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## Appeal Decision

Inquiry commenced on 20 August 2019

Accompanied Site visit made on 30 August 2019

**by Frances Mahoney MRTPI IHBC**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 3<sup>rd</sup> October 2019**

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**Appeal Ref: APP/H2265/W/19/3227034**

**Land east of Lavenders Road, West Malling, Kent**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Bellway Homes Strategic (Mr Ben Stacey) against Tonbridge & Malling Borough Council.
  - the application ref TM/18/02093/OA, is dated 31 August 2018.
  - the development proposed is an outline planning application for up to 80 residential dwellings (including 40% affordable housing), open space, drainage, access and associated works, with all matters reserved except for access which is to be considered in detail at this stage.
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### Decision

1. The appeal is dismissed, and planning permission refused.

### Preliminary matters

2. The Inquiry sat from the 20-23 August and 28-29 August 2019 with an accompanied site visit on 30 August 2019.
3. In this outline proposal all matters are reserved for future consideration save that of access. The description of development set out above reflects that of the planning application form. Over the course of the consideration of the planning application<sup>1</sup>, and as a response by the appellant company to the comments of the various consultees and the Council, amendments were made to the illustrative site layout plan and the Parameter Plan<sup>2</sup>. These illustrate a concentration of built development in the eastern part of the site with the main open space along the Lavenders Road boundary. The promoted change also included a reduction in the number of proposed units from 80 to 65. The Council carried out a formal re-consultation on the amended plans prior to the appeal being submitted<sup>3</sup>. All the main parties, along with those who addressed the Inquiry were aware of the alternative illustrative plan, and their comments being made in the context of the illustrative changes. As such I am satisfied that there has been no prejudice to any interested party in the change in the number of units proposed nor in the introduction of the amended illustrative

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<sup>1</sup> I am aware that the scheme originally (at pre-application stage) involved a development of 90 units which was reduced to 80 before the application was submitted and then to 65 as set out above.

<sup>2</sup> Dwg no 2520-C-1005-SK6 (CD 27) – Sketch Scheme 6 & 2520-A-1400-B (CD 26).

<sup>3</sup> Inquiry Doc 22.

plans. Therefore, my consideration of the proposal is based on the outline proposal for 65 units.

4. I am also conscious that other than the location plan and site access plans<sup>4</sup>, all other plans are purely for illustrative purposes only. However, I have considered them on the basis of a promoted design approach and whilst they may not be determinative, they have informed my reasoning<sup>5</sup>.
5. This appeal is against the failure of the Borough Council to make a decision within the prescribed period<sup>6</sup>. However, the putative reasons for refusal for the Council are set out in the report to the Area 2 Planning Committee dated 29 May 2019<sup>7</sup>.

### **Policy background**

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for the Borough includes the Tonbridge and Malling Borough Core Strategy<sup>8</sup> (CS) and the associated Managing Development and the Environment Development Plan Document<sup>9</sup> (DPD). Both policy documents are of some age.
7. The Council is currently engaged in the production of a new local plan for the Borough. The Tonbridge and Malling Local Plan (LP) was submitted for examination in January 2019. An initial review of the plan and the supporting evidence has been undertaken by the Examining Inspectors and a number of issues identified which the Council are seeking to address. The Council has given an interim response to those concerns and sought clarification on some points<sup>10</sup>. However, no indication has been promoted to me as to when the Local Plan examination will be moving forward nor a realistic projected date for the Plan's adoption. It is common ground between the Council and the appellant company that, in this circumstance of a LP yet untested, only limited weight can be ascribed to it as a policy document<sup>11 12</sup>. With no clear reliable timeline available covering the examination and ultimately the adoption of the LP and, taking into account the terms of the National Planning Policy Framework (the Framework) paragraph 48, I can give its policies only limited weight in the consideration of this appeal<sup>13</sup>.
8. Therefore, it is the policies of the adopted planning policy documents<sup>14</sup> which prevail alongside Government's planning policies set out in the Framework and relevant Planning Practice Guidance (PPG) which are of particular relevance to this case.

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<sup>4</sup> CD1.

<sup>5</sup> I have noted that the appellant company has suggested the broad perimeters of the illustrative material could be secured through the use of conditions.

<sup>6</sup> First bullet point in banner heading.

<sup>7</sup> CD45.

<sup>8</sup> Adopted 2007.

<sup>9</sup> Adopted 2010.

<sup>10</sup> The appeal site is proposed to form part of a Green Belt extension within the emerging LP.

<sup>11</sup> Statement of Common Ground para 4.2.1.

<sup>12</sup> I am aware the Parish Council (Rule 6 Party) were not a signatory to the general Statement of Common Ground.

<sup>13</sup> There is no claim that the proposal is premature.

<sup>14</sup> As detailed in para 6 of the decision.

9. The CS identifies West Malling as being a rural service centre within which, amongst other things, housing will be permitted in the confines of the defined settlement<sup>15</sup>. This is subject to the terms of other relevant CS policies, including Policy CP6 which sets out that outside of settlements<sup>16</sup> or on the edge of a settlement, development will not be permitted where it might unduly erode the separate identity of settlements, or harm the setting or character of a settlement when viewed from the countryside, or from adjoining settlements.
10. CS Policy CP14 deals with development in the countryside, its slant being in favour of concentrating most development in or adjoining existing built-up areas. The appeal site lies within the countryside as defined by the Development Plan. Of the criteria set out in the policy to which development in the countryside should be restricted none of them appear relevant to the proposed development. Nonetheless in the context of this proposal for the provision of housing, CS Policies CP12 and CP14 are both most important when determining this appeal.
11. On the face of a plain reading of these policies it would appear that there is a direct conflict with CS Policies CP12 and CP14 stemming from the site location in the countryside. However, Paragraph 11, footnote 7 of the Framework is clear where a Council cannot demonstrate a five year supply of deliverable housing sites such relevant policies must be considered out-of-date. That position is qualified in that they are not to be ignored. It is for the decision-maker to determine the weight to be attributed to the conflict with those policies.

### **Agreed housing matters**

12. It is an agreed position between the appellant company and the Council that only a three year supply of housing land can be demonstrate<sup>17</sup>. This was for the purposes of the Inquiry. The Parish Council accept the three year supply and that it would weigh materially in favour of the development. However, their contention is that the weight ascribed to this factor should not be overstated in the context of: a Borough Council with an excellent record in the delivery of housing, the seeking to address the shortfall by the bringing forward of the LP, any reliance on strategic sites, 65 units would represent only a limited contribution to the five year supply situation, and the economic and social benefits of the proposal would be derived from the delivery of any housing development of the same size. I shall return to the weight to be ascribed to the apparent lack of a five year housing land supply and so to the resultant contribution of 65 units to the identified housing need of the Borough.
13. That said the important issue is whether the result of the Development Plan policies is the existence of a five year housing land supply in accordance with the objectives of Framework<sup>18</sup>. In this instance this is not the case and so is sufficient, as a first notion, to engage the 'tilted balance' of paragraph 11 of the Framework<sup>19</sup>, reaching a conclusion within the terms of footnote 7 that the identified most important Development Plan policies for the provision of housing are out of date. This is a matter which will be returned to in the planning balance.

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<sup>15</sup> CS Policy CP12.

<sup>16</sup> In the countryside.

<sup>17</sup> Inquiry Doc 20 + CD 45 para 6.11.

<sup>18</sup> Framework Section 5 Delivering a sufficient supply of homes.

<sup>19</sup> Framework Para 11d).

## Main matters for consideration

### Highways

14. The Transport Statement (TS) identifies that the access to the site would be via a new priority junction with Swan Street. In physical terms the accommodation of the access and the 2.4 metre X 43 metre visibility splays on each side of the access point, would be achievable and this is not contested. The impact of those necessary works both in visual and characterful quality terms will be considered later<sup>20</sup>.
15. Kent County Council as Highway Authority (HA) assessed the TS as being a fair representation of what might be expected from the composition of accommodation proposed<sup>21</sup>. I heard anecdotal evidence from residents of the busy nature of Swan Street, in respect of traffic flows in both directions particularly at peak times, including when busy trains arrive at the Station and the car park empties out. I saw for myself the nature of traffic flows in the locality at different times of the day and noted the position of the More Park Roman Catholic Primary School along Lucks Hill, beyond the railway bridge<sup>22</sup>. Nonetheless, the quantitative technical evidence was not challenged, and it is an agreed position between the Council<sup>23</sup> and the appellant company that the proposed development would not result in a severe residual cumulative impact upon the strategic road network<sup>24</sup>. I have no reason to challenge that position.
16. Swan Street includes a continuous pavement on its northern side and crossing points, including near Station Approach<sup>25</sup>. Inter-visibility along Swan Street and beyond is also generally open. Even given the peak traffic flows in the locality the crossing of Swan Street, where visibility for pedestrians in both directions is good, does not present a hazard any more so than any other busy rural approach to the Town. In these circumstances the introduction of the proposed development, which would necessitate pedestrians crossing Swan Street close to the new access point, would not present an unacceptable impact on the highway safety of pedestrians or road users<sup>26</sup>.
17. Lavenders Road has been identified as a Quiet Lane which is considered appropriate as a minor rural road for shared use by walkers, cyclists, horse riders and motorised vehicles. There are entry signs at the junction of Lavenders Road and Swan Street to indicate that users are moving into a different type of road where everyone shares the lane, and nobody has priority. From the junction with Swan Street to that with Water Lane, the Quiet Lane benefits from a pavement on the western side of the road but beyond that the road appears to narrow and the pavement ceases. I heard anecdotally from local residents how much they valued the pleasant nature of Lavenders Road. From my own observations of motorised traffic along Lavenders Road I did note

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<sup>20</sup> It is acknowledged by the appellant company that some trees would need to be removed to accommodate the access and visibility splays.

<sup>21</sup> I am conscious that the TS was based on a development of 80 units. The later reduction to 65 units was not then reflected in a revised TS but clearly is a lesser figure resulting in an overall reduction in transport impacts from that reflected in the TS.

<sup>22</sup> The school was closed for the summer holidays, but I do appreciate that at start and finish of the school day additional traffic would be entering and leaving the flow of traffic along Swan Street.

<sup>23</sup> The Council has not promoted a case against the appeal proposal on highway grounds.

<sup>24</sup> Statement of Common Ground (General) paras 5.3.1 & 5.3.2. It was also agreed that there would be only a negligible impact on the M20 junction during weekday peak hours.

<sup>25</sup> The width of the continuous pavement does vary along Swan Street, but the variance is limited and does not to my mind have an impact on highway safety.

<sup>26</sup> Framework para 109. This view reflects that of the Council and the HA.

the quieter nature of the road in terms of traffic flow compared with Swan Street. It is likely many of those using the road would be locals who would understand the modification in user behaviour required when passing along its length<sup>27</sup>. The narrowing of the carriageway and absence of pavements once beyond the junction of Water Lane would also likely affect driver behaviour in curbing speeds as the lane moves into twisting banked carriageway. I see no reason to conclude that the proposed development would unacceptably affect the safety of those passing along the length of the Quiet Lane, nor its pleasant nature and natural ambiance any more than existing traffic flows do so.

*Best and Most Versatile Agricultural Land (BMVAL)*

18. Framework paragraph 170 b) sets out that planning decisions should contribute to and enhance the natural and local environment by recognising the economic and other benefits of the BMVAL. BMVAL is defined as land in grades 1, 2 and 3a of the Agricultural Land Classification<sup>28</sup>.
19. It is not disputed that the appeal site includes grade 1 and 3a agricultural land. The appeal site amounts to some 4.5 hectares of land currently used for grazing and arable purposes. It is contained on three sides by roads and then to the south by the Lavenders Care Home and by Eden Farm.
20. Footnote 53 of Framework paragraph 171 sets out that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. By any stretch of the imagination the development of this contained and limited piece of BMVAL cannot be considered to be significant. Therefore, I do not consider such an appraisal to be necessary in the context of these Framework terms.
21. Whilst recognising that as BMVAL it does have some economic benefits, the loss of the small scale opportunity for cropping which the appeal site currently offers, part of the site being used as a pony paddock with well-defined treed boundaries, is unlikely to result in anything more than little or no impact in agricultural yield or profitability<sup>29</sup>.
22. So in common sense terms even as BMVAL the appeal site presents an isolated pocket of agricultural land which in the economy of scale and the constraints of the land, at worst, its loss would be modest. Therefore, the development of the grade 1 and 3a agricultural land in real terms would not adversely impact on the economic and other benefits of BMVAL and the primary purpose of food production. Therefore, the aims of the Framework in this regard, would not be undermined by the proposed development<sup>30</sup>. In reaching this view I am mindful that the Council did not demur from the contention that some strategic allocations within the emerging LP necessary to meet their housing need, are likely to be greenfield sites, including agricultural land<sup>31</sup>.

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<sup>27</sup> The aim of the Quiet Lanes initiative was to achieve positive changes in user behaviour on minor rural roads, without reliance on speed limits or traffic calming. Community involvement was decided on as the mechanism to encourage this change by developing community ownership of the network.

<sup>28</sup> Framework Glossary.

<sup>29</sup> In business terms.

<sup>30</sup> The general thrust of CS Policy CP9 would not be undermined in these circumstances.

<sup>31</sup> Some of which may be BMVL.

### *Accessibility*

23. Framework paragraph 103 identifies that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making.
24. Accessibility of facilities and services is fundamental to the proper functioning of a neighbourhood. The appeal site, whilst outside the designated boundaries of the Town is nonetheless well located in close proximity to the Railway Station and within an easy walk of schools and the Town Centre with all its services and shops<sup>32</sup>. Purely in terms of the ease of access for future residents to fundamental aspects of daily life without reliance upon private motor vehicles, the proposed development presents a site which performs well in respect of its accessibility which would contribute in a positive way to the functioning of the development as a new neighbourhood.

### *Impact on local services*

25. Local residents expressed concerns in relation to the impact of the proposal on local services, particularly schools and health services. However, the appellant company, through a unilateral undertaking<sup>33</sup>, have promised agreed contributions to primary and secondary education, youth and community facilities, community learning, library facilities, adult social care, and rights of way. Alongside this is a bilateral agreement with the Council to make agreed contributions to NHS England<sup>34</sup>. The appellant company have promised all the contributions reasonably asked of them to mitigate the impacts of the proposed development. These contributions have been calculated by the public bodies requesting them<sup>35</sup>. I am satisfied that these contributions are justified and that whilst anecdotal evidence seems to indicate some existing pressure on local services, this is not borne out by the evidence of the responsible service providers. Therefore, I do not consider this to be a determinative factor.

### *Coalescence*

26. It is suggested that the proposal would result in a perceived coalescence between East and West Malling. West Malling is a town of a reasonable size and distinct in character, set apart in location from other settlements. East Malling lies to the east of West Malling and is separated by distance, intervening countryside and the overly engineered A228. There is a distinct sense of leaving the built-up area of East Malling and travelling through green and leafy countryside, including characterising tree tunnelled country roads, towards West Malling. Whilst those travelling between East and West Malling would be aware of the new development, in respect of the perceived separation between the two settlements, the extent of the green predominantly undeveloped nature of the expansive countryside, is sufficient to maintain the distinction between town and village. Therefore, I consider the break between settlements would be maintained both in actual and perceived terms.

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<sup>32</sup> The continuous pavement along Swan Street into West Malling and to the School would enhance that level of accessibility.

<sup>33</sup> Inquiry Doc 27.

<sup>34</sup> Inquiry Doc 28.

<sup>35</sup> Kent County Council & NHS England.



## Consideration of the Historic Environment

27. The Council initially had concerns in respect of the impact of the proposed development on buried archaeology. However, following co-operative discussions between the parties, the Council now acknowledge that the outline application provides some flexibility for any detailed design to take into account the buried archaeology and to ensure preservation in situ where possible and/or preservation by record. The submission of a Statement of Significance based on a more detailed design scheme is accepted as being an appropriate way forward, with the requirement secured under the terms of conditions<sup>36</sup>. On this basis the Council did not pursue an archaeological objection. I agree this matter would be best dealt with by condition at a time when the details of any scheme are known<sup>37</sup>.
28. Therefore, taking into account all of the matters for consideration dealt with above and based on all I have heard, seen and read I consider the overriding main issue in this decision to be whether the proposed development would preserve or enhance the character or appearance of West Malling Conservation Area, and whether it would preserve the setting and architectural and historic interest of the nearby listed buildings, including, in particular, but not exclusively, those designated and non-designated heritage assets of St Mary's Abbey<sup>38</sup>.
29. Considering the location of the appeal site to the east of the historic town of West Malling and St Mary's Abbey and grounds, along with the West Malling Conservation Area, there are a number of heritage assets to be considered in terms of impacts of the appeal proposal. As decision-maker I must consider this appeal in light of the statutory duties placed upon me in Section 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which require that special regard shall be had to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess, and special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
30. St Mary's Abbey stands on the opposite side of Lavenders Road to the appeal site. It has the status of a Scheduled Ancient Monument in its own right, but includes eleven listed buildings, five of which are Grade I and two Grade II\*. It is undeniable that the Abbey and all of its component parts are of exceptional interest<sup>39</sup>, and outstanding national significance<sup>40</sup>. I am conscious that paragraph 184 of the Framework sets out that heritage assets are irreplaceable resources to be conserved in a manner appropriate to their significance.
31. Paragraph 193 of the Framework also requires that great weight should be given to the conservation of assets, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. The more important the asset, the greater the weight should be

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<sup>36</sup> Inquiry Doc 17 Addendum to Statement of Common Ground for Archaeology.

<sup>37</sup> The evidence of Ms Rogers in respect of impact on landscape archaeology did not add in any significant way to the Council's case and she accepted that there was nothing in this regard which would be considered determinative. In these circumstances I do not consider it necessary to consider this matter further.

<sup>38</sup> Descriptions of the heritage assets both designated and non-designated can be found in various places within the evidence but in particular the Heritage Statement of Common Ground. I do not intend to repeat this descriptive evidence.

<sup>39</sup> Only top 2.5% of listed buildings in this country fall into that category.

<sup>40</sup> Edis Proof para 5.19.

afforded to the asset's conservation. I shall proceed with the consideration of this proposal with these matters at the forefront of my reasoning and weighing of the decision and, rather than consider the individual designated and non-designated heritage assets of the Abbey precincts individually, I will consider them as component parts of the whole.

32. The appeal site as an open, undeveloped greenfield site, which forms part of the setting of the Abbey and its precincts, therefore contributes to its heritage significance<sup>41</sup>. Malling Abbey was founded in 1090. It was essentially the economic powerhouse of the area in cultural, legal and agricultural terms. It fuelled the development of the Town concentrated to the west beyond the Abbey precincts, preserving a separation between the residences and commerce of the Town itself and the religious hub of the Abbey. To the east the land was agricultural in nature, necessary to support the community within the Abbey and the townsfolk of West Malling. The relationship of the Town, the Abbey and the farmland/countryside is still discernible today, with the sense of the Abbey as the pivotal dominating presence in the Town, the historic development of the town centre, the expansion of the residential development in more modern times further to the west, and the primary purpose of land to the east of the Abbey and Town being rural countryside capable of agricultural use. The West Malling Conservation Area similarly articulates this relationship, but I will return to this.
33. In 1551 following Dissolution the Abbey and its lands became a secular estate, with the association of Estate house and farmstead and agricultural land maintained. In 1849 parcels of land were sold off and in 1898 in response to a revival in the Church of England the Abbey was returned to an ecclesiastical use as a convent. A focus on a life of prayer and worship returned to the Abbey, a vocation which must be considered to be the optimum use of the Scheduled Ancient Monument and has persisted almost continuously for over one hundred years.
34. The presence of the Nuns along with their quiet and yet palpable faith and life of prayer and worship, permeates through the precincts of the Abbey. It is present and discernible in their unfailing commitment to their daily call to prayer at prescribed intervals in their day, a routine which, has no doubt, persisted over the generations of religious who have dedicated their lives to God through prayer and service, who have lived at St Mary's. Their works of charity and promotion of education, sharing their site with guests and those who need a place to find purpose and direction, is a clear expression of their faith and devotion. In my view, whilst this is not a physical manifestation of the significance of the Abbey it is just as important a part of that significance. The esteem which the Nuns are held in by the local people of West Malling is evidence of this element of significance. I heard and read anecdotal evidence of the contribution the Nuns make to the life of the Town and just maintaining the occupation of the Abbey by a religious order was seen as important by some of those who addressed the Inquiry.
35. So, having concluded that the occupation and use of the Abbey by the Nuns is a component part of the significance of these heritage assets, it is reasonable to consider the association of the Abbey and its grounds as an essential contributor to the life of the community of Nuns. At my site visit I was able to

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<sup>41</sup> This is an agreed point between the parties.



experience the quiet dignity of the Chapel which then spilled out into the wider grounds and particularly to the Nuns enclave which is a walled space, a garden retreat for prayer and contemplation. This all goes to significance. However, I recognise that quiet does not mean silent. The term tranquil was used by Mother Mary David in her description of the grounds, particularly the two burial grounds and the enclosed exclusive area for the Nuns. There is no settled definition of tranquillity. It is essentially a state of mind, a judgement by an individual. My experience of the area was of moments of tranquillity, but of an enjoyment and appreciation of being out in pleasant gardens, serenaded by bird song and the wind in the trees, but with the hum of the distant traffic on the A228, and other local road noise as cars passed along both Lavenders Road and Swan Street, the distant rush of the trains and the familiar sound of overhead aircraft. However, this intrusion of the sounds of modern-day life do not, in my view, diminish the quality of the tranquillity, for this locality is not an area relatively undisturbed by noise<sup>42</sup>.

36. Were the general layout of the parameters plan to be adhered to the appeal proposal would introduce new dwellings at a distance to the walls of the Abbey grounds. Intervening trees and hedges and the wall itself would serve to soften the awareness of activity associated with a concentration of homes. This is not a residential amenity issue in respect of noise and disturbance. It is about the impact of the scheme on the inherent sense of peace within the Abbey which the Nuns clearly treasure and, in my judgement, is an essential part of the ecclesiastic way of life of the Convent. This does go directly to significance.
37. Of particular concern for the Nuns is the proximity of the proposed open space to the quiet areas of the Abbey grounds. My understanding of the concern is that as open space available for the use of future residents of the new development and others the nature of the use could be such as to result in the high spirits of play and recreation to drift into the quiet areas of the Abbey where the contemplative atmosphere, so important to the Nuns, would be mutated<sup>43</sup>. The open space is proposed to be informal without play equipment or formalised play spaces, although Mr Buckwell<sup>44</sup> does refer to the open space as providing play space. Through creative design and landscaping this area could be such that the fears of the Nuns would be allayed, where the design would dictate the way the space could be used<sup>45</sup>, and even replicate an area for the enjoyment of a tranquil, verdant, sylvan space for those residing beyond the Abbey grounds. It is a dilemma and whilst it may be possible to design out any conflict, I cannot be secure in this premise. Just trying to word an appropriate condition to limit the use of the open space without any intrusion into tranquillity, proved difficult and unsuccessful. Therefore, having accepted

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<sup>42</sup> Within the informal burial space close to the junction of Lavenders Road and Swan Street, at the high point behind the Chapel, vehicles travelling along Swan Street were clearly visible and audible both close to the Abbey walls and at a distance as a traffic flow along the street.

<sup>43</sup> The quiet areas of the Abbey are concentrated in the eastern part of the Abbey grounds away from the hustle and bustle of the Town to the west, beyond the kitchen gardens (Tesco car park and beyond). This seems to have been a circumstance which has been purposefully maintained for decades.

<sup>44</sup> Appellant company's planning witness – Proof para 6.2.6.

<sup>45</sup> Mother Mary David did allude to the possibility of the Nuns moving from the Abbey were the development to go ahead. The Nuns and their Abbess are, I have no doubt, thoughtful and prayerful. Such a decision would be likely to be taken after much discussion and contemplation in the context of their important charitable work from the Abbey. I have no firm evidence that this would be the outcome should the scheme be allowed and have given it little weight in my weighing of the decision there being no certainty, more a reactionary anxiety, although I do recognise that the optimum use of the Abbey is as a place occupied by a religious monastic community and this goes to its significance.

the tranquillity of the prayerful parts of the Abbey grounds as going to its significance, any diminishing of that tranquillity, in this case generated by the future use of the proposed open space, must impact upon the significance of the Abbey<sup>46</sup> in a negative way.

38. Part of the appeal site is known locally as the Fairfield. The name implies a use at some time or other as a location of a fair associated with the Abbey. The contention is that it was used after harvest to celebrate the bringing in of the crops. However, evidence was sketchy for such an associated use. I do not doubt it may have been used for some such use, but as it has already been identified as part of the associated historic agricultural land of the Abbey and, in those circumstances, I give this unproven historic community use no additional weight in the assessment of the significance.
39. Obviously, the development of the railway and, much later the introduction and modern-day improvement of the A228, has introduced urbanising features which have, to some degree, truncated the association of the Abbey in a wider countryside setting. That said, other than a few scattered residences<sup>47</sup>, the character of the immediate setting of the Abbey to the east is still firmly distinguished by its rural nature and pastoral appearance. Even with the embanked presence of the railway line, the extent of the wooded boundaries and spreading tree canopies, as well as the appreciation of the green undeveloped spaces as one passes along Swan Street and Lavenders Road, there is a strong sense of being in verdant, sylvan, rural countryside. This relationship between the Abbey and the rural hinterland as its wider setting to the east, is a characterising feature of the Scheduled Ancient Monument's significance. It reinforces the still evident historic development of West Malling as being from west to east – Town, Abbey, Farm (countryside)<sup>48</sup>. The extent of the Conservation Area does reflect the relationship of the Town to the Abbey and includes some of the rural hinterland to the south (Manor Park) and north, as an expression of the juxtaposition of the remaining countryside element of the historic developmental features of the settlement.
40. West Malling Station itself is a Grade II listed building. Its significance is as an expression of the expansion of the railway network to serve, initially the agricultural activities of the countryside and town, and later to facilitate the development of the suburbs as commuting into the City of London became common. The suggestion that, in some way, the appeal site would provide an experience of the railway as a means of agricultural exportation by association, I do not find convincing. This is mainly due to the Station having been subsumed into an unsympathetic expanse of, no doubt, necessary car parks and roadways, including associated lighting. There is no evidence on the appeal site of the long-gone agricultural use for hops growing and the only nod to this phase in the use of the appeal site is the adjacent Oast Houses of Eden House, which themselves have been converted to residential use. Their domestic appearance and manicured gardens, along with high hedgerows and fencing have physically dissected the original farmstead of this agricultural bygone age. Whilst the appeal site lies within the setting of the Station and

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<sup>46</sup> This sets up a conflict with DPD Policy SQ1 which requires the protection, conservation and where possible the enhancement of the prevailing level of tranquillity, amongst other things, in the historic environment.

<sup>47</sup> Including Eden House and Lavenders Care Home

<sup>48</sup> The evidence of Ms Wedd was convincing in this regard. Historic England also allude to this distinct morphology where urban development has historically focused to the west of the Abbey - Edis Appendix 3 - Letter dated 9 May 2019.

- the adjacent non-designated heritage assets, the proposed development, in the context of what has already been undertaken around the Station and the residential conversions, would have a neutral impact on significance.
41. This similarly applies to any impact on Lavenders which lies to the south of the appeal site. The original house has been extended in, what seems, all directions and sprawls across the width of the frontage with little definition between historic fabric and more modern additions. The use of this pleasant 19<sup>th</sup> century house is now firmly seated in a contained function as a care home. Any association with a wider agricultural purpose is not proven or obvious. The proposed development would have nothing more than a neutral impact on significance in this instance due to the separation between buildings and intervening banks and trees.
42. Approaching the Abbey and Town along Lucks Hill and Swan Street, even in the context of the location of the Primary School<sup>49</sup>, the Catholic Church<sup>50</sup> and, in the knowledge of the permitted new Station car park off Station Road north<sup>51</sup>, these modern day intrusions do not undermine the prevailing quality and distinctiveness of this predominantly characterful rural approach to the historic town of West Malling and to the Abbey itself.
43. The Conservation Area, whilst not including the majority of the appeal site<sup>52</sup>, does include the frontage along Lavenders Road and Swan Street where the banked frontage boundaries along both roads are identified as contributing to special character<sup>53</sup>. To my mind that special character is firmly based in the green, wooded spaces which permeate up from beyond Lucks Hill, along Swan Street and into the Abbey grounds and up to the more densely populated centre of the Town. The distinctive tree-lined highway approach, where the canopies create a leaf-laden tunnel drawing the eye up towards the Abbey and the Georgian extremities of the Town, are an essential part of the character of the Conservation Area, as well as to the setting and significance of the Abbey. When passing along Swan Street towards the Town, whether walking or in a vehicle, the sense of moving from wooded, green countryside to the elegant, historic edge of the built-up area of West Malling is distinct and creates a sense of an appreciation of the countryside setting of the Town from the east. That Town edge is clearly discernible, defined by the historic walls of the Abbey and Went House. The tree lined approach creates a distinctive green gateway to the historic Town focusing in on the Abbey as the land raises up Swan Street to the centre of West Malling at the top of the elevated ridge. These banked, tree-lined tunnels are repeated as local features along Lavenders Road, Water Lane and in the wider Kent countryside. However, this commonality of road-side features does not diminish the importance of the identified special character of Swan Street to the significance of the setting of the Abbey as well as that of the Conservation Area<sup>54</sup>.
44. This outline proposal does include consideration of the access. That access is proposed from Swan Street relatively central between the junctions with

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<sup>49</sup> A comparatively low key, flat roof building set back from the road

<sup>50</sup> Set well back the road with intervening trees afforded only glimpses of the building.

<sup>51</sup> The frontage bank and mature trees along Lucks Hill are to be retained, the car park to be built behind.

<sup>52</sup> Includes a small piece of the pony paddock at the junction of Lavenders Road and Swan Street.

<sup>53</sup> West Malling Conservation Area Appraisal Plan 3a.

<sup>54</sup> I am conscious there are a number of listed buildings within the West Malling Conservation Area which I have not individually identified in respect of any impacts upon their settings. However, for brevity I have dealt with them as component parts of the Conservation Area.

Station Approach and Lavenders Road. There is no dispute that it would be physically possible to accommodate the access and the required visibility splays in either direction<sup>55</sup>. However, in order to provide the visibility splays and insert the new access point and associated footpath, it would be necessary to regrade the existing embankment for the length of the visibility splays which, as Mr Lulham<sup>56</sup> confirmed, would essentially require the re-grading of the entire frontage of the appeal site onto Swan Street. How much of the bank would need to be removed and how far back the re-grading would need to go is unclear, although it has been suggested that a regraded bank would need to be repositioned up to approximately 2 metres from the carriageway edge, with the regrading of the access penetrating some 20 metres into the appeal site. It has also been suggested that low level vegetation can be provided on the highway verge fronting the regraded embankment and within the visibility splay<sup>57</sup>.

45. Whilst the extent of the engineering works required are unclear, these surmised works indicate to me that all of the trees along the south side of the Swan Street frontage would need to be removed, and the bank regraded with low level planting to the fore and any new tree planting set back into the site. Mr Lulham fairly accepted this was likely to be the case, including some, if not all the trees at the junction of Swan Street with Lavenders Road and Station Approach<sup>58</sup>. This would decimate the green, verdant, sylvan approach to the Town along Swan Street, which I have already identified as being part of the special character of the Conservation Area and of the setting of the Abbey. The tree-lined tunnelling would be no more, with a more sculptured suburban contrived frontage, engineered to accommodate highway infrastructure. This in no way would preserve or enhance the character or appearance of the Conservation Area. It would unacceptably erode the rural character of the approaches to the Town and the setting of the Abbey<sup>59</sup>.
46. It is undeniable that the appeal proposal would represent change in the significance and setting of these designated and non-designated heritage assets. The proposed outline development in the context of the appeal site being outside of the settlement, within an area of distinct rural character, which is of significant importance to the setting of nationally important heritage assets, would introduce a suburban form of development, detached from the main townscape, eroding the countryside setting and significance of the Abbey and the Conservation Area. Further it would disrupt the understanding of West Malling's distinctive development pattern of Town, Abbey, Farm/Countryside already alluded to above, which makes an important contribution to the character and appearance of the Conservation Area<sup>60</sup>.
47. However, there would not be a total loss of significance and so the appeal proposal, as a totality, would lead to less than substantial harm to the

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<sup>55</sup> Access carriageway width of 5.5 metres and footway widths of 1.8 metres along with visibility splays of 2.4 metres X 43 metres – Appendix 2 to appellant company closings Inquiry Doc 31.

<sup>56</sup> Appellant company's Highway witness.

<sup>57</sup> All of this conjecture is contained in Appendix 2 to appellant company closings Inquiry Doc 31. Within the visibility splays the landform nor any obstruction to visibility including vegetation should not exceed 600mm.

<sup>58</sup> I accept these trees are more likely to be self-seeded specimens but this in no way reduces their importance as contributors to the sylvan character and appearance of Swan Street. They are also covered by TPO 19/00001/TPO in identified groups (CD58). This is an indication of the importance afforded to these trees. I give this considerable weight.

<sup>59</sup> This aspect of the proposal in significantly harming the historic environment and the character of the area, would set up a conflict with CS Policy CP2 (e).

<sup>60</sup> Historic England dated 9 May 2019 – Edis Appendix 3.

significance of designated heritage assets. That said the degree of less than substantial harm would be at the highest level in my judgement<sup>61</sup>.

48. In reaching this conclusion I am aware of the advice of Historic England<sup>62</sup>. Their final comments take into account the reduced scheme (65 units) as I have done. They acknowledge there will be some sense of a presence of the new housing from the Abbey and that the proposal would harm an appreciation of the historic setting for the Abbey which, to its east, has always been open and undeveloped. This would cause harm to the significance of the Abbey site within which collectively would continue to illustrate how a medieval monastic site functioned and developed with countryside to the east. They also express concern in relation to the impact of the proposed housing on the tranquil and peaceful character of the Abbey site, an aspect of its historic character which helps illustrate its medieval and modern function as a monastic site. They conclude there would be harm to the significance of designated heritage within West Malling Abbey. However, they consider the level of less than substantial harm to be at the lower level, but this is a matter of judgement and, whilst I have noted their advice for the reasons I have set out above, as decision-maker, I find the level of harm to be at the highest level.
49. Having reached this view, the less than substantial harm to the significance of the designated heritage assets should be weighed against the public benefits of the proposal, including securing its optimum viable use<sup>63</sup>.

*Main Public benefits – these are not listed in order of importance<sup>64</sup>*

50. For clarity the optimum viable use of the Abbey is as a home to a monastic community where religious life can thrive. The occupation of the Abbey by the Benedictine Nuns, in itself, is a significant contributor to the significance of both the Abbey and to the wider Conservation Area and Town as a whole.
51. *Delivery of market and affordable housing* – The proposal would contribute to the provision of housing in the Borough, in an accepted situation of considerably less than a five-year housing land supply. Whilst the Parish Council put a case that the weight to ascribe to the 3 year supply should be reduced due to factors such as the Council's record for housing delivery in recent times and the response to reducing the short-fall through the emerging LP<sup>65</sup> I do not agree particularly as the LP is only at a relatively early stage of its examination with no clear timetable of progression as yet identified.
52. The delivery of housing on the appeal site would be in an area with access to existing services, recognising the significant role the delivery of housing has in the sustainable economic well-being of the Borough, which would boost the supply of homes. With the constrained delivery of affordable housing in the Borough the provision of 26 affordable units<sup>66</sup>, and a situation where the emerging LP would still not meet the needs of the Borough, it would be a significant benefit.

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<sup>61</sup> Framework paragraph 196 – Dr Edis for the appellant company did accept less than substantial harm may be a consequence of the proposal, but it would be at the lower level of harm.

<sup>62</sup> Edis Appendix 2 to proof.

<sup>63</sup> Paragraph 196 of the Framework requires that the identified harm in the less than substantial category should be weighed against the public benefits of the proposal.

<sup>64</sup> Inquiry Doc 31 sets out a summary table of the positive impacts at page 25 of the appellant company's Closings. I have taken all of these into account in my weighing of the positive elements of the proposal.

<sup>65</sup> Inquiry Doc 30 – Parish Council Closings paras 61.

<sup>66</sup> Secured by means of planning obligations and in compliance with the 40% requirement of CS Policy CP17.



53. The Council shows an awareness of the difficulties faced in the provision of both market and affordable housing in the Borough, but the pre-emptive actions of the Council do not in themselves diminish the heavy weighting ascribed to the significant shortfall in overall housing supply.
54. *Provision of open space* - Up to 40% of the site would be provided for publicly accessible open space. It was accepted that such a size of area would go beyond what would normally be required. Therefore, it is reasonable to give some weight to the provision, although its use has to be considered in the context of its relationship with the Abbey grounds as a potential limiting factor to unrestricted recreational use which has been dealt with above.
55. *Ecological benefits* – these would be over and above the open space which would present an opportunity for ecological enhancements. These would include habitat creation through new planting of wildflower grassland, wetland features, tree planting, provision of bat boxes, bird boxes and habitat piles<sup>67</sup>. The submission of a detailed scheme could be properly required by condition. Such enhancements would be partially in mitigation for the proposal, but with a larger area of open space provision, I consider some weight should be given to the likely increased provision over and above that normally required.
56. *Economic and social benefits* – the proposal would enhance the economy of the community by the creation of jobs associated with the construction stage, and new residents are also likely to support existing local services and businesses as well as having the potential to enhance the life of the Town with new skills and interests. This should be given limited weight as I recognise these factors would be common to any such development.
57. *Sustainably located* close to a train station, a school and within easy walking distance of the town and its shops and services. These, in my view, are not benefits, but what one would expect from a well-located residential development. Therefore, limited weight is given to this factor.
58. *Contributions to local services through S106 agreement* – these contributions are required to mitigate the impacts of the proposal. Only that which supports the open space, which goes beyond the standard required, could be considered a benefit and I give little weight to this aspect in the positive scale pan of the decision.

#### *Heritage balance*

59. The identified public benefits of the appeal proposal do present cumulatively considerable weight to be added in the heritage balance set out in Framework paragraph 196.
60. However, the Scheduled Ancient Monument, including all its component designated and non-designated heritage assets, along with the Conservation Area by association, are assets of National importance. Consequently, the greatest weight should be afforded to these with an elevated degree of importance for the assets' conservation<sup>68</sup>.

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<sup>67</sup> Section 6.3 Ecological Appraisal.

<sup>68</sup> Framework para 193.



61. Further, considerable importance and weight to the desirability of preserving the settings of listed buildings and the special character of conservation areas must be undertaken in any balancing exercise<sup>69</sup>.
62. In my consideration of the impact of the proposal in heritage terms, it is clear that there would be identified harm to the significance of Malling Abbey, in part, due to the erosion of its pastoral setting. Further the proposal would neither preserve nor enhance the character or appearance of the Conservation Area for the reasons set out above. This would result in an inordinate amount of harm to heritage assets which, whilst constituting less than substantial harm in Framework terms, would be of considerable importance and great weight sufficient to roundly outweigh the public benefits which would ensue from the development<sup>70</sup>.

### **Landscape<sup>71</sup>**

63. In respect of the impact of the proposal on landscape, the assessment of the West Malling Conservation Area Appraisal does provide some description of the townscape with much detail provided in connection with St Mary's Abbey and its associated grounds, along with Lavenders Road and Water Lane<sup>72</sup>. The appellant also produced an Landscape and Visual Impact Assessment. It is accepted this is not a valued landscape in the terms of the Framework<sup>73</sup>. There would undoubtedly be change with the introduction of 65 units and associated infrastructure onto a greenfield site of undistinguished agricultural and pastoral land. However, having established that part of the character of West Malling is its distinct pattern of Town-Abbey-Farm/Countryside, the appeal proposal would present a diminishing of that countryside setting when viewed from the immediate countryside surroundings outside of the settlement itself and from within. It would neither maintain nor enhance the rural setting and character of West Malling, particularly in respect of the quality of the verdant approach through the countryside to the Town along Swan Street for the reasons which have been expressed above and which I do not intend to repeat<sup>74</sup>. This would offend CS Policy CP6 and, albeit with reduced weight, the terms of CS Policy CP14 in so far as it relates to the protection of the character of the countryside.

### **Planning Balance**

64. Taking into account the primacy of Development Plan policy it is clear from the above reasoning and conclusions that there is some conflict with the Development Plan as a whole, even given the reduced weight to be ascribed to the most important policies relevant to the provision of housing.
65. However, as already indicated at paragraph 13 above, the tilted balance of paragraph 11 of the Framework, at first consideration has been engaged with relevant policies for the provision of housing within the Development Plan being found to be out of date<sup>75</sup>. That said, now in the context of my conclusion that

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<sup>69</sup> CD61c – Barnwell Manor case – para 16.

<sup>70</sup> Statutory duties placed upon decision-maker in Section 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The terms of CS Core Policy SQ1 would also be offended.

<sup>71</sup> Character and appearance was identified as a main issue at the opening of the Inquiry and landscape has been considered in this context.

<sup>72</sup> Landscape Statement of Common Ground CD35.

<sup>73</sup> Framework para 170.

<sup>74</sup> The engineering works to the roadside bank including the removal of the trees. This is considered in the context of any replacement tree planting/landscape further back into the site.

<sup>75</sup> Framework paragraph 11 d).

the identified less than substantial heritage harm being at the highest level, and outweighing the identified public benefits of the proposal, the exception to the application of the presumption in favour of sustainable development is brought to bear<sup>76</sup>. So the proposal having been assessed against the Framework as a whole and, when specifically assessed against paragraph 196, it is found in the balance of the decision, that specific policies in the Framework indicate development should be restricted, a finding which weighs significantly against the proposal sufficient to provide clear reasons for dismissing this appeal without then adding the identified Development Plan harm into the balance.

66. Consequently, I dismiss this appeal and refuse planning permission.

*Frances Mahoney*

Inspector

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<sup>76</sup> Framework para 11 d) i Footnote 6.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Kevin Toogood	Solicitor- Advocate Tonbridge and Malling Borough Council
He called	
Mother Mary David	Abbess of Malling Abbey
Wendy Rogers BA (Hons) Archaeology	Senior Archaeological Officer, Kent County Council
Debbie Maltby BA (Hons) MA Heritage Management IHBC	Conservation and Urban Design Officer Tonbridge and Malling Borough Council
Paul Batchelor MPLAN MRTPI	Senior Planning Officer
Emma Keefe MA BA (Hons) DipTP MRTPI	Development Manager – Conditions session

### WEST MALLING PARISH COUNCIL (RULE 6 PARTY)

Rob Williams of Counsel	Cornerstone Barristers
He called	
Kit Wedd BA (Hons) IHBC	Director Spurstone Heritage Limited
Kevin Goodwin BA MRTPI	Director KG Creative Consultancy
Simon Kelly	Associate Solicitor Richard Buxton Solicitors – Conditions session

### FOR THE APPELLANT:

Hashi Mohamed Of Counsel	No 5 Chambers
He called	
Paul Lulham	Director of Transport Planning at DHA
Dr Jonathan Edis BA MA PhD MCIfA IHBC	Managing Director, Heritage Collective UK Limited

Stephen Wadsworth  
BA(Hons) PGDip Urban  
Design Grad Dip  
Landscape Architecture  
CMLI

Director Landscape Collective UK Limited

Jonathan Buckwell BA  
(Hons) MA MRTPI AIEEMA

Director DHA Planning

#### INTERESTED PARTIES

Canon Alan Stevenson	Retired Vicar of St Mary West Malling and Malling Abbey
Francois Gordon	Local Resident & acting Chair of the East Malling Conservation Group
Christine Woodger	Local Resident
Jacques Arnold	Local Resident
Matt Christmas	Local Resident
Ruth Bierbaum	Local Resident
Peter Cozier	Local Resident
Clare Graham	Local Resident
Jane Field	Local Resident
Don Jones	Local Resident
Yvonne Smyth	Local Resident
Thomas Kemp	Local Resident
Nick Stapleton	Local Resident
Angela Dex	Local Resident
Michelle Tatton	Local Resident
Alan Gibbins	Local Resident
Linda Nunn	Local Resident

<b>index Number</b>	<b>Inquiry Documents</b>
1	Opening Statement of Hashi Mohamed of Counsel for the Appellant Company
2	Opening Statement of Kevin Toogood for the Council
3	Opening Statement of Rob Williams of Counsel for the Parish Council (Rule 6)
4	Cannon Brian Stevenson – statement
5	Francois Gordon – statement
6	Christine Woodger – Quiet Lanes documents x 2
7	Matt Christmas – statement
8	Ruth Bierbaum – statement
9	Peter Cozier – statement and referenced material
10	Clare Graham – statement
11	Jane Field – statement
12	Don Jones - statement
13	Thomas Kemp – statement
14	Nick Stapleton – statement and referenced material
15	Michelle Tatton – statement
16	Alan Gibbons – statement
17	Signed Addendum to Statement of Common Ground on Archaeology
18	Documentation regarding approved car park at West Malling Station - decision notice and layout plan
19	Update on local plan timetable – letters between PINS and LPA
20	Extract from Planning Practice Guidance – Historic Environment – Referred to by Ms Wedd (Parish Council)
21	Local Plan Housing (OAN and land supply) Topic Paper

22	Statement of Common Ground relating to the reduction in number of houses
23	Written explanation of the approaches to West Malling by Clare Graham, local resident submitted by hand on 23 August 2019
24	Note on Best and Most Versatile Agricultural Land (Parish Council)
25	Managing Development and the Environment – Development Plan Document
26	Suggested Planning Conditions
27	Unilateral Undertaking
28	Section 106 agreement
29	Closing submissions on behalf of the Council
30	Closing submissions on behalf of the West Malling Parish Council (Rule 6 party)
31	Closing submissions on behalf of the appellant company
32	Letter dated 12 September 2019 from Examining Inspectors to the Council re: the LP – submitted after the close of the Inquiry.
<b>Inquiry Plans</b>	
PLAN 1	A3 map – Best and Most Versatile Agricultural Land (Parish Council)
PLAN 2	Agricultural Land Classification (Appellant)
PLAN 3	Aerial map (appellant)