



## Appeal Decision

Hearing held on 11 July 2023

Site visits made on 10 and 11 July 2023

**by Paul Griffiths BSc(Hons) BArch IHBC**

an Inspector appointed by the Secretary of State

**Decision date: 28 September 2023**

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**Appeal Ref: APP/V2255/W/22/3312284**

**Land at School Lane, Newington**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Fernham Homes against the decision of Swale Borough Council.
  - The application Ref.21/504028/FULL, dated 19 July 2021, was refused by notice dated 17 October 2022.
  - The development proposed is the erection of 25 no. residential dwellings and the provision of a 20 space staff car park and 20 space pupil pick-up/drop-off area for Newington C of E Primary School, together with associated access, landscaping, drainage, and infrastructure works.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 25 no. residential dwellings and the provision of a 20 space staff car park and 20 space pupil pick-up/drop-off area for Newington C of E Primary School, together with associated access, landscaping, drainage, and infrastructure works on Land at School Lane, Newington in accordance with the terms of the application, Ref.21/504028/FULL, dated 19 July 2021, subject to the conditions set out in Annex A.

### Main Issues

2. As set out at the Hearing, these are: (1) the effect of the proposal on the character and appearance of the area; and (2) whether any adverse effects of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework (the Framework)<sup>1</sup> taken as a whole.

### Reasons

3. Before embarking on an exploration of the main issues set out above, it is necessary, for reasons that will become clear, to deal with two matters that are of fundamental importance to the way in which a decision on the proposal must be approached.
4. The first of these is the development plan. This includes Bearing Fruits 2031; the Swale Borough Local Plan that was adopted in July 2017. Policy ST1 explains how sustainable development is to be delivered in Swale.

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<sup>1</sup> A revised version of the Framework was issued on 5 September 2023 but the changes made have no effect on my consideration of the case in hand, so I have not sought comments on those changes post-event

5. Amongst a series of requirements, development is expected to accord with the settlement strategy which is set out in Policy ST3. This strategy involves the prioritisation of brownfield land, and a hierarchy with Sittingbourne as the primary urban focus for growth, followed by the other Borough urban centres of Faversham and Sheerness. After them, Rural Local Service Centres are intended to provide a tertiary focus for growth in the Borough overall, and the primary focus for the rural area. Other villages with built-up area boundaries are expected to provide for development on minor infill and redevelopment sites within built-up area boundaries, where compatible with the character of the settlement and other factors. Finally, at locations in the open countryside, outside those built-up area boundaries, development will not be permitted.
6. The appeal site lies outside the built-up area boundaries of Newington, a Rural Local Service Centre, and as such, it must be considered part of the open countryside where the settlement strategy inhibits development.
7. In that context, the proposal must be considered contrary to Policy ST3, and, as a result, Policy ST1. Given the central importance of these policies to the overall strategy of the Local Plan, the failure to accord with them means that the proposal falls contrary to the development plan read as a whole.
8. That is not the end of the matter, however, because, following the line of s.38(6)<sup>2</sup> a decision-maker must take account of 'other material considerations' before reaching a final conclusion on the proposal. The Framework is, obviously, a significant material consideration.
9. That leads on to the second preliminary matter. Paragraph 74 requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing. It is accepted that the Council cannot do that but there is a difference between the parties on the extent of the shortfall; the appellants calculate that the Council can demonstrate 3.28 years' worth while the Council maintain that the correct figure is 4.83 years.
10. Very little turns on the difference for reasons that will become clear but for the sake of completeness, it seems to me that the correct figure (bearing in mind that calculating housing supply is not an exact science) is nearer to that of the appellants. I reach that conclusion because the Council, having failed the Housing Delivery Test (with a published figure of 78%), should be applying a 20% buffer to the housing requirement, calculated through the standard method, because the housing requirement in the Local Plan is more than five years old.
11. I appreciate the Council's concerns about the outcome of the Housing Delivery Test, and their own calculations, but Planning Practice Guidance is very clear that it is the published figure that should be used. That published figure is 78% which makes for a 20% buffer.
12. On top of that, there are concerns about the rate of housing delivery on some major sites that are connected through Grampian conditions to the completion of improvement works to Junction 5 of the M2. I recognise that these works are outside the Council's control, but the drag they impose on the delivery of new housing has an impact on housing supply that cannot be ignored.

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<sup>2</sup> Of the Planning and Compulsory Purchase Act 2004 (as amended)

13. In the situation where five years' worth of housing cannot be demonstrated, paragraph 11 d) of the Framework comes into play. There are no policies in the Framework protecting areas or assets of particular importance that, if applied, provide a clear reason for refusing the development proposed. On that basis, paragraph 11 d) i is not triggered and it is paragraph 11 d) ii that must be used.
14. This sets out that in the circumstances of this case, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, considered as a whole. With that in mind, I turn to those adverse impacts, and the benefits of the scheme.

#### *Character and Appearance*

15. The site lies to the immediate west of Newington Primary School. The north-east corner of the site is covered with hardstanding. It seems that surface was put in place to accommodate construction vehicles involved in building out the housing scheme to the north of the school, on the opposite side of School Lane. The rest of the appeal site is part of a very large field, in agricultural use, that stretches out to the south, and the west.
16. The existing hardstanding is used informally to provide parking for those dropping children off at the school or collecting them. In the Statement of Common Ground<sup>3</sup>, the Council accepts that the area of hardstanding is immune from enforcement action by virtue of the passage of time. However, it is not clear whether its use for the purposes of parking in association with the school is immune too. In that context, I have considered the landscape baseline to include the area of hardstanding, but not the vehicles parked upon it, and the associated comings and goings.
17. It is agreed in the SoCG that the site is not a 'valued' landscape so paragraph 174 a) of the Framework has no application. However, paragraph 174 b) of the Framework is clear that we should recognise the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.
18. The Local Plan, as you would expect, takes a similar approach. Amongst other things, Policy DM 14 requires development proposals reflect the positive characteristics and features of the site and locality; conserve and enhance the natural and/or built environment taking into account the desirability of sustaining and enhancing the significance of heritage assets; and be both well sited and of a scale, design, appearance and detail that is sympathetic and appropriate to the location. Part B of Policy DM 24 says that non-designated landscapes will be protected and enhanced and planning permission will be granted subject to the minimisation and mitigation of adverse landscape impacts; and where significant adverse impacts remain, that the social or economic benefits of the proposal significantly and demonstrably outweigh the harm to landscape character and value of the area. Part C requires the scale, layout, and landscape design of all proposals to be informed by landscape and visual impact assessment.

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<sup>3</sup> Agreed between the appellant and the Council - referred to hereafter as SoCG

19. Policy DM 26 refers to rural lanes and states that planning permission will not be granted for development that would either physically, or as a result of traffic levels, significantly harm the character of rural lanes.
20. My starting point is that against this policy background, and notwithstanding the baseline that I have referred to above, building a housing development on the site, alongside a replacement school car park, is bound to have something of a harmful effect on the countryside character and appearance of the site.
21. The Council has described the extension of the urban area that would result as the arbitrary annexation of the corner of a field, and thereby particularly incongruous. Given the way this part of the settlement of Newington is contained by the strong wooded western boundary of the school grounds, and Boxted Lane to the north, I can understand why the Council has reached that view. However, I think that is reducing an analysis of the potential impacts to something that is a little too simple.
22. Historic mapping shows that the large field that the appeal site is currently part of has, in the past, been subdivided into smaller parcels containing orchards. On that basis, excising parts out of fields is not something alien to the area. Moreover, the planted screen on the southern boundary of the proposal, once established, would line through, broadly, with the strong, tree-lined southern boundary to the school grounds. That gives a strong basis for the line of the southern boundary the development. Views of the scheme from the footpath that crosses the ridge to the south-west of the site<sup>4</sup>, would have the same planted boundary, and that on the western boundary of the site, in the foreground. There are already filtered views of the existing housing, to the north of the school, on the opposite side of School Lane, from the footpath.
23. For all those reasons, I do not consider that the proposal would appear arbitrary or particularly incongruous. Rather, if the landscaped boundaries are well-designed, something that can be secured by condition, the proposal could, when those boundaries become established, be seen as a logical extension of the settlement. The photomontages set at Year 15 suggest as much.
24. I do not say that this ability to assimilate the proposal, over time, means that the harm caused in character and appearance terms will disappear. However, it does act in a way that leads me to conclude that the harm caused by the proposal, in character and appearance terms, will be very limited, and not as severe as the Council suggests.
25. I noted during the site visit, when walking along the footpath that crosses the ridge to the south-west of the site, that the proposal will be seen in the foreground of views towards the Newington Conservation Area and in particular, rising above the existing trees, the tower of the Church of St Mary, a Grade I listed building. While it was not discussed in these terms at the Hearing, there is some suggestion in the SoCG that the proposal would cause some (less than substantial) harm to the setting, and thereby the significance of the Church of St Mary.
26. I do not accord with that view. The visibility of the Church tower, rising above the trees in views from the footpath is one part of the setting of the Church that contributes to its significance as a designated heritage asset.

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<sup>4</sup> Shown on the submitted photomontages from Viewpoints 6 and 17

27. However, one is already conscious of built form in the foreground of these views, so the observer is conscious of the settlement of Newington, and the presence of the Church within it. The proposal will add built form to the foreground that will be more prominent than the existing built form in these views, though in time that prominence will recede as the screen planting becomes established. However, this new visual presence will not interfere with the tower or reduce its status as a marker of the position of the Church within the settlement. In that way, while the proposal would change the setting of the Church, it would not do so in a way that would be harmful to that setting, or to the significance of the designated heritage asset.
28. Bringing those points together, the proposal would have an adverse impact on the character and appearance of the area. That adverse impact would be limited but nevertheless, there would be conflict with the first part of Policy DM 14 in that the natural environment of the site, such as it is bearing in mind that it is, in the main, intensively farmed, would not be conserved or enhanced. Having said that, I am content that the proposal would reflect the positive characteristics and features of the site and locality, notably the existing strong wooded boundaries, and be of a scale, design, appearance and detail that is sympathetic and appropriate to the location. The significance of affected designated heritage assets would not be harmed by the proposal.
29. I take a similar view in relation to Part B of Policy DM 24. The (non-designated) landscape would not be protected or enhanced by the proposal, but adverse landscape impacts would be minimised and mitigated by the design of the proposal and in particular, the strong boundaries planted out with native species. In that way, the scale, layout, and landscape design of all proposals has been properly informed by landscape and visual impact assessment. The latter part of the policy (Part C) is a matter for the balancing exercise that I turn to below. Similarly, the proposal would cause a degree of harm to the rural lane (which has been referred to under various names including Breach Lane, Bricklands, and Mill Hill), in character and appearance terms, but the approach to design means that it would not be significant. I see no departure from Policy DM 26 as a result.
30. The adverse impact of the very limited harm caused in character and appearance terms needs to be brought into the balancing exercise.

#### *Other Matters*

31. Local residents raised issues in terms of highways and air quality. I note what is said in the submissions made on behalf of the Parish Council<sup>5</sup> but the Council takes no issue with the proposal in these terms.
32. Dealing with traffic flows first, I accept that Church Lane is narrow and a challenge for the driver in either direction given the manner in which vehicles are parked along it. I have no doubt that this must lead to difficulties for drivers, particularly where the road passes under the railway bridge. Moreover, I experienced for myself the difficulties involved in turning into Church Lane from the High Street (the A2), and emerging from Church Lane on to High Street, particularly when turning right.

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<sup>5</sup> Prepared by Railton – the copy handed up to me at the Hearing (Document 6) is dated 7 July 2023

33. It is important to appreciate though that these conditions persist at present, without the development proposed here in place. The question for me is whether the proposal would make those situations worse. That analysis must take place in the context of paragraph 111 of the Framework. This says that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
34. Using the trip rates agreed between the appellant and the Council, that I have no good reason to depart from, the proposals would be likely to generate around 12 two-way movements (4 arrivals and 8 departures) on Church Lane in the morning peak, and 10 two-way movements (7 arrivals and 3 departures) in the afternoon peak. The Highway Authority considered that this would have a negligible impact on the operation of Church Lane, bearing in mind existing traffic flows, and the activity associated with pupils being dropped off at school in the morning.
35. I acknowledge the evidence I heard from local residents about conditions on Church Lane, and the 'Railton' paper, but I consider the conclusion of the Highway Authority to be a robust one, having regard to the technical evidence submitted on the appellants' behalf. I would observe too that even if I thought that the Highway Authority was perhaps underplaying the likely impacts, it would be difficult to conceive of a situation where they were doing so to the extent that a conclusion on those impacts could go from 'negligible' to 'severe'.
36. In highway safety terms, I take the view that the proposal would lead to a significant improvement from the existing situation. I observed for myself<sup>6</sup> that conditions around the school are somewhat fraught when the school closes, with largely unmanaged parking on the existing hardstanding, with associated tensions between comings and goings, and many of examples of ill-considered parking, with vehicles mounting pavements and verges. Though I accept that this sort of behaviour is not unknown around schools, at drop-off and collection times, what I saw appeared particularly egregious, and, frankly, a danger to those leaving the school.
37. In the first instance, the proposal would provide a rearrangement of the car park with spaces clearly arranged and marked, and a remodelled site access, designed to ease the tension between incoming and outgoing vehicles. That would be a significant improvement over the prevailing situation.
38. Moreover, new footways would be provided with high kerbs, the road would be widened, with double yellow lines to restrict parking, and the 30mph speed limit zone extended. These works would need to be carried out under s.278 and elements would require a Traffic Regulation Order (TRO), but they could be secured by suitably worded conditions. Altogether, they would result in a significant improvement to highway safety in the vicinity of the school. Far from weighing against the proposal, the positive impact it would have in these terms is a benefit of the scheme.
39. I accept that those residents of the houses opposite the school have concerns about the retaining structures that would be required to facilitate some elements of the highways works proposed. However, from what I saw, these would be relatively minor and would have no undue impact on the dwellings

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<sup>6</sup> When I carried out an unaccompanied site visit on the afternoon of 10 July 2023

- themselves, or the appearance of the street-scene. In any event, the Council could, through the conditions, ensure that they are suitably well-designed.
40. I have also given some thought to the suggestion that rather than turn right out of the development, residents might be tempted to turn left along the rural lane variously referred to as Breach Lane, Bricklands, and Mill Hill, rather than right, thereby avoiding Church Lane in seeking access to the A2. I cannot rule out the possibility, obviously, but it seems to me a rather unlikely prospect given the restricted width of the rural lane and the lack of passing spaces<sup>7</sup>. Indeed, I noted very little traffic heading in that direction when I visited the vicinity of the school at collection time on the day before the Hearing. In that light, I do not consider the prospect that some might attempt this route as something weighing against the proposal.
41. In terms of air quality, the conclusion of the Council's Environmental Health Officer(s) was, based on the information provided by the appellants, that the operational phase of the proposal itself would have negligible impacts but that cumulative impacts would be high, because of the inclusion of other Medway developments. The advice was that a wider mitigation scheme was needed to deal with these cumulative impacts. That overall approach is in line with that set out in Policy ST 5 which makes reference to local air quality action plans for, amongst others Newington High Street, where there is an AQMA, and the need for innovative proposals for mitigation of adverse impacts.
42. The appellant has put forward a series of mitigation measures. Conditions can be applied to ensure that each dwelling has an EV charging point, and suitable cycle storage facilities. In this way, incoming residents can be encouraged to use modes that have little or no impact on air quality. Moreover, the Agreement under s.106 includes further measures. First, there is an Electric Bike Contribution that feeds into an Electric Bike Scheme. This provides facilities for two electric bikes to be made available for residents of the scheme, and others, and for charging them, or a suitable alternative scheme to be agreed with the Council. The Obligation also includes an Emissions Mitigation Contribution and a linked series of Emissions Mitigation Measures. These are a suite of measures designed to mitigate air quality impacts in the vicinity of the development including, but not limited to, measures set out in the Air Quality Assessment, and any other measures that may be agreed between the appellant and the Council. These may include measures on- and/or off-site.
43. While I take note of what is said on behalf of the Parish Council, it seems to me that the appellant and the Council have approached the issue in a pragmatic way. If mitigation of potential cumulative impacts is not approached in this manner, it is difficult to see how any new housing, or any other form of development that generates traffic, might come forward. This would frustrate the purposes of the Local Plan. Overall, I consider that any air quality impact of the proposal, considered alone, or in association with other proposals, would be successfully mitigated by the measures put forward. On that basis, the scheme would cause no harm in air quality terms.

### *The Planning Balance*

44. As set out above, the Council's inability to demonstrate five years' worth of housing means that paragraph 11 d) ii of the Framework must be applied. This

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<sup>7</sup> I walked some of the lane during the Accompanied Site Visit that followed the Hearing

sets out that in the circumstances of this case, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, considered as a whole.

45. I have identified adverse impacts in terms of the impact of the proposal on the character and appearance of the area. As set out, while these would bring the proposal into conflict with the development plan, those adverse impacts would be very limited.
46. There is no dispute, between the main parties at least, that the proposal would bring forward benefits. Chief amongst these is the provision of 25 new dwellings in an area where 5 years' worth of housing cannot be demonstrated. That must carry a good deal of weight. Further, of those 25 houses, 10 units would be affordable. That may be the quota required by policy but nevertheless, in an area where there is an acute need for it, the provision of affordable housing is a very weighty benefit.
47. On top of that, the scheme would provide a dedicated drop-off and staff car park for the adjoining primary school that will be built and transferred to the school at nil cost. In my view, the design of this car park is such that it will be a significant improvement over the rather chaotic situation that pertains in relation to the use of the existing hardstanding in this way. The scheme also includes improvements to School Lane, secured by condition, that deal with existing pinch points near the school, and provide for a footpath that will allow pedestrians to walk in more safety along School Lane in the vicinity of the school. These are benefits to which I attach significant weight too.
48. There are a series of environmental benefits that would flow from the scheme, notably in terms of biodiversity, and surface water drainage. The SoCG sets out the economic benefits the proposal would deliver at both the construction stage, and post completion.
49. It is common ground that the Council cannot demonstrate a five-year supply of deliverable housing sites. The parties differ on the extent of the shortfall and as I have set out above, it seems to me that the precise figure tends more towards the appellant's than the Council's. The extent of the shortfall clearly affects the weight that one attaches to new housing that might come forward and make good some of that shortfall.
50. However, that is academic in this case because even if one accepts that the Council's figure is correct, the very limited adverse impact of the proposal is nowhere near sufficient to significantly and demonstrably outweigh the multiple benefits of the proposal, when assessed against the policies in the Framework, taken as a whole.
51. On that basis, it is my conclusion that in these circumstances, the accord with paragraph 11 d ii of the Framework is of sufficient weight, as a material consideration, to justify setting aside the provisions of the development plan and allow the appeal.

### **Conditions and the Obligations**

52. Paragraph 56 of the Framework tells us that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all



other respects. A list of conditions agreed between the appellant and the Council was presented to me as an addendum to the SoCG. I have considered those conditions in the light of advice in the Framework. I have treated those that are pre-commencement in nature as accepted by the appellant given their inclusion in a SoCG.

53. It was suggested that the commencement condition might be adjusted to two years from the standard three but given the number of matters required to be agreed pre-commencement, which include off-site highway works, and a Traffic Regulation Order, I consider it best to be prudent. A condition is required to set out the approved plans.
54. Given the rather restricted means of access to the site, and the proximity of the school and dwellings, it is necessary to apply a condition requiring the submission and approval of a Construction Environmental Management Plan (CEMP) before development commences. The site has archaeological potential so it is reasonable to apply a condition requiring field evaluation work and to address what should occur if remains of interest are found.
55. As indicated above, there is a significant band of trees along the boundary between the site and the neighbouring school. Given their importance, it is for these, and any other trees on the site, to be protected for the duration of construction works through the imposition of a suitably worded condition.
56. There is the potential for the site to be contaminated as a consequence of previous agricultural practices. Therefore, there is a need to apply a series of conditions to address the potential need for remediation. To protect existing biodiversity, a condition is required to secure an Ecological Mitigation and Enhancement Strategy (EMES).
57. In order to ensure that the quality of the design is carried through to implementation, conditions are required to secure details of the on-site highway elements and external materials. In a similar vein, it is necessary to exert control through conditions over the sustainable drainage scheme, and energy efficiency and carbon reduction measures, along with pre-occupation verification reports.
58. Similarly, the scheme includes a series of boundary treatments around and within the site. A condition is required to control design and implementation though I have adjusted that suggested to include a timetable for implementation in order to cover treatments that are not linked to individual dwellings. Linked to that, conditions are needed to secure details of the landscaping scheme, a landscape a Landscape and Ecological Management Plan (LEMP), and the provision of play equipment.
59. The proposal includes a series of off-site highway works designed to improve access to the site and conditions around the entrance to the site and the adjacent school. These need to be dealt with through a condition that makes reference to the necessary application under s.278. I have taken note of the post-hearing comments of the parties in relation to the point at which these off-site highway works should be completed<sup>8</sup>. In my view, it is reasonable to tie completion to occupation of the fifth dwelling given that the traffic generated by four dwellings would not, in my judgment, trigger any great need for them.

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<sup>8</sup> Document 7

60. Similarly, speed restrictions on School Lane are proposed as part of the scheme. These would require a TRO. The difference between the parties on this matter is whether the requirements of the TRO are implemented before the tenth dwelling is occupied, or before any of the dwellings are occupied. In my view, it is reasonable to follow the former path for similar reasons to those set out above in relation to the s.278 works.
61. In relation to the site access and visibility splays, highway works between the dwellings and the highway within the site, parking areas, including electric vehicle charging points, and cycle parking, it is necessary to apply conditions to ensure completion before the dwellings are occupied. The same is the case for refuse and recycling storage for the individual dwellings.
62. Given the potential for light pollution affecting bats in particular, conditions are necessary to address external lighting relating to the housing, and to the school car park. In relation to the alter, given the potential for difficulties, it is necessary to apply a condition to deal with the future management of the school car park.
63. Finally, a condition is required to deal with any infiltration measures that might be required as part of the surface water drainage scheme.
64. A completed Agreement under s.106, dated 11 July 2023, was handed up to me at the Hearing. This contains a significant number of obligations which I have considered in the context of paragraph 57 of the Framework. Mirroring the requirements of the CIL Regulations<sup>9</sup>, this says that planning obligations must only be sought where they are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
65. Paragraph 3.4 of the Agreement requires a finding on my part that the various obligations meet the tests of the CIL Regulations for them to take effect. I have considered them in that context.
66. There is no disagreement over most of the obligations and on my analysis, the Electric Bike Contribution, the Emissions Mitigation Contribution, the NHS Healthcare Contribution, the Refuse Contribution, the SPA Mitigation Contribution<sup>10</sup>, the provision of Affordable Housing<sup>11</sup>, the Community Learning Contribution, the Highways Contribution, the Libraries Contribution, the Primary Education Contribution, the Secondary Education Contribution, the Secondary Education Land Contribution, the Social Care Contribution, the Waste Contribution, the Youth Services Contribution<sup>12</sup>, and the provision and transfer of the School Car Park<sup>13</sup>, all meet the tests set out in paragraph 57 of the Framework, and Regulation 122 of the CIL Regulations.
67. The main parties are in dispute over the Formal Sports Contribution and the Play and Recreation Contribution<sup>14</sup>. The former is a financial contribution of £14,825 (index linked) for the improvement of existing, and additional provision of, facilities for formal sport in the Parish of Newington. The latter is a financial contribution of £11,150 (index linked) for the improvement of

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<sup>9</sup> Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended)

<sup>10</sup> All in Schedule 2

<sup>11</sup> Schedule 3

<sup>12</sup> Schedule 4

<sup>13</sup> Schedule 5

<sup>14</sup> Both Part of Schedule 2

existing, and additional provision of, facilities for play and recreation in the Parish of Newington.

68. I understand that the figures have been based on multipliers in the Council's Open Spaces and Play Area Strategy 2018-2022. Reference has also been made to LP Policy DM 17 in this regard. This sets out that where it is not appropriate to make provision for new open space and sports facilities on site, proposals for residential development can contribute funding for off-site facilities to meet local deficiencies or to the qualitative or quantitative improvement of existing provision. In terms of what is termed formal outdoor sport, contributions are sought to improve the existing facilities. The same is the case for what are called formal play facilities.
69. I visited the Newington Recreation Ground after the accompanied site visit to the appeal site and its surroundings. I saw the building that houses the existing changing facilities. Moreover, I saw the existing children's playground.
70. I heard from the appellant at the Hearing that the Council has recently received significant financial contributions for Formal Sports and Play and Recreation from other developments that have been approved in the Parish of Newington. It is not clear whether these financial contributions have been spent. It appears to me that if the approach of LP Policy DM 17 is to seek to improve existing facilities rather than expand them, there must come a point when those existing facilities reach a point where further improvement is unnecessary.
71. Bearing in mind the significant funds that developments in Newington have already produced, it has not been shown that further funding is necessary to make the enhancements envisaged by LP Policy DM 17. As a consequence, I am of the view that the case for the Formal Sports and the Play and Recreation Contributions have not been made out. I therefore conclude that neither meets the tests of the Framework or Regulation 122 of the CIL Regulations.

### **Final Conclusion**

72. For the reasons given above I conclude that the appeal should be allowed.

**Paul Griffiths**

**INSPECTOR**

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY**

Sav Patel

Planning Consultant

Jill Peet

Planning Policy Manager -  
Swale BC

Matt Duigan

Planning Officer - Swale BC

### **FOR THE APPELLANT**

James Maurici

King's Counsel

Jonathan Buckwell

Director, DHA Planning

Matthew Spry

Senior Director, Lichfields

Richard Hammond

Associate, EDLA

Steve Baughen

HoP – Fernham Homes

Paul Hulham

DHA Transportation

### **INTERESTED PERSONS**

Richard Palmer

Local Councillor

Chris Palmer

Local Councillor

Stephen Harvey

Local Councillor

Martin Conn-White

Local Resident

Karen Conn-White

Local Resident

Eric Layer

Local Councillor

Elaine Jackson

Local Councillor

Tracy Underhill

Local Resident

Martin Conway

Local Resident

### **DOCUMENTS**

Document 1

Appearances for the appellant

Document 2

Council's Notification Letter

Document 3

Agreement under s106

Document 4

Mr Hammond's presentation on  
landscape and visual matters

Document 5	Drawing 15058-H-01 Rev P7 – Proposed Access
Document 6	Railton paper on transport and air quality submitted on behalf of the Parish Council
Document 7	Post Hearing submission on TRO and s.278 conditions

## **Annex A: Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing number 4176/p/001 Site Location Plan; Drawing number 4176/p/100 (Rev B) Floor Plans – Plot 1; Drawing number 4176/p/100 (Rev B) Floor Plans – Plot 2; Drawing number 4176/p/100 (Rev C) Floor Plans – Plots 3&4; Drawing number 4176/p/100 (Rev C) Floor Plans – Plot 5; Drawing number 4176/p/100 (Rev C) Floor Plans – Plots 6&7, 15&16 (handed); Drawing number 4176/p/100 (Rev C) Floor Plans – Plots 8-10; Drawing number 4176/p/100 (Rev C) Floor Plans – Plots 11&12; Drawing number 4176/p/100 (Rev E) Floor Plans – Plots 13&20; Drawing number 4176/p/100 (Rev B) Floor Plans – Plot 14; Drawing number 4176/p/100 (Rev C) Floor Plans – Plots 17&18; Drawing number 4176/p/100 (Rev B) Floor Plans – Plot 19; Drawing number 4176/p/100 (Rev D) Floor Plans – Plot 21; Drawing number 4176/p/100 (Rev D) Floor Plans – Plot 22; Drawing number 4176/p/100 (Rev C) Floor Plans – Plot 23-25; Drawing number 4176/p/101 (Rev E) Elevations – Plot 1; Drawing number 4176/p/101 (Rev E) Elevations – Plot 2; Drawing number 4176/p/101 (Rev D) Elevations – Plots 3&4; Drawing number 4176/p/101 (Rev D) Elevations – Plot 5; Drawing number 4176/p/101 (Rev F) Elevation – plots 6&7, 15&16 (handed); Drawing number 4176/p/101 (Rev D) Elevations – Plot 8-10; Drawing number 4176/p/101 (Rev F) Elevations – Plots 11&12; Drawing number 4176/p/101 (Rev E) Elevations – Plot 14; Drawing number 4176/p/101 (Rev F) Elevations – Plots 17&18; Drawing number 4176/p/101 (Rev C) Elevations – Plot 19; Drawing number 4176/p/101 (Rev F) Elevations - Plot 21; Drawing number 4176/p/101 (Rev E) Elevations – Plot 22; Drawing number 4176/p/101 (Rev D) Elevations – Plots 23–25; Drawing number 4176/p003 (Rev D) Proposed Site Plan (Rev D); Drawing number 4176/sp/01 (Rev B) Boundary Treatment Strategy Plan; Drawing number 4176/sp/02 (Rev B) Tenure Strategy Plan; Drawing number 4176/sp/05 (Rev B) Fire Strategy Plan; Drawing number 1594/003 (Rev A) Play Strategy; Drawing number 4176/sp03 (Rev C) EV Charging & Parking Strategy Plan; Drawing number 4176/sp04 (Rev C) Refuse Strategy Plan; Drawing number 1594/001 (Rev F) Entrance Landscape Sketch; Drawing number 1594/002 (Rev D) Landscape Masterplan; Drawing number 15058-H-01 P7 Proposed Access; Drawing number 15058-T-02 P2 Vehicle Swept Path Analysis Pantehnicon; Drawing number 15058-T-03 P2 Vehicle Swept Path Analysis Fire Tender; Drawing number 15058-T-01 P3 Vehicle Swept Path Analysis 11.4m Refuse.
- 3) No development shall take place until a Construction Environmental Management Plan (CEMP) that includes details of hours of working; noise, dust and lighting pollution control measures; wheel and chassis cleaning facilities; routing of construction and delivery vehicles to and from site; parking and turning areas for construction and delivery vehicles and site personnel; timing of deliveries; temporary traffic management/signage; and site contact details in case of complaints has been submitted to and approved in writing by the local planning authority. Construction shall be carried out in accordance with the approved CEMP.

- 4) No development shall take place until a programme of archaeological field evaluation work has been secured in accordance with a written specification and timetable which has been submitted to and approved in writing by the local planning authority. The archaeological works shall be carried out in accordance with the approved details. Should the watching brief indicate remains of interest, no further development shall take place until details have been submitted to and approved in writing by the local planning authority securing safeguarding measures to ensure the preservation of archaeological remains and recording. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until details of tree protection measures across the site have been submitted to and approved in writing by the local planning authority. The tree protection measures shall be implemented in accordance with the approved details prior to any site clearance and the commencement of development and shall be retained for the duration of construction.
- 6) Unless otherwise agreed by the local planning authority, development other than that required to be carried out as part of an approved scheme of remediation must not take place until conditions 7 to 10 have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified in writing by the local planning authority until condition 10 has been complied with in relation to that contamination.
- 7) No development shall take place until a desktop study and risk assessment (in the form of a written report), in addition to any assessment provided as part of the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, including risks to groundwater, whether or not it originates on the site. The scheme shall be submitted to and approved in writing by the local planning authority before development commences. The desktop study and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report shall be submitted to and approved by the local planning authority before development commences. The report of the findings must include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland, and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, and archaeological sites and ancient monuments; and (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination CLR11'.
- 8) No development shall take place until a detailed remediation scheme (if required following the desktop study and risk assessment under condition 7) to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings, and other property and the natural and historic environment has been prepared and submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation

objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

- 9) No development shall take place (other than development required to enable the remediation process to be implemented) until the approved remediation scheme (under condition 8) has been carried out in accordance with its terms. The local planning authority must be given not less than two weeks written notice of the commencement of the remediation scheme works. Following completion of the measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to, and approved in writing by, the local planning authority, before the development is occupied.
- 10) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing to the local planning authority immediately. Development shall cease and an investigation and risk assessment must be undertaken in accordance with the requirements of condition 7, and where remediation is necessary, a remediation scheme must be prepared in accordance with the requirements of condition 8, which shall be submitted to and approved in writing by the local planning authority. The remediation must be completed in accordance with the approved scheme and following completion of the measures, a verification report providing details of the data that will be collected in order to demonstrate that the works set out in condition 8 are complete and identifying and requirements for longer-terms monitoring of pollutant linkages, maintenance and arrangements for contingency action must be prepared, which is subject to the approval in writing of the local planning authority in accordance with condition 9.
- 11) No development or site clearance works shall take place until an Ecological Mitigation and Enhancement Strategy (EMES) in accordance with details as set out in section 8.0 (Mitigation Measures) in the 'Interim Ecological Assessment' reference KEME9 437, dated July 2021, by Bakerwell has been submitted to and approved in writing by the local planning authority. The development and site clearance shall thereafter be carried out in accordance with the approved EMES.
- 12) No development shall take place above slab level until details of the proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture to be laid out, and a timetable for implementation have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 13) No development shall take place above slab level until details of all external materials have been submitted to and approved in writing by the



- local planning authority. Development shall be carried out in accordance with the approved details.
- 14) No development shall take place above slab level until a scheme based on sustainable drainage principles has been submitted to and approved in writing by the local planning authority. The scheme shall be based upon the Flood Risk Assessment and the Drainage Strategy Ref.140960-FAH-ZZ-XX-RP-C-0001, dated July 2021, prepared by Fairhurst, and shall demonstrate that the surface water generated by the development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100-year storm) can be accommodated without increase to flood risk on or off site. The drainage scheme shall also include (with reference to published guidance): (i) details of the design of the scheme (in conjunction with the landscaping plan where applicable); (ii) details to show that silt and pollutants resulting from the site use can be adequately managed to ensure that there is no pollution risk to receiving waters; (iii) a timetable for implementation; (iv) an operational maintenance and management plan including access requirements for each sustainable drainage component; and (v) proposed arrangements for future adoption by any public body, statutory undertaker, or management company. Development shall be carried out in accordance with the approved details and retained as such thereafter.
  - 15) No development shall take place above slab level until details of the measures to be implemented to address energy efficiency and carbon reduction have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
  - 16) No dwelling shall be occupied (or alternatively other than in line with an implementation schedule agreed in writing by the local planning authority) until a signed verification report carried out by a qualified drainage engineer (or equivalent) confirming that the surface water systems have been constructed in accordance with the approved scheme and plans, has been submitted to and approved in writing by the local planning authority. The report shall include information and evidence (including photographs) of details and locations of critical drainage infrastructure (such as inlets, outlets and control structures, landscape plans) including as-built drawings, and an operation and maintenance manual for the unadopted parts of the scheme as constructed.
  - 17) Before the occupation of the 25<sup>th</sup> dwelling, a verification report prepared by a suitably qualified professional confirming that all the approved energy efficiency and carbon reduction measures required pursuant to condition 15 have been implemented for dwellings 1 to 15 has been submitted to and approved in writing by the local planning authority.
  - 18) No dwelling shall be occupied until further details of all means of enclosure have been submitted to and approved in writing by the local planning authority. These details shall accord with drawing no.1594/002 Rev D – Landscape Masterplan and drawing no.4176/sp/01C – Boundary Treatment Strategy Plan and include proposed materials, overall height, and siting, and a timetable for implementation. Development shall be carried out in accordance with the approved details and retained as such thereafter.

- 19) No dwelling shall be occupied until full details of both hard and soft landscape works, any artefacts to be located within the public space(s), and a timetable for their implementation, have been submitted to and approved in writing by the local planning authority. The landscaping scheme shall be based on drawing no.1594/002 Rev D – Landscape Masterplan and should provide images together with planting plans, written specifications (including cultivation and other operations associated with grass and plant establishment, aftercare and maintenance); schedules of plants noting species, plant sizes and proposed numbers/densities where appropriate; and hard surfacing materials. The details shall include a landscape buffer along the western boundary of the site which shall include a strong mix of trees of native species. The development shall be implemented in accordance with the approved details and any trees or plants which within 5 years of planting are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.
- 20) No dwelling shall be occupied until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP must be based on drawing no.1594/002 Rev D – Landscape Masterplan and shall include the following details: (i) a description and evaluation of the features to be managed; (ii) ecological trends and constraints on site that might influence management; (iii) aims and objectives of management; (iv) appropriate management prescriptions for achieving the aims and objectives; (v) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period); (vi) details of the body or organisation responsible for the implementation of the plan; (vii) ongoing monitoring and remedial measures; and (viii) the legal and funding mechanism(s) by which the long term implementation of the plan will be secured by the developer with the management body or bodies responsible for its delivery. The LEMP shall be implemented in accordance with the approved details.
- 21) No dwelling shall be occupied until details of the areas for equipped play facilities, together with the play equipment, seating, and safe surfacing, based on drawing no.1594/003 Rev A – Play Strategy and a timetable for implementation have been submitted to and approved in writing by the local planning authority. The play area(s) shall be provided in accordance with the approved details and retained thereafter.
- 22) No development shall take place above slab level until a s.278 application has been made for off-site highway works to provide a footway, and carriageway widening, as shown on drawing no.15058-H-01 Rev P7 – Proposed Access. The development shall be implemented in accordance with the outcome of that s.278 application and any off-site highway works required by the s.278 application shall be completed before the fifth dwelling is occupied.
- 23) No development shall take place above slab level until an application for a Traffic Regulation Order (TRO) has been made to reduce vehicle speed limits along School Lane, as shown on drawing no.15058-H-01 Rev P7 – Proposed Access. The development shall be implemented in accordance with the outcome of that TRO and any works required by the TRO shall be completed before the tenth dwelling is occupied.

- 24) No dwelling shall be occupied until the access shown on drawing no.4176/p003 – Proposed Site Plan, including the visibility splays, has been completed. No obstruction of sight, including and boundary treatments, more than 1.2 metres above carriageway level shall be permitted within the visibility splays thereafter.
- 25) No dwelling shall be occupied until the following works between the dwelling and the adopted highway have been completed: (i) footways and/or footpaths, with the exception of the wearing course; and (ii) carriageways, with the exception of the wearing course but including turning facilities, highway drainage, visibility splays, street lighting, street nameplates, and highway structures (if any).
- 26) No dwelling shall be occupied until the areas shown for parking or garaging as shown on drawing no.4176/sp03 – EV Charging and Parking Strategy Plan have been provided, surfaced and drained in accordance with the approved details. Thereafter no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order amending, revoking and re-enacting that Order), shall be carried out on the land so shown, or in such a position so as to preclude vehicular access to the reserved vehicle parking area.
- 27) No dwelling shall be occupied until an electric vehicle charger has been provided for that dwelling in accordance with drawing no. 4176/sp03 – EV Charging and Parking Strategy Plan. Electric vehicle chargers for homeowners within the development approved herein must be provided to Mode 3 standard (providing up to 7kw) and SMART (enabling WiFi connection) (or to a subsequent equivalent amending standard). All electric vehicle chargers for visitor spaces shall be provided before the space is brought into use. All electric vehicle chargers shall be retained thereafter.
- 28) No dwelling shall be occupied until details of the secured and covered cycle storage arrangements for that dwelling has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved cycle storage arrangements for that dwelling are in place. All approved cycle storage arrangements shall be retained in their approved form thereafter.
- 29) No dwelling shall be occupied until refuse storage arrangements for that dwelling, including provision for the storage of recyclable materials, in accordance with drawing no.4176/sp/04 – Refuse Strategy, have been provided. All refuse and recycling storage arrangements shall be retained in their approved form thereafter.
- 30) No dwelling shall be occupied until a Lighting Design Plan (which shall be overlain on the landscape plan) which has particular regard to biodiversity, has been submitted to and approved in writing by, the local planning authority. The plan should show the height, external appearance, light intensity, colour and extent of spillage, and locations of external lighting, demonstrating that areas to be lit have taken account of the recommendations of the Bat Conservation Trust and the effects of lighting will be minimised in relation to any disturbance of bat activity. All external lighting should be installed in accordance with the approved Lighting Design Plan and retained as such thereafter.

- 31) Before the school car park is first brought into use, details of the proposed lighting associated with it, as shown on drawing no.4176/p003 – Proposed Site Plan shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 32) Before the school car park is first brought into use, details of a Parking Management Scheme for the school car park shall be submitted to and approved in writing by the local planning authority. The car park shall be managed thereafter in accordance with the approved details.
- 33) Where infiltration is to be used to manage surface water from the development hereby permitted, it will only be allowed within those parts of the site where details have been first submitted to and approved in writing by the local planning authority. Those details should demonstrate that there would be no resulting, unacceptable risk to controlled waters and/or ground stability. Development shall be carried out in accordance with the approved details.