



## Appeal Decision

Inquiry held 21-23 June, 27-30 June, 1 July and 15 July 2022

Site visits made on 27 June and 1 July

**by Mike Worden BA (Hons) DipTP MTRPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 2 September 2022**

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**Appeal Ref: APP/M2270/W/21/3289034**

**Land at Sandown Park, Royal Tunbridge Wells, TN2 4RT, 561147, 141082**

- 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 Cooper Estates Strategic Land Ltd against the decision of Tunbridge Wells Borough Council.
  - The application Ref 20/01506/OUT, dated 2 June 2020, was refused by notice dated 17 June 2021.
  - The development proposed is outline application (Access not reserved) - Development of a care community within Use Class C2 of up to 108 units of accommodation for older persons in need of personal and nursing care; associated communal facilities and services to meet residents' day to day needs and associated facilities for staff; car parking for residents, visitors and staff of the community; associated landscaping and outdoor amenity areas; and associated infrastructure.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The application was made in outline with all matters reserved apart from access. I have considered the appeal on this basis.
3. The Inquiry was held virtually in the first week and in person in the second week. The final day was held virtually.
4. The Friends of Sandown Park were given Rule 6 status and took part in some of the Inquiry sessions.
5. I undertook a visit of the appeal site and its surrounding area on 27 June. I followed an itinerary agreed by all three main parties and was accompanied by their representatives. The site visit included Robingate Wood, Woodsgate Corner, Pembury Road and Pembury Grange. I made an unaccompanied visit to the junction of Blackhurst Lane/Sandown Park/Pembury Road during the morning peak hour on 1 July, at the request of the Rule 6 party. During the Inquiry I also visited the former cinema site in the town centre unaccompanied.
6. Following the close of the Inquiry, the Council provided an update on the status of the planning application for the cinema site and the modification order for the track through the site. I have had regard to this and the comments made in response by the appellant in my decision.

## **Main Issues**

7. The main issues are:

- The extent to which the proposal is consistent with the National Planning Policy Framework and any relevant development plan policies relating to the Green Belt.
- The effect of the proposed development on the character and appearance of the surrounding area with particular regard to the setting of the High Weald Area of Outstanding Natural Beauty
- The effect of the proposed development on the special interest of nearby heritage assets with particular regard to the Royal Tunbridge Wells Conservation Area and the setting of Pembury Grange
- The effect of the proposed development on existing trees and the adjacent Ancient Woodland
- Other considerations to be weighed in the planning balance including the housing land supply position and the need for specialist residential accommodation
- Whether any harm by reason of inappropriateness, and any other harm including effect on the openness of the Green Belt and the purposes of including land within it, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

## **Reasons**

### *Green Belt*

8. The National Planning Policy Framework (the Framework) makes it clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved, except in very special circumstances. The parties agree that the proposal is inappropriate development.
9. The Framework also states that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm arising from the proposal, is clearly outweighed by other considerations.
10. Paragraph 137 of the Framework states that the essential characteristics of Green Belts are their openness and their permanence. The proposal is for a permanent form of development. There is agreement between the parties that the proposal would harm openness, but they differ on the nature and level of that harm.
11. Planning Practice Guidance (PPG) provides advice on the role of Green Belts in the planning system. With regard to openness, it sets out<sup>1</sup> that three factors, but not limited to those three, can be taken into account when assessing openness. These are the spatial and visual aspects of openness, the duration of

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<sup>1</sup> PPG ID: 64-001-20190722

the development and the degree of activity likely to be generated, such as traffic generation.

12. Core Policy 2 of the Tunbridge Wells Core Strategy Development Plan Document 2010 (the Core Strategy) sets out general principles relating to the Green Belt, some of which are not fully consistent with the Framework. However, the policy also states that new development should accord with national planning provisions and in that sense, that part is by definition fully consistent with the Framework and therefore I afford it significant weight.
13. Policy MGB1 of the Tunbridge Wells Local Plan 2006 (the Local Plan) sets out some principles for assessing development in the Green Belt. Parts of it are inconsistent with the Framework, but other parts such as its references to openness are not. Unlike Core Policy 2 it does not make reference to national policy, and I consider it should be afforded limited weight.
14. The appeal site is a greenfield site. It contains no built development other than the small WW2 pill box in the tree belt close to Pembury Grange. The site has the appearance of two open fields, mostly bounded by trees and separated by a tree lined track, known as The Avenue. The appeal site lies between the edge of the Sandown Park estate and the A21. The northern boundary is defined by Blackhurst Lane. The southern boundary is less well defined but partly follows a tree line and is partly open. The Sandown Park development is well screened from the site by a substantial tree belt and the only built development visible close by is the Hamptons, the lodge building to Pembury Grange. This lies just outside of the site. Pembury Grange is also visible through the trees from part of the site.
15. The proposal would introduce around 8000 m<sup>2</sup> of residential accommodation, and around 2485m<sup>2</sup> of communal facilities along with around 142 car parking spaces and internal roads. Whilst the submitted illustrative plan is just that, whatever the detailed design of the proposal will be, it inevitably would introduce significant and permanent built development into an area where there is no built development at present. This would almost certainly also be of a higher density than the adjoining Sandown Park development.
16. The proposal would fill part of the gap between the edge of the built development of the town and the A21. Although only around 23% of the parcel TW5 as defined in the Council's Green Belt Study<sup>2</sup>, it would nevertheless be a significant part of it.
17. This level and nature of development would have a significant impact on the spatial aspect of openness.
18. The parties disagree on the extent of the visual impact of openness.
19. I will come onto consider the impact on character and appearance of the area later. Given the vegetation around the appeal site and its location, I consider that the proposed development would not have a high visual impact on openness too far outside of the appeal site, at least from public viewpoints. From within the site, and from the public viewpoints at the end of Sandown Park and by the Hamptons and on parts of Blackhurst Lane adjacent to appeal site, there would be a strong adverse impact of visual aspects of openness. There would clearly be built form where there is none presently and this would

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<sup>2</sup> CD05.22 Green Belt Study Stage 2 LUC 2017

- be prominent to those who would walk past the site, but particularly those who would walk through the site via The Avenue, irrespective of season.
20. Having regard to the PPG, there would also be an adverse impact on openness as a result of the permanent nature of the proposal and due to the expected levels of activity on the site. Although traffic generation would be relatively low, there would still be activity on the site, where currently there is almost none.
  21. The limiting of the visual aspects of openness to the site, around the access points and immediate areas nearby does not diminish the harm to openness with regard to the internal visual impacts and the spatial aspects. The two dimensions of openness should not be netted off. Overall, I consider that the proposal would have a significant harmful impact on openness.
  22. Paragraph 138 of the Framework sets out the five purposes of Green Belts. Of most relevance to the proposal are purposes a) b) and c). The parties agree that there would be harm to these purposes. Purpose d) is less relevant and purpose e) is not relevant.
  23. In relation to the first purpose, to check the unrestricted sprawl of large built-up areas, the proposal would result in an expansion of the built form of the town outwards towards the A21. The appeal site currently checks this expansion and there is a well-defined and well-treed eastern boundary with the Sandown Park estate.
  24. The proposal would expand the urban area outwards to the east. Whilst the proposal would be well planned and there is no dispute over quality or design and indeed that is not before me in relation to this outline stage, it would nevertheless lead to sprawl. The appeal site serves a valuable role in meeting this purpose and there would be harm caused as a result of the proposal.
  25. The second purpose relates to preventing neighbouring towns from merging into one another. The two towns which are relevant are Tunbridge Wells and Pembury. The latter settlement is not a town, but the parties accept that for the purposes of Green Belt assessment it can be treated as such. The settlement of Pembury is focussed further to the south-west, across the A21. There is a significant part of parcel TW5 which would remain should the appeal site be developed, and I consider that would be sufficient to form a buffer, along with the A21, to act to prevent the merging of Tunbridge Wells and Pembury at that point. Pembury extends northwards along Tonbridge Road and there is a hotel, a garden centre, a permission for built development at Owlsnest, and the Tunbridge Wells Hospital. These are not within any defined settlement boundary of Pembury.
  26. I consider that as a result of the buffers, gaps and the A21 corridor, and the offsetting of the appeal site in relation to the core settlement of Pembury, the harm to this purpose would be more limited but nonetheless there would still be harm.
  27. The third purpose is to assist the countryside from encroachment. The appellant considers the appeal site to be urban fringe land with some characteristics of countryside as it is in agricultural use. The A21 is to the east of the site but I do not consider that this alone would mean that the appeal site, the land between Sandown Park and the A21, should be seen as urban fringe. I consider that the general appearance of the appeal site is of

countryside whereas I would normally expect urban fringe land to have different characteristics. For example, looking back towards the town from the appeal site, there are few signs of urbanising influences. I consider that the proposed development represents encroachment into the countryside and that harm to this purpose would result.

28. The fourth purpose relates to preserving the setting and special character of historic towns. Tunbridge Wells can be considered as an historic town. However, the appeal site is some distance from the historic core of the town and there are more recent developments between the historic core and the appeal site. I consider the appeal site to make a relatively weak contribution to this purpose and I see very limited harm as a result of the proposal.
29. Overall, I consider that the proposed development would have a significant impact on openness. In addition, there would be other Green Belt harm due to the contribution of the appeal site to most of the of the purposes of including land within the Green Belt and harm to them which would result. I consider that these harms add to the significant harm to openness to which substantial weight would need to be given in accordance with paragraph 148 of the Framework.

#### *Character and appearance*

30. The appeal site has no landscape designation. It lies between the edge of the built-up area and the A21 to the east. To the south of the appeal site, fields run down towards a brook and then rise again to the Pembury Road. The area is well wooded with groups of trees and woodland forming an attractive area of land. The woodland which sits alongside the A21 is well established. Part of it next to the appeal site is designated as Ancient Woodland.
31. To the north of the appeal site lies Blackhurst Lane which becomes a dead end by the Hamptons. It has the appearance of a narrow country lane until the houses are reached further to the west. On the other side of Blackhurst Lane is Robingate Wood, a private woodland which has some permitted access on an informal basis. It lies within the High Weald Area of Outstanding Natural Beauty (the AONB), the southern boundary of which locally, is Blackhurst Lane. In accordance with paragraph 176 of the Framework, great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and AONB.
32. The Avenue runs through the site from the end of Sandown Park to meet Blackhurst Lane by the Hamptons. The Avenue is currently an unmade path with trees either side. It has the appearance of an attractive country footpath. The two fields which form the bulk of the appeal site and lie either side of the track, have the appearance of countryside.
33. The track is well used as I could see from my site visit. It links to Robingate Wood, Blackhurst Lane and over the A21 via a footbridge and from my observations people were using these links on their walks. There is quite a distinct and sudden change in character when walking along Sandown Park with its suburban feel to then encountering open countryside at the western end of the track. This is an essential part of its character.
34. There is no evidence that the route of the track would be closed as part of the proposal and it is not within the ownership of the appellant. It is currently the

subject of a process to make it a defined footpath although the appellant has stated that it will object to the draft order. Nevertheless, it is shown on the illustrative masterplan submitted with the application and if the development were to be allowed, a suggested condition agreed by all three main parties could have been imposed to ensure continued public access.

35. The proposals would introduce built form of up to 108 residential units and supporting infrastructure including roads on to the site. Although the proposals would incorporate a detailed landscaping scheme which would be designed to integrate the development into its context over time, I consider that the proposed development would have a major adverse effect on the character and appearance of the immediate area, particularly as experienced by users of the track. It is not a designated rural lane as set out in the Council's Rural Lanes Supplementary Planning Guidance 1998. Nonetheless, I am sure that its countryside character is appreciated by the many people who walk along it.
36. The boundary of the appeal site to Blackhurst Lane is reasonably well wooded. In summer the trees would screen most of the development although the creation of the emergency access point would open up views of the site which do not exist currently. In winter the impact would be greater and be significant. It would have an adverse impact on the countryside lane character of this part of Blackhurst Lane.
37. Robingate Wood lies in the AONB. It is not disputed that the appeal site forms part of the setting of the AONB at this point. The AONB extends northwards from Blackhurst Lane through the wood and eastwards across the A21 to include areas of woodland north of Pembury. Robingate Wood is reasonably dense in character, but this would be less so in winter, and the proposed development would be likely to be visible and detract from the visual character of the AONB at this point. The proposed development would border the AONB on Blackhurst Lane and be harmful to the setting of the AONB. I consider that the adverse impact of the proposal on this part of the AONB would be moderate.
38. From the footbridge over the A21 I consider that the impact of the proposed development would be minor given the existing vegetation and the embankment. I consider that impact from the A21 itself would be negligible and in any case since there is no footpath alongside the highway, it would only really be seen by occupants of vehicles passing along this road to which the national speed limit applies.
39. I consider that the views of the proposed development from the A264 bridge over the A21 would be very limited and would mostly be of glimpses in the distance, even in winter. I consider there would be a negligible adverse impact especially given the presence of significant highway carriageway, infrastructure and vehicular activity at this point.
40. The A264 Pembury Road is a designated Important Landscape Corridor within the Local Plan. The appeal site lies some distance from Pembury Road and the parties are in dispute about whether development would be visible from it. The Council considers that traffic on Pembury Road is visible from the site in winter. On my site visit in summer, it was not, and I do not have the benefit of being

able to undertake a site visit in winter. Pembury Road is well outside of the agreed Zone of Visual Influence<sup>3</sup> (ZVI) for summer.

41. The winter ZVI extends to cover a short section of Pembury Road, between viewpoints 12 and 13. There are groups of trees and landform changes in the distance between that section on Pembury Road and the appeal site. The layout, heights and form of the proposed buildings and landscaping and lighting, are not yet known as this is an outline application and these matters would be within the control of the Council through the imposition of suitable conditions if the appeal was allowed.
42. Based upon this, the undisputed GPS verified wire diagrams<sup>4</sup> submitted by the appellant and my observations from the site visit, I consider that if the proposed development would be visible from Pembury Road, it would only be in winter and would be of part glimpses. I consider that a cyclist or car driver travelling along the road or cycle path would not really notice such views and the pedestrian might only so if looking out towards the appeal site. I therefore consider that there would be no conflict with Policy ENV23 of the Local Plan which seeks to protect Important Landscape Approaches from harm.
43. In the light of my conclusions on the impact of the proposal from Pembury Road, I do not consider that there would be any negative impact on the character and appearance of that part of the AONB south of Pembury Road including the area around Oakley School and the Coach House.
44. The appellant invites me to consider the overall landscape character of the area not just the immediate impact. I have found generally no more than minor adverse impact away from the environs of site and moderate harm to the AONB. However, this does not net off or reduce the major adverse impact within the site itself and some of its immediate vicinity. In reaching this view I have had regard to the Landscape Institute's Technical Guidance Note on Assessing Landscape Value<sup>5</sup> including references to the Inspector's views in the appeal case<sup>6</sup> at Coggleshall but unlike her find that this appeal site does have characteristics of value and importance and that in this case the interactions between people and place (as in relation to track) are important in drawing perceptions of landscape.
45. I consider that a landscaping scheme for the site could make a stronger southern boundary to the appeal site than is present now, but this would not mitigate or reduce any harm to Green Belt that I have found.
46. Overall, I consider that there would be significant harm to the character and appearance of the area as a result. This would be contrary to Policy EN25 (1) of the Local Plan which requires development to have a minimal impact on the landscape character of the locality; Core Policy 4 of the Core Strategy which seeks to protect the Borough's built and natural environments including its urban and rural landscapes and the AONB; and Core Policy 9 of the Core Strategy which seeks to ensure amongst other things, that development in Royal Tunbridge Wells conserves and enhances the landscape including the AONB. I find that each of these policies are broadly consistent with the

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<sup>3</sup> CD10.01 Statement of Common Ground May 2022 - Appendix

<sup>4</sup> CD07 11.02.03 Appendix to Mark Gibbins Proof of Evidence

<sup>5</sup> CD 05.26 The Landscape Institute technical guidance note on assessing landscape value

<sup>6</sup> APP/Z1510/W/16/3160474

Framework in their relevance to this proposal and should be afforded significant weight.

47. I have had regard to the purpose of the High Weald AONB under Section 85 of the Countryside and Rights of Way Act in coming to this view.
48. Although it is listed on the decision notice, I do not find that the proposal would be contrary to Policy EN1 of the Local Plan which sets out general development criteria and would be more relevant to the consideration of a detailed, rather than outline, proposal.

#### *Heritage*

49. The parties agree that there would be no harm to the significance of the non-designated asset the WW2 pill box, and after visiting the feature, I agree.
50. The Royal Tunbridge Wells Conservation Area (the Conservation Area) lies along the Pembury Road corridor and into the town centre. It has an arcadian character and its significance is strongly related to its main entrance route to Tunbridge Wells. The appeal site lies some distance outside of the Conservation Area but is within its setting. I have already found that views of the proposed development from Pembury Road would tend to be of glimpses and these would be limited from a short stretch and be seasonal. I consider that such limited glimpses would not represent a visual change to the appreciation of the Conservation Area. For these reasons, I consider that there would be no harm to the significance of the Conservation Area.
51. The appeal site is part of the setting of Pembury Grange. The two main parties agree that there would be less than substantial harm to the significance of Pembury Grange as a result of the proposal. They differ on the extent of that harm.
52. Pembury Grange dates from around 1869 and was built as a mansion within the Calverley Estate. It has since been converted into individual residences and apartments. There have been some new residential properties built on its sides away from the appeal site. Many of the prominent rooms of Pembury Grange face in the direction of the appeal site. The appeal site would have formed part of the parkland which Pembury Grange would have, and still does, overlook.
53. Whilst I have not been able to visit the site in winter, photographs<sup>7</sup> taken in winter and submitted by the Council clearly show Pembury Grange visible through the trees from the appeal site. These are supported by Mr Hood's photographs<sup>8</sup> taken from within Pembury Grange looking towards the appeal site.
54. I have already found that the proposal would have a harmful effect on the character and appearance of the Avenue. It would permanently sever the open link and spatial association between the lodge (the Hamptons) and Pembury Grange and effectively break the lodge-avenue-house sequence which is the historical character of approach. This would be harmful to the setting of Pembury Grange.

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<sup>7</sup> CD 08.13 Proof of Evidence of Debbie Salter Figure 2

<sup>8</sup> CD 09.11 Proof of Evidence of Charles Hood Appendix 10



55. Whilst suburbanisation has occurred on the Sandown Park side of Pembury Grange, it has not on the appeal site side. I also consider that the proposed development would reduce the opportunities to understand and appreciate the historic extent of the Pembury Grange estate.
56. For the reasons set out above I consider that the proposed development would lead to harm at the higher end of less than substantial harm. Paragraph 199 of the Framework states that great weight should be attached to asset's conservation.
57. The proposal would be contrary to Core Policies 4 and 9 of the Core Strategy. It would also be contrary to criterion 5 of Core Policy 14 which seeks relates to development in the villages and the rural areas including the conservation of designated buildings of historic or environmental importance. Although not in a village, the appeal site lies in the countryside and outside of the limits of built development. The Policy is generally consistent with the Framework and affords significant weight.
58. Paragraph 202 of the Framework states that proposed development which would lead to less than substantial harm to a designated heritage asset should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. I will turn to this when I come on to this when I consider the planning balance.

#### *Trees*

59. During the Inquiry the parties reached agreement that there would be no harm to the significance of the Ancient Woodland between the appeal site and the A21 if an agreed condition was imposed which would define a buffer and its appropriate protection and management. I agree with the parties on this.
60. The woodland in the western part of the appeal site is covered by a TPO and this includes the trees that run alongside the Avenue. Two horse chestnut trees on the track, T4 and T5, are proposed to remain but the Council is concerned that short- and long-term pressure on these trees may lead to their removal or loss. They are valuable trees which contribute to the character of the Avenue.
61. The reason for refusal relating to trees stated that insufficient information had been provided to assess the impact of the proposed development on those trees which make a positive contribution to the visual amenity of the locality. At the round table session on trees, the wording and effectiveness of an appropriate condition relating to the submission of more detailed information was discussed.
62. I consider that if the appeal were to be allowed, such a condition would give the Council sufficient control to protect the two trees during the construction and operational phases. I therefore consider that the proposal would not lead to any harm in respect of trees and would accord with Policies EN1 and EN13 of the Local Plan. Policy EN1 sets out general development criteria and Policy ENV 13 seeks to avoid harm to protected trees. Both policies are broadly consistent with the Framework.
63. I therefore weigh no harm to trees into the planning balance.

## **Other Matters**

### *Highways*

64. The Council did not put forward any reason for refusal on the grounds of highway safety or the operation of the highway network.
65. Local residents have expressed deep held concerns about the impact of the proposal on the highway network, especially at peak times. Skinners Kent Academy also presented evidence against the proposal. However, the expected trip generation rates from the proposed development are very low, amounting to around 19 additional vehicle movements on the morning peak and 22 in the afternoon peak.
66. I observed queuing traffic at the Sandown Park/Blackhurst Lane/Pembury Lane junction during the term time weekday morning peak. My observations tally with the submitted statistical evidence. The traffic queued but moved along Sandown Park and through the junctions. At no point in the morning peak visit did the queue on Sandown Park reach beyond Thornfield Gardens. Morning peak hour traffic movements are very influenced by vehicles dropping off pupils at the Skinners Kent Academy. During the afternoon site visit outside of peak time, the parties could walk along the Sandown Park carriageway such was the lack of vehicular traffic.
67. Clearly the current peak time congestion and fears of potential highway safety issues is a concern for local people, but the evidence does not indicate that there is a record of accidents. I do not consider that proposed development would cause any harm to highway safety or lead to an unacceptable impact on the highway network.
68. I have placed significant weight on the position of the highway authority who raise no objection. The proposal would accord with Paragraph 111 of the Framework which states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. As a result, I do not weigh any harm on highways grounds into the planning balance.

### *Infrastructure*

69. The main parties submitted an executed Section 106 agreement. I am satisfied that should the appeal have been allowed, the planning obligations set out would have provided appropriate mechanisms for mitigating the impact of the proposal on infrastructure. Consequently, there is no harm in relation to infrastructure to weigh into the planning balance. Since I am dismissing the appeal, I do not need to consider the Section 106 further.

### *Renewable Energy*

70. One of the reasons for refusal was the absence of sufficient information submitted to meet the Council's Renewable Energy Supplementary Planning Document. The parties agreed that this matter could be dealt with by condition and since I am dismissing the appeal, I do not need to consider it further.

## 71. Other considerations

### *Need*

72. Paragraph 61 of the Framework requires that the size, type and tenure of housing needs for different groups in the community including older people should be assessed and reflected in planning policies. The glossary defines older people as people over or approaching retirement age.
73. There are three principal areas of need which are in dispute between the parties. These are: population projections; prevalence rates to be applied to projections and the need figures which result; and the supply position.

### Projections

74. There is no standard method for assessing extra care need as there is for general housing need. Both parties have used the 2018 based ONS population projections and there is no significant difference between them on this. The 2014 projections that were used in the Tunbridge Wells Submission Local Plan 2021 (the Submission Local Plan) evidence only produced a difference of 11 units over the plan period.
75. The Planning Practice Guidance for Older and Disabled People (PPG older people) makes reference to online tool kits. It recognises that the need to provide housing for older people is critical and the proportion of older people in the population is increasing. It also states that the health and lifestyles of older people will differ generally, as will their housing needs which can range from accessible and adaptable general needs housing to specialist housing with high levels of care and support.

### Prevalence rates and need figures

76. There is no defined guidance on the use of prevalence rates. The Council argues that a rate of 45/1000 is appropriate and is consistent with evidence supporting its Submission Local Plan and with some appeal decisions<sup>9</sup>. It is also consistent with the HPC needs assessment report<sup>10</sup> for this proposal submitted with the application.
77. The appellant considers that a prevalence rate of 40/1000 should apply to the over 75 age group. The appellant states that this is in line with recent appeal decisions<sup>11</sup>. It has adopted the Housing in Later Life (HiLL) toolkit. The appellant's position is that analysis of need should include those between 65 and 74 years of age and that this would add a further 25/1000 to the prevalence rate.
78. There was some discussion at the Inquiry about evidence presented to the Local Plan Examination on prevalence rates, but this is generally not before me and I can only rely upon evidence presented in this Inquiry. My Inspector colleagues may have taken different positions to each other in the appeal cases presented to me. Some of the evidence that they were presented with was unchallenged and in some cases evidence was not given by an expert witness,

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<sup>9</sup> CD6.16 APP/K3605/W/20/3263347 Homebase Elmbridge and CD 6.12 APP/G2245/W/21/3271595 Edenbridge Sevenoaks

<sup>10</sup> CD02/05 HPC Needs Assessment Sandown Park February 2020 p14

<sup>11</sup> CD6/11 APP/W0530/W/21/3280395 Stapleford and CD 6.14 APP/F0114/W/21/3268794 Bath

both of which are not the case here. The Inspector in the Homebase appeal<sup>12</sup> in Walton on Thames still used a prevalence figure of 45/1000, recognising that the need figures for the 65-74 age group were uncertain. In the Edenbridge decision<sup>13</sup> the Inspector considered that the overall need figure should be adjusted to take account of this cohort but could not quantify it and stated that she could not reach a definitive conclusion on overall need.

79. The Amber Valley report submitted by the appellant sets out<sup>14</sup> a number of different prevalence rates used different models. One of those, the Housing LIN toolkit recognises that working out what provision should be is a matter for local determination<sup>15</sup>. Both parties agree on a 40/1000 - 45/1000 range for the over 75 age group should be the starting point but differ on how that figure should be developed taking account of other need evidence.
80. Taking into account that the current figure in the borough is around 16/1000 for the over 75 year age group and that the figure proposed by the Council is around three times that level; the uncertainties as to how the 65-74 age group should be accounted for; the better than average health profiles in the borough; and the different approaches used in cases presented to me, I consider that a prevalence figure of 45/1000 is not an inappropriate or unreasonable rate to use in this case.
81. I also consider that the local authority boundary catchment approach put forward by the Council is appropriate. It accords with work being undertaken to support the Submission Local Plan and means that the impact of existing and emerging planning policies on potential provision can more easily be considered. I agree with the appellant that once selected, the local authority boundary approach should be strictly adhered to, and that the Little Mount Farm site in neighbouring Wealden District should not be brought into consideration.
82. The appellant considers that the net need for private extra care would be 337 units in 2025 increasing to 408 units by 2038<sup>16</sup>. The Council's figures are set out differently and are gross. Under the Council's Scenario A approach<sup>17</sup>, the gross need for market extra care housing would be around 173 in 2026 and 280 in 2038. This is also set out in the Council's Housing Needs Topic Paper (the HNTTP) prepared for the Submission Local Plan which refers to the use of the SHOP@ model projections.
83. The HNTTP also refers to modelling by Kent County Council but those figures have to be adjusted as a result of errors. The Kent County Council figures are lower than those which the Council refer to. In the Council's Scenario B<sup>18</sup> approach based on an adjusted prevalence rate of 40/1000 cross tenure, the figures for market extra care would be 195 by 2026 and 363 by 2038.

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<sup>12</sup> CD6.16 APP/K3605/W/20/3263347 Homebase Elmbridge

<sup>13</sup> CD 6.12 APP/G2245/W/21/3271595 Edenbridge Sevenoaks

<sup>14</sup> CD 7.10.02 Table 10.11 in Amber Valley Icenci report in Appendix to Jessamy Venables PofE

<sup>15</sup> CD 7.10.02 Page 42 of the Housing LIN toolkit, in Appendix I to Jessamy Venables PofE

<sup>16</sup> ID 14 Appellant's closing submission paras 162 and 163 and paras 178 and 179

<sup>17</sup> CD 08.10 Table 4.30 of Appendices of Nick Ireland Proof of Evidence

<sup>18</sup> CD 08.10 Table 4.32 of Appendices of Nick Ireland Proof of Evidence

## Supply

84. There is agreement that there are currently around 183 extra care units in the borough. 121 of these units are private. There is agreement too on the pipeline schemes at the Arriva Bus Depot which is under construction and will deliver 89 units and St Michaels which will deliver 72 units but which is not within the five year supply as Listed Building Consent is required. All of these will be private units. The appellant's need figures are net of these.
85. Other sites which could contribute to supply are in dispute. These are the two strategic sites at Paddock Wood and Tudeley Village and the Submission Local Plan allocation (PE6) at Woodsgate Corner Pembury. In addition, the potential contribution of the former Cinema Site in Tunbridge Wells town centre is in dispute.
86. The Submission Local Plan policies for the strategic site allocations require at least one sheltered scheme and one extra care scheme to be provided on each site. There are unresolved objections to those allocations. The Council is in active discussion with the site promoters for both sites. I have no reason to doubt that the extra care element of both schemes would not be delivered post the adoption of the Submission Local Plan should those sites be confirmed as allocations, albeit that they would be outside of the five-year period and the quantum is yet undefined.
87. The Submission Local Plan includes an allocation at Woodsgate Corner in Pembury. It lies to the south east and across the A21 from the appeal site. It lies in the AONB. It is allocated in the Submission Local Plan for either extra care of up to 80 units or residential care of up to 120 units, or a combination of the two.
88. During the Submission Local Plan examination, Natural England raised concerns about some sites, but the regulation 19 letter of June 2021<sup>19</sup> setting out these concerns does not refer to the Woodsgate Corner site. The Council maintains that Natural England do not see the proposal on this site being major development in the AONB. I have no demonstrable evidence to indicate otherwise.
89. The parties disagree on the likelihood of whether the Woodsgate Corner site would come forward for extra care or for affordable care provision, and the attractiveness of it for an extra care facility operator. It is unquestionable that the site is not as visually as attractive as the appeal site but appears to be well served by public transport and is adjacent to a major supermarket. I have no evidence which would indicate that either use is more likely, and in any case if the allocation is confirmed as proposed it would mean that it had been found sound for an extra care facility following a local plan examination.
90. The Submission Local Plan examination is ongoing and the site or the policy relating to it may not be confirmed. Nevertheless, the plan has some weight given the stage that it has reached. I consider that the Woodsgate Corner site should therefore be capable of being counted towards supply in the plan period.
91. The cinema site is located in Tunbridge Wells town centre. It has a long and complex history and has been vacant for some time. The site is cleared and is

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<sup>19</sup> ID9 – Letter from Natural England Regulation 19 – June 2021

boarded. It has been derelict for around 20 years and previous planning approvals for redevelopment have not been delivered.

92. At the Inquiry the Council referred to a new planning application which was due to be submitted and, as part of a mixed-use scheme, would propose around 165 units of extra care provision. This application has now been submitted.
93. Clearly the site presents challenges to bringing development to fruition, including the underground railway tunnel. The site is prominent, and it is possible that proposals for its redevelopment may be subject to local opposition. Nevertheless, given the evidence of the Council's planning witness to the Inquiry, who has been involved in pre-application discussions, and the commitment of the Council at senior level to bring forward the regeneration of this high-profile site, I would expect that there would be likely to be workable solutions to those challenges. The application may not of course receive planning approval and the scheme does not fall within the definition of deliverable as set out in the Framework. Nevertheless, I consider that there is a reasonable prospect of the site being able to contribute to supply in the five-to-ten-year period.
94. It is entirely possible that windfall sites may come forward and such sites have contributed towards supply in the recent past. The Council states that over the last five years windfall sites have delivered around 125 units for extra care. Although the actual historic numbers are disputed, windfalls will have a part to play in contributing to supply. Policy H6 of the Submission Local Plan which seeks to secure housing to meet the needs of older and disabled people supports suitable specialised schemes on appropriate windfall sites. In addition, there are also other ways to meet need other than extra care and sets some of those out including adaptations and securing older persons housing as part of residential development proposals, as set out in Policy H6. I give some weight to this Policy as it provides an indication of how the Council seek to support the provision of older persons accommodation during the plan period.

#### Conclusion on need

95. It is clear that local authorities need to plan for the needs of older people and that these needs are becoming more critical as the number of older people in the population increases. Extra care provision is one form of accommodation for older people. The private type of extra care provision, as proposed in this scheme, is one type of accommodation which can help to meet need.
96. I consider that the Council's position on prevalence rates is more convincing than that put forward by the appellant, for the reasons I have set out above. I therefore consider the consequential need figures advanced by the Council more appropriate.
97. I consider that it is reasonable to assume that there is a prospect that provision for extra care will be delivered on the two strategic sites, and on Woodgate Corner and the old cinema site. These would more likely deliver in the plan period rather than in the next five years. It is also appropriate that some contribution will be made from windfall sites. I will consider the need and supply issue further in the planning balance.

### *Benefits*

98. The scheme would deliver a number of benefits agreed by the parties. The weight attached to each is in dispute.
99. The scheme would contribute towards meeting the borough's unmet housing land supply and the need for specialist accommodation. I attach significant weight to these.
100. Given the nature of the proposed scheme, there is the potential that larger homes in the borough which may be under occupied could be released for other households. I attach moderate weight to this benefit.
101. There would be some benefits to having health and wellbeing facilities on site but these would primarily be for residents of the scheme. Nonetheless, these facilities on site would no doubt help with the mental and physical wellbeing of those residents and would reduce the need to travel for them off site. Although the Council produced a letter from the NHS which seemed to suggest that the scheme would put added pressure on local health services, I would expect it to be the reverse and I heard nothing in evidence to dissuade me. I therefore attach significant weight to this benefit.
102. There would be some economic benefits in terms of the scheme creating new jobs in both construction and in the operation of the facility. It is agreed that the operational jobs connected to the development would be around 50-60, some of which would be part time. The actual proposed FTE numbers were not explained in evidence. Taking account of the prevailing levels of unemployment levels in the area and having regard to my Inspector colleague's decision<sup>20</sup> presented to me, I attach moderate weight to this benefit.
103. There would be a biodiversity gain which at around 21% would be in excess of policy requirements and would be a significant benefit. I do not attach any particular or additional weight to the proposed buffer between the development and the Ancient Woodland. It does not add to the significant weight that I attach to the biodiversity gain benefit.

### **Planning Balance**

104. I have found that the proposal would lead to significant harm to the openness of the Green Belt and to harms relating to the purposes of the Green Belt. Paragraph 147 of the Framework states that inappropriate development should not be approved except in very special circumstances. Paragraph 148 requires substantial weight to be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm arising from the proposal, is clearly outweighed by other considerations.
105. I have found that the proposal would have a major adverse impact on the character and appearance of the area and moderate harm to the setting of the AONB. Overall, there would be significant harm to the character and appearance of the area. I have also found that there would be less than substantial harm, but at its higher end, to the designated heritage asset of Pembury Grange.

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<sup>20</sup> CD6.17 APP/M0655/W/20/3256101 Rixton, Warrington

106. The proposal would deliver a number of benefits. Some of these would attract significant weight. The proposal would also deliver new housing in an area where the Council cannot demonstrate a five year supply of deliverable housing land. This has been the position for some time, although the extent of the shortfall is not great. The potential of the proposal to help address this shortfall would afford significant weight.
107. There is clearly a need, and an increasing need, for older persons accommodation in Tunbridge Wells. The scheme would contribute towards meeting that need through the provision of a quality single centre development supported by health and other facilities. However, there is no commonly agreed methodology and in this case the parties took different approaches to assess need.
108. I consider that there is a reasonable expectation that the Submission Local Plan allocated sites at Woodsgate Corner and the two strategic sites will deliver extra care housing within the local plan period. I also consider that there is a reasonable prospect that the cinema site will too. Whilst each site does not have certainty in the planning process and have other challenges, I think that they should not be discounted. Although not certain for the reasons I have set out, these sites could total around 445 extra care units<sup>21</sup>. The proposed allocations in the Submission Local Plan carry some weight given the stage it has reached.
109. These sites may not deliver within the five-year period and do not accord with the definition of deliverable as set out in the Framework. The planning application which is the subject of this appeal was made in outline, but it was not disputed that the site could be delivering units by 2025. I have weighed that potential early delivery in the balance, but I have also taken into consideration that other sites which I have referred to could be expected to start to deliver in the five-to-ten-year period. Overall, I consider that the sites identified, together with windfalls, would be likely to meet need for extra care housing over the plan period. This reduces the weight I attach to the benefit of the extra care housing which this proposal would provide.
110. Set against these benefits and considerations are the harms to the Green Belt to which substantial weight has to be given and the other harms including significant harm to the character and appearance of the area and less than substantial harm to the designated heritage asset. The Framework requires great weight to be given to conserving and enhancing the scenic beauty in the AONB and to the conservation of a designated heritage asset.
111. I find that the other considerations in this case do not clearly outweigh the totality of harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. Even if the need and supply position was as the appellant argues, this would not outweigh the harm of the proposal.
112. With reference to paragraph 202 of the Framework, I conclude that the less than significant harm to the designated heritage asset of Pembury Grange is not outweighed by the public benefits of the proposal.

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<sup>21</sup> CD 8.10 Proof of Evidence of Nick Ireland from Table 4.25



113. The Council cannot demonstrate a five-year supply of deliverable housing sites. However, the appeal site is in the Green Belt. In accordance with paragraph 11d(i), the application of policies in the Framework that protect areas or assets of particular importance (which include the Green Belt as set out in footnote 7 to the Framework), provide a clear reason for refusing the development proposed. The tilted balance is therefore not invoked.

114. The proposed development is contrary to Policies 2, 4, 9 and 14 of the Core Strategy and MGB1 and EN25 of the Local Plan, all of which carry weight in the decision-making process for the reasons that I have set out.

### **Conclusion**

115. For the reasons given above I conclude that the appeal should be dismissed.

*Mike Worden*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Gregory Jones QC	Instructed by Pro Vision
He called:	
Katherine Miles BA (Hons) MSc MTRPI	Director Pro Vision (Planning)
Mark Gibbins BA (Hons) CMLI	Director Indigo Landscape Architects (Landscape)
Jessamy Venables BSc (Hons) MSc MRICS	Director, Carterwood (Need)
Andrew Blacker MSc MCIHT CMILT	Technical Director WSP (Transport)
Phil Brophy HNDArb MArborA MICFor	Associate Director Barrell Tree Consultancy (Trees)
Edward Hawkins MSc IHBC ACIfA	Associate Director RPS (Heritage)

### FOR THE LOCAL PLANNING AUTHORITY:

Emmaline Lambert LLB (Hons) of Counsel	Instructed by Mid Kent Legal Services
She called:	
Antonia James BSc (Hons), MA, MSc, MRTPI	Principal Planning Officer TWBC (Planning)
Tanya Kirk BSc (Hons), PGDip, CMLI	Director HDA (Landscape and Green Belt)
Nick Ireland BA (Hons) MTPI, MRTPI	Director, Icen Projects (Need)
Jeff Mashburn BSc (Hons) MSc	Consultant (Trees)
Debbie Salter BA (Hons), MA IHBC	Conservation and Design Officer TWBC (Heritage)

### FOR THE RULE 6 PARTY

Noemi Byrd of Counsel	Instructed by the Friends of Sandown Park
She called:	
Charles (Ted) Hood	Friends of Sandown Park
Rob Shorrick	Local resident
Martin Alderman	Local resident
Zoe Baker	Local resident

INTERESTED PARTIES:

Councillor Hugo Pound	TWBC
Councillor Paul Barrington-King	Kent County Council
Councillor Lance Goodship	TWBC
Councillor Bob Backhouse	Southborough Town Council
Stephanie McMahon	Local resident
Les Adey	Local resident
Dr John Pomeroy	Local resident
Stuart Forder	Local resident
Guy Eve	Owner of Robingate Wood
Simon Hicks	Estates Manager, Skinners Kent Academy
Helen Firth	Local resident
Bob Hughes	Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

ID1	Opening Statement – Appellant
ID2	Opening Statement - Council
ID3	Opening Statement – Rule 6 party
ID4	Section 106 agreement
ID 5	Letter submitted by Appellant regarding Local Plan examination
ID6	Attachment to ID5
ID7	Document TWLP/063 of Local Plan examination. Submitted by TWBC
ID 8	Document TWLP/044 of Local Plan examination. Submitted by TWBC
ID 9	Response of Natural England to Local Plan reg 19 consultation June 21
ID 10	Statement of Councillor Hugo Pound
ID 11	Appellant’s response to ID10
ID12	Amended agreed list of suggested conditions
ID 13	Closing Submissions - Council
ID14	Closing Submissions – Appellant
ID 15	Closing Submissions – Rule 6 Party