

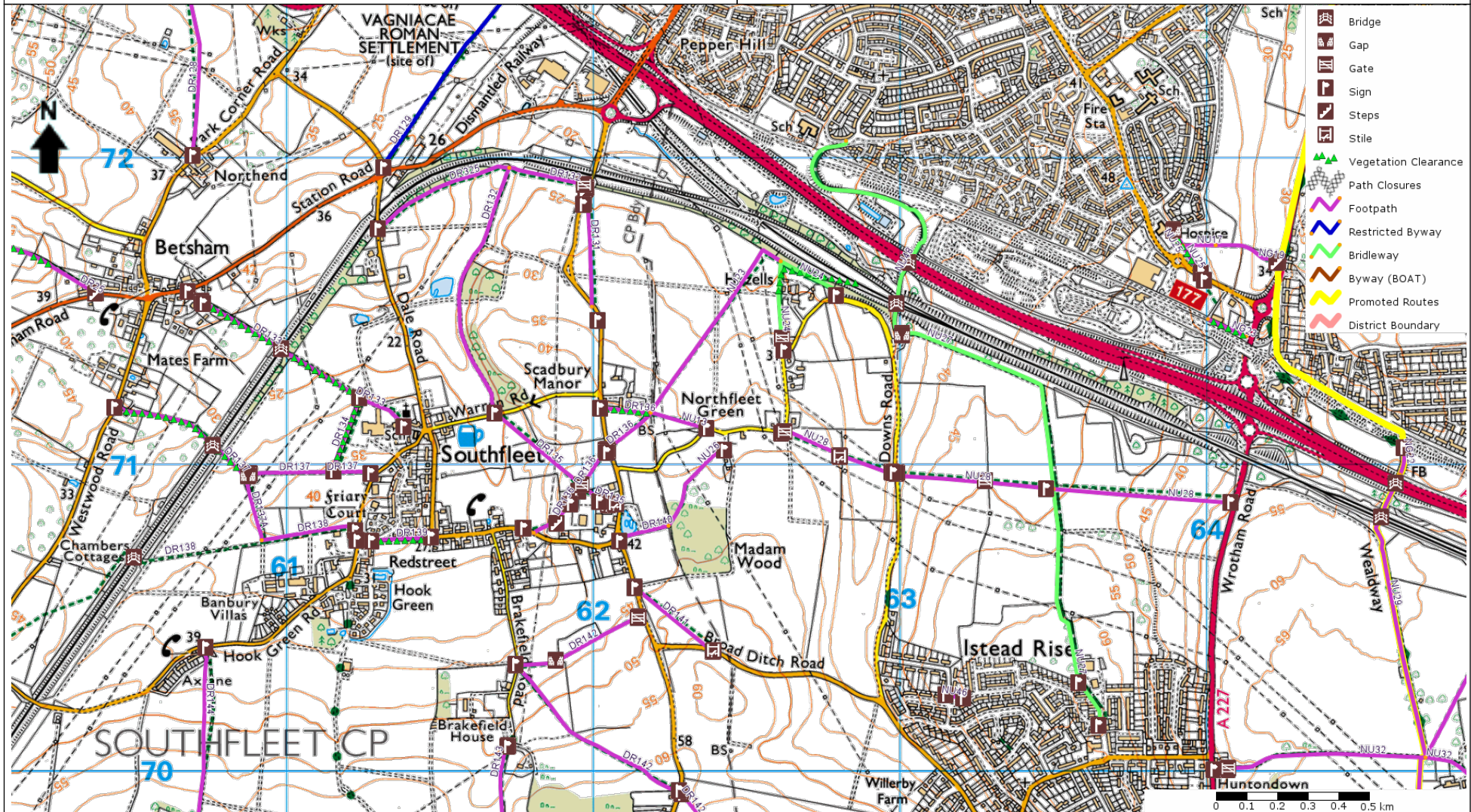
Appendix A

Northfleet Barn

Please note: this map is not the legal record of the alignment, status or existence of a Public Right of Way.

Date created: 21/09/2023

Kent County Council
County Hall
Maidstone
Kent
ME14 1XQ



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Appendix B

Appeal Decision

Site visit made on 15 December 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 March 2021

Appeal Ref: APP/M1710/W/20/3258256

Land at The Spinney, Shalden Green Road, Shalden, Alton GU34 4DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs O'Connell against the decision of East Hampshire District Council.
 - The application Ref 38980/006, dated 10 June 2020, was refused by notice dated 14 August 2020.
 - The development proposed is demolition of an existing agricultural building and a poultry shed, along with a further two poultry sheds, and erection of one 3-bedroom dwelling, together with hard and soft landscaping and associated works.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of an existing agricultural building and a poultry shed, along with a further two poultry sheds, and erection of one 3-bedroom dwelling, together with hard and soft landscaping and associated works at Land at The Spinney, Shalden Green Road, Shalden, Alton GU34 4DT, in accordance with the terms of the application, Ref 38980/006, dated 10 June 2020, subject to the conditions set out in the attached schedule.

Procedural Matter

2. The site address in the heading above is taken from the application form and appeal form, notwithstanding that the address on the decision notice and the planning application drawings refer to the road as "*Shalden Lane*".

Application for costs

3. An application for costs was made by Mr and Mrs O'Connell against East Hampshire District Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the existing barn is a suitable location for a dwelling, having regard to local and national planning policy and all other material considerations.

Reasons

5. The site is located on the east side of Shalden Green Road. It is occupied by a timber barn, which is set back from the road behind dense vegetation and trees. There are also 3 former poultry sheds, which are positioned further back

- into the site. Vehicular access is from Shalden Green Road. The former agricultural use of the site has ceased, and the buildings are currently disused.
6. Abutting the site to the south is a detached dwelling, known as The Spinney, and its large garden. To the east and north are open fields. The road is rural in nature, being narrow, unlit and having no pavements. Its edges are defined by grass verges, mature vegetation and trees. Built development along the road comprises sporadic detached dwellings and farmstead buildings.
 7. The site benefits from 2 extant permissions¹ under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order (2015) (as amended) (the GPDO), which would allow the barn and one of the poultry sheds to be converted into dwellings.
 8. The proposal comprises the replacement of the barn with a detached, single storey, pitched roof dwelling on a similar footprint as the existing building. The poultry sheds would be demolished.
 9. The first step in considering the appeal scheme is the development plan, which comprises the *East Hampshire District Local Plan: Joint Core Strategy* (2014) (JCS) and the Saved Policies of the *East Hampshire District Local Plan: Second Review* (2006) (LPR). The site lies outside of any designated settlement boundary and is therefore considered to be a countryside location for planning policy purposes, where new development is restrained.
 10. JCS Policies CP1, CP2 and CP10 set out the District's spatial strategy. As a general rule this directs new housing to within the designated settlement policy boundaries and allocated sites, and restricts new residential development within the countryside. JCS Policy CP19 and Saved Policy H14 of the LPR set out exceptions to the above.
 11. Policy CP19 states that the only development allowed in the countryside will be that with a genuine and proven need for a countryside location, such as that necessary for farming, forestry, or other rural enterprises. Policy H14 states that outside settlement boundaries, residential development will only be permitted where it is essential to house a full-time worker in agriculture, forestry or other enterprise who must live on the site rather than in a nearby settlement.
 12. The site is not an allocated site, and the appellant has not sought to justify the proposal on the basis of requiring a countryside location. As such, the appeal scheme is clearly in conflict with the above policies.
 13. Section 38 (6) of the Act sets out that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In this instance, the extant permissions to convert the barn and one of the poultry sheds into dwellings constitute a significant material consideration.
 14. Whilst acknowledging that these permissions are a material consideration, the Council's view is that they do not justify approval of a new dwelling in the countryside. The Council considers that they are specific to the barns, and permissible as conversions under permitted development, so that if the barns were to be demolished, as proposed, these permissions would be extinguished.

¹ 38980/004 granted 17 April 2018 and 38980/005 granted 1 June 2020

15. Having regard to the Court of Appeal judgement² relating to fallback positions, I do not concur with the Council's view. Although the prior approval process is separate to the planning application process, this judgement clarifies the principle that, in considering proposals for new development, decision-makers should have regard to the fallback position of lawful development which has a real prospect of taking place in the alternative. The demonstration of a real prospect of a fallback scheme being implemented does not necessarily require a permission or prior approval to have already been secured.
16. In this case, whilst the extant permissions have not been implemented, I find that there is a real possibility of either or both of the prior approval schemes being implemented in the event that this appeal fails. This is evidenced by the existence of the two extant prior approval decisions, and the appellants' stated intention to implement the schemes. I see no reason to take a different view. The implementation of both schemes would result in 2 residential properties on the site. While this should not automatically guarantee planning permission for the appeal scheme, the fallback position is an important material consideration that carries significant weight for the purpose of my decision.
17. The effect of the conflict of the proposal with the development plan and paragraph 79 of the *National Planning Policy Framework 2019* (the Framework) in respect of its location, would be similar to that from the effect of the implementation of either of the prior approval permissions and less than if both extant schemes were carried out. The proposed removal of the buildings which benefit from the extant permission would ensure that the appeal scheme resulted in a reduction in on-site residential units compared with that allowed under the 2 extant permissions.
18. The Council has raised no objection to the design of the replacement building and the impact of the scheme on the character of the area. On the basis of the information before me and my site visit, neither do I. The new building would be sited on the same part of the site as the existing barn, would be of a modest scale and would have a design and materials that would be appropriate to its rural location. The appeal scheme would not result in a significant increase in built development on the site compared to the existing situation and the extant schemes.
19. I do not have full details of the prior approval schemes. However, due to the restricted nature of works to the buildings allowed under the prior approval process, I give some weight to the appellants' assertion that the appeal proposal would enable the provision of a more functional living space for future occupants than that of the extant schemes. It would provide an opportunity for more sustainable construction within the development, including the incorporation of energy efficient features within the design.
20. The proposal would also enable the provision of additional native tree and vegetation planting and associated benefits to biodiversity and landscape screening of the proposal in wider views towards the site.
21. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, having regard to the above, I find that the conflict with the development plan in respect of the location of the

² Michael Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

proposal is outweighed by the reduction in the number of dwellings, and the potential biodiversity, landscaping, living conditions and sustainability benefits arising from the implementation of the proposal instead of the extant permissions. On this basis, I therefore find that the barn is a suitable location for a dwelling.

Conditions

22. I have considered the Council's suggested conditions in accordance with Paragraph 55 of the Framework and the National Planning Practice Guidance. Where necessary, I have modified them. In addition to the standard implementation condition, it is necessary to define the plans for certainty (1, 2). In the interests of the character and appearance of the area, conditions are necessary to ensure appropriate building facing and roofing materials, a landscaping scheme for the site and the removal of some permitted development rights in association with the permitted dwelling (3, 4, 5 and 6).
23. In the interests of highway safety, a condition is necessary to ensure the provision and retention of the approved on-site parking (7).
24. To ensure that the development provides a satisfactory means of drainage, and does not increase flood risk on or off-site, a condition is necessary to ensure the implementation, and subsequent retention of, a scheme of foul and surface water drainage (8). In the interests of sustainable construction, a condition is necessary to ensure that the permitted dwelling incorporates measures that provide energy savings (9).
25. Having regard to the need to avoid non-essential residential development in the countryside, a condition is necessary to ensure the removal of the existing agricultural buildings which benefit from Class Q residential development rights (10).

Conclusion

26. For the above reasons, I therefore conclude that the appeal should be allowed.

S Leonard

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: xx-OBA-OO-ZZ-DR-A:0100 - location & block plan; 0103 - existing site plan; 0104 - proposed site plan; 0200 - existing ground floor plan; 0201 - existing roof plan; 0250 - proposed ground floor plan; 0251 - proposed roof plan; 0400 - existing east elevation; 0401 - existing north elevation; 0402 - existing south elevation; 0403 - existing west elevation; 0450 - proposed west elevation; 0451 - proposed north elevation; 0452 - proposed east elevation; and 0453 - proposed south elevation.
- 3) No development shall take place above slab level until details/samples of all external facing and roofing materials in respect of the development hereby permitted have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved detail/samples.
- 4) No development shall take place above slab level until there shall have been submitted to, and approved in writing by, the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development as defined within Part 1 of Schedule 2, Classes A, B, C and E of that Order, shall be constructed on the site.
- 7) The parking spaces hereby permitted shall be provided before the development hereby permitted is first occupied, and shall be kept available at all times for the parking of motor vehicles by the occupants of the dwelling and their visitors and for no other purpose.
- 8) No development shall commence on site until details of a scheme for foul and surface water drainage has been submitted to, and approved in writing by, the local planning authority. Such details should include provision for all surface water drainage from parking areas and areas of hardstanding to prevent surface water from discharging onto the highway and should be based on site investigation and percolation tests. The development shall be carried out in accordance with the approved details before any part of the development is first occupied and shall be retained thereafter.

- 9) No development shall take place above slab level until a scheme has been submitted to, and agreed in writing by, the local planning authority to demonstrate that the built development hereby permitted incorporates measures that provide energy savings of no less than 10% above Building Regulations in force at the time the development is to be constructed. Before any part of the development is first occupied, a verification report and completion certificate shall be submitted in writing to the local planning authority confirming that the built development hereby permitted has been constructed in accordance with the approved scheme.

The developer shall nominate a competent person for the purpose of assessing and providing the above required report and certificate to confirm that the completed works incorporate such measures as to provide the required energy savings.

The energy saving works set out in the above report shall thereafter be maintained so that the required energy saving is sustained at the certified level for the lifetime of the development.

- 10) Prior to first occupation of the dwelling hereby permitted or the completion of the development, whichever is the sooner, the existing barns on the site which have Class Q residential development rights shall be demolished, the resultant materials cleared from the site, and the land reinstated, in accordance with details which have first been submitted to, and agreed in writing by, the local planning authority.

*****End of Conditions*****

Appendix C



Appeal Decision

Site visit made on 12 January 2022

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 JANUARY 2022

Appeal Ref: APP/M2270/W/21/3275924

Broadlake, Mill Lane, Frittenden, Cranbrook TN17 2DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Clews against the decision of Tunbridge Wells Borough Council.
 - The application Ref 21/00188/FULL, dated 18 January 2021, was refused by notice dated 12 April 2021.
 - The development proposed is to replace the existing barn building with a new barn building to comprise of a 3-bed dwelling with associated car parking and landscaping
-

Decision

1. The appeal is allowed, and planning permission is granted to replace the existing barn building with a new barn building to comprise of a 3-bed dwelling with associated car parking and landscaping at Broadlake, Mill Lane, Frittenden, Cranbrook TN17 2DX in accordance with the terms of the application, Ref 21/00188/FULL, dated 18 January 2021, subject to the conditions set out in the attached Schedule.

Main Issue

2. The main issue is whether the appeal proposal would constitute an acceptable form of development in respect of its location.

Reasons

3. The appeal site lies within a rural area characterised by open fields, landscaping, and occasional buildings. The appeal site comprises a former agricultural Dutch barn served by a part tarmac, part unmade driveway to Mill Lane. It is proposed to demolish the existing barn and erect a new dwelling in the same place as set out in the banner heading above.
4. Both parties are in agreement that the appeal site is situated outside the limits to built development as defined within the Tunbridge Wells Borough Local Plan 2006 (Local Plan) and is therefore in the countryside. Core Policies 6 and 14 of the Tunbridge Wells Core Strategy 2010 (Core Strategy), Policy LBD1 of the Local Plan and paragraphs 9 and 174 of the National Planning Policy Framework (the Framework) prioritise development away from the countryside and acknowledge that development within the countryside should be restrained to, amongst other things, promote sustainable development patterns and protect the intrinsic character and beauty of the countryside.
5. The site does not fall within Previously Developed Land (PDL) and the introduction of a new dwelling, in the countryside located away from services,

weighs against the proposal. However, my attention is drawn to a fallback permission 20/00386/PNQCLA for the conversion of the existing Dutch barn into a dwellinghouse (the fallback permission).

6. In fallback cases, the courts¹ have confirmed that there should be a 'real prospect' of a fallback development being implemented. In this case the fallback permission is for the conversion of the existing barn, within the same location, into a dwelling rather than a new dwelling. I am satisfied that there is a demand for housing given the Council cannot demonstrate a five-year housing land supply, furthermore the fallback permission and the current appeal are both for a residential use in the same location. On this basis, there is no evidence before me that the fallback permission is merely a theoretical possibility. As a consequence, any impacts from the current appeal proposal in respect to a residential use away from services or not falling within PDL would create no greater harm than the fallback permission.
7. The demolition of an existing building produces waste. Such waste would not be produced if the existing building was converted. This weighs against the development proposal. However, the appellant argues a new building would be subject to stricter Building Regulations in respect of sustainable design and construction, whereas existing conversions benefit from a more discretionary approach. The appellant also states that it is easier to incorporate sustainable construction techniques and methodologies within a new build than to retrofit such measures into an existing agricultural building not originally designed or constructed for residential occupation. The Council has not challenged this evidence in their statement. I note Policy EN25 of the Plan and the Framework at paragraph 152 support the reuse of existing resources and some waste may be created from the demolition of the existing building. However, the longer-term benefits which arise from a new building, which is required to fully comply with Building Regulations, outweigh the harm derived from demolition in this instance.
8. It is agreed between the parties that the Council is unable to demonstrate a 5-year housing land supply, and paragraph 11d ii) is therefore engaged. Having had regard to the benefits and the fallback permission set out in paragraphs above, I have found that there are no adverse impacts which would significantly and demonstrably outweigh the benefits. Additionally, a driveway would be required for both the fallback and appeal proposal and while the appeal site extends beyond the location of the proposed dwelling, conditions can be imposed to ensure hard and soft landscaping is submitted for approval to the Council.
9. The Council have referred to Policies EN1, H10 and TP5 of the Local Plan and Core Policies 1, 4 and 5 of the Core Strategy. While I have considered these policies, they do not alter my findings.
10. Given the location, I have found some conflict with Local Plan Policies LBD1 and EN25 of the Local Plan, Core Policies 6 and 14 of the Core Strategy and paragraphs 9, 152 and 174 of the Framework. However, I have found that the appeal before me would be no more harmful than the fallback permission. This is a material consideration which balances the conflict with the development plan and the Framework justifying a grant of planning permission for the proposal. Consequently, I conclude that the appeal should be allowed.

¹ *Mansell v Tonbridge and Malling BC & others* [2017]

Conditions

11. The Council has provided a list of suggested conditions and I have assessed these regarding the advice provided in the Planning Practice Guidance². I have amended the wording of some conditions for clarity. Conditions 1 and 2 are required in the interests of certainty. Conditions 3, 4, 8 and 11 are also necessary to ensure that the development is in keeping with the character and appearance of the area. Condition 5 is necessary in the interests of biodiversity and condition 6 is required to ensure that the development is in keeping with the character and appearance of the area and in the interests of biodiversity. Condition 7 is necessary in respect to avoiding pollution and condition 9 to ensure availability of parking.
12. While not included in the Council's suggested schedule of conditions, the County Council's archaeological adviser recommended a condition on archaeology at application stage. It is apparent from the evidence before me that the site lies within a 16th century farm complex which may have medieval manorial roots with potential for surviving remains associated with the earliest uses of this site. Therefore, in the interests of ensuring that features of archaeological interest are properly examined and recorded, condition 10 is also necessary.

Conclusion

13. For the above reasons, having regard to the development plan as a whole, the approach in the Framework and all other relevant considerations, the appeal is allowed.

N Praine

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan 20/30/100 Revision B; Proposed Site Plan 20/30 201 Revision D; and Proposed Elevations and Plans 20/30/202 Revision C.
- 3) No above-ground development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Once approved the development shall be carried out in accordance with the approved details/ samples.

² Paragraph: 21a-003-20190723

- 4) No above-ground construction work shall take place until the following details have been submitted to and approved in writing by the Local Planning Authority:
 - i) Details of all surfacing materials for areas of hard surfacing;
 - ii) Details of all proposed fencing.Once approved, the development shall be carried out in accordance with the approved details.
- 5) The development shall be carried out in accordance with the recommendations in the submitted Preliminary Ecological Appraisal. Additionally, and prior to the first occupation of the dwelling hereby permitted, a scheme of proposed ecological enhancement works to include a timetable for implementation and how the agreed works will be maintained / retained shall be submitted to and approved in writing by the Local Planning Authority. Once approved the development shall be carried out in accordance with the approved details and retained thereafter.
- 6) Prior to the first occupation of the dwelling hereby permitted, details of any external lighting to be installed shall be submitted to and approved in writing by the Local Planning Authority. External lighting shall be installed and retained thereafter in accordance with the approved details.
- 7) Prior to the first occupation of the dwelling hereby permitted, details of the proposed method of foul sewage treatment shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the development shall be carried out and retained thereafter in accordance with the approved details.
- 8) Prior to the first occupation of the dwelling hereby permitted a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall show any existing trees, hedges and blocks of landscaping on and immediately adjacent to, the site and indicate whether they are to be retained or removed. It shall fully detail all new planting, and shall include a planting specification, a programme of implementation, and a 5-year management plan. Once approved, the development shall be carried out in accordance with the approved details. Any existing trees or hedges retained or planted on site which, within a period of five years from the first occupation of a property, commencement of use or adoption of land, die or become, so seriously damaged or diseased that their long term amenity value has been adversely affected, shall be replaced in the same location during the next planting season (October to February), with plants of an appropriate species and size to mitigate the impact of the loss as agreed in writing by the Local Planning Authority.
- 9) Prior to the first occupation of the dwelling hereby permitted, the area shown on the approved plans as vehicle parking shall be provided. It shall be retained for the use of the occupiers of, and visitors to, Broadlake Farm. No permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this parking provision.

- 10) No excavation shall take place until the appellant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed, and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved by the Local Planning Authority prior to any excavation.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no development shall be carried out within Classes A-E of Part 1 of Schedule 2 of that Order (or any Order revoking and re-enacting that Order), without prior planning permission.