

OPENING SUBMISSIONS ON BEHALF OF THE APPELLANT

1. The Maidstone Local Plan Review (LPR) was adopted in March 2024 and identifies Marden as a rural service centre. Such centres are intended to be the “secondary focus” of new housing development in the Borough after the Maidstone urban area and new garden settlements and a strategic development location.¹ The LPR identifies two site allocations in Marden, including a new allocation LPRSA295, comprising the Appeal Site, which is allocated “for the development of approximately 113 dwellings”². The settlement boundary of Marden is updated to take in the Site.
2. The starting point for this appeal is therefore that the principle of developing the Site for approximately 113 dwellings is established in recently adopted policy, and further that the delivery of that scale of development is required to contribute to Borough wide housing needs. In supporting the allocation of the Site at the Examination into the LPR, MBC’s lead officer explained:³

‘It’s a site, that although is open countryside, it’s sloping so it has some visual sensitivities the promoters have carried out a significant amount of testing to support the allocation and we are therefore comfortable that adequate mitigation can be incorporated to address those potential concerns.

Having been through pre application on the site and consulted on the site with various parties such as KCC Ecology team and our own Landscape officers, we are comfortable at 113 and it may be possible that that can be increased.

¹ H5 p 35 and Policy LPRSP6 p 94

² H5 p 259

³ L7 (Rainier Proof), 9.6

Having tested the scheme against open space requirements 113 is comfortable, but it may be possible through good design to optimise this further.”

3. The appeal proposals are for up to 117 dwellings, with all matters reserved for subsequent approval save for the site access. In accordance with LPRSA295, it is proposed to access the Site from a single principal access on Albion Road, details of which have now been agreed as acceptable with the local highway authority (KCC).
4. With these points set out, it is surprising that nonetheless the appeal reaches an Inquiry with material issues in dispute.
5. First, MBC argues that the proposals “fail to respond sensitively of the rural setting of Marden and would harm the character and appearance of the surrounding countryside” and in addition “the proposed quantum of houses will lead to cramped overdevelopment”.
6. As to the first allegation, it is difficult to see how an outline application on an allocated site can sensibly be criticised in this way. The illustrative proposal has been carefully conceived and forms the basis of the Mr Tomes’ detailed analysis, but it is necessarily illustrative in nature. MBC will control the impacts on the rural setting and character and appearance of the countryside through reserved matters approvals. Since the Site is allocated, impacts are inevitable. The adequacy of the mitigation of those impacts is largely for reserved matters stage, although an Outline Landscape and Ecological Management Plan (OLEMP)⁴ can assist in guiding the detailed design, layout, and landscaping. The illustrative Green Infrastructure Plan⁵ shows how the existing green infrastructure can be reinforced and added to with new planting to achieve policy objectives, and there

⁴ L4.17

⁵ L4.3, ASLA44

is no reason why the detailed objectives in LPRSA295 cannot be achieved at reserved matters stage.

7. As to the second allegation, the proposal is for “up to” 117 dwellings. MBC has not identified any material difference between such a proposal and the policy’s reference to “approximately” 113 dwellings. Indeed, 117 is “approximately” 113. The suggestion that 117 dwellings would represent a “cramped overdevelopment” is plainly at odds with the terms of the LPR when read as a whole. Policy LPRHOU5 seeks to achieve a net density of 30 dwellings per hectare. Excluding the almost 2ha of the Site left free from development as natural/semi-natural open space, the density is c. 29 dwelling per hectare.⁶

8. Second, MBC argues that there is an absence of safe cycle access from the Site to the village of Marden (having accepted that safe pedestrian access is demonstrated). This contention is wholly unsubstantiated. KCC has accepted that that the proposals can achieve safe and suitable access. The safety of the proposed Albion Road junction and the adjacent single lane working where a new footway is proposed has been assessed by the road safety auditor and considered to be safe for cyclists. MBC offers no evidence to the contrary. There is no reason why cyclists cannot cycle on the road in this location, and there is no alternative route available to the facilities in the village.

9. Third, MBC contends that the proposals would fail to meet nature conservation policies through failing to identify sufficient provision of habitat and/or mitigation for turtle doves and yellowhammers. The Appellant has identified the need to provide mitigation for impacts on turtle doves (and yellowhammers) by management measures to reduce disturbance and by the creation of new on-site habitat. The detail of such measures will be settled at reserved matters stage. There is no doubt that the impacts are capable of being mitigated. This is clearly a matter which can be dealt with by a suitably worded planning condition. Further,

⁶ L7 (Rainier Proof), 3.26

MBC question the location of a new badger sett and whether this would impact on open space requirements. A badger sett can be located within proposed scrub planting which in areas identified for natural/semi-natural open space and where direct pedestrian access would not be required.

10. Fourth, MBC contends that there is an inadequate amount of natural and semi-natural open space in terms of both quantum and public useability. This contention is surprising given the proposals exceed the policy specific requirement in LPRSA295 to deliver “not less than 1.25 hectares of open space, with typologies in accordance with policy LPRSP13 and LPRINF1”.⁷ The LPR explains that “development should replace larger, more rural land, with smaller, more active, higher quality open spaces for communities to enjoy”⁸ and goes on to explain that⁹ all new development should make a contribution to open spaces, either on or off site.

11. In respect of natural/semi-natural areas of open space, proposals should “make a contribution towards maintaining the borough-wide target of 6.5 Ha of natural/semi-natural open space per 1,000 head of population”¹⁰. This space need not be open to the public as a whole and includes, for instance, areas of wetlands and open water, ponds, and closed graveyards¹¹. Accordingly, it is no part of the LPR that access should be obtained to all parts of such natural/semi-natural open space. MBC’s evidence¹² wrongly excludes ponds from the calculation of the areas of such space. When the correct figures¹³ are considered, a surplus of natural/semi-natural areas is shown in the indicative layout. Outdoor sports provision is to be secured off-site through a planning obligation. Again, MBC’s concern is a matter properly addressed at reserved matters stage, when layout and landscaping will be considered.

⁷ H5, p 261

⁸ H5, para 7.116 p 183

⁹ H5, policy LPRSP13, para 8

¹⁰ H5, policy LPRINF1

¹¹ See the definition at H5 p 334

¹² M6.5

¹³ Set out at L8.2

12. It follows that each of MBC's objections is either misconceived, or a matter to be addressed at the reserved matters stage. The same is true of the wider issues raised by third parties, including the Parish Council.

13. In those circumstances, the Inspector should conclude that the appeal proposals accord with the development plan and specifically with the site allocation policy. The detailed terms of policy LPRSA295 can be relied upon in the determination of applications for reserved matters, and therefore compliance with that policy will be achieved.

14. Further, the appeal scheme will deliver tangible planning benefits which way heavily in favour of allowing the appeal. These are summarised in Mr Rainier's evidence¹⁴ as follows:

- a. Supporting the plan led system through the timely delivery of housing on an allocated site;
- b. Making a significant contribution to the supply of market housing in the Borough;
- c. Making a significant contribution to the supply of affordable housing in the Borough;
- d. Delivering at least 20% biodiversity net gain;
- e. Social benefits through new housing and improved footway and footpaths
- f. Economic benefits through construction and through a new resident population;
- g. Landscape enhancement including new open space;
- h. Specific biodiversity enhancements.

15. MBC wrongly treats some of these matters (such as biodiversity net gain) as not being benefits because they are "mitigation" or because similar benefits could be

¹⁴ L7, p 57

delivered by another proposal. Such reasoning is obviously wrong. Matters which mitigate the effects of a proposal may also deliver wider benefits. In the case of biodiversity, the proposals go beyond mitigation to deliver net gains. It is no part of the planning balance process to disregard obvious benefits just because they could be achieved elsewhere.

16. In short, the appeal proposals accord with an up to date development plan and deliver significant benefits. The appeal should be allowed and permission granted without delay.

Richard Turney KC

Landmark Chambers

12 November 2024