

Appeal by Gladman Developments Ltd

Land off Town Road, Cliffe Woods

**Against the Refusal by
Medway Council on the Application for:**

“Outline planning application with some matters reserved (appearance, landscaping, layout and scale) for up to 225 residential dwellings (including up to 25% affordable housing), introduction of structural planting and landscaping, informal public open space and children’s play area, surface water flood mitigation and attenuation, vehicular access point from Town Road and associated ancillary works.”

Rule 6 Statement of Case

Appeal Reference: APP/ A2280/W/17/3175461



May 2017

CONTENTS

1	Introduction	3
1.1	Context	3
1.2	Site and Surroundings	3
1.3	Background	3
1.4	Housing Land Supply	4
2	The Development Plan	5
2.2	Medway Local Plan (1996-2006)	5
2.3	Weight to be Afforded to the Development Plan	5
2.4	Principle of Development.....	5
3	Other Material Considerations.....	6
3.1	The National Planning Policy Framework	6
3.2	Medway Emerging Local Plan.....	7
3.3	Cliffe and Cliffe Woods Neighbourhood Plan.....	7
3.4	Other Documents	8
4	Response to the council’s reasons for refusal	9
4.1	Introduction	9
4.2	Reason for Refusal 1	9
4.3	Reason for Refusal 2.....	9
4.4	Third Party Objections	9
5	Planning Conditions and Section 106 Obligations	11
5.1	Planning Conditions	11
5.2	Section 106 Obligations	11
6	The Planning Balance and Conclusions	12
6.1	The Planning Balance	12
6.2	Conclusions	12

APPENDICES

Appendix 1	Justification for an Inquiry
Appendix 2	Response to Third Parties

1 INTRODUCTION

1.1 Context

1.1.1 This Statement of Case is submitted by Gladman (the Appellant) and it relates to an appeal against Medway Council's (MC) decision to refuse the outline application for:

"Outline planning application with some matters reserved (appearance, landscaping, layout and scale) for up to 225 residential dwellings (including up to 25% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Town Road and associated ancillary works."

1.1.2 A draft list of Core Documents that will be referred to during the course of the appeal is appended to the submitted Statement of Common Ground. These documents may be added to by the Appellant or Council prior to the commencement of the appeal.

1.1.3 The Appellant considers a public inquiry is the most appropriate forum in which to test the appeal proposal. A justification for this request is provided in accordance with the PINs Procedural Guide 2016 (Annex K) at **Appendix 1**.

1.2 Site and Surroundings

1.2.1 The site, comprising 11.26ha of agricultural land, is located in Cliffe Woods, approximately 6km north from Chatham.

1.2.2 A full description of the appeal site and surroundings is set out in the Statement of Common Ground for agreement with the Council.

1.3 Background

1.3.1 The planning application for the proposed development was validated by Medway Council on 06/09/2016 (Application ref: MC/16/3669). The application was supported by a comprehensive suite of technical reports in accordance with the Council's planning application validation requirements, which are set out in the Planning Statement that accompanied the application.

1.3.2 The application / red line boundary was amended during the course of the planning application to include the attenuation pond which had originally been provided within blue land. A set of updated application documents (CD2), including a revised site location plan, was submitted to the Council on 5th October to reflect the amendment to the red line boundary. The Council confirmed that re-consultation was necessary in the light of the revised site location plan and application documents and was undertaken on the 7th October 2016 (CD4.1).

1.3.3 The application went before Planning Committee on 12/04/2017. The Planning Committee resolved to refuse permission, which the Council confirmed by notice on 05/05/2017.

1.3.4 The reasons for refusal are:

1. **Cliffe Woods village is not considered to be a sustainable location for a single use development of this scale. Employment opportunity within the village is limited and the nature of the facilities within the village will result in occupants of the development having to look outside the village for alternative provision. The site is not well related in terms of sustainable transport modes to surrounding Towns and villages and their facilities. The proposed development is not considered to be accessible by a realistic chance of access by a range of transport nodes and will be highly reliant on the use of the private motor vehicle. Therefore this development amounts to an unsustainable form of development contrary to principles set out at paragraphs 7, 8, 14, 17, 34 and 70 of the National Planning Policy Framework and Policy BNE25(i) of the Medway Local Plan 2003.**

2. **The development, if permitted, would have an adverse impact on the character and visual amenity of the local area, which is considered to be a “valued landscape”, contrary to Paragraphs 17 and 109 of the National Planning Policy Framework and Policies S1, S2 and BNE25(i) of the Medway Local Plan 2003.**

1.3.5 A full copy of the Decision Notice is enclosed at CD5.2.

1.4 Housing Land Supply

1.4.1 The Council accepts it cannot demonstrate a five year housing land supply. It's most recent housing supply statement confirms the supply is less than 3 years. The appeal proposal therefore responds to the urgent requirement to identify new development sites to meet housing needs and significantly boost the supply of housing in accordance with paragraph 47 of the Framework.

2 THE DEVELOPMENT PLAN

2.1.1 The Development Plan for Medway comprises the saved policies of the Medway Local Plan 2003.

2.2 Medway Local Plan (1996-2006)

2.2.1 The Medway Local plan was adopted in May 2003 and it sets out planning policies and proposals up to 2006.

2.2.2 While policies may have been saved for continued use by Secretary of State Saving Direction (21st September 2007), they should be read in the context of other material considerations, including the Framework and matters of housing land supply.

2.2.3 A list of the planning policies relevant to the appeal proposal is enclosed in the submitted Statement of Common Ground for agreement with the Council.

2.3 Weight to be Afforded to the Development Plan

2.3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that determination must be made in accordance with the development plan unless material considerations indicate otherwise.

2.3.2 The weight to be attributed to the policies of the MLP should be determined according to their consistency with the Framework as outlined in paragraph 215; the greater the degree of consistency, the greater the weight that can be attached.

2.3.3 The Medway Local Plan is now some 11 years beyond its intended end date, with the plan period ending in 2006. It is therefore evident the policies within the Local Plan are significantly time-expired and that they cannot accommodate the arising housing needs of the District (NPPF 47).

2.4 Principle of Development

2.4.1 It is accepted the proposals do not comply with Policy BNE25 regarding Settlement Boundaries and Development in the Open Countryside.

2.4.2 However, this policy serves to constrain housing land supply and in the light of the adverse supply position accepted by the Council and paragraph 49 of the Framework, those policies are out-of-date and the weight to be attached to them is significantly reduced.

2.4.3 A decision other than in accordance with the Development Plan is therefore justified and the presumption in favour of sustainable development should be applied.

3 OTHER MATERIAL CONSIDERATIONS

3.1 The National Planning Policy Framework

3.1.1 The Appellant will demonstrate that, having regard to the proper application of the Framework, the following can be said of the appeal proposals.

Sustainable Development

An economic role

3.1.2 Evidence will be adduced to demonstrate the beneficial economic impacts of the appeal proposal. Delivery of new market and affordable homes now in Cliffe Woods is a key contributor that will enable Medway Council to promote and sustain a strong, responsive and competitive economy.

A social role

3.1.3 It will be demonstrated that the appeal proposals will deliver new homes of the right type and mix, at the right place and at the right time to meet market and affordable housing need and in turn will support Medway Council's growth aspirations. Without a sufficient supply of new homes, Medway Council cannot meet the needs of present or future generations. It will be demonstrated that the site is located in an accessible and sustainable location close to key services and facilities, and the wider area that will help support the health, social and cultural wellbeing of Cliffe Woods.

An environmental role

3.1.4 It will be demonstrated that the appeal proposals have no unacceptable adverse effects on environmental considerations. The proposals involve the provision of a significant area of informal and formal public open space, landscaping and ecological mitigation works which together deliver a net gain to biodiversity.

The Presumption in Favour of Sustainable Development

3.1.5 It will be demonstrated that the appeal proposals benefit from the presumption in favour of sustainable development set out in Paragraph 14 of the Framework and that they accord with the Core Planning Principles set out in paragraph 17 of Framework.

3.1.6 Medway Council are unable to demonstrate a five year housing land supply. Paragraph 49 of the Framework states:

"...Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites".

3.1.7 In the circumstances, it is reasonable to conclude that the presumption in favour of sustainable development is applicable to the appeal proposals.

- 3.1.8 The appeal proposals will deliver new housing development which will assist Medway Council by contributing towards providing the requisite land supply and will also assist in meeting the central government objective of “boosting significantly” the supply of housing whilst also serving to remedy a position of deficit.

3.2 Medway Emerging Local Plan

- 3.2.1 The new Medway Local Plan (2012-2035) will be a single document containing strategic policies as well as development management policies and site allocations. The Council are currently consulting on a ‘Development Options’ version of the Local Plan under Regulation 19. The latest Local Development Scheme does not anticipate adoption of the emerging Local Plan until 2019 at the earliest.
- 3.2.2 The Framework sets out at Paragraph 216 that weight may be afforded to relevant policies in emerging plans according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies in the emerging plan to policies in the Framework.
- 3.2.3 The emerging Local Plan is considered to be at a relatively early stage, has not been the subject of examination and has a number of unresolved objections, as such the emerging Local Plan carries very limited weight in accordance with paragraph 216 of the Framework.

3.3 Cliffe and Cliffe Woods Neighbourhood Plan

- 3.3.1 Cliffe and Cliffe Woods was designated a Neighbourhood Area in June 2015.
- 3.3.2 The Framework sets out at Paragraph 216 that weight may be afforded to relevant policies in emerging plans according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies in the emerging plan to policies in the Framework.
- 3.3.3 The Parish Council are currently in the early stages of evidence gathering to support a draft version of the Neighbourhood Plan. Given the early stage of preparation and the lack of draft neighbourhood plan policies, no weight can be attached to the Neighbourhood Plan at present.

3.4 Other Documents

3.4.1 The Appellant may also refer to the following policy documents:

Supplementary Planning Documents

- Guide to Developer Contributions 2014
- Landscape Character Assessment 2011

Emerging Local Plan Evidence Base

- Strategic Housing and Economic Needs Assessment November 2015
- Strategic Land Availability Assessment 2017
- Annual Monitoring Report December 2016

Planning Decisions / Appeals

3.4.2 The Appellant will refer to other planning decisions/appeal decisions of relevance to the appeal proposal. These will be agreed with the Local Authority and provided as Core Documents.

4 RESPONSE TO THE COUNCIL'S REASONS FOR REFUSAL

4.1 Introduction

4.1.1 This section of the Statement of Case sets out the Appellant's position in relation to the Council's Reasons for Refusal (RfR), provided in Section 1.

4.2 Reason for Refusal 1

4.2.1 Reason for Refusal 1 (RfR1) sets out the Council's concerns that Cliffe Woods is not considered to be a sustainable location for a single use development of this scale and that there are insufficient employment facilities and services within the village or services in surrounding towns and villages accessible by sustainable transport modes, contrary to paragraphs 7, 8, 14, 17, 34 and 70 of the National Planning Policy Framework and Policy BNE25(i) of the Medway Local Plan 2003.

4.2.2 The Appellant will adduce evidence to demonstrate that employment and other services and facilities can be accessed from the proposed development using sustainable transport modes. The development proposal will also make a valuable contribution towards maintaining and enhancing the vitality and viability of Cliffe Woods and its rural hinterland.

4.2.3 Evidence will be adduced to demonstrate Cliffe Woods is a demonstrably suitable and sustainable location to host new housing development.

4.3 Reason for Refusal 2

4.3.1 Reason for Refusal 2 (RfR2) sets out the Council's concerns that the proposed development would have an adverse impact on the character and visual amenity of the area considered to be a 'valued landscape' contrary to Paragraphs 17 and 109 of the National Planning Policy Framework and Policies S1, S2 and BNE25(i) of the Medway Local Plan 2003.

4.3.2 Evidence will be adduced to show that with the scheme of mitigation measures proposed, the development would not have an unacceptable adverse impact on the character of the area.

4.3.3 Furthermore it is the Appellant's case the Site does not constitute a 'valued landscape' for the purposes of paragraph 109 of the Framework.

4.3.4 The Appellant will adduce evidence to demonstrate that any landscape harm will be outweighed by the benefits of the proposed scheme, which are substantial.

4.4 Third Party Objections

4.4.1 In addition to the Council's reasons for refusal, a number of objections were received from third parties to the planning application. These raise issues similar to those of the Council, as well as a number of other potential material considerations, which are summarised and considered in the table enclosed at **Appendix 2** to this Statement of Case.

- 4.4.2 The Appellant will also address those material considerations raised in evidence to demonstrate those concerns are unfounded, or that they can be suitably mitigated by condition or planning obligation.

5 PLANNING CONDITIONS AND SECTION 106 OBLIGATIONS

5.1 Planning Conditions

- 5.1.1 It is proposed by the Appellant that affordable housing be secured by condition.
- 5.1.2 The parties will seek to reach agreement on other planning conditions in advance of the Inquiry. An update will be provided accordingly.

5.2 Section 106 Obligations

- 5.2.1 It is proposed that the obligation will be provided by way of Unilateral Undertaking (UU). This will be issued to the Council for comment in advance of the appeal in order to provide reasonable opportunity for agreement to be reached and in order for a draft UU to be provided to the Inspector 10 days in advance of the Inquiry, in accordance with the PINs Procedural Guide (2016).
- 5.2.2 Where differences in the obligations sought arise, the UU will be drafted to include both options and the Inspector invited to adopt the obligation considered to be in compliance with the CIL regulations.

6 THE PLANNING BALANCE AND CONCLUSIONS

6.1 The Planning Balance

6.1.1 It is accepted that the appeal proposals constitute a departure from certain policies of the adopted Medway Development Plan. The Appellant will demonstrate that the policies of the adopted Development Plan relevant to housing supply are out-of-date and therefore cannot be determinative in this case.

6.1.2 On the basis that the proposal constitutes sustainable development and the Council does not have the minimum requisite five year land supply, the Appellant submits that the presumption in favour of sustainable development, set out in the Framework, applies.

6.1.3 The appeal proposal will secure a range of benefits that will be demonstrated in full in evidence. These include, *inter alia*:

- Up to 225 dwellings (including 25% affordable dwellings) to meet pressing housing needs;
- New jobs associated with construction and economic benefits related to this;
- Provision of public open space, including a children's play area;
- Ecological and biodiversity benefits;

6.1.4 It will be demonstrated that the harm arising in respect of the appeal proposal is no more than might reasonably be anticipated when changing a green field to one of built form.

6.2 Conclusions

6.2.1 In accordance with Paragraph 14 of the Framework, it will be demonstrated there are no material adverse impacts arising from the appeal proposals, which would significantly and demonstrably outweigh the benefits the development will deliver. There are no specific policies of the Framework which would either preclude or restrict the development and in the circumstances, the Framework directs that planning permission should be granted.

APPENDIX 1 – JUSTIFICATION FOR AN INQUIRY

With reference to Annexe K of The Planning Inspectorate's Procedural Guide for Planning Appeals – England (23 March 2016), the Appellant requests a Public Inquiry for the following reasons:

Need for the Evidence to be tested through Formal Questioning by an Advocate

Matters in relation to accessibility, rural sustainability, landscape and overall planning balance are contested between the Council and the Appellant. Emerging case law in relation to the interpretation of national policy means detailed legal submissions will be necessary.

Complexity of Issues

The Appellant disputes objections made by the Council in relation to planning policy, landscape effect, accessibility and rural sustainability which will need to be dealt with through evidence adduced by both parties. As such, it is the view of the Appellant that these matters will require cross examination to establish the extent of the evidence which underpins the Council's claims.

Likely Length of Inquiry

It considered that to address all matters, 5 sitting days will be required. This exceeds the single day usually reserved for a hearing (or even a two day hearing, which are understood to be used only in exceptional circumstances). The Annexe therefore suggests that a public inquiry is necessary.

Summary

For the above reasons, the Appellant considers a public inquiry is the only appropriate procedure in this case.

APPENDIX 2 – RESPONSE TO THIRD PARTIES

Purpose

This document summarises, responds, and gives due consideration to the relevant interested third party representations submitted to Medway Council as part of the planning application process. Responses to the planning application are summarised, together with the applicant's response in the table below:

Summary of Comments	
Principle	Response
<ul style="list-style-type: none"> - The site is not identified in the Medway local Plan or Neighbourhood Plan - Lack of 5 year supply is temporary - There is no housing need demonstrated 	<ul style="list-style-type: none"> - Medway Council accept they cannot demonstrate a 5-year housing land supply and that the adopted Local Plan is time expired. As such it is appropriate to bring forward a site capable of supporting sustainable development.
Sustainability	Response
<ul style="list-style-type: none"> - Development is not in a sustainable location with a lack of facilities/infrastructure in the village - Lack of employment opportunities - Inadequate public transport provision 	<ul style="list-style-type: none"> - Cliffe Woods has a number of services and facilities which are within easy walking and cycling distance of the site. - The Transport Assessment demonstrates Cliffe Woods has good public transport links to larger employment centres such as Chatham and Rochester.
BMV / Greenbelt	Response
<ul style="list-style-type: none"> - Loss of best and most versatile agricultural land 	<ul style="list-style-type: none"> - Whilst a small proportion of the site is land within the BMV category (25% sub-grade 3a), poorer subgrade 3b land controls the land use on the majority of the Site (75% sub-grade 3b). The loss of agricultural land is an unavoidable necessity within Medway in order to meet the Borough's objectively assessed needs. The loss of 2.6ha of sub-grade 3a BMV land and its economic benefits would be far outweighed by the benefits that would be derived from the appeal scheme. - The site is not in the Greenbelt

- Loss of Greenbelt land	
Landscape	Response
<ul style="list-style-type: none"> - Out of keeping with surrounding area and rural location. - Development would have an adverse impact on landscape character and the appearance of the countryside 	<ul style="list-style-type: none"> - The development proposals will aim to retain notable existing landscape features resulting in an overall moderate adverse effect in terms of local landscape character. - The site has the ability to absorb development of the scale and type proposed without causing unacceptable landscape and visual harm and that a high quality urban design solution can be delivered at the site which can make a positive contribution to the local landscape and townscape.
Ecology	Response
<ul style="list-style-type: none"> - Loss of wildlife habitat and adverse impact on biodiversity - Impact on flora and fauna 	<ul style="list-style-type: none"> - The proposed development will strengthen habitat linkages across the site and wider area and increase foraging potential with planting of native species - Through the scheme of mitigation and enhancement measures proposed, the proposals are capable of achieving a net gain in biodiversity.
Flooding	Response
<ul style="list-style-type: none"> - Surface water run off will flood the highway. - The site already floods 	<ul style="list-style-type: none"> - The site falls within the Flood Zone 1 where there is a very low risk of flooding. - The implementation of sustainable urban drainage (SUD's) will mean there is no material increase flood risk to the surrounding area.
Archaeology	Response
<ul style="list-style-type: none"> - Archaeological interest in the area 	<ul style="list-style-type: none"> - The submitted Archaeological Assessment suggests that the available evidence indicates, if present, archaeological assets are likely to be in a plough damaged condition and will not

	present a constraint to development. The modest archaeological interest could be secured by an appropriately worded condition.
Highways	Response
<ul style="list-style-type: none"> - Increased traffic - Lack of pedestrian/cycle access and no crossing points on Town road. 	<ul style="list-style-type: none"> - The submitted Transport Assessment has assessed the relevant junctions in the locality and confirms they have sufficient capacity to accommodate the development proposal. - Offsite highway improvements include a new footway along the site boundary, upgraded footway between Tennyson Avenue and View Road, and two informal crossing points on Town road to allow the safe movement of pedestrians.
Affordable Housing	Response
<ul style="list-style-type: none"> - 25% affordable housing provision is insufficient 	<ul style="list-style-type: none"> - The affordable housing provision of 25% is in line with the requirements of the adopted Local Plan.
Other	Response
<ul style="list-style-type: none"> - The development would result in poor design - No Environmental Impact Assessment has been undertaken - Increase in crime and antisocial behaviour 	<ul style="list-style-type: none"> - Scheme design will be determined in a future Reserved Matters application - An EIA Screening Request was submitted to Medway Council on 1st August 2016 seeking confirmation that an Environmental Statement was not required for the proposed development. Medway Council confirmed on 23rd August 2016 that an Environmental Statement was not required. - There is no credible evidence to suggest new housing leads to increased crime and antisocial behaviour. However, the submitted Design and Access Statement details the design principles in relation to a safe and secure neighbourhood.

