



**CPRE Kent 1
Planning Evidence**

Appeal by Gladman

PINS Reference: APP/V2255/W/15/3067553, 3067567 & 3148140

Swale Borough Council reference: 15/50671/OUT, 15/510595/OUT

Land Off London Road, Newington, Kent.

**Proof of Evidence of Jillian Barr
BSc (Hons) LLM PgCert MA MRTPI**

The Kent Branch of the Campaign to Protect Rural England exists to promote the beauty, tranquility and diversity of rural England by encouraging the sustainable use of land and other natural resources in town and country.

CPRE Kent, Queen's Head House, Ashford Road, Charing, Kent, TN27 0AD Fax: 01233 714549 Email: info@cprekent.org.uk

Phone: 01233 714540 www.cprekent.org.uk

Section 78 TCPA 1990 Appeal against the non-determination of an Outline application for residential development of up to 330 dwellings plus 60 units of extra care (including a minimum of 30% affordable), an allocated 1/4 acre of serviced land for potential doctors surgery, demolition of farm outbuilding, planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road and associated ancillary works. (Access being sought)

LPA Ref No: 15/500671/OUT PINS Ref No: APP/V2255/W/15/3067553 & 3067567

Section 78 TCPA 1990 Appeal against the non-determination of an Outline application with all matters reserved (except for the details of a vehicular access point from London Road, including the widening and realignment of the A2) for residential development of up to 126 dwellings (including 30% Affordable) plus 60 units of Extra Care (Use Class C2) an allocated 1/4 acre of serviced land for potential doctors surgery, planting and landscaping, informal open space, children's play area, surface water attenuation, and associated ancillary works. (Resubmission of 15/500671/OUT)

LPA Ref No: 15/510595/OUT PINS Ref No: APP/V2255/W/15/3148140

1. Introduction

- 1.1 I am Jillian Barr, a planner working for the Kent Branch of the Campaign to Protect Rural England (CPRE Kent). I have been a member of the Royal Town Planning Institute since 2006 and I have worked for CPRE Kent since September 2015. Previously, I have worked as a Planner (planning policy) for Canterbury City Council and Principal Planner (planning policy) for Maidstone Borough Council.
- 1.2 CPRE Kent is the Kent Branch of the Campaign to Protect Rural England which is part of the national CPRE charity. It is our objective to retain and promote a beautiful and thriving countryside that is valued by everyone and we believe the planning system should protect and enhance the countryside in the public interest for the important contribution it makes to peoples' physical and mental wellbeing, as well as its vital role in feeding the nation. It is our position that local planning authorities should seek to ensure that the impact of development on the countryside, both directly and indirectly, is kept to a minimum and that development is sustainable in accordance with national planning policy.
- 1.3 For CPRE my main role is to help our district committees to provide input to the preparation of local plans throughout Kent and Medway to secure CPRE objectives. I also provide professional advice to committees on major planning applications and planning issues generally.

2. Procedural Matters: This Proof of Evidence

- 2.1 This evidence concerns the framework of planning policy against which these appeals should be judged, and will seek to highlight the overarching planning policy considerations. Other witnesses representing CPRE Kent will provide detailed evidence on some of these considerations. I will highlight where this is the case, as I do not intend to duplicate evidence.
- 2.2 This conjoined appeal relates to two applications that substantially relate to the same site, although the earlier application (Appeal 1) is significantly larger than the subsequent application (Appeal 2). The issues are broadly similar and I intend to cover both applications in this proof of evidence. Where relevant, I will make it clear which application my comment relates to. Otherwise my evidence is relevant to both Appeal 1 and Appeal 2. I have divided my evidence into general issues, and detailed policy issues. Of course, there are often overlaps in this division of issues.
- 2.3 My evidence assesses compliance with the Development Plan, National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG) and considers where there are other important material considerations relevant to these appeals. My evidence focuses on the environmental arm of sustainable development in the main, since that is the focus of CPRE and will have the following structure:

Part A: Summary of appeal schemes and site description (Page 5)

Part B: The main general planning policy issues. I have indicated where my evidence should be read in conjunction with other Proofs of Evidence.

- (i) Development plan policies and weight in decision-making (Page 7)
- (ii) Prematurity (Page 12)
- (iii) Settlement hierarchy – the local plan context (Page 15)
- (iv) Development in the countryside (Page 17)

Part C: The main detailed policy issues

- (v) Agricultural Land (Page 18)
- (vi) Landscape character and visual impact – referring to evidence provided by Margaret Milsted-Williamson on behalf of CPRE Kent (Page 19)
- (vii) Settlement / Strategic gap (Page 22)
- (viii) Heritage assets – referring to evidence provided by Emma Rouse of behalf of CPRE Kent (CPRE Kent 7) (Page 24)
- (ix) Highways, congestion and access - referring to evidence provided by Cllrs Baldock, Harvey and Wright of behalf of CPRE Kent (CPRE Kent 2, 3 and 5) (Page 26)
- (x) Air quality - referring to evidence provided by Professor Stephen Peckham of behalf of CPRE Kent (CPRE 4) (Page 27)

Part D: Summary – sustainable development and conclusions (Page 28)

Part A: Summary of appeal schemes and site description

3. The appeal schemes

- 3.1 Appeal 1: The application seeks outline permission for a mixed use development which includes the following:
- residential development of up to 330 dwellings (including a minimum of 30% affordable);
 - 60 units of extra care accommodation;
 - an allocated ¼ acre of serviced land for a potential doctors surgery;
 - demolition of farm outbuildings;
 - planting and landscaping, informal open space, children’s play area, surface water attenuation;
 - a vehicular access point from London Road and associated ancillary works.
- 3.2 The Council did not determine the application within the statutory 13-week period. The appeal is against the non-determination of the outline planning application.
- 3.3 An associated application for demolition of outbuildings to the listed Pond Farm was refused, but it was subsequently accepted by the Council that Listed Building Consent is not needed for their demolition.
- 3.4 Appeal 2: This application is on a smaller parcel of land, located within the same site as the original application (within the red-line). The application seeks outline permission for a mixed use development which includes the following:
- residential development of up to 126 dwellings (including 30% affordable);
 - 60 units of extra care accommodation;
 - an allocated ¼ acre of serviced land for potential doctors surgery;
 - planting and landscaping, informal open space, children’s play area, surface water attenuation and associated ancillary works.
- 3.5 The Council did not determine the application within the statutory 13-week period. The appeal is against the non-determination of the outline planning application. At a meeting on the 26th May 2016, the Council’s Planning Committee resolved that it would have refused planning permission for the following reasons:

“The proposal does not constitute sustainable development as defined by the National Planning Policy Framework (NPPF) because of the following adverse social, environmental and economic impacts:

- 1. The excessive scale of the proposal which is out of proportion to the modest size of the village of Newington.*
- 2. Landscape and visual harm.*
- 3. The proposal would result in a significant and unacceptable loss of the best and most versatile agricultural land.*
- 4. The short term construction and longer term extra-care employment opportunities could be provided elsewhere through other more suitable developments.*
- 5. Development within the countryside that is unwanted by the community.*

6. The site is not necessary as the council will be able to secure a 5 year supply of housing land on more suitable sites within a reasonable period of time.

In all these respects, the impacts arising from the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. The proposal is therefore contrary to saved Policies SP1, SP2, SP5, SH1, E1, E6, E7, E9, E19 and H2 of the adopted Swale Borough Local Plan 2008; Policies ST1, ST3, ST5, CP4, DM14, DM24 and DM31 of the emerging Local Plan entitled 'Bearing Fruits 2031: Proposed Main Modifications LDF Panel version'; paragraphs 14, 17, 64, 109 and 112 of the National Planning Policy Framework; and the Council's adopted Supplementary Planning Document entitled 'Swale Landscape Character and Biodiversity Appraisal' dated September 2011"

4. Appeal sites and surroundings

- 4.1 The site is located immediately beyond the western edge of the village of Newington south of the A2. The built extent of the village continues north of the A2 to include a ribbon of dwellings which stretches almost as far west as the site itself.
- 4.2 Appeal site 1 extends from Playstool Close in the east to a short row of dwellings, starting with 97 Newington Road in the west. Beyond the end of the gardens on Newington Road (A2) on that western boundary, the site is adjacent to a narrow piece of irregularly shaped of agricultural land, beyond which is the Newington Industrial Estate.
- 4.3 The site itself is in fruit production, with the two westernmost parcels of land planted with orchards, and the easternmost parcel used for blackcurrant production. The land is subdivided by predominantly alder shelterbelts. Another substantial hawthorn hedgerow is located on the boundary where it abuts the A2. The remainder of the northern boundary, to the east of the site is set behind dwellings on the A2, including Pond Farm House. The site includes the outbuildings associated with Pond Farm House.
- 4.4 Beyond the southern boundary is community woodland, allotments and Newington Recreation Ground. A public footpath runs diagonally across the site from a point on the western boundary, through the orchard, to the A2. It is likely that people often find an informal route around the edge of the orchard.
- 4.5 Appeal site 2 is within the same site as Appeal site 1, but is smaller, with the westernmost boundary terminating at one of the two alder shelterbelts and does not include the outbuildings to Pond Farm House. On this smaller site the public footpath crosses the site at the northwest corner.

Part B

5. Development Plan policies and weight in decision-making

- 5.1 The Council confirmed in its Statement of Case (September 2016) that the Borough currently has a housing land supply of 3.9 years, based on an objectively assessed need of 776 dwellings per annum. It is understood this relates to the 2014/15 monitoring period. This means that policies relevant to the supply of housing, in both the adopted and emerging plans are out-of-date in line with paragraph 49 of the National Planning Policy Framework.
- 5.2 NPPF paragraph 14 confirms that, where the relevant policies of the development plan are out-of-date, permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework, taken as a whole, or specific policies in the Framework indicate development should be restricted. It is necessary then to consider whether the impacts arising from granting planning permission are adverse and whether they would significantly and demonstrably outweigh the benefits of addressing the housing shortfall.
- 5.3 The fact that a policy is ‘out of date’ does not mean that it does not carry weight in the decision. A relevant Appeal Court Judgement¹ (Suffolk Coastal), makes the following statement at paragraph 46:

“policies in paragraph 14 and 49 of the NPPF do not make ‘out-of-date’ policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they describe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision maker. Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is “out-of-date” should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied”.

- 5.4 It goes on to clarify that the weight a decision maker may attach to a policy for the supply of housing will depend on a number of factors, including at [47 and 48]:

47 *“One may, of course, infer from paragraph 49 of the NPPF that in the Government’s view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular*

¹ Neutral Citation Number: [2016] EWCA Civ 168 Case No: C1/2015/0583 and C1/2015/0894
Suffolk Coastal DC v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP v Cheshire East BC and SSCLG [2016] EWCA Civ 168, Jackson, Vos and Lindblom LJ

purpose of a restrictive policy – such as the protection of a “green wedge” or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law, it is a matter of planning judgement.....”.

48 *“The policies in paragraphs 14, 47 and 49 of the NPPF are not, as we understand them, intended to punish a local planning authority when it fails to demonstrate the requisite five-year supply of housing land. They are, however, clearly meant to be an incentive. As Sir David Keene said in paragraph 31 of his judgment in Hunston:*

‘... Planning decisions are ones to be arrived at in the public interest, balancing all the relevant factors and are not to be used as some form of sanction on local councils. It is the community which may suffer from a bad decision, not just the local council or its officers.’

5.5 It is therefore necessary to consider how consistent the policies are with the NPPF, and to assess what weight should be attached to them. The weight that should be attributed to specific policies will be considered in more detail in the relevant sections of the Proof of Evidence.

5.6 The key policies relevant from the adopted Local Plan 2008 are as follows:

- SP1 (Sustainable Development)
- SP2 (Environment)
- SP3 (Economy)
- SP5 (Rural Communities)
- SP6 (Transport and Utilities)
- SP7 (Community services and facilities)
- SH1 (Settlement Hierarchy)
- TG1 (Thames Gateway Area)
- E1 (General Development Criteria)
- E6 (Countryside)
- E7 (Separation of settlements)
- E9 (Protecting the character and quality of the Borough’s landscape)
- E10 (Trees and Hedges)
- E11 (Protecting and Enhancing the Borough’s biodiversity and geological interest)
- E14 (Development involving listed buildings)
- E19 (Good Quality Design and distinctiveness)
- H2 (Providing for New Housing)
- T1 (Providing Safe Access to new development)

C2 (Housing Developments and the Provision of Community Services and Facilities)
 C3 (Open Space on new housing development)

5.7 The key policies relevant from the emerging Local Plan are as follows:

ST1 (Delivering Sustainable Development in Swale)
 ST2 (Development Targets for Job and Homes)
 ST3 (Swale Settlement Strategy)
 ST5 (Sittingbourne Area Strategy)
 CP2 (Promoting Sustainable Transport)
 CP4 (Requiring Good Design)
 CP7 (Conserving and Enhancing the Natural Environment—Providing for Green Infrastructure)
 CP8 (Conserving and enhancing the historic environment)
 DM6 (Managing Transport Demand and Impact)
 DM8 (Affordable Housing)
 DM14 (General Development Criteria)
 DM24 (Conserving and Enhancing Valued Landscape)
 DM25 (The Separation of Settlements)
 DM28 (Biodiversity and Geological Conservation)
 DM29 (Woodland, trees and hedges)
 DM31 (Agricultural Land)

5.8 Of particular relevance to these appeals is the Council's settlement strategy. Policies TG1 and SH1 in the adopted local plan and Policies ST3 and (to a degree, ST5) in the emerging local plan are relevant.

5.9 The ability to make additional site allocations without undermining the settlement strategy was important to the onward progress of the emerging local plan following the examination hearing sessions held in November 2015. In her Interim Findings², the Inspector found the settlement strategy soundly based and recognised the difficult (but not impossible) task ahead to allocate additional sites whilst '*maintaining the settlement strategy and taking account of localised infrastructure and environmental constraints*' (Part 3, Matter 2). Referring to the Council's evidence base on sites, the Inspector commented at Part 2 (paragraph 26) of her Interim Findings that:

'...the assessment documents are clearly a technical survey of the sites and they do not take a strategic approach or refine the ranking in relation to the settlement strategy or cumulative impact on infrastructure or the environment. The Council will need to take account of these factors when allocating additional sites.'

² Interim Findings on the Swale Local Plan: Introduction and Structure of the Findings. (Feb 2016)

Interim Findings on the Swale Local Plan: Part 1 – Background and Progress of the Examination. (Feb 2016)

Interim Findings on the Swale Local Plan: Part 2 – Headline Interim Findings on Housing Supply. (Feb 2016)

Interim Findings on the Swale Local Plan: Part 3 – Overall Interim Findings (March 2016)

- 5.10 In response to the Inspector's Interim Findings, the Council has allocated additional sites and made more changes to policy and text in a further draft of the Local Plan titled '*Bearing Fruits 2031: The Swale Borough Council Main Modifications June 2016*'³ (Modifications Consultation 2016). This has been subject to consultation and at the time of writing this proof the Council is processing the comments received. In respect of Newington, the major proposed changes are the addition of an allocation to the east of the village, north of the A2, for 115 residential units. Further, amendments to the Settlement Strategy Policy (Policy ST3) seek to clarify the contribution allocations will make to meeting local housing needs in Rural Local Service Centres and the approach to sites in the open countryside.
- 5.11 The progress the Council has delivered on a settlement strategy for the Local Plan is relevant to these appeals, as are the Inspector's Interim Findings. The Inspector has commented that the Council '*has responded positively to criticism of the Plan's failure to meet the OAN for housing*' (Interim Findings, Part 2⁴, Para 24). The positive approach has continued in the prompt publication of Main Modifications for consultation and the published timetables⁵ indicate a desire to resume the Local Plan examination in November or December 2016.
- 5.12 Given the progress the Council has made on its strategy, and the allocation of additional sites to deliver an Objectively Assessed Need, the settlement strategy should attract significant weight. The settlement strategy policies are clearly in keeping with the NPPF as the local plan inspector has found them sound. They seek to ensure housing is delivered in the most sustainable locations and take account of environmental constraints.
- 5.13 This view is supported by the Suffolk Coastal judgement discussed above (para 5.4), where paragraph 47 states that the weight applied to out-of-date policies will vary according to circumstances. For example:
- Extent of the shortfall for the 5 year supply of housing land;
 - The action being taken by local planning authority to address it the shortfall; or
 - The particular purpose of a restrictive policy.
- 5.14 At the time of writing this Proof of Evidence, the 2015/2016 Housing Information Audit data was not yet available from the Council. It is worthy of note, however, that there appears to be numerous submitted outline planning applications related to proposed housing allocations. Although they cannot be researched in detail in the time available, there is inherent uncertainty, and they may fall into different monitoring years, it nevertheless gives positive indications that the council will be able to address the shortfall reasonably quickly. Examples include 15/502912 Milton Pipes, Cooks Lane (240 units), and 14/0257 Oare Gravel Works Ham Road, (330 units). Perry Court Farm (15/504264) has resolution to grant permission.

³ Bearing Fruits 2031: The Swale Borough Council Main Modifications June 2016

⁴ Interim Findings on the Swale Local Plan: Part 2 – Headline Interim Findings on Housing Supply. (Feb 2016)

⁵ Swale Borough Local Plan Examination in Public – Indicative Programme for 2015 - 2016

- 5.15 The action being taken by the council to address the shortfall through a new local plan, currently at examination is clear.
- 5.16 In terms of the purpose of a restrictive policy, the settlement strategy seeks to direct development to sustainable locations at appropriate scales. It is clear that both Appeal 1 and 2 will not result in the delivery of homes in a manner that will result in the delivery of balanced and sustainable growth. This is the growth that the adopted development plan and the emerging development plan is seeking to deliver. Significant weight should be given to the settlement strategy policies in the adopted development plan (TG1 and SH1) and the emerging development plan (ST3 and to a degree, ST5).
- 5.17 Although there are many differences with this proposal, including development plan status, the importance of directing growth to sustainable locations was recognised by the Secretary of State in a recent recovered appeal⁶:

'The Secretary of State is not satisfied that the Council can convincingly demonstrate a five year housing land supply across the District as a whole. Accordingly, he considers that the policies for the supply of housing are out-of-date and paragraph 14 of the Framework is engaged. He has therefore considered whether the proposed development is sustainable in terms of the principles set out in the Framework and, if so, whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the terms of the Framework as a whole. However, whilst attaching significant weight to the positive benefit that the contribution of housing, including affordable housing, would make to the District and to the fact that the village has capacity in terms of facilities and services, the Secretary of State considers that this is outweighed by the fact that granting planning permission for the proposed development would go against the objective of providing a reasonable match between jobs and dwellings, thereby calling into question its overall sustainability. The Secretary of State does not therefore consider that the circumstances in this appeal represent material considerations of sufficient weight to justify a decision otherwise than in accordance with the development plan.' (Paragraph 23)

- 5.18 This is a relevant insight into the views of the new Secretary of State. It supports the principle of directing growth to sustainable locations.
- 5.19 The Inspector to the recent and local Norton Ash Garden Centre appeal⁷ gives further support, stating:

'..... the general approach of the out-of-date policies to the location of development in the Borough has been endorsed as part of the settlement strategy of the emerging plan. On this basis moderate weight can be attached to the out-of date policies as they reflect this approach' (Paragraph 18).

⁶ APP/F0114/A/14/2217216. Town and Country Planning Act 1990 – Section 78 appeal by Charles Church Severn Valley & Edward Ware Homes LTD on residual land at Cappards Road, Bishop Sutton Application Ref: 13/04975/OUT

⁷ APP/V2255/W/15/3135521. Town and Country Planning Act 1990 – Section 78 appeal by BMW Trustees Limited at Norton ash Garden Center, London Road, Norton, Kent Application Ref: 14/505933

6. Prematurity

- 6.1 CPRE appreciates that to demonstrate Prematurity requires a high threshold to be passed.
- 6.2 The National Planning Practice Guidance (NPPG) clarifies the circumstances in which prematurity can be used (ID: 21b-014-20140306):

“Such circumstances are likely, but not exclusively, to be limited to situations where both: the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area”.

- 6.3 In terms of the first of the two situations listed, the appeal proposals comprise major development that conflicts with the settlement strategy of both the adopted local plan and the emerging local plan, particularly as it relates to growth at Newington. This conclusion is magnified when considered in combination with the recent proposed modification to allocate land to the east of Newington. Together the proposed allocation site and, if accepted, the appeal sites would result in a step change transformation in the size of Newington that would not represent an appropriate response to the housing shortfall according to the settlement strategy proposed by the plan that was supported by the Inspector in her Interim Findings. Further, it would be unexamined (subject to timescales and local plan evidence gathering) in terms of cumulative impact on the availability of services and the environment. The plan-making process would be undermined. At Part 3, paragraph 5 and 6 of her Interim Findings⁸, the Inspector stated:

‘However the Plan’s approach is informed by robust evidence, it aligns with the Plan’s vision and it is supported by sustainability appraisal. The settlement strategy successfully addresses the core principles set out in paragraph 17 of the NPPF, particularly with regard to driving and supporting economic development and conserving the natural environment and heritage assets, whilst taking account of the different roles and character of different areas.

The Council has a difficult, but not impossible task ahead in managing the allocation of additional sites whilst maintaining the settlement strategy and taking account of localised infrastructure and environmental constraints.....’

- 6.4 The anticipated role of Rural Service Centres (as considered by the Inspector at the examination) is clearly set out in the Publication version⁹ of the emerging Local Plan submitted to the Planning Inspectorate.
- 6.5 The Council has responded to the Inspector’s concerns in a positive manner and has proposed additional sites and other Main Modifications. Text relating to the settlement

⁸ Interim Findings on the Swale Local Plan: Part 3 – Overall Interim Findings (March 2016)

⁹ Bearing Fruits 2031: The Swale Borough Local Plan Part 1- Publication Version (December 2014)

strategy is set out below. The underlined text in the extracts below relates to the Modifications Consultation 2016¹⁰ which includes a new allocation to the east of the village, north of the A2. This results from a Council decision that some Rural Service Centres could contribute to meeting the tertiary housing needs in the borough and the Inspectors reference to a 'proportional boost' in the rural areas. The modifications have been subject to consultation and have yet to be considered by the Inspector. The comments will be considered by the Inspector when the examination reconvenes.

6.6 The Settlement Strategy at policy ST3 states the following:

'The Rural Local Service Centres will provide the tertiary focus for growth in the Borough and the primary focus for the rural area. At allocated sites relating well to the existing settlement pattern and the character of the surrounding countryside, development will provide for the local housing or employment needs for their home and surrounding communities, whilst supporting existing and new services'.

6.7 In terms of the settlement of Newington, paragraph 4.3.20 provides further advice:

Newington: *Despite its role and level of services, development opportunities are very relatively limited due to the valued and important heritage, landscapes and habitats to the north of the village, poor pedestrian connections between north and south of the village, a restricted internal road network, poor air quality and surrounding high quality agricultural land. Opportunities are limited to brownfield sites or to the east of the village where there is potential to development a visually well contained site*

6.8 The decision to propose additional sites at the Rural Service Centres was made in response to the Inspectors Findings, with members advised at an LDF Panel meeting¹¹ that a proportionate boost within the rural areas needs to be considered and that they could be achieved without diminishing the character or role of the settlement affected. At this meeting Members accepted a recommendation (recommendation 6) that the larger site at Pond Farm should not be allocated, and that land to the east of Newington (SW/407) was preferred. Although Members were given the option to consider the smaller proposal at Pond Farm, it was described as less favourable than other sites, and members concluded that Pond Farm was not a good place for development¹².

6.9 In the Main Modifications to the Local Plan, which were subject to consultation (finishing August 2016), the sites have been chosen to comply with the settlement strategy of the Local Plan. These new allocations (including objections) will be considered in detail by the Local Plan Inspector. If planning permission were to be allowed on the site at Pond Farm, then the extent of expansion proposed at this settlement (particularly when considered with the proposed Local Plan allocation) would have an urbanising effect on the village, would fail to respond to the environmental constraints listed at paragraph 4.3.20 of the emerging Local Plan, nor understand the cumulative effect of traffic and air pollutants. In

¹⁰ Bearing Fruits 2031: The Swale Borough Council Main Modifications June 2016

¹¹ LDF Panel Meeting 19th May 2016) paragraph 3.143 and 3.185

¹² Local Development Framework Panel Minutes – 19th May 2016

this way, the proposed development (both Appeal 1 and 2) could prejudice the Local Plan. Refusal would not impose a significant delay on determining the future use of the land, given the Council's proactive approach to the Local Plan and prompt approach to considering the Inspectors concerns.

- 6.10 The proposed developments (the appeal proposals) at Pond Farm are substantial relative to the size of the village. In combination with the proposed allocation this would amount to a considerable village expansion not in keeping with the settlement strategy and which has the potential to have significant cumulative effects. This undermines the plan-making process, by predetermining the scale of development appropriate at Newington. It is not in the public interest and would disregard the Inspectors reference to '*sensitively nudge the housing target upwards across the borough*¹³'. The local community and decision makers at the Council are unlikely to have another formal consultation opportunity in the Local Plan process to consider whether both the appeal site, together with the proposed allocation at Newington, would be desirable or deliverable. Nor will the local plan evidence base, or consultees, have considered whether the impacts of both developments can be appropriately mitigated. The Local Plan examination is expected to reconvene imminently. Allowing the appeal in advance of establishing the appropriate level of growth at Newington and resolving uncertainties in terms of congestion and air quality in the local plan context would be not be in the public interest, nor in the interest of good planning.
- 6.11 This is relevant to the second ground of prematurity as explained in the NPPG. The Plan is clearly at an advanced stage. The Local Plan Inspector has endorsed the Swale Settlement Strategy, Main Modifications have been proposed and consulted on, and the examination will reconvene soon. An indicative timetable has been agreed with the Inspector. It would be harmful to undermine it at this late stage.
- 6.12 The development, therefore, should be refused on the grounds of prematurity. The adverse impacts of granting permission would significantly and demonstrably outweigh the benefits – and would result in an unhelpful community bewilderment at the effectiveness of the plan-led system. Plan preparation should proceed as planned. The Local Plan Inspector will consider whether the plan is sound given the proposed Main Modifications and associated representations. No doubt representations have been made on the proposal site by the appellant, so they will be before the Local Plan Inspector.
- 6.13 The prematurity concern applies to both Appeal 1 and Appeal 2.
- 6.14 The next section will explain that the settlement hierarchy in the plan, set out in Policy ST3 should be given significant weight, given the Inspector's Interim Findings.

¹³ Interim Findings on the Swale Local Plan: Part 2 – Headline Interim Findings on Housing Supply. (Feb 2016) Paragraph 28.

7. Settlement Hierarchy – Local Plan Context

- 7.1 Both the adopted local plan and the emerging local plan are relevant to establishing the position of the village of Newington in the settlement hierarchy.
- 7.2 A settlement hierarchy ranks settlements according to their size and range of services and facilities; and assists determine their capacity for growth and the policy for the function of the settlement in meeting development requirements. It assists the directing of development to the most sustainable locations at a suitable scale.
- 7.3 Neither plan identifies the settlement of Newington as a focus of growth and expansion. As you would expect from a settlement hierarchy, the scale of acceptable growth descends in scale down the hierarchy.
- 7.4 In the adopted local plan Newington is designated as a Local Service Centre. Policy SH1 explains the scale of development that would be supported at Local Service Centres, stating: *'the local service centres of Boughton, Eastchurch, Newington, Teynham and Leysdown, where new development may be acceptable on previously-developed land within the defined built-up areas or, in the case of new services for the settlement and the surrounding rural area, on other suitable sites that do not harm the settlement pattern or character of the surrounding countryside'*. The supporting justification at paragraph 2.108 assists with the interpretation of the policy, and clearly explains that only development within the built confines is acceptable, despite a good range of services and rail links.
- 7.5 In terms of the emerging development strategy, policy ST3 (publication version) indicates that sites at Rural Local Service Centres (tertiary focus for growth and primary focus for the rural area) that are well related to the existing settlement pattern and character of the surrounding countryside may be acceptable when meeting the needs for their home and surrounding communities. Paragraph 4.3.20 explains in more detail what this means for Newington, explaining that different villages differ in the scale of opportunities available, stating that development opportunities are limited due to *'the valued and important heritage, landscapes and habitats to the north of the village, poor pedestrian connections between north and south of the village, a restricted internal road network, poor air quality and surrounding high quality agricultural land'*. Significant expansion was clearly not envisaged. This is the version of the Local Plan the inspector has considered (at the time of writing this Proof).
- 7.6 Interim Findings of the Inspector, published in February and March 2016, are relevant. The Inspector indicated broad support for the settlement strategy of two planning areas, with growth continued to be focused on the Thames Gateway area, but with a proportional boost to allocations in Faversham and the Rural Area. In response to concerns about site allocations undermining the settlement strategy or harming the character of some villages or rural lanes, the Inspector made the following comment at Paragraph 28 of Part 2 of the Interim Findings on Swale Local Plan: *Headline Interim Findings on Housing Supply:*

'Concerns have been raised that additional site allocations could undermine the settlement strategy or harm the rural character of some villages and rural lanes.'

However the evidence demonstrates that there is a range potential additional sites across the Plan area. This provides the Council with sufficient flexibility to plan for a carefully managed uplift in allocations across the two planning areas without undermining the settlement strategy or harming its objectives’.

7.7 The Inspector’s Part 3 findings (para. 5) also further endorses the strategy:

“However the Plan’s approach is informed by robust evidence, it aligns with the Plan’s vision and it is supported by sustainability appraisal. The settlement strategy successfully addresses the core principles set out in paragraph 17 of the NPPF, particularly with regard to driving and supporting economic development and conserving the natural environment and heritage assets, whilst taking account of the different roles and character of different areas.”

7.8 This led to the conclusion:

“The settlement strategy is soundly based and consistent with national policy subject to allocating additional sites to meet OAN whilst maintaining the broad proportional balance of growth between the two planning areas”

7.9 Policy SH1 of the adopted local plan and ST3 of the emerging local plan should be given significant weight, particularly given paragraph 17 of the NPPF which seeks to ensure that planning takes account of the different roles and character of different areas. Whilst neither policy prevents development, the scale and the prominence of the urbanization proposed fails to reflect the settlement hierarchy and the particular care established in supporting justification.

7.10 The most up-to-date version of the emerging Local Plan is ‘*Bearing Fruits 2031: The Swale Borough Local Plan, proposed Main Modifications (June 2016)*’. The modifications to paragraph 4.3.20 are underlined:

‘Despite its role and level of services, development opportunities are ~~very~~ relatively limited due to the valued and important heritage, landscapes and habitats to the north of the village, poor pedestrian connections between north and south of the village, a restricted internal road network, poor air quality and surrounding high quality agricultural land. Opportunities are limited to brownfield sites or to the east of the village where there is potential to development a visually well contained site’.

7.11 The amendments included the addition of a single residential allocation of 115 homes at Newington, north of the A2 to the east of the village. The Council considered this site less harmful, preferred it to the appeal sites, and the evidence will be considered in detail by the Inspector appointed to consider the Local Plan. The Council argues this site is less harmful given its visually contained site location. It is not the purpose of this Inquiry to examine other sites, or seek to pre-determine the Local Plan Examination (see Section 6 of this proof on prematurity).

- 7.12 This assessment relates to both Appeal 1 and Appeal 2. Although Appeal 1 would be even more urbanising in character, neither respond appropriately to the settlement hierarchy, which should be given significant weight.

8. Development in the Countryside

- 8.1 The appeal sites are located outside the built confines of the settlement of Newington as defined in both the adopted and emerging local plans. Both Policy E6 of the adopted local plan (2008) and Policy ST3(6) of the emerging local plan seek to protect and enhance the countryside. Policy SP5 of the adopted local plan (2008) is also relevant. It expects development proposals to protect and where possible enhance the quality and character of the wider countryside. Emerging policy ST3 refers to a general restraint against development unless it is supported by national planning policy and contributes to protecting, and where appropriate enhancing, intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
- 8.2 As one of the 12 'core planning principles' the NPPF at paragraph 17 states that planning should:
- 'take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it'.*
- 8.3 This, when coupled with other core planning principles which seek to seek to steer development to land of 'lesser environmental value' and reusing land that has been previously developed' means that development in the countryside, at sites such as this, should not be the option of first resort. Although it predates the NPPF, the purpose of policy E6 accords with these underlying key principles of the NPPF. Furthermore Policy ST3 of the emerging local plan broadly incorporates the requirements of saved Policy E6.
- 8.4 It is accepted that settlement boundaries cannot be considered inviolate in the absence of a 5 year supply. Although these policies are out-of-date, they are not replaced with a presumption of favour of development in the countryside. It is not accepted that the general thrust of the local plan, which is to direct development to the most sustainable locations, is not relevant. Similarly it remains that a careful consideration of impacts must be carried out. These are considered in more detail in the following section of this proof.
- 8.5 Preceding sections have argued that emerging local plan Policy ST3 should be given significant weight, given local plan progress. Policy E6, and ST5 should benefit from moderate weight in this decision.

Part C

9. Agricultural Land

- 9.1 The appeal sites are currently in active agricultural use (apple orchard and blackcurrant) and the crop was being picked during a site visit in September 2016. The agricultural use does not appear to be impeded by its position on the edge of the village, other than the smell of traffic fumes and traffic noise close to the A2. There was evidence of trespass from neighbours to the site (dog walkers on the perimeter of the site), but there were no signs dissuading access or any evidence that this was a problem. Other than unmanaged and overgrown areas of land around the buildings all of the land is in active use. The Natural England Land Classification Map identifies that this site is very likely to be of Grade 1 and 2 agricultural land. This is also the assessment of the appellant.
- 9.2 This area is described in the Swale Landscape Character and Biodiversity Appraisal (2011) as land traditionally used for fruit production. The appraisal describes the Fruit Belt Landscape Type¹⁴ (p63), with historical reference to this agricultural heritage:

“Forming part of the North Kent Plain and lying upon the fine loam soils found between the London Clay underlying the Greater Thames Estuary to the north and the North Downs chalk to the south, these areas are some of the most productive agricultural areas in Kent. The area, formed by a belt either side of Watling Street, has been historically famous for its fruit, especially cherries and apples. Plums, pears and soft fruits are also present. Poly tunnels have become a characteristic feature throughout the fruit belt, used to protect and enhance the development of produce such as soft fruits. Some orchards still comprise large trees with grazing sheep and blossom in spring, strongly identifiable with the ‘Garden of England’. Fruit belt areas are indicative of the traditional landscapes and ways of working that was once widespread across north Kent and, alongside the growing of hops, they are important in terms of historical reference. However, many traditional orchards been replaced with dwarf stock that is in turn being turned over to arable crops. Some became overgrown, whilst others have been sold to individuals who graze horses instead of sheep. Large areas of former fruit production are now used for arable crops, perhaps with shelterbelts or hedgerow lanes the only sign of the former land use. In some areas the orchards have changed to arable altogether and the shelterbelts largely gone. Poplar or alder dominated shelter belts are particularly characteristic of these landscapes. The regular patterns and rectangular shapes of the fields typical of this area are more usually defined by changes in crop type, rather than by hedgerows marking the field boundaries. Within this landscape, the few small woodland blocks and copses that do exist add a vertical element and thus variety, to the horticultural scene. Occasionally, large veteran trees stand in historic parkland or in fields as reminders of former parkland. The repeated felling and regrowth of the coppice cycle has characterised some woodlands for centuries and are strongly representative of cultural and economic activity.”

¹⁴ Swale Landscape Character Appraisal and Biodiversity Appraisal 2011 – Fruit Belt Landscape Types

- 9.3 The Newington Fruit Belt Character Area is representative of this landscape type and the appraisal recognises that orchard and fruit production remains the dominant feature. Although these trees have been planted relatively recently, the use of this land for orchard and fruit production is typical of this character area.
- 9.4 Fruit and agriculture generally is important to the economy and essential for food security and self-sufficiency. In 2015 Swale Borough Council published a document titled 'Value of Best and Most Versatile Agricultural Land in Swale'¹⁵, which identifies the importance of the Swale agricultural sector in detail. Correspondingly, and in line with the NPPF, Swale Borough Council has recognised the importance of Best and Most Versatile Agricultural Land and this was a key theme in its site selection process for the Local Plan.
- 9.5 This approach is supported by NPPF (para 112) which states that local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. When development of agricultural land is demonstrated to be necessary it encourages councils to use areas of lower quality land in preference to that of a higher quality. It has been demonstrated by the up-to-date evidence base developed as part of the local plan that there are alternative sites available that will deliver the necessary amount of housing to meet the Objectively Assessed Housing Need.
- 9.6 The Local Plan Inspector will consider the sites proposed by the Council at the Local Plan examination when it reconvenes. It is right that any decision to choose a site on best and most versatile agricultural land should be made in the context of alternatives available. It is proper given the advanced stage of the local plan preparation process that this should fall to the Local Plan process to give this issue proper consideration
- 9.7 Policy DM31 of the emerging local plan relates to agricultural land. This policy should be given significant weight. The loss of the land should therefore be a significant adverse effect of the proposal. Even if a need to use best and most versatile agricultural land existed, it is likely that more sustainable site(s) would be preferred. This assessment is relevant to both Appeal 1 and Appeal 2.

10. Landscape character and visual impacts

- 10.1 Evidence will be presented on public footpath impacts by Margaret Milsted-Williamson of The Ramblers Association.
- 10.2 The appeal sites occupy land to the south of the A2 at the approach to the village of Newington from the west. There is high land to the north, including Mill Hill where panoramic views are available and there is ribbon development to the north on the A2 itself. To the south of the A2 a substantial hawthorn hedge screens much of the site and provides a gap in almost continuous development. Beyond, undulating agricultural land rises gently to the south and east.

¹⁵ Swale Landscape Character Appraisal and Biodiversity Appraisal 2011 – Fruit Belt Landscape Types

- 10.3 Swale Landscape Character and Biodiversity Appraisal (2011) (adopted as a Supplementary Planning Document) describes the Newington Fruit Belt character area (p.82) as having ‘*a strong character and is in moderate condition overall*¹⁶’. It is also described as low sensitivity due to urbanization of the A2 and twentieth century expansion of Hartlip. The guidelines for the Newington Fruit Belt are relevant. These relate to ‘*create and reinforce*’ and include the following recommendation:

‘Reinforce the strong enclosed landscape structure and the rural character of enclosed narrow winding lanes through the retention and management of existing hedgerows and shelterbelts. Seek opportunities to further reinforce this landscape structure, especially in localised denuded areas and through the screening of commercial buildings along the A2’.

- 10.4 The appeal site itself does have a strong landscape structure and it would be unfortunate to disrupt, rather than reinforce this, on a site that links Newington to its historical and agricultural past. The agricultural landscape setting is important to the character of the village.
- 10.5 The Landscape and Visual Review (March 2016) prepared by Davis Huskisson Associates (advising the Council) makes a measured assessment of the site, and we would agree that the consequences identified are accurate. It concludes that significant landscape effects would arise from the development as follows:
- The total loss of characteristic, attractive orchard farmland.
 - Substantial Hedgerow loss and introduction of urbanising features, associated with the proposed access from the A2, with these extending into the field to the west, outside of the two principal fields proposed for development.
 - Introduction of out of character residential development, in terms of some 2.5 storey development, including a proposed care home which is likely to include a block of development of larger scale and massing, and development of a higher density relative to the existing development along the A2 to the north.
 - The character change from an existing more rural context of the farm buildings to a more urban one, despite the provision of some mitigating green space around them.
 - The further erosion of local landscape character along the A2 corridor.
- 10.6 The assessment was prepared in response to Appeal 2. In terms of Appeal 1, the landscape and visual impacts are even more pronounced and significant. The site is larger and will result in a direct change in character over a larger area. Its close proximity to the A2 and a more limited landscaping provision would result in an even more prominent urbanisation of the site. This impact is compounded by the loss of the agricultural outbuildings, which amplify the agricultural and rural character of the appeal site and are important to the setting of the listed building in this historic landscape. Although the site is relatively contained in the wider landscape, there will be significant impacts on views close to the site boundaries, particularly from the A2 and also adverse impacts on views from high land at Mill Hill in the north.

¹⁶ Swale Landscape Character Appraisal and Biodiversity Appraisal 2011 – Fruit Belt Landscape Types

- 10.7 The localised impact from the loss of characteristic farmland through urbanization will be significant and adverse. As well as the obvious impact on the landscape character of the site itself, the development will erode an important countryside gap in development on the A2 and although the local landform, rising gently to the south, is not very pronounced, it nevertheless means that the extent of urbanisation may easily be perceived. The appeal proposal would result in significant and demonstrable harm in terms of impact on the landscape character and the visual amenity of a distinctive and traditionally characteristic agricultural landscape on the edge of the village. It is of course, also relevant to the rural landscape setting of the Pond Farm House, the listed building. Some of the best views of the farm house in its agricultural landscape are from the eastern part of the site, which is proposed for development in both Appeal 1 and Appeal 2. This assessment is relevant to both Appeal 1 and Appeal 2.
- 10.8 If the appeal was allowed, the proximity of the resultant village edge to the industrial estate and houses west of the site will result in the westernmost boundary being more difficult to defend.
- 10.9 The rural nature of the footpath crossing the site will clearly be adversely affected. Whilst it is proposed to retain the footpath it will become an urbanised feature enclosed by built form for the most part. It will no longer be experienced in countryside. This impact is clearly more significant for Appeal 1.
- 10.10 In respect of whether the appeal site constitutes a valued landscape for the purposes of paragraph 109 of the Framework, it is clearly important to the setting of Newington and as a gap in A2 development on the approach to the village. This area, partly as a result of the proximity to the community woodland to the south, and the footpath crossing the site, means that the local community is able to experience this characteristic landscape close at hand and it is critical to the setting of the listed farmhouse. The Key Characteristics listed in the Landscape Character Assessment illustrate the extent to which it is in keeping with the traditional fruit belt landscape:
- Undulating landscape of rich loam soils;
 - String landscape structure formed by the network of mature hedgerows and shelterbelts that would surround hedgerows;
 - Views largely enclosed;
 - Narrow winding lands enclosed by shelterbelts;
 - Linear village with historic core, scattered isolated farmsteads and cottages of mixed age and building style.
- 10.11 The proposal would fail to protect and enhance a valued landscape, contrary to paragraph 109 of the Framework. A letter from Brandon Lewis in March 2015¹⁷ (then Minister of State for Housing and Planning) gave a reminder that plans and decisions should take into account the roles and character of different areas, and recognise the intrinsic character of the countryside (NPPF para 17), and stated: *'while National Parks, the Broads, Areas of*

¹⁷ Brandon Lewis MP Letter (27 March 2015)

Outstanding Natural Beauty and Heritage Coasts quite rightly enjoy the highest degree of protection, outside of these designated areas the impact of development on the landscape can be an important material consideration’.

- 10.12 The development (both Appeal 1 and Appeal 2) would be clearly contrary to adopted local plan Policy E9 (protecting the quality and character of the boroughs landscape). The second half of the policy relates to undesignated landscapes. It refers to development being sympathetic to landscape character and quality, considering guidelines in Landscape Character Assessments, safeguarding or enhancing landscape elements that detract from the character of the landscape, removing detracting features and minimising adverse impacts on landscape character.
- 10.13 In her Interim Findings (Part 3) the Local Plan Inspector endorsed policy DM24 of the emerging Local Plan, stating the evidence on which it is based is robust, could see no conflict with the NPPF and concluded it is soundly based. She recognized the policy is for development management and will not preclude strategic allocation of sites. Given this, it should clearly attract significant weight in decisions.
- 10.14 This policy states that non-designated landscapes will be protected and enhanced and planning permission will be granted, subject to: the minimisation and enhancement of the landscape being demonstrated; and when significant adverse impacts remain, that social and or economic benefits of the proposal significantly and demonstrably outweigh the harm to the landscape character of the area. The appellants have not succeeded in making this case and less sensitive sites in more sustainable locations are available. Similarly the proposal would be contrary to paragraph 17 and 58 of the NPPF in that it would be harmful to the intrinsic beauty of this part of the countryside and would not appropriately respond to local character.
- 10.15 The impacts of the Appeal 1 are more pronounced given the larger site, the increased expansion westward, and the proximity to the A2 and listed building. However the landscape harm associated with both Appeal 1 and 2 should be a significant adverse effect of the proposals.
- 10.16 Substantial removal of the prominent hawthorn hedge to the front of the site as a result of amended access arrangements would clearly have a notable local impact. It is not clear whether landscape and ecological assessments were updated in respect of this major change.

11. Settlement/ strategic Gap

- 11.1 The appeal site lies within a designated Strategic Gap to the west of Sittingbourne in the adopted local plan. The Strategic Gap was an important element of the spatial strategy for Kent in the Kent and Medway Structure Plan 2006¹⁸ (Policy SS3). The specific purpose of the Medway Towns-Sittingbourne Strategic Gap was described as: *‘to maintain the separation between the urban areas of the Medway Towns and Sittingbourne.’* The role of

¹⁸ Kent and Medway Structure Plan (2006)

the strategic gap included curtailing ‘*development in the A2 transport corridor between Sittingbourne and Rainham*’.

- 11.2 The South East Plan¹⁹ was less specific, but made similar statements at policy KTG1 (Core Strategy) relevant to the Kent Thames Gateway. The policy stated the following:

‘Local and central government, and all parties concerned with service provision and infrastructure, will co-ordinate their policies and programmes to:
(x) protect from development the Metropolitan Green Belt, the Area of Outstanding Natural Beauty and avoid coalescence with adjoining settlements to the south, east and west of the Medway urban area and to the west of Sittingbourne’

- 11.3 The two plans are, of course, no longer relevant in decision-making. The above references, however, serve to demonstrate the long-term importance that has been attributed to this issue when Kent and Medway strategic planning (and regional planning) was in place. Although the strategic context is no longer available (paragraph 89, Technical Paper 6: Interim Review of Local Landscape Designations and Important Local Countryside Gaps) and the designation will not be maintained in the emerging local plan, the principle is none-the-less still an important one. This is reflected in Policy E7 of the adopted Local Plan, as follows:

‘Policy E7 The separation of settlements

In order to retain the individual character and setting of settlements, the following countryside gaps are defined on the Proposals Map:

- 1. that part of the Strategic Gap between Maidstone and the Medway Towns falling in Swale;*
- 2. that part of the Strategic Gap between the urban areas of the Medway Towns and Sittingbourne north of the M2 falling in Swale; and*
- 3. the important local countryside gaps.*

Within these gaps, the Borough Council will not grant planning permission for development, including changes of land use, which would either:

- a. result in the merging of settlements; or*
- b. result in encroachment or piecemeal erosion of land or its rural open and undeveloped character; or*
- c. prejudice the Council's strategy for the redevelopment of urban sites’.*

- 11.4 Furthermore, the principle is carried forward in the proposed Modification to Policy ST5 of the emerging local plan, where it is proposed that criterion 6 will be as follows:

“Maintain the individual character and separation of important local countryside gaps around Sittingbourne in accordance with Policy DM25 and within the A2 corridor to the west of the town through to Rainham.”

¹⁹ Regional Spatial Strategy for the South East (2009)

- 11.5 It is our view that the proposed development of the site is not in accordance with Policy E7 of the adopted local plan or proposed Policy ST5 of the emerging local plan. These policies should be given significant weight given the compatibility with the NPPF which holds as a Core Planning Principle (para 17) that planning should take account of the role and character of different areas. The site represents one of the only remaining gaps in roadside development between Hartlip Hill and Newington. Development of the appeal sites would result in the merging of settlement, or piecemeal erosion of land or its rural open and undeveloped character, described by the Policy E7.
- 11.6 The loss of this settlement gap is a significant adverse effect of the proposal. This is relevant to both Appeal 1 and Appeal 2.
- 11.7 We would also add that good design and taking account of the role and character of different areas is relevant to the emerging Local Plan (Policies ST1, DM3 and DM24). Part 9 of emerging Local Plan Policy ST1, for example, refers to promoting healthy communities through ‘maintaining the individual character, integrity, identities and settings of settlements’.
- 11.8 Despite development to the north of the A2, the natural boundary of the site itself to the A2 gives a sense of separation and the sense of approaching a distinct settlement. The urbanization of this site, including a highly engineered access and highway would erode this separation further so that the A2 in this location would be perceived as a continuous urban stretch. This would be harmful to the character of Newington and the identity of the community. This is applicable to both appeals. Even the removal of much of the hedge, delivery of a prominent access and associated hard-engineering at the highway for the Appeal 2 proposal will erode the sense of a gap.
- 11.9 Ultimately, the ability to defend the western boundary of the site would be tenuous and a precedent would be set for other sites close by, including the industrial estate and the Gardening World site. The evidence of Newington as a distinct settlement would be eroded. This conclusion is relevant to both appeal sites.
- 11.10 This issue was identified in the Inspector’s conclusions on this site in his report²⁰ on the 2008 Local Plan, which stated at paragraph 3.23 that: *‘As far as the totality of the objections is concerned, the land is important visually in its function of providing openness in its peripheral location and in its contribution to the character and appearance of the countryside and the gap’.*

12. Heritage assets

- 12.1 Evidence will be presented by Emma Rouse (CPRE Kent 7) on the revised second Appeal. She concludes that there would be no direct harm to either the Listed Grade II Farmhouse or the associated undesignated heritage assets forming the related farm buildings but there would be a major effect on significant components of their setting leading to

²⁰ Swale Borough Local Plan Inquiry – Inspectors Report (2007)

material adverse harm.

- 12.2 In terms of Appeal 1 it is clear that the harm to the outbuildings (non-designated assets) is substantial and irreversible. Paragraph 135 of the NPPF is therefore relevant. In addition the outbuildings also contribute significantly to the historic agricultural setting of the listed farm house. The adverse effect of the application (i.e. total loss) on their significance and also on their significance to the setting of the Listed Building is clear.
- 12.3 It is unknown whether the potential for their demolition has triggered an internal survey for the purposes of potential local listing, but it would certainly be valuable to carry out further investigation to determine whether these are assets worthy of local listing.
- 12.4 The Council will be providing evidence on the harm to the listed building that results from Appeal 1, whilst we have provided evidence on the revised Appeal 2. In terms of Appeal 1 it is clear, given the even closer proximity of the development to the listed building, the complete loss of agricultural farmland setting and substantial harm to the historic outbuildings (that are a significant element of the setting of the Listed Farmhouse), the harm assigned to the impact on the listed building must be even greater, and there would be at least an extreme effect on significant components of its setting. This is a significant material adverse harm that should result in a refusal of the application. The key connection with the outbuildings and the adjacent farmland has survived and the importance of this setting to the farmhouse can be appreciated in the available views, including long distance views from Mill Hill, the eastern portion of the site, as well as a range of closer views associated with the yard and buildings. Similar issues were considered at a recent appeal nearby in Rainham²¹. Proposed development within the setting of the building is limited in detail, but it is clear the appeal proposal has the potential to cause substantial harm.
- 12.5 It is important to recognise that despite development close to the site, the listed building still enjoys a rural setting and it is still possible to appreciate the elements that would have made up a functioning farm – the farm house, its outbuildings and the working land. The proposal would result in negative ‘cumulative change’ as described by Historic England in its publication ‘The Setting of Historic Assets²²’ as follows:
- ‘Where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies, consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of an asset. Negative change could include severing the last link between an asset and its original setting....’*
- 12.6 This is an instance of where the removal of the last link between the farmhouse, farm buildings and surrounding historic agricultural setting would represent such a negative change.

²¹ Appeal Ref: APP/A2280/W/15/3012034 Land North of Moor Street, Rainham

²² The Setting of Heritage Assets: Historic Environment Good Practice in Planning (2015) Historic England

13. Highways, congestion and access

- 13.1 Evidence will be presented by Cllr Mike Baldock and Cllr John Wright on 'local concerns', which include highway issues. Evidence from Stephen Peckham titled air quality is also relevant.
- 13.2 The Proofs of Evidence include, but are not limited to, explaining the existing high traffic volumes and congestion problems, and the likelihood of new residents contributing to the existing problem. Safety problems and impact on amenity associated with the proposed access are mentioned. The impact of additional cars at Key Street roundabout and the network beyond and the cumulative impacts of new housing sites (including local plan sites) form part of this evidence.
- 13.3 Policy T1 of the adopted Local Plan is relevant. This states that proposal which generates traffic in excess of the capacity of the highway network or results in a decrease in highway safety will not be permitted unless these issues can be addressed by environmentally acceptable improvement. Similarly Policy DM6 seeks environmentally acceptable improvements to the network where the residual cumulative impact of development on traffic generation would be in excess of the capacity on the highway network. NPPF paragraphs 32 and 34 state that development should only be refused on transport ground where the residual cumulative impacts of development are severe. Development decisions should be located where the need to travel is minimised and should take account of whether opportunities for sustainable transport modes have been taken up to reduce the need for major transport infrastructure, safe and suitable access can be achieved, and cost effective improvements to the transport network can be undertaken to limit significant impacts.
- 13.4 CPRE has not yet seen the Statement of Common Ground in respect of Appeal 1, which will presumably bring the current position up to date. It is understood, at the time of writing this proof of evidence, that the Highway Authority was still doing modelling work, and had not received evidence that the scheme could be mitigated via a pro-rata contribution to a scheme to be designed/implemented by the County Council or the Borough Council.
- 13.5 However, in respect of both Appeal 1 and 2, local evidence explains that the A2 at the village is very congested already (due to pinch points as well as numbers of vehicles). It is already at very high traffic levels, and there are regular delays. Further, it seems reasonable, given the substantial levels of development being proposed through the local plan, that up-to-date cumulative impacts and potential cumulative impacts should be considered in detail and to date there does not appear to be evidence this is the case.
- 13.6 Planning Practice Guidance (42-014-20140306) states: *'It is important to give appropriate consideration to the cumulative impacts arising from other committed development (i.e. development that is consented or allocated where there is a reasonable degree of certainty will proceed within the next three years). At the decision-taking stage this may require the developer to carry out an assessment of the impact of those adopted Local Plan allocations which have the potential to impact on the same sections of transport network as well as other relevant local sites benefitting from as yet unimplemented planning approval'*. Indeed

there is another major planning application being considered to the north east of the village, which is a proposed allocation in the local plan. Given the advanced stage of the emerging local plan (and the potential need for more transport modelling indicated by the Inspector) and severe local impacts on amenity due to congestion, it would seem to be in the public interest that modelling of cumulative impacts is complete. This is the interest of local amenity and ensuring the local plan is deliverable.

14. Air Quality

14.1 Evidence will be presented by Professor Stephen Peckham and Cllr Wright on air quality.

Part D

15. Summary – sustainable development and conclusions

- 15.1 Sustainable development is about change for the better and paragraph 14 of the NPPF identifies that at its heart is a presumption in favour of sustainable development.
- 15.2 A range of social and economic benefits (including affordable housing, and construction employment) are broadly recognised benefits of residential development. This proof has sought to demonstrate that the environmental harms associated with the appeal schemes should outweigh the benefits of the proposal, particularly given the advanced stage in the preparation of the Local Plan. The NPPF at paragraph 7 is clear that there are three dimensions to sustainable development, whilst paragraph 8 explains that these roles should not be undertaken in isolation, because they are mutually dependent. We submit that the proposed development fails to do this and that the environmental harms we have highlighted in our evidence to the inquiry shows that the development is not sustainable as required by the NPPF.
- 15.3 The Council has demonstrated as part of its local plan process that alternative sites that score better in sustainability terms are available. This is key. The social and economic benefits of the proposals do not rely on this site in particular. On the other hand, the harm relevant to the environmental role of sustainable development undermines the sustainability claims of the scheme. This relates to the particular landscape, separation, heritage, air quality, highway capacity and agricultural land characteristics of this site, which when taken together, weigh significantly and demonstrably against the benefits of both the appeal schemes. Harm can be identified individually for these characteristics too.
- 15.4 Although the Council is unable to demonstrate a 5 year supply of housing, a number of the policies, including those related to the settlement strategy of the emerging Local Plan, should be given significant weight. Relevant case law is presented on this issue, notably the Suffolk Coastal Judgement gives support to assigning weight according to the circumstances of the case. At an inquiry at Norton Ash Garden Centre earlier in 2016, the Inspector agreed that moderate weight should be given to settlement strategy policies. Since then, the Council has also identified sufficient sites to meet an agreed Objectively Assessed Need, to a figure that is supported by the Local Plan Inspector. These sites have been subject to consultation and will be considered by the Local Plan Inspector in the very near future, according to a published timetable. Settlement strategy and sustainability of location is clearly important in determining these appeals, even if a 5 year supply cannot be demonstrated.
- 15.5 To determine an application for a large site of this scale (applicable to both appeals) in a modestly sized village, when the emerging plan is at such an advanced stage, would predetermine the local plan and the scale of development in a way that does not respond to the spatial strategy of the plan. This is a particularly imperative issue, given an alternative large site in the same village is included in the modifications to the Plan. It is not in the public interest and will leave the community bewildered as to the value and purpose of the Local Plan process, with which they are fully engaged, if this site were to be accepted

outwith the process. This is a significant adverse effect that should be a material consideration when considering the paragraph 14 presumption in favour of sustainable development. The proposed allocation would amount to a considerable expansion of a village of modest proportions, which is not in keeping with the settlement strategy and which has the potential to have significant cumulative effects. This undermines the plan-making process. It is not in the public interest and would disregard the Inspectors reference to 'sensitively nudge the housing target upwards across the borough'.

- 15.6 It is submitted, therefore that a prematurity objection would constitute a material consideration which should weigh against the grant of permission, since in NPPF terms it would constitute an "adverse effect" for the purposes of the paragraph 14 presumption. The Newington community has made representations to the emerging Local Plan and the Local Plan Inspector will consider these, together with comments from developers on non-allocated sites. The range of sites are available for consideration by the Inspector and this is the most effective way to ensure the Local Plan delivers a sustainable development. It would not be in the interest of sustainable development to permit a site assessed as less sustainable in the 'Ranked Assessment of Non-Allocated Site Options' than those proposed for allocation in the Local Plan. Permitting speculative proposals at this stage would be a reactionary response that would not evoke confidence in the Local Plan which is at examination. This advanced stage in local plan preparation is important.
- 15.7 The policy amendments and proposals within the Modifications to the Local Plan are the Council's response to identifying suitable sites to meet the housing requirement in a manner that does not undermine the settlement strategy that has been found sound by the Local Plan Inspector. In summary, the examination of the local plan is expected to resume imminently, the Inspector is satisfied the Duty to Cooperate has been met to date, has directed the council to a revised housing target, and sites have been identified that will deliver the OAN. Although the inspector has yet to consider the proposed new allocations and relevant objections received to them, it seems difficult to dispute the advanced stage in local plan preparation. It is difficult to see a more advanced stage in the preparation of a local plan that would trigger prematurity as a consideration. The issue of prematurity is relevant to this appeal.
- 15.8 Of course, also relevant to this is the settlement hierarchy, which is related to the settlement strategy. Neither the Adopted Local Plan, nor the emerging Local Plan envisage development at Newington of the scale and prominence proposed. The appeal proposals do not take account of the role and character of the village.
- 15.9 Coming to the individual issues related to sustainable development. Using natural resources prudently is important to the economic and environmental role of sustainable development. The NPPF requires that local planning authorities take into account the economic and other benefits of the best and most versatile agricultural land and specifies that where significant development of agricultural land is necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality. In this respect it is important to emphasize that the emerging local plan is progressing well and will continue its examination very soon. The evidence base to the local plan demonstrates a selection of alternative and available sites. Selection of this site

is not necessary, since other sites are available on poorer quality agricultural land or in more sustainable locations generally. The loss of agricultural land itself is clearly not an environment or economic gain. The planning system within the Swale Borough is working hard playing an active role in guiding development to sustainable solutions as it is required to by paragraph 8 of the NPPF. It has demonstrated alternatives, so therefore there is an immediate conflict with paragraph 112 of the NPPF and the loss of agricultural land must be considered a significant adverse effect of Appeal proposals 1 and 2. The proposals are also contrary to Policy DM31 of the emerging Local Plan.

- 15.10 In terms of the landscape character and visual impacts of the proposed development, it is obvious that development of the appeal site(s) would markedly change the character of the site, both in itself and for those using the public right of way (particularly relevant for Appeal 1). Urbanisation would replace the countryside character of this location. Similarly, nearby residential properties would lose their outlook of the wider countryside and some nearby views and a long distance view from Mill Hill would be adversely affected. Notably, the approach to Newington on the A2 would become more urban in character and any remaining sense of a gap between Hartlip and Newington would be substantially lost. This is relevant to both Appeal 1 and 2. Although much of the Appeal 2 development is set back from the front of the site, the loss of hedgerow, the highway works associated with the access and prominent development will nevertheless erode this gap. Overall, in visual terms, the above factors combine to form a significant negative conclusion. The appeal proposals would result in the erosion of an important gap in development on the A2, and a fundamental and adverse change to the character of a distinctive and characteristic agricultural landscape on the edge of the village, and which form part of the setting of a listed building and the village itself. The proposals are contrary to policy E7 and E9 of the Adopted Local Plan, Policies ST1, ST5, DM3 and DM24 of the emerging Local Plan and paragraphs 17 and 58 of the NPPF.
- 15.11 Air pollution evidence has sought to explain that increased traffic movements will increase pollution levels through increased traffic and increased congestion. In this evidence it is explained that it is inconceivable that improvements in emission control in vehicles would enable such substantial reduction in NO₂ levels given traffic levels are predicted to rise. It is argued that the proposed development will contribute to continuing breaches of limit values of the Air Quality Directive 2008/50/EC. The effects of air pollution on human health cannot be ignored and all efforts should be made to improve, not add to, the ambient air quality in Newington, and in the local and adjacent AQMAs on the A2 in particular. To rely on mitigation measures dealt with by conditions in individual planning applications completely fails to address the cumulative impacts of allocating these large sites within the draft Local Plan on the Newington AQMA. This would undermine the sustainability claims of the scheme. The proposals are contrary to Policies ST1 and E1 of the adopted local plan, DM6 and DM14 of the emerging Local Plan and paragraphs 124 of the NPPF.
- 15.12 Similarly, evidence, drawing on local knowledge explains the high traffic volumes and severe congestion associated with Newington. It is essential that cumulative impact of new sites on Newington, at the Key Street roundabout and the network beyond are properly understood. There is no evidence this is the case and it does not seem reasonable to proceed, disregarding the local plan and its proposed sites, given that highway capacity

concerns are relevant to deliverability of the local plan and amenity of residents. The proposals are contrary to Policies SP6 and T1 of the adopted local plan and ST1, CP2 and DM6 of the emerging Local Plan and paragraphs 32 and 34 of the NPPF.

- 15.13 In terms of heritage assets, it is clear in reference to Appeal 1 that the harm to the outbuildings (non-designated assets) is substantial and irreversible. Paragraph 135 of the NPPF is therefore relevant. In addition the outbuildings also contribute significantly to the historic agricultural setting of the Listed Farm House. The adverse effect of the application (i.e. total loss) on their significance is clear and also on their significance to the setting of the Listed Building. Further, given the even closer proximity of the development to the listed building, the complete loss of agricultural farmland setting and substantial harm to the historic outbuildings (that are a significant element of the setting of the Listed Farmhouse), the harm assigned to the impact on the listed building must be even greater, and there would be at least an extreme effect on significant components of its setting. This is a significant material adverse harm that should result in a refusal of the application. Proposed development within the setting of the building is limited in detail, but it is clear the appeal proposal has the potential to cause substantial harm.
- 15.14 In terms of the Appeal 2 proposals, there would be no direct harm to either the Listed Grade II Farmhouse or the associated undesignated heritage assets forming the related farm buildings. There would be a major effect on significant components of their setting leading to material adverse harm. The evidence explains that there is a strong presumption against development that would harm the setting of a listed building. Considerable weight should be given to this harm.
- 15.15 In conclusion, this is not a sustainable location for development. While the proposals would deliver some benefits, these are largely generic and would be the same for any similar housing scheme of the scale proposed. The availability of alternative sites is also relevant. It is our view that the adverse environmental impacts significantly and demonstrably outweigh the benefits. The development would also be harmful to the progress of the emerging local plan which is at an advanced stage and is the result of substantial community investment. Neither Appeal 1 nor appeal 2 would amount to sustainable development and they should be dismissed. Indeed in terms of the harm to the setting of the listed building (and particularly important in appeal 1), even considered alone that harm is likely to give rise to a strong presumption against granting permission.