



8th April 2016

Robert Wordsworth
The Planning Inspectorate
3/26 Wing
Temple Quay House
2 The Square

Dear Mr. Wordsworth,

Appeal Reference: APP/A2280/W/16/3143600

Planning Application Mc/14/2395 – Proposed Development at Gibraltar Farm, Ham Lane, Hempstead, Gillingham: Outline application with some matters reserved (appearance, landscaping, layout, scale) for construction of up to 450 market and affordable dwellings with associated access, estate roads and residential open space.

As you will know, CPRE Kent is the Kent Branch of the Campaign to Protect Rural England. It is our objective to retain and promote a beautiful and thriving countryside that is valued by everyone and we believe the planning system should protect and enhance the countryside in the public interest for the important contribution it makes to peoples' physical and mental wellbeing, as well as its vital role in feeding the nation. It is our position that local planning authorities should seek to ensure that the impact of development on the countryside, both directly and indirectly, is kept to a minimum and that development is sustainable in accordance with national planning policy.

We have looked very closely at this application and the supporting documentation, and we are familiar with the site. CPRE endorses reason for refusal and has identified other reasons why the development is inappropriate. CPRE has reviewed the Appellants Statement of Case and the Statement of Common Ground and would like to make the following comments.

General Points

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the Development Plan unless other material planning considerations indicate that a different decision should be made. This plan-led approach to development is endorsed and enshrined in the National Planning Policy Framework (NPPF - e.g. as explained in paragraph 196). Consequently, the saved policies in the Medway Local Plan 2003 will comprise the primary consideration, though the NPPF and other relevant guidance will be important material considerations. In accordance with the NPPF due weight should be given to policies according to the degree of consistency with the framework.

The Kent Branch of the Campaign to Protect Rural England exists to promote the beauty, tranquillity and diversity of rural England by encouraging the sustainable use of land and other natural resources in town and country.

CPRE Kent, Queen's Head House, Ashford Road, Charing, Kent, TN27 0AD Fax: 01233 714549 Email: info@cprekent.org.uk

Phone: 01233 714540 www.cprekent.org.uk

CPRE Kent notes the statement at paragraph 2.29 of the Appellant Statement of Case which states:

“The absence of a five year supply of housing land renders housing policies in the Local Plan out of date. Paragraph 14 of the Framework is clear that in these circumstances, planning permission should be granted”

This interpretation is not correct. The attention of the Inspector is drawn to a recent Appeal Court judgement of two conjoined appeals¹. This judgement clarifies the way in which paragraph 49 of the National Planning Policy Framework is applied. Although the decision seeks to apply a wide interpretation of ‘policies for the supply of housing’ it also clarifies that the absence of a 5 year supply does not mean that policies in an adopted plan do not have weight. The judge stated in Paragraph 46 of the judgement that the:

“policies in paragraph 14 and 49 of the NPPF do not make ‘out-of-date’ policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they describe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision maker. Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is “out-of-date” should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied”.

The NPPF is clear about the commitment to a plan led system and the NPPF does not change the status of the development plan as a starting point for decision-making. It is reasonable to make decisions in accordance with the development plan – and in particular give appropriate weight to the following policies:

- Development Strategy policy (S1),
- Strategic Principles policy (S2),
- Landscape and Urban Design policy (S4),
- General Principles for Built Development policy (BNE1),
- Amenity Protection policy (BNE2),
- Development in the Countryside policy (BNE25),
- Areas of Local Landscape Importance policy (BNE34),
- Strategic and Local Conservation Sites policy (BNE36),
- Wildlife Habitats policy (BNE37),
- Wildlife Corridors and Stepping Stones policy (BNE38),
- Protected Species (BNE39)
- Rural Lane policy (BNE47), and
- Impact of Development policy (T1).

The ‘Development Strategy’ policy and the ‘Strategic Principles’ policy, and other relevant policies (including those listed above) direct development to the most sustainable locations. These policies, as well as adopted Policy agreed by the Council relate to sustainable development.

In terms of the Council’s reason for refusal, it is agreed that the impact on a locally important landscape, which forms part of the setting of the Kent Downs AONB, is substantial. CPRE Kent would, however, argue that the failure of the proposal to deliver a sustainable development could also have been a prominent factor in the reason for refusal. The potential absence of a 5 year supply does not mean that unsustainable development should be permitted, as argued by the appellant. Appropriate weight should be given to local plan policies, including policies S1 and S2 which seek to direct development to the most sustainable

¹ Neutral Citation Number: [2016] EWCA Civ 168 Case No: C1/2015/0583 and C1/2015/0894 *Suffolk Coastal DC v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP v Cheshire East BC and SSCLG* [2016] EWCA Civ 168, Jackson, Vos and Lindblom LJ

locations. It is in the public interest for the Council to direct development to the most sustainable locations and Paragraphs 14 and 49 of the NPPF are not intended to mean that inappropriate development is permitted to the detriment of future generations.

Specific Points

We would raise the following specific points:

1. Location –Impact on landscape character

Capstone Valley is a sensitive and locally valued landscape feature. The proposed site lies at the entrance to Capstone Valley at a narrow ‘pinch point’ between the urban areas of Hempstead and Lords Wood. It is clearly evident that the proposed development at this southern end of the valley would be detrimental to the role this landscape plays as a green wedge that acts as a ‘green lung’ and gives an important connection to the countryside for existing dense urban communities.

CPRE agrees with the Council that the development would have a significant and demonstrable impact on the character and appearance of the Capstone, Darland and Elm Court ALLI. The Council has considered the planning balance and has correctly concluded that the adverse impacts of the proposal do not outweigh the benefits to housing supply.

The appellant does not seek to argue that the ALLI policy is inconsistent with the NPPF and it is right that planning decisions should take account of the different roles and character of different areas (NPPF Paragraph 17)². This is a very vulnerable landscape, due the proximity of the urban area and substantial development pressures. Given the development needs of the area, it is accepted that parcels of land at the urban edge will need to give way to development needs. It is essential, however, that in the most sensitive and valued parts of the Medway area, that it is the Local Plan process which grapples with the policy of protecting designated local landscapes of strategic importance. It needs to consider the ability of the area to contribute to development needs, against the availability of alternative sites. Releasing land in valued locations such as this would form a precedent for other sites within this designated area. This is not just a function of the principle of siting development within a locally designated landscape, but also the appalling impact of this particular site (at a ‘pinch point’ in the Capstone Valley) on the character and function of this landform. The Medway Landscape Character Appraisal recognises the Capstone Valley as ‘a green wedge linking urban communities into the wider countryside and the Kent Downs AONB’ (p75).

The quality of the experience of the Capstone Valley as a link between the urban areas, the countryside and the Kent Downs AONB is key to the understanding of the impact of the development on the setting of the AONB. Users of the public right of way network would have to negotiate urban development at the ‘gateway’ to the Kent Downs AONB and the urbanising effect of the development in terms of traffic, lighting and noise and other urban fringe pressures would have an impact well beyond the site.

The importance of setting to the Kent Downs AONB has been supported in recent appeal decisions, including:

- Land South of Court Lodge Road, Harrietsham (APP/U2235/W/15/3119223). The inspector concluded that the *‘unacceptable effects of the proposal on the landscape character of the area, including its SLA categorisation and its position at the edge of the AONB significantly and demonstrably outweigh the benefits that would arise from the proposal’*.

² Appeal decision APP/J2210/A/14/2227624 (Land at Bodkin Farm, Thanet Way, Chestfield, Whitstable) supports the principle of taking into account the role and character of different areas and the consistency with the NPPF.

- Land south of A20/M20 Link Road Roundabout (Waterside Park), Ashford Road, Hollingbourne (APP/U2235/A/14/2224036 and APP/U2235/14/2229271). The Inspector concluded that: *‘Considerable environmental harm would result from the loss of this area of countryside to development through the combined impact on the landscape setting of the AONB and the heritage assets. The developments would fail to protect the setting of the AONB and therefore also conflict with the aims of Section 85 of the Countryside and Rights of Way Act 2000’.*

The NPPF ensures that the *‘protecting and enhancing valued landscapes, geological conservation interests and soils’* are a key part of delivering sustainable development. Development is not sustainable if the adverse impacts of granting permission significantly and demonstrably outweigh the benefits. Character, function and amenity value of the land in question remains a relevant consideration when determining whether development is sustainable. In terms of Policy BNE34 the development is clearly not sited to minimise the impact on the landscape character and function. Further, it does not satisfy Policy BNE2 in so far as it does not protect the amenities of nearby properties. CPRE also argues that development at this strategic location in the Capstone Valley would have an impact on the amenities enjoyed by the residents of the wider urban area.

2. Impact on nearby designated habitats and protected species.

The Appellant Statement of Case states that *‘It will be shown in evidence that the site has relatively limited constraints by reason of habitat and protected species interest’.*

CPRE is concerned that the proposal is supported by insufficient survey information for this assessment to be made with any reasonable certainty. Given the Site of Nature Conservation Interest designation adjacent to the site, and the presence of ancient woodland, it is clear that this issue and risks to protected species has not been properly assessed. Clearly, it is difficult to determine whether the location and design of development could adequately respond to protected species and avoid an impact on populations and direct injury to individuals, if that work is not completed.

Paragraph 109 of the NPPF requires that the planning system minimises the impacts on biodiversity and provide net gains where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity including establishing coherent ecological networks. Policies BNE36, 37, 38 and 39 should be considered in more detail. Their provisions cannot be met with a good understanding of protected species present and the likely impact on populations is known.

CPRE would also like to draw the Inspectors attention to the importance of coherent ecological networks. Development of the site is likely to result in increased fragmentation of existing habitats from the wider countryside. It does not enhance ecological networks and will increase the likelihood of the isolation of species from the wider countryside.

3. Loss of Best and Most Versatile Agricultural Land

The site comprises land that is in agricultural production. CPRE is concerned that the Appellant’s Statement of Case seeks to argue that the Best and Most Versatile Agricultural Land only includes Grade 1 and 2 agricultural land. This is clearly not the case. Half of the site is assessed as Grade 3 and therefore the proposal would result in loss of Best and Most Versatile Agricultural Land.

Food security and maintaining the ability to feed a growing population is an increasingly important national and social issue, meaning that giving up precious BMV land for development should be robustly justified. This is why national planning policy seeks to protect such land and to steer

development to land of lower quality. This is explicitly explained in paragraph 112 of the NPPF, which states:

“Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.”

The proposal does not comply with this. Even if development of agricultural land is considered to be necessary, it remains important for an applicant to make sufficient argument that this NPPF Guidance should be set aside, so that poorer land should not be sought in preference to higher quality land. This should include assessment as to how the loss of a site would affect the viability of the remainder of the farm holding, which is a further important consideration.

4. Sustainable Development

The NPPF seeks to ensure that development is sustainable, and it explains in paragraph 7 that sustainable development has three roles – economic, social and environmental. Paragraph 8 goes on to explain that these three roles should not be undertaken in isolation, and that sustainable development is achieved by ensuring that economic, social and environmental gains are sought jointly and simultaneously. This proposal does not comprise sustainable development in accordance with these requirements of the NPPF. The proposal fails to bring the necessary environmental gains demanded of sustainable development, and in fact results in environmental losses i.e. loss of an area of countryside that has been long protected because of its landscape importance and connectivity with the AONB.

In summary the proposal fails to:

- ensure the most effective use of land to meet the future development needs of Medway,
- demonstrate NPPF guidance should be set aside, to use of land of best and most versatile quality when alternative land of lower quality should be used in preference;
- adequately assess the potential impact on habitats and protected species and justify harmful habitat fragmentation;

The development would result in material harm to the character and function of the Area of Local Landscape Importance, and would also be harmful to the function of the Capstone Valley as a gateway to the Kent Downs AONB that is important to its setting. The impact of the development would have a pronounced effect on a recognised landscape asset.

The Core Planning Principles in the NPPF recognise that preference for land of less environmental value is a core land-use planning principle. The Councils ‘Call for Sites’ exercise demonstrates that alternative and potentially preferable sites are available.

5. Habitat Regulations Assessment

Although there is a discussion in the ecological assessment about the impact of development on the nearby Natura 2000 sites, there does not appear to be a submitted Habitats Regulations Assessment. This is an essential requirement, and should have been submitted as part of the application. This need not go beyond the screening step if it can identify that the likely impacts upon Natura 2000 sites, either alone or in combination with other projects or plans are not likely to be significant.

CPRE Kent notes that the Council has assessed the likelihood of a significant effect on the coastal SPAs/ Ramsar Sites in its Committee Report. A screening report does not appear to have been published. This will normally identify Natura 2000 sites, identify possible effects and then subsequently assess the likely significance of those effects. This should be available.

6. Other Local Impacts

CPRE notes that there is a substantial level of local concern about the impact of the development on traffic flows. CPRE has been unable to identify a specialist highway report on the website, commenting on the adequacy of the Transport Assessment and the council's view on highway and junction capacity. This may be because documents are poorly labelled, but will be essential to the Inspector when considering impacts.

7. Conclusion

It is our very strong view that the claim of the Appellant that the Council cannot demonstrate a five-year supply of land for housing does not outweigh the adverse impacts of developing this site. As we have highlighted in this letter, CPRE supports the Council's reason for refusal and the Council's assessment of Landscape Impact in its planning balance in the report. CPRE makes other comments in this letter relevant to the Appellants Statement.

The proposal would introduce an unsustainable pattern of development into a sensitive and valued landscape. It would be detrimental to the enjoyment of this landscape by local communities in an area where undeveloped countryside is scarce.

We support Medway Council's decision to refuse this planning application and ask the Inspector to dismiss the appeal.

Yours sincerely,

Jillian Barr
Planner, CPRE Kent