

MAIDSTONE BOROUGH COUNCIL

Town and Country Planning Act 1990 – Section 78

**Town and Country Planning Appeals (Determination by Inspectors)
(Inquiries Procedure) (England) Rules 2020**

**Statement Of Case on Behalf Of
Maidstone Borough Council**

Outline application with some matters reserved (access only sought) for the removal of 2 former agricultural sheds and erection of up to 117no. dwellings and associated infrastructure including partial footways on Albion Road.

**Land East Of Albion Road And North Of Copper Lane
Marden Kent TN12 9EG**

Appeal by B.Yond (Formerly Rydon Homes Limited)

Planning Inspectorate Reference: APP/U2235/W/24/3346817

Maidstone Borough Council Reference: 23/504068/OUT

Date of Inquiry: 12 November 2024

1. INTRODUCTION

1.01 This Statement of Case ("**SOC**") is provided by Marion Geary (MA (Oxon) MRTPI) of Maidstone Borough Council ("**the Council**") in the above appeal proceedings in accordance with Annexe J of the PINS Procedural Guide (March 2021).

1.02 The purpose of this SOC is to set out the case to be presented by the Council, as the local planning authority, in response to the appeal submitted by B.Yond against the refusal of its application for planning permission (reference 23/504068/OUT) ("for the following development at Land East Of Albion Road And North Of Copper Lane Marden

'Outline application with some matters reserved (access only sought) for the removal of 2 former agricultural sheds and erection of up to 117no. dwellings and associated infrastructure including partial footways on Albion Road.'

1.03 The Council resists the Appeal and submits that planning permission should not be granted for the Proposed Development. Accordingly, the Council respectfully requests that the Appeal should be dismissed.

2. APPEAL SITE AND ITS CONTEXT

2.01 The Council will describe the Appeal Site and its context in its evidence. For the purposes of this SOC, the following matters are noted.

Appeal Site

2.02 The Appeal Site comprises 3 main parcels of land is on the eastern side of Albion Road measuring 5.98ha. It includes 2 adjoining land parcels comprising the allocation in the Maidstone Borough Local Plan Review 2024 under LPRSA295 but also part of the front garden of a neighbouring property "The Howlands". The red line application site includes highway verges north and south for visibility splays.

2.03 The site is mostly in agricultural use, currently fruit orchards. The topography of the site noticeably slopes upwards from south to north and the upper part of the slope is elevated above Thorn Road and Copper Lane to the south. Residential development along Albion Road and Thorn Road is located to the west. Those are opposite the access parcel but not adjacent to the main body of the appeal site. There is an intervening field immediately adjacent to the west, with Albion Road/Thorn Road.

2.04 A recent housing development ("Russet Grove") is immediately north of the appeal site. Farmland and sporadic rural development lies to the south and east.

2.05 The existing character of the area is underpinned by the rurality due to orchard use, ponds and open fields.

2.06 The Appeal Site is on the settlement edge of Marden, located to the south-east where there is a single row of houses (a mix of detached, semi-detached and terraced dwellings) which face onto Albion Road and Thorn Road

Relevant Planning History

2.07 There is no relevant planning history for the Appeal Site.

3. THE COUNCIL'S DECISION

3.01 The Council refused to grant planning permission for the following reasons:

- 1) *The application site lies in the countryside and residential development of this scale does not accord with the adopted Maidstone Borough Local Plan's Spatial Strategy policy SS1 which directs residential development to defined built areas and site allocations. It would erode the sense of tranquillity, resulting in an urbanising and visually prominent form of development, out of character with the rural locality, visually harmful to the setting of Marden in its rural context on approach from the south and therefore significantly harmful to the character and appearance of the countryside being the two primary tests of "harm" in adopted policy SP17. The Council has in excess of 5 years housing land supply and positive housing delivery rates. There are no exceptional circumstances that would justify departing from this strategy with the resulting harm to the character and appearance of the countryside and the proposals are therefore contrary to Policies SS1 and SP17 of the Maidstone Borough Local Plan 2017 and Marden Neighbourhood Plan policies BE1 and NE3.*
- 2) *The application site contributes to the landscape character of the Staplehurst Low Weald which is that of low lying gently undulating clay landscape of small fields with orchards, pasture, ponds and watercourses. The indicative sizes and number of dwellings (117 including some 2.5 storey dwellings) and associated hardstanding for access, parking and turning will result in a layout and siting of built development of a suburban form extending into the rural landscape, significantly harming its character. The indicative layout shows cramped overdevelopment along the access road entrance and in the NE corner and a proximity of dwellings to the southern and western boundaries that cannot be effectively screened by planting due in part to the intervening ponds and proposed attenuation basin. The harmful development would be particularly visually prominent due to site topography and the site being elevated above Thorn Road and Copper Lane with limited scope for adequate landscape buffers/screening at the boundaries and within the site. There is a significant loss of the orchard with only 2 very small areas being retained, contrary to conserving what is a defining land use important to the landscape character of the Staplehurst Low Weald. There will also be significant harm from external lighting and additional engineering to form the access onto Albion Road, a rural lane. The development would erode openness and cause unacceptable harm to the character and appearance of the countryside. The development is contrary to policies SS1, SP17, DM1, DM8 and DM30 of the Maidstone Borough Local Plan and Marden Neighbourhood Plan policies BE1 and NE3.*
- 3) *Due to the absence of safe pedestrian and cycle access on Albion Road to access the services within the village of Marden, the residents are likely to be reliant on the private motor vehicle to travel for access to day-to-day needs. This would be contrary to the aims of sustainable development as set out in Policies SS1, SP17, SP23 and DM1 of the Maidstone Borough Local Plan, policy In2 of the Marden Neighbourhood Plan, the National Planning Policy Framework and the objectives of Active Travel England to secure good walking, wheeling and cycling infrastructure.*
- 4) *The proposed access arrangement shows that refuse freighters are not able to safely access or egress from the site without overrunning adjacent traffic lanes. The Transport Assessment is deficient in that is no Road Safety Audit, there is inadequate raw data for traffic survey, visibility splays need recalculation and trip generation data needs sensitivity testing. The development is contrary to the NPPF*

which requires safe and suitable access to be achieved for all users and to policies DM1 and DM21 of the Maidstone Borough Local Plan 2017 and policy In3 of the Marden Neighbourhood Plan.

- 5) *The ecology appraisal is deficient in terms of provision of habitat and/or mitigation for badgers, breeding birds, turtle doves, great crested newts and reptiles and in the assessment of the ecological value of the orchard in situ. The applicant has not taken account of local information provided by Kent Wildlife Trust and Marden Wildlife Group nor engaged with those groups. Therefore, it is not possible to confirm compliance with statutory species protection legislation, contrary to paragraph 180 of the NPPF, policy DM3 of the Maidstone Borough Local Plan 2017 and policy NE4 of the Marden Neighbourhood Plan.*
- 6) *There is an inadequate amount of natural and semi-natural open space both in quantum, and public useability because of the indicative configuration and siting relative to the housing, the attenuation basin has not been demonstrated to be a wet pond and ecological habitat/mitigation areas would not be publicly accessible. Therefore, the proposal does not comply with policy DM19 of the Maidstone Borough Local Plan 2017 or policy A2 of the Marden Neighbourhood Plan.*
- 7) *The development will result in significant additional pressure on Kent County Council infrastructure including primary and secondary education that is unlikely to be fully mitigated in the absence of a s106 legal agreement providing supplementary financial contributions to the Local Education Authority. This is contrary to policy ID1 of the Maidstone Borough Local Plan 2017 and policy A3 of the Marden Neighbourhood Plan.*

3.02 Since the decision notice was issued, the Maidstone Borough Council Local Plan Review (LPR) for the period 2021-2038 has been adopted. As a result, the principle of development is now established. In particular, (i) the appeal site is now allocated for approximately 113 homes, and (ii) the appeal site is no longer in the countryside but is within the settlement boundary of Marden, a Rural Service Centre. As a result, the Council hereby withdraws Reason for Refusal 1.

3.03 Reason for Refusal 2 is maintained, albeit with some modifications (described below) which have been approved under delegated authority (see Appendix 1MBC.SoC). The issues identified will now need to be considered in the context of the site allocation policy and its conditions.

3.04 The adoption of the LPR does not impact on the substance of any of the other reasons for refusal. However, the policies from the 2017 Maidstone Borough Local Plan 2017 which are referred to in the decision notice have now been replaced. Therefore all the reasons for refusal have been updated to reflect the new policies in the Maidstone Borough Local Plan Review 2024. These updates have also been approved under delegated authority (see Appendix 1MBC.SoC). This is explained further below.

4. RELEVANT STATUTORY PROVISIONS AND PLANNING POLICY

Statutory provisions

4.01 The Appeal must be determined within the statutory framework of the Town and Country Planning Act 1990 ("**TCPA 1990**") and the Planning and Compulsory Purchase Act 2004 ("**PCPA 2004**"). In particular:

- pursuant to section 70(2) TCPA 1990 when determining an application for planning permission regard must be had to (amongst other matters) the

development plan, so far as material to the application; and any other material considerations;

- pursuant to section 79 TCPA 1990, these provisions in section 70(2) TCPA 1990 apply in the determination of an appeal pursuant to section 78 TCPA 1990; and
- pursuant to section 38(6) PCPA 2004, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.

The Development Plan

4.02 The development plan comprises:

- the Maidstone Borough Local Plan Review (LPR) (March 2024), to be read alongside the Policies Map;
- the adopted Kent Minerals and Waste Local Plan 2013-30, as amended by the Early Partial Review (2020);
- Kent Mineral Sites Plan (2020).
- Marden Neighbourhood Plan (2020)

Relevant policies

4.03 The Council will agree a list of all relevant policies with the Appellant through the Statement of Common Ground. The Council highlights the following policies which are of particular relevance:

Maidstone Borough Local Plan Review (LPR)

- Policy LPRSS1 – Maidstone Borough Spatial Strategy
- Policy LPRSP6 – Rural Service Centres
- Policy LPRSP6(E) – Marden
- Policy LPRSP10(B) – Affordable Housing
- Policy LPRSP12 – Sustainable Transport
- Policy LPRSP14(A) – Natural Environment
- Policy LPRSP15 – Principles of Good Design
- Policy LPRTRA2 – Assessing the Transport Impacts of Development
- Policy LPRSA295 – Land at Copper Lane and Albion Road, Marden
- Policy LPRHOU5 – Density of Housing Development
- Policy LPRSP13 – Infrastructure Delivery.

Marden Neighbourhood Plan (MNP)

- Policy BE1- Local Character
- Policy NE3- Landscape Integration
- Policy In2 -Sustainable Travel
- Policy In3 -Traffic Generation
- Policy NE4- Biodiversity and Habitats

- Policy A2- Open Space
- Policy A3- Primary Education

4.04 The refusal was issued in the context of the adopted Maidstone Borough Local Plan 2017, before the adoption of the LPR. A table below explains which new LPR policy has replaced the MBLP policies referred to in the reasons for refusal.

	MBLP 2017	LPR 2024
Spatial Strategy	SS1	LPRSS1
Countryside	SP17	LPRSP9
Sustainable Transport	SP23	LPRSP12
Infrastructure Delivery	ID1	LPRSP13
Natural Environment	DM3	LPRSP14(A)
External Lighting	DM8	LPRQD2
Open Space	DM19	LPRINF1
Transport Impacts	DM21	LPRTRA2
Design Principles in the Countryside	DM30	LPRQD4

National Planning Policy

4.05 The following sections of the National Planning Policy Framework (2023) ("**NPPF**") are relevant:

- Section 2: Achieving sustainable development
- Section 4: Decision-making
- Section 5: Delivering a sufficient supply of homes
- Section 9: Promoting sustainable transport
- Section 11: Making effective use of land
- Section 12: Achieving well-designed and beautiful places
- Section 15: Conserving and enhancing the natural environment.

4.06 Equivalent sections of the Planning Practice Guidance may also be relevant.

Other material considerations

4.07 In addition, the following documents (all of which are material considerations) will be relied upon by the Council:

- National Design Guide (2019)
- Maidstone Landscape Character Assessment 2012 (Updated 2013)
- Maidstone Landscape Capacity Study Sensitivity Assessment (2015)
- Supplementary Planning Documents: Maidstone Building for Life 12 (2018)
- Kent Design Guide (2005) – Kent County Council
- Affordable and Local Needs Housing SPD (2020)
- Public Art Guidance 2017
- Infrastructure Delivery Plan (Maidstone Borough Local Plan 2011-2031)
- Infrastructure Delivery Plan (Local Plan Review 2021-2038)

- Housing Land Supply reports published by MBC
- Community Infrastructure Levy reports published by MBC
- Active Travel England Policy Papers

5. THE COUNCIL'S CASE

- 5.01 The Council submits that the appeal proposal fails to accord with the development plan, read as a whole, and the other material considerations in this case do not indicate that planning permission should be granted in conflict with the development plan.

The Allocation

- 5.02 The LPR at paragraph 2.5, establishes the framework to guide future development of the borough. The LPR plans for (amongst other matters) homes and the environment. In particular, the LPR at paragraph 2.9 sets out the scale and distribution of development; identifies, by site, where development will be located; identifies where development will be constrained, and explains the infrastructure required to help deliver the plan.

- 5.03 The formulation of the LPR has required the Council to balance a number of factors, some of which are conflicting, including the goal of building more homes, as well as supporting the environment, including the substantial rural hinterland to the Borough. This reflects the strategic objectives underpinning the LPR, for example embracing growth and conserving the natural environment. In particular, spatial objective 10 (meeting housing need) explains that:

'The plan supports new housing in villages that meet local needs and is of a design, scale, character and location appropriate to the settlement and which supports the retention of existing services and facilities, a better mix and balance of housing will be provided, while the density and location of development will also be carefully considered.'

- 5.04 Marden is a Rural Service Centre which can provide for some development for a choice of deliverable housing locations and support for the role of the rural service centres. Accordingly, the spatial strategy for the Borough, as set out in Policy LPRSS1, identifies Marden as a location for "the secondary focus for housing development with the emphasis on maintaining and enhancing their role".

- 5.05 Policy LPRSP6 concerns Rural Service Centres, including Marden, and provides that new development will be focused within settlements on allocated sites. In turn, Policy LPRSP6(E), concerning Marden specifically, identifies the Appeal Site as an allocation for 'approximately 113 new dwellings'.

- 5.06 Notably, the settlement boundary for Marden has been extended to encompass the Appeal Site. In the earlier Local Plan, the Appeal Site was entirely within the open countryside, outside of the settlement boundary. Accordingly, the settlement boundary for Marden now follows the eastern, southern and the majority of the western boundaries of the Appeal Site. (Figure 6-12 of the LPR page 108.)

- 5.07 Policy LPRSP6(E) sets out the infrastructure requirements for Marden:

"5 Key infrastructure requirements for Marden include:

a. Improvements to highway and transport infrastructure including railway station enhancements, a variety of measures to improve sustainable transport infrastructure, and improvements to pedestrian and cycle access in accordance with individual site criteria set out in policies H1(46) and LPRSA295"

b. Provision of 0.6 form entry expansion at Marden Primary School;

c. Improvements to open space which improve overall quality, and address forecast deficits of in 0.9 hectares play, 3.3 hectares sports, 0.9 hectares allotment, and 27.4 hectares natural/semi-natural green space;

d. Improvements to health infrastructure including extension and/or improvements at Marden Medical Centre; and

e. Gas main improvement works as per the requirements of the Maidstone Infrastructure Delivery Plan"

- 5.08 The Allocation is set out in detail in Policy LPRSA295. The Allocation should be read as a whole (as should the development plan), but the following parts are particularly material.
- 5.09 The Allocation establishes that the Appeal Site is an appropriate location for residential development.
- 5.10 The Allocation permits residential development *'of approximately 113 dwellings'* Notably, this is reiterated in both LPRSP6(E) and in policy LPRSA295.
- 5.11 During the plan-making process the Council did not undertake landscape sensitivity testing nor detailed capacity testing by reference to landscape and visual effects: there was no site specific consideration of capacity based on landscape sensitivities.
- 5.12 It follows that acceptable quantum of development must be established within the parameters of the Allocation, in particular the parameter of *"approximately 113 dwellings"*. The fact that the parameter is *'approximately 113 dwellings'* means that an acceptable quantum may be below 113 dwellings (albeit approximate to that number).
- 5.13 Paragraph 1 of the Allocation specifies *'conditions'* which are *'to be met before the development is permitted'*. It is the conditions of LPRSA295 that reflect and seek to address landscape sensitivities.
- 5.14 The appeal submission contains no parameter plans and all matters of layout and landscaping are reserved. Before outline planning permission can be granted, there must be certainty at this stage that **all** the conditions can be met, whether through Reserved Matters and/or through discharge of conditions or s106 obligations. A failure to demonstrate that these conditions can be satisfied with the quantum of development proposed will cause a proposal to be in conflict with the Allocation, even if it is for *'approximately 113 dwellings'*, because it will not be able to deliver everything required in the allocation at this stage.
- 5.15 It further follows that whilst the Allocation anticipates a change in the character of the Appeal Site this is only to the extent necessary to accommodate *'approximately 113 dwellings'* (bearing in mind that the acceptable number may be below 113 dwellings); and whilst ensuring that the adverse impacts of any development on the character and appearance of the area are minimised and mitigated so far as possible. This is particularly important given the sensitive edge of settlement location of the Appeal Site and the visual prominence in the surrounding area; as well as the broader strategic imperatives to balance growth with the protection of the environment. The policy requirements may in practice necessitate a lower quantum than 117, or indeed lower than 113 houses. The policy expressly contemplates that the final scheme might be above or below 113. The aims of LPRSA295 conditions 3, 4, 5, 9, 10 and 11 in particular are recognising the visual

prominence of the site and the sensitivity of the location and requiring the development to respond to and minimise impact.

High Quality Design

- 5.16 Policy LPRSP15 requires developments to '*create high quality design*' and to meet certain specified criteria. Those criteria include:
- In paragraph 2: responding positively to, and where possible enhancing, the local, natural, or historic character of the area. Particular regard should be paid to scale, height, materials, detailing, mass, bulk, articulation and site coverage.
 - In paragraph 6: respecting the topography and responding to the location of the site and sensitively incorporating natural features such as natural watercourses, trees, hedges, and ponds worthy of retention within the site. Particular attention should be paid in rural and semi-rural areas where the retention and addition of native vegetation appropriate to local landscape character around the site boundaries should be used as positive tool to help assimilate development in a manner which reflects and respects the local and natural character of the area.
 - In paragraph 7: providing a high quality design which responds to areas of heritage, townscape and landscape value or uplifts an area of poor environmental quality.
 - In paragraph 17: having regard to relevant character appraisals and design guides.
- 5.17 Paragraphs 135 (ensuring well designed and beautiful developments) and 180 (contributing to and enhancing the natural and local environment) of the NPPF are also relevant.
- 5.18 The National Design Guide is relevant. Paragraph 40 stipulates that '*well designed new development responds positively to the features of the site itself and the surrounding context beyond the site boundary.*' Paragraph 49 states that the '*identity or character of a place comes from the way buildings, streets, spaces, landscape and infrastructure combine together and how people experience them*'. Paragraph 51 advises that local identity is made up of typical characteristics such as the pattern of housing, and special feature that are distinct from their surroundings. Paragraph 52 articulates that this includes considering the composition of street scenes, individual buildings and their elements and the height, scale, massing and relationships between buildings.

Reasons for Refusal

Reason for Refusal 1

- 5.19 As mentioned above, this reason has fallen away due to the significant change in the Development Plan since the decision was made by the Council.

Reason for Refusal 2

- 5.20 The significant change in the Development Plan since the decision was made means that Reason 2 is amended as follows:

2)The application site is an upwardly sloping site on the rural edge of Marden village within the landscape character of the Staplehurst Low Weald. It has not been demonstrated, in this outline application, that the proposed development will meet all the conditions of policy LPRSA295 of the Maidstone Borough Local Plan Review 2024. These conditions reflect and seek to address the landscape sensitivities of the site. The illustrative plan: (i) shows that the proposed quantum of development

and necessary infrastructure leads to a lack of structural landscaping throughout the site and to sensitive boundaries, especially the southern boundary (due in part to the intervening ponds and proposed attenuation basin, which will also result in existing tree loss); (ii) shows that the south part of the site around the existing ponds will not be kept free of development, with a proposed emergency access and associated visibility splays and a pumping station shown here (iii) shows that the existing tree/hedge site boundaries will not be enhanced, again particularly in the location of the attenuation basin. The resulting development would fail to respond sensitively of the rural setting of Marden and would harm the character and appearance of the surrounding countryside. In addition, the illustrative layout shows that the proposed quantum of houses will lead to cramped overdevelopment, exemplified in the illustrative plan at the access road entrance and in the NE corner adjacent to the southern and eastern boundaries respectively. The proposal is contrary to Policies LPRSP15 and LPRSA295 of the Maidstone Borough Local Plan Review 2024 and Marden Neighbourhood Plan policies BE1 and NE3.

- 5.21 In terms of the updated Reason for Refusal 2, whilst 117 no. dwellings may be "approximately" 113 dwellings, the Appellant has not demonstrated that the proposed development and its impacts are acceptable by reference to the conditions in LPRSA295 (**all** of which must be met) and the Development Plan as a whole.
- 5.22 The Appeal Site and the surrounding area currently has Low Weald Characteristics, which is that of low lying gently undulating clay landscape of small fields with orchards, pasture, ponds. The Appeal Site is in an area of high landscape character sensitivity and moderate visual sensitivity, as defined in the Maidstone Landscape Character Assessment (March 2012) Amended 2013.
- 5.23 The Appeal Site adjoins the south east of the village of Marden and there is a clear contrast in the character of the built settlement and the adjacent and predominantly agrarian landscape. The agricultural and rural character of land around the Appeal Site extends to the west and south, and the southern and western (village approach) boundaries are highly sensitive. Effective landscaped margins are essential.
- 5.24 The application was accompanied by a Landscape and Visual Impact Assessment (LVIA) but there is no evidence that the indicative layout and form of the housing was informed by the LVIA in order to demonstrate how conditions 4, 9, 10 and 11 of LPRSA295 can be complied with. The Design and Access Statement describes a design evolution process with only one reference to the LVIA, and, in any event, that process did not respect all the conditions of the Allocation.
- 5.25 There are no parameter plans in the application that would direct or inform future reserved matters applications (that may be submitted by a different developer) to ensure that high quality design will be achieved and the conditions of LPRSA295 can be met with the quantum of development sought.
- 5.26 There is no indication of where there can be a quantum and quality of landscaping to soften and break up the impact of built development, as required by conditions 4, 9 and 10. The appellant has not demonstrated that sufficient or adequate boundary and/or internal structural landscaping can be provided alongside 117 houses and all the other necessary infrastructure and public open space. These are key issues for development on an upwardly sloping and visually prominent site, to break up the more visible expanse roofscape that is inevitable on a site with this topography.
- 5.27 Parts of the southern edge of the site are visually exposed. The proposal for an emergency access (which has not been evidenced to be necessary) requires

visibility splays that will entail removal of a significant length of hedgerow spanning a distance of approx. 50m along Copper Lane, which will open up more of the SW corner. This is contrary to conditions 4, 10 and 11 of Policy LPRSA295.

- 5.28 In addition, a very large attenuation basin is indicatively shown (but will clearly be essential) along this edge of the site, which will preclude tree retention or planting in this location. It is noted that Tree Retention/Removal Plan 22037/SK30A does not accord with the Site Layout drawing 22037/SK25J as regards the shape and much larger size of the attenuation basin. It also fails to show hedgerow loss to accommodate the visibility splays to the Emergency Access on Copper Lane. It can be inferred that more trees would need to be removed or have Root Protection Areas affected than indicated by drawing 22037/SK30A. This is contrary to conditions 10 and 11 of Policy LPRSA295.
- 5.29 The Appellant has not demonstrated why more effective boundary and internal structural landscaping could not be incorporated into the Proposed Development if the quantum of development were reduced (whilst still being "approximately" 113 dwellings). It is the Council's case that both increased and more effective boundary and internal structural landscaping to accord with conditions 4, 9, 10 and 11 of LPRSA295 must be incorporated into the Proposed Development, but that would likely necessitate a reduction in quantum of houses. Further, it is the Council's position that there is no good reason for the Appellant not to have reduced the quantum of the Proposed Development in order to effect this change to the Proposed Development's design.
- 5.30 The indicative layout shows a 117 home scheme which would involve pockets of very high density in the NE corner (including some 2.5 storey apartments) very close to the Eastern boundary of the settlement edge and a pocket of high density at the site entrance which is adjacent to the southern boundary. This would be cramped and out of keeping for this edge of settlement location. It has not been demonstrated that 117 houses can be laid out in a way which accords with LPRSP15 and MNP policy NE3, whilst also meeting all the conditions of LPRSA295. For the same reasons, the Proposed Development would also be in conflict with paragraph 135 of the NPPF.
- 5.31 Overall, it has not been shown that the impacts on the character and appearance of the area will be acceptable, and that the development will respond positively to the rural setting of Marden. The failure to comply with conditions 4, 9, 10 and 11 of policy LPRSA295 will result in harm to the setting of the approach to the village and the character of the local area, causing the visual influence of the development to extend into the adjoining countryside in a way which exceeds what is necessary to deliver "approximately 113" houses.
- 5.32 It follows that the Proposed Development would fail to accord with LPR Policies LPRSA295 and LPRSP15 and MNP policies NE3 and BE1. As a result the appeal scheme fails to accord with the Development Plan, read as a whole.
- 5.33 Although not necessary to reach the conclusion of conflict with the Development Plan as a whole, this conclusion is also supported by the conflict with policy LPRSP14(A) (paragraph 1b) of the Maidstone Borough Local Plan Review 2024.

Reason 3:

- 5.34 This has been updated to:

3) Due to the absence of safe pedestrian and cycle access on Albion Road to access the services within the village of Marden, the residents are likely to be reliant on the private motor vehicle to travel for access to day-to-day needs. This would be contrary to the aims of sustainable development as set out in policies LPRSA295, LPRSP12 and LPRSP15 of the Maidstone Borough Local Plan Review 2024, policy

In2 of the Marden Neighbourhood Plan, the National Planning Policy Framework and the objectives of Active Travel England to secure good walking, wheeling and cycling infrastructure.

- 5.35 The scheme introduces up to 117 dwellings onto a narrow rural lane with no footways and limited street lighting. The appeal proposal's response to LPRSP6(E) and its requirement for "*improvements to pedestrian and cycle access*" and to Policy LPRSA295 condition 16 "*creation of safe pedestrian connections to the wider pedestrian network*" is only to "improve" an existing public right of way (footway) KM821 for a distance of 80m until it reaches Blossom Way.
- 5.36 That footpath is on an east-west line and not on a desire line to the village centre that is presented by Albion Road itself.
- 5.37 Footpath KM821 is considered by the Council and also Kent County Council as Local Highway Authority to be narrow, overgrown, unlit and lacking any form of natural surveillance. This is likely to significantly discourage the route's use.
- 5.38 Due to this inadequate scheme on which the LPA made its decision, there would be an absence of safe pedestrian and cycle access to access the services within the village of Marden because the alternative is for pedestrians to walk in Albion Road itself. Consequently, the residents are likely to be reliant on the private motor vehicle to travel for access to day-to-day needs. This would be contrary to the aims of sustainable development and policy In2 of the Marden Neighbourhood Plan, the National Planning Policy Framework and the objectives of Active Travel England to secure good walking, wheeling and cycling infrastructure.
- 5.39 The appellants indicate in their Statement of Case that they have been negotiating an alternative pedestrian and cyclist strategy directly with KCC Highways and Transportation.
- 5.40 To date, the appellants have chosen not to disclose the details of those discussions nor submit their alternative plans informally to the Council. They have not submitted them with their appeal and so their "alternative" pedestrian/cyclist access scheme is not in the public domain (although at the time of writing the appellants were seeking to arrange a consultation on an amended pedestrian access scheme). This severely disadvantages the Council, the Parish Council and interested parties in responding or assessing whether it overcomes reason for refusal 3 or complies with LPRSP6(E). LPRSA295 LPRSP15 of the Maidstone Borough Local Plan Review 2024 and policy In2 of the Marden Neighbourhood Plan. In addition, the revised proposal may have additional impacts on material planning matters which would also need to be assessed and taken into account.
- 5.41 As it stands, the appellant's Statement of Case paragraph 2.10 is contradictory as, despite the concerns of KCC Highways and Transportation, they state that the use of KM281 is "*convenient and safe*". However, in also negotiating with KCC on "*additional improvements*", they are effectively conceding that reason for refusal 3 is robust.
- 5.42 The Council and KCC will endeavour to work with the appellant but if a mutually agreed safe pedestrian and cyclist access along Albion Road is not secured and/or any additional/revised information is not formally accepted as part of the appeal proposal, the Council will continue to defend reason 3. It will submit that the appeal proposal, due to the absence of safe pedestrian and cycle access along Albion Road itself to access the services within the village of Marden, means that the residents are likely to be reliant on the private motor vehicle to travel for access to day-to-day needs, contrary to the aims of sustainable development and the objectives of Active Travel England to secure good walking, wheeling and cycling infrastructure.

Reason 4:

5.43 This has been updated to:

4) The proposed access arrangement shows that refuse freighters are not able to safely access or egress from the site without overrunning adjacent traffic lanes. The Transport Assessment is deficient in that is no Road Safety Audit, there is inadequate raw data for traffic survey, visibility splays need recalculation and trip generation data needs sensitivity testing. The development is contrary to the NPPF which requires safe and suitable access to be achieved for all users and to policies LPRSP6(E), LPRSP12, LPRSP15 and LPRTRA2 of the Maidstone Borough Local Plan Review 2024 and policy In3 of the Marden Neighbourhood Plan

5.44 The appellants indicate in their Statement of Case paragraph 6.62 to that they are liaising directly with KCC Highways and Transportation and have submitted to them:

- a revised access to accommodate refuse freighters
- a Stage 1 Road Safety Audit,
- raw data for traffic survey
- improved visibility splays

5.45 In negotiating directly with KCC, the appellants are effectively conceding that reason for refusal 4 is robust. However, the appellants have chosen not to disclose the details of those discussions nor submit the alternative information or drawings informally to the Council. Moreover, they have not submitted them with their appeal and so their additional/revised information/drawings are not in the public domain. This severely disadvantages the Council, the Parish Council and interested parties in responding or assessing whether that information overcomes reason for refusal 4.

5.46 The Council and KCC will endeavour to work with the appellant but if a mutually agreed access to Albion Road is not secured and additional/revised information is not formally accepted as part of the appeal proposal, the Council will continue to defend reason 4. It will also submit that the appeal proposal has inadequate access arrangements for refuse freighters, inadequate detail on visibility splays, no Road Safety Audit, inadequate raw data for traffic survey and trip generation data needs sensitivity testing. The appeal proposal therefore being contrary to policies LPRSP15 and LPRTRA2 of the Maidstone Borough Local Plan Review 2024 and policy In3 of the Marden Neighbourhood Plan.

Reason 5:

5.47 This has been updated to:

5) The ecology appraisal is deficient in terms of provision of habitat and/or mitigation for badgers, breeding birds, turtle doves, great crested newts and reptiles and in the assessment of the ecological value of the orchard in situ. The applicant has not taken account of local information provided by Kent Wildlife Trust and Marden Wildlife Group nor engaged with those groups. Therefore, it is not possible to confirm compliance with statutory species protection legislation, and is contrary to paragraph 180 of the NPPF, policy LPRSP14(A) of the Maidstone Borough Local Plan Review 2024 and policy NE4 of the Marden Neighbourhood Plan.

5.48 The appellant has, in their Statement of Case, submitted additional information in its Appendix C, "Technical Note: Ecology Response" dated March 2024.

5.49 KCC Ecology have advised the Council on the additional information and the Council considers that there remain concerns:

- The appellant has not provided full survey results for breeding birds (in line with the latest bird survey guidelines and the latest Chartered Institute of Ecology and Environmental Management (CIEEM) good practice guide.
- The site is likely to experience relatively high levels of disturbance and the locations and size of much of the proposed scrub means it is unlikely to provide suitable nesting habitat for turtle dove, a Red List species. It is crucial that off-site mitigation measures are agreed with Kent Wildlife Trust via a legal agreement.
- Updated reptile surveys have been carried out in 2024, but the full results have not been submitted. The following information would be needed allow for assessment on the mitigation/compensation for impacts to reptiles:
 - The amount of habitat to be lost relative to that created should be estimated in order to verify the current proposals are sufficient, with adjustments made to the receptor site size/quality as required;
 - The receptor habitats would be in place prior to the clearance of existing reptile habitat;
 - Suitable means would be in place to move the reptiles to the receptor site. It is currently unclear whether a translocation or habitat manipulation is proposed for this;
 - The receptor site would need to be protected during construction and operation (including through appropriate management);
 - The receptor areas would need to be managed over the long-term for the benefit of reptiles.
- Over 0.5ha of land will be lost within 100m of a known great crested newt (GCN) breeding pond and the spoil pile would be very likely to provide shelter and may be a hibernaculum for the species. However, there would need to be a suitable outline mitigation strategy for GCN secured by condition if the appeal were allowed. It would be helpful for the appellant to clarify their approach at this stage.
- In terms of badgers, the intention to provide a suitable detailed badger mitigation strategy, to include an artificial sett for at least one breeding pair of badgers must be secured by a planning condition should the appeal be allowed.
- In terms of reptiles, there is limited indication of the area of habitat to be lost relative to the area of habitat to be created, so it is difficult to be certain that proposals can fully mitigate for impacts to reptiles. Whilst, it may be possible to mitigate for impacts to reptiles, the location and size of the proposed receptor sites makes recreational disturbance and cat predation a risk. Further, it is not clear that the loss of the hibernaculum (spoil heap) has been accounted for in the landscaping designs. Sufficient hibernacula will need to be included within areas of suitable habitat on-site.
- Without access to the excel version of the calculation tool it is not possible to verify on the validity of the claimed biodiversity net gain (+27.77% of area habitats and +59.36% of linear habitats) to evidence compliance with Maidstone Borough Local Plan Review Policy LPRSP14(A) which requires delivery of a minimum 20% biodiversity net gain on new residential development.

5.50 The Council will endeavour to work with the appellant to resolve KCC's concerns but if the necessary information is not forthcoming, the Council will continue to submit that it is not possible to confirm adequate Biodiversity Net Gain nor compliance with statutory species protection legislation, contrary to paragraph 180 of the NPPF, policy LPRSP14(A) of the Maidstone Borough Local Plan Review 2024 and policy NE4 of the Marden Neighbourhood Plan.

Reason 6:

5.51 This has been updated to

6) There is an inadequate amount of natural and semi-natural open space both in quantum, and public useability because of the indicative configuration and siting relative to the housing, the attenuation basin has not been demonstrated to be a wet pond and ecological habitat/mitigation areas would not be publicly accessible. Therefore, the proposal does not comply with policy LPRINF1 or LPRSA295 of the Maidstone Borough Local Plan Review 2024 or policy A2 of the Marden Neighbourhood Plan.

5.52 The Council will submit that the appellant has not demonstrated that a sufficient amount of natural and semi-natural open space both in quantum, and public useability can be provided in a scheme of 117 houses. This is because of the indicative configuration and siting relative to the housing, and whether the ecological habitat/mitigation areas should be publicly accessible. This is contrary to the conditions 17 and 19 of LRPSA295 and policy LPRINF1 of the Maidstone Borough Local Plan Review 2024 and policy A2 of the Marden Neighbourhood Plan.

5.53 There is a concern with the appellants' calculation of open space provision and typology (for example, the calculation appears to include roadways and road verges) and a lack of clarity over what they say they can provide with a 117 house scheme.

5.54 The appellant in Appendix D of its Statement of Case, submitted a 1 page Technical Memorandum on SuDS drainage stating that an on-line attenuation pond will ensure a permanent water depth or 'wet pond' of at least 0.6m to 1.2m and they further state that would be compatible with a "boardwalk" feature.

5.55 The Council will endeavour to work with the appellant to seek further assurance that the indicative design is feasible for a year round wet pond and whether health and safety concerns are likely to make the "boardwalk" unrealistic.

Reason 7:

5.56 This has been updated to:

7) The development will result in significant additional pressure on Kent County Council infrastructure including primary and secondary education that is unlikely to be fully mitigated in the absence of a s106 legal agreement providing supplementary financial contributions to the Local Education Authority. . This is contrary to policy LPRSP13 of the Maidstone Borough Local Plan Review 2024 and policy A3 of the Marden Neighbourhood Plan.

5.57 MBC is a CIL authority. However, following representations from Kent County Council Education, reason 7 is based upon KCC's assessment that the development will result in significant additional pressure on infrastructure including primary and secondary education that is unlikely to be fully mitigated in the absence of a s106 legal agreement providing supplementary financial contributions to the Local Education Authority.

5.58 The appellant refers in paragraph 6.105 of its SOC to further discussions with KCC and MBC on this matter. However, very limited progress on this matter has been made by the appellant since June 2024 when the Statement of Case was written.

5.59 The Council and KCC will endeavour to work with the appellant but if a mutually agreed contribution is not secured in a s106 legal agreement, the Council will continue to submit that the lack of supplementary financial contributions to the Local Education Authority is contrary to policy LPRSP13 of the Maidstone Local Plan Review 2024 and policy A3 of the Marden Neighbourhood Plan.

6. MATERIAL CONSIDERATIONS WEIGHING AGAINST THE PROPOSED DEVELOPMENT

6.01 The failure to accord with paragraphs 135 and 180 of the NPPF are also matters which weigh against the grant of planning permission.

7. BENEFITS OF THE PROPOSED DEVELOPMENT

7.01 The Council acknowledges that the Proposed Development, if allowed, would give rise to planning benefits. These include:

- up to 117 new homes;
- 40% affordable housing provision;
- the provision of economic benefits in terms of construction jobs and local spend;
- the provision of a social benefit of public on-site open space and play areas

7.02 However, the Council disagrees with the Appellant as to the weight to be afforded to these matters and in any event does not consider that these matters are sufficient to outweigh the breaches of the development plan and the NPPF identified above, having particular regard to

(1) the limited evidence to support the claimed benefits;

(2) the fact that a number of the claimed benefits are in fact mitigation, not net benefits;

(3) the fact that a very similar package of benefits could be achieved by a development which accords with the development plan, such that any difference does not come close to justifying the departure from the policies referred to above; and

(4) the Council's strong track record of housing delivery.

8. CONCLUSION ON THE PLANNING BALANCE

8.01 For the reasons above, the Council submits that the Proposed Development fails to accord with the development plan, read as a whole, and the other material considerations in this case do not indicate that planning permission should be granted in conflict with the development plan. Accordingly, the Appeal should be dismissed.

9. PLANNING OBLIGATIONS, CONDITIONS AND STATEMENT OF COMMON GROUND

9.01 The Council is liaising with the Appellant on a Statement Of Common Ground.

9.02 The Council will prepare a list of planning conditions and liaise with the Appellant to refine where necessary.

9.03 The planning obligations sought by the Council will be shown to accord with the tests as set out within regulation 122 of the Community Infrastructure Levy Regulations 2010.