



## Appeal Decisions

Inquiry Held from 3 - 18 December 2019

Site visits made on 18 & 19 December 2019

**by Andrew Dawe BSc(Hons) MSc MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14<sup>th</sup> February 2020

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### **Appeal A (Site 5.1): APP/H2265/W/19/3235165**

#### **Development site between 1 Tower View and 35 Kings Hill Avenue, Kings Hill**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Liberty Property Trust UK Limited against the decision of Tonbridge & Malling Borough Council (the Council).
  - The application Ref TM/18/03030/OAEA, dated 17 December 2018, was refused by notice dated 30 May 2019.
  - The development proposed is redevelopment to provide up to 70 Class C3 residential units, together with landscaping, open space and other associated works; all matters reserved for future approval except for access.
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### **Appeal B (Site 5.2/5.3): APP/H2265/W/19/3235166**

#### **Development site north and east of Jubilee Way, Kings Hill**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Liberty Property Trust UK Limited against the decision of Tonbridge & Malling Borough Council (the Council).
  - The application Ref TM/18/03034/OAEA, dated 17 December 2018, was refused by notice dated 30 May 2019.
  - The development proposed is redevelopment to provide up to 210 Class C3 residential units, together with landscaping, open space and other associated works; all matters reserved for future approval except for access.
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### **Appeal C (Site 5.4): APP/H2265/W/19/3235167**

#### **Development site north of Amber Lane, Kings Hill**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Liberty Property Trust UK Limited against the decision of Tonbridge & Malling Borough Council (the Council).
  - The application Ref TM/18/03031/OAEA, dated 17 December 2018, was refused by notice dated 10 June 2019.
  - The development proposed is redevelopment to provide up to 85 Class C3 residential units, together with landscaping, open space and other associated works; all matters reserved for future approval except for access.
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**Appeal D (Site 5.6): APP/H2265/W/19/3235171  
Development site between 23 Kings Hill Avenue and 8 Abbey Road, Kings Hill**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Liberty Property Trust UK Limited against the decision of Tonbridge & Malling Borough Council (the Council).
  - The application Ref TM/18/03033/OAEA, dated 17 December 2018, was refused by notice dated 30 May 2019.
  - The development proposed is redevelopment to provide up to 70 Class C3 residential units, together with landscaping, open space and other associated works; all matters reserved for future approval except for access.
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**Decisions**

1. Appeal A is allowed and planning permission is granted for redevelopment to provide up to 70 Class C3 residential units, together with landscaping, open space and other associated works; all matters reserved for future approval except for access at Development site between 1 Tower View and 35 Kings Hill Avenue, Kings Hill in accordance with the terms of the application, Ref TM/18/03030/OAEA, dated 17 December 2018, subject to the conditions in the attached Annex.
2. Appeal B is allowed and planning permission is granted for redevelopment to provide up to 210 Class C3 residential units, together with landscaping, open space and other associated works; all matters reserved for future approval except for access at Development site north and east of Jubilee Way, Kings Hill in accordance with the terms of the application, Ref TM/18/03034/OAEA, dated 17 December 2018, subject to the conditions in the attached Annex.
3. Appeal D is allowed and planning permission is granted for redevelopment to provide up to 70 Class C3 residential units, together with landscaping, open space and other associated works; all matters reserved for future approval except for access at Development site between 23 Kings Hill Avenue and 8 Abbey Road, Kings Hill in accordance with the terms of the application, Ref TM/18/03033/OAEA, dated 17 December 2018, subject to the conditions in the attached Annex.
4. Appeal C is dismissed.

**Procedural Matters**

5. The planning applications relating to all four appeals were submitted in outline with only access to be considered. The matters of appearance, landscaping, layout and scale would be for future consideration were each appeal allowed. I have determined each appeal on that basis. However, in each case, as well as a means of access plan, the Appellant has submitted an illustrative masterplan and a land use and building height parameter plan which I have taken into account as a guide to how the sites might be developed.
6. Reference is made to the Kent Design Guide (KDG) in the submissions. I have had regard to that document and afforded it some weight on the basis that it supports the relevant policies of the development plan.

## **Background Information**

7. Kings Hill is a settlement based on Garden Village principles that has been and continues to be developed in phases by the Appellant on the former West Malling airfield. It is located close to West and East Malling to the north and north-east with Maidstone further to the east and Tonbridge slightly further still to the south-west. Phase 3, consisting of housing, is currently under construction, with the element close to the southern boundary of Site 5.2/5.3 nearing completion. Along with its housing, Kings Hill includes a small centre with various shops and facilities, primary schools, leisure and health facilities and a business park known as Kings Hill Business Park. The Appellant controls much of the business park.
8. The site numbering in the above headers is that used by the Appellant to identify and distinguish between the parcels of land concerning the four appeals, proposed to be part of the next phase of development at Kings Hill. Sites 5.1 and 5.6 are within the existing business park to the west of Kings Hill. Site 5.2/5.3 is to the north of the settlement adjacent to an existing office building, known as the Rolex building. Site 5.4 is to the north of the eastern side of Kings Hill, separated from Site 5.2/5.3 to the west by a large area of open countryside.

## **APPEALS A, B AND D**

### **Main Issues**

9. The main issues are the effect of the proposed development on:
  - i) the provision for employment land, in particular whether there is a reasonable prospect of the sites coming forward for their allocated employment use and whether the proposed use for housing would contribute to meeting an unmet need for housing in the area;
  - ii) the character and appearance of the surrounding area, in particular having regard to whether or not it would have any harmful impacts in this respect.

### **Reasons**

#### *Employment land*

10. Policy CP21 of the Tonbridge and Malling Borough Council Core Strategy (the Core Strategy) states, amongst other things, that employment areas that meet criteria concerning being well located to the main road and public transport network; provide, or are physically and viably capable of providing through redevelopment, good quality modern accommodation attractive to the market; and are capable of meeting a range of employment uses to support the local economy, will be safeguarded for such purposes. It goes on to state that redevelopment of such sites for housing, retail or other non-employment uses, will not be permitted.
11. Policy E1 of the Tonbridge and Malling Borough Council Development Land Allocations Development Plan Document (the DLADPD) sets out that the areas listed and shown on the Proposals Map will be safeguarded for employment purposes. Specifically, in relation to Kings Hill, set out in E1(r) of that policy, this relates to a high quality, campus style Business Park suitable for offices, research and development and light industrial use (B1) including also hotel,

conference, education and training and commercial leisure uses as part of the wider Kings Hill mixed-use development. Other than those uses, the policy states that any other uses will not be permitted. The vacant sites concerned are also listed in policy E3 of the DLADPD as being allocated for employment development.

12. I have also had regard to the National Planning Policy Framework (the Framework) which in paragraph 120 highlights that planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. It goes on to say that where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in the plan in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.
13. The sites concerned have been vacant for a number of years. Planning permission has been granted for office buildings on part of site 5.2/5.3. However, whilst extant, the reserved matters were approved in 2009 and the scheme remains to be implemented. It also forms the part of the site that is generally alongside and to the east of the existing Rolex building. I have no evidence of any planning applications having been made for the other sites since the development of the business park. Notwithstanding the Council's concerns over the extent of marketing of the sites, which I shall consider below, these are otherwise factors which indicate a lack of demand or viability to date for the development of these sites for uses sought through policies CP21 and E1(r). However, it is necessary to consider the likelihood of this continuing into the future.
14. In light of the Core Strategy and DLADPD having been adopted for over 11 years, I have had regard to a more recent report conducted on behalf of the Council<sup>1</sup> (the Turley Update). This shows, based on a labour demand approach, an objectively assessed need for 6.3ha of land suitable for B1 a/b office uses against a supply of 8.5ha, albeit that it does not include a detailed assessment of market demand across Borough sub-areas. The report takes account of lower demand levels than in the past, reflecting likely configuration over multiple storeys and potential future development in locations other than business parks such as Kings Hill resulting in a lower office requirement than forecast in the Tonbridge & Malling Employment Land Review December 2014 (the 2014 ELR). The 6.3ha comprises the additional land found to be required, amounting to 3.5ha with the addition of a buffer to account for a margin of choice and flexibility and allowing for delays in sites coming forward or premises being developed, and an allowance for losses.
15. The Appellant disputes the extent to which the buffer takes account of the allowance for losses based on the 9 years prior to the Turley update particularly compared with that used by other west Kent councils, and whether such allowance should spatially reflect where those losses are likely to occur, such as Tonbridge. Nevertheless, even with a slightly reduced buffer the appeal sites still contribute to the identified needed supply of employment land. Given the combined extent of land area, the loss of the appeal sites would

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<sup>1</sup> Update of Employment Land Needs in Tonbridge and Malling November 2017 by Turley

therefore remove a significant amount of remaining land available for potential office use, likely to tip the balance towards undersupply or at least providing limited flexibility for choice to suit differing employment needs. I have also had regard to the identification of the appeal sites in the 2014 ELR as being amongst some of the better employment sites in the Borough considered at that time, in qualitative terms.

16. Conclusions on the supply/demand balance in the Turley Update are made with reference to the reported level of demand in the 2014 ELR, setting out, for strategic planning purposes to 2031, moderate market demand for offices. The report does highlight that as a result of losses of office supply elsewhere, the remaining supply is almost exclusively at Kings Hill despite wider demand within the borough, and also that a lack of new sites risks limiting choice and could constrain demand in other parts of the borough. It goes on to say that there remains a qualitative need to ensure that future provision is better aligned to the needs of the market, in particular small and start-up businesses. The report also highlights the need to ensure new office provision responds to latent demand from existing office occupiers, helping to facilitate their expansion where appropriate, and that this could involve smaller scale office units, close to the main town centres, public transport and services. The 2014 ELR and Turley Update together take account of the likely need for adaptation within Kings Hill business park to suit a changing market.
17. The Appellant highlights that within south-east England, business parks account for only 14% of the built stock of employment uses and that less than 1% of all south-east home counties business park stock in schemes over 500,000 square feet exists in the south-east M25 regional sub-market. The Appellant also states that the average floorspace size in deals concerning the take up of office space and take up of such space for business parks generally in the region has diminished. Furthermore, in terms of Kings Hill it is highlighted that the average floorspace size in deals over those last 10 years has been at a level relating to fairly small office space.
18. The Appellant also points to only 24 pre-let developments having occurred in the wider M25 market region over the last 10 years with demand focussed on the medium scale range. Reference is also made to average take-up of space in the south-east M25 regional submarket over the last 10 years as being only 3% of the wider M25 market. Furthermore, Kings Hill business park is referred to as having noticeably lower average transaction size, with no pre-lets over the last 10 years and no speculative development at all since 2006. Additionally, the Appellant draws comparison with Oxfordshire, Surrey and Berkshire in respect of average office rents over the last 10 years. Whilst this shows Kent to have been noticeably lagging behind Surrey and Berkshire, it is comparable with Oxfordshire. This also relates to selected counties and does not provide the full picture. These factors therefore show some comparative weakness but in themselves do not demonstrate no likely future demand for new office space or other development listed in policy E1(r). Rental levels for Kings Hill have also generally grown over recent years, further indicating some degree of stability.
19. There are vacant units within the business park as a whole although it is disputed as to the extent to which this is the case and its significance. Nevertheless, based on the Council's assessment of vacancy, including parts of the park not controlled by the Appellant, the level of vacancy is not unusually

high, particularly taking account of a margin to take account of the need for choice due to differing demands. This is notwithstanding the Appellant's case that vacancies are projected to increase.

20. The demand for smaller-scale office floorspace is reflected in recent occupation of a significant amount of the space in Kings Hill business park controlled by the Appellant, through the subdivision of existing buildings, including provision for small offices. Provision for such floorspace is therefore already taking place and able to be accommodated at Kings Hill. I acknowledge that in making some comparisons with the wider region and other counties in south-east England in recent years, comparative demand for office space generally has not been as high at Kings Hill. Nevertheless, that small office users are occupying space in Kings Hill indicates demand and availability here.
21. While existing floorspace at Kings Hill business park is able to provide the choice and flexibility of space relating to differing user demands, speculative investment into the development of new buildings incorporating purpose built small office units would be unlikely in terms of the risk involved in filling the space and viability. Notwithstanding viability, which I shall come on to, it is however unclear as to the extent to which existing available space will continue to be able to provide sufficient choice and flexibility, even if vacancy rates increase, particularly as such space is not purpose built and requires expensive adaptation.
22. I have had regard to the risk of demand not being met in other parts of the borough were all the identified need for new office space to be accommodated at Kings Hill business park. Nevertheless, whilst Kings Hill does not include one of the borough's main town centres, I have taken account of the situation whereby the settlement has a high degree of accessibility to and from it by road and via the nearby rail station, the provision of services and facilities including those referred to previously, as well as a significant population which is set to increase further with the completion of Kings Hill Phase 3. The available supply of land at Kings Hill therefore has the potential to meet existing and future B1a/b office demand if that were to be for development on vacant undeveloped land, notwithstanding existing scope and demand for subdivision of existing office space.
23. In terms of viability, it is evident from the submissions that in order for the construction of new office floorspace to be a viable proposition this would be likely to need public sector subsidy, which is not disputed by the Council. However, whilst this has occurred elsewhere, I have no substantive evidence from the parties to indicate where this would come from, its availability, amount or terms, or that it has been explored by the Appellant in the case of the appeal sites. Nevertheless, even were public sector involvement to be necessary and available, such reliance indicates a currently weak and uncertain position in terms of committing to build new office space at least in the short term.
24. The assessed need in the 2014 ELR and Turley Update does not account for the other non-office uses allocated for the sites in policy E1(r). There is already a range of facilities and services within Kings Hill, including leisure and education provision, together with shops and health services. Nevertheless, unlike most of the other business parks referred to by the Appellant in this context, that at

Kings Hill does not have a hotel, nor does the settlement as a whole despite its continued growth and generally well occupied business park.

25. I note that a marketing exercise was undertaken in 1997 for hotel development, with no interest shown. Nevertheless, a report undertaken on behalf of the Appellant in 2007 highlighted a clear marketing opportunity to develop a mid-market hotel including conference facilities, which was subsequently promoted. However, again no such hotel or other visitor accommodation has been forthcoming.
26. It is disputed as to the extent to which appropriate marketing has been carried out for employment uses on the sites. I acknowledge that over a significant period of time to the present day there has been significant marketing of the Appellant's portfolio including the availability of a master plan brochure, the Appellant's website, targeted mailers, databases, connections with Locate in Kent, various events and social media. This together with clear development plan policies setting out allocated uses on what is a well-established and known business park would generally provide good awareness of opportunities.
27. Despite this, there is little specific evidence provided of pro-active promotion of the appeal sites in recent years, notwithstanding that relating to hotel and conference use undertaken a number of years ago, and acknowledging the existing presence within Kings Hill of some of those non-B1a/b office uses referred to within policy E1(r). Particularly given the lack of a hotel, and the more recent and future further growth of the settlement through Kings Hill Phase 3, I therefore consider that there remains some reasonable prospect of such a use to come forward on at least one of the sites.
28. For the above reasons, as there remains some scope for future development of the appeal sites for the uses set out in policies CP21 and E1(r), the proposals would not only be contrary to those policies but, having regard to paragraph 120 of the Framework, there would be a loss of employment land where there remains some reasonable prospect of applications coming forward for those uses. I have considered this issue further in the planning balance.

#### *Character and appearance*

29. I will firstly consider this issue in relation to sites 5.1 and 5.6, relating to appeals A and D, located amongst existing employment buildings. Each of those existing buildings generally comprise of a large single floorplate structure set comfortably within its plot and set back from the road frontage, with associated adjacent surface level parking areas. The streetscenes are therefore characterised predominantly by the general spaciousness and openness that such configurations provide, which in the case of Kings Hill Avenue takes the form of a wide boulevard. This also allows the coexistence of the varying sizes, heights and designs of the buildings, without any clear consistency between them in these respects.
30. The proposed residential buildings would be likely to be seen clearly as such in comparison with the general single floorplate nature of those existing employment buildings referred to above. This is particularly given the likelihood, as shown on the illustrative plans, of more than one block on each of the sites, mostly with individual footprints smaller than for those existing buildings in the vicinity, and with parking areas in between the blocks.

Individual storey height requirements may also be different to those of neighbouring employment buildings.

31. However, the illustrative plans demonstrate how the buildings, comprising varying sized blocks of flats, could be set back from the adjacent roads with landscaped space and the parking areas around them. As such they would be likely to maintain the fundamentally open and spacious characteristics of the locality, albeit that the parking areas would generally be more broken up than is commonly the case in the vicinity. With heights of up to 3 and 4 storeys, they would also not appear out of place with the varying heights of neighbouring buildings. The appearance of the buildings would also be given more detailed consideration at the reserved matters stage.
32. Additionally, in respect of site 5.1, this is only a short distance from residential development comprising Kings Hill Phase 3 seen clearly from the eastern end of Kings Hill Avenue on the opposite side of the roundabout at the junction with Tower View, with only the office building at 1 Tower View in between. The proposed development on site 5.1 would therefore not be clearly isolated from existing residential development and so would not be unexpected in that slightly wider existing context.
33. The proposed development on site 5.1 would be likely to significantly screen sight of woodland to the rear of the site. However, the general open and spacious character of the area would be reflected by the open spaces around the buildings. Furthermore, the woodland would still be likely to be glimpsed from the road.
34. In respect of site 5.6, this is not in a prominent location in respect of the main through boulevard of Kings Hill Avenue. Whilst the proposed development would be visible from the adjacent A228, as well as being set back from that road it would be likely to be significantly softened or screened by an intervening row of mature trees.
35. The nature of the use would be clearly different to that of the neighbouring employment uses at both of the above sites. In this respect, the employment uses would be likely to have reduced activity associated with them in the late week-day evenings and at weekends. However, the developments, given the number of proposed residential units, would be likely to generate a significant amount of their own activity and vitality. Furthermore, in being respectively either adjacent or close to the main through road of Kings Hill Avenue, prospective residents of those proposed developments would have good accessibility to local facilities and services including school and shops.
36. Residential properties have the potential to generate associated outdoor paraphernalia such as seating, play equipment or washing lines. However, it is likely that the extent of this associated with individual units would be limited given the intention shown on the illustrative plans for flats, and therefore less scope for each to have its own private outdoor space. Furthermore, landscaping to ensure an acceptable appearance to the areas around the buildings could be secured through any future reserved matters applications.
37. In respect of site 5.2/5.3, this is a large plot on the edge of Kings Hill that is clearly visible from the footpath running through the site, and to varying degrees from surrounding public vantage points, including those identified in the submitted Landscape and Visual Impact Assessment (LVIA).

38. The proposed development would be segregated from the Kings Hill Phase 3 housing to the south by a combination of the existing 3-storey Rolex building and a belt of woodland. However, the close proximity to the Rolex building would provide visible connectivity between the proposal and the existing settlement. The frontage of the Phase 3 development is also seen to an increasing extent on the approach along Tower View from the A228. Although not immediately adjacent to that development, the proposed housing would therefore not be an unexpected feature in the context of that part of Kings Hill, also given the existing relationship between Phase 3 housing and the non-residential Rolex building.
39. Additionally, from the adjacent A228, on the approach to Kings Hill, it is likely that the proposed development at site 5.2/5.3 would be at least partially screened by the intervening roadside bund and planting, thereby lessening its prominence. It would also be seen in the context of urbanising features including the tall street lighting along the A228. The same would apply to varying extents in terms of visibility from other vantage points in the locality to the north and north-east of the site from where intervening vegetation would also provide softening or screening.
40. The proposed development would be clearly visible at close range from the pathway running through the site. Whilst it would significantly increase the amount of built form in the vicinity, it would nevertheless still be seen in the context of the existing presence of the Rolex building. Furthermore, the illustrative masterplan demonstrates how a path could be retained within an open, green corridor so as to maintain an attractive route, albeit with a different outlook.
41. In longer range views from the downs to the north the visual prominence of the proposed development would be likely to be significantly restricted by intervening distance and the context of its close relationship with the existing settlement of Kings Hill. I have also had regard to concerns about the closing of the gap to neighbouring settlements in respect of development on site 5.2/5.3. Notwithstanding that the site is allocated for development, there would remain a significant buffer of open countryside between the proposed housing and such existing settlements.
42. I have taken account of an extant planning permission for an office campus on part of site 5.2/5.3 which would increase the developed area of this part of Kings Hill were it to be implemented as a fall-back position in the event of the appeal being dismissed. Whilst the office campus would draw more attention to the built form of this part of the settlement edge, it would be seen largely alongside the existing Rolex building and set well away from the A228. Regardless of whether or not its non-residential form would be a significant differing factor to the residential scheme proposed, I have therefore afforded limited weight to this factor.
43. For the above reasons, I conclude on this issue that the proposed developments relating to appeals A, B and D would not cause unacceptable harm to the character and appearance of the surrounding area in each case. As such, in respect of this issue, they would accord with policies CP24 of the Core Strategy and SQ1 of the Tonbridge and Malling Borough Council Managing Development and the Environment Development Plan Document (the MDEDPD) which together, amongst other things, require development to be designed to

respect the site and its surroundings, to protect, conserve and, where possible, enhance the character and local distinctiveness of the area and the distinctive setting of, and relationship between, the pattern of settlement, roads and landscape, urban form and important views. In respect of this issue, they would also accord with section 12 of the Framework which relates to achieving well-designed places. The Council, in its decision notice, also refers to paragraphs 180 and 182 of the Framework in respect of this issue. However, those paragraphs relate to the section regarding ground conditions and pollution and so are not directly relevant to this issue.

#### *Other matters*

44. I have had regard to concerns about potential conflicts between office traffic and pedestrians and children playing. Concerns have also been expressed generally about the impact the proposals would have on Kings Hill's already pressured road networks, causing more congestion and pollution levels, particularly at the Ashton Way roundabout where it meets the A228; future capacity issues on the A228 and junction 4 of the M20; problems with parking at the rail station; the already increased on-street parking and effect on traffic flows. In all of these respects, notwithstanding my conclusions on the specific matters relating to highway safety concerning Appeal C, I have received insufficient substantive evidence that traffic levels and provision for traffic, pedestrians and parking would be unsuitable. Furthermore, I note that no objections have been received from the highway authority on such grounds.
45. Concerns have also been raised about the loss of green space for informal recreation. In respect of sites 5.1 and 5.6, relating to appeals A and D, there is no such existing provision and measures to secure adequate external space around the buildings concerned could be secured at the reserved matters stage. In respect of Appeal B, footpath access through the site, linking to the adjacent countryside, would be maintained. Provision has also been made through planning obligations for contributions to be made towards local parks and gardens and outdoor sports facilities to mitigate for the additional impact of the proposed developments on them. There would therefore be adequate provision in respect of this matter.
46. I have also had regard to concerns over the proposed increase in the numbers of houses in Kings Hills, relating to their sustainability in the context of insufficient local services such as doctors, schools and public transport to serve them. However, I have received insufficient substantive evidence to demonstrate that such services would be negatively impacted upon by the proposed developments. The proposals also include provision, through planning obligations, for appropriate contributions to be made in order to mitigate any potential impacts on local infrastructure.
47. I have had regard to concerns raised by Berkeley Strategic Land Ltd (Berkeley), who control land to the north of Kings Hill known as Broadwater Farm, if provision for a vehicular access between that land and site 5.2/5.3, relating to Appeal B, was not incorporated into the proposals. In this regard, I note the submission by Berkeley of a suggested condition and planning obligation clause to ensure that such a link is provided for.
48. The Broadwater Farm land concerned is shown as allocated for development in the emerging Tonbridge and Malling Borough Council Local Plan (the emerging Local Plan), for a large housing scheme, with a requirement for links to be

provided with Kings Hill. Such links would enable convenient and sustainable access to the existing facilities, services and employment locations of Kings Hill by those residents of any future development of that Broadwater Farm site. The services and facilities associated with that development, such as a secondary school or health centre, would also be likely to benefit prospective occupiers of the appeal site and residents of Kings Hill generally.

49. However, as referred to previously, the emerging Local Plan remains unadopted and at a stage whereby outstanding objections are still to be considered. In any case, I have received insufficient substantive evidence to indicate that such an access via site 5.2/5.3 would be the only possible location for providing adequate access to Kings Hill or that, without it, any Broadwater Farm development would definitely be sterilised.
50. Furthermore, the appeal proposals would have direct accessibility to the rest of Kings Hill and its existing shops, services and facilities, including primary schools and make provision for necessary local infrastructure contributions within s106 Agreement planning obligations. As such, the Broadwater Farm proposals would not be necessary to make the appeal schemes acceptable.
51. A requirement for such a link via the appeal site would also cause potential delay to the occupation of the proposed development on the appeal site, pending approval of link road details and its implementation. Initially, there would also be a likelihood of uncertainty in progressing a reserved matters application for the detailed site layout whilst the emerging Local Plan remains unadopted.
52. For the above reasons, I have afforded little weight to this factor of access provision via site 5.2/5.3 relating to the inclusion of the Broadwater Farm site in the emerging Local Plan. As such, and for those same reasons, it would also be inappropriate and unreasonable to make provision for such an access through condition and/or planning obligation, albeit that they would only apply were the Broadwater Farm development to be included in the new Local Plan once adopted and with a requirement for links to be provided. The omission of a clause in the submitted s106 Agreement would therefore also not be sufficient reason to dismiss the appeal concerned.
53. Berkeley also refers to another development at Abbey Barn South in High Wycombe where a s106 agreement was secured to ensure that a road was provided to the boundary of the adjacent sites. However, I do not have the full details of that case and it is unclear as to whether the same circumstances arose as in this case concerning the status of the relevant development plan. I have in any case determined these appeals on their own merits.

#### *Conditions and planning obligations*

54. The Council has submitted 27 suggested conditions in relation to Appeals B and D and 28 for Appeal A, were I minded to allow the appeal. These are generally agreed by the Appellant. I have considered these in the light of advice in the National Planning Practice Guidance and have, in the interests of clarity and precision, amended some of the wording.
55. For Appeal A, the additional suggested condition (No 6) would require a new footway link to be provided. However, I have received no substantive evidence to demonstrate a clear need for separate provision for such a pedestrian access

over and above that which would be provided by the proposed main and emergency access shown on the submitted plans. This is particularly given the positioning of those accesses on each of the two sides of the site fronting onto existing roads, such that any additional pedestrian route would be unlikely to significantly improve links to the wider area. I have therefore omitted that condition.

56. I have referred to the condition numbers, cross referenced to the attached annex, in brackets for clarity purposes. The conditions for all three sites are the same other than with different respective drawing references. Therefore, where I have referred to each of the common conditions in the singular, this should be read as referring to all three cases.
57. The standard conditions (1, 2 and 3) to ensure the submission of details relating to the reserved matters, and appropriate timescales for this and the subsequent commencement of development, would be necessary. In this respect, it was agreed by the Council and Appellant at the Inquiry that application for approval of reserved matters shall be made before the expiration of 2 years rather than 3. This would be necessary in order to accelerate housing delivery, in the interests of boosting the supply of homes. For certainty, a condition requiring each reserved matters application to be in general conformity with the associated submitted land use and building height parameter plan (4) would also be necessary.
58. In the interests of highway safety, conditions would be necessary to secure the completion, retention and maintenance of the proposed access arrangements shown on the relevant means of access plan (5); provision and retention of vehicle parking and turning areas as approved at the reserved matters stage (14); and the submission and implementation of a Construction Management Plan, also in the interests of residential amenity and ecological features (16).
59. In the interests of the character and appearance of the site and surrounding area, conditions would be necessary to secure details of external materials (6); finished floor and ground levels (7); hard and soft landscaping, including an implementation programme for soft landscaping and measures to replace any trees or shrubs removed, that die, or become seriously damaged or diseased within 5 years of planting (8); the submission of a further arboricultural report to ensure the protection of existing trees and shrubs identified as to be retained (10); details of boundary treatment, also in the interests of residential amenity (12); an external lighting scheme, also in the ecological interests of the site (13); and a scheme for the collection and storage of refuse, also in the interests of facilitating the collection of refuse (23).
60. To ensure appropriate provision for open space, a condition would be necessary to secure details, implementation and maintenance of amenity space, children's play and natural green space (9). In order to protect the amenities of prospective residents, a condition would also be necessary to secure the provision of an appropriate scheme of acoustic mitigation (24). Furthermore, in the interests of public safety and human health, conditions would be necessary to secure the results of site investigations relating to contamination and any required remediation together with the verification of such remediation works undertaken (25 and 26).
61. In order to ensure the appropriate landscape and ecological management of the sites, a condition to secure the submission and implementation of a

Landscape and Ecological Management Plan would be necessary (11). In the interests of ensuring that any items of archaeological interest on the sites are recorded, it would be necessary to secure the implementation of an archaeological watching brief (27).

62. A condition to secure provision of facilities for low-emission vehicles would be necessary in the interests of environmental sustainability (15). To prevent water pollution conditions would be necessary to ensure foul water is disposed of directly to the mains sewer (17), and to prevent infiltration of surface water drainage into the ground other than as permitted (20 and 21). Furthermore, in the interests of ensuring provision for sustainable drainage measures and prevention of flooding, as well as the protection of controlled waters and ecological systems, conditions to secure a detailed sustainable surface water drainage scheme would be necessary, together with its implementation, including verification of works, maintenance and management (18, 19 and 22).
63. A Planning Obligation has been submitted for each appeal scheme making provision for the following:
- 40% affordable housing, in accordance with policy CP17 of the Core Strategy.
  - Appropriate payments towards primary and secondary education, community learning, libraries, youth services, social services, healthcare, parks and gardens, outdoor sports, and the Gibson Drive Junction Improvement Scheme in accordance with policies CP25 of the Core Strategy concerning the securing of infrastructure and service provision, and policy OS3 of the MDEDPD concerning provision of open space. These would be necessary in the interests of mitigating the likely additional demands on such infrastructure and services from prospective residents and as provision for the relevant facilities would not be provided on the site.
  - The submission, for the approval of the Highway Authority, of a Travel Plan, in accordance with paragraph 111 of the Framework, necessary as the proposals would be likely to generate significant amounts of movement, and in the interests of sustainable travel.
64. The Council and Kent County Council have submitted statements of compliance with the Community Infrastructure Levy Regulations 2010 (CIL Regulations). Based on that evidence, and relevant development plan policies, I am satisfied that the provisions would meet the tests set out in paragraph 56 of the Framework and Regulation 122(2) of the CIL Regulations.

#### *Planning balance*

65. The Council cannot currently demonstrate a five year supply of deliverable housing sites (5 year HLS), it being between 2.3 and 2.5 years, a reduction from previously published figures in recent years. Although the Council is attempting to address this situation, the extent to which this will affect the 5 year HLS is unclear. The proposals would significantly contribute to the supply and mix of housing in the borough which, in the above context, particularly due to the extent of current under-supply, would amount to a substantial benefit. Furthermore, with 40% of the proposed dwellings being affordable, despite it being a development plan policy requirement, this would

significantly add to the benefit, given that such housing is much needed in the borough.

66. I have found that the proposals would be contrary to Core Strategy policy CP21 and policy E1 of the DLADPD and with regard to paragraph 120 of the Framework, there would be a loss of employment land where there remains some reasonable prospect of applications coming forward for those uses relating to the relevant parts of Policies CP21 and E1. I have also taken account of paragraph 80 of the Framework which, amongst other things, states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. In this respect, there remains some demand for offices in the borough, particularly small units, based on labour demand forecasts and projections from 2017 even if the buffer relating to that need were to be considered overly cautious.
67. However, there is still a degree of uncertainty as to whether the delivery of development plan compliant uses on the sites concerned will be possible in the future. This is based on factors which include the likely reliance on currently undefined public sector intervention relating to office uses, and the only moderate demand for them, which is also more specifically towards small flexible units. The Appellant is also currently addressing at least some demand for smaller units through the sub-division of existing buildings. These are factors that weaken the likelihood of development plan compliant uses coming forward on the appeal sites in at least the short term.
68. It is also relevant to take account of the significant length of time that the sites have remained vacant, regardless of the level of pro-active marketing relating to the appeal sites and the generally limited extent of speculative office development and pre-letting in the wider region. Furthermore, despite its growth as a settlement with a variety of services and facilities, Kings Hill is not identified as the location where there is most need for office space in the borough. Although the potential for such space is limited elsewhere, it nevertheless adds to the weakened situation. It is therefore not clearly apparent that the local or wider economy would be substantially affected were the appeal sites to be no longer available for employment use.
69. Nevertheless, whilst it does not include one of the borough's main town centres, I have taken account of the situation whereby Kings Hill has a high degree of accessibility to and from it by road and via the nearby rail station, the provision of services such as schools, shops, leisure and health facilities, as well as a significant population which is set to increase further with the completion of Kings Hill Phase 3. The available supply of land at Kings Hill therefore has the potential to meet existing and future B1a/b office demand if that were to be for development on vacant undeveloped land, notwithstanding existing scope and demand for sub-division of existing office space.
70. Although there are other non-office uses referred to under policy E1(r), and limited evidence has been submitted relating to the need or demand for such uses, I have also had regard to the existence already of a fairly good range of different uses within Kings Hill. The lack of a hotel is a noticeable omission which weighs against the proposals to some extent.
71. In light of the Council's 5 year HLS position, the tilted balance referred to in paragraph 11(d) of the Framework is triggered. As such, the combination of

the above factors causes me to find, in respect of Appeals A, B and D, that the adverse impacts relating to loss of employment land would not significantly and demonstrably outweigh the benefits of providing the proposed levels of new housing, including affordable housing. I have also found that the proposed developments would not cause unacceptable harm to the character and appearance of the surrounding area.

## **APPEAL C**

### **Main Issues**

72. The main issues are:

- i) whether or not any of the woodland on and adjacent to the site comprises ancient woodland, and if so, the effect of the proposed development on it;
- ii) the effect of the proposed development on the character and appearance of the surrounding area, in particular having regard to whether or not it would have any harmful impacts in this respect;
- iii) the effect of the proposed development on the living conditions of nearby residents in respect of noise and disturbance;
- iv) the effect of the proposed development on the safety of the highway network.

### **Reasons**

#### *Ancient woodland*

73. Paragraph 175(c) of the Framework sets out that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists. Ancient woodland is defined in the Framework as an area that has been wooded continuously since at least 1600 AD. It includes ancient semi-natural woodland and plantations on ancient woodland sites.

74. I will firstly consider whether the woodland referred to in the submissions and included in Natural England's Ancient Woodland Inventory (AWI) as Warren Wood is actually ancient woodland. This is taking account of the acknowledgement that the AWI represents a provisional identification of ancient woodland and that mapping evidence is not infallible, and notwithstanding the Environmental Statement assumption of it being ancient woodland. I also note the Appellant's reference to an assumption of ancientness in the AWI if woodland is shown on early 19<sup>th</sup> century Ordnance Survey (OS) maps unless other evidence shows otherwise. The Appellant highlights that because of the relatively recent date of those OS maps, they cannot be relied upon to demonstrate ancientness, particularly in the circumstance whereby woodland planting became increasingly common after 1600.

75. Notwithstanding the above concerns with the AWI, and regardless of the dispute as to where the burden of proof lies, several older maps have been submitted alongside the relatively more recent OS ones. This has enabled a

more informed assessment as to whether or not Warren Wood has been continuously wooded since at least 1600 AD.

76. The earliest of these is one produced by Simonson, dated 1596. This indicates no woodland present in the location of Warren Woods at that time. I also note that a submission entitled The Survey of Kent by historian Colin Flight dated 2010 refers to this as being far more accurate than two previous maps he comments on.
77. Nevertheless, I also note Flight's reference to a document dated 1596 written by William Lambard entitled A Perambulation of Kent (second edition), also an appeal submission. That document refers to how various features of the Simonson map were more exactly shadowed and traced than for those that he knew of that had gone before. However, the features listed do not include trees or woodland. I also note that Flight highlights that 'we may be sure that he [Lambard] had helped to get this map published'. Therefore, whilst not suggesting that the claims of greater accuracy were untrue, that support cannot be clearly treated as being impartial. These factors therefore somewhat weaken reliance on Simonson to clearly show that there was no woodland in the area concerned at that date.
78. The next oldest maps submitted were those by John Speed 1611 and Blaeu 1646. These show woodland at the location concerned. Flight refers to the former, in its original form, as being hardly anything more than a somewhat inaccurate, somewhat simplified copy of Simonson's map. However, that does not rule out the potential for Speed to have made his own observations on the ground and added features, particularly if he had different interests or emphasis. In that context, the addition of woodland in the location concerned cannot be discounted, particularly in light of Lambard's lack of mention of trees and woodland in relation to Simonson's map. From the evidence submitted, the Blaeu map is described as having been based on Speed 1611. However, this again doesn't discount the possibility for his own observations to have been added. Due to the small number of years between 1600 and 1611, it is unlikely that any trees recorded in 1611 would have had sufficient time, if planted since 1600, to reach a maturity sufficient to warrant recording.
79. The combination of the above factors lead me to consider that there was a significant likelihood of woodland having been present in the location of Warren Wood prior to 1600. Furthermore, a map by Speed 1760 also shows woodland in the location concerned as does the East Malling Parish Tithe map of 1839 and OS maps of the 18<sup>th</sup> and 19<sup>th</sup> Century, also submitted, agreed by the Appellant to provide good map-based evidence from 1760. Together with my findings in respect of the earlier maps, this combined evidence demonstrates to a good degree of certainty that woodland has been present there continuously to the present day. On that basis Warren Wood would meet the Framework's definition of ancient woodland. I have afforded this substantial weight, particularly given the high bar set out in the Framework for the protection of ancient woodland.
80. Also submitted during the appeal, was a map surveyed by Abraham Walter dated 1695 (the Walter map). It is disputed by the Council and Appellant as to whether this demonstrates the presence of woodland at Warren Wood at that time. The analysis of this map to ascertain whether there was such presence relies to a large extent on the location of roads shown and labelled on that

map, and the comparison of their location, along with that of other woods and a brick works, with late 19<sup>th</sup> Century OS mapping. A key point of reference used is the road from Watlington to Well Street on the Walter map which the Appellant claims is further to the west than indicated by the Council. However, when comparing the relative positions of that road with others referred to, this shows the degree of separation on the Walter map to be significantly less than for those labelled by the Appellant on the OS mapping. The evidence in this respect does not therefore clearly show an absence of woodland at Warren Wood in 1695. It demonstrates the difficulty in pinpointing that location on the Walter map with sufficient accuracy, notwithstanding the Council's claim that it shows it within an area of woodland. I have therefore afforded little weight to this map.

81. I have had regard to the Boughton Lane appeal case<sup>2</sup> in which the Secretary of State agreed with the Inspector that for the purposes of that appeal the woods concerned in that case were not ancient. However, the earliest mapped evidence dated from 1840, and my colleague found that to be the over-riding factor. This appeal therefore differs in terms of the presence of maps dating back earlier.
82. Furthermore, in respect of the AWI, just because the accompanying datasheet suggests the availability of limited survey information and an uncertain ancient status, that does not mean that it is not ancient, particularly given the high bar set by the Framework for its protection. In any case, I have had the benefit of additional mapping evidence to consider in addition to that used as the basis for inclusion on the AWI.
83. I have had regard to survey evidence provided by the Council relating to trees within Warren Wood and the surrounding area claimed to be of such an age as to corroborate the mapping evidence. The method for determining the age of the identified ash tree within Warren Woods and the significance of two other trees outside of the woods in terms of determining the status of Warren Wood is disputed. However, even if the Appellant is correct that the trees concerned were either not old enough to be ancient or not significant in terms of this appeal due to their location, I have found that the mapping evidence is sufficient to demonstrate that the wood concerned is ancient woodland.
84. I have also had regard to the evidence relating to the nature of the woodland concerned in terms of flora and fauna. In this respect, I have carefully considered the Appellant's claim, and associated evidence, that Warren Wood has a modest biodiversity value at best. However, even if that is the case it is not in itself a determining factor as to whether it is ancient woodland. It would not over-ride my finding that the woodland is ancient woodland based on the mapping evidence. As such, it is not necessary for me to deal with the biodiversity value of the woodland in detail in respect of the degree of harm that would be caused. The presence of coppiced sweet chestnut trees within Warren Wood is also not unexpected in the context of the use of such trees generally in the production of hops in Kent dating to before 1600.
85. Having regard to paragraph 175(c) of the Framework, notwithstanding the existing presence of a fairly narrow footpath, the proposals would include the loss of a strip of ancient woodland, including a number of trees and ground flora, to make way for a wider emergency vehicular access to replace the

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<sup>2</sup> Appeal Ref: APP/U2235/A/14/2227839

- footpath. Although it would represent a small proportion of the woodland as a whole, and much smaller in respect of Borough wide ancient woodland, that loss would nevertheless be noticeable.
86. Paragraph 175(c) does not make provision for the biodiversity value of lost ancient woodland in considering whether or not the development should be refused. Furthermore, the purpose of the clearance works would not be to facilitate a trackway for woodland management or improvement purposes, rather a formal emergency access to serve the proposed housing. Neither have I received any substantive evidence that the tree felling and flora removal would otherwise be likely to be carried out for woodland management purposes, despite the biodiversity benefits of doing so claimed by the Appellant.
87. There is also no substantive evidence of a need for the existing path to be widened to make way for a bridleway in this location. This is both in terms of there being no formally agreed route and that the width of the existing path would in any case be wide enough for such a purpose, albeit that a wider route would be preferable.
88. The submitted means of access plan shows the proposed access road, running alongside the eastern side of Warren Wood, as being 5.5 metres wide. That would also include provision for a 12.5 metre buffer between the road and wood. Government Guidance<sup>3</sup> sets out that for ancient woodland there should be a buffer zone of at least 15 metres to avoid root damage. As such, there would be a risk to health of those trees within the ancient woodland at its eastern end through root damage from road construction and I have received insufficient substantive evidence to indicate to the contrary.
89. The Appellant has submitted an indicative alternative layout for the main access, involving a reduction in the carriageway width to 4.8 metres. It is stated that this would enable a 15 metre buffer from the road. However, the indicative layout is not drawn to a known scale. In this respect, I also note that that plan shows the section of the new road at its southern end closer to the woodland than the section north of the first pinch point. That southern end section is also drawn slightly but noticeably wider than the rest to the north, and yet annotated with a dimension of 4.8 metres. The indicative layout plan provides insufficient certainty, and does not explicitly demonstrate, that a minimum 15 metre buffer would be achieved. I have no substantive evidence to indicate otherwise.
90. Furthermore, the indicative plan shows the footway running through the buffer zone. In terms of the proximity of pedestrian activity close to the woodland this would be similar to the existing situation, albeit with the likelihood of extra movements associated with prospective new residents. There would however remain the risk of root damage from the construction of the footway, in the absence of sufficient information to demonstrate that a no-dig solution could be utilised in this case.
91. Any root damage caused by the construction of the proposed main access road and associated footway would therefore have the potential to cause a

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<sup>3</sup> Ancient woodland, ancient trees and veteran trees: protecting them from development 2018 (from the Forestry Commission and Natural England)

deterioration of the eastern end of the ancient woodland through the loss or reduced health of existing trees.

92. For the above reasons, I conclude on this issue that the woodland known as Warren Wood on and adjacent to the site comprises ancient woodland, and that the proposed development would result in the loss or deterioration of part of it through the creation of the proposed emergency vehicle access and the main access road and associated footway. In accordance with paragraph 175(c) of the Framework, I will consider whether there are wholly exceptional reasons for allowing the appeal, despite the loss or deterioration of ancient woodland, in the planning balance.

*Character and appearance*

93. The proposed development would be clearly separated from the existing settlement by intervening woodland. From vantage points on footpaths adjacent to the site to the east and west and on roads and paths beyond to the north and north-west identified in the LVIA, it would be seen as an isolated form of development set within the confines of woodland on three sides. Although it would be separated from the wider open countryside to the west and north-west by a row of trees, that row is only narrow and not reflective of the denser nearby woodland that creates a more clearly defined edge to the open countryside in this locality.
94. Furthermore, particularly in the winter when not in leaf, that narrow row of trees would only be likely to provide a degree of softening, as opposed to significant screening, from those vantage points on paths and roads set apart from the site to the north and north-west referred to previously. In daytime the proposed development would be seen to some extent against the fairly dark backdrop of the existing mature woodland. Nevertheless, and regardless of the details that would be considered at the reserved matters stage, it would be likely to stand out as a stark, incongruous and incompatible form of development not clearly related to the existing settlement. After dark, light spill from the proposed houses and associated street lighting would also be likely to be clearly seen from those road vantage points referred to above, in the context of otherwise dark woodland areas on three sides of the development. This would further highlight its stark separation from the main existing settlement.
95. I acknowledge that the Broadwater Farm allocation in the emerging Local Plan for a large housing scheme, referred to previously, would be to the west of the site. However, the emerging Local Plan remains unadopted and at a stage whereby outstanding objections are still to be considered. As such, I have attached little weight to this factor.
96. Amber Lane runs all the way up to the point at which the new access road leading to the proposed development would continue, where there is currently only a fence and gate in between. The land to the north of the existing road is therefore clearly visible from the end section of Amber Lane. That land currently comprises woodland either side of an un-made-up fairly informal footpath running north-eastwards through it, providing a pleasantly informal transition to the open countryside beyond.
97. The proposed access road would replace the existing footpath, including the removal of existing trees, with a formal road, along which would be a clear line

of sight from the end of Amber Lane up to where it would turn into the main housing site. This would introduce significant hard surfacing together with associated signage and lighting as well as the general movement of vehicular traffic. Any proposed landscaping and new planting either side of the access road would be unlikely to significantly distract from those urbanising features. As the proposed housing would be unlikely to be seen from Amber Lane, the role of the proposed access road as serving a formal residential development would not be immediately apparent. The introduction of the proposed access road would therefore appear as an incongruous and uncharacteristically formal and dominating feature in that immediate informal context.

98. The proposed emergency access would comprise the widening of the existing footpath, introduction of a firmer surfacing material, albeit designed to minimise its hard appearance, and the loss of a strip of woodland trees. Although not to the same extent as for the main access road, in the context of the existing pleasant informal transition from the settlement edge to open countryside that is also provided here, those changes would further add to the incongruous degree of formality referred to above.
99. For the above reasons, and whilst having had regard to the submitted LVIA, I conclude on this issue that the proposed development relating to site 5.4 would cause unacceptable harm to the character and appearance of the surrounding area. As such, in respect of this issue, it would be contrary to policy CP24 of the Core Strategy, policy SQ1 of the MDEDPD and section 12 of the Framework which set out requirements as referred to previously when considering character and appearance in respect of the other three appeals.

#### *Living conditions*

100. The proposed development would introduce additional vehicular traffic along Amber Lane. Nevertheless, the submitted evidence indicates that this would still only be likely to amount to 47 additional vehicle trips in each of the peak morning and afternoon hours. Movements would also be likely to be at slow speeds. Those houses fronting onto the road along the last section of Amber Lane are close to the existing footway but separated from the road by both that and a grass verge. Houses backing on to the road on the opposite side are also fairly close but with screening boundary treatment which would be likely to reduce any noise from Amber Lane to some degree at ground floor level. Furthermore, I have received no substantive technical evidence to indicate that the level of additional activity would cause a harmful level of noise and disturbance to the residents of those existing properties either side of the road.
101. For the above reasons, I conclude on this issue that the proposed development would not cause unacceptable harm to the living conditions of nearby residents in respect of noise and disturbance. As such, in respect of this issue, the proposed development would accord with policy CP24 of the Core Strategy and policy SQ1 of the MDEDPD which, amongst other things, requires development by virtue of its design not to be detrimental to the amenity of a settlement and for it to protect, conserve and, where possible, enhance the prevailing level of tranquillity. In respect of this issue the proposed development would also accord with section 12 of the Framework relating to achieving well-designed places.

### *Safety of the highway network*

102. The proposed development relating to site 5.4 would add up to 85 dwellings to the existing 121 dwellings served by Amber Lane resulting in a total of 206. Having regard to the KDG, the width of Amber Lane would be sufficient to serve the additional development. However, the number of additional vehicle trips, including those at peak times referred to above, would significantly add to the number of traffic movements along the road.
103. Whilst the definition of 'cul-de-sac' is disputed by the parties, in practical and usability terms, the road is currently a no through road. Having regard to the KDG, a road serving 206 dwellings would fall clearly into the category of having to meet the criteria of a major access road. Whilst such a road would preferably have two points of access, a loop with a short connection to a single point of access and a secondary emergency access link would be the alternative scenario.
104. In this case, the road would remain as a no through road. An emergency access is proposed, notwithstanding my conclusions on the issue relating to the effect on the ancient woodland. However, whilst there would also be a road loop within the proposed housing scheme, it would be a significant distance from the single point of access onto Amber Lane. The greater scope for obstructions on the more heavily used road from increased use of the existing Amber Lane, particularly in terms of accessibility for larger service, delivery or emergency vehicles, would therefore not be alleviated by the presence of that loop. Any such obstructions, particularly in the context of increased vehicle movements, would be likely to cause hazards and unusual and unexpected movements that could result in collisions between vehicles and with pedestrians. This in turn would be likely to pose a risk to highway safety.
105. I acknowledge that Amber Lane currently does not have a second access point and that the footway/cycleway, that the Council claims would serve as an emergency access, is narrow and restricted in places by vegetation or street furniture. Whilst that is not ideal, the proposals would involve a significant increase in the number of dwellings with the consequences referred to above.
106. I have had regard to the submitted Parking Note including proposed private parking restrictions along Amber Lane. This parking management scheme would enable on-street parking to be controlled in terms of location and amount, where there are currently no demarcated restrictions in place. This in turn would help to maintain a free flow of traffic and minimise any likely obstructions or hazards. The Council considers two of the spaces would be too close to the point of access into Amber Lane in respect of creating a potential hazard. Although no objections from Kent County Council as the highway authority have been received on that matter, there would in any case be scope within a condition to require the submission of a finalised, more detailed layout. There would therefore be scope to make any necessary adjustments to the layout forming part of the existing Parking Note.
107. I have also had regard to concerns relating to the reduction in availability of on-street parking as a result of the proposed parking management scheme. The survey work upon which the scheme was developed was conducted on two occasions in 2019 in the early morning on weekdays, albeit in July close to, if not just within, the period of school holidays, demonstrating varying degrees of take-up of off-street parking. The proposals would cause some displacement of

existing on-street parking and it cannot be assumed that existing off-street parking would be better utilised, due to likely variations in levels of car ownership from household to household. However, the proposed scheme would be likely to encourage greater use of such off-street parking in cases where on-street parking is only being used for some extra convenience, albeit that residents may have got used to that existing situation. Furthermore, the provision for 16 on-street spaces would be likely to allow some flexibility in respect of those varying household demands as well as for visitors.

108. Such a parking management scheme would therefore be likely to remove or materially reduce the risk of obstructions and would therefore need to be implemented in order to address the risk that could otherwise be posed to highway and pedestrian safety referred to previously. In this respect I have also had regard to the highway authority having raised no objections to the proposed development, subject to the proposed parking management scheme and emergency access being implemented. The parking management scheme would therefore need to be secured by a condition.
109. The Appellant has suggested such a condition to ensure the submission, implementation and maintenance of a parking management strategy generally in accordance with that already submitted. However, the existing Amber Lane, to which such a scheme would relate, remains private and therefore out of the control of the highway authority and is also outside of the appeal site. Having regard to the disputed submissions on this matter, I consider that there remains uncertainty as to how, or the extent to which, the operation of the scheme would or could be enforced if the proposed development, under the control of a separate developer, was to be built. In that context, it would be inappropriate to impose such a condition.
110. I have also had regard to concerns from the Council regarding the width of the new stretch of access road extending the existing Amber Lane, that would serve the proposed new housing. The submitted access plan shows this to be 5.5 metres wide which in itself would meet the required standards. However, the submissions relating to ecological issues show how the access could be designed at the reserved matters stage, indicating a 4.8 metre width. Whilst fairly narrow, I note from the KDG that it would be at the minimum width for a minor access road serving a cul-de-sac with an emergency access. If such an amended design were to be proposed it would therefore be unlikely to pose a risk to highway safety. However, this does not deflect from my findings in respect of securing a parking management scheme.
111. For the above reasons, I conclude on this issue that, in the absence of an enforceable condition to secure the proposed parking management scheme, the proposed development would have an unacceptable impact on the safety of the highway network. As such, in respect of this issue, it would be contrary to policy SQ8 of the MDEDPD which amongst other things states that development proposals will only be permitted where they would not significantly harm highway safety. It would also not meet the requirements for acceptable development on highways grounds set out in paragraph 109 of the Framework which states, amongst other things, that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. Furthermore, it would be contrary to paragraph 110 of the Framework which amongst other things states that

development should create places that are safe and which minimise the scope for conflicts between pedestrians, cyclists and vehicles.

### *Planning balance*

112. I have found that Warren Wood on and adjacent to the site comprises ancient woodland, and that the proposed development would result in the loss of part of it through the creation of an emergency vehicle access. In respect of paragraph 175(c) of the Framework I have therefore had regard to whether there are wholly exceptional reasons not to dismiss the appeal in light of that loss.
113. Footnote 58 of the Framework, whilst only setting out examples and not being a closed list, helps to demonstrate the nature or type of developments that would be considered as wholly exceptional. In itself, I consider that the proposal for up to 85 dwellings, whilst significant, is not unusually large in strategic terms.
114. Notwithstanding this, the provision of up to 85 dwellings, including 40% affordable units would make a substantial, albeit less than for the combined total for all four appeal sites, contribution to the supply and mix of housing in the borough. Again, this is particularly relevant in light of the 5 year HLS position referred to previously and the much needed affordable housing. However, given the number of houses involved, I do not consider the above benefits to be so great as to clearly outweigh the loss or deterioration of part of the ancient woodland concerned, given the high bar set in the Framework for its protection.
115. Even were the claimed increased ecological function of the woodland along the emergency access and proposed new habitat creation and planting and woodland management to be considered as benefits over and above any compensatory measures, their fairly localised nature would not tip the balance towards there being wholly exceptional reasons. Nor are there any other benefits that would do so, including those associated with the construction and operational phases such as job creation and local spending by prospective occupiers.
116. I have also found that the proposed development would cause unacceptable harm to the character and appearance of the surrounding area and have an unacceptable impact on the safety of the highway network, thereby adding to the factors weighing against the proposal. That it would not cause unacceptable harm to the living conditions of surrounding residents in respect of noise and disturbance does not deflect from or influence my findings above on the other main issues.
117. In respect of paragraph 175(c) of the Framework, there are therefore no wholly exceptional reasons for allowing the appeal. The factor of whether there would be a suitable compensation strategy does not come into consideration as there would firstly have to be wholly exceptional reasons for the loss or deterioration of ancient woodland. The proposed development would therefore be contrary to paragraph 175(c) of the Framework. The tilted balance in paragraph 11(d)(ii) of the Framework is therefore not applicable in this case.

118. I have taken account of the suggested conditions and Section 106 Agreement relating to appeal C. However, these would not render the development acceptable.

**CONCLUSIONS**

119. For the above reasons, and having taken account of all other matters raised, I conclude that appeals A, B and D should be allowed and that appeal C should be dismissed.

*Andrew Dawe*

INSPECTOR

## **ANNEX – CONDITIONS**

### **For Appeal A**

1. Details of the 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 development takes place and the development shall be carried out in full accordance with the approved details.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. Applications for the approval of the reserved matters shall be in general conformity with Drawing Number 3067/513 Rev D.
5. The development hereby approved shall not be occupied until the access arrangements indicated on Drawing Number 44300/Ph5/003 Revision A have been completed. Thereafter, the access serving the development shall be retained and maintained in accordance with the approved drawing and no development whether or not permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to the site.
6. At the time of the first submission of Reserved Matters pursuant to Condition 1, details of all materials to be used externally shall be submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with the approved details.
7. At the time of the first submission of Reserved Matters pursuant to Condition 1, a plan showing the proposed finished floor levels of the new buildings and finished ground levels of the site in relation to the existing levels of the site and adjoining land shall be submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
8. At the time of the first submission of Reserved Matters pursuant to Condition 1, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority. The scheme of landscaping shall be in general conformity to the parameter plan (Drawing Number 3067/513 Rev D). The landscaping details shall include an implementation programme for all planting, seeding and turfing. The soft landscaping shall be implemented in accordance with the approved scheme of landscaping and implementation programme. Any trees or shrubs removed, dying, being seriously damaged or diseased within 5 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the local

planning authority gives written consent to any variation. The hard landscaping works shall be implemented, in accordance with the approved scheme of landscaping, prior to first occupation of those parts of the development to which they relate.

9. The landscaping details of the reserved matters submission shall include full details of amenity space, children's play and natural green space to be provided within the site along with a timetable for provision and a scheme for future management of the spaces. The details shall include any fencing and equipment to be installed. The approved details shall be fully implemented in accordance with the timescale approved and shall be retained at all times thereafter and shall be maintained in accordance with the approved future management scheme.
10. The landscaping details of the reserved matters submission shall include a further arboricultural report to be submitted for the written approval of the local planning authority that:
  - a) identifies the trees and shrubs to be retained;
  - b) provides a comprehensive assessment of the impact of the development on the existing trees on the site and on adjoining land; and
  - c) includes measures to protect the retained trees and shrubs during the construction of the development in accordance with BS5837:2012.The existing trees and shrubs shown to be retained, shall not be lopped, topped, felled, uprooted or wilfully destroyed other than where indicated in the approved arboricultural report, and any planting removed with or without such approval shall be replaced within 12 months with suitable stock, adequately staked and tied and shall thereafter be maintained for a period of 5 years.
11. A landscape and ecological management plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The content of the LEMP shall include the following:
  - a) Description and evaluation of features to be managed.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
  - g) Details of the body or organisation responsible for implementation of the plan.
  - h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning

biodiversity objectives of the originally approved scheme. The approved plan shall be implemented in accordance with the approved details.

12. The development hereby permitted shall not be first occupied until details of all fencing, walling and other boundary treatments, and a programme for their implementation, have been submitted to and approved in writing by the local planning authority. The boundary treatments shall be implemented in full in accordance with the approved details and programme.
13. No development above the ground shall take place until details of an external lighting scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved lighting scheme.
14. None of the dwellings hereby approved shall be occupied until the areas approved, as part of the Reserved Matters, as turning and vehicle parking space have been provided, surfaced and drained to prevent the discharge of surface water onto the highway. Thereafter those areas shall be kept available for such use and no permanent development, whether or not permitted by The Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order), shall be carried out on the land so shown (other than the erection of a garage or garages, subject to gaining any necessary planning permission where not permitted by the above Order or any order amending, revoking and re-enacting that Order) or in such a position as to preclude vehicular access to this reserved turning and parking space.
15. Prior to the first occupation of the development hereby approved, details of facilities for charging plug in or other ultra-low emission vehicles, together with a program for their implementation, shall be submitted to and approved in writing by the Local Planning Authority. The facilities shall be provided in accordance with the approved details and implementation program.
16. No development hereby permitted shall commence until a Construction Management Plan, to include details of:
  - (a) parking for vehicles of site personnel, operatives and visitors;
  - (b) loading and unloading of plant and materials;
  - (c) storage of plant and materials;
  - (d) programme of works (including measures for traffic management);
  - (e) measures to prevent the deposit of materials on the highway;
  - (f) on-site turning for construction vehicles;
  - (g) measures to ensure protection of protected species and habitats during construction;
  - (h) access arrangements;has been submitted to and approved in writing by the Local Planning Authority. The construction of the development shall be implemented in accordance with the approved Construction Management Plan.
17. Foul water shall be disposed of directly to the mains sewer.
18. No development hereby permitted shall commence until a detailed sustainable surface water drainage scheme for the site, which is in general accordance with the November 2018 Flood Risk Assessment prepared by

Peter Brett Associates, has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of within the curtilage of the site.

19. No development hereby permitted shall commence until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
  - a) a timetable for its implementation, and
  - b) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.
20. No infiltration of surface water drainage into the ground is permitted other than with the written approval of the Local Planning Authority.
21. Where infiltration is to be used to manage the surface water from the development hereby permitted, it will only be allowed within those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters and/or ground stability.
22. Prior to the first occupation of any dwelling hereby approved, a Verification Report relating to the surface water drainage system, carried out by a suitably qualified professional, shall be submitted to and approved in writing by the Local Planning Authority. The Verification Report shall demonstrate the suitable modelled operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; topographical survey of 'as constructed' features; and an operation and maintenance manual for the sustainable drainage scheme as constructed.
23. Prior to the first occupation of any dwelling hereby approved, a scheme for the collection and storage of refuse for the development shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be provided in accordance with the approval details prior to first occupation of the development.
24. Prior to the first occupation of any dwelling hereby approved, a scheme of acoustic mitigation, which accords with the recommendations set out in chapter 15 of the submitted Environmental Statement, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of any ventilation or specific glazing requirements for specific dwellings. The approved details shall be implemented prior to the first occupation of each affected property and retained at all times thereafter.

25. No development shall take place other than as required as part of any relevant approved site investigation works until the following have been submitted to and approved in writing by the Local Planning Authority:

a) Results of the site investigations (including any necessary intrusive investigations) and a risk assessment of the degree and nature of any contamination on site and the impact on human health, controlled waters and the wider environment. These results shall include a detailed remediation method statement informed by the site investigation results and associated risk assessment, which details how the site will be made suitable for its approved end use through removal or mitigation measures. The method statement shall include details of all works to be undertaken, proposed remediation objectives, remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site cannot be determined as Contaminated Land as defined under Part 2A of the Environmental Protection Act 1990 (or as otherwise amended).

The submitted scheme shall include details of arrangements for responding to any discovery of unforeseen contamination during the development hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority in writing of the presence of any such unforeseen contamination along with a timetable of works to be undertaken to make the site suitable for its approved end use.

b) Prior to the commencement of the development the relevant approved remediation scheme shall be carried out as approved. The Local Planning Authority shall be given a minimum of two weeks written notification of the commencement of the remediation scheme works.

26. Following completion of the approved remediation strategy, and prior to the first occupation of the development, a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level shall be submitted to the Local Planning Authority. The report shall be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the Local Planning Authority for written approval and shall be fully implemented as approved. Thereafter, no works shall take place such as to prejudice the effectiveness of the approved scheme of remediation.

27. No development shall take place until the implementation of an archaeological watching brief has been secured, to be undertaken by an archaeologist approved by the local planning authority, so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved in writing by the local planning authority.

## **For Appeal B**

1. Details of the 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 development takes place and the development shall be carried out in full accordance with the approved details.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. Applications for the approval of the reserved matters shall be in general conformity with Drawing Number 3067/523 Rev E.
5. The development hereby approved shall not be occupied until the access arrangements indicated on Drawing Number 44300/Ph5/004 Revision A have been completed. Thereafter, the access serving the development shall be retained and maintained in accordance with the approved drawing and no development whether or not permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to the site.
6. At the time of the first submission of Reserved Matters pursuant to Condition 1, details of all materials to be used externally shall be submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with the approved details.
7. At the time of the first submission of Reserved Matters pursuant to Condition 1, a plan showing the proposed finished floor levels of the new buildings and finished ground levels of the site in relation to the existing levels of the site and adjoining land shall be submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
8. At the time of the first submission of Reserved Matters pursuant to Condition 1, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority. The scheme of landscaping shall be in general conformity to the parameter plan (Drawing Number 3067/523 Rev E). The landscaping details shall include an implementation programme for all planting, seeding and turfing. The soft landscaping shall be implemented in accordance with the approved scheme of landscaping and implementation programme. Any trees or shrubs removed, dying, being seriously damaged or diseased within 5 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the local planning authority gives written consent to any variation. The hard landscaping works shall be implemented, in accordance with the approved

scheme of landscaping, prior to first occupation of those parts of the development to which they relate.

9. The landscaping details of the reserved matters submission shall include full details of amenity space, children's play and natural green space to be provided within the site along with a timetable for provision and a scheme for future management of the spaces. The details shall include any fencing and equipment to be installed. The approved details shall be fully implemented in accordance with the timescale approved and shall be retained at all times thereafter and shall be maintained in accordance with the approved future management scheme.
10. The landscaping details of the reserved matters submission shall include a further arboricultural report to be submitted for the written approval of the local planning authority that:
  - a) identifies the trees and shrubs to be retained;
  - b) provides a comprehensive assessment of the impact of the development on the existing trees on the site and on adjoining land; and
  - c) includes measures to protect the retained trees and shrubs during the construction of the development in accordance with BS5837:2012. The existing trees and shrubs shown to be retained, shall not be lopped, topped, felled, uprooted or wilfully destroyed other than where indicated in the approved arboricultural report, and any planting removed with or without such approval shall be replaced within 12 months with suitable stock, adequately staked and tied and shall thereafter be maintained for a period of 5 years.
11. A landscape and ecological management plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The content of the LEMP shall include the following:
  - a) Description and evaluation of features to be managed.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
  - g) Details of the body or organisation responsible for implementation of the plan.
  - h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan shall be implemented in accordance with the approved details.

12. The development hereby permitted shall not be first occupied until details of all fencing, walling and other boundary treatments, and a programme for their implementation, have been submitted to and approved in writing by the local planning authority. The boundary treatments shall be implemented in full in accordance with the approved details and programme.
13. No development above the ground shall take place until details of an external lighting scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved lighting scheme.
14. None of the dwellings hereby approved shall be occupied until the areas approved, as part of the Reserved Matters, as turning and vehicle parking space have been provided, surfaced and drained to prevent the discharge of surface water onto the highway. Thereafter those areas shall be kept available for such use and no permanent development, whether or not permitted by The Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order), shall be carried out on the land so shown (other than the erection of a garage or garages, subject to gaining any necessary planning permission where not permitted by the above Order or any order amending, revoking and re-enacting that Order) or in such a position as to preclude vehicular access to this reserved turning and parking space.
15. Prior to the first occupation of the development hereby approved, details of facilities for charging plug in or other ultra-low emission vehicles, together with a program for their implementation, shall be submitted to and approved in writing by the Local Planning Authority. The facilities shall be provided in accordance with the approved details and implementation program.
16. No development hereby permitted shall commence until a Construction Management Plan, to include details of:
  - (a) parking for vehicles of site personnel, operatives and visitors;
  - (b) loading and unloading of plant and materials;
  - (c) storage of plant and materials;
  - (d) programme of works (including measures for traffic management);
  - (e) measures to prevent the deposit of materials on the highway;
  - (f) on-site turning for construction vehicles;
  - (g) measures to ensure protection of protected species and habitats during construction;
  - (h) access arrangements;has been submitted to and approved in writing by the Local Planning Authority. The construction of the development shall be implemented in accordance with the approved Construction Management Plan.
17. Foul water shall be disposed of directly to the mains sewer.
18. No development hereby permitted shall commence until a detailed sustainable surface water drainage scheme for the site, which is in general accordance with the November 2018 Flood Risk Assessment prepared by Peter Brett Associates, has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall demonstrate

that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of within the curtilage of the site.

19. No development hereby permitted shall commence until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
  - a) a timetable for its implementation, and
  - b) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.
20. No infiltration of surface water drainage into the ground is permitted other than with the written approval of the Local Planning Authority.
21. Where infiltration is to be used to manage the surface water from the development hereby permitted, it will only be allowed within those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters and/or ground stability.
22. Prior to the first occupation of any dwelling hereby approved, a Verification Report relating to the surface water drainage system, carried out by a suitably qualified professional, shall be submitted to and approved in writing by the Local Planning Authority. The Verification Report shall demonstrate the suitable modelled operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; topographical survey of 'as constructed' features; and an operation and maintenance manual for the sustainable drainage scheme as constructed.
23. Prior to the first occupation of any dwelling hereby approved, a scheme for the collection and storage of refuse for the development shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be provided in accordance with the approval details prior to first occupation of the development.
24. Prior to the first occupation of any dwelling hereby approved, a scheme of acoustic mitigation, which accords with the recommendations set out in chapter 15 of the submitted Environmental Statement, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of any ventilation or specific glazing requirements for specific dwellings. The approved details shall be implemented prior to the first occupation of each affected property and retained at all times thereafter.

25.No development shall take place other than as required as part of any relevant approved site investigation works until the following have been submitted to and approved in writing by the Local Planning Authority:

a) Results of the site investigations (including any necessary intrusive investigations) and a risk assessment of the degree and nature of any contamination on site and the impact on human health, controlled waters and the wider environment. These results shall include a detailed remediation method statement informed by the site investigation results and associated risk assessment, which details how the site will be made suitable for its approved end use through removal or mitigation measures. The method statement shall include details of all works to be undertaken, proposed remediation objectives, remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site cannot be determined as Contaminated Land as defined under Part 2A of the Environmental Protection Act 1990 (or as otherwise amended).

The submitted scheme shall include details of arrangements for responding to any discovery of unforeseen contamination during the development hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority in writing of the presence of any such unforeseen contamination along with a timetable of works to be undertaken to make the site suitable for its approved end use.

b) Prior to the commencement of the development the relevant approved remediation scheme shall be carried out as approved. The Local Planning Authority shall be given a minimum of two weeks written notification of the commencement of the remediation scheme works.

26.Following completion of the approved remediation strategy, and prior to the first occupation of the development, a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level shall be submitted to the Local Planning Authority. The report shall be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the Local Planning Authority for written approval and shall be fully implemented as approved. Thereafter, no works shall take place such as to prejudice the effectiveness of the approved scheme of remediation.

27.No development shall take place until the implementation of an archaeological watching brief has been secured, to be undertaken by an archaeologist approved by the local planning authority, so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved in writing by the local planning authority.

### **For Appeal D**

1. Details of the 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 development takes place and the development shall be carried out in full accordance with the approved details.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. Applications for the approval of the reserved matters shall be in general conformity with Drawing Number 3067/563 Rev D.
5. The development hereby approved shall not be occupied until the access arrangements indicated on Drawing Number 44300/Ph5/007 Revision A have been completed. Thereafter, the access serving the development shall be retained and maintained in accordance with the approved drawing and no development whether or not permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking and re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to the site.
6. At the time of the first submission of Reserved Matters pursuant to Condition 1, details of all materials to be used externally shall be submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with the approved details.
7. At the time of the first submission of Reserved Matters pursuant to Condition 1, a plan showing the proposed finished floor levels of the new buildings and finished ground levels of the site in relation to the existing levels of the site and adjoining land shall be submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
8. At the time of the first submission of Reserved Matters pursuant to Condition 1, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority. The scheme of landscaping shall be in general conformity to the parameter plan (Drawing Number 3067/563 Rev D). The landscaping details shall include an implementation programme for all planting, seeding and turfing. The soft landscaping shall be implemented in accordance with the approved scheme of landscaping and implementation programme. Any trees or shrubs removed, dying, being seriously damaged or diseased within 5 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species, unless the local planning authority gives written consent to any variation. The hard landscaping works shall be implemented,

in accordance with the approved scheme of landscaping, prior to first occupation of those parts of the development to which they relate.

9. The landscaping details of the reserved matters submission shall include full details of amenity space, children's play and natural green space to be provided within the site along with a timetable for provision and a scheme for future management of the spaces. The details shall include any fencing and equipment to be installed. The approved details shall be fully implemented in accordance with the timescale approved and shall be retained at all times thereafter and shall be maintained in accordance with the approved future management scheme.
10. The landscaping details of the reserved matters submission shall include a further arboricultural report to be submitted for the written approval of the local planning authority that:
  - a) identifies the trees and shrubs to be retained;
  - b) provides a comprehensive assessment of the impact of the development on the existing trees on the site and on adjoining land; and
  - c) includes measures to protect the retained trees and shrubs during the construction of the development in accordance with BS5837:2012. The existing trees and shrubs shown to be retained, shall not be lopped, topped, felled, uprooted or wilfully destroyed other than where indicated in the approved arboricultural report, and any planting removed with or without such approval shall be replaced within 12 months with suitable stock, adequately staked and tied and shall thereafter be maintained for a period of 5 years.
11. A landscape and ecological management plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The content of the LEMP shall include the following:
  - a) Description and evaluation of features to be managed.
  - b) Ecological trends and constraints on site that might influence management.
  - c) Aims and objectives of management.
  - d) Appropriate management options for achieving aims and objectives.
  - e) Prescriptions for management actions.
  - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
  - g) Details of the body or organisation responsible for implementation of the plan.
  - h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan shall be implemented in accordance with the approved details.

12. The development hereby permitted shall not be first occupied until details of all fencing, walling and other boundary treatments, and a programme for their implementation, have been submitted to and approved in writing by the local planning authority. The boundary treatments shall be implemented in full in accordance with the approved details and programme.
13. No development above the ground shall take place until details of an external lighting scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved lighting scheme.
14. None of the dwellings hereby approved shall be occupied until the areas approved, as part of the Reserved Matters, as turning and vehicle parking space have been provided, surfaced and drained to prevent the discharge of surface water onto the highway. Thereafter those areas shall be kept available for such use and no permanent development, whether or not permitted by The Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order), shall be carried out on the land so shown (other than the erection of a garage or garages, subject to gaining any necessary planning permission where not permitted by the above Order or any order amending, revoking and re-enacting that Order) or in such a position as to preclude vehicular access to this reserved turning and parking space.
15. Prior to the first occupation of the development hereby approved, details of facilities for charging plug in or other ultra-low emission vehicles, together with a program for their implementation, shall be submitted to and approved in writing by the Local Planning Authority. The facilities shall be provided in accordance with the approved details and implementation program.
16. No development hereby permitted shall commence until a Construction Management Plan, to include details of:
  - (a) parking for vehicles of site personnel, operatives and visitors;
  - (b) loading and unloading of plant and materials;
  - (c) storage of plant and materials;
  - (d) programme of works (including measures for traffic management);
  - (e) measures to prevent the deposit of materials on the highway;
  - (f) on-site turning for construction vehicles;
  - (g) measures to ensure protection of protected species and habitats during construction;
  - (h) access arrangements;has been submitted to and approved in writing by the Local Planning Authority. The construction of the development shall be implemented in accordance with the approved Construction Management Plan.
17. Foul water shall be disposed of directly to the mains sewer.
18. No development hereby permitted shall commence until a detailed sustainable surface water drainage scheme for the site, which is in general accordance with the November 2018 Flood Risk Assessment prepared by Peter Brett Associates, has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall demonstrate

that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of within the curtilage of the site.

19. No development hereby permitted shall commence until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
  - a) a timetable for its implementation, and
  - b) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.
20. No infiltration of surface water drainage into the ground is permitted other than with the written approval of the Local Planning Authority.
21. Where infiltration is to be used to manage the surface water from the development hereby permitted, it will only be allowed within those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters and/or ground stability.
22. Prior to the first occupation of any dwelling hereby approved, a Verification Report relating to the surface water drainage system, carried out by a suitably qualified professional, shall be submitted to and approved in writing by the Local Planning Authority. The Verification Report shall demonstrate the suitable modelled operation of the drainage system such that flood risk is appropriately managed, as approved by the Lead Local Flood Authority. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; topographical survey of 'as constructed' features; and an operation and maintenance manual for the sustainable drainage scheme as constructed.
23. Prior to the first occupation of any dwelling hereby approved, a scheme for the collection and storage of refuse for the development shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be provided in accordance with the approval details prior to first occupation of the development.
24. Prior to the first occupation of any dwelling hereby approved, a scheme of acoustic mitigation, which accords with the recommendations set out in chapter 15 of the submitted Environmental Statement, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of any ventilation or specific glazing requirements for specific dwellings. The approved details shall be implemented prior to the first occupation of each affected property and retained at all times thereafter.

25. No development shall take place other than as required as part of any relevant approved site investigation works until the following have been submitted to and approved in writing by the Local Planning Authority:

a) Results of the site investigations (including any necessary intrusive investigations) and a risk assessment of the degree and nature of any contamination on site and the impact on human health, controlled waters and the wider environment. These results shall include a detailed remediation method statement informed by the site investigation results and associated risk assessment, which details how the site will be made suitable for its approved end use through removal or mitigation measures. The method statement shall include details of all works to be undertaken, proposed remediation objectives, remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site cannot be determined as Contaminated Land as defined under Part 2A of the Environmental Protection Act 1990 (or as otherwise amended).

The submitted scheme shall include details of arrangements for responding to any discovery of unforeseen contamination during the development hereby permitted. Such arrangements shall include a requirement to notify the Local Planning Authority in writing of the presence of any such unforeseen contamination along with a timetable of works to be undertaken to make the site suitable for its approved end use.

b) Prior to the commencement of the development the relevant approved remediation scheme shall be carried out as approved. The Local Planning Authority shall be given a minimum of two weeks written notification of the commencement of the remediation scheme works.

26. Following completion of the approved remediation strategy, and prior to the first occupation of the development, a relevant verification report that scientifically and technically demonstrates the effectiveness and completion of the remediation scheme at above and below ground level shall be submitted to the Local Planning Authority. The report shall be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Where it is identified that further remediation works are necessary, details and a timetable of those works shall be submitted to the Local Planning Authority for written approval and shall be fully implemented as approved. Thereafter, no works shall take place such as to prejudice the effectiveness of the approved scheme of remediation.

27. No development shall take place until the implementation of an archaeological watching brief has been secured, to be undertaken by an archaeologist approved by the local planning authority, so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved in writing by the local planning authority.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Asitha Ranatunga of Counsel	Instructed by Kevin Toogood, Principal Solicitor (Litigation), Tonbridge and Malling Borough Council (TMBC)
He called:	
Matthew Broome BA (Hons), Diploma Urban Planning, MRTPI	Principal Planning Officer (TMBC)
Adem Mehmet BA (Hons), PGDip, MA, MRTPI	Senior Planning Officer (TMBC)
Gabrielle Graham BSc (Hons), MSc, MCIEEM, CEcol	Managing Director of SWT Ecology Services
Bartholomew Wren BA (Hons), MA	Principal Planning Officer (TMBC)
John Wilde BEng (Hons), MCIHT	Director of Charles & Associates Consulting Engineers Ltd.

### FOR THE APPELLANT:

Paul Cairnes of Counsel QC	Instructed by Avison Young
He called:	
Nicola Brown BA (Hons), B Land Arch, Cert UD, CMLI	Director, Huskisson Brown Associates
Julian Forbes-Laird BA (Hons), Dip.GR.Stud, MICFor, MRICS, MEWI, Dip.Arb (RFS)	Co-principal of Sylvan Consultancy & Director of Forbes-Laird Arboricultural Consultancy
Alistair Baxter BA (Hons), MA (Oxon), MSc, CEcol, CEnv, MCIEEM	Co-principal of Sylvan Consultancy and Director of Aspect Ecology
Martyn Saunders BSC, MA, MIED	Director, Planning Development & Regeneration, Avison Young
Emma Goodford BSc (Hons), MRICS	Partner, Head of National Offices, Knight Frank LLP
Jason Lewis MSc, CMILT, MCIHT	Director of Transport Planning, Peter Brett Associates (now part of Stantec)
James Stacey BA (Hons), Dip TP, MRTPI	Director, Tetlow King Planning
Gary Halman BSc, FRICS, FRTPI	Principal, Planning Development & Regeneration, Avison Young

**INTERESTED PERSONS:**

Peter Coulling	Chairman of Teston Parish Council
David Thornewell	Chairman of East Malling and Larkfield Parish Council
Margaret Colman	Kings Hill Parish Council
Sarah Barker	Kings Hill Parish Council
Siobhan Kirk	Kings Hill Parish Council and also on behalf of Gill Collingridge (Local Resident)
Rebecca Rees	Kings Hill Parish Council
Richard Dowling	Kings Hill Parish Council
Michelle Tatton	Local Resident
David Rush	Local Resident
Derek Edmonds	Local Resident
Christine Woodger	Local Resident
Matthew Reed QC	On behalf of Berkeley Strategic Land Limited
Steven Sensecall	of Carter Jonas on behalf of Berkeley Strategic Land Limited

**INQUIRY DOCUMENTS:**

1. Appendix 5.2 to Emma Goodford's proof of evidence in complete form including appendices previously omitted.
2. Amendment to the Ancient Woodland Inventory: Warren Wood, by Emma Goldberg, Natural England, 21 November 2019.
3. Statement of Common Ground – Housing Land Supply: Addendum.
4. Vol.4 – copies of references cited in Evidence - of Alistair Baxter's Expert Evidence, November 2019.
5. Email from Principal Transportation & Development Planner, Kent County Council dated 29 November 2019 concerning highways matters, following receipt of Technical Note TN6, relating to Land North of Amber Lane.
6. Laminated context plans for reference during the Inquiry.
7. 2019 Kent Property Market Report (submitted by TMBC).
8. Five case law cases submitted by TMBC.
9. Two letters from local residents dated 25 and 26 November 2019.
10. Opening submission by Paul Cairnes QC on behalf of the Appellant.

11. Opening submission by Asitha Ranatunga on behalf of TMBC.
12. Copy of verbal submission from interested party, Peter Coulling.
13. Copy of verbal submission from interested party, David Thornevell.
14. Copy of verbal submission from interested party, Margaret Colman.
15. Copy of verbal submission from interested party, Sarah Barker.
16. Copy of verbal submissions from interested party, Siobhan Kirk.
17. Copy of verbal submission from interested party, Rebecca Rees.
18. Copy of verbal submission from interested party, Richard Dowling.
19. Copy of verbal submission from interested party, Michelle Tatton.
20. SWT Ecology Services drawing submitted by TMBC showing location of trees surveyed and updated grid reference locations.
21. Email from Julian Forbes-Laird to Natural England dated 30 September 2019.
22. Gabrielle Graham email to Natural England dated 3 December 2019 and note on Tithe Map.
23. Letter from Natural England to Julian Forbes-Laird dated 3 December 2019 headed Warren Wood – ancient woodland status.
24. Email to Natural England from Julian Forbes-Laird dated 04/12/19 concerning Warren Wood.
25. Additional Julian Forbes-Laird referencing documents (Flight 2010, Lambard 1596).
26. Planning Approvals and associated drawings relating to Kings Hill Phase 2 and Rolex.
27. Copy of map of East Malling 1695 provided by SWT Ecology Services.
28. Extract from Ordnance Survey 6" County Series map 1898.
29. Estimating the Age of Large and Veteran Trees in Britain, John White, Forestry Commission, November 1998
30. Early Kent Maps, Greville M. Livett, Archaeologia Cantiana Vol.49 1937.
31. Reference commentary on the background to Blaeu's map of 1646.
32. Kings Hill Phase 2 Section 106 Agreement.
33. Copy of emails between Liberty Property Trust UK Ltd and Corylus Ecology dated 6 December 2019 concerning bat and dormouse surveys.
34. Details of qualifications and experience of Steven Sensecall of Carter Jonas.
35. Letter from Capital Space dated 12 December 2016 regarding Churchill Square Business Centre.
36. Technical note by Gabrielle Graham dated on 11 December 2019.

37. TMBC update note on Affordable Housing.
38. British Horse Society Scotland Equestrian Access Factsheets.
39. Copies of letters from TMBC dated 28 and 30 November 2018 providing pre-application advice relating to the appeal sites.
40. Two plans submitted by LPTUK to TMBC as part of pre-application request in relation to Site 5.4.
41. Replacement Appendix 9 to James Stacey's Proof and James Stacey's response to TMBC update note on Affordable Housing dated 12 December 2019.
42. Utilities plans relating to existing development to south of, and showing relationship to, Site 5.4.
43. Planning Practice Guidance Paragraph: 020 (Reference ID: 3-020-20190722).
44. Letter from Local Plan Inspectors to TMBC dated 23 November 2019.
45. Supplementary Statement of Julian Forbes-Laird regarding ancient woodland matters in response to written submission from Gabrielle Graham of 11 December 2019.
46. Errata Sheet relating to Gary Halman's Proof of Evidence.
47. Planning Practice Guidance Paragraph 001 (Reference ID: 66-001-20190722).
48. Planning Appeal Decision relating to land to the rear of 237-259 London Road, West Malling.
49. Wavendon Properties Limited High Court Ruling, 14 June 2019.
50. Hopkin Homes Ltd Court of Appeal Decision.
51. Amended version of suggested planning obligations submitted by Carter Jonas on behalf of Berkeley Strategic Land Limited.
52. Copy of email from Avison Young to TMBC dated 12 December 2019 relating to suggested conditions concerning submission of a Parking Management Strategy for Amber Lane and an Ecological Enhancement Access Strategy.
53. Signed and dated Section 106 Agreements.
54. Suggested Inspector site visit itinerary.
55. Closing submission by Asitha Ranatunga on behalf of TMBC.
56. Closing submission by Paul Cairnes QC on behalf of the Appellant.