



15th April 2016

Michael Scaplehorn
Planning and Development Unit
Ashford Borough Council
Civic Centre
Tannery Lane
Ashford
TN23

Dear Mr. Scaplehorn,

Application:16/00303/AS : Land between Canterbury Road and Lees Road, Brabourne Lees

Outline planning permission for up to 125 residential dwellings and associated public open space, landscaping, with all matters reserved except access.

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. We 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 Ashford Borough Local Plan 2003, the Core Strategy 2008 and the Tenterden and Rural sites DPD 2010 will comprise the primary consideration, though the NPPF and other relevant guidance (including a range of SPD's) will be important material considerations. It is the Council's

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

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view that it has a 5 year supply of deliverable housing sites, and it is broadly appropriate to determine applications in accordance the development plan.

CPRE Kent notes a comment in the submitted Planning Statement, which states that:

“Gladman consider that the Council have incorrectly applied the 20% buffer to the requirement only, the effect of applying the 20% buffer to the requirement and shortfall alone means the Council are unable to demonstrate a 5 year housing land supply.”

As part of its Local Plan Review, Ashford Borough Council has completed an up to date Strategic Housing Market Assessment, dated August 2014. The Council went on to publish a 5 year housing land supply statement (April 2015), which sets out the Council’s land supply position using appropriate methodology, and concluded that the Council had a deliverable 5 year housing land supply.

It is right that the Council should rely on this most up-to-date SHMA. No doubt the Council will make its monitoring information for the period ending April 2016 available in due course, but CPRE has not seen evidence from the Council to suggest there is no longer a 5 year supply of deliverable housing sites. The Council’s housing supply policies, and for that matter any other policies, should not be considered out of date. CPRE will submit further comments once housing supply information for the last monitoring year is available, if necessary.

Even if concerns about the ability to demonstrate a 5 year supply were justified, this does not mean that Local Plan policies do not carry weight. A recent Appeal Court judgement of two conjoined appeals¹ 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 applicant makes the following statement in Page 7 of the Planning Statement:

“The presumption in favour of sustainable development set out in national planning policy confirms that in circumstances where there is no deliverable five year supply, the policies of the Development Plan for the supply of housing are out of date and the decision-taking test in §14 of the Framework applies. In the absence of any significant and demonstrable harm capable of outweighing the benefits, the presumption in favour of sustainable development is engaged which confirms that development should be approved ‘without delay’.

This is incorrect. The Council (the decision-maker) must assign an appropriate weight to ‘out of date’ policies and the weight applied will influence the decision.

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

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 policies, giving consideration to their degree of consistency with the NPPF. Relevant policies include the following:

Borough Local Plan 2000

GP12 – Protecting the countryside and managing change
 EN9 – Setting and entrances to towns and villages
 EN30 – Nature Conservation

Local Development Framework Core Strategy 2008

CS1 – Guiding principles to development
 CS2 – The Borough wide strategy
 CS6 – The rural settlement hierarchy
 CS9 – Design quality

Tenterden & Rural Sites DPD 2010

TRS1 – Minor Residential Development or Infilling
 TRS2 – New Residential Development Elsewhere
 TRS17 – Landscape character and design
 TRS18 – Important rural features
 TRS19 – Infrastructure provision to serve the needs of new developments

Supplementary Planning Guidance/Documents

Affordable Housing SPD 2009
 Landscape Character SPD 2011
 Dark Skies SPD 2014

Brabourne and Smeeth Community Led Plan

The ‘Borough Wide Strategy’ policy (CS1), the ‘Rural Settlement Hierarchy Policy (CS6) and the ‘New Residential Development Elsewhere’ Policy TSR2, and other relevant policies (including those listed above) direct development to the most sustainable locations. These policies, as well as other adopted policies, agreed by the Council together describe sustainable development for the Ashford Borough.

It is also important to note that work on the emerging Local Plan is well underway, with a Regulation 19 Draft Plan expected to be published in May/June 2016. Given the timetable for the preparation of this plan, and its imminent publication, it is appropriate for the Council to strongly resist speculative proposals such as these.

Once the emerging Local Plan has been published (and particularly when the consultation responses are made available), Ashford Borough Council will be able to confirm a situation of prematurity². The National Planning Practice Guidance (NPPG) clarifies the circumstances in which prematurity can be used. *Such circumstances are likely, but not exclusively, to be limited to situations where both:*

- a) *the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and*
- b) *the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.*

² Of course, this assumes that the Borough Council will continue to pursue a strategy which directs development to the most sustainable and least sensitive locations.

Approval of this application would clearly predetermine decisions about the scale and location of development that are most appropriately made through the Local Plan process. The application is a deliberate attempt to pre-empt and undermine the emerging Local Plan, and thus the plan-led approach. CPRE is concerned that the proposal seeks to pursue matters that should be dealt with through the plan making process and at the examination in public. Sites identified through the Local Plan process are subject to the development strategy, consultation and proper scrutiny, including their scale, location and phasing. The Council needs to continue the proper process of sites selection and this is in the public interest.

It is believed that this site was not submitted to the Council during the call-for-site process. Gladman will, no doubt, raise the site in its objection to the Regulation 19 draft should the site not be included. This is the appropriate way to proceed.

Specific Points

1. Location –Impact on landscape character

This landscape forms part of the setting of the North Downs AONB by virtue of the fact that it is visible in views from the AONB. 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'*.
- 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 site has a prominent location within the setting of the AONB and it would be challenging to design a development of this scale that will conserve and enhance the setting of the AONB. The AONB Management Plan gives further guidance. Policy SD8 states:

"Proposals which will negatively impact on the distinctive landform, landscape character, special characteristic and utilities, the setting and views to and from the AONB will be opposed unless they can be satisfactorily mitigated"

CPRE Kent is of the view that further detail to the application is required before the Council could satisfactorily conclude that views could be protected and mitigated. The NPPF ensures that *'protecting and enhancing valued landscapes, geological conservation interests and soils'* are a key part of delivering sustainable development and it is imperative that this issue (and the impact on daytime and night-time views) is not overlooked.

Furthermore, and partly as a consequent of the importance of this landscape to the setting of the AONB, the Ashford Landscape Character Assessment 2009 guidelines recommend that this landscape should be conserved and restored. The landscape is visible highly sensitive and a development of this

scale would not protect and enhance that landscape character area, as required by Policy TRS17 of the Tenterden and Rural Sites DPD, supported by the Landscape Character SPD adopted in 2011.

Generally, the visual evidence in photo viewpoints is poorly explained, recorded and is difficult to interpret. This is particularly true of photo viewpoints taken close to the site and incorporating views of the AONB, but is a problem generally. It is essential this evidence in the Landscape and Visual Appraisal is improved.

Two public footpaths cross this site and, clearly, the harmful impact on the enjoyment of the landscape from these footpaths would be substantial. It is also noteworthy that the development will have an impact on the character of two historic lanes running perpendicular to the Kent Downs and from which views of the wider historic landscape can be enjoyed beyond the settlement boundary.

2 Impacts on biodiversity

CPRE is concerned that the proposal is not supported by sufficient survey information for the Council to make an assessment, with reasonable certainty, that impacts on protected species can be adequately mitigated. 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. This requirement cannot be met without a good understanding of protected species present.

Paragraph 99 of Government Circular (ODPM 06/2005) Biodiversity and Geological Conservation - Statutory Obligations & Their Impact Within the Planning System states that *"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted otherwise all relevant material considerations may not have been addressed in making the decision."*

3. Loss of Best and Most Versatile Agricultural Land

The site comprises land that is in agricultural production. The proposal does not conclude whether the site is Grade 3a, or 3b agricultural land. This distinction is important in policy and agricultural land quality should be examined.

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."

Should the land be classified as 'Best and Most Versatile' then it would be 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. Impact on the historic setting of Bircholt Corner

Bircholt Corner (Grade II) shares a degree of intervisibility with the site. The site and the wider agricultural landscape make an important contribution to the setting of the historic building. Whilst it is accepted that existing development at Mountbatten Way is already appreciable within views of the Grade II listed building, the building is still appreciated in its rural context. The application site would represent a more than minor alteration to key views of Bircholt Corner and despite the proposed mitigation would be harmful to significance of the building. Noise and traffic movements will further erode the wider rural setting.

5. 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.

In summary the proposal fails to:

- ensure the most effective use of land to meet the future development needs of Ashford Borough,
- demonstrate NPPF guidance should be set aside, to use 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;
- demonstrate that the material harm to the character and function of landscape, and the setting of an historic building, is not significant.

The Core Planning Principles in the NPPF recognise that preference for land of less environmental value is a core land-use planning principle.

In terms of its location, on the edge of a village that sits within lower tiers in the settlement hierarchy, the principle of a development of this size must be questioned. Social and physical infrastructure is inadequate to serve a population increase of this size. The development will inevitably be car dependant, with its occupants travelling by car to work in Ashford or beyond. This would be a poor response to the carbon reduction challenge and locally detrimental in terms of noise, congestion, road safety and air quality.

6. Habitat Regulations Assessment

There does not appear to be a Habitats Regulations Assessment submitted with the application. It is a legal requirement that the Council consider whether there is a risk of significant adverse effects to a protected site. This need not go beyond the 'screening'/ trigger 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.

There are three sites close by, the closest being Wye and Crundale Downs SAC. This includes the Late Spider Orchid, representing about 50% of the national population. The HRA screening should consider whether the impacts of recreation or air pollution are likely to have a significant adverse effect on this important habitat.

7. Congestion and Road Safety

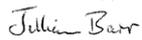
CPRE notes that there is a substantial level of local concern about the impact of the development on congestion and road safety. CPRE has been unable to identify a specialist highway report on the website, commenting on the adequacy of the Transport Assessment and representing the council view on highway capacity and road safety. This will be essential.

8. Conclusion

CPRE Kent has not seen evidence from the Council to challenge its most recent 5 year supply statement. In any case, the claim of the Appellant that the Council cannot demonstrate a five-year supply of land for housing would not outweigh the adverse impacts of developing this site. The proposal would introduce an unsustainable pattern of development into a sensitive, valued and historic landscape.

The application should be refused planning permission. It is in the public interest, in view of the imminent publication of the Regulation 19 Plan, that sites are identified through the local plan, against a clear strategy to direct development to the most sustainable locations.

Yours sincerely,



pp Hilary Moorby
CPRE Kent Ashford District Committee

