

**TOWN AND COUNTRY PLANNING ACT 1990
PLANNING AND COMPULSORY PURCHASE ACT 2004
LAND AT UPNOR ROAD, UPPER UPNOR, KENT**

APPEAL BY ESQUIRE DEVELOPMENTS LIMITED

APP/A2280/W/3276221

Inquiry opened 28 September 2021

APPELLANT'S OPENING POINTS

1. Medway in Kent is an area which has for a considerable period lacked a 5 year supply of housing and an up to date local plan. Esquire Developments is a local SME housebuilder with a good reputation for delivery and for high-quality bespoke homes, and the 72 dwellings and Childrens' Nursery proposed in this appeal scheme represent an attempt to meet some of the growing deficit in a sustainable location next to the existing urban edge in Upper Upnor.
2. The shortfall of housing is very severe: the supply is somewhere between 2.54 years and 3.03 years, which equates to a deficit of between 3,932 dwellings and 5,813 dwellings. For the reasons he sets out, Mr Wilford is of the view that the deficit is 5,813 dwellings, representing just over 2.5 years' supply; the longer-term performance in terms of housing delivery in Medway has been very poor – as Mr Wilford points out, only in 5 of the last 34 years has the then relevant housing requirement been met, and over that time over 7,000 units of required accommodation have failed to materialise.
3. A not dissimilar position was considered by the Secretary of State himself in his decision in 2017 on land at Gibraltar Farm in Medway¹, when addressing a supply of between 2.21 years and 2.79 years. The point was put with clarity and force and applies to the present appeal:

“Moreover, the shortfall in five year housing land supply is so great and the pressure on sites so significant, that it is agreed to be inevitable that greenfield land will have to be developed. Furthermore, given the extent of the ALLI designations, ALLI designated land will need to be

¹ CD6/1, paragraph 200 IR, adopted by the Secretary of State.

developed unless new development is to be located where it would not be accessible in terms of proximity to existing development with its associated services and facilities.”

4. In the monitored years 2013/14 to 2017/18, only 748 affordable homes were built in Medway, around 20% of the identified need, and the affordable housing need is acute. Housing has become 34% more expensive in Medway over the past 5 years, as the Council’s most up to date AMR reveals.
5. Esquire Developments therefore proposed 72 units of housing with a policy-compliant level of affordable housing, (18 units). Notwithstanding, permission was refused by the Council² solely on the basis of alleged breaches of Policies BNE25 and BNE34 of the 2003 Local Plan – ALLI designated and countryside protection.
6. In the 4 years since the Gibraltar Farm decision, there has been very slow progress towards a Medway Local Plan. The 2003 plan (plan period 1996-2006) expired 15 years ago. Following two failed attempts to bring forward a new local plan, thus far only Regulation 18 consultations have been held on the third attempt. The Council is hoping to bring forward a further iteration of the draft plan for consultation under Regulation 19 at some point later this year, but even on the Council’s current estimation, potential adoption of the plan is a minimum of 18 months away. For these reasons, the Council rightly gives the emerging plan only limited weight, and does not allege that any form of prematurity objection weighs against the grant of permission. This is a quintessential example of where one should be very cautious about the prospects of matters being resolved in a timely fashion through the plan-making process.
7. The appeal site contains no national designations. The countryside protection policy BNE25 is agreed not to conform to the Framework, and also needs to be seen in the context of the housing shortfall, which affects the weight to be given to the distinction between urban and rural areas.
8. The ALLI policy, BNE34, is not a blanket prohibition policy, but seeks to restrict development to that which would not “materially harm the character and function of the area” but allows in any event such development to proceed if “the economic and social benefits are so important that they outweigh the local priority to conserve the area’s landscape.”
9. However, the policy does not seem to be included in the emerging plan, and Inspectors have varied as to how much weight they think the policy should have, particularly in the light of the housing deficit and the later Framework.

² See Mr Wilford paragraph 2.7

10. These points all mean that the decision in this appeal is governed by the operation of paragraph 11(d) of the Framework. The harm that would be caused by the scheme – to the extent that it is found materially at all – would definitely not outweigh the benefits of the appeal proposals, which are considerable. I touch on these key points in opening in a moment.
11. However, it is also of some importance that the landscape, policy and planning balance issues are the only ones contested by the Council and the Appellant. The Rule 6 party advances a case based on concerns about highways and sustainability, but these are contrary to the views of the statutory consultees and the local planning authority and do not bear scrutiny. The views of local people, and their strength of feeling against the appeal scheme, is of course recognised and will be considered by the Inspector. But, as ever, it is the substance of the objections, rather than their number or intensity, which is key. In this appeal, there is no other issue of any substance which weighs against the grant of permission.
12. Turning back to the main issues. The appeal site lies adjacent to Castle Street, within the Hogmarsh Valley, which designated as an ALLI in the 2003 plan, and (for that reason alone) accepted to be a “valued landscape”. The site is undeveloped (other than with certain sewage infrastructure) but its context is undoubtedly formed in part by the prominent housing on the Street which would be seen directly above and behind it in most views. There are other urban features in the relevant area – slightly further down the slope, the Southern Water WWTW, and on the valley floor the Tennis Club with its large leylandii hedging, fences and floodlights.
13. The site and its surrounds also have some rural characteristics, but as Mr Chard notes in this evidence, the relationship between the site’s urban and rural character fluctuates depending on the viewer’s position. With one’s back to Castle Street and looking north/north west, there is more of a rural flavour; but in many other views, including from local footpaths in the valley to the west, the Street is prominent, sitting below a strongly-wooded ridgeline.
14. There has to be a recognition of all of the competing aspects of the landscape character, function, value and visual character of the site. It falls within the ALLI as undeveloped land in a designation focused on several purposes – keeping settlements separate, providing an attractive setting to the main road through the valley, and a green buffer.
15. The scheme would not have the effect of leading to physical or visual coalescence between settlements, partly for the very reason that the site lies right next to the urban edge on the slope, a significant distance away from larger urban areas on the western side of the valley, which are separated by the major road infrastructure and large green open areas.

16. The scheme would also not harm the green buffer or the setting of the road – the key wooded ridgeline feature will not be affected; the urban edge will be extended, but (a) that would be a change in degree rather than kind, and (b), the urban edge would be improved – the design of the scheme has been landscape-led from the outset, with large areas of open space and a deliberate design strategy of running landscape deeply into the new housing area. This is partly because the design of the houses themselves will be of a very high standard; Esquire have a track record in that regard and the farmstead/rural typology employed on this site would create something which would be a welcome high quality sight in such views as one would have. A policy of screening out the development was rejected for this reason. Whilst the new access would necessitate loss of some vegetation, the effect would be localised.
17. There would be some harm to landscape in the loss of some features and the development of undeveloped land, but the harm will be limited.
18. Turning to benefits, the design of the housing itself should be recognised as a benefit, in the context of the Framework’s renewed emphasis on beauty. The scheme will bring about a very sizeable (34% at least) biodiversity net gain, multiple times greater than policy or law requires. It will be tied into the Hogmarsh Valley’s footpaths (and therefore local facilities) in a more integrated way, connecting the currently fractured footpaths in the valley floor; there will as a result of the scheme be an enhanced bus service with extended hours of operation which will be a general benefit to the community, increasing the strength of what is already a sustainable location within Medway.
19. These benefits combine with the significant weight to be given to the provision of 72 houses, 18 of which will be affordable; and with the benefit of a new nursery likely to be operated by Montessori. The overall planning balance would be in favour of the development even before one came to the tilted balance under paragraph 11d.
20. The appeal scheme is the kind of contribution that good-quality SMEs can make to housing provision in areas like Medway which continue to struggle to deliver the housing that the community needs; history has shown one must unfortunately take a realistic approach to whether the local plan process can deliver against those targets. The Council has in its evidence to the inquiry given too much weight to the harm the scheme would cause and too little weight to the benefits it would deliver.

21. In due course therefore, and subject to the evidence, the s.106 and conditions discussions, the Appellant will ask for the appeal to be allowed and permission granted.

RUPERT WARREN Q.C.

**Landmark Chambers
180 Fleet St
London EC4A 2HG**

28 September 2021