

Appeal Decision

Hearing held on 7 October 2025

Site visit made on 7 October 2025

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2025

Appeal Ref: APP/V2255/W/25/3368880

Brogdale Farm, Brogdale Road, Ospringe ME13 8XU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by The East Malling Trust against the decision of Swale Borough Council.
 - The application Ref is 20/505877/OUT.
 - The development proposed is described as a mixed-use development comprising up to 360sqm nursery school (use Class Ef), up to five holiday lets and up to 1,710sqm of flexible workshop, industrial & research and development floorspace (use Class Eg (ii, iii) with access from Brogdale Road.
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Decision

1. The appeal is allowed and planning permission is granted for a mixed-use development comprising up to 360sqm nursery school (use Class Ef), up to five holiday lets and up to 1,710sqm of flexible workshop, industrial & research and development floorspace (use Class Eg (ii, iii) with access from Brogdale Road at Brogdale Farm, Brogdale Road, Ospringe ME13 8XU in accordance with the terms of the application, Ref 20/505877/OUT, subject to the conditions in the attached schedule at Annex C.

Applications for costs

2. An application for costs was made by The East Malling Trust against Swale Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal concerns an application for outline planning permission, with all matters reserved except for access. The reserved matters include appearance, landscaping, layout, and scale. Where the submitted plans show details relating to these reserved matters, I have treated them as illustrative only, as they are intended to show how the site could be developed rather than how it will be.
4. Following discussions with all the parties at the Hearing, I undertook an extensive unaccompanied visit to the appeal site and Brogdale Farmhouse. I then travelled via Brogdale Road to and along Porters Lane. I returned to the appeal site and also headed along Brogdale Road over the M2 motorway bridge and into the built-up areas to the south and north of the A2.

Main Issues

5. The main issues are:

- Whether the site represents an appropriate location for the proposed development;
- The effect of the proposed development upon the character and appearance of the area;
- The effect of the proposed development on the Grade II listed building Brogdale Farmhouse;
- The effect of the proposed development on the availability of best and most versatile agricultural land ("BMV agricultural land");
- The effect of the proposed development on highway safety; and
- Whether the site represents an appropriate location having regard to modes of travel.

Reasons*Location*

6. The appeal site lies in the Countryside. It sits within a semi-rural area defined by open fields with some ribbon development along Brogdale Road, and the M2 motorway to the north. Just beyond the M2 there is a landscaped public open space associated with the wider 'Perry Court Farm'¹ development which includes housing, a supermarket and hotel.
7. The appeal site contains agricultural land including a disused reservoir, demonstration garden area, glasshouses and polytunnels. It also features an existing central farmstead hub which includes tourism facilities, small businesses, shops, café, and community / commercial functions currently operating at the farm, including the National Fruit Collection. The main access to the appeal site comes through a parking area which also serves the wider orchards and farmland.
8. Policy ST 3 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 ("the Local Plan") sets out the settlement strategy. It indicates that development should be directed within built up area boundaries. The appeal site falls outside a built up area boundary and as such the development would not sit squarely with the settlement strategy. This conflict with the development plan carries harm and the planning system should be genuinely plan-led.
9. However, Policy ST 3 goes on to say that development will not be permitted outside the built up area boundaries unless supported by national planning policy and is able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. Therefore, and before determining the appeal, I will consider what, if any other

¹ Site allocation MU 7.

harm, would be caused by the proposed development and whether there are any material considerations that may outweigh the conflict with the settlement strategy.

Character and Appearance

10. The appeal site is broadly enclosed and bounded by mature trees, the M2 Motorway runs near to its northern boundary. Open fields generally bound the site to the east but there is some development to these borders such as a Brewery and a larger overflow carpark to the south. To the west and turning southward along the Brogdale Road, fields in the locality give way to a scattering of ribbon development lining the road punctuated by open fields, landscaping, and occasional agricultural buildings. While earlier development has lightly urbanised the area, and the noise and visual impact of the motorway diminishes the sense of tranquillity and remoteness, the local area retains a pleasant semi-rural quality.
11. The existing complex of buildings and hardstanding within the southern side of the appeal site do detract somewhat from the rural character of the area. However, these buildings are close-knit and modest in overall area with many having an agricultural appearance. Their intimate nature as a pocket of development, with sections of boundary screening moderately reduces the harm they generate in their setting.
12. The northern section of the appeal site is more agricultural and rural in character, the glass houses and polytunnels are lightweight rural structures and the disused reservoir does not enclose land. Despite the proximity of the motorway and the overgrown neglected character of this part of the appeal site it does provide relief from the southern buildings, hardstanding, and activity of the wider site. This relief also forms a positive transition from the more rural area into the built-up areas to the north beyond the motorway.
13. The proposed development is for 360sqm of nursery school floorspace, up to five holiday lets and 1,710sqm of flexible workshop, industrial & research, and development floorspace. The indicative drawings suggest that the agricultural glasshouses, demonstration garden, planting areas and polytunnels would be removed and the site levelled. The other structures within the appeal site would be retained and a new access would also be created onto Brogdale Road.
14. The plans submitted are illustrative in respect of any matters that are reserved, and they indicate how the site could be developed. Appearance, layout, scale, and landscaping are reserved matters. Any assessment in this respect would be at the later reserved matters stage, which would incorporate considerations as to whether such development would or would not integrate with the locality.
15. Nonetheless, even when considering the presence of existing development and retention and supplementing of the verdant boundary landscaping, the quantum of the proposed development with its access, likely buildings, circulation routes, parking, and associated activity would have a considerable urbanising effect in this semi-rural area. This would harm the rural character, intrinsic value, landscape setting, tranquillity, and beauty of the countryside; all of which positively contribute to the distinctive character of the locality. I ascribe significant weight to this harm.
16. The proposed development would therefore unacceptably conflict with the relevant provisions of Policies ST1, CP 4 and DM14 of the Local Plan. These, amongst

other things, require development to achieve good design reflecting the best of an area's defining characteristics.

Listed Building

17. Brogdale Farmhouse is a Grade II listed building; the official list entry indicates that it was erected in the 18th Century. While it is not part of the appeal site, it sits very close to it and historically it would have sat within the wider Brogdale Farmstead. However, the evidence before me suggests that it was separated from the farm at some point in the 1960s before it was listed in 1970.
18. In these cases, I have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, ("the Act") to have special regard to the desirability of preserving listed buildings, their setting, or any features of special architectural or historic interest.
19. The special interest of this heritage asset is derived in part as an exemplar of a Kentish farmhouse within the fruit growing belt. Its form, detailing, materials, and method of construction reflect the local vernacular style and its character as a farmhouse within the farmyard context.
20. The setting of a farmhouse within a farmyard complex is an important factor insofar as it relates to this appeal, and the significance of the heritage asset does derive value from this setting. The northern sections of the appeal site retain a decidedly agricultural feel to them by reason of the open land, glass houses, and polytunnels. However, I note that the disused reservoir, unkempt appearance, and the nearby motorway with its attendant visual disturbance and noise moderately detract from this.
21. I also acknowledge that the setting of Brogdale Farmhouse has suffered from a considerable measure of physical and visual disruption from its yard setting over the passage of time. This includes piecemeal development of the yard and the farmhouse entering separate ownership and separate occupation from that of the wider farm complex. The boundaries around Brogdale Farmhouse are also planted by dense and significant landscaping and this significantly reduces intervisibility. These factors all contribute toward an overall sense of detachment and severance from the farmyard weakening its agricultural setting.
22. Nonetheless a legible relationship between the main farmhouse and its wider setting is still experienced on site. This is reinforced by the existing fields, hedgerows, agricultural uses, and buildings which aid in understanding the farmhouse's historical role within the farmstead.
23. This is an outline application meaning the detailed appearance, scale, layout, and landscaping details are reserved for later consideration. It is likely that any future scheme would come forward as a group of buildings and the indicative drawings suggest a vernacular agrarian character, thus nodding to a farmstead context.
24. I also accept that the northern aspect of the appeal site is not the last trace of agriculture associated with the wider farm and change and adaption are part of farmstead evolution. However, the appeal development would intensify non-agricultural activities on site; combined with previous development, it would closely surround the farmhouse on three sides. While I appreciate the relationship of the farmhouse with the farmyard is somewhat diminished already, the proposed

Appeal Decision APP/V2255/W/25/3368880

development would further erode the agricultural setting thus compounding the existing situation.

25. Taking all these factors into consideration, the proposed development would fail to preserve the setting of this heritage asset including how it is appreciated and understood. This negative impact would cause less than substantial harm to the significance and special interest of the farmhouse and for the reasons set out in the preceding paragraphs, the extent of harm would sit at the midpoint of less than substantial harm.
26. The scheme therefore conflicts with the relevant provisions of Policy DM 32 of the Local Plan as far as this policy requires development proposals to conserve a heritage asset and its setting. The National Planning Policy Framework ("the Framework") requires any harm to be weighed against public benefits, and I shall return to this within my Planning and Heritage Balance below.

Best And Most Versatile Agricultural Land

27. The agricultural sector is important to the character of the countryside as well as the identity of Swale as a farming district. This part of Kent is associated with a long history of fruit production and understandably the Local Plan seeks to safeguard this resource.
28. I accept some of the agricultural land is overgrown, unlevel, and is not currently in agricultural use, however, there is limited evidence to suggest that it could not return to active use or that the agricultural use no longer lawfully exists. Therefore, it remains that the appeal site comprises BMV agricultural land and it is not allocated for development in the Local Plan.
29. I note the relative size and self-containment of the BMV agricultural land within the appeal site when compared to the wider Brogdale landholding. The evidence suggests that the proposed development would not compromise the viability of the remaining agricultural holding, its existing orchards, or any land in operational agricultural use. This tempers the harm which would be generated from the proposed loss of BMV agricultural land. Nonetheless there is limited evidence to suggest any alternative sites on land of a lower grade have been considered.
30. Tying all these considerations together on this main issue, the loss of BMV agricultural land would conflict with Policy DM 31 and this would generate harm to which I attach significant weight. This policy states that development on agricultural land will only be permitted when there is an overriding need that cannot be met on land within the built-up area boundaries. I shall return to this consideration within my Planning and Heritage Balance below.

Highway Safety

31. Brogdale Road has an existing speed limit of 30mph. An access would be created onto this road and visibility sightlines would be provided in both directions including to the north and before the crest of the motorway bridge. In calculating the appropriate distances for these sightlines, the appellant has commissioned three independent speed surveys² in order to obtain data for traffic flows either side of the proposed access.

² March 2019, February 2025, and April 2025.

32. The surveys were taken at different times with each running for seven days to ensure local factors such as temporary signage, roadworks, or school holidays would not unduly influence the outcome of the surveys. All the surveys found consistent results regarding the 85th percentile vehicle speeds.
33. The 85th percentile speeds from these surveys were taken to determine the stopping sight distance ("SSD") for the proposed vehicular access and to inform the required visibility sightlines for this proposed access.
34. The 85th percentile is a well-established way to calculate the SSD i.e. the distance a driver needs to see ahead to stop safely. The SSD incorporates the time required for a driver to identify a hazard and then to brake including the vehicle's rate of deceleration. By adopting 85th percentile speeds this ensures that street designs account for how fast most drivers actually travel, not just the posted speed limit.
35. The appellant has shown via drawing 19-008-001 C that the required visibility sightlines associated with the SSD can be achieved and this takes into account the gradient of the carriageway toward and from the crest of the motorway bridge. An independent Stage 1 Road Safety Audit also accompanies the appeal, and this does not identify any concerns with the development.
36. I appreciate that 15% of drivers exceeded the 85th percentile and this is of significant concern to the Council and interested parties. The Manual for Streets ("MfS"), a recognised document authored by the Department for Transport, endorses the 85th percentile speed for calculating SSDs because it represents a realistic upper limit of typical driver behaviour while avoiding design solutions for extreme or rare behaviours. Essentially the 85th percentile is a recognised figure which balances safety with practicality as designing for higher percentiles could be impractical and lead to over-engineered roads.
37. The MfS is a government document underpinned by substantial research and is regarded as a key guidance document for street design. I therefore attach considerable weight to its content. The appeal is further supported by a review of local accidents and there is limited evidence before me to suggest the highway layout unacceptably contributes to vehicular accidents. I also note the Kent County Highway Authority and National Highways raised no objection to the proposed development.
38. I have carefully considered the Speedwatch evidence submitted by Ospringe Parish Council. I appreciate this evidence is coordinated by Kent Police and run by local communities with trained volunteers monitoring speeds of vehicles using approved devices. This evidence is therefore an important material consideration.
39. However, I note that the two sessions were only conducted for a duration of one hour each. While they provide a snapshot of traffic in time, the limited timespan and frequency of both sessions reduce the soundness of the data when building a picture of typical traffic behaviour. I have also not been provided with the raw data to analyse the amount and degree of speeding within these two sessions or a detailed methodology and assessment of the evidence. These factors all reduce the weight I can attach to this Speedwatch data.
40. Overall, the Appellant has shown an appropriate method for recording vehicular speeds and calculating a suitable visibility splay as set out in recognised highway

standards. Highway consultees have also not objected on technical grounds. I therefore attach substantial weight to the Appellant's evidence. The Speedwatch data is of relevance, and I do not dismiss it, but given the shortcomings I have set out above, I do not find it to be as robust as the Appellants evidence. Consequently, the Speedwatch data does not alter my overall findings.

41. The evidence also shows that adequate parking could be provided on site as per the Council's Parking Standards SPD 2020. The access has been designed in accordance with the Kent Design Guide and would provide sufficient width for two-way vehicular movements including larger vehicles. Vehicle turning, traffic flow and traffic generation has also been considered by the Kent County Council Highway Authority, and they raised no objections on these grounds. I have no substantive evidence before me to come to another view.
42. Therefore, and concluding on this main issue I am satisfied that safety standards would not be unacceptably compromised. The proposed development would accord with the relevant provisions of Policies CP2, DM6 and DM14 of the Local Plan. These look to, amongst other things, ensure that development would not be detrimental to the safety of the transport network.

Modes of Travel

43. The appeal site is located next to the Brogdale Road, and this offers opportunities for walking and cycling. The housing, hotel and supermarket associated with the 'Perry Court Farm' development are also within a modest walk or cycle.
44. Brogdale Road has a speed limit of 30mph and there is limited evidence before me to show it is heavily trafficked to the point where crossing the road would be challenging or unsafe. The cycle and walking routes are unlit in parts and this would suppress their attractiveness. However, the speed limit is 30mph and while I accept a minority of drivers break speed limits, 30mph is at the lower end of road speeds. Cycle parking would be proposed as part of the development and walking and cycling opportunities can be found nearby which take users away from the roads offering alternative, albeit modestly longer routes, into the built-up areas.
45. Bus stops are located approximately 1.2km from the appeal site and can be accessed via the footpath. The bus services are reasonably frequent and serve the locality and beyond. The appeal site is approximately 2km to the railway station which can be accessed by the footpath. There is cycle parking at the railway station and regular services to Ramsgate, Deal, and London are offered. I also acknowledge that the appeal site's existing agricultural, employment, tourism and educational hub would have an element of linked/combined trips.
46. Drawing all these considerations together, while there are some concerns about the distances and accessibility to services and facilities by transport modes other than the private car, paragraph 110 of the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In this case and having regard to the facts on the ground, while there would be some shortcomings, genuine opportunities to walk and cycle would still be available. These would offer an appropriate choice of transport modes which would reduce the need to travel, particularly by private car.
47. In conclusion, the proposed development would benefit from sustainable and alternative transport choices. As such it would accord with the relevant provisions

of Policies CP 2 and DM 6 of the Local Plan all of which, amongst other things, seek to provide for sustainable modes of transport to allow choice.

Other Considerations

48. The Council is just over halfway through its Local Plan which was adopted in 2017 and from the evidence before me appears to be meeting its employment land targets as set out in this Plan. However, more recent evidence in the form of the Employment Land Review 2023 ("ELR") states that there have been major structural changes in employment and business habits. It finds that there has been strong take-up of employment land recently and supply is tighter as a result.
49. The ELR confirms that demand for and uptake of industrial land has been stronger and faster than was anticipated previously and new build development that has occurred in the Borough has not been sufficient to keep pace with demand. It states there should be a focus to provide good quality industrial space which can be used flexibly by light industrial occupiers. Demand for land is also influenced by Swale's housing land supply and evidence before me shows that employment floorspace allocations have reduced in favour of housing.
50. This generates a higher demand for employment land than originally envisaged by the Local Plan. In effect the need for employment floorspace cannot be met from land within the designated built up-area boundaries or existing site allocations and new allocations will need to be found. The ELR highlights the importance of attracting economic growth to address long-term systemic shortcomings in Swale's existing economy. The ELR states that there is evidence of a market for light industrial space and this is likely to be most prevalent in Faversham. While not directly within Faversham, the proposed development is nearby and would contribute to this localised need.
51. The appeal site is identified in the ELR as a site potentially suitable for employment uses. It acknowledges the agricultural use of the site and accepts that some of the farm buildings are currently used for business purposes. The Appellant has provided letting agent evidence to show that existing commercial space at the appeal site enjoy high levels of occupancy and low void periods. The letting agent and the Council's own Economic Development team also confirm that a demand exists for existing and further flexible employment space in this area.
52. The Council challenges some of the letting agent's evidence for demand, however, even if I set this aside, it does not diminish the overall strength of the remaining evidence. Bringing all these factors together there is a clear evidenced need for a higher requirement of employment land. This would include light industry in the local area. The proposed development would positively respond to the unmet need and long-term shortcomings in the Borough's economy, and I will return to this in my Planning and Heritage Balance below.

Planning and Heritage Balance

Harms

53. I have identified that the proposal would cause less than substantial harm to the significance and special interest of the grade II listed Brogdale Farmhouse by failing to preserve its setting and this would sit at the midpoint of such harm. It

must be noted that even less than substantial harm to a designated heritage asset carries great weight in accordance with paragraph 212 of the Framework.

54. I have also concluded that the proposed development would have an adverse impact on the character and appearance of the countryside and there would be a loss of BMV agricultural land. These harms attract significant weight.

Neutral Matters

55. The Statement of Common Ground indicates that the appeal site lies more than five hundred meters from the Kent Downs National Landscape ("the NL"). Section 245 of the Levelling-up and Regeneration Act 2023 includes a requirement to seek to further the statutory purpose of conserving and enhancing the natural beauty of National Landscapes.
56. The proposed development would have effects on local character which I have considered above but it would not affect the natural or scenic qualities of the wider rural landscape given its separation and screening. While a reserved matter, it is likely that buildings would also be low set further reducing any effects on the NL. Therefore, the outline elements of this proposal would have an acceptable effect on the NL and would conserve its natural beauty as well as any other areas of high landscape value. The absence of harm in this regard is, however, a neutral factor in my assessment.
57. I have also found no harm in respect to highway safety, but this lack of harm is also a neutral matter which neither weighs for or against this appeal proposal.

Benefits

58. The proposed development would deliver 1710sqm of flexible workshop, industrial & research and development floorspace where there is a demonstrable and considerable shortfall of employment land. This would deliver economic growth, jobs, productivity, and employment floor space for small to medium businesses supporting and contributing to identified shortcomings in the Borough's economy. It would create conditions in which businesses can invest, expand, and adapt, supporting the rural economy, agriculture, and tourism. Tying these together, I place great positive weight on the totality of these benefits.
59. The proposed development would provide a source of income for Brogdale Farm and the National Fruit Collection. I appreciate this collection has a national and international interest alongside its interest to the local farming district and its long history of fruit production. Proposed and existing uses would also support each other through linked trips and spin off trade. I place moderate positive weight on these benefits.
60. Brogdale Farm generates tourism to the area particularly the National Fruit Collection. The holiday lets would further diversify tourism opportunities in this fruit growing belt supporting the rural area. I ascribe this benefit significant positive weight.
61. Information boards are proposed to be installed on site to illustrate the history of Brogdale Farm and its connection with the listed farmhouse. Conditions can be imposed to secure the appearance, siting, and implementation of these information boards. These would provide historical context in a concise and digestible format

- to deliver better awareness of the history of Brogdale Farmhouse. I ascribe moderate positive weight to this benefit.
62. Environmental benefits are also proposed but considering the emphasis of the Framework on using natural resources prudently, minimising waste and pollution, and moving to a low carbon economy, it is not unusual for such benefits within development schemes. For these reasons, I give moderate positive weight to these benefits.
63. I appreciate that great weight should be given to the need to create educational facilities. A nursery has the potential to provide a community facility for local families and at the time of making the application Lorenden Preparatory School had shown a need to occupy the nursery, however this need has now been met elsewhere. There is limited evidence to show a need exists for a nursery in this location and I therefore ascribe this benefit limited positive weight.
64. There would be highway, air quality and ecology obligations secured through the Appellant's deed of agreement. Positive though these aspects would be, they are broadly responding to the effects of the proposed development and the requirements of the development plan rather than being tangible benefits. I therefore afford these moderate positive weight.
65. I have found the modes of travel offer appropriate choice given the appeal site is physically well-related to the existing settlement. These factors carry moderate positive weight.
66. The proposed development is supported by an Ecological Impact Assessment. The evidence shows that sufficient information is contained in this report subject to an update to consider any changes in circumstances prior to any construction works starting. In addition, conditions are agreed to mitigate lighting impacts and to secure ecological management and enhancements. These benefits would mainly be to either offset the effects of the proposed development or are requirements of regulations and planning policy. I therefore afford these benefits moderate positive weight.
67. Given the agricultural use of the appeal site, it has not been shown that the whole appeal site clearly qualifies as previously developed land ("PDL"). There is undeveloped land and agricultural development within the site, which is clearly not PDL, but there are other sections which may well be PDL. Therefore, it is difficult to come to an overall finding in the absence of clear evidence. Taking a precautionary approach I have therefore only ascribed limited positive weight to any PDL status of the site particularly as the indicative drawings suggest the development would be located principally within the northern section of the appeal site which is more agricultural in nature.

Heritage Balance

68. I have found that the harm to heritage assets would be less than substantial but nevertheless of considerable importance and weight. The public benefits together would, however, carry greater positive weight, and I am satisfied that in this instance they would be of the appropriate magnitude and effect to outweigh the harm to the heritage asset I have identified.

69. There is therefore compliance with the Framework's historic environment conservation and enhancement policies, as far as they provide the opportunity for any less than substantial harm identified to a designated heritage asset to be outweighed by the public benefits of a development proposal.

Overall Balance

70. Taking all the factors in the round, the proposal would harm a heritage asset although I have found the public benefits would outweigh the harm. There is, however, further harm to the character and appearance of the area and through the loss of BMV agricultural land. Nonetheless, the benefits of the proposal are many and weighty in total. The harms and conflicts would be fewer and of lesser overall weight. Given my findings above, I am satisfied that the benefits identified would outweigh the harms as well as the conflict with the settlement strategy. Therefore, and in this instance, there are material considerations that indicate that the proposal should be determined otherwise than in accordance with the development plan.
71. While I have found that this particular set of circumstances would be acceptable, that may not be the same for other proposals in comparable locations. I am satisfied that this would not set an unacceptable precedent for future development.

Other Matters

72. The appeal is supported by a section 106 deed of agreement, dated 7 October 2025. It secures:
- A highway contribution towards improvements to mitigate the impact to the Strategic Road Network;
 - An Air Quality Assessment and necessary mitigation measures (via contribution) to mitigate air quality impacts from transport; and
 - An Ecology contribution towards Special Protection Area and Ramsar site recreation mitigation measures.
73. The Council have indicated that they are satisfied with the provisions of the agreement and the Council's Statement sets out the justification for each of the obligations. I am also satisfied that the provisions of the submitted agreement would meet the tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and the tests set out at paragraph 58 of the Framework.
74. The site lies within the zone of influence of a Special Protection Area, ("the SPA") which is noted as an internationally important habitat for rare bird species. Increased recreational pressure arising from additional residents in the zone of influence could potentially have a likely significant effect on the habitat either alone or in combination with other projects.
75. The evidence before me indicates that the proposed development would result in an adverse effect upon the integrity of the SPA. In these circumstances, permission could only be granted if, after undertaking an Appropriate Assessment it was found that adequate measures were in place as to mitigate the adverse effect.

76. To counter such adverse impacts, measures to limit recreational pressure through strategic access management and monitoring ("SAMM") have been devised and the development could, through obligations contained in a legal agreement, provide financial contributions towards SAMM mitigation measures.
77. I am presented with a legal agreement which would secure a SAMM contribution, and this provides adequate mitigation. As a result, I can be certain that there would be no adverse effect on the integrity of the SPA.
78. The appearance, landscaping, layout, and scale of the proposed development is reserved for later consideration. At that stage living conditions such as overlooking, light and outlook of the neighbouring residential occupiers can be considered. Given the separation and intervening screening, I see no reason why such matters cannot be adequately dealt with at that stage.
79. Concerns were raised at the Hearing by interested parties regarding the overall management of the appeal site historically. While this matter falls outside the remit of this appeal, a new owner now manages the site; at the Hearing assurances were made to address those concerns by the current site owner with interested parties.

Conditions

80. A list of suggested conditions has been agreed by the main parties, and this is set out in the Statement of Common Ground. These were also further discussed at the Hearing considering the tests set out within the Framework. Consequently, where my final suite of conditions differs from those suggested to me, reasons are given below. In the interests of clarity, precision and to avoid duplication, I have also made minor changes to some conditions.
81. I have imposed standard outline planning permission conditions in respect of the submission of the reserved matters and time limitation. It is also necessary to ensure that the development is carried out in accordance with the outline plans submitted in the interests of certainty.
82. In order for the reserved matters application to be properly considered I have imposed landscaping conditions which are in the interests of the character and appearance of the area as well as biodiversity. In support of crime prevention and security I have also imposed a secure by design condition. An archaeology condition is necessary to ensure features of archaeological interest are properly examined. Contaminated land, piling, and foul draining conditions are also necessary to avoid unacceptable risks such as pollution.
83. Concerning the safe and efficient operation of the highway network, a construction management plan, parking details, electric vehicle charging details, and details of loading, unloading, and turning facilities are necessary. A condition to secure access and visibility details is also necessary.
84. To protect the living conditions of neighbouring occupiers, details of mechanical ventilation are necessary. In addition, to ensure biodiversity, the character and appearance of the area, and living conditions are protected, conditions to agree external lighting and tree protection are also needed.
85. Ecology conditions are required for the sake of biodiversity, and energy and sustainability conditions are necessary to promote efficiency and carbon reduction. As set out earlier in this decision heritage information boards are necessary to

better understand the grade listed farmhouse and its setting. Conditions to control the uses and restrict permitted development are also required to safeguard employment and tourism uses.

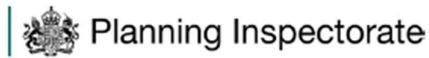
86. The appeal site lies within Flood Zone one which has the lowest probability of flooding. A Flood Risk Assessment and Drainage Strategy supports the appeal and this proposes to incorporate permeable paving and attenuation tanks, before discharging water to a nearby watercourse. I note that the Environment Agency, Kent County Council Flood and Water Management Team nor Southern Water have raised any objections. I have no reason to disagree and therefore conditions would be necessary to secure appropriate drainage.
87. In terms of noise and disturbance, An Acoustic Assessment accompanied the appeal. This concluded that any noise from plant associated with the units would be acceptable subject to mitigation measures. It is also appropriate to control noise through the hours of operation. The use of conditions in these respects would be necessary in the interests of the living conditions of neighbouring occupants.
88. Noise is also likely during the construction phase. Conditions to limit construction hours and to require the submission of a construction management plan, to manage noise and dust during the construction phase, would therefore be necessary.
89. In respect of construction hours, at the Hearing the Appellant accepted an alteration to the agreed starting hours from 07:30 to 08:00. This is reasonable and I have therefore imposed it. I have not included suggested condition 41 as it duplicated suggested condition 26.
90. I have also not included drawing 08482-LEP-BF-ZZ-DR-A-00105 in the list of approved drawings as this is an indicative drawing which will be considered at the reserved matters stage. For the same reasons I have not asked for the submission of materials (suggested condition 9) at this stage as these can be agreed via reserved matters.

Conclusion

91. For the above reasons, having regard to the development plan as a whole and all other relevant considerations, the appeal is allowed subject to the conditions listed in the attached schedule at Annex C.

N Praine

INSPECTOR



Costs Decision

Hearing held on 7 October 2025

Site visit made on 7 October 2025

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2025

Costs application in relation to Appeal Ref: APP/V2255/W/25/3368880
Brogdale Farm, Brogdale Road, Ospringe ME13 8XU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by The East Malling Trust for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for development described as a mixed-use development comprising up to 360sqm nursery school (use Class Ef), up to five holiday lets and up to 1,710sqm of flexible workshop, industrial & research and development floorspace (use Class Eg (ii, iii) with access from Brogdale Road.
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Decision

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

Background

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance ("PPG") advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Applicant states that the Council took several years to decide the application and once it had, it did not provide evidence to substantiate its reasons for refusal. The Applicant also considers the Council behaved unreasonably by accepting late evidence without consultation. Consequently, the Applicant did not have appropriate time to formally review and respond to the late evidence and the Applicant feels that these actions have generated a need for this appeal, resulting in unnecessary delay and expense.

Reasons

4. A Planning Committee decision which goes against officer advice is not a reason to give an award of costs, as the Committee was entitled to come to its own conclusions on the merits of the proposal. The reasons for the refusal are set out in the Council's decision notice, and they are complete, specific, and relevant to the application. The decision notice also clearly states the policies in the development plan. In addition, the Council's statement of case and its oral evidence given at the Hearing was coherent and logically presented. The Council's evidence reasonably showed me how it arrived at its balanced decision.

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Costs Decision APP/N/2255/W/25/3368880

5. However, the Council accepted highway evidence late in the process. While the acceptance of late evidence can be reasonable in certain circumstances, and there is no evidence to suggest the Council has a statutory requirement to further consult, the PPG¹ states that where an application has been amended it is up to the Local Planning Authority to decide whether further consultation would be necessary in the interests of fairness.
6. The PPG also states that in deciding what further steps may be required local planning authorities should consider whether, without consultation, any of those who were entitled to be consulted on the application would be deprived of the opportunity to make any representations.
7. The late evidence was submitted on the day the Council decided the planning application and this evidence proved pivotal in influencing the Council's assessment of the proposal in respect of the highway matters. Despite the considerable weight the Council gave to this late evidence, and the ramifications it had for the outcome of the application, the Council did not consult the Applicant and moved to a decision on the same day. In doing this, the Council deprived the Applicant of an opportunity to make representations particularly as this late evidence was relied upon in framing the highway objection.
8. In the interests of natural justice, the planning process must be open and fair. If new and previously unseen information is submitted and later relied upon, consultation with affected parties would very likely be required before any formal decision is made. This ensures those who would be affected by a decision can express their views and decisions are taken in a transparent way. To do otherwise would undermine confidence in the planning system.
9. Therefore, given the late evidence was pivotal to the final highway reason for refusal, the Council's failure to consult with the Applicant in this respect was unreasonable.
10. The merits of the planning arguments were articulated in evidence, and my reasoning is set out in the associated Appeal Decision; I do not intend to rehearse the planning issues here. However, the late evidence was a legitimate material consideration with merit. The Council is required to give regard to it and the weight to give to these considerations is for the decision maker to decide. This was satisfactorily articulated in the Council's written evidence and orally at the Hearing.
11. Taking all the evidence into account, I have not been persuaded that the costs incurred by the Applicant in preparing for and attending the Appeal Hearing would have been avoided, even if late consultation had occurred at the application stage. This is because the Council's case did not materially change at appeal. While my appeal decision found in favour of the Applicant, this was a matter of planning balance and judgement; the Council was entitled to come to a different view as set out in its evidence.
12. Tying all these factors together, I have found that unreasonable behaviour on behalf of the Council has occurred by accepting late evidence and relying on this evidence to inform the third reason for refusal without affording the Applicant opportunity to comment.

¹ Paragraph: 026 Reference ID: 15-026-20190722

Costs Decision APP/N/2255/W/25/3368880

13. However, having considered the submissions from both main parties, I am not persuaded that undertaking consultation at the application stage would have changed the Council's position at appeal or prevented the inclusion of the third reason for refusal. Consequently, it has not been shown that unnecessary or wasted expense has occurred in the appeal process.
14. Finally, I note the application was live for several years with changes in council personnel over this period. That said, and from the submissions before me, the Council was reactive to the applicant's requests for updates and revisions were negotiated during the lifecycle of the application in response to Council comments. If the Applicant had concerns about the time taken to decide the application, the option was available to appeal against non-determination. This did not occur, and it was not the delay in the decision that compelled the Applicant to appeal.

Conclusions

15. As a result, having considered the above, I conclude that unreasonable behaviour by the Council has been demonstrated, however, this has not led to unnecessary or wasted expense incurred by the Applicant. Consequently, the application for an award of costs is refused.

N Praine

INSPECTOR