



## Appeal Decision

Inquiry Held on 4-7 December 2018

Site visit made on 7 December 2018

**by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 December 2018**

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**Appeal Ref: APP/H2265/W/18/3202040**

**Land to the rear of 237-259 London Road, West Malling, Kent ME19 5AD**

- 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 Retirement Villages West Malling Ltd against the decision of Tonbridge & Malling Borough Council.
  - The application Ref TM/17/00506/OA, dated 23 February 2017, was refused by notice dated 13 November 2017.
  - The proposal is an outline application for an extra care development of 79 units (comprising of apartments and cottages) all within Use Class C2; associated communal facilities; provision of vehicular and cycle parking together with all necessary internal roads and footpaths; provision of open space and associated landscape works; and ancillary works and structures.
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### DECISION

1. The appeal is allowed and planning permission is granted for an extra care development of 79 units (comprising of apartments and cottages) all within Use Class C2; associated communal facilities; provision of vehicular and cycle parking together with all necessary internal roads and footpaths; provision of open space and associated landscape works; and ancillary works and structures on land to the rear of 237-259 London Road, West Malling, Kent ME19 5AD in accordance with the terms of the application, Ref TM/17/00506/OA, dated 23 February 2017, subject to the conditions set out on the attached schedule.

### POLICY CONTEXT

2. I am required by statute to determine the appeal in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan currently includes the Tonbridge and Malling Borough Core Strategy (2007) (the CS), and the Tonbridge and Malling Managing Development and the Environment Development Plan Document (2010)(the DPD).
3. It is a material consideration that the Council is preparing a new Local Plan which will replace the existing development plan and which has recently been the subject of a Regulation 19 public consultation prior to its submission to the Secretary of State for Examination. However only limited weight may be accorded to that emerging plan as there have been relevant objections to the draft plan and the policies may change before the Plan is adopted as part of the development plan.

4. The National Planning Policy Framework (2018) (the Framework) is another important material consideration.

## **MAIN ISSUE**

5. Since the planning application was determined there have been further negotiations between the Appellant and the Council. As a result the Council now advises that Reasons for Refusal 2 and 3 have been overcome. In accordance with the use as defined in the completed Section 106 legal agreement the Council now accepts that this would be a Use Class C2 development (Residential Institution) and not a Use Class C3 development (Dwellings). A recalculated open space financial contribution has been agreed in the Section 106 agreement. Notwithstanding CS Policy CP17, the Council also now accepts that it is unnecessary to provide the affordable housing required by the development plan. Whether or not that is a correct interpretation of CS Policy CP17, the more up-to-date Framework at paragraph 64 is a material consideration and also seeks to preclude such specialist housing for the elderly from a requirement to provide affordable housing.
6. Reason 4 related to the effect of the development on the ecology of the site and bio-diversity. A revised indicative layout was submitted after the application was determined. It shows how some of the buildings could be relocated to reduce the impact on wildlife habitat. The Council now considers that this objection has also been overcome subject to the application of suitable planning conditions setting out clear parameters.
7. I agree with the Council's conclusions on the above agreed matters. Apart from the access the site is in the Green Belt. The parties also agree that the development would be inappropriate in the Green Belt as defined by national policy to which Policy CP3 here defers. At the Inquiry the parties' witnesses also agreed that there would be harm to the openness which is an essential characteristic of Green Belts as well as encroachment into the countryside. However the extent of that harm is disputed.
8. The main outstanding issue is thus whether the harm to the Green Belt by reason of inappropriateness and any other harm, including harm to openness and encroachment into the countryside, would be clearly outweighed by any other considerations.

## **THE SITE**

9. The appeal site is an approximately level area of land that was last used for agriculture. It stands to the rear of a row of detached houses in deep plots that front London Road (A20). The appeal site is open and undeveloped except for a track which provides access to a backland dwelling at 237 London Road. To the east is low density residential development on rising land between the site and Town Hill. That residential area lies within the defined settlement boundary for West Malling, which line also here defines the Green Belt boundary. The southern half of the site is largely covered with self-seeded trees and shrubs. It adjoins a low railway embankment. Beyond the railway is mainly open land including allotments and a sports field. To the south west is other open land of rural character forming part of the extensive curtilages of dwellings at Brickfields and beyond which are open fields in agricultural or similar uses.

## **REASONS**

### ***Green Belt***

10. CS Policy CP3 is the most relevant development plan policy and it provides that national Green Belt policy will be applied here. That national policy is currently expressed in the Framework which was revised as recently as July 2018.
11. It is not disputed that the development would be inappropriate in the Green Belt as defined by the Framework (and hence also the development plan) in that it does not qualify as any of the listed exceptions that define what development is not inappropriate. National policy requires that substantial weight be accorded to the harm of inappropriate development to the Green Belt and that very special circumstances would be needed to clearly outweigh that and any other harm including the harm to openness and of encroachment on the countryside.
12. As a substantial built development on undeveloped land the proposal would inevitably reduce the openness which national policy describes as an essential characteristic of the Green Belt. However the extent of that harm is disputed. The Appellant acknowledges that there is spatial harm but there is disagreement as to whether that is compounded by perceived visual harm to openness and, if so, the extent of that harm. In particular, the Appellant relies on the site's visual containment in views from public places.
13. It is likely that the development would be little visible from London Road or Town Hill and that the setback from the railway and partial screening by retained or reinforced planting would mitigate other visual impacts in public views. Nevertheless, the several substantial 2-3 storey apartment blocks indicated in the submitted proposals would be seen from the adjoining residential areas to the north and east and from more distant buildings on Town Hill such as Malling House. They are also likely to be partially visible in public views both from the railway and from the public footpath that passes close to the site's western boundary. The scale of the built development and associated parking areas and the associated reduction in openness would also be very apparent to the many residents, staff and visitors at the development itself. That visual and spatial harm to openness would therefore constitute significant additional harm to the Green Belt.
14. That the built development would be on undeveloped land, formerly in agricultural use, outside the defined settlement, and adjoining other open land to the south west and beyond the railway also means that the development would result in encroachment into the countryside contrary to one of the Framework's 5 defined purposes of the Green Belt.
15. Harm to openness and encroachment into the countryside must nevertheless be distinguished from other landscape and visual effects to which the Council does not here object. Based on the indicative layout and scale of buildings I agree with the parties that the site's relative containment and the opportunities for retained and improved landscaping mean that there need be no significant harm to landscape character. In relation to visual effects, whilst there would be some adverse impacts on the currently open and undeveloped views as seen from adjoining residential areas, the railway and the public footpath, I do not consider that these would be significantly or unacceptably harmful.

16. Neither, subject to appropriate conditions and the final design, need there be significant harm to bio-diversity or associated policy conflict.

### ***Other Considerations***

17. National policy provides that the identified harm to the Green Belt may be weighed with any other material considerations in order to determine if there are very special circumstances which may justify inappropriate development. A number of matters have been cited by the Appellant and the main considerations are examined below.

#### Housing Supply

18. At the Inquiry it was not disputed that the residential units to be provided as part of the proposed C2 residential institution would still count as housing provision for the purposes of housing land supply calculations.
19. The Council acknowledges that it cannot identify the minimum 5 year supply of housing land against objectively assessed housing needs that is required by Section 5 of the Framework. The most recent figure of 4.7 years supply was assessed in October 2017 but was based on figures as at March 2017. That data is now 20 months old and the current supply position may be different. Nevertheless there is no evidence to demonstrate that the housing supply position has improved since then, and it may have worsened. In these circumstances it is material that Paragraph 11 and Footnote 7 of the Framework provide amongst other things that where a 5 year supply of housing land cannot be demonstrated then the most important development plan policies for determining the application should be considered out of date and planning permission for the proposal should be granted. However different considerations apply in some circumstances.
20. CS Policy CP14 defines the settlement boundary for West Malling. It seeks to protect the countryside outside that boundary from unsuitable development. The appeal proposal does not qualify as an exception under that policy. However that boundary was defined in the context of a different and now outdated assessment of housing needs derived from the withdrawn South East Regional Strategy and its evidence base. For that reason, whereas the proposed development is in conflict with Policy CP14, the Council accepts that, because of the shortfall against the 5 year supply, that conflict would not be a reason to refuse planning permission and it did not do so in this case.
21. The Appellant has suggested that the Green Belt boundary was also defined in relation to housing land needs and should similarly be discounted as out of date. However one of the essential characteristics of Green Belts is their permanence. Whilst national policy does permit the alteration of their boundaries in exceptional circumstances it also seeks that they should otherwise be set to endure beyond the plan period.
22. There is no evidence before me that the current Green Belt boundaries were directly related to local housing needs. Moreover before considering changes to the Green Belt there would have been the opportunity in Tonbridge and Malling to direct necessary development to those parts of the Borough to the east of West Malling that are beyond the Green Belt. But in any case I am aware that the former Regional Strategy did not seek to exactly match housing needs and supply within each local planning authority. Rather it sought the redistribution of

housing supply from constrained areas, including the Green Belt, to less constrained parts of the region.

23. The Framework goes on to provide at Paragraph 11(d) (i) and Footnote 6 that specified Framework policies to protect areas and assets of particular importance, including the Green Belt, can still provide a clear reason for refusing the development proposal if the Framework policies would be breached. Notwithstanding the housing land supply shortfall it would thus remain necessary to establish that very special circumstances existed in order for inappropriate development in the Green Belt to proceed.
24. The parties have drawn attention to Written Ministerial Statements of 1 July 2013 and 17 December 2015 which provide in summary that an unmet demand for housing: *'is unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.'* However that wording would not preclude that an unmet demand for housing may still be weighed against the harm to the Green Belt, whether on its own or in combination with other factors.
25. I conclude that the overall shortfall in housing supply is one significant factor to be weighed in the balance but is unlikely on its own to clearly outweigh the harm to the Green Belt.

#### Housing Needs of Older People

26. Paragraph 60 of the Framework provides that local planning authorities should prepare a local housing need assessment. Paragraph 61 provides that, amongst other things, the amount and tenure of housing needed for different groups should be assessed and reflected in planning policies including housing for older people and people with disabilities. The latter provision is relevant insofar as Extra Care housing seeks to address the needs of older people who are in need of care due to a reduced ability to perform some tasks.
27. The Council produced a Strategic Housing Market Assessment (SHMA) in 2014 as part of the evidence base for the emerging Local Plan. Amongst other things it seeks to estimate the need for specialist housing for older persons both now and in the period leading up to the year 2030. At Table 59 it identified a total need in 2014 for 193 affordable extra care units, rising by 177 units to create a total identified need for 370 units by 2030. By contrast, and relying on the on-line tool provided by the Housing Learning and Improvement Network, it estimates the current need for extra care market housing (such as the appeal scheme) as 0 in 2014 and 0 by 2030. Nevertheless paragraph 9.28 explains that the tenure split between market and affordable extra care housing should be treated as only indicative in that it is influenced by the area's current tenure of specialist housing for older persons. This implies that there had been an absence of extra care market housing in the Borough in 2014 when the SHMA was prepared. The paragraph goes on to recognise that a demand for market extra care housing is nevertheless to be expected in Tonbridge and Malling *'particularly given the level of savings and equity of many older households'*. However, unhelpfully, this is not quantified in the SHMA estimates.
28. The Council has not sought to define a different tenure split or to otherwise quantify the estimated need for extra care market housing. Instead, for the purposes of the Inquiry, its non-expert witness based his assessment on the overall need identified in the SHMA for 370 extra care dwellings. He has identified that 184 units had already been provided since 2014, leaving an

identified need for 186 units of all tenures by 2030. That may well underestimate the overall need and demand for extra care accommodation because an increased provision of open market units for sale may attract current home-owners to move to extra care accommodation. But that would not necessarily result in a reduced demand from non-home-owners for units to rent, whether affordable or otherwise.

29. The Planning Statement submitted in support of the application included a revised estimate of the need for extra care housing in the Borough, again based on an on-line tool (as recommended in national Planning Practice Guidance) but with the application of a reasonably justified split of 35% rented units to 65% leased units for purchase (such as the appeal scheme). That resulted in a modestly increased estimated overall future need for 420 units by 2030 of which 273 would be the estimated need for leased units.
30. For the Inquiry the Appellant's expert witness submitted further evidence suggesting a significantly greater need to provide an additional 590 extra care units in the Borough between 2018 and 2035 of which 499 would be for sale (on lease). Whilst acknowledging the witness's experience in this field, I accord limited weight to these precise figures. The chosen period extends well beyond the period for the emerging Local Plan. Also the Council did not present an expert witness of its own to test the underlying assumptions. Nevertheless the Appellant's expert evidence provides additional support for the contention that the SHMA figures seriously underestimate the future need in the Borough for extra care housing and especially the likely demand for units for sale. In particular this is agreed to be an affluent area with significant numbers of home-owning older people for whom their current homes are likely to become increasingly unsuited to their needs.
31. Whilst the Appellant's estimates of need exceed those of the Council, their expert witness still only expects 4.5% of people in relevant age groups to be accommodated in extra care schemes, divided between 3% in leased units for sale and 1.5% in rented units. These are lower percentages than occur in other countries such as the United States and Australia and may reflect the fact that this is a relatively novel and high cost concept with relatively luxurious units, and that significant annual service charges and lease assignment fees have to be paid to the operator. The great majority of older people are thus likely to remain within their own homes although some will move to sheltered housing schemes or to residential care homes. That there are already some other types and tenures of specialist housing for the elderly in West Malling does not negate the need in the Borough for this type of extra care market housing or render West Malling an unsuitable location.
32. Whereas the SHMA estimated a zero need for extra care market units (albeit with qualifications) that was based on the previous lack of provision. The sector is expanding nationally and the latest evidence shows an active demand for such development in the Borough. In addition to the 24 shared ownership (affordable) extra care units for sale at Rosewell House in Tonbridge, 27 of the extra care units permitted at The Orpines, Wateringbury are to be made available for outright leasehold sale. That would however make only a small contribution to the overall level of need identified in the Planning Statement, let alone that in the evidence of the Appellant's expert witness. Neither is there any specific provision for either extra care housing or other specialist housing for older people in the emerging Local Plan.

33. That the Council has previously accepted that there is an unmet need for extra care housing in the Borough is demonstrated by its grant of planning permission in 2016 for that development at The Orpines, Wateringbury (Council Ref TM./16/00920/FL). That development is similarly to be located in the Green Belt. As in the present case, that was judged to be inappropriate development in the Green Belt; it being disproportionately larger than the care home which it replaced and also harmful to openness.
34. The Officer Report for that development misinterpreted the conclusions of the SHMA by wrongly citing the identified need for 410 care home bedspaces as part of the justification for the development. In fact there would have been the direct loss of such bedspaces arising from the demolition of a care home, albeit offset by the development of 51 extra care units. Nevertheless that identified shortage of 410 care home bedspaces can itself contribute to the need for alternative provision for those in need of care which may include extra care developments.
35. The Wateringbury report did conclude that there is a clear need for accommodation for the growing older population and that this is not only quantitative but also qualitative. The report acknowledges that: '*... a general recognition exists that there is also a shortage of high quality and purpose-built facilities which meet the evolving needs of older people in the UK.*' In that case the development was judged to meet part of such needs and that was the main contribution to the report's conclusions that the harm to the Green Belt was clearly outweighed by that need such that very special circumstances existed to permit the development.
36. Notwithstanding its approach to the Wateringbury scheme and that acknowledgement of a shortage of such accommodation in the UK, at the Inquiry the Council has suggested that there is now not a local need for extra care developments. This was on the basis that the relative numbers of people in older age groups or who own their own properties in those age groups are not markedly different in Tonbridge and Malling from the national averages in England. However there is widespread evidence of a general under-provision of housing of all types across England of which the rapidly worsening affordability ratio is clear evidence and is especially marked in Tonbridge and Malling.
37. That there are national shortages both of general housing and also of high quality purpose-built accommodation to meet the needs of older people does not diminish the identified need for local provision but rather confirms it. Moreover, housing needs assessments must necessarily allow for cross border movements and in this case, whilst there is evidence that a significant proportion of prospective purchasers will either already live locally or will have family or friends that do, the location of the appeal scheme close to the Borough boundary would be likely to attract some residents from other authority areas.
38. The Council suggested at the Inquiry that what it identified as a more modest need for extra care housing of unspecific tenure could be addressed either by development on sites to be allocated for general housing in the emerging Local Plan or as windfall development at the rate of 20 or so a year. However, because extra care developments need to be of a sufficient size to support the shared facilities they are unlikely to come forward on small sites or at that rate. The Appellant has submitted a sequential site assessment to support their view that there are no sequentially preferable sites available to come forward in the short term. This evidence has not been challenged by the Council.

39. The Appellant also claims that for viability reasons it rarely succeeds in obtaining suitable larger sites when in competition with general housing developers and normally instead seeks out sites which are less attractive to such developers because of some policy or other constraint. These claims were not substantiated by examples or by any financial information. It is nevertheless clear that the retirement village concept requires a minimum number of units and site area in order to support the viable provision of shared on-site facilities for residents. That of itself would limit the choice of suitable sites, particularly in a Borough with extensive areas of Green Belt. Neither is there any evidence before me of the successful development of retirement villages as the result of development plan allocations.
40. I conclude that there is a local need for residential accommodation of this type and tenure for which the current and emerging development plan does not make adequate provision and that the development would make a significant contribution towards meeting such needs.

#### Freeing up General Housing

41. One consequence of the national and local housing shortages and of the associated past rise in property values, including in Tonbridge and Malling, are that those older people who purchased their existing homes many years ago are likely to hold substantial equity as the result of rising property values and because they may have paid off their mortgages. Some of those homes are likely to have been purchased originally to accommodate families and may be poorly suited to the present needs of their occupiers due to their size, internal layout, large gardens, or a location remote from necessary services and facilities. However their occupiers are likely to be cautious about moving to a rented property if it means relinquishing the security of their home ownership and the wealth stored in it. On the other hand, and as the SHMA recognises, in an affluent area they may have the equity and savings which provide the means to purchase specialist property such as extra care housing which is more suited to their needs and which can continue to be a source of security and equity.
42. As the Government has recognised in paragraphs 4.42 to 4.44 of the White Paper *'Fixing our broken housing market'*, helping older people to move at the right time and in the right way can help their quality of life as well as freeing up more homes for other buyers. Under-occupied homes could then be released onto the market where they would be particularly attractive to those in younger age groups in need of larger houses to raise families. The provision of specialist housing more suited to the needs of older persons is likely to encourage them to move and would make a valuable contribution to overall housing needs which should be weighed in the balance.

#### Health and Well-Being Benefits

43. I acknowledge the Appellant's evidence, which the Council does not dispute, that the development would be likely to provide health and well-being benefits including: the care package; monitoring of the residents' well-being; facilities to encourage activity and mobility; and reduced isolation. The on-site support would be likely to reduce the need for residents to make use of primary health care services or social services as well as relieving pressure on hospital bed-spaces. Whilst local residents report current pressures on GP services in West Malling, the Appellant's evidence suggests that such pressures are to be

addressed as part of new provision of services at Kings Hill, whether or not the appeal proposal goes ahead.

44. I conclude that there are likely to be overall benefits to health and well-being to be weighed in the balance.

#### The Emerging Local Plan

45. A very relevant consideration is that the emerging Local Plan includes a proposal to remove the appeal site from the Green Belt and to allocate it for the development of an estimated 110 dwellings.
46. That proposal has the support of the Council's officers and members. However it is likely to have been the subject of representations in the recent consultation including objections from the Parish Council and others. The content and nature of those representations has yet to be processed by the Council and is not before me. The Local Plan has yet to be submitted for examination and it may be modified prior to its adoption as part of the development plan. Therefore only limited weight can be accorded to these draft changes to the Green Belt or the draft allocation. Nevertheless it is relevant to consider the evidence base which contributed to the decision to include those changes and the extent to which the appeal proposal would accord with the Council's objectives or otherwise.
47. The Council's Green Belt Study in 2016 reviewed the existing Green Belt and tested it against the criteria set out in the then Framework which have generally been carried forward in the current version. This included a strategic assessment of the Green Belt in the vicinity of West Malling, albeit without the scoring of individual parcels of land against criteria that was a feature of the Rushcliffe study referred to by the parties.
48. The Stage Two Report of August 2018 considered whether exceptional circumstances justified changes to the Green Belt boundary. One important consideration was whether Green Belt sites should be released to increase the supply of housing as a means of addressing the worsening affordability ratio in the Borough, as well as making additional provision for affordable housing, whilst also promoting a sustainable pattern of development. The study concluded that exceptional circumstances would justify the removal of the appeal site and another smaller site at West Malling from the Green Belt: *'to ensure that a degree of development comes forward in order to promote local growth and make a reasonable contribution to the economic well-being of [West Malling] ... and ... provide for sustainable locations for living'*.
49. The Study also proposes that additional land to the east of West Malling be added to the Green Belt to protect the setting and special character of the historic town and to prevent towns merging, functions which the appeal site does not perform.
50. The draft housing allocation policy does not specify the form that housing should take on the appeal site. The Council does not dispute that extra care housing would qualify in terms of providing units of housing to contribute to the Borough's housing supply.
51. The appeal scheme would provide 79 units. The emerging Local Plan's higher estimate of site capacity is 110 dwellings and is based on a standard application of a density of 30 dwellings per hectare to this and other sites in the emerging Plan. That does not appear to take account of the on-site constraints and especially the wildlife habitat. If that habitat were to be protected in the manner

indicated in the appeal scheme then it is likely that a general housing development would need to have a similar layout with apartments predominating but reduced communal facilities. Even so the estimated capacity of 110 units appears ambitious and may be unachievable, not least because of the greater requirements for on-site parking and amenity space. General housing would also be likely to generate significantly more vehicle movements, especially at peak hours. That would have implications for the operation of the junction with the A20 and would be likely to require a wider access road within the site.

52. Were the site to be developed instead with the typical 2-3 storey houses with gardens that some neighbouring residents say they would prefer then its likely capacity in terms of dwelling numbers would be much reduced if a similar area of the site were to be set aside to protect wildlife and the landscape.
53. At the Inquiry the Council's witness suggested that the development would not accord with the emerging Local Plan because it would not include affordable housing. The parish council would also prefer that if the site is developed it should include low cost housing for young people and families. However the draft Local Plan allocation does not specify what form housing on this site should take and does not specifically require that it is to be developed for affordable or family housing.
54. Whereas CS Policy CP17 generally seeks the provision of affordable housing and paragraph 6.3.25 would include retirement housing in those requirements, the Council has agreed that Use Class C2 should here be exempt from a requirement for affordable housing. In any case the more up-to-date Framework at Paragraph 64 now seeks to exempt specialist housing for the elderly from such requirements. In the same way, whilst draft Local Plan Policy LP39 would specifically seek that extra care housing should include affordable housing provision that Plan has yet to be examined and may similarly prove to be inconsistent with the Framework in that regard.
55. The Framework would allow for the first time that affordable housing may come forward on unallocated sites in the Green Belt to address local needs. Thus the development of this site need not be the only means of providing affordable housing in the parish. The proposed release of the site from the Green Belt is itself partly with the object to improve overall housing supply to address affordability concerns more widely.
56. The Council did not refuse planning permission on the grounds of prematurity to the Local Plan and I do not consider that the circumstances set out in paragraph 49 of the Framework exist here to justify dismissal for that reason.
57. My attention has been drawn to the Secretary of State's decision at Tewkesbury to permit a large housing development in the Green Belt on a site which had been included in the Local Plan previously submitted for examination but which was subject to objections and before the examination of that Local Plan had been concluded (ref APP/G1630/V/14/2229497). That case differs in that the Tonbridge and Malling Local Plan has yet to be submitted for examination and is at an earlier stage. Nevertheless it is an example of a case where the need for the development on a site which the local planning authority proposed for release from the Green Belt was considered by the Secretary of State to qualify as very special circumstances that clearly outweighed the harm to the Green Belt.

58. It is not disputed that the site is in a sustainable location adjacent to the built up area of West Malling which is defined as a rural service centre. The attractive high street and its many facilities would be within walking distance for more mobile residents. There are public transport services and the S106 agreement includes provision for a mini-bus service for residents. There is evidence that many primary residents would be in their 80s when they purchase their units and that, whilst some may bring cars when they move in, their use and ownership of cars is likely to be modest. The maximum ownership and use of cars is likely to occur when the development is first fully occupied and to decline with time as the average age range of the occupiers is extended.
59. I conclude that the development would accord with the objectives of the Green Belt Study to promote local growth in West Malling, contribute to its economic well-being and provide a sustainable location for living. It would also accord with the site's draft allocation for residential development in the emerging Local Plan. Site constraints indicate that the higher estimated dwelling capacity for the site estimated in the emerging plan is unlikely to be realised. Whilst the development would not include affordable housing, and would therefore not accord with draft policy LP39 in the emerging Local Plan, that consideration is outweighed by the apparent inconsistency of Policy LP39 with the Framework in that regard.

### **CONDITIONS AND PLANNING OBLIGATIONS**

60. The submitted S106 Legal Agreement includes a suitable definition of the proposed development as Use Class C2 and an appropriate financial contribution to off-site provision of open space as well as other relevant provisions. The S106 Unilateral Undertaking includes a justified and appropriate contribution to the library services needed to serve the future residents and appropriate financial provision for monitoring the Travel Plan. Both documents satisfy the legal tests for S106 planning obligations.
61. Draft planning conditions were submitted by the Appellant and the Council and were the subject of discussion at the Inquiry where some changes were agreed to add necessary provisions or to remove unnecessary conditions. I have made further minor changes to the wording and the order of the conditions. The reasons for each condition are included on the attached schedule. Having regard to what I saw on site including the existing background noise from London Road, the set back of the London Road dwellings from the access track and the existing fencing there, I do not now consider that it is necessary to require the provision of the acoustic fencing that was discussed at the Inquiry.

### **CONCLUSIONS**

62. For the above reasons I conclude that the development would be in conflict with CS Policy CP14 in respect of development in the countryside outside the settlement boundary for West Malling. However that conflict is outweighed by the failure of the Council to demonstrate that it has at least a 5 year supply of housing land. The lack of affordable housing provision, if it does conflict with CS Policy CP17, is outweighed by the provision in the more up-to-date Framework at paragraph 64 that specialist housing for the elderly should not be subject to such requirements.
63. For the purposes of CS Policy CP3 and the national policy to which it defers, the development would be inappropriate in the Green Belt, harmful to its openness and would cause encroachment onto the countryside, contrary to a main purpose

of the Green Belt. **Substantial weight** is accorded to the overall harm to the Green Belt albeit that the harm to openness and encroachment is mitigated by the site's visual containment and limited public visibility. Nevertheless there are a number of other considerations to weigh against that harm.

64. I accord **significant weight** to the contribution that the development would make to general housing supply given the lack of a 5 year housing supply in the Borough, including through the likely consequential release on to the market of family housing as older residents move to the proposed development.
65. I accord **substantial weight** to the contribution that the development would make towards the need for specialist extra care housing for sale to older people which was not accurately estimated in the SHMA and for which the current and emerging development plan does not make adequate provision.
66. I accord **significant weight** to the health and well-being benefits for the future occupiers of the development.
67. I accord **limited weight** to the emerging local plan and to its evidence base whereby the Council has concluded that exceptional circumstances justify the proposed release of the appeal site from the Green Belt for residential development in order to promote local growth in West Malling in a sustainable location and to improve overall housing supply and affordability.
68. My overall conclusion is that these other considerations cumulatively clearly outweigh the harm to the Green Belt and as such qualify as very special circumstances. As the demonstration of very special circumstances accords with national policy the proposed development does accord with CS Policy CP3 and the other identified conflicts with the development plan are outweighed by other material considerations. The appeal should therefore be allowed.

*Robert Mellor*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Asitha Ranatunga	of Counsel, instructed by Mr A Stansfield, Director of Central Services, Tonbridge & Malling BC
He called Mr M Fewster BA(SocSci)GDipRUP	Principal Planning Officer Tonbridge & Malling BC

### FOR THE APPELLANT:

Mr Christopher Young	of Queen's Counsel, instructed by Mr Iain Warner
He called Mr James Donagh BA(Hons) MCD MIED Mr N Appleton	Director at Barton Wilmore – Consultant on housing for older people Executive Chairman of Contact Consulting (Oxford) Ltd – Housing needs expert
Mr Guy Flintoft BA(Hons) DipTP DipUD MRTPI	Planning Director- Retirement Villages West Malling Ltd
Mr Paul Whatley	Landscape Architect & Associate Director of Lloyd Bore Ltd
Mr Iain Warner BSc(Hons) DipTP MRTPI	Director at Tetlow King Planning

### INTERESTED PERSONS:

Mr Arnold	Local Resident
Mr Peter Cosier	Local Resident

### INTERESTED PARTY:

Mr Richard Byatt	Chairman of the Planning Committee of West Malling Parish Council
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### DOCUMENTS

- 1 Suffolk Coastal v Hopkins Homes judgement 10 May 2017
- 2 Land at Perrybrook to the North of Brockworth decision  
APP/G1630/V/14/2229497
- 3 Land north of Asher Lane, Ruddington Appeal decision  
APP/P3040/W/17/3185493
- 4 Opening Statement of Mr C Young QC on behalf of the Appellant
- 5 Opening Statement of Mr A Ranatunga on behalf of the Local  
Planning Authority
- 6 List of corrections of errors in Mr Fewster's proof of evidence
- 7 Final S106 Planning Agreement between Appellant and Tonbridge  
and Malling BC- executed and dated copy
- 8 Final S106 unilateral undertaking to Kent County Council -  
executed and dated copy.
- 9 Tonbridge and Malling BC draft conditions
- 10 Appellant's draft conditions

- 11 Letter from Housing Learning and Improving Network (LIN) to Iain Warner of Tetlow King dated 30 November 2018
- 12 Housing LIN and EAC Consultation Paper — Shop@ Analysis Tool Review July 2016
- 13 Planning Application form, Abbeyfield extra care at Wateringbury, ref 16/00920/FUL
- 14 Tables updating current and pipeline supply of Extra Care housing in TMBC
- 15 Update to Appleton need report tables 15 and 16 based on changes in Document 14
- 16 As per Document 15 plus committed extra care site at Wateringbury
- 17 Copy of letter from Tetlow King to Housing LIN dated 22 November 2018
- 18 Letter dated 27 November 2017 to TMBC from applicants re Wateringbury scheme setting out revised tenure split
- 19 Tables comparing Tonbridge and Mailing to England on indices relating to indicators of care
- 20 Table showing programme for bringing forward the appeal development
- 21 Closing submissions for Council
- 22 Closing submissions for Appellant

## **SCHEDULE OF CONDITIONS**

- 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 as approved.

Reason: In pursuance of Section 92(2) of the Town and Country Planning Act 1990.

- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.

Reason: In pursuance of Section 92(2) of the Town and Country Planning Act 1990.

- 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.

Reason: In pursuance of Section 92(2) of the Town and Country Planning Act 1990.

- 4) The development hereby permitted shall be carried out within the site defined by the red line on the Site Local Plan Ref RETI150716 SLP-02 Revision C.

Reason: In the interests of certainty as to the extent of the site.

### Access

- 5) The development shall not be occupied until measures for the modification of the existing access at the A20 London Road have been implemented as set out on the Proposed Highway Arrangement Drawing Ref PL01 Revision A.

Reason: In the interests of highway safety.

- 6) The development shall not be occupied until traffic islands have been constructed within the A20 London Road in general accordance with the recommendations of the Stage 1 Safety Audit November 2006 (Alpha Consultants) in order to facilitate safe vehicle turning movements and safe pedestrian crossing movements adjacent to the site access.

Reason: In the interests of highway safety.

- 7) At or before the time of the first submission of Reserved Matters pursuant to Condition 1, details relating to the following shall be submitted for approval in writing by the Local Planning Authority:

- a) Provision of a section of passing bay of a width of 5.5m to allow for any incidences when an entering and exiting service vehicle may concurrently occur over the length of the access road;
- b) Provision of a pedestrian link between the site proper and the A20 London Road;
- c) Internal swept path analyses demonstrating efficient refuse collection, servicing and emergency access;

- d) The location of underground services/service strips suitable for maintenance to avoid disruption to the access; and
- e) Provision of surface water drainage from the access road to avoid discharge onto the A20 London Road.

Reason: In the interests of safety and traffic flow.

#### Travel Plan

- 8) The development shall not be occupied until a Travel Plan in accordance with the sustainable development aims and objectives of the National Planning Policy Framework, and in general accordance with the 'Framework Travel Plan' document dated February 2017 has been submitted to and approved in writing by the Local Planning Authority

The approved Travel Plan shall be implemented prior to occupation and for each and every subsequent occupation of the development by a new occupier.

Reason: To encourage sustainable travel modes in accordance with local and national policy.

#### Levels

- 9) No development shall take place until a plan showing the proposed finished floor level of the new buildings and finished ground levels of the site in relation to the existing levels of the site and adjoining land have been submitted for the written approval of the Local Planning Authority. The works shall be carried out in strict accordance with the approved details.

Reason: To ensure that the development does not harm the character of the area or visual amenity of the locality.

#### Ecology

- 10) At or before the time of the first submission of Reserved Matters pursuant to Condition 1, a revised ecological impact assessment report shall be submitted for the written approval of the Local Planning Authority. The report shall include updated dormice, reptile and badger surveys and a detailed mitigation strategy to safeguard protected species, their habitats and local biodiversity. The development shall be undertaken in strict accordance with the recommendations, mitigation and enhancements features detailed in the approved updated ecological report.

Reason: In the interests of minimising the impacts of the development on the wildlife habitats on the site and to local biodiversity.

- 11) At or before the time of the first submission of Reserved Matters pursuant to Condition 1, a plan that sets out the parameters of the built form of the development to include an ecological buffer in general accordance with drawing 3822-LLB-XX-XX-DR-L-0001-S03/P01 dated 11 June 2018 and the recommendations of the revised ecological impact assessment report shall be submitted for the written approval of the Local Planning Authority. The layout and landscaping details submitted pursuant to condition 1 shall accord with the approved parameter plan.

Reason: To ensure that badgers, dormice and reptiles found on site and their habitat are adequately protected and that there is a landscape buffer at the edge of the built up area.

- 12) No development shall take place until a detailed scheme for the translocation of reptiles has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
- a) a methodology for the collection of reptiles and measures to prevent reptiles returning to the site prior to and during the development;
  - b) surveys to confirm that the translocation site is currently not holding a significant population of reptiles;
  - c) details of how the translocation will be enhanced and be in a suitable condition to support the likely number of animals which will be moved, prior to any animals being captured for transportation; and details of the management of the translocation site in perpetuity.

The translocation shall be undertaken in strict accordance with the approved details and the development shall not commence until a verification report has been submitted to and approved in writing by the Local Planning Authority confirming that the reptiles have been removed from the site.

Reason: To ensure that reptiles are protected and are not adversely impacted by the proposed development.

#### Landscape and Trees

- 13) No development above ground shall take place until there has been submitted for the written approval of the Local Planning Authority a scheme of hard and soft landscaping and boundary treatment. The approved scheme of landscaping shall be in general conformity to the indicative landscape drawing (ref 3822-LLB-XX-XX-DR-L-0001-S03/P01 dated 11 June 2018). The landscaping details shall include an implementation programme for all planting, seeding and turfing. 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 Authority gives written consent to any variation. The approved hard landscaping works shall be implemented prior to first occupation of those parts of the development to which they relate.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect and enhance the appearance and character of the site and locality.

- 14) 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, without the prior written consent of the

Local Planning Authority, and any planting removed with or without such consent shall be replaced within 12 months with suitable stock, adequately staked and tied and shall thereafter be maintained for a period of 5 years.

Reason: Pursuant to Section 197 of the Town and Country Planning Act 1990 and to protect the appearance and character of the site and locality.

#### Materials

- 15) No development above ground shall commence until details and samples of all materials to be used externally have been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not harm the character and appearance of the area or the visual amenity of the locality.

#### Boundary treatment

- 16) The development hereby permitted shall not be occupied until details of all fencing, walling and other boundary treatments have been submitted to and approved in writing by the local planning authority. The boundary treatment shall be implemented in full in accordance with the approved details and in accordance with a programme to be agreed in advance in writing by the local planning authority.

Reason: To protect the character and appearance of the area, to safeguard residential amenity, and to control access to the adjacent railway line in the interests of safety.

#### Construction Management Plan

- 17) No development hereby permitted shall commence until a Construction Transport 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 access arrangements

has been submitted to and approved in writing by the Local Planning Authority. Only the approved details shall be implemented during the construction of the development.

Reason: In the interests of parking, highway safety, neighbouring residential amenity and the character of the area.

#### Foul Drainage

- 18) Foul water shall be disposed of directly to the mains sewer.

Reason: To prevent pollution of groundwater.

#### Sustainable Drainage

- 19) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall be based on the principles recommended within the FRA Thomasons Ltd (January 2017), and 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 100yr storm) can be accommodated and disposed of through infiltration features located within the curtilage of the site.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and to ensure ongoing efficacy of the drainage provisions.

- 20) Development shall not begin 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.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal and to ensure ongoing efficacy of the drainage provisions.

- 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. The development shall only then be carried out in accordance with the approved details.

Reason: To protect vulnerable groundwater resources.

#### Lighting

- 22) No development above the ground shall take place until details of a lighting scheme 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.

Reason: To protect the visual amenity and ecology of the rural locality.

#### Refuse/Waste

- 23) The development shall not be occupied until a scheme for the collection and storage of refuse for the development has been 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.

Reason: To facilitate the collection of refuse and preserve visual amenity.

### Noise

- 24) No development above the ground shall take place until a noise report detailing the current noise climate at the site due to the close proximity of the development to both the A20 and railway line and a scheme of noise attenuation measures for the development having regard to the relevant standards outlined in BS8233:2014, have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to first occupation of any part of the development and shall be retained at all times thereafter.

Reason: To protect the amenities of the residential occupiers of the development.

### Contamination

- 25) (a) If during development work, significant deposits of made ground or indicators of potential contamination are discovered, the work shall cease until an investigation/ remediation strategy has been agreed with the Local Planning Authority and it shall thereafter be implemented by the developer.
- (b) Any soils and other materials taken for disposal should be in accordance with the requirements of the Waste Management, Duty of Care Regulations. Any soil brought onsite should be clean and a soil chemical analysis shall be provided to verify imported soils are suitable for the proposed end use.
- (c) A closure report shall be submitted by the developer relating to (a) and (b) above and other relevant issues and responses such as any pollution incident during the development.

Reason: In the interests of amenity and public safety.

### Security

- 26) No development above the ground shall take place until details of measures to minimise the risk of crime according to the principles and physical security requirements of Crime Prevention through Environmental Design (CPTED) have been submitted to and approved in writing by the Local Planning Authority.
- 27) The approved measures shall be implemented before the development is occupied and thereafter retained.

Reason for the condition: In the interest of Security, Crime Prevention and Community Safety.

### Archaeology

- 28) No development shall commence until the landowner, or their agents or successors in title, has secured and implemented:
- a) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved in writing by the Local Planning Authority; and
  - b) further archaeological investigation, recording and reporting, determined by the results of the evaluation, in accordance with a specification and timetable which has been submitted to and approved in writing by the Local Planning Authority

Reason: To ensure that features of archaeological interest are properly examined and recorded.