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## Appeal Decision

Site visit made on 2 August 2023

by **John Felgate BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 13<sup>th</sup> September 2023

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**Appeal Ref: APP/V2255/W/22/3306232**

**Land at Cellar Hill, Teynham, Kent**

- 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 Maidfish Limited against the decision of Swale Borough Council.
  - The application Ref 21/505794/FULL, dated 1 November 2021, was refused by notice dated 10 March 2022.
  - The development proposed is "erection of 5 no. dwellings, with associated amenity, landscaping and access".
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### Decision

1. The appeal is dismissed.

### The appeal site

2. For the avoidance of doubt, the appeal site lies on the eastern side of Cellar Hill, between No 27 and Cellar Hill Barn.
3. The site is located on the edge of the settlement of Teynham. It also falls within the boundary of the Parish of Lynstead, but outside the village of that name.

### Planning background and agreed matters

4. The development plan for the area includes the Swale Borough Local Plan (the SBLP), adopted in July 2017. On the Policies Map, the appeal site is located outside the Teynham built-up area boundary, and therefore in the countryside. Policy ST3 sets out the development strategy, based on a 4-tier settlement hierarchy. In all cases, development is expected to be either on allocated sites or on previously developed land within settlement boundaries. In the countryside, development is generally not permitted. In the present case, it is acknowledged by the appellants<sup>1</sup> that the appeal proposal would be contrary to this policy.
5. The National Planning Policy Framework (the NPPF) requires authorities to be able to identify a minimum of five years' worth of sites for housing development. In the present appeal, it is agreed between the parties that the supply in Swale Borough falls below this requirement, at around 4.8 years.

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<sup>1</sup> Appellants' Statement of Case, paragraph 4.2.4

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### **Main issues**

6. In the light of all the written the submissions made, I consider the main issues in the appeal to be as follows:
  - the effects of the proposed development on heritage assets;
  - the effects on highway safety;
  - whether the site is suitably located for access to local facilities;
  - and the development's effects on biodiversity.

### **Reasons for decision**

#### *Impact on heritage assets*

7. The appeal site falls within the Cellar Hill and Greenstreet Conservation Area (the CA). In Cellar Hill itself, this includes a series of thatched and timber-framed houses with 16<sup>th</sup> century or earlier origins, now known as Tudor Cottage, Cellar Hill Cottage, and The Old Thatched Cottage, all of which are listed; together with the elegant 18<sup>th</sup> century Cellar Hill Farmhouse (also known as Waylands), which is also listed. Alongside and between these are a number of attractive unlisted properties including the thatched, 18<sup>th</sup> century Cellar Hill Barn, and the 19<sup>th</sup> century The Burrs and the row of terraced cottages at Nos 4-14 Cellar Hill. Beyond these are further historic buildings, listed and unlisted, around the entrance to Cellar Hill from Greenstreet (also known as London Road).
8. Together, this grouping of historic buildings illustrates the history of the area's settlement pattern, from its origins as a loosely connected string of individual houses, associated with small-scale horticulture and fruit-growing, to larger-scale farming and orchards, and then some rather more intensive development in the railway era. Although now interspersed with some more recent 20<sup>th</sup> century developments of lesser quality, the historic relationship between these older buildings remains evident, as are their obvious aesthetic and visual qualities as examples of the Kentish vernacular. In particular, the survival of so many thatched properties in close proximity is said to be a rarity in this area due to the early adoption of clay tiles. To my mind, the significance of the CA, and of the listed buildings (LBs) in this part of it, is derived from their combined evidential value as to the area's history and from their architectural and visual interest.
9. The present appeal site lies centrally within this part of the CA, with two of the LBs being a short way to the north and two to the south, and the other, non-designated buildings that I have identified likewise distributed in both directions. Given the interrelationships between all of these older buildings, both historical and visual, it seems to me that, in so far as they are now experienced as heritage assets, they are enjoyed primarily as a composite group, rather than as individuals. Part of that experience is therefore in the viewer's progression along the gently curving rural lane of Cellar Hill, much of it between banked verges and hedges, with the sense of a sequence of new views and buildings being revealed at each stage. Although the road becomes slightly more urbanised to the north of the site, at least as far as Tudor cottage, its character remains semi-rural. The appeal site, due to its central position, forms an integral part of this route, and of the overall experience of

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the heritage assets. As such, the site seems to me to lie clearly within the settings of all four of the LBs identified above, as well as within the CA itself.

10. The appeal site comprises former orchard land, which has evidently been disused for many years, and is now largely overgrown. The appearance of the land is not especially attractive, and its previous connection to fruit-growing is no longer obvious in visual terms. Nor does the site offer any through views to connect with the open fields beyond. But nevertheless, as a surviving parcel of undeveloped land, the site does serve as a reminder of an important aspect of the historic settlement pattern, in terms of the wider and more irregular spacing of the buildings, with productive land surrounding them on one or more sides, and extending up to the lane itself. In addition, the unmanaged nature of the vegetation along the site frontage reinforces the distinctively rural character of this part of the lane itself. As a result the site's existing contribution to the character of the CA, and to the settings of the relevant LBs, is a positive one.
11. The development now proposed would involve five new houses, in four buildings. All would be two-storey, with a variety of roof forms, including some with gables and dormers. There would also be a mixture of single, double and triple garages or car barns, mostly placed in front of the dwellings, and all having pitched roofs. Purely in terms of design, the scheme seems to me in many respects exemplary; the individual designs are tasteful and well detailed, and the layout would make for an attractive overall grouping. However, to judge the scheme only in these terms would be to disregard the positive value that the site brings to the CA and LB settings in its existing condition.
12. As now proposed, the houses and garages would appear to fill almost the whole width of the site. The size of the buildings, in relation to the space around them, would be quite large. The paved, shared driveway area would likewise extend across the site's full width. And the space available for any greenery to the front of the site, either new or retained, would be limited in comparison to the size of the buildings and the extent of the hard surfacing, especially with the need for visibility splays. Consequently, notwithstanding the merits of the individual house designs, the effect would be that the whole site would be developed, and its existing open and undeveloped character would be entirely lost; and so too therefore, would be the positive contribution that the site currently makes to the significance of the heritage assets and their settings.
13. I note the suggestion that orchard planting could be carried out in the front part of the site. However, whilst fruit trees could possibly be incorporated into a landscaping scheme, it seems unlikely that this would give the frontage area the character of an orchard. I note also the contention that glimpsed views would be opened up to the new and retained orchard trees in the rear gardens. But this seems rather fanciful, given the narrowness of the gaps between the proposed new buildings, and the likelihood that the rear gardens will in time contain other planting, together with the usual sheds, furniture and play equipment. Consequently, the proposed landscaping scheme would not in my view make up for the loss of the site's openness.
14. The Council has identified the Cellar Hill and Greenstreet CA as one that is 'at risk', due to unsympathetic developments in the past. I note the appellants' contention that this represents an acknowledgement that its quality has diminished. But the area remains designated as a CA, and there is no

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indication that this is likely to change. As far as I am aware, 'at risk' CAs are not excluded from any of the relevant policies or statutory duties<sup>2</sup>. As the appellants point out, none of those policies or duties completely rule out development in CAs, or in LBs' settings. But even so, the NPPF makes it clear at paragraph 189 that heritage assets are an irreplaceable resource, which should be conserved in a manner appropriate to their significance.

15. Having regard to all the above matters, I conclude that the development now proposed would cause harm to the character, appearance and significance of the Cellar Hill and Greenstreet CA, and to the settings of Tudor Cottage, Cellar Hill Cottage, Cellar Hill Farmhouse/Waylands and The Old Thatched Cottage, due to the loss of the site's undeveloped nature, and the visual contribution that the site makes to these heritage assets in that regard. As such, the scheme would conflict with SBLP Policies CP8, DM32 and DM33, which together seek to sustain, preserve and enhance the significance of heritage assets and their settings, and all features that contribute positively to a CA's special character or appearance, including the layout of streets and spaces.
16. In terms of the distinction made in the NPPF between substantial and less than substantial harm, this case falls into the latter category. However, NPPF paragraph 200 makes it clear that any harm of either kind requires clear and convincing justification, and in this case the extent of the harm has not been justified. In so far as the NPPF also requires such harm to be weighed against any public benefits, that is a matter I shall return to later in my decision.

#### *Highway safety*

17. Cellar Hill, for much of its length, is narrow and winding, so that forward visibility is limited. Passing places are infrequent. Cambridge Lane, which continues southwards towards Lynstead, is similar. Both are said to form part of a popular leisure route for walkers, cyclists and horse riders. Whilst there is no evidence of any accident record on either Cellar Hill or Cambridge Lane, care is clearly needed by all users. The Council's concerns about safety are therefore understandable.
18. However, the proposed development would comprise only five properties. The appellants' Transport Statement (the TS) estimates the likely traffic generation as 25 additional vehicle movements per weekday, with only around 2-3 of these in each peak hour, and slightly less than 2 per hour throughout the remainder of the day. At weekends, when leisure users are most likely to be present, the traffic generation would be expected to be even lower than this. I note the Council's reservations about these figures, but the TS's methodology and assumptions have not been challenged, and no alternative technical assessment has been advanced. The Council refers to the potential use of home delivery services, but there is no evidence that these are not accounted for. In the absence of any substantiated counter-evidence, I see no reason to disagree with the appellants' calculations. I accept that there is always a margin for error, but in this case, even in a worst case scenario, it seems likely that the numbers of vehicles involved would still be quite small.
19. Furthermore, it is clear that the traffic movements to and from the proposed development would be split between those turning to the north as they leave the site, and those to the south. It follows that neither the northern nor the

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<sup>2</sup> Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

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southern sections of Cellar Hill, or Cambridge Lane, would take the full number of daily movements generated. For trips to Teynham village, and to the nearest towns of Sittingbourne and Faversham, the most logical choice would appear to be the route to the north of the site. For more distant destinations, traffic could take either direction, but the proximity of the A2 London Road, with access from there to the strategic network, would again be likely to attract many of these other movements to take the northern route from the site, rather than travelling on the rural lanes to the south. Overall therefore, it seems most likely that the majority of all trips generated by the development would be likely to use the northern section of Cellar Hill, where for the most part the road is straighter and wider. On Cellar Hill's southern section and Cambridge Lane, the movements generated would therefore be likely to be less than half the total number.

20. With regard to those that would initially travel north, these journeys would have to pass through Cellar Hill's junction with the A2, and I saw on my visit that traffic on this part of the road can be heavy, especially in the peak hours, and drivers coming from Cellar Hill may therefore have to wait some time for an opportunity to join the main flow. It appears from the details provided by local residents that, over the years, this junction has been the scene of several accidents resulting in injuries, including more than one fatality. Whilst some of these accidents appear to have occurred before the safety improvements carried out by Kent County Council some years ago, others have occurred since then. This record is not to be taken lightly.
21. However, the junction is within the 30mph speed limit, and it is not disputed that the visibility available in both directions meets the standards for this class and speed of road, as set out in Manual for Streets. Although there is a brow to the west, towards the village centre, this seems to me to be far enough away to allow sufficient time and slowing distance for a vehicle from that direction, travelling within the legal limit. If better enforcement of the speed limit is needed, that is a separate matter from the present appeal. Approaching from the east, the turn into Cellar Hill is tight, but the speed limit sign is set some 60m or so before the junction, and is visible long before this; and the slowing of vehicles from this direction is also assisted by the steep gradient. The development now proposed would increase the number of movements through the junction. However, for the reasons already set out, those numbers would be relatively small. Whilst it is never possible to rule out the possibility of future accidents, in the light of the above considerations, it seems to me that the development's impact on the operation of the junction would be only marginal. In these circumstances, the risk of an increase in accidents at the junction would not be so substantial as to warrant refusal on this ground.
22. As for the route to the south of the appeal site, via the southern part of Cellar Hill and Cambridge Lane, at the time of my visit, it was evident that both vehicle numbers and speeds were quite low. And as already noted, despite its fairly tortuous alignment, there is no evidence of any actual accident record on this route. This appears to include Cambridge Lane's junction with Lynstead Lane, at the southern end of the route. For the reasons already outlined, it seems to me that the additional vehicle movements generated in this southern direction would be few in number, and therefore would not noticeably change the existing situation. I note the suggestion that the additional vehicles from the development now proposed would force walkers and cyclists to change

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their mode of transport in favour of the car; but this seems improbable, especially given the evidence that such trips are mainly for leisure purposes. To my mind, it seems likely that the small increase in usage that the development would generate towards the south could be accommodated without adding any significant element of new risk.

23. I appreciate that highway matters were considered in two previous appeals, in 2004 and 2008, but those appeals were now a considerable time ago, and prior to the first appearance in 2012 of the NPPF's advice that development should only be prevented on highway grounds where the effect on safety would be unacceptable, or where the impact on the network would be severe. In the present case, for the reasons already stated, I do not find either of these thresholds to be reached.
24. I note that the highway authority is said to be supportive of the Council's position, but in the absence of any direct evidence from that authority, I can give little weight to reported views of this kind.
25. Having regard to all of the above matters, I conclude that the proposed development would not have any significant adverse effects on highway safety. In this respect the scheme would therefore avoid conflict with SBLP Policies DM6 and DM14, which seek amongst other things to manage transport demand and impact, and to ensure safe access and convenient routes for all users.

#### *Accessibility to local facilities*

26. In the SBLP, Teynham is designated as a Rural Local Service Centre (RLSC), which is the third tier of the district's settlement hierarchy. The RLSCs are broadly described as providing most or all out of a specified range of health, education, recreation, shopping, service and transport facilities, albeit that residents will also need to travel to larger centres for major retail, leisure and employment. In Policy ST3, the RLSCs' role is to be a tertiary focus for growth across the Borough, and a primary focus for the rural areas.
27. Whilst not within the RLSC's defined boundary, the appeal site is located directly adjacent to that boundary, and within reasonable walking distance of most of the village's local facilities. These include the primary school, the library, the Co-op supermarket and various other local shops, plus the railway station and bus stops. Most of these facilities require the crossing of London Road, as it passes through the village centre, but this part of the road is not unduly wide, and is covered by the 30mph speed limit, and a signalised pedestrian crossing is also available. In a built-up area, the need to cross a road of this nature is neither unusual nor unacceptable. The first few metres of the route from the appeal site, along Cellar Hill, has no footway. But the length of that section is quite short, and given the apparently small volume and low speed of the traffic on it, this seems unlikely to deter occupiers of the development from walking into the village if they are so minded.
28. Since the adoption of the SBLP in 2017, some changes have evidently occurred with regard to local facilities, including the relocation of the local medical centre to Sittingbourne. But it seems to me that part of the reason behind the designation of the RLSCs is so that existing villages services can be given the support that they need, and that in time additional ones can be encouraged as well. In this context, I also note that other new developments are taking place in the area, including some of a substantial scale. This strategy for the rural

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areas is evidently one that will require consistency over the long term, and consequently I see no reason to anticipate any changes to Teynham's RLSC status in the foreseeable future.

29. I conclude that the proposed development would be acceptably located with regard to its accessibility to local services and facilities. In this respect, no conflict would arise in relation to SBLP Policy ST1, which aims amongst other things to support the rural economy, and the vitality of the rural communities.

#### *Biodiversity*

30. The appeal site is identified as a habitat falling within the general category of traditional orchard, which is a habitat type of principal importance, also known as a priority habitat. The proposed development would necessarily mean that the majority of this existing habitat would be lost. In the SBLP, Policy DM28 requires all developments to conserve, enhance and extend biodiversity, to minimise any adverse impacts and either mitigate or compensate for them, and also to provide net gains where possible. This approach is broadly consistent with the advice in paragraph 174(d) of the NPPF.
31. However, the appeal scheme is supported by a Preliminary Ecological Appraisal (the PEA), an Ecological Impact Assessment (the EcIA), and a Biodiversity Net Gain Report (the BNGR). The EcIA also includes, in summary form, the results of bat emergence and reptile surveys undertaken at the site, and sets out in some detail a mitigation strategy for the development's impacts as a whole. This mitigation strategy includes proposals for the retention and enhancement of some existing on-site features, and for the creation of new habitat areas both on and off site, comprising new wildflower meadows, mixed scrub, neutral grassland, a pond, new fruit trees and other native trees, and new sections of hedgerow. Within these, a number of new bat and bird boxes are also proposed, together with log piles and hibernacula. According to the appellants' calculations, using the DEFRA Biodiversity Metric, the resulting effect would be a net biodiversity gain of just over 25%, as well as a net gain in hedgerow units of over 350%.
32. I note the various criticisms and reservations expressed by the Council. The site currently has a large population of slow worm. The success of the mitigation strategy would depend on being able to move these, or a sufficient number, to the proposed new habitat area, straddling the site's rear boundary, and extending into what is now agricultural land, after having first established suitable conditions in that area. I agree that this would rely on the necessary sequence of operations being carried out, by suitably qualified and experienced personnel, with great care and diligence. But the techniques proposed are well proven, and there is no reason to think that they would fail here.
33. The receptor site would be a relatively narrow strip, but its elongated shape would allow the new habitat area to connect with offsite hedgerows, and thus facilitate movement corridors. There is no evidence that the width, or the overall area, would be insufficient to sustain wildlife. The area would abut the rear boundaries of the new dwellings, and this might mean some risk of interference by humans or domestic pets. But the appeal site already adjoins residential properties, and this has evidently not prevented it from supporting wildlife in the past.

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34. All of the mitigation measures provided, both on and off site, would need to be managed and protected on an on-going basis, and the arrangements for this have not been spelt out in detail. Some elements would be within the private gardens of the new properties, and the means by which these would be secured for the long term would need particular consideration. Provision would be needed for monitoring, reporting and inspection by the Council. But such requirements seem likely to become increasingly needed in future developments. In the present case there seems no reason why suitable arrangements could not be agreed, pursuant to a condition.
35. As the Council point out, the information provided in respect of the bat surveys does not include all of the raw data. But the surveys have evidently been carried out by an accredited professional team, and I see no reason to doubt the reported results, or the recommended actions. Although no survey has been carried out for invertebrates, it seems likely that the proposed measures would allow for any required mitigation in this regard. Whilst no measures are proposed in respect of the lone Little Owl observed, such measures do not appear to be required, as the species is non-native, and not subject to any specific protective legislation in this country; but in any event, the Little Owl is protected during the nesting season by the general provisions relating to all nesting birds.
36. I conclude on this issue that, subject to necessary conditions, the proposed development could be carried out without unacceptable harm to biodiversity, and indeed would be capable of achieving a net gain in this respect, as required by SBLP Policy DM28. As such, the scheme would comply with that policy.

#### **Other matters**

##### *SPA mitigation*

37. The appeal site lies within 6km of the Swale Special Protection Area (the SPA), which is designated under the Conservation of Habitats and Species Regulations 2017, because of its importance for birdlife. It is acknowledged by the appellants that, in order to mitigate the development's potential impacts on the SPA, a legal undertaking would be needed, to secure a contribution to the Council's Strategic Access, Management and Monitoring scheme. However, no such undertaking appears to have been entered into.
38. The Planning Inspectorate's procedural guidance makes it clear that any planning obligations on which the parties wish to rely should normally be executed and submitted no later than seven weeks after the start date of the appeal, and that the appeal decision will not normally be delayed to allow for this. In the present case, that date has long passed. There is no evidence that the required mitigation could be provided in any other way. In the absence of any means of securing any form of mitigation, I cannot rule out the possibility of a significant adverse effect on the SPA. This potential adverse impact weighs clearly against the development.

##### *Effects on the wider countryside*

39. In addition to the matters discussed above, the Council's Refusal Reason No 1 (RR1) alleges that the proposed development would be harmful to the character and appearance of the countryside, due to being prominent and intrusive. However, this part of RR1 has not been further amplified or explained.



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40. From my observations, the appeal site is seen publicly only from Cellar Hill. In those views, the site appears as a self-contained parcel, framed by the existing development on either side. The open farmland beyond is not visible, and the appeal site is not seen in the same views as any other part of the wider landscape. To my mind, the proposed development would be viewed in much the same way, and would thus have no effect on the wider countryside.
41. In the absence of any further evidence therefore, this part of RR1 is unsubstantiated.

*Rural lane designation*

42. I note that Cellar Hill is designated in the SBLP as a rural lane, and that Policy DM26 seeks to protect the character of such lanes. In the present case however, the physical works proposed would be limited to the formation of a new site access, and the installation of a single lighting fixture. The length of hedge which would need to be removed would be relatively short. These features would not unduly harm the lane's character. There is no evidence that any other alterations would be needed for highway safety reasons, nor that any damage would be caused to the roadside banks. In addition, for the reasons already set out, I consider that the additional traffic generated on the lane would be relatively small; this would have no significant effect with regard to character.
43. I therefore find no evidence of any adverse effects on the character of Cellar Hill as a designated rural lane, and no conflict with Policy DM26. My findings on this matter appear to differ somewhat from those of the inspector in the 2004 appeal, but I note that he was considering the matter under a different policy, details of which are not before me. In any event, each case is decided on its own facts and planning merits.

*Other policies*

44. In addition to the SBLP policies considered above, both the Council and the appellants have made reference to a number of others, including SBLP Policies CP2, CP3, CP4, CP7, DM7, DM 29 and DM 31. However, I am satisfied that the policies on which I have based my decision are the most relevant to the issues in this appeal.

*Other considerations*

45. The appeal site was apparently included within a possible Area of Opportunity which was suggested in an early draft of the local plan review. However, there is no certainty that that proposal will proceed. It appears that the review process has since been delayed, and in the meantime, both the appellants and the Council appear to agree that the previous draft proposals carry little weight. I agree with that view.
46. The appeal site was assessed in the Strategic Housing Land Availability Assessment (the SHLAA), and found to be suitable and deliverable. But that assessment seems to me essentially concerned with establishing the District's overall capacity, rather than the planning merits of any particular scheme. In my view the SHLAA does not imply that planning permission should be granted.
47. The Council is said to have supported development on a site at Lynstead Lane, outside the settlement boundary, but it is not clear whether that site has any

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other similarities to the present appeal site. I must deal with the present appeal on its own merits.

48. The appeal proposal would have some economic and social benefits in terms of local employment and household expenditure, and it would help to sustain the vitality of the local community. I have taken these into account.

#### **Planning balance and conclusion**

49. The proposed development would conflict with the SBLP's Policy ST3, due to its location in the countryside, contrary to the Local Plan's development strategy. It would also conflict with Policies CP8, DM32 and DM33, because of its adverse effects on the Conservation Area and the settings of four Listed Buildings. There are no SBLP policies that give positive support to housing development on this particular site. The scheme is therefore contrary to the development plan as a whole.
50. This conflict with the development plan must be weighed against all the other relevant material considerations. The district does not have a 5-year supply of land for housing. In these circumstances, NPPF footnote 8 provides that the most important policies may be treated as out-of-date. In the light of this advice, it seems to me that the conflict with Policy ST3 must carry limited weight, because the provisions of that policy, and in particular those which prevent development outside settlement boundaries, are likely to act as an impediment to the Council being able to make good the housing supply shortfall.
51. However, that still leaves the matter of the harm that would be caused to designated heritage assets. That harm would be 'less than substantial', but nevertheless real. NPPF paragraph 199 requires that great weight is given to the conservation of heritage assets. In the present case, whilst the proposed scheme would have some public benefits, in the form of housing provision, plus a net gain in biodiversity, and the economic and social benefits that I have referred to, these are clearly outweighed by the substantial harm that I have identified to the CA and LBs, and their significance.
52. Consequently, having regard to NPPF footnote 7, the application of the relevant NPPF policies, including paragraphs 189, 199 and 200, provides a clear reason for refusing permission. It follows that the appeal proposal does not benefit from the NPPF's presumption in favour of sustainable development.
53. The lack of mitigation for the development's potential impact on the SPA adds further weight against the scheme. Apart from the matters identified above, I have found nothing else that weighs in favour. The development would not harm highway safety, or the character and appearance of the countryside, or of Cellar Hill as a rural lane, but all of these matters are neutral. Overall, despite the District's need for more housing sites, in this case the conflict that I have found with the development plan is not outweighed by this or any of the other material considerations.
54. The appeal therefore fails and is dismissed.

*J Felgate*

INSPECTOR