



## Appeal Decision

Site visit made on 15 August 2023

**by David Wyborn BSc(Hons) MPhil MRTPI**

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

**Decision date: 16<sup>th</sup> October 2023**

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### Appeal A

**Ref: APP/U2235/W/22/3302571**

**Land west of Northdown Business Park, Ashford Road, Lenham, Kent ME17 2DL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by FGS Holdings Ltd against the decision of Maidstone Borough Council.
  - The application Ref 21/505841/OUT, dated 26 October 2021, was refused by notice dated 31 March 2022.
  - The development proposed is Outline application for the construction of up to 2,600 sqm of employment floor space (use classes B2 general industrial, B8 storage and distribution and E(g)(I-III) Offices to carry out any operational or administrative functions, research and development of products or processes and Industrial processes.
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### Appeal B

**Ref: APP/U2235/W/23/3323246**

**Land west of Northdown Business Park, Ashford Road, Lenham, Kent ME17 2DL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by FGS Holdings Ltd against the decision of Maidstone Borough Council.
  - The application Ref 22/505409/OUT, dated 14 November 2022, was refused by notice dated 13 February 2023.
  - The development proposed is Outline application for the construction of up to 1,687 sqm of employment floor space (use classes B2 general industrial, B8 storage and distribution and E(g)(I-III) Offices to carry out any operational or administrative functions, research and development of products or processes and Industrial processes.
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### Decision

1. Appeal A – The appeal is dismissed.
2. Appeal B – The appeal is dismissed.

### Preliminary Matters

3. Both proposals have been made in outline with only access for consideration at this stage. Matters of appearance, landscaping, layout and scale have been reserved. Nevertheless, the intended up to level of employment floorspace is specified in the description of the development in each case. Indicative layout plans have been submitted for both appeal schemes and I have treated them as potential layouts which the appellant has in mind, but other layouts would be possible.

4. The appellant has confirmed that for Appeal A, the plans upon which the appellant is seeking approval include the parameter plans<sup>1</sup>. It is indicated that should the Inspector determine the appeal proposals acceptable, any future layout will need to comply with these as part of the future reserved matters process. With Appeal A, there is some variation in the submitted documents as to the proposed maximum height of the development. As the Parameter Plan – Storey Heights indicates a max height of 10m I have taken this to be the proposal as part of the Appeal A scheme. With Appeal B, the same approach has been taken by the appellant and for that proposal<sup>2</sup>, the Parameter Plan – Storey Heights shows a max height of 7-8 metres. I have taken this as the maximum height which is proposed for the Appeal B scheme. While these plans may not fix any particular aspect of the scheme at the outline stage that they show, I have treated them as the high level parameters in which the reserved matters submissions would accord.
5. It emerged during the processing of the appeals that the settlement boundary of the Maidstone Borough Local Plan 2017 (the Local Plan) and the Lenham Neighbourhood Plan 2017-2031 (the Lenham NP) differ and that this had not been addressed in the submissions. I gave the main parties the opportunity to comment on this matter and, therefore, there is no prejudice in me considering this information and the responses as part of my assessment of the two appeals.

### **Main Issues**

6. In both appeals, the main issues are:
  - whether or not the development plan would support the proposed employment use in this location, and
  - the effect of the proposal on the character and appearance of the area, including having regard to the proximity and any effect on the Kent Downs Area of Outstanding Natural Beauty (AONB).
7. With Appeal A there is the additional main issue in respect of the effect of the proposal on biodiversity including the ability to deliver biodiversity net gain.

### **Reasons**

#### *Location*

8. Policy SS1 of the Local Plan establishes the approach to the spatial distribution of development across the plan area. Maidstone is to be the principal focus of development as the largest and most sustainable location. The settlement hierarchy then includes Rural Service Centres, Larger Villages and outside these settlements the land is designated as countryside.
9. The Local Plan supporting text explains that Lenham provides a good range of local facilities and is the only Rural Service Centre with a secondary school. The village has access to employment opportunities locally, and good rail and bus links to Maidstone and Ashford towns. There is easy access to the A20 which leads to Junction 8 of the M20 motorway. The Local Plan also explains that there are landscape constraints but, despite this, the village is considered the

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<sup>1</sup> Paragraph 4.3.5 of the Statement of Case July 2022 for Appeal A.

<sup>2</sup> Paragraph 3.1.5 of the Planning Statement November 2022 for Appeal B

- most suitable to accommodate the most housing development of all the Rural Service Centres.
10. The text also explains that for the Rural Service Centres appropriately scaled employment opportunities will also be allowed, building on and expanding existing provision in these locations.
  11. The Local Plan Proposals Map shows the settlement boundary of Lenham up to the western boundary of the appeal site and includes the Tanyard Farm housing allocation, such that the appeal site is outside this settlement boundary. The land to the east, which includes the South East Water Depot and the Northdown Business Park, are also excluded from the settlement area. In terms of the Local Plan, therefore, the appeal site falls to be considered as countryside.
  12. The Local Plan also contains Policy SP8 which addresses the approach to development at Lenham. This includes that Lenham is identified as a broad location for the delivery of approximately 1,000 dwellings post April 2021. The Policy explains that housing site allocations and associated infrastructure requirements will be made through the Lenham Neighbourhood Plan or through the Local Plan review.
  13. In respect of the Lenham NP, Policy CP1 sets the policy for countryside protection. It explains that the accompanying Policies Map defines the settlement boundary for Lenham village which has been extended to include the Strategic Housing Delivery Sites. The Lenham NP identifies seven Strategic Housing Delivery Sites. The extended settlement boundary not only includes these identified sites, but also extends to include other land such as housing sites that have been allowed on appeal and an allocation for Nursery Education.
  14. In the vicinity of the appeal site, the settlement boundary identified in the Lenham NP extends further than just the Tanyard Farm allocated housing site in this location. The Proposal Map for the NP, with its settlement area, includes the housing allocation and also the appeal site, the adjoining South East Water Depot and the Northdown Business Park within the settlement boundary. This appears understandable so that the Strategic Housing Delivery Site No 1 (Dean Lewis Estates Ltd) falls within and adjoins the settlement. There is, therefore, a discrepancy between the boundary of the defined settlement between the Local Plan and the Lenham NP.
  15. The National Planning Policy Framework (the Framework) explains that once a neighbourhood plan has been brought into force, the policies it contains take precedence over existing non-strategic policies in a local plan covering the neighbourhood area, where there is conflict; unless they are superseded by strategic or non-strategic policies that are adopted subsequently.
  16. The Council make representations that there is no reference in the strategic Policies SS1 and SP8 of the Local Plan to altering the settlement boundaries, including for Lenham. The Council make the case that the Policies in the Lenham NP do not take precedence over the strategic and existing policies in the Local Plan and that changes to the settlement boundary in the Lenham NP are not in conformity with the Local Plan. Furthermore, the Council argue that the boundary change in the vicinity of the appeal site was not required by nor in compliance with the Local Plan.

17. However, there are quite substantial changes to the settlement boundary in the Lenham NP compared with the Local Plan, and Policy CP1 of this NP explains that these are being made as part of the NP. The boundary changes are not restricted to the inclusion of the Strategic Housing Delivery Sites.
18. The Framework explains that neighbourhood plans should not promote less development than that set out in the strategic policies for the area, or undermine those strategic policies. Furthermore, there is a requirement that neighbourhood plans must be in general conformity with the strategic policies contained in any development plan that covers the area. The Lenham NP has pursued the requirements of the Local Plan, identified the required housing sites and does not appear to have undermined the strategic policies by including them within the settlement together with the other changes.
19. Indeed, paragraph 2.1.4 of the Lenham NP explicitly states the village has a defined settlement boundary which is being re-defined under this Neighbourhood Plan. While I have carefully considered the case made by the Council, the settlement boundary in the Lenham NP is shown in the more up-to-date plan and has not been superseded because the Pre-submission Local Plan (the Emerging Local Plan) is still being progressed<sup>3</sup>.
20. As the Lenham NP has completed all its statutory processes, of which the Council would have been part of, and has been made, it should be assumed to be in general conformity with the Local Plan. I therefore give greater weight to the settlement boundary in the Lenham NP than in the Local Plan. As a consequence, based on this analysis, the appeal site should be considered to fall within the settlement area of Lenham and not within the countryside. The schemes for employment development would, therefore, as a matter of principle, comply with Policy SS1 of the Local Plan which seeks to direct development to Rural Service Centres, such as Lenham. There would be no conflict with Policy SP17 of the Local Plan or Policy CP1 of the Lenham NP as these apply criteria that are applicable to development in the countryside.
21. The appellant has highlighted Policy EMP3 of the Lenham NP which seeks to provide for a mix of employment opportunities. In general, the principle of employment development on the site would be in accordance with this policy which supports proposals for local employment opportunities, including small and medium sized businesses, particularly where they reduce out-commuting.
22. Policy DM30 of the Local Plan has been referenced in the reason for refusal for both appeals. This policy concerns the design principles for development in the countryside. As the site is considered to fall within the settlement (and these are outline schemes), this policy is not applicable to the issues in these appeals. Additionally, Policy DM5 of the Local Plan has also been referenced for both appeals. This policy concerns development on brownfield land. As the site is an undeveloped green field, this policy is also not applicable to the considerations in these appeals.
23. Commentary is provided in the appeal submissions regarding draft Policy LPRSA260 of the Emerging Local Plan which seeks to allocate for the development of approximately 2,600m<sup>2</sup> of employment floorspace (E(g), B2

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<sup>3</sup> This Emerging Local Plan shows the appeal site within the settlement and part of the adjoining South East Water Deport site but excludes the Northdown Business Park.

and B8 uses). This allocation covers two sites in this area, the appeal site and a smaller site nearby which is accessed off the Old Ashford Road.

24. The Council has explained that representations have been received, and Main Modifications are being considered at the Examination by the Local Plan Inspector with Stage 2 having recently been completed. It is understood that the Council intends to run a six week public consultation on the proposed modifications, commencing late September 2023, and adoption of the Local Plan is scheduled for January 2024. Objections to the policy have been submitted from the AONB Unit and Natural England and, while the Inspector has commented in general after the Stage 1, I am not aware of any specific response on draft Policy LPRSA260, although I have taken into account the main modifications set out by the appellant in the final comments. The Plan is still progressing through its various stages and, at this point, I consider that only moderate weight can be afforded to this policy in terms of the issues in this appeal.
25. Nevertheless, in the light of the above analysis and the evidence that I have before me, I conclude that the development plan, as a matter of principle, would support the proposed employment use in this location.

#### *Character and appearance*

26. The site is a rectangular shaped, undeveloped field. On one side is the Tanyard Farm housing allocation and on the other the South East Water Depot. To the north is the A20 (Ashford Road) and to the south there are two dwellings. The site gently slopes down to the south and there is some low level and very limited landscaping along the side to the proposed housing. On the allocated housing site, some new housing has been built on the western section of the land, but nothing so far on the field closest to the appeal site. It is understood that outline permission has been granted but that the reserved matters has been held up because of the need to demonstrate nitrogen neutrality for the housing in relation to potential impacts on European designated habitat river catchments in the area.
27. The frontage with the A20 is characterised by a grass verge and behind which is some established overgrown hedges, and which include some small/medium sized trees. It appears that this frontage growth will need some management and because of the deciduous nature of most of the vegetation the appeal site will be visible from this section of the road at some times of the year. Especially at those times, the open character and verdant appearance of the site would be apparent, and the site contributes positively to the character and appearance of this section of the road.
28. When within the site, the two dwellings to the south are largely obscured by the established boundary planting. However, on the eastern boundary, because of a sizeable gap in the tree screen, the large depot building is very apparent. Its bulky, tall and functional appearance, sited reasonably close to the boundary, has a dominating appearance from within the appeal site.
29. On the other side of the A20 is the Kent Downs AONB. This open land rises up the slope and has an expansive and open character. The higher land within the AONB includes the North Downs Way, a long distance footpath, and the Grade II Listed Chalk Cross, cut into the hillside. From these locations there are extensive views south over the gently undulating landscape.

30. The buildings within the Northdown Business Park and the South East Water Depot are apparent within the landscape from these elevated areas. They are softened by the presence of some mature trees and the presence of some hedging and lower level vegetation, but they still form a ribbon of built development in the landscape. The presence of the larger Water Depot building is especially apparent because of its pale roof colour, bulky appearance and overall size.
31. The new housing which has been built is also visible and, as the new dwellings extend to the east, the combined impact of the housing allocation will become more apparent and become a feature of the landscape.
32. The appeal site is discernible as an undeveloped space from this higher ground. It makes a modest but worthwhile contribution to the wider landscape and provides a green space adjoining the business development. There are three mature trees on the northern side of the A20 which, in conjunction with the front boundary planting, help to filter views of the site. However, especially in the autumn and winter months, when the leaves have fallen, the site would be more apparent, and the openness of the site would make a greater contribution to the character of the area.
33. The area on the southern side of the A20 is experienced in conjunction with the land to the north and forms part of the setting to this part of the AONB. I am conscious of the Framework requirement that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues. The Framework also requires that development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on AONBs.
34. Both schemes are proposed in outline with only access for determination at this stage. Nevertheless, both proposals specify an up to floorspace and it is necessary for me to be satisfied that this floorspace could be accommodated on the site without undue harm to the character and appearance of the area.
35. With Appeal A, three indicative layout options have been submitted. Other layout options would also be possible, but the three layouts are instructive of ways that the proposed floorspace could be accommodated on the site. All three options show quite intensive forms of development with much of the site covered with buildings, yards and/or hard surfacing. There would be limited spaces and opportunities for landscaping, in particular, at the site frontage and along the boundary with the new housing site.
36. Two of the indicative plans show extensive lengths of buildings reasonably close to the boundary with the housing and, with the indicative spaces for landscaping, could with buildings up to 10m in height, produce an overly dominant and harmful built form adjoining the intended residential development to the west. The yard area indicative scheme would also be an intensive use of the site and would, in all likelihood, create storage, parking and manoeuvring space over much of the site area. It would have a visually harmful and unsympathetic effect on the character and appearance of the area.
37. In particular, all of the schemes show indicative development quite close to the frontage of the site. With two of the schemes a building, potentially up to 10m in height, could be positioned towards this area. This would have the effect of urbanising this frontage to an undue and harmful extent.

38. The effects of the proposal under Appeal A would be, in part, experienced from the road frontage, from some of the new housing in time and from the higher land within the AONB. I appreciate that the layouts are only examples. Nevertheless, they demonstrate that the floorspace and maximum height, and in the case of the yard scheme its extent and effect, would be likely, despite details that could be submitted at the reserved matters stage, to constitute an over development of the site that would unduly harm the character and appearance of the area, including the setting to the AONB.
39. In terms of the proposal under Appeal B, the maximum floorspace has been reduced to a level that would be within the figures specified for the site in the Emerging Local Plan. It is a less intensive scheme, with lower heights of buildings, than that proposed under Appeal A. The indicative layout shows green roofs and areas for landscaping, including along the western boundary with the housing. The development would be of a similar height to those buildings on the Northdown Business Park and lower than the larger building on the adjoining South East Water Depot.
40. Nevertheless, the proposal has still resulted in objections to the scheme from the AONB Unit and the Parish Council, while noting that the Council's Landscape Officer considers there is no reason to refuse the application on landscape grounds. The indicative layout is but one way that the site could be developed. However, the width of the site means that, it is likely in practice and as shown on the indicative plan, that to accommodate this quantum of floorspace it would be probable there would be a reasonably long run of hard standing from almost the front to the back, and the indications from the indicative plan are, in my judgement, that this would make the site difficult to landscape successfully.
41. There are some areas within the site shown for structural planting and the other areas for planting are indicatively shown around the boundary. The space to the boundary with the housing is shown at about 6.5m. However, I do not have sufficient details at this outline stage to satisfy me that structural planting of a sufficient height and type could be accommodated in such a space to ensure that it would have a meaningful impact to help to mitigate the development within the landscape and that there would be space for it to be able to mature in the longer term.
42. If the buildings were shifted or sub-divided to provide more space along this boundary, then this would, in all likelihood, adversely affect the ability to accommodate elsewhere the buildings on the site with the up to floorspace and/or the capability to provide suitable parking and manoeuvring space.
43. The height and position of a building at the frontage, which could potentially be to the height indicated on the parameters plan, is likely to be overly prominent, and notwithstanding the housing that will be built to the west and which would adjoin the road, a business building in this broad location would not allow sufficient landscaping to mitigate the appearance of the development when viewed from the adjoining road area. I appreciate that such an indicative siting for a building could be positioned back into the site at the reserved matters stage but that would then affect the potential for other landscaping within the site.
44. I understand that this is an outline proposal and that details could be submitted at reserved matters stage to try to seek to address these concerns. The site is

also within the settlement area as shown within the Lenham NP and the Emerging Local Plan identifies the site for employment development. However, this is a reasonably sensitive site positioned next to the proposed housing and with the AONB on the other side of the road, and with views down from the higher land across this and other sites. I am not satisfied, by the indicative plan and the other information at this stage under Appeal B, that a scheme for this extent of floorspace and height of buildings could be accommodated on the site successfully at the reserved matters stage so as to not cause undue harm to the character and appearance of the area, when viewed from the AONB, the road frontage and/or the adjoining housing to be built. I have concerns that the scheme under Appeal B would likely cause harm to the setting to the AONB and despite the submissions of the Council to the Local Plan Inspector, I am required to assess this appeal on the information before me.

45. For these reasons, the scheme under Appeal B (and Appeal A) would not wholly accord with the draft Policy LPRSA260 of the Emerging Local Plan. This is because, having regard to the policy as originally drafted and also the wording suggested by the main modifications, the evidence does not satisfy me at this stage and having regard to details that could be submitted at the reserved matters stage, that the development under either proposal would be able to incorporate substantial areas of internal landscaping within the site to provide an appropriate framework for the site to protect the setting of the Kent Downs AONB.
46. For these reasons, the proposal under Appeal B (and Appeal A) would not comply with Principle SD8 of the AONB Management Plan 2021-2026 because the scheme would, in all likelihood and, despite any details at the reserved matters stage, negatively impact on the landscape character, and the setting and views to and from the Kent Downs AONB.
47. In the light of the above analysis, I conclude that both schemes, notwithstanding any details that could be submitted at the reserved matters stages, would be likely to cause undue harm to the character and appearance of the area, including the setting of the adjoining part of the AONB. As a consequence, the schemes would not meet with the requirements of Policy DM1 of the Local Plan, Policy D1 of the Lenham NP and the Framework which, amongst other things, require that the location, design and site layout of new development should have regard to the role Lenham places within the setting of the Kent Downs AONB.

#### *Biodiversity (Appeal A)*

48. The application under Appeal A was accompanied by a Preliminary Ecological Report (July 2021) and this included recommendations for ecological enhancements. While the layout plans are only indicative, they all show reasonably narrow strips of landscaping around the boundaries of the site. There will be other layouts that are possible but given the up to floorspace that is indicated, and the likely space required for parking, loading and manoeuvring, I consider that any layout would likely limit the landscaping to similar and restricted areas.
49. The Preliminary Ecological Report indicates that generous native planting of trees and shrubs should be undertaken throughout the site, and suitable planting would include beech, oak, hazel, holly, hawthorn, field maple and crab apple. While some of these species could be maintained at shrub/bush size,

others such as oak and beech could ultimately be sizeable trees with a proportionate crown spread. Indeed, this size of tree would be needed to create an effective landscaping scheme. With the space available I do not consider that this is a realistic proposition to be able to plant such trees and allow them to mature and, therefore, the intended biodiversity gains would not be able to be achieved. The landscaping areas would be, in all likelihood, limited, and therefore with this proposed up to floorspace I do not have confidence from the submitted details that suitable landscape and ecological buffers could be provided at the reserved matters stage. It follows that the Framework requirement that decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, would be unlikely to be met.

50. I do not consider that the other aspects of biodiversity enhancement which have been explained in the Preliminary Ecological Report, such as bird and bat boxes and the provision of climbing plants, would provide sufficient benefits as part of a scheme at the reserved matters stage, to offset the concerns that I have with this issue.
51. Accordingly, I conclude that the scheme under Appeal A would, because of the up to floorspace proposed, and in all likelihood the resulting limited areas for landscaping, and notwithstanding the details that may be submitted at the reserved matters stage, not provide adequate opportunity for biodiversity and related net gain. The scheme would therefore not accord, in these respects, with Policy DM3 of the Local Plan, Policy D1 of the Lenham NP and the Framework.

### **Planning Balance and Conclusion**

52. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise<sup>4</sup>.
53. In this case, I have concluded that the site would be located within the settlement area of Lenham as detailed within the Lenham NP. Even if I was to take the Council's view on this matter and judge the site was outside the settlement boundary for the purposes of these appeals, the site would still be well located for employment use as it would be closely associated with Lenham, a Rural Service Centre. The site is located next to a main road, and within walking and cycling distance of services and facilities within Lenham. There is access to the public bus network within walking distance and Lenham has a main line railway station. The site is a good location for employment development both in terms of commercial vehicles visiting the site and for employees having the opportunity to access the site by a range of transport modes.
54. The schemes would make good and effective use of an underutilised space and would improve the vehicular access to the adjoining Depot as well as providing an acceptable access to the site itself.
55. Both schemes would provide a meaningful and worthwhile delivery of employment floorspace, helping to meet an identified need, in new purpose designed buildings that should complement the offer with other employment

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<sup>4</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

- buildings in the area. Although of moderate weight, the principle of the provision of employment space on the site would accord with the general approach of the Emerging Local Plan Policy LPRSA260, although I have set out the concerns with the compliance with the detailed criteria above, and the use would be policy compliant in terms of the Lenham NP.
56. The Framework requires that significant weight should be placed on the need to support economic growth and productivity, taking account both local business needs and wider opportunities for development. Taking all these matters into account, I consider that the benefits of each appeal scheme should merit significant weight in favour of approval.
57. On the other hand, the Framework also states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. In the case of each appeal, notwithstanding details that could be submitted at the reserved matters stage, both proposals would likely cause undue harm to the character and appearance of the area and, in particular, would detract from the setting of the AONB and, in this local area, would diminish its special qualities. I consider that this harm and related policy conflict, albeit less in the case of Appeal B, should, nevertheless, afford great weight against the proposal in each case. In the case of Appeal A, there is the additional harm resulting from the biodiversity issue which I have identified.
58. The first reason for refusal in the case of both appeals predominantly highlights the likely harm to the character and appearance of the area, and I consider that this is the determinative issue in both appeals, rather than the matters with regard to the settlement boundary. I consider that the identified harm and policy conflict is such that both schemes would conflict with the development plan when considered as a whole.
59. It follows that I judge that the harm and policy conflict in the case of each appeal, which should be attributed great weight, would not be outweighed by the benefits of the respective schemes, which should be afforded significant weight.
60. For the reasons given above, there are no material considerations of such weight that indicate the proposals should be determined otherwise than in accordance with the development plan. I therefore conclude that both appeals should be dismissed.

*David Wyborn*

INSPECTOR