



Appeal Decision

Hearing held on 31 March 2026

Site visit made on 31 March 2026

by Thomas Courtney BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2026

Appeal Ref: APP/V2255/W/25/3376221

Land West of Borden Lane, Sittingbourne, Kent, ME9 8HR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Michael Lucas (Aspire LPP) against the decision of Swale Borough Council.
 - The application Ref is 24/502717/OUT.
 - The development proposed is described as an Outline Application (with all matters reserved) for the erection of a care home (Class C2), with associated parking, landscaping and substation.
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Decision

1. The appeal is allowed and outline planning permission is granted (with all matters reserved) for the erection of a care home (Class C2), with associated parking, landscaping and substation at Land West of Borden Lane, Sittingbourne, Kent, ME9 8HR, in accordance with the terms of the application, Ref 24/502717/OUT, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. A hearing was held on 31 March 2026, attended by representatives of the appellant and the Council, together with interested parties. I undertook an accompanied site visit in the presence of the main parties. I heard evidence from a number of interested parties who raised concerns regarding, amongst other matters, the principle of development, ecology, highway impacts and the need for the proposed care home.
4. The description of development in the banner heading is taken from the decision notice and the appeal form. It differs slightly from the application form in that it refers to reserved matters and the proposed substation. In their submissions at appeal stage, both parties used the description of development as shown in the banner heading. I have therefore proceeded on this basis. I have removed reference to outline application in the decision paragraph to avoid duplication.
5. The application was submitted in outline form with all matters reserved for future consideration. I have therefore assessed the proposal on that basis, having regard to the submitted indicative plans and supporting material where relevant.

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6. Following the close of the hearing, a completed and signed Unilateral Undertaking (UU) was submitted by the appellant. The UU relates to the delivery and long-term management of biodiversity net gain associated with the development, including habitat creation, enhancement and maintenance measures. This is considered later in my decision.

Main Issues

7. The main issues are:

- the effect of the proposal on the Important Local Countryside Gap;
- whether the site is suitably located for the proposed development, having regard to the Council's Spatial Strategy;
- the effect of the proposal on Best and Most Versatile Agricultural Land; and
- the effect of the proposal on ecology, with particular regard to protected species and priority habitats.

Reasons

Important Local Countryside Gap

8. The appeal site comprises a parcel of land fronting Borden Lane, on the built-up edge of the village of Borden. It contains an existing warehouse building together with areas of open land, traditional orchard and grassland. Parts of the site are occupied by scattered machinery, vehicles, discarded materials, informal structures and areas of detritus, giving it a somewhat untidy appearance. It is bounded by woodland along the north-western and north-eastern boundaries which provides a strong vegetated backdrop. Mature trees and vegetation along the site frontage provide substantial screening from Borden Lane, whilst residential properties lie to the south, including No. 124 which shares a boundary with the appeal site. Although the site exhibits signs of informal and ancillary activity, it remains predominantly undeveloped and contributes to the verdant character of this part of Borden Lane and the transition between the built form of the village and the surrounding countryside.
9. The site lies within an identified Important Local Countryside Gap (ILCG) which performs a strategic role in maintaining separation between Sittingbourne and the surrounding villages, including Borden. I have had regard to the Council's ILCG Review¹, which confirms that this part of the gap continues to provide a clear break between settlements and contributes to their individual identity.
10. Policy DM25 of the 'Bearing Fruits 2031' – Swale Borough Local Plan (2017) (the LP) seeks to safeguard the open and undeveloped character of important countryside gaps, maintain the separate identity of settlements and resist piecemeal encroachment. Its aims are consistent with national policy in seeking to protect the intrinsic character and beauty of the countryside.
11. In this location, the separation between Sittingbourne and Borden remains readily appreciable and the appeal site makes a positive contribution to the ILCG. Even where the distance between the settlements is relatively limited, there is still a clear

¹ Swale Borough Council, Swale Important Local Countryside Gaps Review – Final Report (February 2025).

perception of travelling between distinct places, reinforced by the absence of continuous built development. This sense of separation is an important aspect of the gap's function. The area along Borden Lane between the two settlements is characterised by open paddock land, agricultural fields and woodland with relatively limited built form, which allows the edge of Sittingbourne to be experienced in contrast with the more rural setting of Borden.

12. Whilst the surrounding area is subject to change, including development at Wises Lane, this does not diminish the value and role of the remaining open land, including the appeal site. The gap continues to function as a meaningful break between the settlements, and, in my view, the new development as part of the Wises Lane scheme serves to emphasise the importance of the remaining undeveloped parcels in maintaining that separation.
13. Whilst the proposed building could be set back within the site and would be in proximity to an existing residential plot, the proposal would nevertheless extend built form into land that currently contributes to the openness and continuity of the gap. The increase in built form would thus have a spatial and visual impact on the ILCG. It would not safeguard the open and undeveloped character of the area and would represent an encroachment into the countryside, contributing to the incremental erosion of the gap.
14. However, the extent of harm would be moderated by a number of factors. The proposal would not significantly reduce the overall physical separation between Sittingbourne and Borden, nor would it result in their merging or actual coalescence. The development would be contained within the site and would be seen in the context of an existing buffer of vegetation and woodland provided by the Borden Nature Reserve to the north and west of the appeal site. The development would also feature frontage landscaping within a retained orchard area, which would provide a degree of enclosure and limit wider visibility.
15. The ILCG Review recommends that the gap is largely retained at its current extent to avoid the coalescence of Sittingbourne, Chestnut Street, Borden and Tunstall. The proposal would not result in coalescence but would still contribute to the erosion of the gap. Whilst the site's enclosed character would temper the visual impact of the development, it would still be noticeable and read as an encroachment given its proposed scale.
16. Drawing these matters together, I find that the proposal would have an adverse effect on the ILCG. It would conflict with the objectives of Policy DM25 of the LP insofar as it seeks to ensure that the individual character and setting of settlements is retained and that development does not undermine the purposes of ILCGs.

Location

17. The appeal site lies adjacent to, but outside the defined built-up area boundary of Borden and is therefore within the countryside for the purposes of the development plan. Given the relationship to Borden, the site contributes to its rural setting.
18. Policies ST 1 and ST 3 of the LP seek to direct development to the most sustainable locations within the defined settlement hierarchy, whilst protecting the intrinsic character, beauty and tranquillity of the countryside. Policy ST 1 sets out overarching principles for sustainable development, including supporting the provision of community facilities and meeting identified needs. However, it is clear

that such development is to be delivered in accordance with the spatial strategy established by Policy ST 3.

19. LP Policy ST 3 establishes that development may take place within built-up area boundaries, including Borden which is classed as an 'other village with built-up area boundaries in the settlement hierarchy'. It also establishes that within the countryside, development will not be permitted unless it is supported by national planning policy and is able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
20. The National Planning Policy Framework (the 'Framework') states that planning decisions should contribute to the local and natural environment by recognising the intrinsic character and beauty of the countryside. It also seeks to support a prosperous rural economy and seeks to maintain the vitality of rural communities. It also recognises the need to provide housing for different groups in the community, including older people with diverse needs. In those respects, the proposal would make a positive contribution through the provision of specialist accommodation and associated employment opportunities.
21. Although the design and layout of the proposal is not before me at this outline stage, there is a high probability that the development of the appeal site with a care home and associated development would be likely to result in a considerable part of the site being occupied by buildings and hard surfacing. This would diminish the sense of openness and disrupt the transitional rural qualities of the landscape, and the open, countryside setting to Borden thereby harming the intrinsic character and visual qualities of the countryside in this location.
22. However, the appeal site is well contained to the north-east and north-west by mature woodland and is also well related to the built form of the village. Moreover, subject to the detailed design and layout of the development, I am satisfied given the size of the site and the likely scale of development that a high-quality design could be secured with suitable landscaping, providing a vegetated buffer to the road as part of a subsequent planning application. Consequently, these matters would limit the harm that would be caused by the proposal, and the resultant harm would be localised and limited.
23. Whilst Borden has a range of services and facilities, it does not have a shop for day-to-day goods. Although the site lies relatively close to Sittingbourne, the evidence indicates that it is not particularly well served by public transport, with no direct bus routes or stops within easy walking distance of the site. Access to services would therefore be reliant, at least in part, on private vehicles or organised transport. Whilst the nature of the proposed use means that residents themselves may have limited mobility, the operation of the facility would still generate staff, visitor and service trips. These would be spread throughout the day rather than concentrated during traditional commuter peak periods. The evidence indicates that the overall level of traffic generated would be relatively modest.
24. Moreover, the day-to-day operation of the care home would not be dependent upon convenient access to local shops and services. Staff would typically travel directly to and from the site as part of their daily journeys, whilst residents' needs would largely be met on site. Paragraph 117 of the Framework recognises that opportunities to promote sustainable transport solutions vary between urban and

rural areas. Having regard to the nature of the proposed use, the likely vehicle movements associated with use, its location and relationship to the built forms of Borden and Sittingbourne and the public highway, I am satisfied the site is reasonably accessible and that the proposal would not harm the tranquillity of the countryside.

25. Given my findings and acknowledging that any harm would be localised and limited, it is clear that the proposal would not maintain the setting of settlements, or protect and, where appropriate, enhance the intrinsic value, landscape setting, and beauty of the countryside. Accordingly, the proposal is therefore not suitably located having regard to the Council's spatial strategy because of the conflict with Policies ST 1 and ST 3 of the LP. These seek to direct development to the most sustainable locations within the defined settlement hierarchy, whilst protecting the intrinsic character, beauty and tranquillity of the countryside, and meeting identified needs.

Agricultural Land

26. The appeal site comprises Best and Most Versatile (BMV) agricultural land. During the hearing, it was agreed that the land is a combination of Grade 1 and Grade 2 agricultural land, representing a high-quality and finite resource. Policy DM31 of the LP seeks to protect such land and is consistent with national policy which recognises the economic and other benefits of BMV agricultural land.
27. The proposal would result in the permanent loss of this land to built development. That loss would arise irrespective of the current condition or level of agricultural activity on the site. In considering whether that loss is justified, I have had regard to the availability of alternative sites for the proposed development on lower grade land and within built-up area boundaries.
28. The Council identified a number of sites within the appellant's Alternative Sites Assessment which it considered may have been unsuitably discounted, including land at 152 Staplehurst Road (A20.2), the Foundry (A20.11), the Nil Desperandum site (A21.6), the Iwade Fruit and Produce site (A20.13), and land off Colonel's Lane (A21.11).
29. The land at 152 Staplehurst Road may have some potential, however, the appellant indicated that even if it were to come forward for a care home, there would remain a residual unmet need for care home beds within the borough. The Foundry and Nil Desperandum sites are identified as being within areas of flood risk. Although it was suggested that flood risk would not necessarily preclude development, there was no clear evidence before me to demonstrate that such sites would be suitable or capable of being developed for this more vulnerable use in terms of flood risk vulnerability. The Iwade Fruit site is identified within the HELAA but is also allocated for housing, and there is no substantive evidence that it would be available for a care home. Similarly, land off Colonel's Lane is allocated for residential development, which would materially constrain its availability for the proposed use.
30. An interested party also referred to a site on Lynsted Lane previously used as a care home. However, no evidence was provided as to its current availability, suitability or capacity to accommodate a comparable development.

31. In those circumstances, I am not persuaded that the proposal has failed on the basis of available alternatives. Nonetheless, the loss of BMV land remains a matter which weighs against the development, as the policy objective of safeguarding such land continues to apply. Indeed, the development would contribute to the gradual and piecemeal erosion of the overall stock of high-quality agricultural land.
32. In terms of the extent of harm, the site is relatively small in the context of the borough's overall agricultural land resource, and there is no evidence that its loss would have wider implications for agricultural productivity or the viability of any holding. Notwithstanding this, the proposal would reduce the amount of BMV land and would therefore conflict with Policy DM31 of the LP insofar as it seeks to limit development on BMV agricultural land.

Ecology

33. The appeal site includes areas identified as traditional orchard, which is a priority habitat. The Council places significant weight on the ecological value of this habitat, emphasising its age, structural complexity and its role in supporting a range of species, including invertebrates, birds and foraging bats. It also highlights that such habitats are difficult to recreate, with replacement planting requiring a considerable period of time before comparable ecological value is established. I have had regard to these points and accept that the traditional orchard is an important and, in many respects, irreplaceable habitat, the loss of which weighs against the proposal.
34. However, the evidence also indicates that the orchard within the appeal site is not uniform in its quality or distribution. The appellant's ecological assessment identifies that much of the site comprises grassland with only limited clusters of orchard trees, primarily concentrated within part of the site. The evidence also points to a degree of decline, including the loss of trees over time and a lack of active management. Whilst this does not diminish the status of the habitat, it is relevant to the weight that can be given to its current ecological function across the entirety of the site. Importantly, the proposal could retain the principal area of orchard and incorporate measures for its management and enhancement, alongside additional planting.
35. I recognise that there would be a temporal lag before newly established planting could provide equivalent ecological benefits and that biodiversity net gain, whether delivered on-site or supplemented off-site, does not in itself negate that loss. The biodiversity net gain assessment indicates that off-site measures would be required to achieve the necessary uplift, which reinforces that some loss of habitat value would occur. Whilst the development would not avoid harm to the habitat, I am satisfied in this case that the mitigation and compensation measures proposed would be sufficient to address the impacts when considered against the scale and condition of the habitat affected.
36. The appellant has undertaken ecological surveys which have informed the assessment of the site, identifying the presence or potential presence of certain protected species and setting out a number of recommendations including habitat retention, translocation where necessary, and ecological management which could be secured by condition. I note the concerns raised by interested parties in respect of the survey work undertaken, however some of the information is confidential because of the species involved and it is noteworthy that the Council's ecological

advisor, Kent County Council (KCC) Ecology, were satisfied that they provide an adequate understanding of the site's ecological interest.

37. Whilst I have had regard to concerns raised regarding specific species, including badgers, Fiery Clearwing moths and other fauna, there is no substantive technical evidence before me to demonstrate that the proposal would give rise to unacceptable impacts in this respect.
38. Concerns are also raised regarding the proximity of the site to the Borden Nature Reserve and the potential for adverse effects, including through habitat loss, disturbance and lighting. The Council considers that some residual harm would remain even with mitigation. I acknowledge that the development would introduce built form and associated activity adjacent to the reserve, and that mitigation would not entirely remove all effects. However, the proposal includes measures to mitigate such impacts, including the retention of vegetation, the provision of a buffer along the site boundaries, and the control of lighting and activity. The submitted lighting strategy demonstrates that light spill could be minimised and that areas of ecological sensitivity, including the reserve, could be maintained in relative darkness through appropriate design and control measures. With such measures secured by condition, I am satisfied that any impacts on the nature reserve would be limited and would not undermine its overall ecological function.
39. I have also had regard to concerns raised by interested parties regarding cumulative habitat loss in the wider area, including the loss of orchard associated with other developments. Whilst such concerns are noted, the appeal must be determined on the basis of the evidence before me in respect of this proposal. There is insufficient evidence to demonstrate that the cumulative effects, when taken together with this development, would give rise to unacceptable ecological harm that could not be adequately mitigated.
40. Third party concerns regarding the reliance on off-site biodiversity mitigation, its location, and the effectiveness of its long-term management have also been considered. However, biodiversity net gain could be secured through a combination of on-site and, where necessary, off-site measures, and there is no requirement that all gains be delivered within the appeal site itself. Similarly, whilst concerns have been raised regarding the enforceability of such measures, there is no substantive evidence before me to demonstrate that appropriate mitigation and management secured through planning conditions and legal agreement would not be effective in this case.
41. A completed and signed Unilateral Undertaking has been submitted which secures the delivery and long-term management of biodiversity net gain associated with the development. This includes habitat creation and enhancement measures, together with their monitoring and maintenance over a 30-year period. I am satisfied that this provides a robust mechanism to secure the proposed biodiversity enhancements and mitigation in the long term.
42. Drawing these matters together, the proposal would result in the loss of part of a priority habitat and some ecological impact, including potential effects on the adjacent nature reserve. However, having regard to the condition and extent of the existing habitat, the retention and enhancement measures proposed, the findings of the ecological surveys, and the mitigation and provisions secured through the

Unilateral Undertaking, I find that the impacts would be appropriately mitigated and would not result in unacceptable harm to biodiversity or protected species.

43. Accordingly, the proposal accords with Policies DM28 and DM34 of the LP insofar as they seek to ensure that proposals conserve and enhance biodiversity and the natural environment, minimise any adverse impacts and compensate where impacts cannot be mitigated. Furthermore, the proposal would not conflict with the duties set out within Section 40 the National Environment and Rural Communities Act 2006, would not adversely affect species protected under the Conservation of Habitats and Species Regulations 2017 (as amended), and the Wildlife and Countryside Act 1981 (as amended), subject to the implementation of mitigation and any necessary protected species licenses.

Other Matters

Housing Land Supply

44. It is common ground that the Council cannot demonstrate a five-year supply of deliverable housing sites. It stood at 3.97 years in November 2025. Consequently, the most important policies for determining the application are out of date, including LP Policy ST 3 since the strategy has failed to provide for the minimum number of homes over the plan period, and by association Policy ST 1.
45. Care homes are recognised within national policy and guidance as a form of housing and, as such, the proposal would contribute towards meeting the Borough's housing needs through the provision of specialist accommodation. The proposal would also support the Government's objective of significantly boosting the supply of homes.

Living Conditions

46. Concerns were raised regarding the effect of the proposal on the living conditions of nearby residents, including the occupiers of No. 124 adjacent to the site. Objections relate to the scale of the development, uncertainty over the final design at this outline stage, and the potential for adverse effects on health and wellbeing, with reference made to paragraph 92 of the Framework which seeks to support healthy and inclusive communities. Particular concern was expressed by one resident with existing serious health conditions, who considered that the proposal would exacerbate stress and negatively affect their wellbeing.
47. I have had regard to these concerns and to the Public Sector Equality Duty (PSED). I recognise that the proposal would introduce a larger and more intensive form of development than currently exists, and that the outline nature of the application gives rise to some uncertainty at this stage. However, matters of layout, scale, appearance and landscaping are reserved for future consideration, and these provide a clear mechanism to secure a form of development that responds appropriately to neighbouring properties, including through separation distances, building disposition and screening.
48. In terms of noise and disturbance, the operation of a care home could generate activity on a 24-hour basis, including staff movements, servicing and visitor trips. However, such uses are not typically characterised by high levels of noise or late-night disturbance when compared to other forms of institutional or commercial development. Noise associated with plant, deliveries and general activity can be

controlled through detailed design and the imposition of appropriate conditions. Whilst I acknowledge that construction activity would give rise to temporary disturbance, this would be limited in duration.

49. Having regard to these factors, I am not persuaded that the proposal would give rise to unacceptable effects on the living conditions of nearby occupiers, including in respect of outlook, privacy, noise or disturbance. Whilst I recognise the personal concerns expressed, the impacts identified would not be of such a degree as to conflict with the objectives of paragraph 92 of the Framework.

Highway Safety and Parking

50. Interested parties raised concerns regarding the position of the access, the nature of Borden Lane, and the adequacy of parking provision, with suggestions that the number of spaces proposed would be insufficient to accommodate staff, visitors and servicing, leading to overspill parking and potential highway safety issues.
51. The proposal has been considered by the highway authority, which did not raise an objection. The appellant states that staffing patterns would operate on a shift basis, with staggered arrival and departure times, meaning that not all staff would be present on site at any one time. This reduces peak parking demand. Visitor numbers are also likely to be spread throughout the day rather than concentrated at specific times. On this basis, and in the absence of technical evidence to the contrary, I am satisfied that the level of parking provision would be adequate to serve the development without resulting in unacceptable overspill or harm to highway safety.
52. Whilst I acknowledge concerns regarding the access, the bend of the road and pedestrian conditions, there is no substantive evidence before me to demonstrate that safe and suitable access cannot be achieved or that the proposal would result in an unacceptable impact on highway safety.

Heritage

53. Concerns are raised regarding the effect of the proposal on nearby listed buildings along Borden Lane. These include the Grade II listed building known as Posiers at 201 Borden Lane whose significance is derived primarily from its 15th Century historic fabric and architectural interest. To the north-east of the site is the listed building at Riddles Cottage which is part timber-framed and weatherboarded. The listing states its West wing probably dates from the 17th Century. Its significance derives similarly from its historic rural architecture.
54. I have had regard to the statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of listed buildings. Whilst the appeal site forms part of the wider rural context in which these assets are experienced, the evidence indicates that their significance is not heavily dependent on the appeal site itself, given the presence of intervening development.
55. The proposal would introduce built development on land that is currently open. However, given the separation distances, the limited visual interrelationship, and the ability to secure a sensitive layout and landscaping at the reserved matters stage, I find that the proposal would preserve the setting of nearby listed buildings. Accordingly, no harm to the significance of designated heritage assets would arise.

Need for the Development

56. The need for the proposed care home is disputed by an interested party who questioned both the level of need for additional provision in the locality and the reliability and objectivity of the submitted needs assessment. They contended that care home provision within Borden is already high and that future care needs should be met through support within the home and community rather than institutional accommodation. It is also suggested that the needs assessment overstates demand by relying on demographic projections, and that increased population age does not necessarily translate into increased demand for care home places. Concerns were also raised regarding potential pressure on local healthcare services.
57. In terms of methodology, the appellant's evidence is based on an assessment of supply and demand across the borough, drawing on established sector methodologies, including prevalence rates for care home occupancy by age cohort. This approach is widely used within the sector and has been accepted in previous appeal decisions. The evidence explains that demand is derived from demographic projections, particularly the growth in older age groups, and compares this against the supply of appropriate accommodation, with a particular focus on modern, ensuite provision.
58. The criticism that the assessment lacks objectivity is not borne out by the evidence before me. The report is prepared by a suitably qualified expert who confirms compliance with professional standards and an overriding duty to the appeal process. Moreover, its conclusions broadly align with other sources of evidence, including the Council's own position, which acknowledges that existing provision is insufficient to meet current and future needs.
59. As to the level of need, the evidence demonstrates a substantial and increasing shortfall in suitable care home accommodation across the borough. This arises not only from population growth, particularly in the older age cohorts, but also from the condition and suitability of the existing care home stock, much of which comprises older or converted buildings that do not meet modern expectations, particularly in terms of ensuite provision and the ability to cater for higher dependency and dementia-related care needs. The assessment identifies a significant gap between demand and the supply of suitable ensuite accommodation, with that gap projected to widen over time.
60. Whilst I acknowledge the point that some care provision is increasingly delivered within the home or community, the evidence indicates that there remains a clear and continuing need for residential care facilities to meet more complex needs that cannot be accommodated in those settings. The suggestion that existing provision within Borden is sufficient is not supported by the wider evidence base, which points to a borough-wide shortfall.
61. In respect of healthcare impacts, there is no substantive evidence before me to demonstrate that the proposal would place unacceptable pressure on primary or secondary healthcare services. The provision of a care home is materially different from general healthcare services. Care homes provide residential and nursing care for individuals with significant and often complex needs, including those associated with advanced age and conditions such as dementia. The evidence indicates that

demand for such accommodation is driven by demographic change and increasing care needs, rather than the availability of primary healthcare facilities.

62. Drawing these matters together, I am satisfied that there is a clear and compelling need for additional care home accommodation within the Borough. The proposal would provide purpose-built accommodation designed to meet these needs, thereby addressing both the quantity and quality of provision.

Habitats

63. The site lies within the zone of influence of the Swale Special Protection Area (SPA) and Ramsar site, which is designated for its internationally important bird populations. I have a duty under the Conservation of Habitats and Species Regulations 2017 to assess any impact the proposed development would have upon the SPA, which is a designated European site. The potential for effects arises primarily through increased recreational pressure associated with new residential development. However, the proposed use is a care home, where future occupiers would have limited mobility and are unlikely to generate recreational trips to the SPA. In addition, staff and visitor trips would not be of a nature or scale that would give rise to material increases in recreational pressure on the designated site.
64. Both main parties agree that the proposal would not give rise to a likely significant effect on the SPA, either alone or in combination with other plans or projects. Having regard to the nature of the development and the characteristics of its likely occupants, I see no reason to disagree. Accordingly, the proposal would comply with the Conservation of Habitats and Species Regulations 2017.

Contamination

65. Concerns were also raised by an interested party regarding potential methane leakages and contamination associated with the former landfill within the adjacent nature reserve. The evidence before me does not demonstrate that such risks could not be appropriately investigated and managed. Appropriate conditions could be implemented requiring detailed site investigations and risk assessments to be undertaken, together with any necessary remediation strategy and subsequent verification reports. These mechanisms would ensure that any contamination risks, including those associated with landfill gas, are properly assessed and addressed prior to occupation of the development. I am therefore satisfied that the matter does not weigh against the proposal.

Outline nature of proposal

66. It is also suggested that insufficient detail has been provided to properly assess the proposal. However, the submission of an outline application is an established procedure. The principle of development can be considered at this stage, with detailed matters reserved for subsequent approval. I am satisfied that sufficient information has been provided to enable a proper assessment of the proposal.

Planning Balance

67. I have found that the proposal would conflict with the spatial strategy by introducing built development in the countryside, and that it would result in erosion of the ILCG between Sittingbourne and Borden. Whilst the scheme would not lead to coalescence of settlements, it would nonetheless reduce the rural open character of the gap and contribute to incremental encroachment. What's more, accessibility

to services and facilities is not strong. Although Sittingbourne is relatively close, the absence of convenient public transport options means that the site would be reliant to a degree on private vehicles or organised transport. That said, given the proximity to a main urban centre and the nature of the use, the site can be regarded as an acceptable location in accessibility terms. In addition, the site comprises best and most versatile agricultural land, the loss of which weighs against the proposal. These issues bring the scheme into conflict with the development plan taken as a whole.

68. However, given the Council's housing land supply position, the most important policies for determining the application are out of date and the presumption in favour of sustainable development set out in paragraph 11d) of the Framework is engaged. I have found no harm to designated heritage assets, or indeed any areas or assets of particular importance, as set out in footnote 7 to paragraph 11 of the Framework. Accordingly, planning permission should therefore be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
69. The parties provided differing views on how much weight to afford to Policy DM25, and reference was made to the Wises Lane appeal decision² and the appeal decision for the development at land off Riddles Road³. The appellant considered that any conflict with Policy DM25 should be given limited weight because the policy is out-of-date by virtue of the housing land supply position, as well as its inconsistency with the Framework. The Council maintains that Policy DM25 is still relevant and that other inspectors gave it significant weight.
70. It is acknowledged that Policy DM25 is not a landscape policy. It is more of a strategic spatial policy. However, the preamble to the policy states that the purposes of the ILCGs include maintaining the character of settlements and preventing changes to the rural open character of these areas. Therefore, I find that the policy still aligns with paragraph 187 of the Framework which requires development to recognise the intrinsic character and beauty of the countryside. As suggested by the Council, it would also align with paragraph 129 of the Framework which sets out that policies and decision making on the efficient use of land should take into account the desirability of maintaining an area's prevailing character and setting.
71. Policy DM25 is out of date in light of the housing land supply position but can be considered to be consistent with the aims of the Framework. I have therefore attached moderate weight to the harm arising from the conflict with the development plan.
72. I have found that the proposal conflicts with Policies ST1 and ST3 in respect of the settlement strategy, Policy DM25 relating to the ILCG, and Policy DM31 concerning the loss of BMV agricultural land. These policies seek, in broad terms, to direct development to sustainable locations, protect the character of the countryside, preserve the ILCG from encroachment, maintain separation between settlements, and safeguard higher quality agricultural land. Those objectives are consistent with

² Appeal Ref. APP/V2255/W/19/3233606

³ Appeal Ref. APP/V2255/W/25/3372645

the Framework, including securing sustainable patterns of development, the recognition of the intrinsic character and beauty of the countryside, the desirability of maintaining an area's prevailing character and setting, and safeguarding the best and most versatile agricultural land.

73. As such, notwithstanding their out-of-date status in the context of housing land supply, the LP policies continue to attract weight according to their consistency with national policy. However, the weight to be attributed to the harm is curbed by the fact that the relevant development plan policies are being applied in the context of an acknowledged shortfall in housing land supply. Moreover, the Framework places significant emphasis on boosting the supply of homes and meeting the needs of groups with specific housing requirements, including older people and specialist accommodation. Whilst the identified harms remain important considerations, these factors reduce the overall weight that can be attributed to the policy conflicts. Taken together, I attribute moderate weight to the identified harm arising from the proposal.
74. I have also had regard to the Riddles Road appeal decision referred to by the Council and interested parties. However, the circumstances of that case were materially different. In particular, the extent of development proposed there would have resulted in a substantially greater erosion of the ILCG and a more significant alteration to the settlement pattern. Whilst the present proposal would nonetheless give rise to harm in respect of the settlement strategy and the ILCG, I do not find the scale or extent of that harm to be comparable. Consequently, I attribute more moderate weight to those harms in this case.
75. Turning to the benefits, the proposal would deliver a modern, purpose-built care home providing up to 70 bedrooms, contributing towards an identified shortfall in care provision within the Borough. The need for such provision is not disputed between the main parties, and the evidence indicates that there is both a quantitative and qualitative deficiency in existing stock. This is a matter to which I attach significant weight. The proposal would also contribute towards housing land supply through the provision of C2 accommodation, which is agreed between the parties to form part of housing delivery. In the context of a shortfall in deliverable housing sites, this is a material benefit which also attracts significant weight, albeit recognising that it is not equivalent to the delivery of conventional housing.
76. The scheme would generate employment during both the construction and operational phases, with a substantial number of permanent jobs associated with the operation of the care home, alongside wider economic activity. Taken together, these economic benefits carry moderate weight. The provision of on-site care also has the potential to reduce pressure on health and social care services. Whilst such effects are not determinative and must be treated with some caution, they nonetheless attract moderate weight. More general social benefits, including improvements to residents' quality of life and a reduction in the burden on unpaid carers, are inherent to such development and are therefore afforded limited weight.
77. I have not treated the design of the proposal or the provision of landscaping and screening as benefits. These are matters of policy compliance and mitigation which can be secured at the reserved matters stage and do not weigh positively in favour of the development.

78. Drawing these matters together, the proposal would result in moderate harm arising from conflict with the development plan. However, the benefits of the scheme, most notably the delivery of a much-needed care home and its contribution to housing supply, are substantial and attract significant weight. When assessed against the policies in the Framework taken as a whole, I find that these benefits clearly outweigh the identified harms. The adverse impacts would not significantly and demonstrably outweigh the benefits. Accordingly, the presumption in favour of sustainable development applies.

Conditions

79. The standard time limit and reserved matters conditions are necessary because the application was submitted in outline form with all matters reserved for subsequent approval. Conditions specifying the approved plans and limiting the development to a maximum of 70 bedrooms and two storeys are also necessary in the interests of certainty and to ensure that the development proceeds on the basis assessed within this decision.
80. Given the ecological sensitivity of the site and its relationship with the Borden Nature Reserve, conditions relating to landscaping, lighting, tree protection, biodiversity enhancement, ecological mitigation, the Construction Environmental Management Plan are necessary to ensure that ecological impacts are appropriately mitigated and managed. In particular, Condition 13 is necessary because it secures the necessary ecological mitigation strategy, including species mitigation measures where required. Consequently, a separate condition specifically relating to reptile mitigation would unnecessarily duplicate those requirements and has therefore not been imposed. Archaeological investigation and contamination conditions are also necessary given the site's characteristics and potential constraints.
81. Conditions relating to drainage and foul water disposal are reasonable and necessary in the interests of flood risk management. The condition relating to construction management is necessary to safeguard the character of the area and the living conditions of neighbouring occupiers.
82. In response to concerns raised by neighbouring residents regarding construction disturbance, I have restricted construction and demolition works to commencing no earlier than 0800 hours on weekdays, this being necessary to protect living conditions of nearby occupiers.
83. Some of the conditions have been imposed as pre-commencement conditions because they relate to matters, including ecology, contamination, archaeology, drainage and construction management, which must be properly investigated and addressed before development begins. This is necessary to ensure that the development proceeds in an acceptable manner and to avoid unacceptable impacts that could not be satisfactorily remedied once works have commenced.
84. I have not imposed all of the suggested conditions. In particular, conditions relating to parking provision, electric vehicle charging, cycle parking, the detailed design of roads, footways, visibility splays and boundary treatments are matters which relate to the layout and detailed design of the development and can be appropriately considered at the reserved matters stage. Similarly, conditions requiring details of external materials and compliance with Secured by Design principles relate to

matters of appearance and detailed design which are reserved for subsequent approval.

85. I have also not imposed the suggested conditions requiring detailed acoustic assessments, internal noise standards and schemes for the extraction and treatment of fumes and odours. Such matters are dependent upon the detailed design and layout of the development, which are not before me at this outline stage. The suggested Biodiversity Net Gain (BNG) condition has not been imposed because BNG is a statutory requirement and is secured through separate legislative provisions. Furthermore, I have omitted the suggested condition relating to the infiltration of surface water drainage into the ground as this would duplicate the requirements of Condition 16.
86. The Council suggested a condition removing permitted development rights. However, no substantive evidence has been provided to demonstrate that such restrictions would be necessary to make the development acceptable in planning terms, and national guidance is clear that permitted development rights should not be removed without clear justification. I have therefore not imposed such a condition.

Conclusion

87. For the above reasons, there are material considerations in this case which outweigh the identified harm and conflict with the development plan particularly those associated with specialist housing when assessed against the key policies of the Framework set out in footnote 9, and the policies of the Framework taken as a whole.
88. For the reasons given above the appeal should be allowed.

Thomas Courtney

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with drawing nos PL001, PL103, PL105.
- 5) As part of the landscaping reserved matters details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - a statement setting out the design objectives and how these will be delivered;
 - earthworks showing existing and proposed finished levels or contours;
 - means of enclosure and retaining structures;
 - boundary treatments;
 - vehicle parking layouts;
 - other vehicle and pedestrian access and circulation areas;
 - hard surfacing materials;
 - minor artefacts and structures e.g. furniture, refuse or other storage units, signs, etc.;
 - proposed and existing functional services above and below ground e.g. drainage, power, communications cables, pipelines etc. indicating alignments, levels, access points, supports as relevant;
 - retained historic or other landscape features and proposals for restoration, where relevant;
 - renewable energy installations where relevant;
 - CCTV;
 - water features;
 - an implementation programme, including phasing of work where relevant.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is brought into use in accordance with the agreed implementation programme. The completed scheme shall be

managed in accordance with an approved scheme of management and maintenance.

- 6) Any reserved matters application for landscaping shall include details of how the construction buffer zone will be enhanced through tree and shrub planting to provide a natural screening barrier to mitigate the anticipated increased noise and visual disturbance from the development hereby permitted to the Borden Nature Reserve. The landscaping within the construction buffer zone shall be implemented prior to the building becoming operational and retained thereafter.
- 7) Any reserved matters application for scale and layout shall show no more than a total of 70 bedrooms and the building shall be no more than 2 storeys in height.
- 8) Any reserved matters application for layout and landscaping shall include a detailed scheme of lighting to minimise impacts on residential amenity and biodiversity.

This scheme shall take note of and refer to the broad parameters set out in the Lighting Strategy Report (SLR Consulting Ltd, 7th November 2025 Rev 01) and the Institute of ILP Guidance Note 01/21 The Reduction Of Obtrusive Light (and any subsequent revisions) and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The plan shall demonstrate that areas to be lit shall not adversely impact biodiversity. All external and internal lighting shall be installed in accordance with the specifications and locations set out in the approved scheme and shall be maintained thereafter.

- 9) No development including demolition shall take place until:
 - (i) An archaeological field evaluation has been carried out in accordance with a specification and timetable that shall first have been submitted to and approved in writing by the local planning authority; and
 - (ii) Safeguarding measures to ensure the preservation in situ of important archaeological remains and/or further archaeological investigation and recording identified in the archaeological field evaluation have been undertaken in accordance with a specification and timetable that shall first have been submitted to and approved in writing by the local planning authority.
- 10) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;

- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- viii) lighting measures
- ix) details of approach route;
- x) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 11) No site clearance, preparatory work or development shall take place until an updated Tree Protection Plan that is in general accordance with the tree protection measures as identified in Appendix 2 – Drawing number TPP01, Tree Protection Plan contained within the Arboricultural Implications Assessment, dated August 2024, has been submitted to and approved in writing by the local planning authority. The tree protection measures shall be implemented prior to the commencement of development and thereafter remain in place throughout the construction phase.
- 12) No development approved by this permission shall take place until a Construction Environmental Management Plan (CEMP), incorporating the construction buffer zone plan and details of pollution prevention measures, and lighting measures along with a timetable for implementation, has been submitted to and approved in writing by the Local Planning Authority. The development shall subsequently be implemented in accordance with the approved CEMP and approved timetable.
- 13) No site clearance or development shall take place until an Ecological Mitigation Strategy and Enhancement Plan has been submitted to and approved in writing by the Local Planning Authority. It must include the following:
- Preliminary ecological appraisal (if existing survey data is over 18 months old)
 - Recommended species surveys (as set out in the Preliminary Ecological Assessment PJC/5619E/24-01 - 5 April 2024 AMENDED and mapping of relevant findings)
 - Details of locations of off-site mitigation sites (e.g. for reptiles)
 - Overview of the mitigation required
 - Detailed methodology to implement the mitigation
 - Details of habitat enhancement/creation works required for the species mitigation
 - Details of management required for the mitigation areas
 - Timings of the works
 - Details of who will implement the mitigation

The plan must be implemented as detailed. All ecological enhancement features must be implemented in accordance with the approved Ecological Enhancement Plan and follow an approved timetable for implementation.

- 14) No development shall commence until a strategy to deal with the potential risks associated with any contamination of the site has been submitted to and

approved in writing by the Local Planning Authority. This strategy will include the following components:

1. A preliminary risk assessment as set out in Phase 1 Desk Study and Risk Assessment Report (Ref: J15790, dated 13th August 2024) which has identified:

- all previous uses;
- potential contaminants associated with those uses;
- a conceptual model of the site indicating sources, pathways and receptors; and
- potentially unacceptable risks arising from contamination at the site.

2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the written consent of the local planning authority.

Subsequently, all remediation detailed within the approved strategy shall be implemented and a verification report based upon the verification plan shall be submitted to and approved by the Local Planning Authority prior to the first occupation of the development hereby approved.

15) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development or relevant phase of development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.

16) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority.

The submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged

from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

- ii) include a timetable for its implementation; and,
- iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details. The sustainable drainage system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.

- 17) No building shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The report shall demonstrate that the drainage system constructed is consistent with that which was approved. The report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as-built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.
- 18) No development shall take place until a foul drainage strategy, detailing how the developer intends to ensure that appropriate foul drainage is implemented with a connection to foul sewer, has been submitted to and approved by the local planning authority in consultation with the water undertaker and EA. The development shall be constructed in line with the agreed detailed design and recommendations of the strategy.
- 19) No building shall be occupied until details of a Commercial Waste Disposal Strategy which includes details of private commercial waste disposal contract(s) is submitted to and approved in writing by the Local Planning Authority. The waste collection and disposal shall be implemented in accordance with the approved details upon first occupation and a private commercial waste disposal contract shall thereafter be in place.
- 20) Demolition or construction works shall take place only between 0800 - 1800 hours on Monday to Friday, and 0800 - 1300 hours on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays unless in association with an emergency or with the prior written approval of the Local Planning Authority.
- 21) Details of piling or any other foundation designs using penetrative methods shall be submitted and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

End of Schedule



Planning Inspectorate

Costs Decision

Hearing held on 31 March 2026

Site visit made on 31 March 2026

by Thomas Courtney BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2026

Costs application in relation to Appeal Ref: APP/V2255/W/25/3376221

Land West of Borden Lane, Sittingbourne, Kent, ME9 8HR

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Aspire LPP for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for an Outline Application (with all matters reserved) for the erection of a care home (Class C2), with associated parking, landscaping and substation.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant's concerns relate to the Council's second reason for refusal concerning ecology, priority habitat and protected species. The applicant argues that the Council acted unreasonably by pursuing this reason despite the advice of its officers and Kent County Council (KCC) Ecology, who raised no objection subject to mitigation and conditions. The applicant also states that the Council failed to identify which protected species impacts remained in dispute, failed to substantiate those concerns with objective evidence, and caused the applicant to incur unnecessary expense in preparing additional ecological evidence and securing expert attendance at the hearing.
4. The Council states that members of the Planning Committee were entitled to depart from officer and consultee advice and that genuine ecological concerns remained regarding the loss of traditional orchard habitat, effects on Borden Nature Reserve, biodiversity impacts and mitigation. The Council also points to additional ecological material submitted during the appeal process, including revised biodiversity net gain figures and habitat assessment work.
5. Members are entitled to depart from officer and consultee advice, provided their conclusions are capable of being supported by appropriate evidence. The fact that officers recommended approval, and that KCC Ecology did not object subject to conditions, does not in itself demonstrate unreasonable behaviour. Nor does the fact that the appeal has succeeded.

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Costs Decision APP/V2255/W/25/3376221

6. The applicant argues that the Council failed to properly substantiate its reasons for refusal and failed to adequately undertake the balancing exercise required by paragraph 11d) of the Framework. I acknowledge that the Committee's reasoning, particularly in relation to the protected species component of the ecology reason, lacked precision and could have been more clearly articulated. However, the Committee report clearly identified the housing land supply position, the tilted balance, the officer recommendation, and the principal benefits and harms associated with the proposal. Members were therefore aware of the relevant policy considerations before reaching a different planning judgement.
7. The Council had legitimate planning concerns regarding the loss of traditional orchard habitat, ecological effects on Borden Nature Reserve, habitat replacement, biodiversity impacts and mitigation. Those matters formed part of a genuine planning dispute, notwithstanding that I have ultimately reached a different conclusion in the appeal decision.
8. However, the protected species element of the second reason for refusal was expressed in broad terms and was not refined with sufficient precision during the appeal process. The Council did not clearly identify which specific protected species impacts remained unacceptable, nor did it provide detailed technical evidence directly contradicting the appellant's ecological surveys. Greater precision through the Statement of Common Ground and appeal process would have assisted in narrowing the dispute.
9. Nevertheless, the protected species concerns were closely linked to the wider ecological issues which remained genuinely disputed throughout the appeal, including habitat loss, biodiversity impacts and effects on the adjacent nature reserve. Furthermore, some of the additional ecological work undertaken by the applicant related to revised habitat and biodiversity net gain assessment work, rather than solely to protected species matters. Whilst updated ecological evidence was prepared and an ecological consultant attended the hearing, given that wider ecological matters remained in dispute, I am not persuaded that those associated costs arose solely, or even primarily, from unreasonable behaviour on the part of the Council.
10. Whilst the Council could have articulated and narrowed the protected species component of its case more clearly, I do not find that its conduct, viewed in the context of the wider ecological dispute, reached the threshold of unreasonable behaviour as described within the Planning Practice Guidance. Nor am I satisfied that unnecessary or wasted expense has been demonstrated.
11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Thomas Courtney

INSPECTOR