
Appeal Decision

Inquiry held on 19-22 and 26-27 January 2016

Site visits made on 18, 25 and 27 January 2016

by **P W Clark MA MRTPI MCMl**

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

Decision date: 01/03/2016

Appeal Ref: APP/N1215/W/15/3005513

Land South of Le Neubourg Way, Gillingham, Dorset

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Sherborne School, CRUK, CLIC Sargent, Mencap and British Heart Foundation against the decision of North Dorset District Council.
 - The application Ref 2/2014/0916/OUT, dated 30 July 2014, was refused by notice dated 9 December 2014.
 - The development proposed is residential (C3) together with associated open space and infrastructure.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application is made in outline. Details of one main vehicular access to the site from Le Neubourg Way are submitted for determination. Matters of appearance, scale, layout and landscaping are reserved for later consideration in the event of permission being given.
 3. The Dorset County Hospital NHS Foundation Trust is included as an appellant on some documents but not on the original application form or on the appeal form.
 4. I made informal, unaccompanied site visits both before and during the Inquiry, using public footpaths which cross it. No disputed matter arose during the Inquiry which would require resolution by a visual inspection of the site and so, with the agreement of both main parties, no formal, accompanied, site visit was made.
 5. By e-mail dated 30 November 2015 a request was made to amend the extent of the site proposed for development. The request was supported by additional information from the appellant's odour consultant and accompanied by a revised illustrative masterplan. The request would have reduced the site area from 9.82ha to 3.5ha. That would have been a reduction of over 64%, so clearly would not have represented a minor amendment. The request was widely advertised. Subsequent correspondence from the public giving their views on the revised scheme demonstrated their awareness of the request. After discussion on the first day of the Inquiry, the request for a formal
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amendment was withdrawn, so the appeal proceeded on the basis of the application boundary as originally submitted but informed by the additional supporting material.

6. The Inquiry sat for six days. After the last sitting day, it was held open in order to allow for a s106 agreement to be signed and sealed. The Inquiry was closed in writing following the completion of this agreement.

Main Issues

7. In its May 2015 Statement of Case, the Council records that it will not be pursuing its third reason for refusal (relating to protected species). There is also correspondence between the Council and the appellant expressing an understanding that the concerns of the fourth reason for refusal (archaeological remains) could be met by a condition.
8. Accordingly, the main considerations in this appeal are;
 - Whether the site is an appropriate location for development
 - In terms of the effects of its air quality on the living conditions of potential future occupants and
 - In terms of its effects on the character and appearance of the area
 - The effects of the proposal on
 - Local infrastructure, including the local sewage treatment works
 - The supply of housing in general and
 - The supply of affordable housing in particular

Reasons

Air quality

9. At its closest point, the site comes within 100m of the Gillingham Sewage Treatment Works (STW). Most of the site lies within 400m of the STW. On the Proposals Map of the now superseded North Dorset District-Wide Local Plan (1st revision) adopted in 2003 a "cordon sanitaire" of that radius was shown around the STW. But policy 1.17 in that plan accepted that development might be approved on the edge of that area, in a position which would not normally receive odours carried in the prevailing wind from the STW, thus introducing an element of performance measurement into consideration.
10. Policy 25 in the newly adopted North Dorset Local Plan similarly applies performance measurement, referring to the impact of emissions on the intended users of the development being reduced to an acceptable degree. Likewise, saved policy 17 of the Bournemouth, Dorset and Poole Waste Plan (2006) refers in generic terms to areas where sensitive development could be adversely affected by the operation of waste facilities, thus necessitating an element of performance measurement in applying the policy.
11. Both parties' experts agree that the practice of measuring and evaluating disturbance to living conditions caused by odour is an evolving one. The Council's expert frankly admitted that he had applied differing and increasingly stringent standards during the lifetime of his career as professional experience

had evolved. The appellant's expert applied revised professional standards to produce the additional information which led to the request to amend the appeal scheme, referred to above.

12. There appears to be common acceptance that the parameter to be used to consider effects of odour on living conditions should be the predicted or modelled 98th percentile of hourly mean odour concentrations using the European Odour Unit per cubic metre (OU_E/m^3). However, it needs to be understood that this parameter has two smoothing or averaging elements. The use of an hourly mean is, by definition, an averaging element, masking extreme momentary variations. The use of a percentile further excludes infrequent or intermittent extremes.
13. Possibly for those very reasons, there are no universally agreed standards which directly correlate predictions using this parameter with acceptable living conditions.
 - Research published by UK Water Industry Research in 2001 suggests that at modelled exposures of less than 5, using this parameter, complaints are relatively rare.
 - The Chartered Institution of Water and Environmental Management (CIWEM) advises that at exposures greater than 5, complaints may occur and may constitute a nuisance but that, at exposures less than 3, complaints are unlikely to occur or represent significant detriment to amenity unless the locality is highly sensitive or the odour highly unpleasant. This advice needs to be understood with the knowledge that the term nuisance has a statutory significance which requires a high score to justify a complaint whereas detriment to amenity does not have a statutory significance and it is generally regarded as a more demanding criterion for which a lower score will justify a complaint.
 - Benchmark levels suggested in the Environment Agency's Additional Guidance for H4 Odour Management (intended for its environmental permitting regime) are 1.5 for the most offensive odours (which include processes involving septic effluent or sludge) and 3 for moderately offensive odours (none of the examples described apply in this case).
 - Institute of Air Quality Management (IAQM) guidance on the assessment of odour for planning (produced by a working party under the chairmanship of the Council's expert, Dr Bull) observes that in any specific case, an appropriate criterion could lie somewhere in the range of 1 to 10 OU_E/m^3 as a 98th percentile of hourly mean odour concentrations. For high sensitivity receptors (housing is normally included within such a definition), exposure to offensive odour levels of between 1.5 and 5 would be described as having a moderate effect.
14. The IAQM guidance warns that the field of odour impact assessment is a developing one and that Inspectors' decisions on past planning appeals, though useful and often setting precedents, will have been based solely on the evidence that was presented to them, which may have been incomplete or of a different standard to current best practice; caution should therefore be exercised. Nevertheless both parties provided me with an extensive collection of such decisions and of decisions in nuisance cases.

- Newbiggin appeal (1993) reference APP/F2930/A/92/206240; adoption of a level of 5 Dutch OU/m^3 (equivalent to a level of $2.5 \text{OU}_E/\text{m}^3$) is both reasonable and cautious
 - Leighton Linlade appeal (2010) reference APP/P0240/A/09/2110667. At a threshold of 5, evidence of no harm is not convincing and there could be a risk of regular and unacceptable odour annoyance to such an extent that it would detract from the future resident's living conditions
 - Mogden case (statutory nuisance) [2011] EWHC 3253 (TCC). Nuisance certainly established at $5 \text{OU}_E/\text{m}^3$
 - Cockermonth appeals (2012) references APP/G0908/E/11/2152403 and A/11/2151737. $3 \text{OU}_E/\text{m}^3$ for medium offensiveness
 - Stanton appeal (2012) reference APP/E3525/A/11/2162837. More appropriate threshold 3-5 OU_E/m^3
 - Middleton appeal (2013) reference APP/U2805/A/11/2162384. Reasonable to take account of the $1.5 \text{OU}_E/\text{m}^3$ contour map
15. Complaints analysis is recognised in table 4 of the IAQM guidance as a legitimate odour assessment tool. Mr Ottley, for the appellant, points out that from 1999 to 2013 odour complaint numbers ranged from 0 to 3 each year but that in 2014 and 2015 they increased to 27 and 22 respectively and that the timing of the complaints coincided with the timing of events in the lifetime of this proposal.
16. This is unsurprising; the IAQM Guidance records that a lack of complaint does not necessarily prove there is no annoyance or loss of amenity. It advises that complaints are generally a public expression of concern over odour exposure that has been experienced over a much longer period of time, leading to the incremental development of annoyance. It tells us that the lesson is that complaints in the present are likely to be strongly associated with events in the past.
17. The significance I draw from the number of complaints received in the past two years is that they are less representative of the actual variation in smell experienced over that period and more representative of the opportunity the appeal proposal has provided for residents to articulate long-standing grievances. But they are valid evidence of long-standing experience.
18. Mr Bull's evidence attempts some geographical analysis of the objections received. It was not challenged. He notes that most of the objections that referred to odours and the sewage works came from residents in the streets nearest to the site. As was demonstrated in cross-examination of residents who spoke at the Inquiry, these lie within, or close to, the $3 \text{OU}_E/\text{m}^3$ contour line which is suggested by the appellant as the threshold for acceptable location of any housing within the site. And, although they are demonstrative of an experience of odour, it is an experience which has been tolerated, in some cases, for nearly twenty years without leading to a move away from the area or to a greater degree of complaint than when the opportunity offered itself.
19. Taking all the above into account, I conclude that the appropriate parameter to apply in this case is the $3 \text{OU}_E/\text{m}^3$ contour line; a more restrictive approach

- would preclude from development areas which are comparable in odour terms with extensive areas of existing housing in Gillingham. A less restrictive approach would permit development of areas which, in odour terms, clearly ought not to be developed.
20. In applying the parameter to the appeal site, actual measurements of odour experience at locations around Gillingham are not available, so both parties agree that predictive modelling is used. A necessary input to such predictive modelling is a number of years' meteorological data for the site. As originally submitted, the appellant's model was based on average meteorological data for three years. But, in accordance with the most recent IAQM advice, this was revised to be based on the worse case of each of five yearly averages. I concur with that approach, which seems to be based on current best practice.
 21. A complication in this case is that the operators of the STW are known to have proposals for upgrading the works in the short term (known as the AMP6 upgrade) and for expanding the works in the longer term to meet the planned growth of Gillingham. The AMP6 upgrade is expected to be completed within the next few years but, when it becomes apparent (as is shown by the appellant's evidence) that the modelled $3 \text{ OU}_E/\text{m}^3$ contour line would then move closer to Common Mead Lane and include some properties not presently included within that contour, there can be no guarantee that the necessary consents would be forthcoming or that the operators would choose to go forward with that particular proposal. Accordingly, I base my consideration of this appeal on modelled output for both the existing works operation and for the extended works.
 22. Actual meteorological data for the appeal site is not available, so a proxy has to be used, representative of the site. The appellant has used proxy data from a meteorological measuring station at Boscombe Down (46km distant), in preference to data from Yeovilton (26km distant). The reasons given are that the Implementation Guide for the AERMOD predictive model used advises that concentration predictions for area sources may be overestimated under very light wind conditions and that the nearby topography of the Yeovilton meteorological station is not comparable to the Gillingham situation because of the proximity of turbulence-inducing built development closely upwind of the measuring station.
 23. The frequency of light wind conditions at Yeovilton is indeed about double that of Boscombe Down. But, as Dr Bull points out, its rejection in favour of a more distant set of meteorological data is likely to result in the use of data less representative of the site. A member of the public points out that although the appeal site in Gillingham does not have built development closely upwind, it does have a railway embankment which might make it more comparable to Yeovilton.
 24. IAQM guidance recommends that because odour modelling includes uncertainties, these uncertainties be explicitly considered. One of the uncertainties it recommends for explicit consideration (in table 12 of its Guidance) is examination of alternative sites for meteorological data.
 25. At my request, the appellant produced a model output for Gillingham based on Yeovilton data. This shows odour concentration contours which are more extensive than those based on Boscombe. The $3 \text{ OU}_E/\text{m}^3$ contour line extends over the whole appeal site. This possibly reflects an overestimation of

- concentration predictions resulting from the greater proportion of light wind conditions in the data and so I accept the adamant advice of the appellant's consultant that it should not be relied upon.
26. But it also shows a quite different pattern of odour dispersal, with a directional emphasis much more to the north-east and east than the model output based on Boscombe Down. Again, I accept the appellant's expert's note on the model output that this does illustrate the general difference in the extent of the odour isopleths when using meteorological data from Yeovilton rather than Boscombe Down. Even if the extent may be unreliable, the direction is not.
27. What is clear from this exercise is that a very considerable proportion of the appeal site would experience air quality detrimental to the living conditions of potential future occupants. That proportion would be significantly greater than the extent of the site which the appellant accepts should be excluded by condition.
28. I have considered whether it would be appropriate to allow the appeal subject to a condition requiring a further modelling exercise based, in Dr Bull's words, on site specific data provided by the Met Office from their Numerical Weather Prediction Model. There could be no guarantee that this modelling would identify any part of the site which would not be unacceptably affected by odour and I am cognisant that it would not be appropriate to allow a proposal with a condition which would in effect render a permission nugatory, so I pursue this thought no further.
29. Taking into account the model output provided by the appellant based on the Yeovilton data as well as that based on the Boscombe Down data and also that of the existing operation of the site together with the nature and content of the objections received, I conclude that the site is an inappropriate location for development in terms of the effects of its air quality on the living conditions of potential future occupants. The appeal proposal would be contrary to policy 25 in the newly adopted North Dorset Local Plan which requires the impact of emissions on the intended users of the development to be reduced to an acceptable degree. It would also be contrary to saved policy 17 of the Bournemouth, Dorset and Poole Waste Plan (2006) which restricts development in areas where sensitive development could be adversely affected by the operation of waste facilities.

Character and appearance

30. The Gillingham Landscapes and Open Spaces Assessment Report of November 2003 notes (page 22, paragraph 37) that the town and surrounding countryside have few dramatic or stunning amenity features and for decades it was a pleasant enough rural town in delightful but generally unexceptional agricultural landscape. It notes, as a principal landscape characteristic (page 22, paragraph 38) that countryside comes right up to the town, with Chantry Fields (as the site is colloquially known) the only transition area. But it also notes, in the same paragraph, that the rivers are generally not accessible within the town, with human activities turned away from them, an observation also made on paragraph 2 of page 63. This concurs with my own observations made on site.
31. Likewise, although the Gillingham Town Design statement published June 2012 emphasises the role of the river corridors contributing to the "countryside feel"

of the town and even penetrating to its heart, it is noticeable that, despite the continued existence of Town Mead in the centre of the town, from the bridge in the High Street over Shreen Water the view south which would once have encompassed the site is now blocked by a supermarket development. The town's relationship with its countryside has already been compromised and is now restricted largely to the narrower flood channels of the rivers. Indeed the Gillingham Landscapes and Open Spaces Assessment Report notes as a characteristic of the town (page 22, paragraph 38) that new developments extend tight to the river floodplains.

32. The site has no special landscape designation. There is no suggestion that development of the site would lead to the loss of any rare or valuable landscape characteristic or would compromise the integrity of the National Character Area or either of the two landscape character areas defined in the North Dorset District Landscape Character Assessment in which it sits. Although there would be some reduction in the extent of recreational footpaths in the countryside, there would be no identified landscape implication or loss of a valued landscape.
33. A tree preservation order covers the site but, as the appellant's planning statement points out, a Tree Survey and Protection Plan which has been commissioned from an arboricultural consultant can be incorporated into the overall layout of the development at reserved matters stage. Nobody argues that the preservation of trees would make the site incapable of development. I concur.
34. Because the site is outside the settlement boundaries for Gillingham defined in the North Dorset Local Plan, it is regarded as countryside for planning purposes and indeed, has the appearance of pasture. Its development would change that appearance. Nevertheless, approximately one hectare of it continues to be safeguarded for the development of a central community hall for Gillingham (in policy GH21 retained in the newly adopted North Dorset Local Plan), so the designation as countryside would not appear to be an absolute bar to its urban development.
35. A second characteristic of the site, less concerned with its appearance, is its close proximity to all the facilities of the town centre. It lies directly opposite the town's two main supermarkets, library and museum and is within walking distance of all the other facilities of the town including primary and secondary schools, doctor's surgery, leisure centre, railway station and bus services. It is a highly accessible location from which most day to day activities can be reached on foot, thus minimising the need to travel.
36. For all the above reasons, I am not convinced that the change from an agricultural character and appearance to an urban character and appearance would be seriously harmful, so long as open space is retained along the river floodplain. Although the proposal would contravene Local Plan policies 2 and 20 which seek to prevent development in the countryside and are consistent with the fifth bullet of paragraph 17 of the National Planning Policy Framework (the Framework), the council's own plan countenances its development in part. Moreover, the proposal would capitalise on the site's highly accessible location in accordance with paragraph 34 and the 11th bullet of paragraph 17 of the Framework.

Local infrastructure

37. There are two elements to this consideration. One is the extent to which the proposal would place demands on, or help to supply deficiencies in, local infrastructure. The second is whether it would place any constraints on the expansion of the Gillingham Sewage Treatment Works which is known to be necessary to support the planned expansion of the town.
38. During the Inquiry a section 106 agreement was presented in draft. A signed and sealed copy was received, by arrangement, after the sitting of the Inquiry. It provides for 25% of the number of residential units to be provided as Affordable Housing, a Sustainable Drainage Scheme (SuDS), a Biodiversity Mitigation Area alongside the River Stour, the railway embankment and the north-eastern boundary of the Sewage Treatment Works with the potential for its use as informal Public Open Space and its transfer to the Council (with a commuted payment for future maintenance), a Local Area of Play (LAP) and a Local Equipped Area of Play (LEAP) and for the payment of commuted sums of money towards their future maintenance and for a Travel Plan. It provides financial contributions proportional to the eventual number of residential units as follows
- £1,475.75 per unit towards the provision of community hall facilities in Gillingham
 - £6,094.00 per unit of two bedrooms or larger towards additional outdoor sports provision at Gillingham School and/or a one classroom extension to St Mary the Virgin Primary School or to the provision of a new one-form entry primary school to the east of Shaftesbury Road.
 - £988.00 per unit towards improvements at Hardings Lane Recreation Ground
 - £478.64 per unit towards the support or enhancement of existing outdoor sports pitches in the Hardings Lane area
 - £241.00 per unit towards improvements to Gillingham Library
39. There is no suggestion that these provisions are anything other than necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. Nor is there any suggestion that the financial contributions would be pooled with contributions from more than four other contributing developments. I am therefore content that these provisions would comply with CIL regulations 122 and 123 and may be taken into account as mitigations or benefits resulting from the proposal.
40. The second element of this consideration is the obverse of the question considered earlier whether the site is an appropriate location for development in terms of the effects of its air quality on the living conditions of potential future occupants. I have found above that development of the site would be an inappropriate location for development in terms of the effects of its air quality on the living conditions of potential future occupants. It follows that, were the site to be developed, there would be a likelihood of complaints about the operation of the Gillingham Sewage Treatment Works and also objections to its expansion. These complaints would place a constraint on the operation and expansion of the Sewage Treatment Works.

41. I conclude that although the development would have an acceptable effect on local infrastructure in general, it would place constraints on the operation and expansion of the Gillingham Sewage Treatment Works which is necessary for the planned expansion of the town. Although the development would comply with policy 14 of the North Dorset Local Plan 2011-2026 which seeks to ensure the provision of social infrastructure, it would be contrary to saved policy 17 of the Bournemouth, Dorset and Poole Waste Plan (2006) which restricts development in areas where sensitive development could be adversely affected by the operation of waste facilities.

Housing and affordable housing

42. The very recently examined and adopted North Dorset Local Plan 2011-2026 sets a housing requirement for the District of 285 dwellings per year. It also requires a review, starting almost immediately, because that requirement is based on an Objectively Assessed Need (OAN) of 280 (adjusted to 285 to allow for second homes and other factors) derived from the 2012 Strategic Housing Market Assessment (SHMA), whereas just before the conclusion of the Local Plan's examination a new 2015 SHMA established an OAN of 330.

43. The examining Inspector nevertheless found the plan, setting a housing requirement of 285 dwellings per year, sound for a variety of reasons set out in his report. Besides the commitment to an early review, these include considerations that the policies in the plan are for a minimum, not a maximum, of housing numbers, that the Council's housing trajectory forecasts a delivery of 412 dwellings per annum for the first five years of the plan, well in excess of OAN on either basis and that there was a high level of housing delivery achieved in the previous plan period.

44. Notwithstanding the appellant's stated intention of challenging the adoption of the plan, it is not for me to revisit its examination. I simply note, as a matter of fact, that it sets a housing requirement of a minimum of 285 dwellings per year and that, irrespective of the Council's ability to demonstrate a five-year supply of deliverable housing sites against this requirement, the requirement for a review indicates that the policy may already be out of date.

45. A considerable number of appeal decisions were submitted in evidence, giving weight to the supply of housing which reflect the evidence and circumstances of each case. What matters more, in the context of this appeal, is the contribution which the proposal would make to boosting significantly the supply of housing in the relevant housing market area in general and in Gillingham in particular. As the appellant's witness confirmed in cross-examination, the appellant's case for the present proposal is timing, that is; infilling the supply of housing development before the Council's Strategic Urban Extension (SUE) comes on stream.

46. The appellant submits information to suggest that, if the appeal were allowed, a detailed proposal for about 120 units would be put forward. The current appeal is in outline but with an agreed s106 obligation in place, so time would not be needed to negotiate that but would be needed to submit and secure approval of detailed matters. The appellant indicates that, if permission were given, the site would be sold to a developer or developers, so time would also be taken in that transaction and is likely to have to precede the eventual developers' natural desire to submit their own reserved matters. Delivery of the proposed housing could not be immediate. Nevertheless it is reasonable to

- assume that, if permission were given, the site could deliver its 120 dwellings within the next five years.
47. As agreed by the appellant's witness in giving his evidence in chief, the main difference between the parties in terms of housing supply concerns sites identified through the SHLAA, not having planning permission. Other differences relate to the accounting of windfalls and other adjustments.
 48. As far as these latter are concerned, they explain about one-third of the difference between the parties. Because the adjustments resulting from the effects of the General Permitted Development Order are based on historic data, I accept that they are probably reliable. And although I can understand the appellant's argument that the SHLAA process should flush out windfall sites so that they become identified ones, there is no evidence to demonstrate that this is a fully effective process and so I accept that the Council's residual low figure is plausible.
 49. The larger difference between the parties concerns the sites identified through the SHLAA. As the Council's witness accepted in cross-examination, the Council does not have a systematic approach to estimating take-up rates, lead-in times, delivery rates and suchlike on sites without planning permission. It does not base its assessment of the effects of those matters by reference to a track record of past experience but relies on individual, site by site conversations with each developer or landowner.
 50. The reliability of the Council's assessments may be judged by its track record. In May 2015 it submitted, as part of its responses to the Local Plan examining Inspector's requests, a table giving a breakdown of its housing trajectory. This was submitted to me as Inquiry document 9F. In December 2015 it produced an update of that breakdown in the form of the last page of Appendix 17 of Mr Woods's proof of evidence.
 51. Comparison of these documents shows that the expected outcome for North Dorset as a whole for the five-year period 2015/16 to 2019/20 changed from 2081 to 2333 (largely through the addition of a windfall allowance of 40 per annum) but the distribution of the outcome moved towards the latter end of the five-year period. In the earlier assessment the trajectory was 280 (13.5%), 380 (18.3%), 476 (22.9%), 510 (24.5%) and 435 (20.9%). In the later assessment, the trajectory is 239 (10.2%), 346 (14.8%), 544 (23.3%), 563 (24.1%) and 641 (27.5%).
 52. For Gillingham alone, the number for the five-year period changes from 492 to 529 (largely through the addition of infill sites and greenfield sites) but the distribution changes from a trajectory of 30 (6.1%), 52 (10.6%), 157 (31.9%), 130 (26.4%) and 123 (25%) to a trajectory of 14 (2.6%), 21 (4%), 151 (28.5%), 165 (31.2%) and 178 (33.6%).
 53. What is evident from this is that the trajectory is not only very much back-loaded but that in the space of seven months the council has had to revise its expectations backwards to a considerable degree, losing over half its expected number of completions in Gillingham for the first two years of the five-year period and (discounting the windfall allowance included in the second assessment but not the first) about 25% of its expected completions for the first two years in the District overall. Although no five-year housing land supply assessment can ever be fully robust in the face of changes over time,

- this track record does not give confidence in the reliability of the Council's assessments.
54. Although the Council does not have an officer fully dedicated to resolving the obstacles in the way of housing delivery, as some Councils do, it would be too pessimistic to take the view that all the remaining sites of disagreement between the parties would fail to deliver within the five-year period. There is no compelling evidence to side with one party or the other, so all I can conclude is that there is presently an identified five-year housing supply for North Dorset of between approximately 1500 and 2,200 dwellings.
55. Put another way, in relation to the defined housing requirement of 285 dwellings per annum there is between approximately five and a quarter and seven and three quarter years' identified supply, making no allowance for any buffer or shortfall. In relation to the new OAN (which is not the same as a housing requirement) there is between approximately four and a half and six and two-thirds years' identified supply, again making no allowance for any buffer or shortfall. It is therefore, more likely than not that there is, currently, an identified five-year housing land supply but the fragility of this needs to be recognised in the light of the speed with which the Council has had to revise its expectations into the future. There is however, no significance in the point for this appeal, because I have already noted that the Council's housing land supply policies are out of date.
56. This analysis demonstrates that if allowed this appeal proposal would supply between approximately five and a half and eight percent of North Dorset's housing needs for the next five years (making no allowance for buffer or shortfall). It would put any shortfall of housing supply beyond dispute. That is a measure of its benefit. Because the Council's housing supply policies are stated in terms of a minimum, any contribution to supply is welcome. But, for the reasons set out above, it would do little or nothing to address the demonstrable lack of completions expected within the next two years which is the most marked detracting characteristic of the Council's housing trajectory.
57. Evidence submitted to the Inquiry included a passionate disquisition on the importance of affordable housing. Paragraph 4.11 of the Council's Statement of Case confirms a big need for affordable housing. In cross-examination of the appellant's expert, the Council made it clear that it agreed that affordable housing is an important material consideration; that it agreed with the importance of considering market signals and the affordability of the local housing market in line with the Framework and national Guidance; that it agreed that even where there is a five-year housing land supply, material benefits of a scheme can prevail in its favour and it only disagreed with the timing of meeting unmet needs for affordable housing.
58. In an Affordable Housing Statement of Common Ground produced after the end of the Inquiry sittings, the Council and the appellants asserted their acceptance that the benefits arising from providing affordable housing accords with the sustainable development definition within the Framework and that the provision of much-needed affordable housing to deal with the identified need should be a material consideration attracting at least significant weight in the overall planning balance. I have no reason to disagree.
59. I note that the recently examined and adopted Local Plan is based on the 2012 SHMA which recognises that the affordable housing need across the district

cannot realistically be met¹ and that there is no explicit consideration of whether or not overall housing provision should have been increased in order to achieve a higher number of affordable homes.² However, as noted above, the Council believes it is supplying considerably in excess of overall housing requirements in any event. A viability study recommended varying proportions of affordable housing in different parts of the District; that for land within the settlement boundaries of Gillingham is 25%. The proposal would meet this requirement but no more. The requirement for land outside the settlement boundaries is 40% but the Council has accepted that 25% would be appropriate on this site, if the appeal is allowed. For that reason I give this proposal no more credit than is merited by any housing proposal providing affordable housing in compliance with policy in Gillingham.

Other matters

60. The most significant matter raised by third parties but not by the Council is that of flood risk. Assertions that the site is subject to flooding were backed up with photographs and data from previous flood events. These showed that the highest levels reached in the past three major flood events, at 05.30 on 8 June 2012, at 04.00 on 24 December 2013 and at 14.00 hours on 4 January 2014 were, respectively, 70.187 m Above Ordnance Datum (AOD), 70.191 m AOD and 70.282 AOD. Comparison with the topographical survey provided on page 28 of the appellant's submitted Design and Access Statement shows this to be consistent with the Environment Agency's flood map shown on figure 2 of the appellant's submitted Flood Risk Assessment (FRA). If permission were granted, a condition, as recommended by the Environment Agency, could require that no development take place within this area of the site.
61. The appellant's FRA warns that the Environment Agency's Risk of Flooding from Surface Water map shows overland flow paths of surface water with a chance of flooding of between 1 in 1000 (0.1%) and 1 in 100 (1%) with flood depths of less than 0.3m (about 1 foot). As confirmed by Mr Seaton during the Inquiry, the FRA does not provide a formal risk assessment of the potential of flooding from this source. It does however, advise that local superficial geology (Head Gravels) suggests possible localised groundwater flooding potential, that as part of any Geotechnical Investigation, groundwater levels are to be established in order to ascertain potential risk from groundwater flooding and that mitigation measures are to be developed during the detailed design if required. There is no suggestion that these risks would prevent the possibility of development. If permission were granted, these recommendations could be secured by condition.
62. I have considered other matters raised by third parties, including that of traffic impact, but in view of the Highway Authority's acceptance of the scheme and the lack of any technical evidence to the contrary, none of these additional matters direct the outcome of my decision.

Conclusions

63. The appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, as noted

¹ Implicitly, this recognition should be qualified by "through the planning system" since the SHMA goes on to suggest that Councils may wish to look at alternative mechanisms to maximise the delivery of affordable housing. Some of these alternatives were canvassed in my questions put to the appellant's expert.

² North Dorset Local Plan Part 1 Inspector's report December 2015, paragraph 44

- above, the proposal would be contrary to Local Plan policies 2 and 20 which seek to prevent development in the countryside. But, as also noted above, policy GH21 of the North Dorset District-Wide Local Plan (1st revision) adopted 2003 is retained in the newly adopted North Dorset local Plan part 1. This envisages the development of about 1ha of the site for a community hall. There is no suggestion that this proposal would be taken forward and so it is not an objection to the appeal scheme but the continued validity of policy GH21 undermines the force of applying policies 2 and 20 to that part of this site.
64. Because these two policies are undermined in that way in relation to this site, their significance is clearly outweighed by the contribution to housing provision in accordance with Local Plan policy 6 and to affordable housing provision (albeit less than technically required by Local Plan policy 8) on such a highly accessible site close to the centre of Gillingham.
65. However, the merits of the scheme would clearly not outweigh the harm which would be caused by the effects of its air quality on the living conditions of potential future occupants in contravention of policy 25 in the newly adopted North Dorset Local Plan which requires the impact of emissions on the intended users of the development to be reduced to an acceptable degree and of saved policy 17 of the Bournemouth, Dorset and Poole Waste Plan (2006) which restricts development in areas where sensitive development could be adversely affected by the operation of waste facilities. There is no point in trying to meet the need for housing and affordable housing by the development of dwellings which would not provide acceptable living conditions for their occupants.
66. A further material consideration is the presumption in favour of sustainable development set out in paragraph 14 of the Framework. There are three dimensions to sustainable development. These are described in paragraph 7 of the Framework. To a large extent, for the reasons set out in this decision, the proposal would meet these dimensions. The exception is the element of the social role which refers to the creation of a high quality built environment. As noted earlier in this decision, the site is an inappropriate location for development in terms of the effects of its air quality on the living conditions of potential future occupants. It should not therefore be regarded as a sustainable development.
67. Even if that element of sustainable development were overlooked, the advice for decision-taking in paragraph 14 of the Framework is to approve development proposals that accord with the development plan without delay but, as noted above, this proposal would not accord with the development plan in several respects.
68. The appellant argues that policies 2 and 20 are out of date. I express sympathy for this view in an earlier section of this decision. But Local Plan policy 25 and saved Waste Plan policy 17 are not out of date. Moreover Framework paragraph 14 advises that where relevant policies are out of date, planning permission should be granted unless specific policies in the Framework indicate that development should be restricted. The fourth bullet of paragraph 17 of the Framework which sets out the government's core planning principles advises that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. This proposal would not do that and so I dismiss the appeal.

P. W. Clark Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Peter Wadsley, of Counsel	Instructed by the Solicitor to North Dorset District Council
He called	
Dr Michael Bull BSc PhD CEng CSci CEnv FIAQM MIES MICE	Director, Ove Arup & Partners Ltd
Cllr David Walsh	Mayor of Gillingham and County and District Councillor
Anne Kings	Local resident
Mark Sanger	Local resident
Elisabeth Nelson	Local resident
Nick Ireland BA(Hons) MTPI MRTPI	Planning Director, G L Hearn Ltd
Mark Wood BA(Hons) BTP MSc MRTPI MCIT MILT AssocIRTE	Principal, MWA Planning Consultancy

Robert Lennis, Major Projects Officer, North Dorset District Council, spoke in the discussion on conditions

FOR THE APPELLANT:

Christopher Young, of Counsel	Instructed by Nigel Jones RICS
He called	
Paul Ottley BSc(Hons) MIES	Senior Consultant, Odournet UK Ltd
Roland Bolton BSc(Hons) MRTPI	Senior Director and Head of Strategic Planning Research Unit, DLP Planning Ltd
James Stacey BA(Hons) DipTP MRTPI	Director, Tetlow King Planning Ltd
David Seaton BA(Hons) MRTPI	Managing Director, PCL Planning

INTERESTED PERSONS (in order of speaking):

Mike Gosden	Local resident
John Salmon	Local resident
Professor Murray Walker	Local resident
Margaret Porter	Local resident
Michael Waterhouse	Local resident
W H Light	Local resident
Pat Stear	Local resident
Bernard May	Local resident
Ralph Kellythorn	Local resident

Additional DOCUMENTS submitted at Inquiry

- 1 Submission by Mr Wadsley on Appellants amendment of application
- 2 Chronology of events
- 3 Updated Design and Access statement
- 4 Wheatcroft case
- 5 Notification of date, time and place of Inquiry
- 6 Note by Dr Bull
- 7 Table of Windfall Development
- 8 Spreadsheet of completions
- 9 Bundle of seven documents;
 - a) Letter dated 13.1.16 from PCL Planning to N Dorset DC
 - b) E-mail sent 5.1.16 from David seaton to Michelle Peart
 - c) Screenshot of South West Region Housing Completions
 - d) Annotated extract from North Dorset District Council Annual Monitoring Report 2009
 - e) FOI request dated 6.1.16 from PCL Planning to N Dorset DC
 - f) North Dorset local Plan Examination Document MHD008
 - g) Appeal decision APP/A0665/A/14/2224763
- 10 Draft of letter dated 25.1.16 from N Dorset DC to the Planning Inspectorate
- 11 DCLG Housing Statistical Release 12 November 2015 Net Supply of Housing: 2014-14, England (Black and white copy)
- 12 Additional Statement of Common Ground – Five Year housing Supply 2015/16 – 2019/20
- 13 Letter dated 25.1.16 from N Dorset DC to the Planning Inspectorate
- 14 DCLG Housing Statistical Release 12 November 2015 Net Supply of Housing: 2014-14, England (coloured copy)
- 15 Letter dated 4.10.05 calling in applications at Shaftesbury
- 16 Managing Housing Land Supply in Dorset SPD July 2007
- 17 Letter dated 26.1.16 from N Dorset DC to the Planning Inspectorate
- 18 Table of flood levels recorded for 2012, 2013 and 2014
- 19 Plan number 2016/01/27 Rev 1
- 20 Sketch masterplan 130101sk140410 with red hatching annotation
- 21 Model output of extended Gillingham STW with Yeovilton MET data (2014)
- 22 Mr Ottley's Notes of correspondence between Wessex Water and Odournet
- 23 Plans referred to in Mr Ottley's Notes of correspondence between Wessex Water and Odournet
- 24 PCA Consulting Engineers' comments on photographs of flooding.
- 25 Aerial photographs of Gillingham STW, Boscombe Down and Yeovilton MET stations
- 26 Draft s106 agreement
- 27 Copy of Dr Bull's evidence in appeal concerning land at Stoke Road, Leighton Linlade.

Additional DOCUMENTS submitted after Inquiry sittings

- 28 S106 agreement dated 4.2.16
- 29 Affordable Housing Statement of Common Ground