversity.

- 3.15 Policy OS11 requires new housing development to make provision for appropriate outdoor space including semi-natural areas, green corridors, amenity greenspace, children's play areas and allotments. Where provision is not made on-site developers are expected to make financial contributions to new or improved open space or recreational facilities elsewhere in the locality through entering into a legal agreement or other suitable mechanism. Policy OS12 is directed at developing, protecting and enhancing the green infrastructure network. The plan states at paragraph 11.85 that additional allotments and/or community gardens will be provided as part of the strategic development sites identified in Policy SP3.
- 3.16 The Quality of Life chapter is concerned with promoting a wide range of formal and informal community, leisure, health and educational facilities. Where appropriate and linked to Policy SP5, proposals that will lead to more people using and putting further pressure on the use and capacity of existing local community buildings will be expected to make a financial contribution towards maintaining or upgrading them. Policy QL1 encourages proposals for new buildings or uses for local communities to provide social infrastructure. Policy QL5 applies to all strategic sites and requires provision to be made to accommodate local community services within new residential and mixed use developments. Policy QL8 is specific to health and social care facilities. A commitment to ensuring air quality remains at an acceptable limit is reflected in the requirements of Policy QL11.
- 3.17 In relation to climate change, Policy CC2 is concerned with measures to reduce carbon emissions from new development. Flood risk is covered by Policy CC4 and sustainable drainage by Policy CC11. Policy CC12 requires development to incorporate well designed mitigation measures to ensure no deterioration in the quality of the water environment. Policy CC13 focuses on the provision of the necessary water services infrastructure for new housing and commercial development.

***Other local policy considerations: Council strategies***

*Canterbury District Transport Strategy 2014-31*<sup>42</sup> (the CDTS)

- 3.18 The CDTS was adopted by the Council on 13 July 2017<sup>43</sup>. The headline aim is to improve access to services, goods and opportunities and tackle the negative impacts of traffic by promoting sustainable modes of transport, achieving reliable journey times and supporting sustainable development.

---

<sup>42</sup> CDTS.1

<sup>43</sup> CCC/IQ/29 paragraph 5

3.19 With specific reference to the HRR, the Strategy states “Although Herne village doesn’t suffer from significant traffic congestion, the high volume of traffic combined with the narrow and constrained section of the A291 through the centre of Herne village does impact negatively on the environment. Air quality is close to the threshold at which an AQMA (air quality management area) needs to be declared and the impact of additional traffic from all the proposed new development in the Herne Bay area will require the provision of a relief road.”<sup>44</sup> In the Action Plan the purpose of the HRR is to reduce traffic impact through Herne and to facilitate development. Environmental improvements in Herne village would be undertaken. The estimated cost of the HRR is £3,000,000 and the potential funding source is via section 106.

3.20 The Action Plan for bus infrastructure seeks to ensure bus provision is considered as an integral part of all new developments with bus stops located within 400 metres (m) of all premises along with contributions to enhance service levels as appropriate<sup>45</sup>.

*Canterbury District Housing Strategy*<sup>46</sup>

3.21 The Housing Strategy was adopted in 2012 and was updated and revised in September 2014. The CDLP, at paragraph 2.16, explains that the Housing Strategy examines the interdependence between housing, the planning system and the economy and seeks to address imbalances in the local housing market. It gives guidance on the Council’s preferred mix of property types and sizes in all tenures, based on housing need and demographics to meet current and emerging housing need. The core vision of the housing strategy is to plan for the right number of homes in the right place to create sustainable communities in the future<sup>47</sup>.

*Strategic Access Management and Monitoring Plan 2014*<sup>48</sup>

3.22 The plan provides a strategy to mitigate the potential in-combination impacts of new housing development in the vicinity of the Thanet Coast and Sandwich Bay SPA. A tariff has been developed to be levied on new dwellings built within the 7.2 km zone of influence to fund the operation of the mitigation actions and the required capital investment associated with the mitigation strategy.

*Draft Strategies and Plans*

3.23 The Open Space Strategy is under review and will be updated in line with the CDLP<sup>49</sup>.

3.24 A draft Infrastructure Delivery Plan was produced as supporting evidence for the Examination into the now adopted CDLP<sup>50</sup>. As regards transport infrastructure, the expectation is that the vast majority of the funding (65%) will be secured by section 106 agreements because the infrastructure is directly related to

---

<sup>44</sup> CDTS.1 paragraph 7.56. See also page 95 Table 12.4 ref F14

<sup>45</sup> CDTS.1 page 88 Table 12.2 ref C4

<sup>46</sup> CCC.2.A Appendix A and HE/INQ/37 for the updated Strategy

<sup>47</sup> HE/INQ/37 page 4 Our Pledge for Housing

<sup>48</sup> CCC/IQ/15

<sup>49</sup> CCC/IQ/13 and CDLP.1 paragraph 11.2

<sup>50</sup> CCC/IQ/14. The Infrastructure Delivery Plan is the now subject of Policy SP5 (see paragraph 3.7 above).



strategic site allocations. In the schedule of projects the HRR (off-site) has a period of delivery of 2014-2031, a total estimated cost of £3,000,000, with all the funding anticipated to come from section 106 agreement(s)<sup>51</sup>.

- 3.25 More particularly on the HRR, the section of the relief road within the identified boundary of the Strode Farm development (the on-site section) will be provided by that developer under a section 106 agreement. The off-site section will be secured by way of section 106 agreements and funded by the developers of the Policy SP3 SSAs at Strode Farm, HBGC and Hillborough. A funding agreement based on a signed Memorandum of Understanding will set out the level of financial contribution to be provided by each of the developers, based on the traffic generation from each of the allocations that will use the relief road. All the section 106 agreements will include development thresholds agreed by KCC which will specify the maximum number of unit completions that will be permissible for each of the SSAs prior to the delivery of the relief road. An appropriate phased delivery of the relief road will be considered<sup>52</sup>.
- 3.26 The Local Plan Inspector concluded that the infrastructure requirements are soundly based and deliverable, with clear mechanisms for implementation and monitoring<sup>53</sup>.

***Canterbury District Local Plan first review<sup>54</sup> (now replaced)***

- 3.27 The purpose of this section is to briefly identify the policies referred to in the putative reasons for refusal and the summary reports of the cases of the main parties.
- 3.28 Policy H1 directed residential development primarily to land within the urban areas where there was the capacity to achieve strategic housing requirements until 2011. Housing needs surveys identified an exceptional requirement for affordable housing in the District. Policy H4 sought the provision of affordable housing and mixed housing types and sizes on all appropriate sites, related to housing need and taking account of prevailing market and site conditions. In addition to this general requirement, a specific 30% level of affordable housing was expected on named development sites.
- 3.29 Policies H5, C14, C16 and C28 required provision to be made for social and physical infrastructure related to new housing, including health and educational facilities and open spaces. Policy IMP2 was specific to planning obligations to secure the necessary developer contributions. Putative reason for refusal 3, lack of planning obligations to mitigate development impact, also cites Policy C10 (related to public and private parking) and C37 (related to water and sewerage infrastructure). These two matters were not the subject of any dispute during the appeal.
- 3.30 Policy C1 set out the principles of the 2004 Canterbury Transport Action Plan that would be taken into account when considering the location or control of new development. The principles included controlling the level and

---

<sup>51</sup> CCC/IQ/14 page 19 paragraph 47 and page 20 for relevant entry in schedule

<sup>52</sup> CCC/IQ/14 page 27 paragraphs 59 to 62

<sup>53</sup> CDLP.3 paragraphs 106, 107, 115, 120-122, 127, 132, 163, 165, 169

<sup>54</sup> CCC/IQ/4

environmental impact of vehicular traffic, providing alternative modes of transport to the car, seeking new roads and/or junction improvements.

- 3.31 Policy C4 required development proposals with significant transport implications to show through a transport assessment and a travel plan how multi-modal access options would be achieved and how transport infrastructure arising from expected demand would be provided.
- 3.32 Under the sub-heading 'Road Building' schemes were identified that offered possible longer term solutions to traffic congestion hot spots in the District. The A291 Herne Short By-Pass was one of these schemes, where the Local Plan stated that "A developer funded by-pass for Herne would reduce the impact of traffic (particularly HGVs) and improve the residential environment through the historic village of Herne, with its narrow main street and tight bends. No development is identified in this plan that would fund such a scheme."<sup>55</sup>
- 3.33 Policy BE1 set out the expectation that development proposals will be of high quality design and the considerations to be taken into account. Policy C39 is related to air quality issues.

### **National Policy**

- 3.34 The National Planning Policy Framework (the Framework) is an important consideration.
- 3.35 Reference will be made to the Planning Practice Guidance as necessary.

## **4. THE PROPOSALS**

- 4.1 By way of background, Hollamby Estates (2005) Limited is a locally based private company, described as a major stakeholder in the area. Over a period of many years several of its landholdings have been developed to provide new homes and other local infrastructure. The company is not a house builder and will require development partners to complete a scheme of the size and scale of Strode Farm. Financial viability, and the ability to attract development partners on attractive terms, has been the foundation stone of Hollamby's core strategy. At the outset the intention was for the scheme to meet the needs and aspirations of local people and that if the HRR could be delivered across its land on a viable and sustainable basis then that should have priority amongst all other requirements the Council may have<sup>56</sup>.
- 4.2 The proposal is for an extension to the urban area of Herne Bay to create a neighbourhood centre with a mix of commercial, community and residential uses<sup>57</sup>. The Design and Access Statement (DAS) describes the design principles and concept and the development of the design as reflected in the emerging illustrative masterplan (EIM)<sup>58</sup>. The proposal is stated to be driven by Garden City and place-making principles to achieve a scheme that responds to local needs and is deliverable. A series of parameter plans were developed in order to set the framework for the proposed development and to define a maximum

---

<sup>55</sup> CCC/IQ/4 paragraph 7.31 page 123

<sup>56</sup> HE.4.B sections 3 and 4

<sup>57</sup> HE.1.B paragraph 5.4

<sup>58</sup> PA.2 including paragraphs 3.3.2, 4.1 for garden city principles and placemaking

building envelope. The parameter plans form the basis of the EIA and address land use, landscape and open space, access, building heights, density and key frontages/focal points<sup>59</sup>. The intention is that the spine road through the site would form part of the HRR, the second component being the Kent BRIS.

#### *Development overview*

4.3 The main components of the outline application for a mixed use urban extension are<sup>60</sup>:

- A residential estate of up to 800 dwellings;
- A local neighbourhood centre comprising up to 3,400 sq m gross floor space of development falling within Use Classes A1/A2/A3/A4/A5 and B1(a) and up to 600 sq m gross floor space of development falling within Use Class D1<sup>61</sup>;
- Two means of access to the main site, one from the north eastern site boundary at the Thanet Way/Canterbury Road junction and one access at the south western site boundary where it adjoins Bullockstone Road;
- An estate served principally by a spine road through the site between the two principal access points, with estate roads leading off the spine road, together with means of access along Lower Herne Road, pedestrian and cycle links, lighting and other highway related infrastructure;
- Areas of public open space, play areas, amenity space, recreational space and landscaping;
- Associated facilities and service infrastructure including strategic water attenuation and other sustainable drainage measures, utilities, related infrastructure, landscaped noise bund boundary treatments and other earth works;
- Improvements and extension of public rights of way network.

4.4 All matters are reserved except for the means of access from Thanet Way/Canterbury Road junction and from Bullockstone Road. The proposed Thanet Way junction would be in the form of a signal controlled layout, replacing the existing roundabout and utilising an area of adjacent scrubland (owned by the highway authority) between the slip road to Thanet Way and Canterbury Road<sup>62</sup>. The proposed access from Bullockstone Road would be in the form of a priority through link with Bullockstone Road south and a right turn lane to Bullockstone Road north. The Lower Herne Road junction to Bullockstone

---

<sup>59</sup> ES.1 paragraphs 2.4.1, 2.4.2 and 5.2.4, 5.2.5

<sup>60</sup> ES.1 paragraph 5.3.2 provides a description of the scheme

<sup>61</sup> PA.1 paragraphs 1.3 and 2.12 also describe this land use content for the local centre. The Town and Country Planning (Use Classes) Order 1987: Use Classes A1/A2/A3/A4/A5 cover shops, financial and professional services, food and drink, drinking establishments, hot food takeaways; B1(a) is use as an office and D1 is non-residential institutions (such as day centre, public hall, use for education or provision of medical and health services).

<sup>62</sup> Plan F13105/36

Road would be stopped up<sup>63</sup>. On completion of the Kent BRIS the junction would be in the form of a roundabout.

- 4.5 The full application originally provided for a change of use of the lagoon area (north of Thanet Way) to recreational and leisure use comprising allotments, ecological habitat and the creation of a footpath link. However, it was confirmed that the existing land use is agricultural land and that the detention basin would remain. That being the case no material change of use would be involved and habitat enhancement would not amount to development of the land.
- 4.6 The second element of the full application – the improvements along the length of Bullockstone Road – was withdrawn from the proposal following the grant of planning permission for the Kent BRIS. The plan of the application site boundary was amended to exclude the land along Bullockstone Road<sup>64</sup>. The plans of landscape and arboricultural works were withdrawn. A schedule of amended plans was agreed with the main parties<sup>65</sup>.
- 4.7 Therefore the full element now is confined to the demolition of three dwellings and the provision of a footway link along Bullockstone Road between the proposed spine road northwards to link with an existing public footpath on the southern edge of Greenhill. The description of the proposal was amended by the appellant in response to these changes. The Council raised no issue on the matter.
- 4.8 The appellant's amended description now states<sup>66</sup>: "Hybrid application for the development of Strode Farm. The full element comprises the demolition of an existing dwelling house in the Conservation Area and two other dwellings, the provision of a footpath link and improvements along Bullockstone Road. The outline element comprises the development of a new mixed use neighbourhood with up to 800 dwellings, commercial and community development within a local centre, spine road, estate roads, other means of access, pedestrian and cycle links, improvements to existing footpath, sustainable urban design drainage measures<sup>67</sup>, landscaped noise bund/earthworks and boundary treatments, public open space, the provision within an existing lagoon area for allotments and ecological enhancement, highway-related and utilities infrastructure with all matters reserved apart from means of access from Canterbury Road and Bullockstone Road".

#### *Housing mix*

- 4.9 An indicative housing mix was presented in the DAS to illustrate the variety of housing achievable at a gross density of 16 dwellings per hectare (dw/ha) or a net density of approximately 30 dw/ha, a density level chosen to reflect the context of the Herne area<sup>68</sup>. This mix also was used in the financial viability appraisals<sup>69</sup>. In summary the schedule indicated 731 new homes (728 net)

---

<sup>63</sup> Plan F13105/08 Rev D

<sup>64</sup> HE/IQ/41 Plan ref AA4453/1.1.1013 Rev G

<sup>65</sup> GEN.14

<sup>66</sup> HE/IQ/28; HE/IQ/42 paragraph 3

<sup>67</sup> This phrase should state sustainable drainage measures

<sup>68</sup> PA.2 page 138 paragraph 4.5.2

<sup>69</sup> HE.3.B paragraph 4.3 and Table 1

comprising 20 x 2 bed flats and 10 x 2 bed flats over garages (FOG) and 701 houses (a mix of 2, 3, 4 and 5 bed).

- 4.10 The indicative dwelling mix was amended in association with the increase in the proportion of affordable housing to 30%<sup>70</sup>. The total number of new dwellings remained at 731 but the dwelling type showed some variation. The proposed 20 x 2 bed flats were replaced with 22 x 1 bed flats with an associated reduction of the number of 2 bed terrace houses by 2<sup>71</sup>. The layout on the EIM was adjusted but no amendments were required to the parameter plans on density and building height<sup>72</sup>.
- 4.11 The Economic and Employment Statement explained that the proposed development was designed to create a sustainable residential-led mixed use community of up to 800 homes to help meet housing needs within Herne Bay and the District more widely<sup>73</sup>. The other uses were incorporated to be complementary and supportive of this objective and where there was confidence of market demand to ensure the proposals are viable and deliverable. A Local Centre is proposed to include a number of commercial and community facilities to help meet the day to day needs of local residents. The centre would include up to 3,400 sq m of commercial floor space of which up to 1,000 sq m could be for B1a office space. The precise mix of uses and amounts of floorspace for different uses was not fixed in order to provide flexibility to respond to market requirements at reserved matters stage.
- 4.12 The Statement acknowledged that the level of employment floorspace provision falls significantly below the expected level for floorspace within classes B1/B2 and B8 identified for Site 5 under Policy SP3 of the emerging CDLP. However, the policy was said to be subject to objections and had limited weight. The DAS includes the initial masterplan presented to the Council in January 2013, which included a significant amount of employment floorspace in the area adjacent to Thanet Way. A review of that initial plan concluded that employment use on the site had to be reduced to reflect local market conditions and that the residential uses needed to be increased to achieve the draft local plan aspirations for the number of allocated units at viable densities. A fresh masterplan was developed<sup>74</sup>.
- 4.13 The employment generating uses proposed together with the office floorspace would result in up to 298 direct on site jobs during the construction and operational phases along with up to 75 further indirect jobs created through the purchase of goods and supplies. Additional financial benefit would be derived from £13.09 million per annum gross value added, annual retail expenditure from residents of the development, new homes bonus payments and annual Council tax receipts<sup>75</sup>.

---

<sup>70</sup> HE.4.E paragraphs 4.1-4.3 and Appendix 7

<sup>71</sup> HE/IQ/32 paragraph 1

<sup>72</sup> HE.4.D paragraph 4.4 and Appendix 8 for revised EIM

<sup>73</sup> PA.4 Executive Summary and paragraph 2.3

<sup>74</sup> PA.2 page 64 section 3.1

<sup>75</sup> HE/IQ/47A Executive Summary and section 6 for details of the assessment

- 4.14 The proposal allows for the incorporation of community uses within the local centre. For the purposes of the ES, the Class D1 use is identified as being a day nursery but the possibility of incorporating other community facilities is stated<sup>76</sup>.
- 4.15 The increase in the local population as a result of the development is estimated to be 1,840 or 4.77%<sup>77</sup>. The assessment of health care provision showed that there is no existing capacity at either General Practice (GP) or dental surgeries in the surrounding area<sup>78</sup>. The position was expected to change with the building of a new doctor's surgery as part of the HBGC scheme, which would provide sufficient capacity in terms of new GPs to meet the needs of residents on both developments. For that reason no mitigation is proposed to offset the impacts on health services<sup>79</sup>.
- 4.16 The proposal is to deliver 16.65 ha of publicly accessible formal and informal open spaces, including children's play areas and allotments in accordance with the open space strategy<sup>80</sup>. Early discussions took place with the Herne Bay Allotment Association, the idea being that management of the allotments would be undertaken by the Association under a rental agreement with the appellant<sup>81</sup>. No formal sports pitches would be provided on-site and instead a financial contribution would be made towards improvements to existing pitches off-site.

#### *Phasing strategy*

- 4.17 The phasing strategy for the delivery of the development is set out in the DAS and is based on a number of principles<sup>82</sup>. In brief these are to provide key place-making components at an early stage, to balance infrastructure investment with housing provision to ensure viability, to adjust build up rates based on market conditions, to minimise the impact on the existing community and to complete the relief road as soon as practically and viably possible. The potential scenario that is illustrated anticipates commencement of built development at the north eastern end of the site to provide the local centre and housing, to start the upgrade to the Thanet Way junction and deliver phase 1 of the spine road. In addition the main public open space would be provided to the north of Thanet Way. The second phase would be at the south western end of the site with construction of a new junction with Bullockstone Road and the western edge of the spine road, together with lower density housing. Subsequent phases would develop the land from the south west to the north east.
- 4.18 The design and development strategy also was conceived to address development risk over the planned trajectory of the whole scheme, with the

---

<sup>76</sup> ES.17 paragraph 14.6.16

<sup>77</sup> ES.17 paragraph 14.5.3 and Table 14.16

<sup>78</sup> ES.17 paragraphs 14.5.22 – 14.5.24. The ES acknowledges at paragraph 14.5.25 that without appropriate mitigation measures or the implementation of the new doctor's surgery at the HBGC site there would be a minor long term adverse impact on GP services and a moderate long term adverse impact on dental surgeries. No information on current list sizes was available to inform the assessment on dental surgeries.

<sup>79</sup> ES.17 paragraph 14.7.3

<sup>80</sup> ES.17 paragraphs 14.6.19, 14.6.20 and Table 14.27

<sup>81</sup> HE.1.B paragraph 6.13

<sup>82</sup> PA.2 pages 144, 145

greatest risks being sales risk and build cost risk. Measures include providing a spread of house types in each phase and building in sequence. The need to achieve continuity underpins the thinking behind the design of the scheme and its implementation<sup>83</sup>. On a very specific point about the three dwellings on site, Hollamby Estates advised that it has no immediate plans to develop the bungalow or cottages early in the phasing of the development. As a gesture of goodwill the appellant is prepared to offer alternative accommodation to its Strode Farm tenants if at some point in the future it is necessary to do so<sup>84</sup>.

- 4.19 More detailed construction programmes show that the Thanet Way junction improvement works would take over two years to complete from the commencement of design work. A construction access is proposed from Canterbury Road in the gap between the existing frontage dwellings, numbers 270 and 262. The completion of the spine road is shown in year 8.
- 4.20 At the Bullockstone Road end, the junction would be built to the scheme design, to be replaced by the Kent BRIS at a later date. The existing Strode Farm road initially would provide the construction access to serve this end of the site. The Lower Herne Road junction with Bullockstone Road would need to be stopped up by the time the first section of the spine road is usable. Thereafter through traffic using Lower Herne Road would divert into Strode Farm and use a new carriageway following the boundary of the first housing phase. The arrangement would remain in place until the completion of the next section of the spine road and so on until the spine road is completed. A sequence of access points have been identified off Lower Herne Road and are shown on the Access parameter plan<sup>85</sup>. It is recognised that planning permission would be required for the new access points that would not be approved as part of the appeal.
- 4.21 There could be a possibility of alternative funding from the Homes and Communities Agency (HCA) to accelerate delivery of the HRR and should planning permission be forthcoming Hollamby's intention is to explore this possibility further<sup>86</sup>. The Costs plan for off-site highway improvements allows for traffic calming to Lower Herne Road, although no design details have been prepared<sup>87</sup>.

#### *Viability*

- 4.22 The June 2015 viability statement submitted with the planning application concluded that the project was viable but was marginal. The principal reason given was the unusually high cost of providing the associated infrastructure and a spine road to a standard required that would facilitate the development of other strategic sites<sup>88</sup>. The affordable housing content amounted to 29 dwellings or 4% of the total number of dwellings.

---

<sup>83</sup> HE.4.B paragraph 5.4.1

<sup>84</sup> HE/IQ/28

<sup>85</sup> HE.4.D section 2 explains the construction and phasing of delivery with reference to Appendices 1, 2 and 3 of that document.

<sup>86</sup> HE.4.D paragraphs 5.1, 5.2

<sup>87</sup> HE.5.A paragraph 4.5 and HE.5.B Appendix 2 section 8

<sup>88</sup> PA.7, PA.7A and CCC.3.A Appendix 1

- 4.23 As part of the appeal documentation the June 2015 viability statement was re-appraised to reflect changes in market conditions, other developments including the HBGC site and a review of likely development costs. The financial viability model sought to assess the amount of affordable housing by having regard to the housing mix and affordable housing tenure that the proposed development could support<sup>89</sup>. The main model inputs were related to the gross development value (GDV) of the project, all relevant development costs and the development programme.
- 4.24 A series of appraisals were produced, dated 31 August 2016. The policy compliant appraisal 23A generated a deficit of over £6.5 million. The development would generate a positive residual value if the blended return or profit was reduced to below 12.84%. A policy compliant scheme was found to be unviable. The policy non-compliant appraisals (23E, 23G, 23H and 23J) considered ways of improving viability by altering the tenure arrangements for the affordable housing components, reducing the overall amount of affordable housing by size and housing type and/or altering the offsite road proposals<sup>90</sup>.
- 4.25 A further series of appraisals were submitted in associated with the rebuttal evidence on viability - appraisal 24A (policy compliant) and the non-policy compliant appraisals 24E, 24G, 24H and 24J. The evidence of Mr Edge (the appellant's adviser on viability) explains the revisions to the cashflows, related to the overall development contingency. Revised appraisal 24E shows the amount and mix of affordable housing that could be cross subsidised and delivered by the development proposals, assuming the Kent BRIS and subject to the appellant's offer to contribute £2,331,000 to that infrastructure. The result was an increase in the affordable housing offer, 8 more affordable dwellings than in appraisal 23E<sup>91</sup>. The affordable housing would be 115 dwellings or 15.73% of total dwellings, assuming a tenure split of 30% affordable rent and 70% shared ownership<sup>92</sup>. The intention was that this quantum of affordable housing would form the basis of the offer in the planning obligation.
- 4.26 The final appraisal 27A, submitted in April 2017, supports the appellant's amended proposal for 30% affordable housing<sup>93</sup>. Mr Edge stated that the most appropriate appraisal to compare the revised assessment is appraisal 24E because both appraisals are policy non-compliant. Both provide an identical approach to the delivery of planning obligations, notably in terms of the contribution for off-site highway works in the sum of £2,331,000 payable to KCC at the completion of the 500<sup>th</sup> dwelling. Appraisal 24E would have provided 14.64% affordable housing with a tenure split of 30% affordable rent housing and 70% shared ownership housing<sup>94</sup>. Appraisal 27A offers 29.96% affordable housing, with a tenure split of 30% affordable rent housing and 70% intermediate housing.

---

<sup>89</sup> HE/IQ/30 explains the structure and operation of the model in more detail.

<sup>90</sup> HE.3.A. The summary proof sets out the main assumptions and inputs for each appraisal.

<sup>91</sup> HE.3.E paragraphs 2.43 to 2.48 and Appendix 2

<sup>92</sup> HE.3.E paragraph 2.48

<sup>93</sup> HE/IQ/32

<sup>94</sup> HE/IQ/32 paragraph 3 (NB. 14.64% is given in HE/IQ/32 whereas 15.73% is stated in the rebuttal).



4.27 The viability assessment was based on Cost Plan 6 issued in August 2016 and showing a total infrastructure project cost sum of £28,125,000<sup>95</sup>. The costings cover enabling works, miscellaneous earthworks, site wide drainage, on site and off site highways, public open space, utilities, design fees and surveys and other fees. The cash flow sheet for Appraisal 27A gives a total base cost including enabling works of £28,419,976<sup>96</sup>. Construction costs (sub-total) amount to £138,806,154<sup>97</sup>. Total market housing receipts amount to £203,112,450 and total affordable housing receipts amount to £32,792,545 (total £235,904,995). In terms of profit on GDV, the blended rate of profit is stated to be 18.42%, compared to 19.20% for Appraisal 24E.

### ***Environmental Statement***

4.28 The Non-Technical Summary update<sup>98</sup> confirms that the ES, informed by a number of technical assessments, provides a coordinated review of the likely significant effects during both the construction and operational phases of the development. A range of mitigation measures have been recommended and it is anticipated that they would be secured and implemented either through appropriate planning conditions or legal agreement. The significance of residual effects on most environmental aspects have been assessed within the range of minor adverse to minor beneficial. Moderate adverse applies to severance and to impact on views and substantial adverse to the loss of open countryside comprising grade 3 agricultural land. The significance of the provision of 30% affordable housing and a mix of housing typologies and tenures is found to be major beneficial. Land for a new primary school and financial contributions are categorised as moderate beneficial.

### **Kent BRIS**

4.29 The proposed works to construct the Kent BRIS are covered by a separate planning permission<sup>99</sup>. In summary, the scheme proposes the widening and realignment of sections of the highway and the addition of new junctions to serve the Strode Farm development and to improve the junction with the A291 Canterbury Road. The proposals include new drainage attenuation features and footways along the highway. The intention is that Lower Herne Road would be stopped up at the junction with Bullockstone Road, which would be addressed by an application to KCC under the Highways Act 1980<sup>100</sup>.

4.30 During the application process the scheme was supported by additional information on levels of the highway and visibility splays for properties along Bullockstone Road. The application site boundary was increased to allow for the provision of a 2.5 m dedicated cycle route. As shown on the revised plans the design is based on a 7.0 m carriageway and a 2.5 m footway/cycleway, except just north of the junction with the A291 where the carriageway would be

---

<sup>95</sup> HE.5.A sections 2 to 6 and HE.5.B Appendix 2

<sup>96</sup> HE/IQ/37A cash flow sheet row 147. Housing receipts are rows 210, 214 and 215; blended rate of profit is row 222. See also HE/IQ/32 paragraph 9.

<sup>97</sup> HE/IQ/37A cash flow sheet row 161, referenced from HE.3.E paragraph 4.2.

<sup>98</sup> ES.19, see particularly section 4.0 and Table 4.1

<sup>99</sup> HE/IQ/34

<sup>100</sup> CCC/IQ/16 paragraph 7 of main report and paragraph 8 in the update section

widened to a maximum of 6.0 m with a 1.5 m wide footway/cycleway to avoid additional land take<sup>101</sup>.

- 4.31 The planning permission for the Kent BRIS is subject to a planning condition that in effect states no development shall commence until contracts are in place for the delivery of the approved highway works and a spine road through the Strode Farm site. The contracts are to include a timetable for the delivery of both projects, demonstrating that both schemes will be delivered to completion concurrently or the Kent BRIS will be in place acceptably before the spine road<sup>102</sup>.
- 4.32 Planning conditions also require details of routing of construction vehicles as part of a CEMP, details of the closure of the junction between Lower Herne Road and Bullockstone Road and details of a sustainable surface water drainage scheme.

## 5. COMMON GROUND

- 5.1 Three statements of common ground were submitted by the appellant and the Council on planning, viability and highways and transportation matters.

### ***Planning***<sup>103</sup>

#### *Matters not in dispute*

- 5.2 The Kent BRIS would provide an appropriate technical solution to the requirement to improve Bullockstone Road.
- 5.3 Air quality. The ES Addendum No.2 included a further assessment using updated traffic flow data<sup>104</sup>. As a result the Council withdrew its objection to the development on grounds of the impact on air quality.
- 5.4 Thanet Coast and Sandwich Bay SPA. The appellant agreed that the requested contribution towards strategic access management at the SPA would be met in full through a planning obligation. On this understanding the Council accepted adequate mitigation would be secured.
- 5.5 Secondary education. KCC is seeking a financial contribution towards a project for the expansion of the nearby Spires Academy to provide additional secondary education capacity. The appellant has agreed to secure this obligation in full and on that basis the Council no longer sustains its objection on this issue.
- 5.6 Housing supply. Using a base date of 2011 and an end date of 2031 the agreed housing requirement is 800 dwellings per annum. This figure is the one supported by the Local Plan Inspector following the stage 1 hearings on the emerging Local Plan<sup>105</sup>. The Council and the appellant agree that using the Liverpool method of calculating a 5 year supply there is a surplus of housing

---

<sup>101</sup> CCC/IQ/16 paragraph 2 in the update section; HE/IQ/34 plans 4300400/000/03 rev 1; 4300400/000/04 rev 1; 4300400/000/06 rev1

<sup>102</sup> HE/IQ/34 condition 2 on the decision notice

<sup>103</sup> SCG.3

<sup>104</sup> ES.16 chapter 5

<sup>105</sup> CCC.1.B Appendix B and in particular paragraphs 17-26 of the Note on main outcomes of Stage 1 hearings

land (5.39 years) and using the Sedgefield method there is a deficit of housing land (4.44 years)<sup>106</sup>.

### *Matters in dispute*

5.7 The appellant and the Council agreed to enter into a mediation process in an attempt to resolve the dispute regarding development viability and the level of affordable housing that could be delivered by the scheme<sup>107</sup>. The panel made recommendations on:

- Level of contingency: an assumption of an additional 5% on cost on all works associated with road construction, external works, foundations and so on up to DPC level, with 3% above that level. This was on the basis that housing construction costs should be fairly well known compared to work in the ground.
- Level of profit: if a blended profit margin is not considered suitable, a split of 20% on private homes, 6% on affordable rent and between 8% and 9% on shared ownership homes going to a Registered Provider (RP) should be assumed, which includes the cost of sales associated with the shared ownership homes on behalf of the RP.
- Affordable homes: allow a 70/30 split in favour of shared ownership units over affordable rental to enable the delivery of as many social homes as possible within the scheme.

5.8 The disagreement on the timing and amount of the appellant's contribution to the Kent BRIS and other related matters are set out in the Highways statement of common ground.

### ***Viability***<sup>108</sup>

5.9 The matters agreed include:

- The agricultural land value at £8,000 per acre to £9,000 per acre and the retail/pub land valuation at £400,000 per acre;
- Traffic noise impact: a reduction of 5% in the value of the market and the shared ownership houses affected by noise from the A299 Thanet Way (within the greater than 55 dBA noise contour);<sup>109</sup>
- Land use budget;
- Existing dwellings on site by size and type;
- Commercial land take-up;

---

<sup>106</sup> SCG.3 paragraphs 4.8 to 4.12 and Tables 1 and 2. CDLP.3 paragraph 85 where the Local Plan Inspector concluded that the need for a realistic approach points to the Liverpool method as the means of securing the aspiration of addressing the past shortfall.

<sup>107</sup> HE.3.C Appendix F is the report resulting from the use of the Kent Viability Protocol. Also found at CCC.3.A Appendix 9

<sup>108</sup> SCG.1

<sup>109</sup> HE.3.B paragraph 4.5 states that the affected dwellings comprised 63 market dwellings, 101 affordable rent dwellings and 49 shared ownership dwellings, a total of 213 dwellings (29% of the total new stock). This assessment was carried out before the amendments to the scheme.

- Land assembly associated fees and costs;
- Land acquisition costs for Bullockstone Road improvements;
- Housebuilding construction costs;
- Broad agreement on site preparation and infrastructure provision costs;
- Construction contingency agreed at a blended rate of 3.9%, together with some fee inputs;
- Debit and credit interest rates.

5.10 The matters in dispute in January 2017 include:

- Benchmark land value and commercial serviced land value (reduced from £400,000 per acre to £250,000 per acre);
- Residential threshold land value (increase from £9,511,235 to £14,203,784 as the appellant's altered position);
- Development capacity of the site and whether 800 units should be modelled;
- Market housing value, affordable rented and shared ownership values;
- Sales rates and development programme;
- Phasing cost of works and professional fees;
- Section 106 contributions, related to number of units and apportionment of highways contribution;
- Marketing costs for market housing;
- Developer's return – 20% or 17.5% profit on GDV;
- Amount of affordable housing that could be viably provided<sup>110</sup>.

### ***Highways and transportation matters<sup>111</sup>***

#### *Points of agreement*

5.11 There are no outstanding technical highway and transportation issues that prevent a grant of outline planning permission for the development and full planning permission for the proposed means of access at Bullockstone Road and Canterbury Road, subject to the completion of suitably worded planning obligations and a section 278 agreement and securing completion of all agreed junction improvements.

5.12 Traffic data. Trip rates, traffic flows, distribution model and traffic generation are agreed.

---

<sup>110</sup> CCC.3.B Appendix I is a summary of differences between the DVS and the appellant on values and costs based on a policy compliant scheme of 731 units.

<sup>111</sup> SCG.2

5.13 The peak hour trip rates (total per dwelling) are 0.515 (morning) and 0.55 (evening).

5.14 The distribution model for departures shows 33% assigned to Thanet Way A299 west, 32% of traffic assigned to Bullockstone Road (south), and 11% to Canterbury Road north.

5.15 The 2024 baseline flow conditions<sup>112</sup> on the A291, south of the A299 junction are:

Peak	southbound	northbound	Total
Morning	834	607	1,441
Evening	829	676	1,505

5.16 The total proposed traffic generation for 800 dwellings and other uses (new trips) are:

<i>Residential</i>	Arrivals	Departures	Total
Morning peak	122	290	412
Evening peak	270	171	442
<i>All uses</i>			
Morning peak	245	354	599
Evening peak	365	297	663

5.17 Internal layout. The internal spine road should have a minimum width of 6.75 (m) through the site, a 3 m wide footway/cycleway on at least one side of the carriageway and a 2 m wide footway on the other side and street lighting at both edges. In developing the detailed site layout provision for off-street parking and double yellow line parking restrictions at both edges of the spine road should be incorporated to deter indiscriminate parking.

5.18 Off-site works. Traffic impacts could be suitably mitigated by the Kent BRIS, lane improvements at Old Thanet Way/Eddington Way T junction and a pedestrian improvement scheme along Bullockstone Road between the western site boundary and public footpath CH11 to the north<sup>113</sup>.

5.19 Site access. A signal controlled access arrangement at the eastern end of the site is agreed. To the west a proposed ghost island T junction arrangement would be satisfactory until the Kent BRIS is implemented<sup>114</sup>.

5.20 Travel mode. The proposed development would provide satisfactory opportunities for travel by walking, cycling and rail based public transport

<sup>112</sup> Baseline flow = network traffic increased to 2024 plus the addition of consented HBGC traffic.

<sup>113</sup> See plans F13105/35 and F13105/37 Rev A for junction and footway improvements

<sup>114</sup> See plans F13106/36 and F13105/08 Rev D

subject to the delivery of the spine road and the Bullockstone Road pedestrian improvements. The Kent BRIS coupled with the internal spine road is necessary to accommodate potential future bus services. The proposed spine road is designed to safely accommodate the potential future diversion of bus services through the site, with bus stops at intervals of 400 m. A detailed travel plan should be secured by a suitably worded planning condition.

*Points of disagreement*

- 5.21 These focus on the identification of the time when the spine road has to be completed for use by through traffic and public transport accessibility issues.
- 5.22 KCC (and the Council) contend that the spine road and the Kent BRIS should be completed and available for use prior to the completion of the 410<sup>th</sup> dwelling or by the end of 2023, whichever is the sooner. The appellant contends that payment of its contribution is not required prior to the completion of the 500<sup>th</sup> dwelling and that overall completion of the HRR would not be necessary without the Hillborough development.
- 5.23 The parties disagree:
- whether the HRR is necessary to address public transport accessibility and capacity issues along the A291 for this development alone;
  - whether the proposed development would be adequately served by local bus services if they cannot be diverted through the site via a completed HRR prior to the completion of 410 dwellings or the end of 2023, whichever is the sooner; and
  - the final amount and timing of the payment of apportioned costs towards the Kent BRIS.

**Statement of Common Ground – Herne Relief Road<sup>115</sup>**

- 5.24 This document (the SCG – HRR) was provided by KCC, the Council and the developers of the Hillborough, HBGC and Strode Farm strategic housing sites to demonstrate to the Local Plan Inspector that the HRR is deliverable and will allow the delivery of housing on the contributing sites.
- 5.25 The statement confirms that Canterbury City Council as local planning authority and KCC as the highway authority will require the HRR to be in place at the point of saturation of the highway network following the build-out of development. For the purposes of apportionment, KCC will apply the sum of over £3 million secured from the HBGC development, reducing the sum between the remaining contributing sites to £4,581,883 (calculated on a delivery date of 2020). The parties agreed that a cost apportionment approach subject to KCC's trip distribution would be an agreeable and achievable potential scenario. The contribution from the Strode Farm development would amount to £2,331,000 (51%). The apportioned cost to the Hillborough development would be £2,249,000 (49%).
- 5.26 The anticipated build out rates of the strategic sites envisage the Hillborough sites coming forward in the same year (2018/19) as Strode Farm. In the event

---

<sup>115</sup> HE.1.C Appendix 1 or UU.2 Appendix 2

Strode Farm did not come forward highway mitigation works would be confined to improvements to the A291 (works to be defined by KCC).

- 5.27 Apportioned costs should be paid into an escrow bank account controlled by KCC only after implementation of a planning permission for a respective site, broken down into staged payments triggered by sequential and aggregated dwelling occupation thresholds (with recognition to development cashflow and viability considerations). In the event at an agreed date the escrow account does not hold the sum equal to the construction cost the developers, on implementation of the permission for their respective site, will make alternative provision. In summary the measures are (i) an on-demand bond to cover any shortfall, or (ii) advanced payment of the balance of their proportionate contribution as may remain outstanding, or a combination of the measures<sup>116</sup>.
- 5.28 There was an acknowledgement that should the date of construction be post 2020 an adjustment to the scheme costs would be made to reflect additional inflation costs.

## **6. THE CASE FOR CANTERBURY CITY COUNCIL<sup>117</sup>**

- 6.1 The application is for up to 800 houses on a greenfield site. The Council wants to be supportive of the proposal for an emerging local plan site but needs to ensure for the public good that the scheme provides desperately needed affordable housing and necessary infrastructure. The developer has been reluctant to deliver.

### **Affordable housing**

- 6.2 The Housing Strategy described a desperate and urgent picture of the need for affordable homes in Canterbury. The housing needs survey in 2009 identified a backlog of need of 3,248 households and every year a newly arising housing need of 1,276 households. A net annual need of 1,104 new affordable homes was required to address the severe shortfall<sup>118</sup>. Since then the shortfall of affordable homes has certainly increased because of the low rate of housing and affordable housing delivery.
- 6.3 The severity of the problem in Canterbury is highlighted by the fact that there are 1,592 households who have met the stringent tests to be accepted onto the housing register. The figure is three times higher than in Maidstone, which has a higher population and twice as large as in Ashford<sup>119</sup>.
- 6.4 As a result a large number of people live in temporary accommodation, five or six people sharing one room in a hostel. Kitchen/bathroom facilities are often shared. Vulnerable adults and children lack safety and security in the accommodation provided. People housed outside the district have to travel long distances<sup>120</sup>.

---

<sup>116</sup> CCC/IQ/10 where the principle of forward funding, cost neutral to KCC, is explored.

<sup>117</sup> The summary of the Council's case follows the structure of CCC/IQ/27

<sup>118</sup> CCC.2.A at Appendix A page 22 Table 3

<sup>119</sup> CCC.2.A paragraphs 20, 21 and oral evidence of Mr Paterson

<sup>120</sup> Oral evidence of Mr Paterson

6.5 A review of need by the Council's expert housing witness (Mr Paterson) demonstrates a requirement for a tenure mix of 70% affordable/social rent and 30% shared ownership. Developers find shared ownership a more attractive proposition but there is no longer a local connection criterion and the income threshold for applicants has increased from £60,000 to £80,000 a year. Consequently a RP is now able to advertise widely (such as the City and East London) and rent to a wider pool of people. Therefore those in most need, with low incomes and without access to mortgage finance, would not necessarily be able to benefit from an increased provision of shared ownership homes. The outcome of a lower proportion of affordable rent and a higher percentage of shared ownership would be more people in temporary accommodation and on-street homeless. For these reasons the Council has stood firm on tenure split.

#### *Policy*

6.6 The desperate need for affordable housing is reflected in the Council's planning policy. Local Plan Policy H4, when read with the reasoned justification<sup>121</sup>, requires 30% affordable housing. The development contributions supplementary planning document (SPD) set a local target of 35% affordable housing based on later available information. Policy H4 states that affordable housing provision must be "related to housing need". The supporting text to Local Plan Policy IMP2 also makes clear that the provision of affordable housing is to meet local needs<sup>122</sup>. The need is reflected in the Council's Housing Strategy.

6.7 The Housing Strategy, original document and refresh, makes clear the policy is that 70% of new affordable housing should be for rent and 30% for shared ownership<sup>123</sup>. The reason is a huge backlog of existing need (3,248 households) and the very large numbers on the housing register (1,844 households), even though post 2013 fewer people are eligible to join the housing register<sup>124</sup>. In contrast, a relatively small number of households were registered for shared ownership – 253 households of which 151 were living in the district<sup>125</sup>. The stated aim is to keep as many social rented homes as possible because lack of affordable accommodation and low household incomes are a major local concern<sup>126</sup>.

6.8 Therefore the policy of the Local Plan is not complied with if provision does not meet the tenure split and need set out in the housing strategy. The appellant through the evidence of Mr Edge fully understood a policy compliant split as 70% affordable rent. Mr Edge's 27A appraisal (based on 30% affordable rent housing and 70% intermediate housing) is described as policy non-compliant<sup>127</sup>.

6.9 The whole of the appellant's case is predicated upon the emerging local plan. In that plan Policy HD2 requires 30% affordable housing on all developments consisting of 7 units or more. As expressed in the supporting text, the stated

---

<sup>121</sup> CCC/IQ/4 paragraph 2.33

<sup>122</sup> CC/IQ/4 paragraph 8.18 (a)

<sup>123</sup> CCC.2.A Appendix 1 page 23 under heading 'developer contributions for Affordable Housing'; HE/INQ/37 page 32

<sup>124</sup> HE/INQ/37 Tables 6 and 7 on pages 30 and 31; page 33 for information on the Housing Register

<sup>125</sup> HE/INQ/37 page 35 last paragraph

<sup>126</sup> HE/INQ/37 page 17 under the heading Tenure

<sup>127</sup> HE/IQ/32 paragraph 2



target is for a tenure of 70% affordable rent and 30% suitable intermediate tenure<sup>128</sup>. This tenure split is based on the most up to date information in the Adams Integra report<sup>129</sup>. Any other tenure split requires appropriate justification. Policy SP2, development requirements, emphasises that the mix of housing types and tenures will be expected to meet the proportions set out in the Council's Housing Strategy.

- 6.10 The emerging local plan suggests two reasons why it may be necessary to prioritise delivering the overall target of affordable units over tenure split – provision for starter homes and funding arrangements<sup>130</sup>. The position has now changed in respect of both reasons. The Housing White Paper states the intention to introduce a policy expectation that housing sites will deliver a minimum of 10% affordable home ownership units. The policy intention is consistent with the Council's policy, whereas the plans for a mandatory requirement of 20% starter homes would not have been. Secondly, the funding arrangements for affordable rent have radically changed. The Affordable Homes Programme could only be used for shared ownership but now restrictions on funding have been relaxed so it can be used for affordable rent<sup>131</sup>. More generally, the Government in the White Paper recognises the importance of providing a range of homes, including affordable rent.
- 6.11 The Council is acutely concerned that a move away from the policy split, without the appropriate justification in respect of viability, is likely to be very damaging to its stated corporate aims to achieve enough high quality housing to meet everyone's needs and to build housing for those who struggle to afford market prices<sup>132</sup>.

*Proposals for affordable housing*

- 6.12 The Council has stood firm on the 30% requirement and has been proved right to do so. During the adjournment of the inquiry the Appellant reached the commercial judgement that the proposed development could sustain 30% affordable housing and amended its offer to reflect this. 30% affordable housing is thus viable and has always has been so. No material change in circumstance was put forward to explain the change from the initial offer of 4% and the approximately 15% at the start of the inquiry. Very little, if any, reliance can now be placed on the conclusions of Mr Edge on viability.
- 6.13 The latest offer of 30% affordable housing is welcome but the proposed tenure split remains unacceptable. On Mr Crook's evidence the 70/30 in favour of shared ownership was driven by the preference of Orbit and was intended to accord with Government policy<sup>133</sup>. However, the policy relied on has now shifted back towards affordable rent. The offer was based on the offer of one RP. The appellant has refused to consider more competitive approaches and has not asked any RP to offer on a policy compliant tenure split. As shown by the

---

<sup>128</sup> CCC/IQ/5 paragraph 2.42

<sup>129</sup> CCC/IQ/1 Executive Summary paragraph 23

<sup>130</sup> CCC.1.B Appendix D MM 48 re paragraph 2.42

<sup>131</sup> CCC/IQ/19 Appendix 1 paragraphs 4.17, 4.27

<sup>132</sup> HE/INQ/4

<sup>133</sup> HE.4.D paragraph 4.3

evidence of Mr Paterson, a well-recognised national RP Amicus Horizon believed the site is viable with a policy compliant split<sup>134</sup>.

- 6.14 The position at the HBGC site is that the section 106 agreement commits the developer to deliver a policy compliant tenure split on 30% affordable housing over the full scheme<sup>135</sup>. The alteration in the small first phase does not affect the obligation over the whole scheme and any imbalance would need to be addressed in later phases<sup>136</sup>. Therefore the HBGC site does not justify moving away from the policy compliant split.
- 6.15 The appellant has been right to place no reliance on any viability justification to support its current proposal on tenure split. Mr Crook accepted that the difference between providing the correct tenure split and the one proposed was in the order of £1.6 million on Mr Edge's own evidence<sup>137</sup>. By way of example, this difference is accounted for by the under-valuing of market housing by Mr Edge.
- 6.16 The Council has demonstrated through the work of Adams Integra, which was scrutinised by the Local Plan inspector, and Mr de Whalley's evidence that a 30% policy compliant tenure split is viable even with the provision of the necessary infrastructure<sup>138</sup>.

#### *Viability assumptions*

- 6.17 Site value. The original benchmark land value of £9.5 million, approximately 10 times the value of the site as agricultural land, was agreed and would provide the landowner with an entirely reasonable return. In October 2016 the appellant increased the valuation of the site by 50% to £14.2 million, despite market evidence that greenfield development land prices had gone down. The increase was based on Mr Edge's misunderstanding of the Adams Integra report<sup>139</sup>, which in fact produced an indicative residual land value as an output for each of the assessed schemes<sup>140</sup>.
- 6.18 Mr Edge's approach to site value is also at odds with national policy and guidance. The benchmark land value has to reflect policy requirements and planning obligations, as failure to do so would over inflate site value and undermine the implementation of development plan policies. Mr Edge's recent approach to site value does not allow for 30% affordable housing or the correct mix of tenures of that housing. Instead an aspirational fixed figure was input into all the appraisals. In contrast, Mr de Whalley followed the guidance, appraised a policy compliant scheme and provided a competitive return for a willing land owner and developer, generating a residual valuation in excess of his benchmark valuation.

---

<sup>134</sup> CCC/IQ/19

<sup>135</sup> HE.1.C Appendix 16 Deed of Agreement dated 24 September 2015, in particular Schedule B

<sup>136</sup> HE.1.C Appendix D paragraphs 13, 14

<sup>137</sup> With reference to row 51 of the cash flows of Appraisal 24A (policy compliant) and Appraisal 27A (70/30 split in favour of shared ownership), total affordable housing receipts are set out as £31,194,868 and £32,792,545 respectively.

<sup>138</sup> CCC/IQ/1 paragraphs 3.5.11, 4.1.9, CCC.3.A paragraph 20.3

<sup>139</sup> CCC/IQ/27 paragraphs 2.37 to 2.42 set out the argument in detail.

<sup>140</sup> CCC/IQ/22

- 6.19 The difference between the original site value adopted by Mr Edge and that relied on in the 24 series of modelling is sufficient, virtually on its own, to make the scheme viable even if all his other assumptions are correct.
- 6.20 Value of market housing. Mr Edge used the asking prices for houses on the HBGC site as a comparator. However, he applied a 5% negotiating margin which reduced the gross development value of the Strode Farm scheme by approximately £10 million. Whilst attempts were made to justify the reduction by speculation about the future, the result does not reflect the best evidence of current market value or accord with the current day approach to valuation.
- 6.21 The appellant has emphasised the commitment to deliver an exemplary scheme which embraces good place-making and garden city principles and to develop high quality housing for all local people<sup>141</sup>. Mr Crook accepted that the design approach would be likely to add to sales rates and market value of the site both initially and in the longer term. On this evidence the residential values should be higher, not lower, than those achieved at the HBGC site, where development is based on standardised house types delivered by a volume house builder. Consequently the increase in viability would be even greater than £10 million. The correct tenure split would be viable on this factor alone.
- 6.22 Professional fees and housebuilding costs. The inclusion of a 6.5% net increase in costs is reasonable to reflect professional fees. This position is supported by the Adams Integra report, which is the product of consultation with developers of strategic sites<sup>142</sup>. The appellant took a figure of 6.5% on housebuilding costs but a figure closer to 13% on enabling works<sup>143</sup>. There is nothing particularly unusual about the greenfield site and no justification was given for the use of this inflated figure.
- 6.23 The housebuilding costs were derived from the Royal Institute of Chartered Surveyors (RICS) Building Cost Information Service (BCIS) cost estimates. The source information is not ideal because volume housebuilders do not submit their data to BCIS and can build more cheaply with economies of scale. This could have a substantial effect on costings<sup>144</sup>.
- 6.24 Value of affordable housing. Originally the value of the shared ownership units was equated to approximately 73% of market value, a position considered to be reasonable<sup>145</sup>. The figure was revised to 65% of market value, which does not accord with local market evidence. A value to reflect 75% of market value for the shared ownership units is preferable.
- 6.25 Profit. A profit level of 17.5% on GDV on market housing is reasonable on a site where most of the costs would be normal development costs. This view is supported by the Adams Integra report<sup>146</sup>. 20% on GDV is too high a return to

---

<sup>141</sup> PA.2 page 68

<sup>142</sup> CCC.3.A paragraph 13.1 and Appendix 13

<sup>143</sup> HE.3.E paragraphs 4.14 and 4.15 for Mr Edge's rebuttal evidence

<sup>144</sup> CCC.3.B paragraph 5.6 and HE.3.B paragraphs 4.62-4.68

<sup>145</sup> CCC.3.A paragraphs 9.3 and 9.4 and Appendix 8; HE.3.E paragraphs 2.25-2.27 for Mr Edge's rebuttal

<sup>146</sup> CCC/IQ/1 paragraphs 2.8.1 to 2.8.6. See also CDLP.3 paragraph 133 where the Inspector concluded that the Adams Integra report (April 2016) was based on reasonable assumptions and a robust methodology.

adopt in the current economic climate for development of a greenfield site largely free of risk. Unsurprisingly Mr Edge's position is supported by developers who are unlikely to argue for lower profit margins, whilst the mediation panel did not have all the evidence before them. Mr de Whalley's evidence is that a policy compliant scheme is viable on either assumption. A profit level of 8.5% on the shared equity affordable housing has been adopted as a compromise position between the mediator's recommendation of between 8% and 9%. The appellant's 6% profit on GDV for affordable rent housing is agreed<sup>147</sup>.

- 6.26 Appraisal model. Mr de Whalley used ARGUS Developer software, an industry adopted appraisal toolkit that is used widely by institutions and companies, including major housebuilders<sup>148</sup>. Early delivery of infrastructure was modelled and a default setting was overridden to avoid the concentration of expenditure in the middle of the development programme. A current day method of valuation was used and therefore the 'start date' in 2016 is immaterial<sup>149</sup>.
- 6.27 Number of dwellings and delivery rate. In a number of key areas Mr Edge's appraisals do not seek to optimise the viability of the scheme. His model was based on the development of 731 dwellings whereas the proposal is for up to 800 units. The DAS acknowledges that the reserved matters may maximise the site's capacity, Mr Crook accepted the site could eventually become a scheme for 800 units and the 240 affordable units stated in the ES Addendum was based on 800 dwellings being delivered<sup>150</sup>. More units than 731 cannot be ruled out as 'not feasible'<sup>151</sup>. It was not disputed that increasing the number of homes on the site probably would improve the viability of the scheme.
- 6.28 The delivery rate was reduced from 100 units per annum to 80 units per annum without real justification, resulting in a negative impact on viability.
- 6.29 HBGC. The development site was reportedly sold for in excess of £40 million<sup>152</sup>. Although the figure is unsubstantiated, the indication is that a scheme delivering a policy compliant 30% level of affordable housing is viable even with inflated land values. A fair comparison demonstrates that Strode Farm's 106 obligations are less on a per dwelling basis than HBGC<sup>153</sup>.

#### *Conclusion on affordable housing*

- 6.30 The proposed tenure split is not justified by the viability evidence and it would not be an adequate and reasonable contribution to meeting pressing local needs for affordable housing. There is no government policy justification for reversing the tenure split which is sought in the Local Plan, the emerging plan and the expressly incorporated Housing Strategy. The appellant has not asked Orbit or any other RP to make an offer for a policy compliant split. There is no proper reason why this greenfield site with no exceptional expenses should not deliver

---

<sup>147</sup> SCG.1 pages 23 and 24 and CCC.3.A paragraphs 17.1 to 17.3

<sup>148</sup> CCC.3.A paragraphs 11.1 and 11.2 and Appendix 10

<sup>149</sup> These points are in response to matters raised by Mr Edge in HE.3.E, principally at paragraphs 2.5, 2.6 and 3.1 to 3.4

<sup>150</sup> PA.2 page 138 at 4.5.2 and ES.17 paragraph 14.6.4

<sup>151</sup> HE.3.E paragraph 2.2

<sup>152</sup> HE/IQ/11

<sup>153</sup> CCC/IQ/27 paragraph 2.64 details the comparison

the 240 units of affordable housing envisaged in the Addendum to the ES based on the 800 unit scheme applied for.

### **Highway infrastructure**

- 6.31 Policy SP3 of the emerging Local Plan requires the HRR, including the Bullockstone Road improvement scheme, to be provided as part of the development of the Strode Farm site. The requirement has been tested through the Local Plan process and this aspect of the main modification has not been criticised by the Local Plan Inspector. The policy can be accorded considerable weight. The appellant is relying on the main land allocation coming forward through the emerging local plan but fails to comply with the terms of policy.
- 6.32 The issues of capacity, road safety and public transport demonstrate the clear need for the early delivery of the HRR.

### **Capacity**

- 6.33 The A291 carries mainly local traffic between Herne Bay and Canterbury. It passes through the village of Herne and the rural areas towards Sturry. Herne Village is a pinch point on the highway network. The Sturry and Herne Highway Capacity Study (the Amey Study, July 2016) sets out the significant highway constraints through Herne village<sup>154</sup>. These include tight bends, sections of narrow road on the approach to the mini-roundabout at the junction with School Lane, pinch points caused by parked cars and a pedestrian crossing west of the junction and restricted visibility.
- 6.34 The capacity of the A291 through Herne was rated by Mr Hogben, who correctly applied national guidance<sup>155</sup>. There is a lot of frontage activity including loading and unloading, unlimited access to houses, shops and businesses and frequent at grade pedestrian crossings. The speed limit is 30 mph through the village. All these features are consistent with a UAP4 rating, which has a theoretical link capacity of 750 vehicle one-way hourly flow with a carriageway width of 6.1 m. This level is the maximum sustainable flow passing in 1 hour under favourable traffic conditions<sup>156</sup>.
- 6.35 Also as stated in the guidance, the flows represent link capacity only and not junction capacity<sup>157</sup>. The link capacity will not be reached if either the capacity of the junctions along the link or the capacity of the adjoining network is lower than the link in question. Width is an important feature of the capacity matrix, where 6.1 m is the narrowest carriageway width. Through the village the road width is limited at 5.2 m and a section south of the junction with School Lane is 4 m in practice because of parked vehicles. The mini roundabout and the bus stops are additional constraints on capacity. Therefore the realistic capacity is somewhat less than expected of a 6.1 m UAP4 road. Mr Hogben's evidence is

---

<sup>154</sup> CCC.4.A Appendix B paragraph 2.2.3

<sup>155</sup> HE.2.F pages 1114 to 1121 DMRB Volume 5 Section 1 Part 3 TA 79/99 Traffic Capacity of Urban Roads. Mr Hogben's analysis is set out in CCC.4.A paragraphs 4.1 to 4.5 and summarised at CCC/IQ/27 paragraph 3.9.

<sup>156</sup> HE.2.F page 1115 paragraph 1.10 defines capacity for the purpose of the Advice Note.

<sup>157</sup> HE.2.F page 1116: paragraphs 2.3. See also paragraph 2.6 for factors that may affect flow levels on urban roads.

that the capacity is around 650 (one-way hourly flow in one direction), which is about the current traffic level in the peak hours.

- 6.36 For the appellant, Mr Bancroft concluded that the capacity is 1,000, notwithstanding that the maximum capacity for a 6.1 m link in UAP3 is 900. In order to justify that position he relied on superseded guidance<sup>158</sup>. He also relied on congestion flow analysis, even though the carriageway width relationship (used in the formula) is not valid for road widths less than 5.5 m<sup>159</sup>. Finally he over-interpreted speed surveys, using some heroic assumptions<sup>160</sup>. Speed surveys are empirical evidence of speeds between two points, they are not empirical evidence of capacity. The speed surveys carried out and the resultant mean speeds corresponded with an actual number of movements through the A291 of 625 vehicles<sup>161</sup>. Average speeds do not mean that in reality extra cars get through the system.
- 6.37 The correct analysis is by Amey who calculated an unconstrained capacity using 3 years worth of data and then recognised that the capacity would be reduced by constraints where vehicles are forced to adopt one-way operation periodically<sup>162</sup>. Therefore the evidence of Mr Hogben is to be preferred to that of Mr Bancroft on the capacity of the link.
- 6.38 In the Amey study the general observation that the roads are considered to fall between UAP3 and UAP4 with low road widths clearly refers to a longer stretch of the A291 than through Herne Village. The capacity applied to Herne is the UAP4 standard for a carriageway width of 6.1 m, which supports the conclusion of Mr Hogben<sup>163</sup>.
- 6.39 In the Amey study the ARCADY assessments undertaken at the School Lane A291 junction demonstrate how the junction acts as a constraint on the capacity of the network through Herne<sup>164</sup>. In the scenario for the HBGC and Strode Farm developments the outputs for Ratio of Flow to Capacity (RFC) are over 0.85 in the AM and PM peaks and thus show an excess over capacity<sup>165</sup>. The detailed results show the capacity problem even more clearly<sup>166</sup>. For example the rating for the School Lane arm is the worst possible in the PM peak. The severe problems evident in the results confirm that the mitigation sought through delivery of the HRR is critical.

## **Safety**

---

<sup>158</sup> HE.2.F Appendix N page 1317 table reproduced from TD20/85, which was withdrawn by TA 79/99 paragraph 1.2, found at page 1115.

<sup>159</sup> HE.2.B paragraphs 8.5.6 to 8.5.9 and HE.2.F pages 1123 to 1141 for TA 46/97. The Council relied on the advice in Annex D of TA 46/97 on page 1140. Mr Bancroft in his oral response considered that the use of judgement was important and that the results would be more robust with a narrower width.

<sup>160</sup> The detailed argument on this matter is set out in CCC/IQ/27 at paragraphs 3.19 to 3.21

<sup>161</sup> HE.2.D page 290 Figure T1 2014 observed traffic flows AM peak. CCC.4.A Appendix B paragraph 3.2.6 states the A291 through Herne village carries an average daily flow of 11,100 vehicles and during the peaks the two way flows are between 940 and 1,040 vehicles per hour.

<sup>162</sup> CCC.4.A Appendix B Sturry and Herne Highway Capacity Study paragraphs 3.5.15 to 3.5.17

<sup>163</sup> CCC.4.A Appendix B paragraphs 3.5.2, 3.5.3 and Figure 4.2 on page 25.

<sup>164</sup> The detailed argument on this matter is set out in CCC/IQ/27 at paragraphs 3.27 to 3.28

<sup>165</sup> CCC.4.A Appendix B paragraphs 4.3.15 to 4.3.17 and Table 6 on page 29

<sup>166</sup> CCC/IQ/8

- 6.40 There is no dispute that the A291 through Herne is on the 6<sup>th</sup> most dangerous route in Britain and is on the most dangerous route in Kent based on the EuroRap Risk rating. The rating deteriorated between 2008-10 and 2011-13<sup>167</sup>. There were 15 personal injury accidents over the five year period 1 April 2009 to 31 March 2014, three of which were serious<sup>168</sup>.
- 6.41 Every year the development would generate 11 extra cars down the A291 in the peak hour, resulting in 106 extra cars with all the development<sup>169</sup>. There was agreement that this increase in traffic would be bound to add to driver frustration and increase the risk of accidents<sup>170</sup>. Mr Hogben considered rear end shunt accidents would be exacerbated.
- 6.42 The early completion and guarantee of the HRR is necessary to ameliorate safety concerns.

### **Public transport**

- 6.43 The Framework promotes sustainable transport and provides that developments should be located and designed where practical to have access to high quality public transport facilities and consider the needs of people with disabilities. A principle in Policy C1 of the Local Plan, and Policy T1 of the emerging Local Plan, is to provide alternative modes of transport to the car by extending provision for the use of public transport. Emerging Policy SP3 expects design to reflect garden city principles. The appellant's design and access statement notes how the vision for the development of Garden Cities was based on networks of new settlements well connected by public transport<sup>171</sup>.
- 6.44 In accordance with Government guidance, in residential areas bus stops should be located so that nobody is required to walk more than 400 m from their home<sup>172</sup>. A similar expectation is stated in the Kent Design Guide, adopted as a Supplementary Planning Document (SPD) in Canterbury. The SPD confirms that bus services are the main public transport alternative to the car and stresses the importance of considering public transport at an early stage when planning a development<sup>173</sup>. The amended TA agrees that the development should provide bus stops along the spine road at maximum intervals of 400 m<sup>174</sup>.
- 6.45 Advice from KCC on facilitating bus services through the site dates back to 2010<sup>175</sup>. Subsequently the bus company, Stagecoach, confirmed that advice and advised the appellant that it would be essential to divert buses through the site to ensure bus stops would be within a sensible walking distance of new homes<sup>176</sup>. This assessment is supported by the fact that most of the site would

---

<sup>167</sup> HE/INQ/15. The EuroRAP risk rating is based on the number of fatal and serious crashes per billion vehicle km travelled. See also CCC.4.A Appendix B paragraphs 3.6.1 to 3.6.11

<sup>168</sup> HE.2.G Appendix A

<sup>169</sup> HE.2.B paragraph 8.5.16 and Table CB3

<sup>170</sup> Inspector's note: DMRB Volume 11 Section 3 Part 9 Vehicle Travellers paragraphs 3.4 and 4.2 refer to research and assessment of driver stress.

<sup>171</sup> PA.2 page 71

<sup>172</sup> CCC.4.A Appendix E Department for Transport Inclusive Mobility Guide (2002)

<sup>173</sup> HE.2.F pages 1201, 1223, 1224

<sup>174</sup> HE.2.C page 215 paragraph 4.3.3. See also SCG.2 at paragraph 3.9

<sup>175</sup> HE.2.C page 192 email dated 03.09.10

<sup>176</sup> HE.2.C page 190.

be over 400 m from a bus stop on Herne Road<sup>177</sup>. The most recent comments from Stagecoach are consistent with the approach over the last 5 years<sup>178</sup>. The company confirmed that Bullockstone Road in its current form is not suitable for running a regular service because the road is narrow, twisty and unlit. For the most part there are no footways and parts of the road have earth banks either side. The junction with the A291 at Herne Common has poor visibility. The upgrading of Bullcokstone Road is essential.

6.46 There is no physical reason why the full HRR could not be provided at an early stage of the development, as Mr Crook conceded, to reduce the need for any interim measures. The appellant has failed to propose a workable interim solution to the issue of bus provision. Reliance on the unsuitable Kent Karrier scheme is unacceptable because it would not provide high quality public transport. The service only starts at 1000 hours, has one service a week to Canterbury and is run at a subsidy of £40 per passenger<sup>179</sup>. In any event an interim solution would not justify delaying the HRR given the capacity and safety issues.

6.47 In conclusion, to comply with national and local policy on promoting sustainable transport the spine road needs to be put in at an early stage. KCC's requirement that the spine road be completed by the end of 2023 when 410 dwellings are intended to be built is consistent with policy.

### ***Securing delivery of HRR***

6.48 In light of the evidence there is an overwhelming need case for the development to secure the HRR by the end of 2023. In summary the reasons are:

- To comply with Policy SP3;
- To ensure an extra 106 vehicles do not cause severe residual problems for capacity on the A291, which is also the most dangerous road in Kent;
- To ensure residents live within 400 m of a bus stop.

6.49 The Transport Strategy and the emerging Infrastructure Delivery Plan have consistently made clear that the HRR would need to be funded by the developments generating the additional traffic through the village<sup>180</sup>. KCC also has always made clear to the developers that the HRR is to be delivered at nil cost to Kent<sup>181</sup>. The statement of common ground for the HRR has to be read in this context<sup>182</sup>.

6.50 The appellant's planning obligation only secures its contribution and not the interest costs on borrowings for KCC or Hillborough's contribution. Therefore the

---

<sup>177</sup> HE.2.B Figure CB3. Mr Bancroft in his oral evidence considered that a more efficient bus service on Canterbury Road when balanced against a longer walk amounted to good provision.

<sup>178</sup> CCC.4.B Appendix A Letter from Stagecoach South East dated 19 December 2016. Mr Bancroft in his oral response considered the letter was contrived and emotive.

<sup>179</sup> HE.4.D Appendix 4, in particular Committee report 1 December 2016

<sup>180</sup> HE.1.C Appendix 11 Canterbury District Transport Strategy 2014-31 (draft) paragraph 7.57, also CCC/IQ/14 Draft Infrastructure Delivery Plan paragraphs 59-62

<sup>181</sup> CCC/IQ/10

<sup>182</sup> HE.2.F Appendix CBF page 1092, in particular paragraph 11 on page 1097



delivery of the HRR is dependent on an acceptable scheme for Hillborough coming forward and Hillborough agreeing to pay £2.249 million and the interest payments. No-one knows whether this will happen. Thus the appellant has failed to secure the HRR necessary for their development and the risk of delivery has been transferred to KCC who, according to the policy documents, is not responsible.

6.51 KCC has done everything possible to help the appellant as developer. A contribution towards the Sturry Relief Road, a vastly more expensive project, is not being sought now<sup>183</sup>. KCC has agreed that all the section 106 contribution from the HBGC site will be directed towards the HRR, not Sturry. KCC also has agreed that the Hillborough contribution towards improvements to the A291 corridor will be in the form agreed through the HRR Statement of Common Ground<sup>184</sup>. A flexible approach has been adopted towards build out rates in considering the trigger for the HRR<sup>185</sup>.

6.52 Mr de Whalley's appraisals are based on the £4.581 million contribution to the Kent BRIS and the spine road costs being committed prior to 250 units. He concluded that the scheme should be able to provide all the necessary infrastructure and 30% affordable housing and remain viable<sup>186</sup>.

### **Other matters**

#### *Employment land*

6.53 The level of employment land falls significantly below the level of 15,000 sq m within classes B1/B2 and B8 identified for the site under Policy SP3 of the emerging Local Plan. The studies underlying the employment strategy for the plan period provide an objective basis for determining the overall need for employment floorspace supply for the district in order to support economic growth. The B-Use Class floorspace requirements have been appropriately identified and robustly assessed and justified through the evidence submitted to the Local Plan examination. Therefore the 15,000 sq m employment floorspace identified for Strode Farm is justified to ensure a sustainable economic strategy for the plan period to meet future demand and provide a range of different site options for businesses and investors along the coastal corridor of the district. Nevertheless because there are relevant objections to this element of the draft policy it can be afforded limited weight at this time<sup>187</sup>.

#### *Landscape character and agricultural land*

6.54 The development of the site, which is currently primarily open farmland, would have a detrimental visual impact on the landscape character of the area. The ES identified that the scheme would have a moderate adverse residual impact in respect of views from properties on Lower Herne Road. A moderate adverse cumulative impact was identified from the change in the settlement pattern and

---

<sup>183</sup> CCC/IQ/5 Policy SP3, Site 5, originally required a proportionate contribution towards the Sturry crossing.

<sup>184</sup> CCC.1.B Appendix D MM25 Site 3 Infrastructure – the modification substitutes 'improvements to A291 corridor' and deletes the reference to the provision of the HRR.

<sup>185</sup> CCC/IQ/18. Reference is also made to KCC initiatives on the Kent BRIS.

<sup>186</sup> CCC.3.A paragraph 20.3 and Appendix 17

<sup>187</sup> CCC.1.A paragraphs 53 to 58 set out the Council's position more fully.

the potential coalescence of Herne with Greenhill, along with the urbanisation of the A299 corridor. The development of different character areas, as indicated in the DAS and the extensive levels of open space and landscaping would help mitigate the adverse impacts<sup>188</sup>.

6.55 The loss of some 39 ha of arable land in the best and most versatile agricultural land classification would be to the detriment of agricultural interests. The ES identified its loss to be of substantial adverse significance<sup>189</sup>.

6.56 All these matters would need to be weighed in the overall planning balance.

### **Planning and overall balance**

#### *Development plan*

6.57 The proposed affordable housing does not have a tenure split of 70% affordable rent and 30% shared ownership. Prevailing site and market conditions do not justify this failure. The scheme would not relate to housing need and thus is contrary to the Local Plan affordable housing policies H4 and IMP2, when read with the reasoned justifications.

6.58 In view of the failure to secure delivery of the HRR by 2023 the development is contrary to Policy C1 criteria (a), (b), (e) and (f). More specifically, the level and environmental impact of vehicular traffic would not be appropriately controlled. The failure to extend provision for the use of public transport would result in unsatisfactory provision of alternative modes of transport to the car. Without the HRR and bus stop provision within 400 m a choice between transport modes would not be delivered. Finally, criterion (f) is not met without the construction of the HRR package to secure improvement of environmental conditions. Similarly by not providing the infrastructure required the development is contrary to Policy C4.

6.59 With the breaches of these policies the proposal fails to comply with the development plan when read as a whole.

#### *Emerging policy*

6.60 The proposals do not comply with the emerging policy, yet it is the plan on which the appellant relies to justify the development of Strode Farm. Without an appropriate mechanism for the timing and secure delivery of the BRIS there would be a breach of a clear requirement of Policy SP3 and a breach of Policy T13. Without the appropriate contribution and securing of the HRR there would be conflict with Policy T1 for similar reasons as the conflict with Policy C1 in the Local Plan. The latest section 106 agreement does not include a suitable mechanism to provide an option for full payment of the road. The section 106 now only provides for part payment of the Kent BRIS, leaving KCC to meet the balance of the cost in the event Hillborough does not come forward. It has always been clear that the road had to be delivered at nil cost to KCC.

---

<sup>188</sup> CCC.1.A paragraphs 63 to 65 and also GEN.1 paragraphs 101 to 111.

<sup>189</sup> CCC.1.A paragraphs 61, 62. This evidence was without the benefit of the appellant's report on agricultural land quality at HE.1.C Appendix C.

6.61 As a result of the developer failing to provide the necessary affordable housing the development is contrary to Policy HD2 (together with the reasoned justification at paragraph 2.42) and Policy SP2. It is contrary to the provisions in favour of affordable rented accommodation, which the Adams Integra report concluded was viable. Overall there is a breach of the emerging plan.

#### *Five year land supply*

6.62 The five year land supply adds nothing of substance to the case for the appellant. In response to the Local Plan Inspector's letter after the Stage 1 hearings, the Council increased its objectively assessed need from 780 to 800 dwellings a year for the plan period and revised the five year housing land supply position. It is common ground with the appellant that if the Liverpool method applies, as the Local Plan Inspector concluded<sup>190</sup>, there is a 5 year land supply. In any event, rolling the calculation forward a year, results in a five year land supply on both a Liverpool and a Sedgefield basis<sup>191</sup>.

#### *The Framework*<sup>192</sup>

6.63 There is a clear breach of the policies promoting sustainable transport. In addition the impacts on the highway network would be severe. The policies in the Local Plan and emerging Local Plan on affordable housing are consistent with paragraph 50 of the Framework. It follows that a breach of those policies results in a breach of paragraph 50.

6.64 This is a case where the conflicts in relation to highway infrastructure and affordable housing do not concern development plan policies for the supply of housing. As a result the second sentence of paragraph 49 does not apply so as to make the relevant policies out of date. There is no other reason to apply paragraph 14 of the Framework<sup>193</sup>.

6.65 The normal rules set out in paragraphs 2, 11 and 196 of the Framework should be applied – the application should be determined in accordance with the development plan unless material considerations indicate otherwise.

#### **Conclusion**

6.66 The planning balance is in favour of rejecting the application. The lack of rented affordable housing in the context of housing need and the greenfield allocation is sufficient to justify refusal. The appellant's change in position now means that vital infrastructure necessary for the development is not being secured as part of the scheme. This is contrary to a specific requirement of the emerging Local Plan and policy documents which make clear the HRR is required and has to be at nil cost to KCC. Without the HRR in place there will be severe capacity problems, deterioration in safety and poor public transport provision.

---

<sup>190</sup> CCC.1.B Appendix B Note on main outcomes at paragraphs 33 and 34. Also see Appendix D MM 44 paragraph 2.28

<sup>191</sup> CCC/IQ/2

<sup>192</sup> CCC/IQ/27 paragraphs 4.12 to 4.17 set out the detailed submissions

<sup>193</sup> CCC/IQ/28 confirmed the Council's position that the correct analysis in respect of the conflict with the Local Plan had not changed as a result of the Supreme Court *Suffolk Coastal* judgement.

6.67 The breaches are sufficient to mean the development is contrary to the adopted plan, emerging plan and weigh the planning balance in favour of refusal.

### **Updated case post adoption of the CDLP<sup>194</sup>**

#### ***Development plan***

6.68 The Canterbury District Local Plan 2017 was adopted by Canterbury City Council on 13 July 2017. The 2017 Local Plan replaces the previous 2006 adopted Local Plan. The adoption of the CDLP has not changed the position that the proposed development is contrary to the development plan read as a whole. The conflicts expressed in the Council's closing submissions with what were then emerging policies remain and are now conflicts with the adopted development plan.

6.69 In particular the proposed development is in conflict with Policy HD2 read with supporting text at paragraph 2.42<sup>195</sup> and Policy SP2<sup>196</sup>, Policy SP3 and Policies T1 and T13 regarding provision and funding of new highway infrastructure,<sup>197</sup> and Policy SP3 regarding employment floorspace provision.

6.70 These conflicts mean that the proposed development should be refused unless other material considerations indicate otherwise. It remains the Council's case that material considerations do not indicate otherwise and the development should be refused permission.

#### ***Canterbury District Transport Strategy 2014-2031 and the Draft Infrastructure Delivery Plan***

6.71 The CDTS, adopted by Canterbury City Council on 13 July 2017, is a supporting document to the CDLP. The document sets out the framework for transport, with aims and objectives on transportation issues until 2031. Similar to the draft, the CDTS makes clear the source of funding for the HRR is to be section 106 and illustrates the nil cost to KCC principle<sup>198</sup>. The proposed development does not achieve this.

6.72 The position regarding the draft Infrastructure Delivery Plan remains the same as previously stated<sup>199</sup>.

#### ***Employment floorspace***

---

<sup>194</sup> CCC/IQ/29

<sup>195</sup> Inspector's note: paragraph 2.42 refers back to the paragraph in the Publication Draft Local Plan (CCC/IQ/5) cited in the closing submissions CCC/IQ/27 at paragraph 4.3. In oral closing this point was placed with paragraph 4.8, citing the Adams Integra report. The probability is that the paragraph reference in the Update should have been updated to paragraph 2.39 which is the near equivalent paragraph in the CDLP.

<sup>196</sup> CCC/IQ/27 paragraphs 2.13-2.14 and 4.3

<sup>197</sup> CCC/IQ/27 paragraphs 3.1-3.4 and 4.7

<sup>198</sup> CDST.1 page 95. The draft transport strategy was addressed at CCC/IQ/27 paragraphs 3.62-3.64 and 5.1

<sup>199</sup> CCC/IQ/27 paragraph 3.65

6.73 The evidence of Mr Musk<sup>200</sup> identified that the proposed level of provision of employment land falls significantly below the expected level of employment provision<sup>201</sup>. The floorspace identified in the newly adopted CDLP is unchanged from that in the then emerging Local Plan.

6.74 The conflict identified was afforded limited weight because it was a conflict with a draft policy that had outstanding objections. This is now a conflict with the adopted development plan and as such this conflict should be afforded greater weight.

## **7. THE CASE FOR HOLLAMBY ESTATES (2005) LTD<sup>202</sup>**

### **Development plan and housing need**

7.1 The Local Plan makes provision for housing and other forms of development to 2011 and in this respect is out of date. The Council is promoting the allocation of the Strode Farm site for development and relies on this and other draft strategic allocations to show a five year housing land supply. It follows that insofar as there are policies in the Local Plan that could be said to restrain development of the site, they are out of date and therefore the presumption in paragraph 14 of the Framework applies<sup>203</sup>.

7.2 In the emerging Local Plan Policy SP2 states that for the plan period 2011 to 2013 a total of 16,000 housing units will have to be built at a rate (from 2015) of 925 units a year<sup>204</sup>. This is a level of development far in excess of that achieved over the past 25 years and will require a commitment to delivery by all parties at county and district level<sup>205</sup>. The appeal site is one of the strategic sites identified by draft Policy SP3 to meet that need and is shown as contributing 270 units in the period to 2022.

7.3 According to the Council's (out of date) Housing Strategy 2012-2016 there is a need for 1,104 new affordable dwellings annually<sup>206</sup>, which plainly exceeds the capacity of the planning system to meet. Nevertheless, the appeal proposal could make a significant contribution by generating 219 affordable dwellings.

7.4 The appeal site was proposed for housing development in June 2013 and has been a draft allocation in the emerging Local Plan ever since. At no stage has the Council or the examination Inspector queried the allocation and there is no reason to suggest that the site will be deleted from the new Local Plan. There is no doubt that the site is suitable for the development of up to 800 dwellings.

---

<sup>200</sup> Mr Musk was the Council's planning witness

<sup>201</sup> CCC.1.A paragraphs 53 to 58

<sup>202</sup> The summary of the appellant's case follows the structure of HE/IQ/42 and also includes additional sections on matters that were not examined to any extent at the inquiry to ensure sufficiently detailed coverage.

<sup>203</sup> HE/IQ/44 confirmed that the appellant considered the Supreme Court *Suffolk Coastal* judgement does not affect the merits of the appeal.

<sup>204</sup> CCC.1.B Appendix D: MM23 SP2 Table and MM44 Table H1

<sup>205</sup> HE/IQ/4 SHLAA June 2013 Table 2 page 14; Canterbury City Council Annual Monitoring Report 2014-15 Table 1; KCC Housing Information Audit Table 1 and Table CA1

<sup>206</sup> CCC.2.A Appendix A page 22 Table 3

7.5 In view of the common ground reached with the Council<sup>207</sup> the main issues between the parties are the proposed highway improvement works and the provision of affordable housing.

### **Highway works**

7.6 The substitution of the Kent BRIS for the appellant's original scheme allows the second putative reason for refusal to be addressed in a way acceptable to the Council and KCC and prejudices no-one. On the assumption that the substitution will be accepted by the Secretary of State, there is no need to respond to the Council's case on the original scheme.

7.7 The alleged insufficiency of information cited in the first putative reason for refusal was addressed through the provision of Technical Note 3 and a Transport Assessment Addendum, which resolved all outstanding highways objections<sup>208</sup>. The Statement of Common Ground for the HRR, where the unmet cost of the scheme (the spine road and BRIS) is to be borne proportionately by the developers of the Strode Farm and Hillborough sites, is a fair and reasonable means of sharing the cost for the HRR<sup>209</sup>.

7.8 It was not until October 2016, very shortly after the Statement of Common Ground, that KCC required the scheme to bear the entire unmet cost of the HRR, amounting to £4,581,833 and that the funding should be provided by the end of 2021 or the completion of the 250<sup>th</sup> dwelling, whichever is the sooner<sup>210</sup>. It is not known what prompted this change in KCC's position.

### *Capacity of A291*

7.9 Mr Bancroft's compelling evidence demonstrates that there is no highway capacity case for the provision of the HRR before 2028/2029<sup>211</sup>. The congestion flow analysis and journey time surveys demonstrate that the one hourly capacity of the A291 should be taken as 1,000 movements. This finding is consistent with the assessment that the A291 through Herne is more comparable with the UAP3 classification (900 one way capacity) rather than the UAP4 (750 one way capacity) stated by KCC.

7.10 Consideration of how traffic flow conditions would build up along the A291 during the construction period (with 2 points of access) shows that the 1,000 vehicle movement capacity threshold would not be exceeded by Strode Farm development traffic. A maximum peak hour flow of 904 one-way movements would occur at the 2028/29 development phase in the morning peak period<sup>212</sup>. Assignment of Hillborough traffic to the network would increase the one-way

---

<sup>207</sup> SCG.3 paragraph 4.13

<sup>208</sup> HE.2.B paragraphs 4.5-4.11. 4.13-4.14; SCG.2 paragraphs 2.3-2.9;

<sup>209</sup> HE.1.C Appendix 1

<sup>210</sup> HE.2.B paragraph 4.20 and HE.2.F Appendix G pages 1106, 1107. The appellant noted that KCC expresses its requirement in slightly different terms: the HRR should be completed and available for use prior to the completion of the 410<sup>th</sup> dwelling or by the end of 2023, whichever comes the sooner. The effect is the same.

<sup>211</sup> HE.2.B sections 7 and 8 in particular paragraphs 8.5.9-8.5.15 Tables CB1-CB4; and HE.2.G section 4

<sup>212</sup> HE.2.B Table CB1 – figures represent 50% of overall development (800 dwellings) within the eastern part of the site served solely by direct access to A291 through Herne with no spine road and includes 100% residual new trips (non-residential) heading south along A291.

hourly flow to around 985 one-way movements. The results of constructing the site with a single point of access solely onto Canterbury Road show that the Strode Farm development would reach a maximum one-way hourly flow level of 994 vehicle movements during the morning peak hour at 2028/29. With Hillborough traffic assigned the 1,000 movement threshold would be exceeded with a total one-way flow of 1,025 movements. The appellant's offer to fund its proportionate share of the cost of the HRR by the construction of the 500<sup>th</sup> dwelling should be entirely acceptable.

- 7.11 The Sturry and Herne Capacity Study appears to provide the basis of KCC's justification for the HRR. The Capacity Study seeks to arrive at an assessment of the capacity of the A291 through Herne by reference first to its classification within DMRB volume 5 TA 79/99. The UAP classification is merely a guide and as the advice note states capacity of urban roads can be affected by a wide range of factors. Further advice is given within the document on the assessment procedure<sup>213</sup>.
- 7.12 When comparing projected flow increases against link capacity through Herne the Capacity Study uses a UAP4 based classification capacity threshold of 750 one way movements. However, the road through Herne cannot be described as a busy high street – there is only one shop (a village post-office store) fronting the road. There is very little frontage activity. The UAP3 classification has a description that more closely matches: "Variable standard road carrying mixed traffic with frontage access, side roads, bus stops and at grade pedestrian crossings." Even this general description masks significant variations but the UAP3 classification presents a more reasonable starting point for assessing potential link capacity of the A291. This classification provides a maximum one-hourly flow of 900 vehicles for a 6.1 m wide 2 lane carriageway<sup>214</sup>.
- 7.13 The Capacity Study, in considering current conditions in Herne, used average speed on a section of the A291 to derive an indicative unconstrained link capacity in the order of 970 to 1,000 vehicles per hour (vph)<sup>215</sup>. The journey time survey results of Mr Bancroft were broadly consistent<sup>216</sup>. However, it is illogical to reduce the capacity to reflect the presence of parked cars and other road features, which already would have influenced recorded speeds/journey times<sup>217</sup>. To do so involves a form of double counting. Mr Bancroft's calculation of the potential one-way capacity of the link indicates a flow of 962 vph, broadly in line with the lower value calculated in the Amey study<sup>218</sup>. A traffic count based Congestion Reference Flow calculation confirms the one-way hourly capacity of the A291 would be 1,000 movements<sup>219</sup>.
- 7.14 The consistency in journey times through Herne throughout the day suggests that the physical layout and features of the road regulate traffic flow, rather than the volume of traffic. If the road was operating at or close to capacity one would expect fluctuations in the volume of traffic particularly during the AM and

---

<sup>213</sup> HE.2.F Appendix H (page 1108), with particular reference to paragraphs 1.5, 2.2 and 4.2

<sup>214</sup> HE.2.B paragraphs 8.5.2, 8.5.3; HE.2.G paragraph 1.12

<sup>215</sup> CCC.4.A Appendix B paragraphs 3.5.15 to 3.5.17

<sup>216</sup> HE.2.B paragraphs 7.9 to 7.12

<sup>217</sup> HE.2.G paragraphs 1.13, 1.14

<sup>218</sup> HE.2.B paragraph 7.13

<sup>219</sup> HE.2.B paragraphs 8.5.6 to 8.5.9

PM peaks to have a significant effect on journey times, but this is not the case. According to Mr Hogben the road is now operating at capacity but his assessment of “realistic capacity” is not based on any recognised methodology or highway policy advice, it does not result from empirical analysis or supported by the Capacity Study, nor is it borne out by any of the traffic surveys. The idea merits no weight.

7.15 There is broad agreement between the Capacity Study and Mr Bancroft that the capacity of the A291 through Herne is in the region of 1,000 vph. The traffic likely to be generated by the appeal site and other developments in the area is not in dispute<sup>220</sup>. Mr Bancroft shows that the 1,000 vph threshold is not exceeded in the morning peak hour through the period to 2028/29<sup>221</sup>. The morning peak hour traffic likely to be generated by the appeal site over the course of the construction programme will be a minor contributor to the overall traffic generation in the area when set against the HBGC and Hillborough sites<sup>222</sup>. Mr Hogben accepted that without development at Hillborough there would be no capacity objection and with development at Hillborough KCC would be able to secure whatever highway improvements were necessary to offset the increase in traffic from that site<sup>223</sup>.

7.16 The Council suggested there was a risk that the HRR would not be built because Hillborough might not come forward. The evidence, including the promotion of the site as a strategic allocation, does not support this view<sup>224</sup>. As of March the planning documentation was complete and discussions with the Council were on-going<sup>225</sup>. In the circumstances KCC’s insistence that Hollamby should fund Hillborough’s share is unreasonable and it is difficult to see how requiring the appellant to do so would satisfy paragraphs 173 and 204 of the Framework or Regulation 122 of the CIL Regulations.

7.17 As to the Council’s offer of a ‘clawback’, the proposed modification robs the emerging Local Plan of any policy justification for seeking to do so<sup>226</sup>. It is wholly unclear on what basis the Council or KCC could require a payment from Hillborough to reimburse Hollamby for paying its share.

7.18 In respect of the A291/School Lane junction, it is not surprising that a junction so close to two schools would experience occasional peak hour congestion, which is most likely associated with drop offs and collections. Queues are forecast to be less than 10 vehicles with both Strode Farm and the HBGC site<sup>227</sup>. It would not be appropriate to use this as an indicator of congestion/saturation on the A291 through Herne. Also without the background data and details of the

---

<sup>220</sup> HE.2.B paragraphs 8.5.10 to 8.5.14, Tables CB1–CB4 Figure CB2; CCC.4.A paragraphs 4.9 and 4.10

<sup>221</sup> HE.2.B Figure CB2

<sup>222</sup> HE/INQ/12 – the table shows in 2023 a southbound flow in the AM peak of 38 vehicles from Strode Farm (350 dwellings) compared to 51 vehicles for HBGC (470 dwellings) and 48 vehicles for Hillborough (740 dwellings). HE/IQ/13 sets out the traffic generation by Strode Farm at specified development intervals.

<sup>223</sup> HE/IQ/42 See the appellant’s note of the evidence attached to the back of the document and HE.4.D paragraph 3.1. Mr Hogben did not accept he conceded this point – see CCC/IQ/18 final paragraph on page 1. My note of the proceedings is similar to that of the appellant.

<sup>224</sup> HE/IQ/42 paragraph 23 sets out the evidence in full.

<sup>225</sup> HE/IQ/28 (point (iv) on last page and Appendix 7) confirms this information.

<sup>226</sup> CCC.1.B Appendix D page 7 ref MM 25 Site 3 Infrastructure

<sup>227</sup> CCC.4.A Appendix B Table 6 on page 29 of the Amey Report



junction modelling the evidence by Mr Hogben should not be given any weight<sup>228</sup>.

### *Safety*

7.19 Road safety is always a concern because roads are inherently dangerous but it was agreed through the transport assessments that no further mitigation works were required. EuroRAP is a lobby group<sup>229</sup>. Using the accident data from KCC, accidents in Herne amount to intermittent incidents and, as stated in the Amey report, no obvious trends are apparent<sup>230</sup>. If safety is a problem then KCC would be expected to have a solution. They do not<sup>231</sup>.

### *Buses*

7.20 The argument advanced by the Council and KCC as an objection to a grant of planning permission is of concern given the poor record of housing delivery in the district over many years, the substantial backlog of new housing that has accrued and the challenge of meeting an annual target of 925 dwellings per year. The Council and KCC did not adopt a similar approach to bus services in the interim for residents of the HBGC site<sup>232</sup>.

7.21 In this instance KCC are applying over-rigorous standards specifically to trigger the need for a major piece of transport infrastructure. KCC's Design Guide does not reflect policy in paragraphs 29 and 32 of the Framework, which allow for a more considered view and maximising opportunities, rather than a 'one size fits all approach to applying standards'.<sup>233</sup>

7.22 The reality is that for many residents there will be bus stops within 400-600 m of their homes from the first day of occupation<sup>234</sup>. On the worst case some residents will be about 1.2 km from a stop. However, this would be only for a temporary period and 1.2 km is within the preferred maximum walking distance for commuting and other purposes established by the Chartered Institution of Highways and Transportation (CIHT)<sup>235</sup>. The bus stops are served by the Triangle route operating between Herne and Canterbury via Herne Bay (including the rail station) and Whitstable at a frequency of 1 bus approximately every 15 minutes in each direction. There would be good opportunities for

---

<sup>228</sup> HE.2.G paragraphs 1.22 and 1.23

<sup>229</sup> HE/INQ/18 page 30 provides information on EuroRAP. The Road Safety Foundation has led on the establishment of EuroRAP, which is described as an international not for profit association registered in Belgium dedicated to saving lives through safer roads.

<sup>230</sup> HE.2.G Appendix A for details of accidents; CCC.4.A at Appendix B paragraph 3.6.8. The period covered is from 1 April 2009 to 31 March 2014. Mrs Blatherwick reported that more up recent data would show a fatality (near the Bullockstone Road junction) and an accident involving a bus in the village centre. She noted many accidents go unrecorded.

<sup>231</sup> This evidence on safety was given by Mr Bancroft at the inquiry.

<sup>232</sup> HE.4.D paragraphs 3.1.2 to 3.1.7

<sup>233</sup> HE.2.B Mr Bancroft develops this argument in paragraphs 8.6.3 to 8.6.9, including reference to the 6Cs Design Guide used in the East Midlands region.

<sup>234</sup> HE.4.D Appendix 5 contains an isochrones plan which compares the Strode Farm site with the HBGC site. A schedule shows 117 units in phase A would be within 400 m of a bus stop and 6 units within 600 m. No units are within the 400 m distance for phases B, C, D and E. In phases D and E 82 and 79 units respectively would be within the 600 m zone.

<sup>235</sup> HE.4.D Appendix 6 paragraph 6.4

public transport journeys in view of the proximity to frequent services in a non-central urban area.

7.23 Various means have been explored for the interim period until the completion of the HRR in order to address the Councils' concern<sup>236</sup>:

- A suggestion that part of the Kent BRIS utilising Hollamby land could be brought forward in order to make Bullockstone Road usable by buses;
- Drawing attention to services run by Stagecoach in the local area on routes which are comparable to Bullockstone Road in its existing condition;
- The offer of a subsidy for the use of the Kent Karrier bus service for those households falling outside the 400 m isochrones.

7.24 By way of comparison, the emerging proposals for the HBGC site have been considered. The planning permission did not include any mitigation for interim bus services. It appears that a bus gate is being installed on the HBGC site some 500 m from the appeal site and it is likely that a bus stop would be provided at that location. There is a clear intent for buses to run along Bullockstone Road<sup>237</sup>. The refusal of KCC to enter into constructive dialogue on the issue does not sit comfortably with the positive approach advocated in the Framework.

#### *Conclusion*

7.25 The Council's evidence does not demonstrate that the A291 through Herne village is congested or will be congested by 2023, still less that there will be a severe residual cumulative impact. There are no technical objections to the mitigation proposals put forward. The insistence that the appeal proposals should bear the entirety of the unmet cost of the HRR is unreasonable and assumes a risk of the Hillborough site not proceeding to development, which is inconsistent with the stance taken at the Local Plan examination. The Council's offer of a clawback has been made at the same time as the policy justification is proposed to be removed from the emerging Local Plan. The demand that buses run through the site, yet with no similar obligation on the HBGC site, is a blatant example of inconsistent decision-making. The absence of a through bus service for a temporary period is not a reason to prevent this much needed development from proceeding. There is no good highways objection to the appeal scheme and there never has been.

#### **Affordable housing**

7.26 The proposal for 30% affordable housing removes any policy objection to the amount of affordable housing to be included in the appeal scheme. The Local Plan contains no policy that fixes the type or amount of affordable housing that the scheme should provide. The appeal site is not one of the specified sites in Policy H4 that requires 30% affordable housing and Policy IMP2 is not prescriptive. The appeal proposal will help to meet a need for both rented and

---

<sup>236</sup> HE.4.D paragraphs 3.1.1 to 3.1.10 and Appendix 4

<sup>237</sup> Mr Crook's evidence in cross examination and additional information in HE/IQ/43

intermediate affordable housing and there is no conflict with the statutory development plan.

- 7.27 Turning to the emerging Local Plan, draft Policies HD2 and SP3 impose no requirement as to tenure mix and the appeal proposals are compliant with them. Although the supporting text refers to a suggested target of 70% rented and 30% suitable intermediate tenure, this text is not policy and does not impose any additional policy obligations. Clear authority is found in the decision of the Court of Appeal in the *Cherkely* case<sup>238</sup>.
- 7.28 The Council suggested that draft Policy SP2 requires that residential development complies with the Council's Housing Strategy<sup>239</sup>. This policy is expressly concerned with the allocation and broad phasing of the district-wide provision of housing. It is not a site specific or development management policy.
- 7.29 In conclusion the inclusion of 30% affordable housing in the appeal proposals produces a scheme that complies with both adopted and emerging development plan policy on affordable housing. It will meet an undoubted need for both types of affordable housing in the district and there is no longer a sustainable policy objection to this aspect of the scheme.
- 7.30 Moreover, although the Council expresses a preference for a different tenure mix, the Framework in paragraphs 50 and 205 requires flexibility in the imposition of affordable housing obligations. The emerging Local Plan refers to a target, not a requirement and indicates that tenure mix is a matter for negotiation. In certain circumstances the Council may have to prioritise delivery over achieving its desired mix<sup>240</sup>. It is also relevant that the Council's Housing Strategy is out of date and due for replacement.
- 7.31 The proposed housing mix comes from Orbit Homes, a substantial and successful affordable housing provider. Orbit was asked to come forward with a proposal that would allow 30% affordable housing to be provided<sup>241</sup>. The proposed mix accords with the Kent mediation panel's recommendations in September 2016<sup>242</sup>. The mix also is:
- in line with that approved by the Council for the first phase of the HBGC development<sup>243</sup>;
  - a better fit with the HCA's April 2016 funding prospectus<sup>244</sup>;
  - supported by Mr Edge's up to date viability appraisal 27A<sup>245</sup>. His appraisal is the most thorough and realistic viability appraisal before the inquiry. It demonstrates marginal viability, which would be threatened if the mix was tilted more towards affordable rented properties.

---

<sup>238</sup> *R (Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567. The relevant paragraph 16 is cited at paragraph 35 of HE/IQ/42.

<sup>239</sup> In cross examination of Mr Hester

<sup>240</sup> CCC/IQ/5 paragraph 2.42 as proposed to be modified, which is set out in HE/IQ/42 at paragraph 32.

<sup>241</sup> HE.4.D paragraph 4.1 provides additional background information on the approach to Orbit.

<sup>242</sup> HE.4.B Appendix 2 page 31 (section 'Level of affordable homes within the overall scheme')

<sup>243</sup> HE.1.B paragraphs 3.74 to 3.77 and HE.1.C Appendix D

<sup>244</sup> HE.1.B paragraphs 3.69 to 3.72 and HE.1.C Appendix 15

<sup>245</sup> HE/IQ/32

7.32 There is no rationale in any version of the Housing Strategy for the so called 'policy' of 70:30 tenure split in favour of affordable rent or the 'target' of 60:40. There is clear evidence both broad categories of tenure are needed to serve local needs but no clear evidence base for preferring one split above another. Both forms of tenure will serve a substantial and pressing local need. The evidence of Mr Paterson does not suggest otherwise and he endorsed the mix of house types proposed<sup>246</sup>.

#### *Conclusion*

7.33 The proposed level and mix of affordable housing are both policy compliant and likely to be delivered. In view of the serious and increasing market and affordable housing needs of the district this is a scheme that should be permitted without delay.

#### ***Viability***<sup>247</sup>

7.34 The revised financial viability appraisal takes into account an increase in the overall housing values that occurred between August 2016 and February 2017, reflecting an increase in house prices over that period. In addition the affordable housing values were revised reflecting the smaller and relatively more valuable affordable housing product in terms of value per square foot. Housing construction costs show an increase of 0.07%. The largest change is in relation to threshold land value which has been reduced by £4.2 million to £10,000,000, acknowledging the imperfections in assessing this theoretical value<sup>248</sup>. The sum is not a commercially supportable figure but is a compromise to seek consensus. The reduction in market housing from over 84% to 70% causes a reduction in profit of about £3.2 million. In summary, the threshold land value reduction coupled with the reduction in absolute profit, combined with the marginal increase in housing sales values has substantially facilitated the increase in the affordable housing offer to 30% assuming a tenure split of 30% affordable rent and 70% intermediate tenure<sup>249</sup>.

7.35 The illustrative mix for a 731 unit scheme is based on a comprehensive and well considered master planning design. The section 106 obligation contains a revision mechanism to cover the extent of any increase in the number of units. The appraisals carried out by Mr de Whalley included evidence on a theoretical mix of 800 units and serve no useful purpose<sup>250</sup>.

7.36 Delivery of the first phase of the housing would be expected in the first quarter of 2019. A common delivery rate of 80 dwellings per annum is adopted throughout the development programme, which is consistent with the housing

---

<sup>246</sup> HE/IQ/42 Appendix 2

<sup>247</sup> Viability was touched on in the closing submissions (HE/IQ/42 paragraph 38) but to ensure balance with the Council's case this section reports the appellant's initial evidence, primarily in HE.3.B, HE.3.E HE/IQ/32 and oral evidence, on the main points of dispute. This earlier evidence was not withdrawn on submission of Appraisal 27E.

<sup>248</sup> In view of this change, the appellant's initial case on threshold land value is not reported but can be found at HE.3.B paragraphs 4.32 to 4.37 and HE.3.E at paragraphs 2.37 to 2.41

<sup>249</sup> HE/IQ/32

<sup>250</sup> HE.3.E paragraphs 2.1-2.2

trajectory in the planning statement of common ground<sup>251</sup>. A delivery rate of 100 units per annum is not realistic. Local market demand will drive housing delivery. Given the scale of proposed housing development in the local area, including HBGC and Hillborough, housing delivery on individual sites is likely to be moderated.

- 7.37 The initial infrastructure costs for the entire project will need to be expended in the first years to pay for site-wide servicing to enable development to take place<sup>252</sup>. The carrying cost will be a burden for the development until the project's capital receipts overtake the outgoings. The expectation is that 45% of the infrastructure expenditure will be before the end of the first phase<sup>253</sup>. The planning obligations alone are greater than required of the HBGC site<sup>254</sup>. It is not apparent how the DVS appraisal provides for this and the related interest burden. The education contribution should also include a value for the land being transferred to KCC for the provision of a primary school.
- 7.38 The likelihood is that Hollamby would sell the development land on a phased basis over the life of the development. Therefore the bespoke model used for the appraisals allows for development to take place over 6 linked phases and the cash flows for those phases are evident. The model used in the DVS appraisal is not transparent or flexible and is likely to be less accurate. It does not allow for a fine grained assessment to reflect the phasing of the proposals at Strode Farm and the associated cash flows<sup>255</sup>.
- 7.39 In determining the value of the housing five categories of dwellings have been identified to take account of the effect of traffic noise and the market and affordable housing. Considerable regard has been given to the sales prices quoted for the HBGC site, allowing a 5% negotiating margin. The market place for the HBGC scheme is unclouded by competition, whereas the Strode Farm development will come on stream in a completely different and more competitive housing market where the supply of dwellings will have increased. There are no grounds for extrapolating the value on a small sample of reservations on the HBGC site, as suggested by Mr de Whalley<sup>256</sup>.
- 7.40 Professional fees are based on 6.5% of the housing construction costs, external costs and contingency<sup>257</sup>. Professional fees also would be incurred by the developer of any strategic site for the design and contract management of the infrastructure and enabling work costs<sup>258</sup>. The figure of £3,995,000 is greater than the sum in Mr Dadswell's cost plan (£2,995,000) because of the relatively high cost incurred in the pre-start and planning process<sup>259</sup>. In fact the pre-start figure has already been exceeded.

---

<sup>251</sup> HE.1.C Appendix 5 provides an updated housing trajectory which takes into account information gathered in August 2016

<sup>252</sup> HE.5.B Appendix 2 Cost Plan 6 Main cost summary

<sup>253</sup> HE.3.E paragraph 2.11

<sup>254</sup> HE/IQ/6 sets out the appellant's comparison

<sup>255</sup> HE.3.E paragraphs 2.10, 3.2-3.8

<sup>256</sup> CCC.3.B Appendix G provides information from the Redrow marketing department confirming 5 reservations, all reserved at the asking price.

<sup>257</sup> HE.3.D row 159 in cash flow sheet

<sup>258</sup> HE.3.D rows 136-139 in cash flow sheet

<sup>259</sup> This explanation was given by Mr Edge in examination in chief. The figure of £2,995,000 is found in HE.5.B Appendix B Cost Plan 6 section 11 Design Fees and surveys (see also Main Cost Summary)

- 7.41 The value of the shared ownership affordable housing stock has been assessed at 65% of market value, a figure informed by two large housing associations and agreed with DVS in relation to a scheme in East Sussex<sup>260</sup>. However, the more important difference with the Council in relation to the GDV was accounted for by the assessment of the value of the affordable rented component<sup>261</sup>.
- 7.42 The appropriate developer's return for the project is no less than a 20% return on GDV for the market housing, 9% on the GDV of the shared ownership housing and 6% return on the affordable rented housing<sup>262</sup>. These returns would reflect an adequate incentive for all the risks carried by the developer in proceeding with the venture. Unless an adequate return can be achieved, the developer will not secure development finance from funding institutions, the developer will seek alternative opportunities and the landowner is likely to be dissuaded from placing the land in the market for development. Mr de Whalley agreed that regard had to be given to a land owner achieving a competitive return because without such a return a scheme would not be viable.
- 7.43 The risks associated with the Strode Farm development include the high infrastructure costs early in the scheme, non-delivery or late delivery of the Kent BRIS and market saturation<sup>263</sup>. Future sales rates in coastal locations are often the worst affected by fluctuations in market conditions. In coastal or near coastal locations similar to Strode Farm housing delivery has been interrupted and delayed because commercial returns have been unacceptable. The intention was that Hollamby would find a development partner(s) at an early stage but a number of the larger house builders are now aligned with other sites in the district. Therefore Hollamby may have to consider taking on the role of serviced land provider, for which third party finance would have to be in place. The returns for the third party will need to be above the market norm in view of the heightened risks for that proposition.
- 7.44 Commercial funding over the last 8 years has become progressively easier for developers but other risks have come to the fore including the ability to secure skilled labour, uncertainty over inflation and the price of building materials following the Brexit decision. The mediation panel, with local knowledge, concurred with the appellant's position and its recommendation should be accepted by the Council. A 20% return on GDV of market dwellings was agreed by the DVS for a project in Hailsham for 110 dwellings on a nursery site, a much less risky development involving no major on or off site highway improvements or major engineering operations on site.

## **Other matters**

### *Employment floorspace*

---

<sup>260</sup> HE.3.E paragraphs 2.25 to 2.27

<sup>261</sup> HE.3.E paragraphs 2.14 to 2.23 and 2.34, 2.35. Inspector's note: Financial appraisal 27A revises the position discussed in the evidence – see cash flow rows 48 and 49 where affordable rent capital receipt = £4,070,934 and shared ownership capital receipt = £28,721,611.

<sup>262</sup> This remains the assumption in Appraisal 27A- see HE/IQ/32A Assumptions sheet rows 148-151.

<sup>263</sup> HE.3.E paragraphs 2.53 and 2.54, HE.4.B paragraphs 5.4.1 - 5.4.7 and HE.4.C paragraph 2.1.1-2.1.3 detail the envisaged development risk.

7.45 For a number of reasons the appellant has consistently opposed inclusion of the provision of 15,000 sq m of employment floorspace within the development through representations on the emerging Local Plan<sup>264</sup>. Following the Examination Hearing, Council planning officers indicated that the employment requirement would be changed through the main modifications. This was not done<sup>265</sup>. The quantity of floorspace is not needed to meet employment objectives. It would require the deletion of some 150 dwellings and would harm the approach to urban design and place-making indicated on the illustrative masterplan. The scheme would become unviable. Furthermore, it is not clear that the policy (as proposed to be modified) imposes an obligation to provide this level of employment floorspace or is merely permissive. Little weight should be given to the divergence between the draft policy and the appeal proposals.

*Landscape and visual effects*<sup>266</sup>

7.46 In terms of landscape character, the main area of land is within an area of low sensitivity and is not subject to any statutory protection. The main adverse effects of the development on the landscape would be the loss of some 39 ha of open countryside/agricultural land and the change in settlement pattern, resulting in the potential coalescence of adjoining settlements and the urbanisation of the A299 corridor. No mitigation is possible to offset the loss of agricultural land so that the residual impact is substantial. However, in terms of the wider townscape the loss of countryside would be partially offset by the creation of a better defined and more defensible southern boundary to the Herne Bay conurbation. Provision of extensive green open space within the site and links to the surrounding area would reduce the impact on landscape character to moderate adverse.

7.47 The proposed development would be visible from many locations surrounding the site, particularly from rising land to the south and east. However, due to extensive screening afforded by existing woodland and intervening structures, there are comparatively few locations or properties experiencing major changes to the existing views or to visual amenity. The visual effects on Herne Windmill Conservation Area would not be significant due in part to the distance from the site and the presence of modern housing between the site and the Conservation Area. Significant changes in visual amenity are predicted along the northern edge of Herne Conservation Area including residential properties on Lower Herne Road, which currently have a semi-rural outlook across open farmland. Mitigation is directed at sensitive layout and landscape treatment of the interface between the site and Lower Herne Road, including extensive tree planting and the use of materials to reflect the vernacular architectural style. The assessment is one of a moderate adverse effect.

7.48 The site is allocated as a strategic development site in the emerging Local Plan. The loss of agricultural land and the impact on the character and appearance of the area will have been taken into account in the selection of the site for allocation and the appraisal of the draft Plan's sustainability. The conclusion reached must be that they were acceptable. The draft allocation is not in doubt

---

<sup>264</sup> HE.1.B paragraphs 5.33 and 6.7, HE/IQ/28 at Appendix 6 paragraphs 15 to 17 and HE/IQ/5

<sup>265</sup> HE/IQ/28 Appendix 6 paragraph 16

<sup>266</sup> ES.1 section 11 is the main source of information and assessment on behalf of the appellant on this topic.

and it is difficult to see how the Council can rationally identify these matters as factors weighing against the grant of permission.

*Cultural heritage*<sup>267</sup>

- 7.49 There are no designated heritage assets within the site which will be impacted on by the proposed development. Indirect effects may occur on designated and non-designated heritage assets during the construction phase arising from noise, dust, vibration and construction. The effects would be temporary, short term and reversible and the significance would be negligible or minor adverse, apart from Downtops'I with a moderate/minor adverse effect. Due to its location, Herne Windmill commands a dominant view over the lower ground in the vicinity of Herne, Herne Common and Herne Bay. Its extensive landscape setting is now heavily compromised by 19<sup>th</sup> and 20<sup>th</sup> century urban development.
- 7.50 Downtops'I cottage has limited interaction with the surrounding countryside. The construction of a large residential development in the vicinity of the building would intrude in the predominantly rural setting, resulting in a moderate adverse impact on its setting. Proposed mitigation in relation to Downtops'I is through lower density development at the western end of the site and incorporation of planting to provide screening and reduce inter-visibility between the new houses and the heritage asset. Retention of the tree-lined boundary would restrict inter-visibility with the realignment of Bullockstone Road. The proposal meets the statutory test of preserving the setting of the listed building.
- 7.51 Herne Conservation Area is dominated by the rural, open character of the Strode Park estate, with the historic settlement cores of Herne and Herne Common adding a historic urban character to the feel of the Conservation Area. The locations of the two 'fingers' that cross Lower Herne Road into the application site are not apparent within the street scene and are not marked out as different to land either side or around them. The single storey dwelling to be demolished is a modern bungalow. It is of no particular historic or design merit and does not relate in visual or built terms to the predominant character and appearance of the Conservation Area<sup>268</sup>.
- 7.52 The EIM incorporates these 'fingers' into the design and layout of the proposed neighbourhood. The replacement dwelling would be designed to be in keeping with the proposed new character area. The new road alignment would have the added benefit of removing traffic from the Conservation Area. The integrity, character and appearance of the Conservation Area as a whole will be preserved. There will be some limited changes to its wider setting to the north, but this will be restricted by the limited inter-visibility to the east and restricted

---

<sup>267</sup> ES.1 section 12, TR.4 and PA.1 paragraphs 5.28 to 5.42 are the main sources of information and assessment on behalf of the appellant on this topic. Grove Farm House is not within the amended site boundary.

<sup>268</sup> GEN.1 paragraph 126, where the Council also expresses the view that the building is not of any particular architectural merit and does not make a positive contribution to the Conservation Area.



views to the southern area of the proposed development. A minor adverse impact is identified to the setting of the designated heritage asset. Proposed mitigation comprises the strengthening of rear boundaries along Lower Herne Road through the use of vegetation, boundary treatments and building design. Residual impact is predicted to be negligible.

#### *Fear and Intimidation*<sup>269</sup>

- 7.53 The study area for detailed assessment in the ES was established from the predicted change in traffic conditions using environmental led thresholds that are different to the capacity and safety thresholds that might otherwise have been applied within the TA. It was established that a material change in conditions would not occur within the centre of Herne and no specific assessment of the centre of Herne was undertaken. Notwithstanding, Link E A291 (south of A299) was rated as being of high sensitivity because of its proximity to the Herne Church of England Junior School and the Strode Park Foundation in the immediate area.
- 7.54 The ES (Addendum No. 2) summaries how the 'without development' baseline conditions generate an overall hazard level of Moderate based on the balance of 18 hour HGV movements and the overall traffic flow levels and speeds. The 'with development' assessment shows how this would not materially change, with a Moderate outcome. The magnitude of the impact and the significance of the effect would be negligible<sup>270</sup>. No further mitigation measures were deemed necessary.
- 7.55 The principle of the current operation of the A291/School Lane junction was considered in the TA. The junction does not operate in an entirely conventional way, with occasional ad hoc manoeuvres, such as vehicles waiting within the junction for others to emerge through pinch points and HGV overhang of the footway. However, the junction is located within carriageways that restrict approaching vehicle speeds and there is no serious ongoing recorded accident problem. There is no evidence to suggest that mitigating improvements are required.

#### **Concluding submissions**

- 7.56 The appeal proposals provide a policy-compliant level of affordable housing that will assist in meeting the needs of the district. Considerable weight should be attached to the delivery of 219 affordable homes, particularly where the Council is presently only averaging an achievement of 18%.<sup>271</sup> The Council has not sought to argue that the proposals fail to meet housing needs in the district, only that they don't meet housing needs in accordance with the Council's preferred priority.
- 7.57 An experienced registered provider Orbit has endorsed the heads of terms that bind into a partnership with the appellant to deliver affordable housing throughout the life of the scheme. To suggest that this well considered offer

---

<sup>269</sup> HE/IQ/39

<sup>270</sup> ES.16 paragraphs 3.5.11 to 3.5.14. Table 7.7a is the baseline conditions. Tables 7.9a and 7.9b are 'with development' 2024.

<sup>271</sup> HE/IQ/37 page 32. The figure of 18% applies to the period between April 2006 and March 2013

should be rejected because of a possibility that a less successful operator might be able to make a better offer borders on the irresponsible.

7.58 All parties are content that the approved Kent BRIS should replace the appeal scheme BRIS. There are no outstanding technical objections to the remainder of the HRR. The appellant has offered to build the spine road, the substantial junctions to the east and west of the site and make a proportionate and timely contribution towards the cost of the Kent BRIS in accordance with a statement of common ground for the HRR and the current version of the draft Local Plan. There is no good reason to refuse the proposal on this ground.

7.59 The EIM, the ES, the proposed planning obligations, the suggested conditions and the controls that may be exercised by the Council at reserved matters stage fully address any adverse environmental and infrastructure impacts. The Council does not argue otherwise.

7.60 The site is considered suitable by the Council for residential, employment and retail development. The proposal is broadly equivalent to one year's supply of housing given current objectively assessed need. The scheme, through its contribution to the delivery of the HRR, would help bring forward or support development on other strategic sites in the area<sup>272</sup>. The proposals would undoubtedly help to secure a better balance between housing demand and supply. The clear intention is to create a high quality mixed and inclusive community consistent with the principles of the best examples of Garden Village development.

7.61 The appeal scheme meets all up to date policy objectives at national and local level. The scheme would provide well designed family housing where it is most needed, key elements of a strategically significant relief road and a new school to support its own and surrounding communities. The district desperately needs the scheme to come forward without delay.

### **Updated case post adoption of the CDLP<sup>273</sup>**

#### ***Transport/Highways***

7.62 Policy SP3 supports the appellant's approach for CCC/KCC to seek proportionate and fair financial contributions towards the HRR from SSAs Sites 3, 4 and 5 in accordance with the agreed approach in the joint Statement of Common Ground. The policy does not seek to saddle Strode Farm with the full costs of the KCC BRIS or the A291 improvements.

7.63 Policy SP3 does not provide alternative funding arrangements should the appeal site or the Hillborough site not come forward. It provides no support for the proposed clawback mechanism promoted at the inquiry by the authorities. The Examination Inspector concluded that KCC would forward fund the road and made no reference to the contentious mechanism proposed at the inquiry<sup>274</sup>.

---

<sup>272</sup> Mr Hester explained, with reference to the housing trajectory in CCC.1.A Appendix 1, that the level of housing will amount to 2,672 units minimum in the plan period, of which 610 units are within the first five years.

<sup>273</sup> HE/IQ/47 and HE/IQ/48

<sup>274</sup> CDLP.3 paragraph 158

Policy SP3 does not require the HRR to be provided within a specific timescale or prior to the completion of a particular number of dwellings.

- 7.64 Policy SP3 also provides the opportunity for the Council/KCC to seek improvements to Bullockstone Road from SSA sites 3 and 4. A contribution has already been secured from the HBGC site, the appeal proposal would secure funding from Strode Farm, leaving the authorities to secure funding from the Hillborough sites when they come forward. There is already a commitment from KCC through the SCG – HRR to do so.
- 7.65 The proposal meets the requirements of Policy SP3 in that it delivers the spine road through the site, brings forward the appellant's land to facilitate the Bullockstone Road improvements. The planning obligation provides a proportionate financial contribution towards the KCC BRIS in accordance with Policy T13, and the SCG – HRR, which was submitted to the examination of the CDLP. To construe Policy SP3 as the Council suggest, to require the appellant to provide for the whole of the HRR at the outset, would be a plain conflict with those parts of Policy SP3 and Policy T13 that require other sites to make proportionate contributions to the HRR.
- 7.66 Policy T13 states that any development proposals that might prejudice the HRR will be resisted. Any requirement to provide 15,000 sq m of employment floorspace would prejudice the delivery of the HRR due to issues of viability and the high degree of uncertainty around the economic prospects of the Herne Bay area. Policy T13 also provides a policy justification for seeking contributions to the HRR beyond the three SSAs because the HRR would help mitigate the traffic impact from future housing development on other sites. The wording of the policy offers the opportunity for the Council or KCC to seek contributions from other non SSA sites should the SSA sites not come forward.
- 7.67 The CDTS supports the appellant's approach towards the funding and delivery of the HRR and does not state that the HRR is at nil cost to KCC<sup>275</sup>. The CDTS provides in paragraph 7.57 that the relief road would need to be funded by those developments that generate additional traffic through the village. The appeal scheme is only one of such schemes. Without the appeal site the Kent BRIS/HRR cannot be delivered. Furthermore, the objectives in the CDTS for the HRR to help alleviate existing and potential environmental problems and to improve journey times for buses between Herne Bay and Canterbury would not be met<sup>276</sup>.

### ***Affordable housing***

- 7.68 The full 30% affordable housing component sought by Policy HD2 would be provided. The proposed tenure split accords with the flexible approach on tenure taken by the CDLP to achieve delivery. There is no conflict between the proposal and the supporting text at paragraph 2.42 of the CDLP<sup>277</sup>. The emerging illustrative masterplan, the schedule of accommodation, mix and location of affordable housing units demonstrate that affordable housing would be integrated seamlessly into the scheme and meet the requirements of a

---

<sup>275</sup> CDTS.1, paragraphs 7.56 and 7.57 and table on page 95

<sup>276</sup> CDTS.1 Target 1 on page 101 and Target 7 on page 103

<sup>277</sup> See paragraph 6.69 above and Inspector's note in footnote 195

registered social landlord. The unilateral undertaking provides for a further layer of agreement to be reached with the Council on such matters.

- 7.69 The mix of affordable housing has been identified with a reputable provider of social housing to meet identified need in a viable manner and is not in conflict with the broad strategic Policy SP2.

### ***Employment floorspace***

- 7.70 Policy SP3, as a strategic policy, is not prescriptive in character but is permissive. The indicative employment floorspace is one of a set of parameters which are intended to provide a broad framework to achieve sustainable development. The proposal complies with each parameter since the commercial floorspace component accords with the general requirement of Policy SP3, albeit not at the maximum level identified in the parameter. The Local Plan Inspector in his report stated that 'an employment component to the SSA is appropriate'. He did not address the justification for the amount of floorspace on this site<sup>278</sup>.
- 7.71 The locations in Policy SP3 are intended to be residential led. There is a compelling need to accelerate the delivery of housing in the district. Site 5 is intended to be making a contribution to the supply of housing land for the current five year period. The delivery of the housing component would also secure the delivery of the main component of the HRR. In turn this would enable the delivery and mitigate the traffic impact of other strategic housing sites in Herne Bay and Sturry and other housing sites coming forward in the plan period.
- 7.72 It has always been the appellant's case that the appeal proposal complies with the policies of the draft and now the adopted development plan and should be approved without delay as sustainable development in accordance with paragraph 14 of the Framework.
- 7.73 There are significant employment allocations made in Policy EMP1 (26.1 ha for B1 to B8 use classes). The employment parameter of site 5 within Policy SP3 is intended to provide an employment element in a residential led mixed use new community. The CDLP refers to a high degree of uncertainty regarding local employment prospects and a healthy surplus of employment land to meet the needs for Class B employment uses<sup>279</sup>. The general situation for employment is a stark contrast to the position relating to the supply of housing, where the Council can only demonstrate that it can make up the current housing deficit by using the Liverpool method of calculating housing supply.
- 7.74 The appeal scheme aims to provide a cohesive and high quality residential community that is viable, embraces good place-making and achieves garden city principles. The master planning exercise has shown that the housing and employment parameters in Policy SP3 cannot both be met in full. A reduction in the housing component and consequential increase in employment floorspace would put at risk the viability of the scheme and its deliverability. To have

---

<sup>278</sup> CDLP.3 paragraph 171 states "Although the site is fairly close to the Altira employment allocation, it is well related to the A299 and an overall need for additional employment land in the plan period has been demonstrated, as considered under Issue 7. As such, an employment component to the SSA is appropriate."

<sup>279</sup> CDLP.1 paragraphs 3.21 and 3.33

prominent undeveloped land at the front of the appeal site for years to come would have a significant negative impact on the attractiveness of the residential component. The change in land use content would reduce the ability of the development of the site to achieve the immediate and wider sustainability objectives set out in the CDLP.

- 7.75 Putative reason for refusal number 7 clearly expresses the reduction in employment floorspace below that envisaged by policy as forming part of the cumulative adverse impacts of the development. Since that time the planning balance has tilted significantly further in favour of the appeal proposal as the social and highway infrastructure has improved through the amended proposal on affordable housing and increased contributions towards secondary education, the SAMM project and the Kent BRIS.
- 7.76 The parameters in Policy SP3 are not to be equated with the protective or safeguarding policies. Policy EMP1 allocates new business locations and protects business sites. Policy EMP2 supports the growth of non-class B development and its contribution towards employment objectives. Policy EMP4 protects existing or allocated employment sites. The appeal site is not named in these policies whereas other Herne Bay sites are named. The appeal proposal does not jeopardise the objectives behind these policies, which should maintain existing and future supply for the foreseeable future and into the next plan period. In contrast many of the housing allocations, including the appeal site, are required to deliver in the short and medium term to maintain the minimum supply.
- 7.77 The reduction in housing numbers on the site would affect the scale of the financial contribution required from the scheme towards the Kent BRIS because the trip generation and distribution from the housing component would be reduced. That reduction has not been calculated. In view of the positions reached on the HBGC and Hillborough sites it would not meet the wider objectives of the CDLP and the SP3 allocations to have to increase the employment provision at Strode Farm with the consequent risk of slowing down or stopping delivery of much needed housing or providing uncertainty as to the delivery of housing and the HRR.

### **Final conclusion**

- 7.78 The appeal proposal is policy compliant. The material considerations supporting the proposal include: paragraph 14 of the Framework, the deficit in the 5 year housing supply, the reliance on the site to help make up the current 5 year supply and in the years following towards 2031, facilitating the development of other strategic and non-strategic housing sites, and the provision of timely and needed social, environmental and transport infrastructure. In addition the scheme provides for land for a primary school, which is not specifically required by Policy SP3, in an area where there is an outstanding need for primary school places. Neither the Council nor KCC has identified any other location for a school or means of delivery.
- 7.79 Therefore the appeal proposal is policy compliant, compliant with the Framework and delivers a sustainable form of development in itself and also for wider sustainable objectives.

---

## 8. THE CASE FOR HERNE AND BROOMFIELD PARISH COUNCIL<sup>280</sup>

8.1 There has been local awareness of proposed development in the area for a number of years, most recently related to the new Local Plan. The early meetings with the Council and Hollamby Estates highlighted a strong feeling of village identity and that the infrastructure was at breaking point<sup>281</sup>. The Parish Council has objected strongly to the Strode Farm allocation and to determine the application would prejudge the outcome of the new Local Plan examination. The scheme would have a tremendous impact on the community and must be done with sensitivity to the quality of life of current residents and that of future occupants. Sadly, the evidence at the inquiry indicates that profit and cash flow comes before people.

### *Loss of village identity*

8.2 Herne is an ancient village, predating the development of Herne Bay by many hundreds of years. There is a strong sense of community, with residents of the opinion that they are a completely separate community to their young neighbour. Many of the green buffers around the historic village have been eroded due to extensive development. The Strode Farm land is the last green gap between Herne, Greenhill and Herne Bay. Residents fear Herne will be swallowed up in a major conurbation and lose its identity.

8.3 The proposal does little to allay these fears as there appears to be little attempt to integrate the design with that of the existing village. There are few green spaces to integrate with the Conservation Area to the south and the area of high landscape value to the west and no green gap to preserve the identity of the village. The proposed 800 dwellings is overdevelopment of the site and the height of the buildings in certain areas needs to be reconsidered. The development of the site will have a detrimental impact on the landscape character and the proposed landscaping would not make any difference on the impact on the Conservation Area from a variety of viewpoints.

### *Highways*

8.4 The phasing programme is totally unacceptable because during construction all the generated traffic from the development will be going through the centre of the village causing enormous issues with congestion and pollution. The A291 carries not only local traffic but also inter-urban traffic, which affects its capacity. Buses travel along the A291 and also up School Lane. When a bus turns into School Lane all traffic has to stop because of the very narrow carriageway. Parking, with people pulling in and out, occurs near to the shop which is another constraint at a pinch point.

8.5 Mr Crook's evidence indicates the spine road would not be connected for eight years but there is every possibility that it could be longer with current uncertainties. Those most severely affected would be residents nearest the proposed construction in Canterbury Road and Lower Herne Road. The residents of the bungalows at the northern end of Canterbury Road, adjacent to the

---

<sup>280</sup> PC.1 to PC.10 provide all the written representations, submissions and detailed comments on statements and proofs of evidence on behalf of the Parish Council. The main points in this section also include evidence given by Mrs Blatherwick at the inquiry.

<sup>281</sup> PC.4

construction access, would be surrounded by traffic and construction and then be overshadowed by the tallest buildings on the development. The spine road and improvements to Bullockstone Road should be completed at a very early stage of the development.

- 8.6 The air quality assessment for Herne village takes account of the HRR. If the HRR does not go ahead a large increase in traffic will affect the air quality of the village, especially at peak times<sup>282</sup>.
- 8.7 The HRR, proposed to be the preferred route between Herne Bay and Canterbury, should become an 'A' road and a strategic inter-urban route. It is imperative that the road is designed to the correct standards in the DMRB to ensure that it is fit for purpose.
- 8.8 The proposed stopping up of Lower Herne Road is of concern because it provides an agricultural access route.

#### *Community*

- 8.9 There is little evidence of a positive nature about the development's contribution to the community. In terms of open space, there are no proposals to provide informal play space suitable for teenagers, such as a skateboard area (a recurring request over the years), a multi-use games area, a youth shelter and informal kick about area. Experience has shown that such facilities are essential to limit the social problems that occur when they are not provided. The HBGC site contributed towards the building of a new community centre on land off School Lane. In view of the Policy SP3 requirement for the appeal site, and its future use by residents of the scheme, a contribution should be included in the section 106 agreement<sup>283</sup>.
- 8.10 The inclusion of 30% affordable housing is welcome because of the need for this type of housing with many people having low paid occupations. The area is not as affluent as Canterbury or Whitstable. The Council's views on tenure mix are supported. No provision of accommodation suitable for older people is disappointing. Small modern bungalows, assisted living or sheltered accommodation is required in the Herne area to enable people to downsize but remain living in a familiar community. An added benefit would be to free up larger family homes in the area<sup>284</sup>.
- 8.11 The insistence of building at the Bullockstone Road end of the site has no merit and future occupants would have many problems to deal with, for at least eight years. There would be no direct access to any amenities, no bus service to allow children to travel to senior school<sup>285</sup>. The offer of the Kent Karrier to serve the area is not a viable alternative. A walk to the nearest bus stops would be along a narrow unlit country lane or possibly through a construction site. The reality is that prospective residents of these houses would travel by car to work, services

---

<sup>282</sup> PC.6 – comment on MM 181

<sup>283</sup> Mrs Blatherwick explained that tenders are in for the building project. The only way the centre could be funded is through a Public Works Loan and the money will have to be recovered from the community.

<sup>284</sup> Mr Paterson supported housing for the elderly if further work demonstrated a local need. In his view Herne Bay had a lot of older persons' accommodation already. He drew attention to the requirement for 20% of new units to meet regulations on accessibility.

<sup>285</sup> ES.3 Appendix 14.2 identifies the locations of the schools in the area.

and schools for a number of years, which is hardly sustainable. The result would be increased traffic on Lower Herne Road and Bullockstone Road prior to any improvements being carried out.

- 8.12 The Kent BRIS is likely to be constructed after the completion of the early phases of houses. A lengthy road closure of possibly up to a year will be required, which in turn will result in additional traffic on the northern part of Bullockstone Road and along Lower Herne Road. The construction of the western end of the site will require construction traffic using both the north and southern section of Bullockstone Road. This is completely unsuitable. The southern section is unsuitable for HGVs due to its geometry, construction and width. The northern section passes a very busy High School, whilst the residential section has many parked cars, side roads and a sharp bend. All this could be avoided by building from the eastern end of the site only or constructing the complete spine road at the start of the scheme.
- 8.13 The three dwellings proposed to be demolished should be retained to help integrate the new development into the area, especially the bungalow in the Conservation Area. They were part of the former Strode Farm and the original lodge dates back to 1880s. One of the occupants who has lived there all his life is suffering from lots of stress with the prospect of losing his home.

#### *Character and design*

- 8.14 Quality of life issues arise for future residents of dwellings proposed on land between the A299 and the spine road. Mechanical ventilation will be required and residents will not be able to open windows or use their gardens. The properties most affected nearest the A299 probably will be social housing, which would not be fair. Business use would be better in this location.
- 8.15 The loss of good to moderate quality agricultural land is not acceptable. This undeveloped land outside the urban boundary should be retained as farmland.

#### **Final response post adoption of CDLP<sup>286</sup>**

- 8.16 Any development of Strode Farm should trigger the need for the Kent BRIS because there will still be a large amount of traffic generated from the development as well as the business use, especially if it is retail. The £2.31 million towards Bullockstone Road has not been agreed by KCC, nor has the timing for the payment of the funding of the road. The road is part of the requirement for development of the land.
- 8.17 The amount of employment floorspace should comply with the CDLP requirement. If there is not enough employment floorspace the development will create a dormitory area.

## **9. WRITTEN REPRESENTATIONS**

- 9.1 The following paragraphs summarise the main points raised in the ten representations that were received in response to the appeal<sup>287</sup>.

---

<sup>286</sup> PC.10

<sup>287</sup> GEN.2



- 9.2 The land should be protected as a green gap because the development would lead to the loss of community spirit, the identity of the village of Herne and a peaceful farming area. The village would become part of Herne Bay and the disproportionate increase in population would put additional strain on community services and infrastructure, including schools and medical services. The agricultural land is needed for food production.
- 9.3 The development would cause congestion, noise and air pollution. The spine road should be built first, not on a phase by phase basis. Canterbury Road is already under enormous strain and without the spine road construction traffic will blight the lives of everyone close by. Another view was that to route part of the HRR through a residential estate would be dangerous and it should be more closely aligned with the Thanet Way corridor. The proposed junction with Canterbury Road was considered disproportionate to a village location. The proposed temporary use of the gap near the northern end of the site for construction traffic would be unsafe and cause delays. One objector thought that no further large scale development should take place until the Sturry link road has been built.
- 9.4 A number of detailed points were made in one representation about local traffic circulation as a result of the closure of Lower Herne Road at its junction with Bullockstone Road. There was more general concern over the proposed access roads and individual frontage access onto Lower Herne Road, which is a rural lane without a footway and street lighting. The proposed access to the allotments onto Bullockstone Road was considered unsuitable.
- 9.5 There was one objection regarding a lack of leisure facilities for children and adults within the proposed neighbourhood centre. Individual objections were made to the needless demolition of existing homes. Some people were concerned over an increase in flooding and a loss of wildlife. The incompatibility between a working farm and new housing was highlighted.
- 9.6 The written representations made at the time of the planning application<sup>288</sup> raised similar matters and concerns to those expressed by the Parish Council and in the objections above.

## 10. PLANNING CONDITIONS AND OBLIGATIONS

### Planning conditions

- 10.1 A list of conditions prepared by the Council was discussed at the inquiry on a without prejudice basis and with the six tests in mind – necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects<sup>289</sup>.

#### *Summary of submissions*

- 10.2 The Council and the appellant were in agreement with many of the proposed conditions on the final draft list<sup>290</sup>. Disagreement centred primarily on the conditions linking the completed construction of the spine road to the

---

<sup>288</sup> GEN.1 paragraphs 87 to 90

<sup>289</sup> The Framework paragraph 206

<sup>290</sup> CCC/IQ/26

occupation of a specified number of dwellings. The Parish Council<sup>291</sup> considered that to delay the completion of the spine road to the final phase of development would be unacceptable. The proposed phasing set out in the DAS would be too intrusive for nearby residents, bearing in mind the uncertainty over the content of the proposed CEMP. The Parish Council also considered that the play space should be required to be in place before occupation of properties takes place and that open space and landscaping should be implemented at an early stage. General concern was expressed by the Parish Council about the lack of consultation on applications to discharge planning conditions.

*List of conditions*

- 10.3 In view of the outline nature of the application a set of conditions relate to the submission of details of reserved matters and the commencement of development, in order to comply with statutory requirements. Development is required to be carried out (i) in accordance with the parameter plans in order to ensure no material departure from the scheme considered in the EIA, and (ii) in accordance with the submitted details of access in the interests of highway management and safety. In addition, the phasing of the development is required to be carried out in accordance with the phasing plan in the DAS in the interest of achieving sustainable development.
- 10.4 Conditions are proposed in order to secure a high quality design and appropriate outdoor space and green infrastructure in accordance with Policies DBE3, DBE7, DBE8, OS11 and OS12 of the CDLP. Comments were invited on the timing of submission and approval of a Masterplan, design code and open space strategy and the amount of detail on the expected content of these documents. No alternative wording was put forward. An approved energy strategy for each phase of development would be necessary to ensure compliance with Policies DBE1 and CC2 to achieve a sustainable form of development.
- 10.5 Conditions are included that prevent any development until the requirements of the condition have been met. An archaeological evaluation of the site is required to ensure features of archaeological interest are properly examined and recorded in accordance with Policy HE11. With reference to Policies CC4, CC11, CC12 and CC13 an approved surface water drainage strategy and a scheme for foul water disposal are necessary to prevent pollution of the water environment and reduce flood risk. Further details regarding surface water drainage would also be necessary in association with each phase of development. Specific to the lagoon area, details of any alterations to ground levels are necessary to ensure no reduction in flood storage capacity. A condition regarding land contamination is directed more towards protecting human health.
- 10.6 Control and mitigation of adverse effects during construction, described in the ES, would be achieved by means of a site wide Construction and Environmental Management Plan (CEMP) and also a CEMP for each phase of development. Matters to be addressed include management and routing of traffic, control of dust and noise, location of compounds, waste minimisation, temporary lighting and community liaison. Following a request by the Parish Council a requirement

---

<sup>291</sup> PC.10

was added to address the potential impact of a temporary site access on existing homes and residents.

- 10.7 The protection of species and habitats and enhancement of biodiversity and visual amenity is required by Policies LB8 and LB9. The principles set out in the ES would be progressed by means of an ecological mitigation strategy, along with a landscape and ecological management plan. More specifically, related to Policy LB10, a condition is proposed specifying tree protection details to be included with the landscaping reserved matters applications.
- 10.8 Protection of the residential amenity of future occupants is a principle identified in Policy DBE3. Therefore proposed noise insulation and mitigation measures should comply with the recommendations set out in the ES. Approved details of such measures would be necessary before the commencement of each phase of development.
- 10.9 Control of the land use content of the development by means of a condition would ensure the scheme is in accordance with the EIA and achieve objectives of Policy SP3. The number of dwellings would be restricted to a maximum of 800. The stated retail and office content in the local centre should set a limit of 3,400 sq m floorspace in total, together with up to 600 sq m floorspace for a D1 use class (non-residential institutional use)<sup>292</sup>. In association with the first phase of the development details are required of how the commercial or community buildings would be provided with utilities and media infrastructure as an aspect of achieving sustainable development
- 10.10 In terms of highway infrastructure, the Council requires that until the spine road has been constructed to an adoptable standard no more than 410 dwellings should be occupied. Furthermore the development should not commence until a section 106 planning obligation has been entered into to pay a sum of £4,581,833 as a financial contribution towards the Kent BRIS, payable on occupation of the 250<sup>th</sup> dwelling. The appellant proposed that the approved spine road shall be constructed prior to the occupation of the first dwelling on the final phase of the development. The Parish Council considered that would be unacceptable.
- 10.11 There was disagreement over preventing occupation of any of the development until the completion of the main signal control junction at the northern end of the site. An amended form of wording was proposed by KCC which allows for occupation of the second phase prior to the completion of the junction and for a scheme providing for a temporary access junction on the A291. A separate condition would prevent the occupation of phase two until the first stage site access junction on Bullockstone Road has been fully implemented.
- 10.12 The appellant proposed a condition whereby a pedestrian strategy would be submitted at the same time as the reserved matters for each phase of the development. The purpose of the strategy would be to enable the residents of to access the nearest bus stops by foot or cycle.

---

<sup>292</sup> CCC/IQ/16 condition 34. An amended form of wording to that in the document was agreed subsequently by the Council and the appellant.

- 10.13 There was common ground between the Council and the appellant on conditions requiring improvements to the Old Thanet Way/Edington Way junction to be fully implemented before the occupation of the 200<sup>th</sup> dwelling and for the pedestrian improvement scheme on Bullockstone Road to be fully implemented before the occupation of any dwelling. The Parish Council noted a lack of information as to whether the footway would continue along the whole length of Bullockstone Road to Herne Bay High School, as it should do, because this is a main route to the school.
- 10.14 The reasons for all conditions on highway infrastructure are based on creating a sustainable and safe form of development. The relevant policies are Policies SP3, DB3, DBE5, T1 and T13.
- 10.15 In accordance with Policy T17 the approval of a travel plan is necessary before the occupation of any dwelling. The Framework Travel Plan focused on encouraging non-car travel beyond the site. Reducing the level of single occupancy car trips to and from the site was identified as a key target<sup>293</sup>.

#### **Planning Obligations<sup>294</sup>**

- 10.16 The relevant statutory framework comprises the terms of section 106 of the 1990 Act and the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 as amended (the CIL Regulations). The policy tests are set out in paragraph 204 of the Framework: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related and scale and kind to the development. The relevant policies in the CDLP are SP5, T13, T17 and OS11.
- 10.17 There are similarly worded clauses in each of the three deeds which are intended to ensure that the planning obligations comply with the CIL Regulations and avoid any double collection of funds for infrastructure projects<sup>295</sup>. One of the provisions states that in the event the Secretary of State finds that one or more of the obligations does not meet the statutory tests then the relevant individual obligation shall not take effect.
- 10.18 In all deeds the definition of the planning application is the amended description of development put forward by the appellant during the course of the inquiry.

#### ***Unilateral Undertaking given by the Appellant to the Council***

- 10.19 This deed has obligations on affordable housing, public open space provision and protection of the Thanet Coast and Sandwich Bay SPA<sup>296</sup>.

#### ***Affordable housing***

- 10.20 The appellant would provide affordable housing in accordance with a mix of 1 bed flats and 2 and 3 bed houses to deliver a total of 219 homes in a split of 30% affordable rented housing and 70% intermediate housing<sup>297</sup>. In each phase

---

<sup>293</sup> ES.9 paragraph 1.10

<sup>294</sup> HE/IQ/45 is the appellant's note on the section 106 planning obligations.

<sup>295</sup> UU.1 clause 14, UU.2 clause 15 and DA.1 clause 17

<sup>296</sup> UU.1

<sup>297</sup> UU.1 schedule 1 clause 1, HE/IQ/45 page 5 section 3

of the development the affordable housing would be in accordance with an affordable housing scheme approved by the Council. A restriction is imposed whereby no more than 50% of the market housing units in the phase shall be permitted to be occupied until a contract has been entered into for the transfer of the affordable housing units to an affordable housing provider. In addition, occupation of 75% of market units housing is tied to completion and transfer of the affordable housing units to an affordable housing provider. There is provision for a nominations agreement with the Council in respect of the affordable housing units<sup>298</sup>.

10.21 In the event any reserved matters application seeks approval for any more than 731 dwellings (728 net) within the development, clause 10 requires the appellant to submit with that application a revised affordable housing mix which demonstrates that the overall percentage of affordable housing delivered across the development shall be 30% of total dwellings<sup>299</sup>.

10.22 At the inquiry in discussion on the draft document the Council disagreed on two key matters. Firstly, the tenure split was not acceptable. Secondly clause 10 should be deleted and the definition of affordable housing units should be amended to ensure 30% of 800 units would be affordable housing. The drafting resulted in uncertainty and the application was for up to 800 dwellings.

#### *Strategic Access Management and Monitoring*

10.23 The main report for the SAMM explains that the Thanet Coast and Sandwich Bay SPA is used by large numbers of migratory birds, supporting populations of European importance of over-wintering Turnstone and European Golden Plover. A survey in 2013 showed a 50% drop in Turnstone numbers. Studies have shown that recreational activity, in particular walking with dogs, can cause disturbance of birds. This recreational activity is most likely to increase with increased housing. Therefore it is this recreational activity which is considered as the primary activity for mitigation within the strategy. A mitigation package includes a wardening service, a co-ordination role, access management and regular monitoring<sup>300</sup>. The Council confirmed that the SAMM plan is exempt from pooling restrictions under CIL Regulation 123(3) because it does not amount to infrastructure<sup>301</sup>.

10.24 Natural England advised that strategic mitigation, in the form of an appropriate financial contribution to SAMM, will need to be in place before the dwellings are occupied<sup>302</sup>.

10.25 The planning obligation provides that the SAMM contribution will be calculated in accordance with a formula based on the number and size of dwellings approved for each phase. Development on any phase is not to commence until the SAMM contribution has been paid to the Council.

#### *Open space*

---

<sup>298</sup> UU.1 schedules 1 and 2

<sup>299</sup> UU.1 schedule 1 clause 10

<sup>300</sup> CCC/IQ/15 Executive Summary

<sup>301</sup> CC/IQ/12 paragraph 8

<sup>302</sup> GEN.4 page 2

10.26 The Council explained that because the scheme does not propose any sports facilities within the site, a contribution of £20,000 is sought for improvements to the nearby Cherry Orchard Recreation Ground to address the deficiency. The Council was satisfied that the statutory tests would be met by a planning obligation to this effect and confirmed that there are not five or more planning obligation contributions allocated to such a project<sup>303</sup>.

10.27 In summary, the planning obligation provides for the payment of a public open space contribution of £20,000 to the Council before the occupation of the 111<sup>th</sup> dwelling<sup>304</sup>.

***Unilateral undertaking from the Appellant to KCC***<sup>305</sup>

10.28 The purpose of this obligation is to secure from the appellant payment of a contribution of £2,331,000 towards the KCC BRIS, payable prior to the occupation of the 500<sup>th</sup> dwelling. The obligation was given by way of a unilateral undertaking because the parties were unable to agree the amount and timing of the KCC BRIS contribution.

10.29 A Supplemental Deed corrects a typographical error in Recital A when referring to the land ownership of Hollamby Estates<sup>306</sup>.

***Section 106 agreement between KCC and the Appellant***<sup>307</sup>

10.30 This agreement contains obligations in relation to education, libraries, youth services, the KCC BRIS, public rights of way, and a travel plan. A Supplemental Deed corrects errors of a typographical nature and clarifies definitions by way of new plans<sup>308</sup>.

*Education*

10.31 Primary education. KCC calculated that based on the revised number and mix of dwellings the development would give rise to 196 primary school pupils. KCC considered that the pupils could not be accommodated within any forecast surplus of places and that the only way to provide the additional places would be the construction of a new primary school. Instead of providing a school site within the development the appellant proposed the transfer of a 1.68 ha area of land nearby to KCC. KCC considered the land would accommodate a two form entry school, providing for 420 pupils, 224 more places than required to directly mitigate the development. Taking account of the area of land associated with each pupil place and land values KCC calculated that the net contribution towards the construction of the school amounted to £1,249,389 plus the transfer of 1.68 ha of serviced land<sup>309</sup>.

---

<sup>303</sup> CCC/IQ/12 paragraphs 5 to 8

<sup>304</sup> UU.1 Schedule 4

<sup>305</sup> UU.2

<sup>306</sup> UU.2A and HE/IQ/45 page 1

<sup>307</sup> DA.1

<sup>308</sup> DA.1A and HE/IQ/49 page 2

<sup>309</sup> CCC/IQ/25 paragraphs 1.1 to 1.12 sets out the reasoning in detail.

- 10.32 Against this background the s106 agreement provides for the transfer of the 1.68 ha of land<sup>310</sup> and the payment of a primary education contribution of £1,246,270 towards the build cost of a new primary school on the land.
- 10.33 Secondary education. KCC calculated that the proposed 728 net dwellings would give rise to 140 pupils and considered that this need could only be met through the expansion of appropriate secondary schools in the locality.
- 10.34 The section 106 agreement provides for a payment of a financial contribution of £1,650,090 towards a new two storey building to provide classrooms and other facilities for a one form entry school expansion at the Spires Academy, a development that has planning permission.
- 10.35 In relation to both the primary and secondary school contributions, payments would be on a phased basis linked to occupation of the proposed dwellings. Allowance is made for variations in dwelling mix and for uplifts in the contributions in the event the number of proposed dwellings exceeds 728, calculated in accordance with formulas based on dwelling size.
- 10.36 Youth services. KCC as education authority has a duty to provide for young people aged 13-19 (and up to 24 years for those with learning disabilities) sufficient recreational and educational leisure time activities and facilities for the improvement of young people's well-being and their personal and social development. KCC has sought a contribution of £12.67 per dwelling, £9,224 in total, to provide increased capital equipment, which would allow additional classes and activities to take place to accommodate attendees from the development.
- 10.37 Schedule 7 of the deed provides for the payment of the contribution of £9,224 prior to the occupation of the 111<sup>th</sup> dwelling.

#### *Libraries*

- 10.38 KCC referred to its statutory duty as library authority to provide a comprehensive and efficient service and the national guidance relevant to that service<sup>311</sup>. The library service is a universal non-discriminatory service statutorily required to be available to all. KCC considered that there is an assessed shortfall in service capacity with book stock in Herne Bay of 588 per 1,000 population, which is below the County average of 1,134 and England figure of 1,399. The development would generate additional library users and additional resources are required to cope with the increased demand. KCC also provides community learning facilities for further education, which has an existing shortfall in capacity. KCC required a contribution of £180 per dwelling to mitigate the impact of the development on these services. The contribution would be directed towards the Herne Bay Gateway project to provide additional capacity at Herne Bay Library. The project would undertake adaptation works to create more space for public use and to increase accessibility for marginalised groups of the community.

---

<sup>310</sup> DA.1 Schedule 2 sets out the pre-transfer and transfer obligations for both parties, covering matters such as site investigation, timescales, service provision and mechanisms for the return of the land and contribution.

<sup>311</sup> GEN.5 page 5

10.39 The planning obligation provides a library contribution of £131,040 (£180 x 728 dwellings), payable on a phased basis linked to occupation of the proposed dwellings.

10.40 In the event the total number of proposed dwellings exceeds 728 net, the youth services and library contributions would be uplifted, calculated in accordance with formulas based on the standard contribution per dwelling.

*KCC BRIS*

10.41 The appellant owns two parcels of land that would be required for the implementation of the KCC BRIS, to be carried out by KCC as part of the HRR. Schedule 3 provides for the transfer of the two land parcels, to the north of Lower Herne Road and along the western side of Bullockstone Road, to KCC. The transfer is subject to KCC demonstrating that it has the funding, consents, contracts and all the land required to deliver the road improvement scheme. Also included is a mechanism for refund of the KCC BRIS contribution, to be paid under the unilateral undertaking, in the event that either the actual cost is less than the current estimated cost or the scheme does not proceed. In the event the scheme is not completed within ten years of the date of the land transfer the land would be transferred back to the owner.

*Public rights of way*

10.42 PROW CH23 crosses the site, providing a link between Lower Herne Road via the A299 underpass to the lagoon area and the HBGC site and more widely to Herne Bay, the railway station and secondary schools. To the south of Lower Herne Road there are several PROWs. Public bridleway CH29 is expected to attract most of the increased use from the development because it would be a direct connection to Blean Woods<sup>312</sup>.

10.43 The deed provides for:

- The payment by the appellant of a PROW contribution of £70,000 before the occupation of the 111<sup>th</sup> dwelling;
- The submission by the appellant of a scheme for the upgrading of Footpath CH23 for the purpose of accommodating shared pedestrian and cycle use, to include a maximum track width of 3 m and surfacing with materials that reflect the Green Lane environment;
- The completion of the works prior to the occupation of the 150<sup>th</sup> dwelling.

10.44 In addition the appellant and KCC covenant to enter into agreements to enable the establishment of Footpath CH23 as a public bridleway (to enable its use by cycles), the dedication of a public footpath link along the northern edge of the proposed allotment / ecological enhancement area prior to the occupation of the 50<sup>th</sup> dwelling, and the dedication of the proposed footway along Bullockstone Road<sup>313</sup>.

*Travel Plan*

---

<sup>312</sup> GEN.1 paragraphs 214 to 221 and GEN.2

<sup>313</sup> DA.1 Schedule 6 and Plan 2



10.45 The expectation is that a Travel Plan, to promote the use of sustainable transport by occupiers of the development, would be secured by a condition on the planning permission. By means of the planning obligation, the appellant agrees to pay a travel plan monitoring contribution of £10,000 to KCC in instalments of £1,000 annually from the date of occupation of the first dwelling.

## 11. INSPECTOR'S CONCLUSIONS

*References to earlier paragraphs of this report are in square brackets []*

### **Introduction**

- 11.1 The CDLP, adopted in July 2017, is now the development plan document applicable to the proposed scheme. The CDLP is up to date and has relevant policies, consistent with the Framework, on all aspects of the development. It demonstrates there is a five year housing land supply. The policies in the former Local Plan, which were cited in the evidence and the cases presented, have been replaced, have no weight and will not be relied on at all. There is no necessity to consider the submissions made by the appellant and the Council on whether or not relevant policies in the former Local Plan were out of date or for the supply of housing. [1.18, 3.1-3.17, 5.6, 6.62, 6.64, 6.68, 6.70, 7.1, 7.73, 7.78]
- 11.2 The development proposals were amended by the appellant during the course of the inquiry in so far as the appellant's Bullockstone Road improvement scheme was withdrawn from consideration and the affordable housing content was increased to 30%. My conclusions focus on the amended scheme. [1.8-1.13, 4.6, 7.6]
- 11.3 The conclusions take full account of the ES and all other environmental information on the likely significant effects of the development, including the potential cumulative effects. [1.6, 4.28]

### **Main considerations**

- 11.4 The CDLP identifies Strode Farm as a SSA and supports the land being brought forward for development. Given the statutory force of the newly adopted development plan there is insufficient justification and no new evidence to re-open the question as to whether or not the land merits protection as a green gap within the countryside. [1.1, 3.4, 6.1, 7.4, 8.1, 8.2, 8.15, 9.2]
- 11.5 The Council's putative reasons for refusal and prevailing planning policies indicate the main considerations are:
- Whether the proposed amount and type of affordable housing would be an adequate and reasonable contribution to meeting local housing needs.
  - Whether the proposal would deliver (in terms of design standard, timing and funding,) the highway infrastructure required to enable the Strode Farm development to proceed in a timely and coordinated manner.
  - Whether the proposed land use content would meet the primary objectives for the Strategic Site Allocation Site 5 and in particular whether the employment component would adequately contribute to the supply of land for employment.
  - Whether the proposal makes adequate provision for mitigating any resultant adverse impact on the environment and on the social and physical infrastructure of the surrounding area.
  - Whether the proposal would secure a better balance between housing demand and supply and create a high quality, sustainable, mixed and inclusive community.

## Meeting local housing needs

- 11.6 Strode Farm is a SSA and the proposed development would make an important contribution to housing supply in the District in accordance with Policies SP2 and SP3 of the CDLP. [3.2-3.5, 7.2]
- 11.7 The probability is that the scheme would provide an appropriate mix of sizes and types of homes in the form of one and two bed flats, small terrace houses and a range of semi-detached and detached houses. Ensuring flexibility, adaptability and accessibility of homes to achieve inclusive design and compliance with Policy DBE5 would be appropriately dealt with at reserved matters stage for all phases of development. [3.13, 4.9, 4.10, 7.32, 8.10]
- 11.8 Affordability has been an increasingly important issue in the Canterbury District. The CDLP identifies affordable, decent housing as one of the top five quality of life issues for local residents<sup>314</sup>. The Council produced evidence to demonstrate that the issue is more acute than in other towns in Kent and outlined the serious consequences for residents in terms of poor standards of living accommodation and the harmful impact on home and family life. [3.28, 6.2-6.4, 8.10]
- 11.9 The proposal is for 219 of the 728 (net) new dwellings to be affordable housing, which is equivalent to 30% of the units. This level of provision, based on the scheme delivering 728 dwellings (net), complies with Policy HD2. [3.9, 4.10, 6.13, 7.3, 7.26, 7.27, 7.68]
- 11.10 A planning obligation is the appropriate mechanism to deliver the affordable housing. The planning obligations in the unilateral undertaking secure a total of 219 units as affordable housing and ensure as far as reasonably possible that in each phase of development affordable housing would be provided in accordance with an affordable housing scheme for that phase. [10.20]
- 11.11 In the deed the definition of Development is specifically tied to the description set out in the planning application. Success in this appeal would result in an outline planning permission for up to 800 units. The planning obligation should be based on that fact, rather than the premise of 728 dwellings net. Significantly the ES Addendum states that 30% of the proposed dwellings would be provided in the form of on-site affordable housing, equivalent to 240 dwellings based on 800 dwellings being delivered. [4.8, 6.30, 10.09, 10.18]
- 11.12 The appellant's viability evidence and planning obligation have been based on 728 dwellings net. The appellant relies on a clause which requires the submission of a revised affordable housing mix if any more than 731 dwellings (728 net dwellings) overall within the development are proposed by any reserved matters application. However, the clause does not allow for the probability that a series of reserved matters applications would be submitted over several years during the course of a phased development. It would not become clear until later in the development whether the 728 figure would be exceeded. The chosen approach introduces uncertainty and would be difficult to put into practice. [4.17-4.18, 6.27, 6.30, 7.35, 7.38, 10.09, 10.21, 10.22]

---

<sup>314</sup> CDLP.1 paragraphs 2.2, 2.11; also see CCC/IQ/5 paragraph 2.2 for 2010 Residents' survey

- 11.13 The affordable housing scheme is a critical element of the deed. By reason of the wording of the definitions there is no obligation to provide 30% of the units in each phase as affordable housing.
- 11.14 As a result of these deficiencies in the unilateral undertaking the proposal would not ensure the delivery of 30% affordable housing on the proposed residential development in a timely manner. The Council's concern is justified. This consideration should be taken into account when weighing compliance with Policy HD2 in the overall balance. [7.26, 7.68, 10.22]
- 11.15 Policy HD2 does not include any requirement as to the tenure of the affordable housing. The policy direction on tenure is found in Policy SP2, which in turn relies on the proportions in the Council's Housing Strategy. In that document the proportion sought is 70% for rent and 30% shared ownership, a split which is in response to and fully supported by the housing needs of the District. The CDLP, at paragraph 2.39, refers to the target of 70% rented and 30% suitable intermediate tenure in the Adams Integra report (2014) and states that tenure split should be negotiated on each site to reflect local needs and the Council's Housing Strategy. In addition, local needs housing is an objective of the Strode Farm SSA in Policy SP3. All these development plan policy and related considerations support the Council's position on tenure split applicable to the Strode Farm proposal. [3.2, 3.21, 6.7-6.9, 7.27, 7.28, 7.68]
- 11.16 The CDLP, at paragraph 2.39, in some circumstances allows for the delivery of the overall target of affordable units to be prioritised over the 70/30 split. The potential flexibility is linked to two factors - a government set target on starter homes and the funding arrangements and finances of registered providers. It is the case that proposals on starter homes have been subject to consultation but are not yet part of Government policy. The Housing White Paper confirmed that the Government will not introduce a mandatory requirement for starter homes at the present time. The stated intention will be for local areas to work with developers to agree an appropriate level of delivery of starter homes, alongside other affordable home ownership and rented tenures. As to funding, the HCA's April 2016 funding prospectus was subject to an Addendum which made available grant for affordable rent schemes. For these reasons the two potential factors identified by the CDLP do not justify a departure from a 70/30 split in favour of affordable rent at the present time. [6.10, 7.3, 7.31]
- 11.17 Turning to other considerations, the Council's Housing Strategy is under review but the refresh in 2014 confirmed the preferred proportion of 70% for rent and 30% shared ownership. The evidence of Mr Paterson on the current housing needs indicated that the nature and scale of local needs justifying a 70/30 split in favour of affordable rent have not materially changed and may have deteriorated. The housing register is strong evidence that the greatest local need is for affordable housing to rent. [6.3-6.5, 6.7, 7.30, 7.32]
- 11.18 The involvement of Orbit Homes has enabled the affordable housing offer to be based on the expertise of a RP and indicates the proposal is likely to be realistic and achievable. The Council, whilst maintaining its objection to the tenure split, worked with Orbit to ensure the proposal meets local need as far as it can within the overall constraint<sup>315</sup>. The proposal has progressed forward. However,

---

<sup>315</sup> CCC/IQ/19

the evidence on the process indicates that Orbit was asked to make an offer on a 70/30 split in favour of shared ownership and consideration of an alternative option(s) was not entertained by the appellant. [6.13, 6.30, 7.31, 7.57, 7.69]

- 11.19 The Kent mediation panel's recommendation was made in September 2016 and therefore pre-dated the appellant's revised proposal for 30% of the units to be affordable housing. At the time of the panel's involvement the overall level of affordable homes was considered to be very much dependent on the split between affordable rental and shared ownership housing. The recommendation on tenure split was with a view to the delivery of as many social homes as possible within the scheme. Subsequent events have shown that the underlying rationale of the recommendation no longer applies and accordingly this consideration has little weight. [5.7, 7.31]
- 11.20 The comparison with the HBGC site shows as a matter of fact that the Council accepted a tenure split of 27% affordable rent and 73% shared ownership in phase 1 of that development. The deed of variation deals only with phase 1 and affects 33 affordable dwellings. The tenure mix for later phases remains 70% affordable rented and 30% shared ownership as set out in the original section 106 agreement. The revision in tenure mix, in association with a change to location, type and grouping of affordable homes, was said to be in accordance with the requirements of a RP. Consistency in application of policy is a relevant consideration but a variation in one phase of the HBGC development is not a good or adequate reason to justify a 70/30 split in favour of shared ownership across the whole of the Strode Farm development. [6.14, 7.31]
- 11.21 The Framework states that policies on affordable housing should be sufficiently flexible to take account of market conditions over time. No specific reference is made to affordable housing tenure. At a broader policy level the tenure of housing that is required in particular locations should reflect local demand. CDLP Policy HD2 introduces flexibility by allowing for reduced provision to be justified by a financial appraisal and Policy SP2 links tenure to local conditions by means of the Council's Housing Strategy. The CDLP is consistent with national policy on affordable housing. [7.30]
- 11.22 The final consideration is viability. The appellant does not argue that the scheme would become unviable if the mix was tilted in favour of affordable rent. The case goes only so far as to say that the marginal viability of the scheme would be threatened. The Council has highlighted that the cost to the scheme of a policy compliant tenure split would be in the order of £1.6 million. I consider a sum of this order in a scheme of the scale of Strode Farm would be unlikely to be the factor that would cause the project to be unviable, even on the appellant's evidence. On that basis the matter of viability also does not justify a 70/30 split in favour of shared ownership. [4.27, 6.11, 6.15, 6.16, 7.31, 7.34]
- 11.23 In conclusion, the development plan supports a 70/30 split in favour of affordable rent housing. The other considerations do not support the proposed 70/30 split in favour of shared ownership. There is not the evidence to demonstrate that a 70/30 split in favour of affordable rent housing would not be deliverable. [6.16, 6.57, 7.33]
- 11.24 In the light of the amendment to increase the affordable housing provision to 30% the matter of viability, which was explored in detail at the start of the inquiry, has reduced importance to the cases presented. The sequence of

revisions to the level of affordable housing offered does not assist the appellant in demonstrating a credible case on viability. Nevertheless the main points of contention are considered in order to deal with the evidence comprehensively, address the appellant's marginal viability point and to assist in understanding the impact of the planning obligations on the proposal. I will focus on the main variables in dispute between the appellant and the Council, which include the key factors listed in the Planning Practice Guidance (GDV, costs, land value, competitive return). [4.22-4.26, 5.10, 6.12, 7.31]

- 11.25 The most significant changes in the viability appraisals concern the threshold land value. The increase in the threshold land value in the 23 and 24 series of appraisals was based on a misunderstanding of the Adams Integra report. This was confirmed conclusively by the authors of the report, who are the best placed to know how they carried out their assessment of the strategic sites. The revised land value in appraisal 27A is more reasonable and better reflects the approach in national guidance. [5.10, 6.17, 6.18, 7.34]
- 11.26 The value of the market housing was informed by the use of the HBGC site as a comparator, but with an allowance for a 5% negotiating margin. The latest 27A appraisal applies a house price increase to the base data but there is no indication that the base figures were otherwise reviewed. Mr Edge highlighted increased competition in the market place but also acknowledged that local market demand would drive housing delivery. I consider the CDLP is very relevant in that the SSAs are an essential component to maintaining an ongoing five year supply. The intention is that the current shortfall will be dealt with over the plan period, rather than in the first five years. This realistic approach would even out delivery. In this context there is merit in the Council's argument that the values were underestimated in the 27A appraisal, firstly by the application of a 5% negotiating margin across the board and secondly by the insufficient account taken of the effect of the design principles on enhancing market value. [3.2, 3.3, 4.2, 6.20, 6.21, 7.34, 7.39]
- 11.27 The Council's current housing trajectory shows a delivery rate of 80 dpa for Strode Farm and is the main reason for supporting the use of the figure in the appraisals. Mr Edge's use of this delivery rate is reasonable and therefore does not contribute to a negative impact on viability. [6.28, 7.36]
- 11.28 Mr Edge's fine grain bespoke model incorporates the use of a dwelling mix informed by the master planning design process. A total of 731 dwellings is a consistent assumption in the financial appraisals. The planning application is seeking outline permission for up to 800 dwellings. The masterplan is purely illustrative and the density parameter plan, for which approval is being sought, allows for maximising the capacity of the site. For these reasons the use of 800 units would be a fairer reflection of the scheme content. The use of a higher figure would probably improve the viability of the scheme. The review mechanism in the planning obligation is for a specific purpose, said by the appellant to ensure 30% of total dwellings would be affordable housing. As such it does not address the matter raised on the financial appraisals, which do not include the revenue from and the costs of the additional market dwellings. [4.8, 4.10, 6.27, 7.35, 7.38, 10.21]
- 11.29 With reference to the Planning Practice Guidance, the competitive return is scheme specific and a rigid approach to assumed profit levels should be avoided. The appellant drew attention to a number of factors specific to the

development of Strode Farm such as the scale, the high and early infrastructure costs, uncertainty over the delivery of the Kent BRIS and the planned housing in the area. None of these factors were shown to be of an unusual nature to facilitate a major development on a greenfield site. Delivery of the Kent BRIS is reliant on KCC but the desirability of the highway scheme is identified in planning and transportation policies and planning permission is in place. The appellant has a key role in making land available and in financing the scheme. The planning permission for the Kent BRIS is subject to a planning condition that would minimise programming risk and delivery. [1.9, 4.31, 6.25, 7.37, 7.42, 7.43, 10.41]

11.30 The appellant has also described how, with a development on this scale, actions and mechanisms, related to a staged sale of land and to phasing, design and site planning, are able to be put in place to reduce risk. The comparisons with coastal locations are unconvincing and do not take sufficient account of the distinct advantages of the location of Strode Farm such as proximity to Canterbury, the association with Herne village and the new community that would be created. The appellant was keen to emphasise the desperate need for new homes. The Inspector's Report explains how the objectively assessed housing need of 800 dpa took reasonable account of market signals and indicated the upward pressure on the housing requirement<sup>316</sup>. In that context concern over market saturation has limited credibility. [2.9, 4.17, 4.18, 4.20, 7.43]

11.31 Uncertainty to varying degrees over external factors will always be present and over a ten year project conditions would be likely to fluctuate. Developer profit of 20% GDV was considered reasonable during and in the aftermath of the 2007/08 financial crisis. There is general agreement such conditions are not prevalent at the present time. The mediation panel recommended a profit margin of 20% on private homes. The reasoning indicates this was based on an expectation that the major developers, who would develop the site rather than Hollamby, would be looking for a greater level of profit. It is not clear whether this conclusion took account of the land being released in phases as opposed to the whole of the site being acquired at the start of the scheme. The Adams Integra report has informed the CDLP, been scrutinised as part of the examination process and been found to be robust. These factors indicate the report has a lot of weight, especially on risk in general and non-site specific terms. The report considered 20% was not appropriate in view of several years of continuous price growth and volumes of sales and tested at a profit level of 17.5% on GDV. The Adams Integra report was produced for the purposes of plan-making but nevertheless is very relevant to decision making when considering the matters of risk and competitive return. [4.1, 5.7, 6.25, 7.44]

11.32 My conclusion is that informed by the particular circumstances of the site and the development in question that a profit level of 17.5% on GDV is reasonable and appropriate.

11.33 Professional fees are one element of total costs. Although a relatively small element compared to build costs, the difference between the parties is significant when placed against the sums being debated for infrastructure

---

<sup>316</sup> CDLP.3 paragraphs 60-75

contributions and tenure split. Having studied the evidence it appears that in addition to applying a 6.5% figure on housebuilding costs a figure of around 13%, if not higher, has been used for the enabling works. This approach was not justified by either the physical nature of the site, the need to call on very specialist expertise or any other particular requirement. The result is an inflated figure. [4.27, 6.22, 7.40]

11.34 The use of BCIS data for build costs is cited in the Planning Practice Guidance and therefore is reasonable, notwithstanding potential economies of scale available to volume housebuilders. [6.23]

11.35 In conclusion, the appellant has not demonstrated the marginal viability of the scheme. The evidence confirms that viability is not a justification for a 70:30 split in favour of shared ownership. [6.15, 6.16, 7.31, 7.34]

#### *Conclusion on meeting housing needs*

11.36 The scheme has evolved to a position where there has been RP involvement and a good prospect of 219 affordable homes being delivered. Provision is made to secure 30% affordable housing on a scheme for 728 dwellings net.

11.37 The proposal is for up to 800 dwellings and an outline planning permission would authorise that number of dwellings. The planning obligation is not sufficiently robust to secure 30% affordable housing on the development described.

11.38 Homes for affordable rent would be the most appropriate tenure to meet local housing needs. Policy support is based on Policy SP2. There is not sufficient justification for the proposed 70:30 split in favour of shared ownership. Failure to achieve the 70:30 split in favour of affordable rent would impact most on vulnerable members of the community.

11.39 The proposed amount and type of affordable housing is not an adequate and reasonable contribution to meeting local housing needs.

#### **Highway Infrastructure**

11.40 The importance of the HRR, comprising a spine road through Strode Farm and improvements to Bullockstone Road, is confirmed by Policies SP3 and T13 of the CDLP, the Local Transport Plan and the CDTs. [3.5, 3.11, 3.12, 3.19]

11.41 The Kent BRIS has planning permission. The appellant and KCC as highway authority have agreed the design standard of the spine road, although this is not for approval at this outline stage. The layout and form of the two main junctions linking the spine road to the existing highway network, which are the only matters regarding access for approval, are acceptable. The exact engineering details would be firmed up through the design process and obtaining the necessary approvals from the highway authority. [1.9, 4.4, 4.29, 5.2, 5.11, 5.17, 5.19, 8.7, 9.3]

11.42 The principal matters in dispute between the main parties are timing and funding. Timing is concerned with the stage in the development programme when the spine road should be available for use. This is linked to the proposed phasing programme. Funding centres on the contributions to be made by the appellant and the planning obligations offered. In presenting their cases related



to timing the Council and the appellant focussed on capacity, highway safety and public transport. [4.17, 5.21-5.23, 6.32, 7.7, 7.8, 10.28]

11.43 The stated reasons for the HRR, the impact on the local community, the physical characteristics of the village and the heritage designations should not be overlooked. In my view the effect on the amenity of people living and visiting Herne village and the environmental aspects also should be weighed in the balance when considering timing. The parties were advised of this view at the start of the inquiry and had the opportunity to add to their evidence if they so wished. [2.5, 3.11, 3.19, 8.4-8.6, 8.12]

### ***Timing***

#### *Policy*

11.44 Policy SP3 of the CDLP sets out that for Strode Farm SSA site 5 the HRR (a new highway and improvements to Bullockstone Road) is a primary objective. Furthermore, permitting development at the site is subject to the provision of this infrastructure. The policy requires phasing of development to be addressed through a comprehensive masterplan. Policy T13, by requiring the HRR as an integral part of new development of the SSAs, emphasises the necessity of the infrastructure. The Infrastructure Delivery Plan, envisaged by Policy SP5, has yet to be prepared. The draft document concentrates on funding mechanisms rather than timing or phasing. [3.5, 3.7, 3.11, 3.24, 3.25, 7.63]

#### *Capacity*

11.45 The appellant demonstrated that the capacity of the A291 through Herne would not be exceeded during the construction period of the Strode Farm development to 2028/29, even allowing for the addition of traffic from the Hillborough development. A critical factor underlying this assessment is the stated capacity of the A291, which the appellant says is 1,000 vph in the peak periods. The Council say the realistic capacity is around 650 (one way hourly flow). [6.35, 7.9, 7.10, 7.15]

11.46 There are different approaches to expressing the capacity of a road and different meanings for various road capacities according to the purpose for which they are derived, such as design capacity, operational or effective capacity. In this case a primary purpose of the capacity assessment is to inform a decision as to when the HRR should be in place to serve the new development proposed in the area and more specifically the Strode Farm development. [6.48, 7.9, 7.14]

11.47 The relevant national guidance on the capacity of existing urban roads is contained in TA 79/99 of DMRB, where capacity is defined as the maximum sustainable flow of traffic passing in 1 hour, under favourable road and traffic conditions. In summary, Table 1 in the document sets out the types of urban roads and the features that distinguish them. Table 2 gives the one way hourly flow capacities for each type of two-way single carriageway urban road, broken down into carriageway widths. It follows that a reduction in carriageway width reduces the capacity of the road. A starting point is to identify the road type. [6.34, 6.35, 7.11]

11.48 The A291 is the main road through Herne, it is a bus route and primarily carries local traffic between Herne Bay and Canterbury. The main interchange

with the A299 Thanet Way is at the northern end of the corridor. Between this junction and the southern extent of the built up area of the village the highway varies in width and character mainly due to its alignment, the siting and density of buildings, frontage uses and access to properties, availability of parking and the presence of open space, trees and hedges. A 30 mph speed limit is in place and the highway has street lighting. [2.10, 6.33]

- 11.49 More particularly the character of the route through the historic core of the village, near the church and the junction with School Lane, is quite distinct from the approaches to the north and south. In the centre there are a number of facilities and a more diverse land use pattern, with the village post office and general store, a pub, the church, and a small number of local businesses in addition to the residential properties. There are two bus stops, one on each side of the road, just to the south of the mini roundabout at the School Lane junction. A pedestrian crossing is just to the north of the roundabout, almost outside the post office/shop. This area is a focus of activity, although the street is not similar to a local parade or a high street in a town with retail frontages and a concentration of shops and local services. Parking restrictions apply but on-street parking areas also are defined. Loading and unloading is unrestricted. In terms of physical attributes the Amey report provides a good description, referring to tight bends, sections of narrow road, pinch points and forward visibility being constrained by the tight bends and the proximity of buildings to the road. [2.5, 6.33, 6.34, 7.12]
- 11.50 North of the village centre the A291 has a more open, character because of the layout of buildings and spaces. More particularly, buildings, mainly dwellings, are set back. The grounds to Strode Park and the recreation ground front onto the highway and trees and hedges introduce landscape features. Generally the dwellings have driveways with direct access onto the highway and junctions occur with Lower Herne Road and residential estate roads. The carriageway is wider and straighter. There are bus stops and, at the southern junction with Lower Herne Road, a signal controlled pedestrian crossing. South of the village there is a quicker transition to a more rural character beyond Curtis Wood Park Road.
- 11.51 The TA 79/99 capacity assessments by Mr Hogben, Mr Bancroft and the Amey report refer to 'the A291 through Herne', which indicate the assessments were not confined to the village core. The stretch of Canterbury Road between its junction with Lower Herne Road and Curtis Wood Park Road corresponds to the study area in the journey time surveys carried out by Amey and Mr Bancroft to inform conclusions on capacity and is probably the same 0.4 mile stretch considered by Mr Hogben. Using this stretch for initial consideration, the A291 does not fall neatly into the UAP3 or the UAP4 road type because of the variation in character. Therefore the theoretical capacity is between 750 and 900 (one way hourly flow) for a carriageway width of 6.1 m. [6.34, 7.12]
- 11.52 As noted above, the capacities given in TA 79/99 are a starting point. The capacities apply to links and take no account of junctions. The DMRB advice note also acknowledges that the capacity of urban roads can be affected by a wide range of factors that may not always be accurately predicted by the road features identified. For this reason capacity flows may be up to 10% more or less than the values stated in the document. More particularly the capacity of

lower width roads will be significantly reduced by parking and temporary width restrictions. [6.35, 7.11]

- 11.53 Applying this advice, the pinch points in Herne are the sections of narrow road, the tight bends and the parked vehicles and bus stops in the village centre. The narrowest section of carriageway, in the order of 5.2 m, is near the pedestrian crossing in the village centre. The operation of the junction with School Lane is also a very relevant factor. The probability is that the link capacity varies along the corridor. These factors strongly indicate that the theoretical capacity should be adjusted downwards, the approach followed by KCC and the Council. A 10% reduction would be consistent with the guidance. [6.35, 7.13, 7.14]
- 11.54 In order to compare the theoretical capacity with observed traffic flows, work was undertaken on journey time data/typical travel times. The difference in interpretation between the parties rests on the methodology and whether or not the capacity of the link derived from the actual speed surveys is an unconstrained capacity that should be adjusted to account for parked vehicles and other causes of delay. There is little information on the details of the methodology used by Amey but it appears to have been similar to that used by Mr Bancroft based on average values for speed, vehicle length and headway. A notable difference was the time period of data collection. Notwithstanding the speed was derived from the measured journey times, there is an in-built assumption that vehicles would be travelling evenly at constant speeds. The derived capacity outcome may well be affected by the choice of start and end points. [6.36, 6.37, 7.13]
- 11.55 In my view, the use of journey times may be useful as a check as to whether a derived capacity is broadly realistic and to assess benefits of a proposed scheme but in this case it is not a robust method to derive highway capacity.
- 11.56 In terms of the other methods of capacity assessment used by the appellant, the figure of 1,100 vehicles per hour was derived from TD 80/25, a document that was entirely superseded by TA 79/99 and TA 46/97. Therefore the capacity resulting from the assessment has no weight. [6.36]
- 11.57 The assessment based on the Congestion Reference Flow (CRF) of a link using the formula in TA 46/97 resulted in a southbound maximum one-way hourly flow of 1,024 movements on the A291. Apart from the concern raised by the Council, TA 46/97 applies to traffic flow ranges for use in the assessment of new rural roads. More particularly the advice note sets out the carriageway standard options related to opening flow ranges for use as starting points in the design and economic assessment of new rural trunk road links. Rural roads are defined as all-purpose roads and motorways that are generally not subject to a local speed limit. The A291 through Herne does not fall into this category of road. Given the stated scope and purpose of the document, Mr Bancroft's consideration of the CRF from TA 46/97 adds nothing to the TA 79/99 capacity assessment. [6.36, 7.9, 7.13]
- 11.58 I also have concern that the assessment relied on in the appeal appears to be inconsistent with a previous capacity exercise carried out and referred to by Mr Bancroft in connection with the emerging Local Plan. In that exercise the CRF suggested that on the more constrained sections in terms of width a peak two-

way flow of 1,399 vehicles could be accommodated before congestion is likely to occur<sup>317</sup>. Applying a 60% directional correction would result in a one way flow of 839 vehicles, significantly less than the 1,000 vph now advocated. Another factor to bear in mind is that the CRF is a measure of the performance of a road link between junctions and the effect of junctions must be considered separately. Taking account of junctions through Herne would result in an adjustment of capacity downwards. In view of all these matters the conclusion based on CRF is of very little assistance.

11.59 The mini roundabout in the centre of Herne allows traffic (including buses) from Broomfield to the east to join with the A291 mainline traffic flow. Community facilities serving the village are located on School Lane. The Parish Council particularly asked that the operation of this junction was observed on the site visit and be fully taken into account. The capacity assessment of the mini roundabout has demonstrated that with the developments at the HBGC site and Strode Farm there would be queuing in the morning and evening peaks, with arms operating over capacity. The evening peak shows the A291 arms operating over capacity and therefore the congestion is not solely due to the proximity of the junction to schools. [2.5, 6.39, 7.18, 7.55, 8.4]

11.60 In conclusion, the evidence does not demonstrate that the one-hourly capacity of the A291 through Herne village should be taken as 1,000 movements. This figure was in part derived from the use of superseded or inappropriate guidance and takes insufficient account of the narrow and constrained stretch of road to the north and south of the School Lane junction in the categorisation of the TA 79/99 classification. An observed traffic flow southbound in the AM peak was 625 vehicles. A capacity of 1,000 vph would be a substantial increase above the current flow, getting on towards doubling existing peak hour traffic flow. On a simple comparison with present day conditions, such a result does not ring true. All matters considered the best available representation of capacity is found in the Amey study based on a UAP4 road type. [6.36, 6.38, 7.9]

11.61 On the basis that I have disagreed with the appellant's analysis on the capacity of the A291 through Herne, there would be a capacity objection even without the Hillborough development. Completion of the HRR would be necessary in advance of the proposed timescale. [5.22, 5.23, 7.15]

### *Safety*

11.62 The Council relied on the EuroRap risk rating to demonstrate that the A291 is the most dangerous route in Kent. That does not necessarily justify the HRR, assist in determining at what date the HRR should be in place to serve the development or provide an accurate description of the A291 through the village. The CDTS does not explicitly refer to safety as a reason for requiring the HRR, nor does the CDLP. [3.11, 3.19, 6.40, 7.19]

11.63 The safety analysis in the Amey report indicates that the more severe accidents occur in the Wildwood section of the A291 where the speeds are higher and that an accident cluster occurred at the A291/Sweechgate junction, at Broad Oak near the southern end of the corridor. These locations would not be affected directly by the HRR. The accident data for Herne does not display

---

<sup>317</sup> HE.2.F pages 1330, 1337, 1338

any particular trends or a higher proportion of accidents involving the most vulnerable highway users. The probability is that in the centre of the village the carriageway constraints reduce speed and alert users to the possibility of conflict. I conclude for the purposes of this appeal the EuroRap risk rating has limited weight. [6.40, 7.19]

11.64 The second consideration is related to the effect of the development on the highway network and how this relates to the impact on vehicle travellers. Based on agreed trip rates and trip distribution the development every year would result in an extra 11 vehicles southbound on the A291 in the morning peak, amounting to an increase of 106 vehicles over the 10 year development period. [6.41, 7.10]

11.65 DMRB reports that research into driver behaviour indicates that with increased driver stress there is a drop in driving standards. As frustration, annoyance and discomfort increase drivers tend to become more aggressive towards other road users and more inclined to take risks. Frustration is caused by a driver's inability to drive at a speed consistent with his or her own wishes in relation to the general standard of the road. Congestion can lead to frustration. [6.41]

11.66 Applying these findings to this case, the ES reported on accident and safety impacts and driver stress. The proposed development is said to have essentially negligible effects on local highway accidents and safety. However, the delivery of the HRR would have moderate road safety benefits within Herne, potentially reducing the risk of slight accidents occurring within Herne by about half. The delivery of the Bullockstone Road improvements should reduce the risk of accidents on this link especially for equestrians who would benefit from the increased carriageway width<sup>318</sup>. On driver stress the conclusion is that drivers utilising the local highway network are unlikely to perceive a notable difference to frustration or the risk of accidents as a result of the proposed development. Subject to completion of the HRR those travelling through Herne itself may perceive slight benefits due to reduced levels of congestion<sup>319</sup>. No additional assessment during the construction phase was considered necessary<sup>320</sup>.

11.67 On the basis of these considerations I conclude that the HRR would improve highway safety on the A291 through Herne, amounting to a moderate benefit as a minimum. The delay in providing the HRR would have a small negative effect.

11.68 The Kent BRIS overcomes the highway safety concern expressed in the putative reasons for refusal, which was directed at the appellant's improvement scheme for Bullockstone Road. [1.1, 5.2]

#### *Public transport*

11.69 The spine road through the development and the improvements to Bullockstone Road would enable a bus service to run through the site and offer the prospect of the residents having a good bus service. The aim is to provide bus stops at maximum intervals of 400 m along the spine road in accordance with design guidance. A principle of Policy T1 of the CDLP is met. [3.10, 3.20, 5.20]

---

<sup>318</sup> ES.1 paragraphs 7.5.20 and 7.5.21, and ES.16 paragraphs 3.5.17 and 3.5.18

<sup>319</sup> ES.1 paragraph 7.5.23 and ES.16 paragraph 3.5.20

<sup>320</sup> ES.1 paragraph 7.3.56 and ES.16 paragraph 3.3.58

- 11.70 On current evidence the spine road and the Kent BRIS both need to be in place to ensure a bus service operates through the site. The phasing programme put forward by the appellant would not deliver completion of the spine road until the final phase of the development, estimated to be year 8. The Council is seeking completion of the spine road at an early stage to promote sustainable transport provision. The appellant considered over-rigorous standards, out of step with policy in the Framework, were being applied by KCC. [4.19, 5.20, 6.45, 6.47, 7.21]
- 11.71 The Kent Design Guide expects good public transport to be available at the initial phase of new development. This objective may be achieved either by linking to existing networks or by establishing new routes. This guidance is consistent with aims in the very recently adopted CDLP and the CDTs which encourage the use of alternative modes of transport as an alternative to the car and aim to support independence and reduce social exclusion. The Kent Design Guide also reflects paragraph 35 of the Framework. The importance of a 400 m distance to the elderly and disabled people is brought out in the Government guidance cited by the Council. Bus use is stated to fall off sharply if the distance to a bus stop is more than 200 m for disabled people and 250 m for the able bodied. Therefore I give little weight to the 1.2 km distance in the CIHT guidance cited by the appellant. I attach no weight to the 6Cs Design Guide referred to by Mr Bancroft primarily because it does not apply to Canterbury and Kent. [3.10, 3.18, 3.20, 6.44, 7.21, 7.22]
- 11.72 The appellant's plan of 400 m and 600 m catchments shows two bus stop locations. The accompanied site visit confirmed that the Cemetery Gates bus stop is sited where a temporary access into the site is proposed during the construction period of the new main site access. The probability is that the bus stop would have to be re-sited, which could significantly affect the extent of the catchments. The ability to create reasonably direct and safe walking routes also has to be taken into account during the construction period. In this respect the appellant has suggested a planning condition requiring approval of a pedestrian/cycling strategy. In the information related to the isochrones plan, the number of units given for phase A (123) is more than the total number of units in the housing mix table in the planning obligation document (111 units)<sup>321</sup>. Furthermore the data is based on 728 dwellings (net) whereas the total could be revised upwards to 800 dwellings, thereby increasing the number of dwellings outside a bus catchment. As a result of these factors the data produced on the number of units within each catchment has to be treated cautiously. [7.22, 8.11, 10.12]
- 11.73 Nevertheless the probability is that all residents in phase A would be within 600 m of a bus stop but a significant number are unlikely to be within 400 m. Phases B and C (a total of 156 dwellings in the housing mix table) would be at the western end of the site furthest away from public transport, all well outside the 600 m catchment. The likelihood is that access to a bus stop would require a walk along Lower Herne Road, a narrow unlit road with no footway. The development would lead to an increase of traffic along the road during the construction period. On the appellant's evidence 30% of the dwellings would be affordable homes whose occupants probably would rely more on public

---

<sup>321</sup> DA.1 Schedule 8

transport. Lower and higher density housing in phases D and E would be within 600 m of a bus stop (a total of 161 units) but no units within these phases would be in the 400 m catchment. [4.20, 7.22, 8.11]

11.74 In this context, the Council's requirement for the completion of the spine road by the 410<sup>th</sup> dwelling, linked to the end of 2023, would be roughly equivalent to the end of phase D. The appellant is proposing construction of the spine road prior to the occupation of the first dwelling on the final phase F. Using the appellant's delivery rate of 80 dpa and the trajectory in the traffic assessment the final phase could be some 8 years or more on from commencement of development. The temporary period referred to by the appellant could be quite a long time in practice. [4.19, 6.47, 7.22, 8.11]

11.75 On my analysis the Council's position is reasonable in order to reduce the length of time and number of households without good access to a bus service. There is no physical reason why this could not be achieved. An earlier completion of the spine road would be required to fully achieve the policy objectives for sustainable travel and social inclusion. [6.46, 7.25]

11.76 No interim solution exists. The suggestions put forward to date, which have not been progressed, would not satisfactorily address bus accessibility during the period of development. [6.46, 7.23, 8.11]

11.77 The appellant's comparison with bus accessibility on the HBGC site is not a good or adequate reason to accept a position that is contrary to policy objectives in the CDLP and the Framework in respect of improving accessibility for all, social interaction and creating inclusive communities. [3.10, 6.47, 7.20, 7.24]

#### *Other considerations*

11.78 The ES distinguished the environmental led thresholds from the capacity and safety thresholds applied through the TA. I consider that the A291 through Herne village is sensitive because of the presence of community facilities and open spaces that would be the focus of local journeys, which are more likely to be by foot. Footways are variable in width and extent and there are varying degrees of enclosure by buildings and vegetation. There are places with no footway, such as the western side of the street north of the mini-roundabout and on School Lane just to the east of the junction, which means pedestrians have to cross the road to continue safely. Narrow pinch points exist such as opposite the junction with Albion Lane. Due to the narrow width of the carriageway, large vehicles travel very close to the kerb, especially when negotiating the junction with School Lane and I observed HGVs travelling north over-running the footway. The conclusions set out in the ES do not fully reflect the intimidating conditions that exist for pedestrians. [2.5, 2.11, 7.53-7.55]

11.79 The HRR would improve the amenity and environment of the village by significantly reducing the amount of traffic. This is a very positive factor supporting the proposed development. However, this benefit is dependent on the HRR being completed and available for use. During the interim period increasingly more traffic would have to pass through the village. Conditions for pedestrians would deteriorate and the risk of accidents would increase. The CDLP and the CDTS place walking at the top of the hierarchy of transport modes, with the aim of encouraging sustainable travel. The conditions for

cyclists have been given scant attention. Safeguarding the amenity of pedestrians is a consideration that supports the early completion of the HRR. [3.10, 7.10, 8.1, 8.4]

#### *Air Quality*

- 11.80 The centre of Herne village has not achieved air quality objectives in the recent past. Concern over air pollution is one of the factors why the HRR is being promoted through the CDLP and CDTS. [2.12, 3.11, 3.19]
- 11.81 The information in the ES, in conjunction with Addendum No 2, demonstrates that the development, including the HRR, would have insignificant human health impacts. There is no analysis to show the air quality implications during the phased development. The appellant has not disputed the concern expressed by the Parish Council over air quality if the HRR does not go ahead. [5.3, 8.6]
- 11.82 The HRR is important infrastructure to address quality of life concerns in Herne village. Air quality is a consideration of significant weight supporting delivery of the HRR early in the development programme in order to ensure full compliance with CDLP Policy QL11. [3.16]

#### *Conservation Area*

- 11.83 The ES did not include the general increase of traffic and congestion as one of the indirect effects on the Conservation Area. In view of the probability that the deterioration in character would be indirect and reversible, with the prospect of a permanent improvement, this consideration adds little to the case in favour of an earlier completion of the HRR than currently planned. [7.49, 7.51]

#### *Conclusion on timing*

- 11.84 The completion of the spine road by the 410<sup>th</sup> dwelling is required to avoid the development having a severe impact on the capacity of the A291 and reducing highway safety for a significant period of time during construction. To delay the ability for residents to have good access to public transport and more particularly a bus service would be contrary to policy objectives to give people a real choice about how they travel and to reduce social exclusion. In the centre of the village increases in traffic would make the pedestrian environment inhospitable and delay securing improvements in air quality. Amenity would deteriorate. Overall there would be a severe impact on the community.
- 11.85 The phasing of the development has not been satisfactorily addressed, contrary to a requirement of Policy SP3. Insufficient account has been taken of principles of the Transport Strategy in Policy T1, namely (a) controlling the level and environmental impact of vehicular traffic including air quality, and (b) providing alternative modes of transport to the car by extending provision for pedestrians, cyclists and the use of public transport. A failure to deliver the HRR at an appropriate point in the development programme would delay the provision of an integral part of the development, undermining the intent of Policy T13.

#### **Funding**

- 11.86 The dispute over funding relates to the Kent BRIS only.



*Policy and strategy*

- 11.87 Policy SP3 establishes that the spine road and improvements to Bullockstone Road (the HRR on the Proposals Map) are to be provided as an integral part of the Strode Farm development. The policy also establishes that the infrastructure associated with Site 3 Hillborough and Site 4 HBGC should include improvements to the A291 corridor, which may include improvements to Bullockstone Road in so far as it forms part of the HRR. Therefore Policy SP3 focuses on the type of physical infrastructure that is or may be required in association with the development of these three SSAs. The mechanisms of delivery are the subject of Policies T13 and SP5, although funding arrangements are not detailed. [3.4-3.7, 3.11, 7.62]
- 11.88 Specific to the HRR, Policy T13 confirms the Policy SP3 requirements in relation to the SSAs. Contributions may be sought, as opposed to will be sought, from appropriate developments. Relevant to interpretation of the policy, the supporting text indicates funding will be secured by means of legal agreements with the relevant site owners/agents, contributions will be fair and proportionate from all relevant developments. The text refers to new development sites allocated in Herne Bay, which in my view means the SSA sites in Herne Bay allocated through Policy SP3, rather than the broader scope indicated by the appellant. An emphasis on allocated sites is consistent with the expectation reported by the Local Plan Inspector that critical infrastructure could be delivered within the pooling restrictions that apply to planning obligations and the draft Infrastructure Delivery Plan. [3.11, 3.26, 7.17, 7.66]
- 11.89 The purpose of the Infrastructure Delivery Plan, confirmed by Policy SP5, is to demonstrate how the different elements of infrastructure, including transport measures, will be delivered, how the infrastructure will be phased to serve new development and to identify the mechanisms such as section 106 agreements and CIL, to ensure timely delivery. To date the Infrastructure Delivery Plan is in draft but the document was supporting evidence for the examination into the draft CDLP, and the Inspector concluded the draft document provided sufficient clarity on likely cost and funding sources. The document has significant weight. [3.7, 3.24, 3.26, 6.72]
- 11.90 The draft IDP is consistent with the CDTs in that the mechanism for securing funding of the off-site section of the HRR is by way of section 106 agreements and therefore developer funding. There is no indication that KCC would be a source of funding, whether by Local Transport Plan funding, or through the Local Sustainable Transport Fund or the Single Local Growth Fund. [3.19, 3.25, 6.49, 6.71, 7.67]
- 11.91 A further layer of detail is provided by the SCG - HRR. Its stated purpose is to demonstrate how the HRR could be delivered using a cost apportionment approach. The document is a statement of understanding and intent but it is not based on any statutory provision, is not binding on the signatories and is not enforceable. Options are included on measures to fund the scheme in the event the construction cost has not been secured by the relevant date. It is in this context that the possibility is raised of forward funding by KCC, subject to provisos to ensure it is cost neutral to KCC. The basic method of apportionment of the residual outstanding sum has not been contested by either main party and is acceptable. [5.24 -5.27, 6.49, 7.64]

*Proposed contribution*

- 11.92 The outstanding total sum of £4,581,883, as stated in the SCG – HRR, was calculated on a delivery date of 2020 and was based on an estimated cost. The appellant's contribution of £2,331,000 towards the KCC BRIS would be in accordance with the apportionment set out in the SCG – HRR. The planning obligation allows for the contribution to be increased in line with the All Construction Tender Price Index (or equivalent). There is no provision to reflect any change to the base cost of the scheme as a result of a detailed cost plan or alterations to the scheme that were made prior to the grant of planning permission. This omission is significant and could result in a shortfall in the necessary contribution, even without taking account of the considerations raised by the Council. [5.25, 5.28, 7.7, 10.28]
- 11.93 The contribution is timed to be made prior to the occupation of the 500<sup>th</sup> dwelling to tie in with the appellant's proposal to complete the spine road in the final phase of development. I have concluded that delivery of the HRR earlier in the development programme is justified in order to achieve policy objectives. Consequently the contribution should be paid on first occupation of the 250<sup>th</sup> dwelling in accordance with the Council's requirement. [7.8, 7.58, 10.10]
- 11.94 For these reasons alone the planning obligation fails to ensure the necessary infrastructure is provided in an acceptable timescale and that a proportionate contribution is secured. Consequently there is a failure to comply with Policies SP3 and T13. [6.71, 7.65]
- 11.95 The Council is requiring the appellant not only to pay its share of the cost of the Kent BRIS but also the sum apportioned to Hillborough, for an interim period at least until that site comes forward for development. It is the case that the wording of the Policy SP3 is less definitive for Hillborough (site 3) when compared to Strode Farm in respect of the Bullockstone Road infrastructure. However, when the traffic and environmental impacts are taken into account there is strong justification for Hillborough to contribute to the Kent BRIS. Policy T13 is reasonably interpreted in such a way. The SCG – HRR also strongly supports such an approach. [5.25, 6.50, 6.51, 7.17, 7.25, 7.62, 7.64]
- 11.96 An essential test is whether the obligation would be fairly and reasonably related in scale and kind to the development to be permitted. Viability and flexibility on other related infrastructure provision are not determining factors. It would be disproportionate to require the appellant to commit to pay all the outstanding balance now with no enforceable mechanism in place to ensure the Hillborough share is secured. [6.50-6.52, 7.7, 7.16, 7.17, 7.63, 7.65]
- 11.97 The planning position has moved on with the adoption of the CDLP. There is the prospect of the Hillborough sites coming forward within a short timescale that could offer a way forward and avoid a serious delay to housing delivery on sites that are allocated in the development plan. The matter at issue now is primarily one of timing and coordinating development with the essential infrastructure to serve it. The onus is on all interested parties to come forward with a solution that avoids KCC forward funding the project and not recovering the costs of doing so. [4.31, 6.50, 6.60, 6.71, 7.16, 7.25]

### ***Other highway infrastructure***

11.98 The proposed footway link along a section of Bullockstone Road towards Greenhill is agreed, subject to the detailed design being secured by planning condition. The link is necessary to extend provision for pedestrians in accordance with Policy T1. The scheme and timing of off-site works at Old Thanet Way/Eddington Way T junction are acceptable. [3.10, 5.18, 10.13, 10.44]

### ***Conclusions on highway infrastructure***

11.99 There are no outstanding issues regarding the design standard of the proposed highway infrastructure at this outline stage.

11.100 The proposal would not deliver the HRR at an acceptable stage in the development by reason of the phasing programme and the timing of the contribution to the Kent BRIS. There is a shortfall in funding the Kent BRIS.

11.101 The proposal would not deliver the highway infrastructure required to enable the Strode Farm development to proceed in a timely and coordinated manner. Safe and suitable access to the site would not be achieved for all and the residual cumulative impact of the development would be severe through the construction phase.

### **Employment floorspace**

11.102 Policy SP3 is a permissive policy in that it identifies strategic site allocations to be brought forward in the CDLP period. Development will be permitted subject to the provision of the listed infrastructure. The supporting text (paragraph 1.46) confirms that the parameters set out in the policy are the primary objectives for the sites. That being so, the primary objectives for Site 5 Strode Farm include the provision of a substantial amount of housing (800 dwellings), employment floorspace (15,000 sq m), retail in the form of local centre shopping only and other community facilities. [3.5, 7.70]

11.103 The policy intention regarding the employment objective is restated in the Economic Development & Employment chapter of the CDLP in the context of new employment land allocations (paragraph 3.36). The strategic employment land allocation at Strode Farm (15,000 sq m) is confirmed as being within a strategic development allocation and is in addition to the sites allocated in Policy EMP1. With reference to the supporting text (paragraphs 3.35 to 3.40) I consider that the term 'employment floorspace' as it applies to Strode Farm is development for business purposes within the B Use Class, the approach taken in the Council's evidence. This interpretation also is consistent with the Local Plan Inspector's comment that the sites allocated for business purposes in Policy EMP1 are in addition to the provision made as part of the SSAs<sup>322</sup>. The employment use is not qualified as it is with some of the other SSAs, for example 'mixed commercial uses' on the HBGC site. [6.53, 7.73]

11.104 The inclusion of an employment element in the SSA for a greenfield site and previously unallocated land does not require the land to be safeguarded in Policy EMP4. The CDLP in Policy EMP2 adopts a flexible approach to other

---

<sup>322</sup> CDLP.3 paragraph 269

employment generating uses such as hotels and leisure, social care, other education and sui generis uses. [7.76]

11.105 During the preparation of the CDLP the appellant pursued an objection to the inclusion of the employment floorspace (15,000 sq m) within the SSA. In his examination of the CDLP the Inspector would have considered this objection in the context of all the evidence on employment land and the economic strategy for the District as a whole. He has endorsed the inclusion of employment development on Site 5 in terms of its location and its contribution to the overall need for employment land in the plan period. In view of the very recent in-depth consideration of the matter and the adoption of the CDLP there are no grounds for revisiting and questioning the conclusion of the Local Plan Inspector. [6.53, 6.73, 7.45, 7.70, 7.73]

11.106 The proposed land use content of the scheme is essentially housing and a local centre. The description of the local centre maintains flexibility in order to be able to respond to market interest and demand. The maximum employment generating floorspace proposed is 3,400 sq m (or 4,000 sq m including the D1 space) but all the evidence points to the main uses being retail related. Even if the centre was employment led the floorspace would fall well short of the 15,000 sq m stated in the SSA. I conclude that the scheme does not meet the employment objective set out in the SSA. [4.3, 4.11, 6.74, 7.71, 7.72]

11.107 The layout and design illustrated in the EIM has evolved as a primarily residential-led scheme at a time when limited weight was attached to the draft SSA. The appellant's expectation was that the draft plan would be modified to omit the employment objective. All the evidence on viability has reflected the potential dwelling numbers and mix associated with that residential-led proposal. A scheme having a significant employment land use content probably would have a very different design approach. One of the garden city principles in the CDLP is "a wide range of employment opportunities including local jobs within easy commuting distance of homes". There is not the evidence to show that a development in compliance with all the SSA objectives would be unviable or put at risk delivery of other SSAs in the area. The CDLP is not solely about providing homes and the Strode Farm site has been identified as contributing in an important way to the economic growth strategy over the plan period. [3.6, 4.12, 4.23, 7.45, 7.74, 8.17]

11.108 I conclude that the proposed land use content would not meet the primary objectives for the SSA Site 5 and the employment component would not adequately contribute to the supply of land for employment. In that respect the proposed development fails to comply with Policy SP3 of the CDLP. [6.74, 7.72, 7.78]

### **Effect on environment and social and physical infrastructure**

#### *Natural environment*

11.109 The residential development would be likely to increase recreational activity within the internationally important Thanet Coast and Sandwich Bay SPA and Ramsar site. The potentially harmful impact is able to be adequately mitigated by a planning obligation, which secures a financial contribution towards the implementation of the SAMM before the commencement of each phase. As a consequence the development would be unlikely to have a

significant effect on the important interest features of the SPA, whether alone or in combination with other plans and projects. The obligation is directly related to the development and is necessary to make the scheme acceptable in planning terms through compliance with CDLP Policies SP6, LB5 and LB6 on SSSI's. The sum is linked to the proposed number of dwellings and hence the obligation is fairly and reasonable related in scale and kind to the development. An appropriate assessment of the implications of the proposal for the SPA is not necessary. [2.9, 3.8, 3.22, 5.4, 10.23-10.25]

- 11.110 Reliance on the use of best practice measures through a CEMP and a sustainable drainage scheme would be appropriate to prevent contaminated surface run-off during construction entering hydrological links to the Thanet Coast SPA and Ramsar sites. [2.9, 10.5, 10.6]
- 11.111 On the basis of the advice of Natural England, the development is unlikely to have a significant effect on the Blean Complex and Tankerton Slopes and Swalecliffe SACs. [2.9]
- 11.112 The development offers an opportunity to achieve a net gain in the biodiversity/nature conservation value of the site and to enhance the value and character of woodland and hedgerow networks. Compliance with Policies LB9 and LB10 of the CDLP would be achieved through the use of planning conditions. [10.7]

*Landscape and visual impact*

- 11.113 The Strode Farm lands provide a countryside buffer between the village of Herne and the built-up area of Herne Bay and Greenhill. Residential development has already extended northeast from the village into Broomfield. The open countryside to the northwest protects the identity of Herne and reinforces the settlement pattern. The vicinity of Lower Herne Road has a semi-rural character. The loss of the land to built development would have a harmful effect on the local landscape, resulting in the urbanisation of the A299 Thanet Way corridor. In conjunction with the development of the HBGC site there would be a coalescence of settlements. [4.28, 6.54, 7.46, 8.1, 8.2]
- 11.114 The concern of the Parish Council and residents to protect local distinctiveness and the identity of Herne was addressed by the Inspector in his report on the CDLP. The confirmation of a SSA at Strode Farm means that the relationship between the new development, the village, the Thanet Way corridor and the countryside to the south and west would have to be resolved through the masterplan and the detailed proposals for open space and landscape. For this reason and in order to achieve compliance with CDLP Policy DBE3 there is justification in requiring an approved masterplan, based on garden city principles, before submission of reserved matters. [3.13, 7.48, 8.3, 10.4]
- 11.115 Similarly the visual impact on the surroundings is primarily related to the loss of views across open countryside and its replacement by a large scale residential development served by a spine road. The challenge would be to produce high quality design solutions appropriate to the site and its surroundings through a masterplan, design code and details of the reserved matters. Policy DBE3 sets out relevant principles of design. [3.13, 4.28, 6.54, 7.47]

*Agricultural land*

11.116 The development would result in the loss of some 15 ha of best and most versatile agricultural land, comprising some 39% of the site area. This factor does not weigh significantly against the development because the CDLP process has shown that not all the housing needs of the district are able to be met by re-using brownfield land or through areas of poorer quality agricultural land. This conclusion is consistent with the provisions of Policy EMP12. [2.4, 6.55, 7.48, 8.15, 9.2]

*Built environment and heritage*

11.117 Herne Conservation Area extends into the development site and the Grade 2 listed building Downtops'I, on Bullockstone Road, lies immediately to the west. The effect of the development on these two designated heritage assets and their settings require to be assessed against the statutory and policy tests. [2.2, 2.5, 2.6]

11.118 Strode Farm Bungalow is proposed to be demolished. The dwelling is not of particular architectural merit but the proportions and appearance are attractive for their simplicity and domestic scale. The local community associate the dwelling with the history of Strode Farm. Nevertheless the building is not identified to be of significance in the heritage statement and the Council raised no objections to its demolition. Its loss would have a neutral effect on the character, appearance and significance of the Conservation Area. [2.2, 7.51, 8.13]

11.119 The construction phase would result in temporary and reversible negative direct impacts by reason of noise, dust, changes to access and traffic impact. A CEMP would control such impacts and minimise harm. The masterplan and the design details forming part of the reserved matters would be subject to approval to ensure the new development within the Conservation Area responds positively to significance of the heritage asset. On completion of the development and delivery of the spine road as part of the HRR enhancement would occur by the reduction in traffic through the historic centre. At this outline stage there is no evident conflict with Policies HE1 and HE6 in respect of the physical presence of the Conservation Area. [3.14, 7.49, 7.52, 10.6]

11.120 The residential development of land that has historically been in farming use would not preserve the rural setting to the north west of Herne Conservation Area. The edge of the new development could be softened but the loss of the essential rural quality and the distinct identity of the historic village would not be overcome. The harm to the significance of the designated heritage asset would be less than substantial but nevertheless this is a matter of considerable importance and weight. In this respect the proposal fails to comply with Policy HE6. [7.52, 8.3]

11.121 The proposal would deliver new homes in an area in need of additional housing. The new infrastructure, once in place, would facilitate the development of other SSAs, improve highway safety and environmental conditions in Herne village. On completion of the development the less than substantial harm to the significance of the designated heritage asset would be outweighed by the public

benefit. Consequently there is no conflict with Policy HE1 or policy in the Framework. [7.78, 8.3]

11.122 The significance of the listed building Downtops'1 is principally concerned with the age and fabric of the rural cottage. The agricultural land use and the rural nature of Bullockstone Road and the western end of Lower Herne Road contribute positively to its setting, the surroundings in which the asset is experienced. The proposed highway works and the new larger scale road junctions to serve the site and then function as part of the HRR, with the associated additional traffic, would be in close proximity to the listed building and intrusive in its setting. Retention of existing tree planting and new planting would be important to limiting the degree of harm. Even so the setting would not be preserved. Policy HE4 indicates in such circumstances development normally should not be permitted. [2.6, 4.4, 7.49, 7.50]

11.123 Policy HE1 and paragraph 134 of the Framework requires the less than substantial harm to the significance of the designated heritage asset to be weighed against the public benefits of the proposal. These benefits, as set out in paragraph 11.121 above, centre on the delivery of much needed homes and infrastructure in the area, together with the social and economic advantages they would bring to the district. The harm is outweighed by the public benefits and accordingly there is compliance with Policy HE1. [7.50, 7.78]

#### *Community and social provision*

11.124 The objectives of Policies SP3 and QL5 for the development include the provision of local community services and facilities on and off-site. There would be a marked increase in the local population as a result of the development. [3.5, 3.16, 4.15]

11.125 Additional primary school accommodation is necessary to cater for the increase in primary school pupils associated with the housing development. In addition to financial contributions, the scheme makes provision for a new primary school off-site by means of a transfer of land to KCC. The new school site would be well located to serve the development. [10.31, 10.32]

11.126 There is no certainty that the new school would be built to ensure adequate school places in the locality for new pupils living on the Strode Farm site. No mechanism is proposed to link occupation of new dwellings to provision of school places. Reliance has to be placed on KCC using best endeavours to deliver the project in a timely manner. Nevertheless the appellant has undertaken to facilitate primary school provision to serve the development. [7.61, 7.78, 10.32, 10.35]

11.127 The need for additional secondary school places would be able to be met by expansion of the Spires Academy. The financial contributions are necessary and fairly and reasonably related to the development. [5.5, 10.33-10.35]

11.128 The proposed financial contributions towards youth services and library services would be of broad benefit to residents of the development by furthering learning opportunities, leisure time activities, social interaction and inclusion. [10.36-10.40]

11.129 The Parish Council is making progress towards the building of a new community centre on land off School Lane. No obligations have been included in

the unilateral undertakings / planning agreement to contribute to the project. However, the description of the development by inclusion of a Class D1 use allows for a day centre or similar building to form part of the Strode Farm scheme. That being so a financial contribution towards the School Lane project is not necessary. [4.8, 4.14, 8.9]

11.130 The provision of adequate health care provision is to a large degree reliant on the delivery of a new doctor's surgery on the HBGC site. No means of securing this facility is possible through the appeal proposal. Nevertheless, there would be little justification for seeking additional similar medical provision as part of the Strode Farm scheme and no financial contributions towards health care were sought by the Council. As a worst case, there may be inadequate capacity for dental care, although a limited information base precluded an accurate assessment. [4.15]

11.131 In conclusion, the development and resulting increase in population would make extra demands on community facilities and services. The proposal makes adequate provision for social infrastructure to meet an objective of the SSA and to contribute to the quality of life of the new community as required by the CDLP. The proposed Class D1 use within the local centre is supported by Policies QL1 and QL5. There may be inadequate health facilities for a temporary period, in part dependent on the how quickly a new doctor's surgery on the HBGC site is brought forward. To that extent a requirement of Policy QL8 is not fully met. [9.2]

*Open space and public rights of way*

11.132 The provision and details of an adequate amount, type and quality of open space on site to serve the development would be secured through planning conditions in view of the outline nature of the scheme. The allotments proposed north of Thanet Way are intended to be for existing and new residents. They would be linked to the new residential area by a dedicated footpath link. Details of the vehicular access would be resolved through the reserved matters. In view of the phased nature of the scheme the early approval of an open space strategy would be particularly important to ensure a good distribution of amenity open spaces and play areas throughout the scheme to ensure compliance with Policy OS11. [3.15, 4.16, 8.9, 9.4, 10.4, 10.42]

11.133 Access to sports facilities would be achieved through off-site facilities and to this end a planning obligation confirms a financial contribution towards improvements at the Cherry Orchard Recreation Ground. This approach is in accordance with Policy OS11 and is acceptable. [3.15, 4.16, 10.26, 10.27]

11.134 The provision of a new footpath/cycle path is an objective of the Strode Farm SSA (Policy SP3). A planning obligation secures the upgrading of the existing footpath CH23 to enable this objective to be achieved. [3.5, 10.42-10.44]

11.135 Reasonable provision is also made for improvements to existing PROWs to allow for increased use by new residents enjoying the countryside and to improve links to the surrounding area. [10.42-10.44]

11.136 The open space strategy and subsequent details submitted through the reserved matters would provide the means of linking the development with



existing footpath and circulation networks and encouraging walking and cycling in compliance with Policies DBE7 and T1. [3.10, 3.13, 10.4]

### *Conclusions*

- 11.137 At this outline stage, planning conditions would have a very important role in ensuring policy requirements are met and the scheme delivers on stated design objectives. The planning obligations are necessary to make the development acceptable in planning terms by providing the financial and physical resources to protect sites of international nature conservation importance and to provide new and improved community facilities and services.
- 11.138 The proposal makes adequate provision for mitigating any resultant adverse impact on the natural environment and on the elements of social and physical infrastructure of the area that have been assessed under this main consideration.

### **Housing and community**

- 11.139 This consideration brings together the economic, social and environmental dimensions of sustainable development.
- 11.140 The Strode Farm site is of a strategic nature and its development would be important to the ability of the Council to demonstrate and maintain a five year housing land supply. Development of the land is also necessary to deliver the HRR. This essential infrastructure in turn would enable progress on other major housing development in the Herne Bay area and facilitate delivery on the requirements set out in Policy SP2. The proposed development offers a good prospect of achieving a better balance between housing demand and supply. [3.2-3.4, 6.1, 7.2, 7.60, 7.78]
- 11.141 Within the overall challenge of significantly increasing the supply of housing, a priority for Canterbury is to ensure it contributes to meeting local housing needs in terms of affordability, tenure and mix. The 30% affordable housing is welcome and would involve a successful and experienced RP in the region. The probable housing mix would be acceptable. The unjustified shortfall in affordable housing to rent is of serious concern if the proposal is to make its full contribution towards catering for those most in housing need. Prioritising shared ownership over affordable housing to rent would not fully promote an inclusive community. [3.21, 4.10, 6.2-6.5, 6.13, 6.57, 7.3, 7.30-7.33, 7.68-7.69]
- 11.142 The HRR is essential highway infrastructure that would not only facilitate the development of the Strode Farm land but also other strategic sites in the Herne Bay area. Timing and funding delivery have not been satisfactorily resolved by the proposal. The proposed completion of the HRR in the final phase of development on capacity grounds alone would result in a severe impact for a temporary period. There would be delay in delivering policy objectives to minimise congestion, achieve reliable journey times and safer travel, with adverse effects on growth. [3.11, 3.18, 6.48, 7.9, 7.65, 7.67]
- 11.143 The residential-led scheme does not include the employment floorspace identified in the SSA. Despite the jobs generated both during construction and from the mix of uses in the local centre the development would not provide the necessary land to sustain the economic strategy over the plan period. Its contribution to the economic dimension of sustainable development would be

limited and considerably less than the long term integrated role in the local economy envisaged by the CDLP. [4.13, 6.53, 6.73, 6.74, 7.70, 7.75]

- 11.144 The scheme would bring a major permanent physical change to the environs of Herne village and disruption to the community over the 8 to 10 years construction phase. The Parish Council on behalf of the community expressed the anxieties and concerns about the impacts and spoke with the benefit of local knowledge and experience on the practical consequences for residents and others. Accessibility, safety, amenity and community provision were understandably of particular concern. [4.17-4.20, 4.28, 8.1-8.6, 8.9, 8.12]
- 11.145 Insufficient attention has been given to the impacts on the local community and residents living near the site. Early delivery of the HRR would do much to ease the transition period, reduce adverse effects on the quality of life, enable social inclusion for all residents, encourage community cohesion and deliver the necessary infrastructure at the earliest opportunity.
- 11.146 The development's achievement of high quality sustainable design in accordance with Policies DBE1 and DBE3 to a large degree would be demonstrated by compliance with development plan policies through reserved matters submissions and details pursuant to planning conditions. The technical studies and reports do not indicate any significant physical constraints in meeting requirements over a range of issues, including the incorporation of suitable measures to ensure resilience to climate change. The EIA does not identify significant effects that are unable to be adequately or appropriately mitigated, apart from those inherent in the loss of open countryside and agricultural land. [3.12, 4.28, 7.48, 7.59, 10.2]
- 11.147 Therefore there is a prospect that the proposal, on completion of development, would secure a better balance between housing demand and supply and create a high quality residential environment served by a local centre. Where it falls short is on the economic and social objectives, leading to a conclusion that sustainable development would not be secured.

### **Human Rights**

- 11.148 The application seeks permission for the demolition of three dwellings. The dwellings could be designed into a scheme but the heritage arguments are not sufficiently strong to require their retention. [2.2, 4.7, 7.49, 8.13, 9.5]
- 11.149 In the event permission is granted the occupants probably would lose their homes. There would be disruption to their home, private and family life, more especially in respect of the resident who has lived there all his life. The Article 8 Convention right would be engaged. Occupation is under Assured Shorthold Tenancy Agreements and the tenants could be required to leave their properties in any event subject to the relevant notice periods (which range from one to two to twelve months). Hollamby Estates has indicated that the tenants would be offered alternative accommodation from its pool of residential properties in the Herne Bay area, if necessary. The probability is that the occupiers would not be made homeless, so reducing the seriousness of the interference with their rights. [2.2, 4.8, 4.18, 8.13, 9.5]
- 11.150 Article 8 is a qualified right. In this case there is a legal basis for the restriction of the tenants' rights. The restriction has a legitimate aim and is

necessary and proportionate in the wider public interest to provide new housing and infrastructure. Consequently the interference would be justified and no violation of the residents' rights would occur.

11.151 During the construction period the people who would be most affected are those residents who live at the northern end of Canterbury Road near its junction with Thanet Way. This is where the main access into the site would be constructed and where a temporary access point is likely to be located. The use of heavy plant and equipment and movement of construction vehicles would lead to a major noise impact, more especially during the first phase of the construction programme. Article 1 of the First Protocol, the peaceful enjoyment of property, would be engaged. [4.17, 4.19, 8.5]

11.152 The development would not deprive these residents of their possessions and a CEMP would be required by planning condition. An objective of the CEMP would be to minimise the effect on living conditions as much as reasonably possible. Even so there would be interference with their rights for a temporary period. There is a legal basis for the restriction of the residents' rights. The restriction has a legitimate aim and is necessary and proportionate in the wider public interest to provide new housing and infrastructure. Consequently the interference would be justified and no violation of the residents' rights would occur. [10.6]

#### **Planning conditions** [10.1-10.15]

11.153 Conditions are used to enhance the quality of a development and to mitigate any adverse effects in order that development may proceed when otherwise refusal would have been necessary. Section 10 of this report includes a summary of the content of and reasons for the conditions proposed by the main parties. I considered that the detailed wording of a number of the conditions in the draft list required amendment in order to ensure they meet the policy tests, to avoid repetition and overlap between conditions, to reduce unnecessary detail and to minimise reference to extraneous documents, such as the ES. No comments of significance were received from the main parties on the amended list, which is reflected in Appendix 1. The following observations focus on the non-standard and contentious conditions.

11.154 The scope and content of the conditions reflect the outline nature of the application, its scale and the probability that the scheme would be carried out in phases. The appellant's proposals, viability appraisals, planning obligations and evidence were based on the phasing strategy in the DAS. The phasing strategy was put forward for approval at this stage and to require resubmission would be unreasonable and unnecessary, as indicated by advice in the Planning Practice Guidance. [4.17, 10.2, 10.3]

11.155 A comprehensive masterplan is required by Policy SP3 and is essential to establish the principles of development across the site as a whole and to draw together all the development parameters. It would inform the reserved matters applications for the first and subsequent phases and the open space strategy. The submitted masterplan is illustrative. Therefore to require approval of a masterplan before, rather than concurrently with, the reserved matters applications is justifiable to enable positive planning for the achievement of high quality and inclusive design throughout the course of the development. A similar justification supports the need for an approved design

code in advance of reserved matters applications. To delay the submission of a design code until after the approval of a masterplan and open space strategy, as suggested by the Council, would be unreasonable. The draft conditions were over prescriptive in content and shortened conditions are recommended. [10.4]

11.156 A number of conditions prevent any development until the requirements of the condition have been met (conditions precedent). These conditions are only where the requirements of the condition are so fundamental to the development that without them it would have been necessary to recommend refusal of permission.

11.157 The draft list of conditions required an ecological mitigation strategy, an open space strategy and a landscape and ecological management plan. I have regrouped and reworded the content of these conditions to include information from the ES and to improve clarity of purpose. I have also recast the tree protection conditions to avoid overlap with the landscaping reserved matters and to ensure they are enforceable and precise. [10.7]

11.158 There was a clear difference of opinion on conditions related to highway infrastructure and more particularly the HRR. Acceptance of the appellant's case would support the use of conditions 33 and 34 in the attached Schedule. In the alternative, conditions 35 and 36 are those put forward by the Council. [10.10, 10.12]

11.159 More specifically on condition 36, exceptional circumstances have to be present to justify the use of a negatively worded condition preventing commencement of development until a planning obligation has been entered into, in this case regarding the Kent BRIS contribution. The proposal is a SSA and the HRR has importance for enabling development of the Herne Bay SSAs. The development is not complex and there is no clear evidence that the development would be at serious risk. I have concluded that the sum cited in the Council's condition is unreasonable and the principal terms are unacceptable to the appellant. Having had regard to the Planning Practice Guidance my conclusion is that such a form of condition would be inappropriate in this case. Nevertheless the condition is included at the end of the Schedule in the event the Secretary of State comes to a different conclusion. [10.10, 10.12]

11.160 In conclusion, the schedule in Appendix 1 details the planning conditions (numbers 1 to 34) I consider should be imposed on a grant of planning permission for the development proposed at Strode Farm.

### **Planning Obligations**

11.161 The reasoning on the main considerations has included my conclusions on the planning obligations. In summary I have serious concern over the obligations on affordable housing and highway infrastructure. The obligations in respect of the SPA, the provisions on education and learning, open space and PROWs overcome the planning objections raised by the Council and others. They would ensure the effect of the development on the environment and social infrastructure is adequately addressed.

11.162 A travel plan would be required by planning condition in order to encourage more sustainable travel, with an emphasis on reducing reliance on the private car. A travel plan would be consistent with Policy T17 and is described as a key tool by the Framework. The Council, as the local planning

authority, would be responsible for approving the travel plan. The section 106 agreement includes a travel plan monitoring contribution that would be paid by the appellant to KCC. KCC did not submit any reasoning as to how this provision met the three tests. KCC did not explain why the monitoring of the travel plan would fall outside the scope of its every day functions as highway authority or how its monitoring function related to the Council's role as local planning authority. For these reasons I consider that the monitoring contribution is not justified and is not necessary to make the development acceptable in planning terms. [10.15, 10.16, 10.45]

- 11.163 In the event the Secretary of State concludes that the development proposals are acceptable and the deficiencies in the deeds are not significant, the planning obligations that have been offered, with the exception of the travel plan monitoring contribution, are 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. [10.16, 10.17]

### **Other matters**

- 11.164 The stopping up of Lower Herne Road would be the subject of a separate procedure under the Highway Act 1980. The test would be whether another reasonably convenient route is available or will be available before the highway is stopped up. [4.29, 9.4]
- 11.165 No increase in flood risk should occur provided that (i) appropriate measures are secured and carried out as part of the CEMP, (ii) an approved surface water drainage strategy and related approved schemes for each phase of development are carried out, and (iii) no reduction in flood storage capacity occurs in the lagoon area. These matters are suitably covered by planning conditions. [2.3, 3.17, 9.5, 10.5, 10.6]
- 11.166 The design of the layout, a reserved matter, should address the relationship between the new homes and a working livestock farm. The proposed PROW improvements are directed at the PROW which crosses and runs along the northern edge of the site, the links between residential areas and an existing bridleway. The improvements may encourage people away from grazing land. [9.5, 10.42-10.44]

### **Overall Conclusions**

- 11.167 Strode Farm is a SSA, important for contributing to the district's housing land supply and in accommodating the route of the HRR, a priority road scheme. The proposal offers the prospect of bringing forward development for realising these planning objectives. The appellant confirmed that 219 of the dwellings would be affordable homes. Planning obligations also include provision for facilitating a new primary school off-site.
- 11.168 In view of the outline nature of the proposal and the illustrative nature of an emerging masterplan, achieving a high quality, sustainable design would be dependent on compliance with a comprehensive set of planning conditions. At this outline stage compliance has been demonstrated with CDLP policies SP6, LB5 and QL5.
- 11.169 Turning to the main areas of dispute, the proposal for 30% affordable housing accords with Policy HD2, based on the scheme delivering 728 dwellings

(net). The planning obligation is not sufficiently robust in the event up to 800 dwellings come forward through the reserved matters and the development phases.

- 11.170 The provision for local needs housing on the site is an objective of Policy SP3. There is strong evidence that in the Canterbury district housing for affordable rent is a priority over shared ownership. There is no sound justification and no case on viability to depart from a 70:30 split in favour of affordable rent.
- 11.171 The spine road would form an integral element of the HRR and would provide a suitable means of access to serve the development by various travel modes – bus, bicycle, by foot and by car - if designed and constructed in accordance with the parameters indicated. The appellant's phasing plan would delay completion of the road until the final phase of development. I have concluded there would be harmful consequences for Herne village, the existing community and new residents of the scheme. Quality of life would be reduced by congestion, highway safety concerns, a deterioration in the environment for pedestrians and possibly a worsening of air quality. Poor access to public transport, with social exclusion for some, would apply to new households. The temporary period during the construction phase would be a significant length of time. I attach substantial weight to these outcomes.
- 11.172 The spine road cannot be considered in isolation from the Kent BRIS. Based on the conclusion that delivery of the spine road is necessary earlier than currently planned the provisions in the planning obligation on the timing of the appellant's contribution towards the Kent BRIS is not acceptable. Overall funding for the Kent BRIS has not been resolved satisfactorily.
- 11.173 The proposed residential-led scheme conflicts with Policy SP3, which includes a strategic employment land allocation as a primary objective for development of the Strode Farm site.
- 11.174 The proposal fails to comply with Policy SP2 in respect of affordable housing tenure, Policy SP3 on land use content and Policies SP3, T1 and T13 as regards highway infrastructure. The sustainable form of development identified for this SSA would not be delivered, resulting in conflict with Policy SP1.
- 11.175 Policies in the Framework promote safe and accessible developments for all people, giving people a real choice about how they travel. The importance of the planning system's role in creating healthy and inclusive communities is affirmed. Planning authorities are expected to make every effort to meet the housing needs of an area by identifying a supply of deliverable sites and by identifying the size, type, tenure and range of housing to reflect local demand. To support sustainable economic growth planning authorities should plan proactively and identify strategic sites for local and inward investment to meet anticipated economic needs over a plan period. Balancing the conclusions on the social, economic and environmental dimensions of the scheme, the proposal would not be a sustainable form of development.
- 11.176 The proposed development is not in accordance with the development plan read as a whole. Material considerations do not indicate that the application should be determined other than in accordance with the CDLP.

## **12. RECOMMENDATIONS**

12.1 I recommend that the appeal is dismissed and planning permission be refused.

12.2 In the event that the Secretary of State should disagree with this recommendation, then I further recommend that any planning permission granted should be subject to the planning conditions set out in Appendix 1 to this report.

*Diane Lewis*

Inspector

## **APPENDIX 1: SCHEDULE OF PLANNING CONDITIONS**

- 1) For each phase of the development details of the access (with the exception of the permanent means of vehicular access into the development from Canterbury Road and the vehicular access from Bullockstone Road), appearance, landscaping, layout and scale (hereinafter called "the reserved matters"), shall be submitted to and approved in writing by the local planning authority before any part of that phase of development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters for the first phase of development shall be made to the local planning authority not later than 3 years from the date of this permission. The commencement of development of that phase shall be begun not later than 2 years from the date of approval of the last of the reserved matters to be approved for that phase.
- 3) The final application for the approval of the reserved matters for the final phase of the development (as shown on the phasing plan approved under condition 6) shall be submitted to the local planning authority not later than 10 years from the date of this permission.
- 4) The commencement of each phase of development shall be begun not later than 2 years from the date of approval of the last of the reserved matters to be approved for that phase.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Application site boundary: AA4453/1.1/1013 Rev G
  - Land use parameter plan: AA4453/1.1/1051 Rev D
  - Access parameter plan (main site): AA4453/1.1/1052.1 Rev D
  - Access parameter plan (Bullockstone Road): AA4453/1.1/1052.2 Rev E
  - Density parameter plan: AA4453/1.1/1053 Rev D
  - Building heights parameter plan: AA4453/1.1/1054 Rev D
  - Key frontages and focal points parameter plan: AA4453/1.1/0155 Rev D
  - Potential alternative signal controlled access layout at A291: F13105/36
  - Potential relief road improvement scheme (Area G): F13105/08 Rev D
- 6) The development hereby permitted shall be carried out in accordance with the phasing arrangements and plans set out on pages 144 and 145 in the Design and Access Statement June 2015.
- 7) The land use content of the development hereby approved shall comprise not more than 800 dwellings and a local centre with up to 3,400 sq m gross floorspace of development falling within Use Classes A1/A2/A3/A4/A5 and B1(a) and up to 600 sq m gross floorspace of development within Use Class D1.



- 8) Before the submission of any reserved matters, a Masterplan shall have been submitted to and approved in writing by the local planning authority. The Masterplan shall demonstrate how the development would achieve "garden city" principles (set out in Appendix 1 of the Canterbury District Local Plan), reduce energy demand and promote energy efficiency and comprehensively apply the principles established in the parameter plans hereby approved. The reserved matters submissions shall thereafter be in accordance with the approved Masterplan.
- 9) Before the submission of any reserved matters a Design Code shall have been submitted to and approved in writing by the local planning authority. The Design Code shall develop the vision, design concept and principles established in the Design and Access Statement June 2015, describe how the principles and parameters shall be implemented and shall address issues including enhancement of the public realm, use of external materials, approach to parking provision, community safety, recycling and servicing and external lighting. The reserved matters submissions shall thereafter be in accordance with the approved Design Code.
- 10) No development shall commence unless and until an Open Space Strategy has been submitted to and approved in writing by the local planning authority. The Open Space Strategy shall be in accordance with the Masterplan approved under condition 8 and shall:
- Demonstrate the quantum of open space to be provided on site as set out in the Environmental Statement Addendum No. 3 dated 16 March 2017 at Table 14.27 on page 32 (namely a total of 16.65 ha comprising Parks 4.16 ha, green corridors and amenity greenspace 4.47 ha, play areas 0.49 ha, natural and semi-natural space 5.93 ha and allotments 1.6 ha);
  - Identify the approximate location of the main areas of formal and informal open space to be provided within the development and set out a proposed programme for its delivery linked to the development phases;
  - Outline the local play space and the distribution of play areas within the development and set out a proposed sequence for their delivery linked to the development phases;
  - Set out (i) a proposed programme for delivery of the area of allotments on land north of Thanet Way (A299) linked to the development phases, and (ii) proposals for future management of the allotment area.
- Development and delivery of open spaces shall be carried out in accordance with the approved Open Space Strategy.
- 11) No development shall commence unless and until an Ecological Mitigation and Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall include:
- i) A statement of purpose and objectives;
  - ii) Measures, informed by ecological survey work, to achieve the stated objectives;

- iii) Details of the extent and location of proposed mitigation works (including biodiversity protection areas) shown on plans of an appropriate scale;
- iv) Details of the nature and extent of habitat creation for all habitat types to include the specification of native seed mixes and species for tree/shrub planting;
- v) Habitat enhancement measures for species, to include the specification and location of features such as bat and bird boxes/bricks and reptile hibernacula;
- vi) Ecological design considerations for the proposed sustainable drainage system;
- vii) Habitat management practices to promote biodiversity within the retained areas of woodland, scrub and grassland habitat and within new areas of habitat creation;
- viii) Means of implementation of the plan, including persons responsible and provision for specialist ecologist(s) to be present on site to oversee works;
- ix) Programme of and arrangements for monitoring against stated and measurable objectives;
- x) Procedure for the identification, agreement and implementation of contingencies and/or remedial actions where the monitoring results show objectives are not being met;
- xi) A management plan and maintenance plan for the lifetime of the development and details of the body/organisation(s) responsible for implementation of the plan.

Development and future management shall be carried out in accordance with the approved Ecological Mitigation and Management Plan.

- 12) No development shall commence on the first phase of development until details of the ecological enhancement measures within the lagoon area north of the A299, excluding the proposed area of allotments, have been submitted to and approved in writing by the local planning authority. The measures shall include enhancement to Plenty Brook, habitat diversification through the creation of a mosaic of habitats and scrapes/ponds, a timetable for implementation and a management plan. The ecological enhancement measures shall be carried out and the area shall be managed thereafter in accordance with the approved details and timetable.
- 13) No development shall take place, including any works of demolition, until a site-wide Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include and provide for:
  - i) the management and routing of construction traffic, including: the location of access points for site traffic, routes within the site to be kept free of obstruction, parking of construction vehicles and vehicles of site operatives and visitors, wheel washing facilities, a scheme for the prevention of surface water discharges onto the highway, a travel plan for construction workers, directional signage on and off site;
  - ii) loading and unloading of plant and materials;

- iii) the location and size of site compounds and areas for storage of plant and materials to be used in constructing the development;
- iv) the location and form of temporary buildings and temporary lighting, details of the erection and maintenance of security hoardings;
- v) details for the safe storage of any fuels, oils and lubricants;
- vi) a scheme to control surface water run-off, prevent pollution and manage flood risk;
- vii) details of proposed temporary sewerage systems;
- viii) a scheme for the handling and storage of topsoil;
- ix) measures, including the construction of exclusion zones, to prevent soil compaction in large scale planting areas and measures to remediate soil compaction;
- x) details of measures to protect trees, hedgerows and water features;
- xi) a scheme for the protection of areas of ecological interest and mitigation of any harm to such areas, including timing of works and precautionary work practices;
- xii) measures to control the emission of dust and dirt during construction;
- xiii) measures for the control of noise and vibration during construction, including delivery, demolition and construction working hours;
- xiv) a scheme for recycling/disposal of waste resulting from demolition and construction works;
- xv) details of temporary pedestrian and cycle routes;
- xvi) procedures for maintaining good public relations, including complaint management procedures, community consultation and liaison;
- xvii) a scheme (a) to offer and carry out a schedule of condition of existing properties adjacent to the construction access point(s), (b) to assess the impacts of construction on neighbouring dwellings, and (c) to provide details of the implementation of any recommended protection /remediation works.

The approved site-wide CEMP shall be adhered to throughout the construction period for the development.

- 14) In connection with each phase, no development, including any works of demolition, shall commence until a Construction Environmental Management Plan (CEMP) for that phase has been submitted to and approved in writing by the local planning authority. The CEMP for each phase shall demonstrate how the measures agreed in the site-wide CEMP approved pursuant to condition 13 shall be implemented in relation to the phase of development. During each phase of development the approved CEMP shall be adhered to throughout the construction period for that phase.
- 15) Within each phase, no development shall commence unless and until a Landscape and Open Space Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The Plan shall provide for:
  - i) a description and evaluation of features to be managed;
  - ii) the precise location and boundaries of the areas of formal and informal open space to be provided within the phase and timetable for their

delivery (which shall be substantially in accordance with the approved masterplan);

- iii) a detailed specification for any equipped plan area to be provided in accordance with the approved masterplan/open space strategy;
- iv) aims and measurable objectives of management and maintenance;
- v) appropriate management responsibilities and prescriptions and maintenance schedules for achieving those aims and objectives;
- vi) details of the body or organisation(s) responsible for implementation of the Plan.

The development shall be carried out in accordance with the approved details. The public open spaces shall be laid out and implemented in accordance with the agreed timetable and shall be retained thereafter in accordance with the management plan and used for public amenity purposes only.

- 16) No development shall commence until a surface water drainage strategy based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in writing by the local planning authority. The scheme shall:
- identify methods to manage surface water runoff up to the 1:100 year event plus climate change;
  - set out the proposed methods to delay and control the surface water discharged from the site in order to mitigate the risk of surface water flooding on the site, avoid increasing the flood risk downstream and prevent pollution of the receiving groundwater and/or surface waters;
  - outline a management and maintenance plan, which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout the lifetime of the development.
- 17) Within each phase no development shall commence until a detailed surface water drainage scheme for that phase has been submitted to and approved in writing by the local planning authority. The scheme for each phase shall be in accordance with the site-wide strategy approved under condition 16 and shall include details of:
- the location, design and capacity of proposed sustainable drainage systems within the phase;
  - a timetable for implementation of the scheme, ownership, adoption, monitoring arrangements and responsibilities; and
  - a management and maintenance plan, which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation of the sustainable drainage system throughout the lifetime of the development.

Within each phase of development the surface water drainage system shall be implemented and thereafter managed and maintained in accordance with the approved details.

- 18) No alterations to the land levels in the lagoon area to the north of the A299 shall take place until a scheme with details of any proposed changes to ground levels have been submitted to and approved in writing by the local planning authority. The scheme shall include details of existing and proposed ground levels of the area, shall demonstrate that any works within this area of the site shall not reduce its flood storage capacity and a timetable for implementation. Development shall be carried out in accordance with the approved scheme and timetable.
- 19) No development shall commence until a scheme for the proposed means of disposal of foul water discharge from the development and a timetable for its implementation have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme and details.
- 20) If, during the course of construction of the approved development, contamination not previously identified on the site is found to be present the occurrence shall be reported immediately to the local planning authority. Development on that part of the site affected shall be suspended. A risk assessment shall be carried out and submitted for the written approval of the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted for the written approval of the local planning authority. No development or relevant phase of development shall be resumed or continued until the risk assessment and, if required, remediation and verification schemes have been approved by the local planning authority and the schemes carried out in full accordance with the approved details.
- 21) No demolition/development shall commence until the following components of a scheme for the archaeological evaluation of the site shall have been submitted to and approved in writing by the local planning authority:
  - i) a Written Scheme of Investigation (WSI), to be submitted a minimum of fourteen days in advance of commencement of fieldwork, for the purpose of determining the presence or absence of any buried archaeological features and deposits and to assess the importance of the same;
  - ii) a report summarising the results of the investigations to be produced on the completion of fieldwork, in accordance with the requirements set out in the WSI;
  - iii) details of any further mitigation measures shown to be necessary as a result of the archaeological investigations in order to ensure preservation in situ of important archaeological remains and/or further archaeological investigations and recording in accordance with a specification that has been submitted to and approved in writing by the local planning authority;
  - iv) if shown to necessary by the archaeological investigations and if requested by the local planning authority, a programme of post excavation assessment, analysis, publication and conservation.

Fieldwork, including further mitigation works and post excavation work, shall be completed in accordance with the approved details and programme timings and the local planning authority shall be notified a minimum of fourteen days in advance of the commencement of any fieldwork.

- 22) No site clearance, preparatory work or development shall take place unless and until a tree survey report has been submitted to and approved in writing by the local planning authority. The report shall contain a schedule and plan(s) showing the position of every tree and hedgerow on the site and on land adjacent to the site (including street trees) that could influence or be affected by the development, indicating which trees and hedgerows are to be removed and which trees are to be retained.
- 23) Within each phase of development no development shall commence unless and until a tree protection scheme shall have been submitted to and approved in writing by the local planning authority. The tree protection scheme shall identify the retained trees and where excavations, changes to ground levels or underground works are proposed that might affect the root protection area the scheme shall detail the appropriate working methods (the arboricultural method statement) in accordance with British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced). The scheme for the protection of the retained trees shall be carried out as approved.

In this condition "retained tree" means an existing tree or hedgerow which is to be retained in accordance with the plans and particulars approved under condition 22.

- 24) Within each phase of development if any retained tree is cut down, uprooted or destroyed or dies within 5 years of the completion of development of that phase, the tree/hedgerow shall be replaced by a tree/hedgerow of a similar type and species in the next planting season after the damage or loss.

In this condition "retained tree" means an existing tree or hedgerow which is to be retained in accordance with the plans and particulars approved under condition 22.

- 25) Within each phase of development no development shall commence unless and until an Energy Strategy for that phase has been submitted to and approved in writing by the local planning authority. Each Energy Strategy shall be in accordance with the principles contained within the Energy and Sustainability Statement June 2015 and shall include details of the strategy to increase energy efficiency, reduce energy consumption and carbon emissions. The development shall be carried out in full accordance with the approved Energy Strategy for each phase.
- 26) No development shall commence on each phase of the development unless and until a noise mitigation scheme for the phase has been submitted to and approved in writing by the local planning authority. The noise mitigation scheme shall provide details of proposed measures to mitigate road traffic noise impacts on the residents of the new dwellings and /or plant noise from retail and employment units on nearby existing and proposed housing. The measures shall include, as appropriate, a noise bund/barrier adjacent to the A299, use of external/internal layout, siting

and design of dwellings, noise insulation, specifications of glazing performance requirements, window sizes and means of ventilation. The approved mitigation measures shall be implemented before the first occupation of any dwelling in that phase, first occupation of an employment/retail unit or in accordance with a timetable agreed in writing by the local planning authority.

- 27) At the same time as the submission of the first reserved matters application for development of phase A, a scheme for the proposed provision of utilities and media infrastructure to serve the commercial or community buildings shall be submitted to the local planning authority for its approval. The scheme shall include details of how the service infrastructure provision will be connected to the proposed buildings and the programme of provision. The approved scheme shall be implemented in full in accordance with the approved timetable and shall thereafter be maintained in accordance with the approved details.
- 28) No development shall commence unless and until full details of the pedestrian improvement scheme, comprising a footway along Bullockstone Road to link the western end of the development with an existing public footpath on the southern edge of Greenhill, has been submitted to and approved in writing by the local planning authority. The footway works shall be constructed in accordance with the approved details and the footway shall be available for public use prior to the first occupation of any dwelling within the development hereby approved.
- 29) Prior to the occupation of any phase of the development, save for the second phase of the development (as shown on the phasing plan approved under condition 6), either the site access signal junction on the A291 shall be fully implemented in accordance with plan F13105/36 or a scheme shall have been submitted to and approved in writing by the local planning authority which shall contain:
- i) Details of the provision of a temporary access junction on the A291 to serve the development site;
  - ii) Evidence to demonstrate that the proposed temporary access junction would facilitate the development proposed in phase A of the masterplan;
  - iii) Details of the timetable for the decommissioning of the temporary access;
  - iv) Details of any remedial works and a timetable for their implementation.

Any alternative temporary access scheme shall be implemented in full in accordance with the approved details prior to the occupation of any phase of the development, save for the second phase of the development (as shown on the phasing plan approved under condition 6). The decommissioning and remedial works shall be carried out in accordance with the approved details and timetable.

- 30) No phase of the development shall be first occupied unless and until details of the proposed improvement to the Old Thanet Way/Eddington Way junction shall have been submitted to and approved in writing by the local planning authority. The junction improvement works shall be carried out in

full accordance with the approved details prior to the first occupation of the 200<sup>th</sup> dwelling within the development hereby approved.

- 31) Prior to the first occupation of any dwelling within the second phase of the development (as shown on the phasing plan approved under condition 6) the site access junction on Bullockstone Road shall be implemented in full in accordance with the details on plan F13105/08 Rev D.
- 32) No dwelling and no building within the local centre shall be first occupied unless and until a travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall identify opportunities for the effective promotion and delivery of sustainable transport initiatives and include measures to reduce the demand for travel by less sustainable modes. The travel plan shall include details of required outcomes, modal share targets, measures to ensure the modal share targets are met, future monitoring and management arrangements, sanctions in the event outcomes/targets/processes are not adhered to or met and a timetable for implementation. The travel plan shall be implemented in accordance with the approved details and timetable.
- 33) At the same time as the submission to the local planning authority of the first reserved matters application for each phase of development a pedestrian/cycling strategy shall be submitted to the local planning authority. The strategy shall enable the occupiers of the dwellings within that phase to access on foot or cycle the nearest bus stops to the site. The strategy shall include details of the proposed routes for pedestrians and cyclists, details of how these routes would link with other routes and phases of development, specify the surface materials to be used in the construction of the routes and the means of enclosure and lighting, and a programme for their implementation, retention or removal as each phase is developed and occupied. The strategy and implementation programme shall be carried out in accordance with the approved details.
- 34) No development shall take place until the details of the spine road through the site linking Bullockstone Road with Canterbury Road have been submitted to and approved in writing by the local planning authority. The spine road shall be constructed in accordance with the approved details and to an adoptable standard prior to the first occupation of any dwelling on the final phase of the development of the site.

**Alternative Canterbury City Council planning conditions**

- 35) No development shall take place until the details of the spine road through the site linking Bullockstone Road with Canterbury Road have been submitted to and approved in writing by the local planning authority. No more than 410 dwellings within the site shall be first occupied until the spine road shall have been constructed in accordance with the approved details and to an adoptable standard.
- 36) The development hereby approved shall not commence until a section 106 agreement has been entered into to pay the sum of £4,581,833 (four million five hundred and eighty one thousand eight hundred and thirty three pounds) as a financial contribution towards the KCC BRIS (as defined



in the section 106 agreement), payable on the first occupation of the 250<sup>th</sup> dwelling within the development.

**End of Schedule**

## APPENDIX 2: APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Ground QC	Instructed by Legal Services, Canterbury City Council
Mr Ben Du Feu, Barrister	
Mr Ground called	
Mr Andrew Paterson BA (Hons)	Housing Enabling Officer, Canterbury City Council
Mr Simon de Whalley MRICS	Head of Development Viability & Disposals RICS Registered Valuer DVS
Mr Matthew Hogben BSc(Hons) MA	Principal Transport and Development Planner, Kent County Council
Mr Martin Taylor BSc MSc MIED MRTPI	Nathaniel Lichfield & Partners
Mr Stephen Musk BA(Hons) MA	Deputy Team Leader – Development Management Canterbury City Council

### FOR THE APPELLANT:

Mr Mark Lowe QC	Instructed by Mr Hester
Mr Robin Green, Barrister	
Mr Lowe called	
Mr Jeremy Edge BSc FRICS MRTPI	Partner, Edge Planning & Development LLP
Mr Chris Bancroft Adv Dip TS FCILT	Director of Bancroft Consulting
Mr Peter Dadswell BSc MRICS	Director of Allen Dadswell Construction Consultants
Mr Chris Crook BA(Hons) FRICS	Kingsgate Property Consultants
Mr Vic Hester MRTPI	VLH Associates

### FOR THE PARISH COUNCIL:

Mrs Ann Blatherwick	Chairperson, Herne and Broomfield Parish Council
---------------------	--

<b>APPENDIX 3: DOCUMENT LIST</b>	
	<b>PROPOSED DEVELOPMENT</b>
	<b>Environmental Statement</b>
ES.1	Volume 1 Main report
ES.2	Volume 2 Appendices 1.1-10.9
ES.3	Volume 2 Appendices 11.1-14.6
ES.4	Outline Construction Environmental Management Plan ES Appendix 5.5
ES.5	Site Waste Management Plan: Pre construction phase ES Appendix 5.6
ES.6	Volume 1 Transport Assessment main report ES Appendix 7.1
ES.7	Volume 2A Transport Assessment Appendices A to K, ES Appendix 7.1
ES.8	Volume 2B Transport Assessment Appendices L to P, ES Appendix 7.1
ES.9	Framework Travel Plan ES Appendix 7.2
ES.10	Flood risk assessment and drainage strategy ES Appendix 13.1
ES.11	Phase 1 Ground condition assessment ES Appendix 13.2
ES.12	Technical Note Geoenvironmental/geotechnical assessment of retention lagoon ES Appendix 13.2
ES.13	Summary Geoenvironmental/geotechnical assessment (Bullockstone Road improvements) ES Appendix 13.2
ES.14	Non-Technical Summary June 2015
	<b>ES Addendums</b>
ES.15	Addendum 22 December 2015
ES.16	Addendum No.2 5 July 2016
ES.17	Addendum No.3/3141444 16 March 2017
ES.18	Volume 2: Appendices amended July 2016
ES.19	Non-Technical Summary Update March 2017
ES.20	Newspaper advertisement of the 'other information' comprising the above Addendums and NTS Update
	<b>Planning Application</b>
PA.1	Planning statement
PA.2	Design and Access Statement June 2015
PA.3	Outline design guide
PA.4	Economic and employment statement
PA.5	Retail and town centre statement
PA.6	Statement of community involvement
PA.7	Viability executive summary
PA.7A	Financial viability appraisal
PA.8	Development brief
PA.9	Utility constraints

PA.10	Sustainability and energy statement
	<b>Technical Reports</b>
TR.1	Hydraulic modelling report
TR.2	Drainage assessment: Bullockstone Road Improvements
TR.3	Habitat Regulations Assessment – screening statement
TR.4	Heritage Assessment
	<b>CANTERBURY DISTRICT LOCAL PLAN</b>
CDLP.1	Canterbury District Local Plan adopted 13 July 2017
CDLP.2	Report to Council 13 July 2017 Adoption of Canterbury District Local Plan
CDLP.3	Report on the Examination of the Canterbury District Local Plan dated 15 June 2017
CDLP.4	Appendix to Report: Main Modifications
CDLP.5	List of Canterbury District Local Plan 2017 policies relevant to the proposal agreed by the appellant and the Council
	<b>CANTERBURY DISTRICT TRANSPORT STRATEGY 2014-31</b>
CDTS.1	Canterbury District Transport Strategy 2014-31
CDTS.2	Report to Council 13 July 2017 Adoption of Canterbury District Transport Strategy 2014-31
	<b>EVIDENCE</b>
	<b>Hollamby Estates (2005) Ltd</b>
	Vic Hester
HE.1.A	Summary
HE.1.B	Proof of evidence
HE.1.C	Appendices 1-20, A-E
HE.1.D	Rebuttal + Appendices F-I
	Chris Bancroft
HE.2.A	Volume 1 Summary
HE.2.B	Volume 2 Proof of evidence
HE.2.C	Volume 3 Appendices pages 1 to 360
HE.2.D	Volume 4 Appendices pages 361 to 747
HE.2.E	Volume 5 Appendices pages 748 to 1074
HE.2.F	Volume 6 Appendices pages 1075 to 1374
HE.2.G	Rebuttal Rev B Dec 2016
	Jeremy Edge
HE.3.A	Summary
HE.3.B	Proof of evidence
HE.3.C	Appendices A to F
HE.3.D	Financial viability appraisals series 24
HE.3.E	Rebuttal
	Chris Crook
HE.4.A	Summary

HE.4.B	Proof of evidence including Appendices 1 to 4
HE.4.C	Rebuttal December 2016
HE.4.D	Supplemental proof of evidence April 2017 including Appendices 1 to 8
	Peter Dadswell
HE.5.A	Proof of evidence
HE.5.B	Appendices 1 to 3
	<b>Canterbury City Council</b>
	Stephen Musk
CCC.1.A	Proof of evidence including Appendix A
CCC.1.B	Rebuttal including Appendices A to E
	Andrew Paterson
CCC.2.A	Proof of evidence including Appendix A
	Simon de Whalley (DVS, Valuation Office Agency)
CCC.3.A	Proof of evidence with Appendices 1 to 18
CCC.3.B	Rebuttal with Appendices A to J
	Matthew Hogben (Kent County Council)
CCC.4.A	Proof of evidence including Appendices A to F
CCC.4.B	Rebuttal with Appendices A and B
	<b>Herne &amp; Broomfield Parish Council</b>
PC.1	Objection dated 7 March 2016
PC.2	Response dated 14 November 2016
PC.3	Response, dated 18 December 2016, to KCC's proof of evidence
PC.4	Response, dated 5 January 2017, to documents and meeting notes
PC.5	Air quality – Council's comments for Local Plan
PC.6	Comments dated 23 March 2017 on Local Plan Main Modifications
PC.7	Assured Agricultural Occupancy Agreement
PC.7A	Assured Agricultural Occupancy Agreement signed
PC.8	Closing statement
PC.9	Response to the Council's closing submissions
PC.10	Final Response
	<b>INQUIRY DOCUMENTS</b>
	<b>Statements of Common Ground</b>
SCG.1	Viability
SCG.2	Highways and Transportation matters
SCG.3	Planning
	<b>Canterbury City Council</b>
CCC/IQ/1	Adams Integra April 2016 Update + emails
CCC/IQ/2	5 year housing land supply tables and email

CCC/IQ/3	Viability appraisals update 06.01.17
CCC/IQ/4	Canterbury District Local Plan 1 <sup>st</sup> review
CCC/IQ/5	Canterbury District Local Plan Publication Draft June 2014
CCC/IQ/6	Canterbury District Transport Strategy 2014-31 (Draft) extract
CCC/IQ/7	Statement of common ground- Highways and Transportation matters Sept 2015 Rev B
CCC/IQ/8	Junctions 9 Arcady 9 Roundabout module
CCC/IQ/9	Stagecoach South East emails
CCC/IQ/10	S.106 emails re Herne Relief Road
CCC/IQ/11	Council's response to Inquiry Note 1
CCC/IQ/12	CIL compliance statement
CCC/IQ/13	Draft Open Space Strategy for the Canterbury District 2014 to 2019 + Appendix 4 and Appendix 13
CCC/IQ/14	Draft Infrastructure Delivery Plan
CCC/IQ/15	Strategic Access Management and Monitoring Plan Main Report November 2014
CCC/IQ/16	Report to Planning Committee on proposed improvements to Bullockstone Road ref CA/16/01764/FUL
CCC/IQ/17	Statement of CIL Compliance: Kent County Council 23.04.17
CCC/IQ/18	Response by Mr Hogben + appendices A to D
CCC/IQ/19	Response by Mr Paterson to evidence of Chris Crook
CCC/IQ/20	Minutes of Planning Committee meeting 4 April 2017
CCC/IQ/21	Strode Farm planning application publicity
CCC/IQ/22	Adams Integra letter dated 19.01.17 re HCA Toolkit
CCC/IQ/23	Appeal decisions refs APP/L1765/W/16/3141664, 3141667
CCC/IQ/24	Email from Amicus dated 11.04.17
CCC/IQ/25	Statement of CIL Compliance: Kent County Council 27.04.17
CCC/IQ/26	List of planning conditions
CCC/IQ/27	Closing submissions
CCC/IQ/28	Council's Submissions on the Supreme Court judgement [2017] UKSC 37 ( <i>Suffolk Coastal v Hopkins Homes</i> )
CCC/IQ/29	Council's Final Response
	<b>Hollamby Estates (2005) Ltd</b>
HE/IQ/1	Bundle of documents to accompany response to pre-inquiry note 1
HE/IQ/2	Opening statement on behalf of the Appellant
HE/IQ/3	Planning Committee report ref CA//16/01764/FUL Bullockstone Road improvements
HE/IQ/4	Additional documents referred to in opening statement
HE/IQ/5	PRP letter re employment space dated 06.01.17
HE/IQ/6	Table 1 Comparison of s106 obligations
HE/IQ/7	Location plan of strategic sites
HE/IQ/8	Planning statement in support of planning application June 2015
HE/IQ/9	Homes & Communities Agency Development Appraisal Tool User Manual v3.02
HE/IQ/9A	Note on phasing costs Jan 2017
HE/IQ/10	Site for new primary school - location plans, worksheets

HE/IQ/11	Property Week article re Herne Bay Golf Club site 19.02.16
HE/IQ/12	Summary of morning peak hour traffic generation
HE/IQ/13	Traffic generation by Strode Farm at specified development intervals
HE/IQ/14	Minutes of meeting 26.07.16 (KCC/CCC/Hillborough land owners)
HE/IQ/15	Persistently higher risk roads
HE/IQ/16	Kent Karrier Dial-a-Ride Service
HE/IQ/17	Planning permission Four Oaks ref CA/89/0917/HBA dated 26 February 1990
HE/IQ/18	British EuroRAP Results 2015
HE/IQ/19	Email dated 16.01.17 re Bullockstone Road Committee item
HE/IQ/20	Summary of outputs email
HE/IQ/21	Appellant's note on s106 obligations
HE/IQ/22	Note on proposed conditions
HE/IQ/23	Canterbury District Local Plan Examination letter dated 03.01.17
HE/IQ/24	Canterbury City Council Sustainability Appraisal of Development Scenarios Amec June 2012
HE/IQ/25	Appendix 1 Garden City principles (Main Modification)
HE/IQ/26	Lower Herne Village areas (PRP letter dated 19.0.17)
HE/IQ/27	Schedule of plans and bundle of plans
HE/IQ/28	Response to Inquiry Note 1 (+ Appendices)
HE/IQ/29	Response to Inquiry Note 2
HE/IQ/30	Statement on structure and operation value of financial viability model
HE/IQ/31	Valuations, Four Oaks, Bullockstone Road
HE/IQ/32	Statement on Appraisal 27A and Appraisal 24E
HE/IQ/32A	Financial Appraisal and related cash flow sheets
HE/IQ/33	Note on HCA DAT model
HE/IQ/34	Decision Notice dated 11 April 2017 ref CA/16/01764/FUL and bundle of plans, proposed improvements to Bullockstone Road
HE/IQ/35	Email re Assured Agricultural Occupancy Agreement dated 27.04.17
HE/IQ/36	Emails re Amicus Horizon 24 and 27 March 2017
HE/IQ/37	Canterbury District Housing Strategy 2012 to 2016 Updated and revised September 2014
HE/IQ/38	Draft planning obligations on affordable housing and financial contributions
HE/IQ/39	Note on Fear and Intimidation
HE/IQ/40	Amendments to emerging illustrative masterplan + plan ref AA4453/1.1/1018 Rev J
HE/IQ/41	Amended site plan ref AA4453/1.1/1013 Rev G
HE/IQ/42	Closing submissions
HE/IQ/43	Response to Inquiry Note 3
HE/IQ/44	Submissions on the Supreme Court judgement [2017] UKSC 37 ( <i>Suffolk Coastal v Hopkins Homes</i> )
HE/IQ/45	Note on section 106 planning obligations
HE/IQ/46	Response on Planning Obligations

HE/IQ/47	Response to Inquiry Note 4
HE/IQ/47A	Appendix 1 to Response to Inquiry Note 4 – Economic and Employment Statement June 2015
HE/IQ/48	Final response
HE/IQ/49	Response to inspector's note on planning obligations
	<b>SECTION 106 PLANNING OBLIGATIONS</b>
UU.1	Unilateral undertaking Hollamby Estates (2005) Limited to Canterbury City Council dated 12 May 2017
UU.2	Unilateral undertaking Hollamby Estates (2005) Limited to Kent County Council dated 30 June 2017
UU.2A	Supplemental Deed by unilateral undertaking dated 21 July 2017
DA.1	Deed of Agreement between (1) Kent County Council and (2) Hollamby Estates (2005) Limited dated 30 June 2017
DA.1A	Supplemental Deed dated 21 July 2017 to section 106 planning obligation financial contributions and highways obligations dated 30 June 2017
	<b>ADDITIONAL DOCUMENTS</b>
GEN.1	Officer report on the planning application to the Council's Planning Committee 1 March 2016
GEN.2	Bundle of representations on the planning appeal
GEN.3	KCC (PROW & Access Service) consultation response dated 08.07.15
GEN.4	Consultation response from Natural England dated 4 November 2015
GEN.5	KCC statement dated 10 March 2016 in relation to planning obligations
GEN.6	Note of Pre-Inquiry Meeting held on 2 June 2016
GEN.7	Inspector's Pre Inquiry Note 1
GEN.8	Inspector's Pre Inquiry Note 2
GEN.9	Inspector's Inquiry Note 1
GEN.10	Inspector's Inquiry Note 2
GEN.11	Inspector's Inquiry Note 3
GEN.12	Inspector's Inquiry Note 4
GEN.13	Inspector's Note: Planning obligations
GEN.14	Inspector's List of Plans (as amended)
GEN.15	Inspector's List of Planning Conditions (draft revisions to CCC/IQ/26)







# Ministry of Housing, Communities & Local Government

[www.gov.uk/mhclg](http://www.gov.uk/mhclg)

## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.