



22nd February 2016

Mr. Sadler  
Swale Borough Council  
Swale House  
East Street  
Sittingbourne  
Kent, ME10 3HT

Dear Mr. Sadler,

**Planning Application SW/15/510254 – Proposed Development of land off Swanstree Avenue, Sittingbourne.**

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. Although undetermined, the Council provided putative reasons for refusal to the previous application (14/506248). CPRE endorses and adds-to these reasons and believes that the applicant has failed to address the reasons for refusal. For the reasons we explain in this letter we consider that the application should be **refused** permission.

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 adopted Swale Borough Local Plan (SBLP) 2008 will comprise the primary consideration, though the NPPF and the emerging new Local Plan currently at examination will be important material considerations.

We note that the main justification for making the application is that Swale does not have a five-year housing land supply. In their evidence the applicant refers to the 2014/15 Housing Information Audit for Swale, which indicates a housing land supply of 4.13 years. They also refer to the most recent calculations

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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of Objectively Assessed Need, which is higher than that which would be met by both the existing annual requirement and the constrained housing target proposed in the emerging Local Plan. The Inspector has responded to this constrained target in her Interim Findings.

This application is clearly a deliberate attempt to pre-empt and undermine the emerging Local Plan, and thus the plan-led approach, by seeking to secure the development of a site that is not allocated for development in the adopted Local Plan and which has been rejected by the Council for inclusion in the new Local Plan. We are very concerned that the justification for the development, as presented in the applicants Planning Statement, seeks to pre-determine matters that are being considered through the Local Plan process, and to pursue matters that should be dealt with through the plan making process. Indeed much of the case presented comprises objections to the Local Plan not a justification for this application, and the Council should not be swayed by these arguments in considering the application.

We consider there are clear grounds for refusing the application on grounds of prematurity. We accept that prematurity is a reason for refusal that should not be used lightly. However, the National Planning Practice Guidance (NPPG) helps to explain the circumstances in which it can be used. This guidance can be found at paragraph 014 of the section headed ‘*Determining a Planning Application*’ (Reference ID: 21b-014-20140306). This advises that:

*“...in the context of the Framework [Annex 1 of the NPPF] and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. 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.”*

In our opinion the Council can satisfy both of these conditions. With regard to a) the application comprises a substantial greenfield site, in an inappropriate location that would undermine the Councils emerging Local Plan that seeks to deliver sustainable development. Although Interim Findings from the Inspector require that the Council identifies additional housing sites, it is appropriate at this stage in the plan-making process that the Council review its evidence and make a robust assessment of which sites could contribute. Any new sites identified through this process should be subject to consultation and proper scrutiny, including their scale, location and phasing.

The application also needs to be seen in the context of the cumulative effect of other planning applications in the Swale borough that challenge the basis of the plan strategy by seeking permission for sites not proposed for allocation.

With regard to b) the emerging plan is now at examination - an advanced stage. As such, any benefit associated with addressing the shortfall in the housing land supply must be balanced against the advanced stage of the emerging plan. The Interim findings have now been received by the Council and the Inspector directed the Council to proceed to allocate sites to meet a revised target of 776 dwellings per annum. The Council should review its evidence and make a robust assessment of what sites should contribute. It should continue to endeavour to deliver sustainable development. The changes will form part of a main modifications consultation.

This work has not yet been completed and prematurity argument will still stand.

Even if it is accepted that Swale does not have a five-year land supply, the application of Paragraphs 14 and 47 of the NPPF does not mean that any development should be automatically seen as acceptable and that relevant planning considerations should be overridden. Even if housing supply policies are considered out-of-date according to Paragraph 47, it remains that the remainder of the development plan should not be deemed out-of-date and will continue to represent sustainable development for the purposes of Paragraph 14 of the NPPF. Sustainable development is key and in this case, we believe that the adverse impacts of development outweigh the benefit of increasing housing supply.

The applicant agrees that the establishment of a final housing target is a matter for the examination process. Due to the advanced stage of the plan it would be inappropriate to approve development that would undermine a number of emerging policies that have been prepared in consultation with the community, and adopted policies that are consistent with the NPPF.

### Specific Points

We would raise the following specific points:

#### 1. Location – Impact on landscape character

The applicant argues that Policy E6 ‘The Countryside’, as a housing supply policy, should be considered out-of-date. CPRE Kent note the decision to which they refer and agrees that limited weight can be attributed, so far as it relates to housing supply. That is not to say, however, that the site is no longer ‘countryside’ and 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. ‘Quality, character and amenity value’ of the land in question, as set out in policy E6 remains a relevant consideration when determining whether development is sustainable.

For thirty years or more, and most recently under Policy E9 of the SBLP, the site falls within an area of countryside designated as a Special Landscape Area (SLA). This designation is recast as an Area of High Landscape Value under Policy DM24 of the new Local Plan. This designation has been made because the landscape type of this area is the same as that of the Kent Downs AONB, as explained in the Swale Landscape Character and Biodiversity Appraisal, which has been adopted as a Supplementary Planning Document (SPD). It forms part of the dip slope of the AONB, and comprises one of the dry valleys that descends from the Downs to the town. As such it is a distinctive part of the local landscape and comprises part of the setting of the AONB. The SPD explains that it is an area of high sensitivity, and the landscape guidelines that relate to this area seek to conserve and restore the landscape. In particular the guidelines seek to: “*conserve the remote character belonging to the dry valley along the eastern edge of the area.*” This is a direct reference to this particular dry valley.

Furthermore, as shown on the Key Diagram and on Map 5.6.1 of the new Local Plan, this dry valley comprises the focus of a Strategic Green Corridor between the Sittingbourne urban area and the AONB. As such, the site is an important part of the green infrastructure to be protected under Policy CP7 of the new Plan and Policy E11 of the SBLP.

Consequently, it is important to understand that this area of countryside has been consistently excluded from the built-up area because of its intrinsic quality and character and the need for it to be protected for green infrastructure purposes. Policy E6, therefore, needs to be seen in this context.

This position is supported by the Swale Urban Extension Landscape Capacity Study (2010). Study areas 7 and 8 are relevant. Although this study area sees the potential for improvements to the urban edge as a result of minor development to the north and north-west it recognises the importance of the

ridgeline to the south and east of the development site, which is key to containing development. Although the 'capacity to accommodate change' is assessed as moderate, sensitivity does increase across the site and the following statement is made:

“Sensitivity increases to the south from where the urban edge is not evident and the distinctiveness and remoteness of the landscape are stronger”

Associated guidelines and mitigation recommendations include:

“Conserve the sense of remoteness within the Highstead dry valley, and ensure any further minor development does not encroach on this strong characteristic of the wider landscape.”

The proposed development, and in particular those parts of the development on the valley side will be detrimental to the character, distinctiveness and remoteness of the valley. Although the landscape buffer might physically enclose the site to the south and east, its position on the valley floor will not moderate views from the surrounding landscape which is on higher ground. This does not amount to sensitive development.

Paragraph 17 of the NPPF sets out a number of Core Planning Principles. One of these requires local planning authorities to recognise “*the intrinsic character and beauty of the countryside*” whilst another requires them to “*prefer land of lesser environmental value*” for development. This sensitive site, which benefits from long-standing landscape designation, has a recognised value which has continued to be recognised in the draft Local Plan. ‘Protecting and enhancing valued landscapes’ is a key element of Paragraph 109 of the NPPF. This paragraph is not limited to nationally designated landscapes and ensures that valued landscapes, whether or not they are designated locally is an important issue. Paragraph 113 establishes the importance of the hierarchy of designations in decision-making. The development would be pronounced and significant effect on some views and would have an urbanising 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 up-to-date SHLAA demonstrates alternative available sites that might be preferred should additional sites be required to remedy housing land supply deficiencies.

The application should, therefore, be refused for not complying with paragraph 17 of the NPPF, policies E6, E9 and E11 of the SBLP and policies ST3, CP7 and DM24 of the new Local Plan. It should also be refused because of its impact on the setting of the Kent Downs AONB.

## 2. Location – encroachment in the countryside gap

The site falls within the Important Local Countryside Gap defined under Policy E7 of the SBLP. This seeks to prevent the coalescence of Sittingbourne and the surrounding villages. In this case it is the gap between Sittingbourne and the village of Rodmersham Green that would be vulnerable as a result of the proposed development. This important gap continues to be protected by Policy DM25 of the new Local Plan. The proposed development would see this gap reduced from around 1.2km to just 350 metres at its closest point. The development comprises a significant encroachment of development into this important countryside gap, contrary to Policy E7 of the SBLP and Policy DM25 of the new Plan.

The policies are about maintaining the character of the area by preventing the merging of settlements. This is an entirely legitimate planning objective and is not one that cannot be simply overridden by claims of a failure to provide housing land. Consequently, the application should be refused for being contrary to Policy E7 of the SBLP and Policy DM25 of the new Plan because of the impact it will have on this important countryside gap, and the separation of Sittingbourne from

Rodmersham Green. The principle of such designations was supported recently in a planning decision at Bodkin Farm, Thanet Way, Chestfield (App/J2210/A/14/2227624). The inspector stated in that case that the green gap policy was ‘consistent with the NPPF’s principle of taking account of the different roles and character of different areas (paragraph 17) and its advice that Local Plan should identify land where development would be inappropriate (paragraph 157)’. It is an accepted point that countryside gap policies are not policies that limit housing supply.

### 3. Loss of Best and Most Versatile Agricultural Land

The site comprises land that is in agricultural production. The site has been subject to a detailed agricultural land quality survey which shows it as comprising a mixture of land classified as Grade 1 and 2, i.e. the highest quality. As such it enables a very wide range of agricultural and horticultural crops to be grown, including top fruit, soft fruit, salad crops and winter harvested vegetables as well as the more usual crops. Yields are high and less variable than on land of lower quality.

Food security and maintaining the ability to feed a growing population is an increasingly important national and social issue, meaning that giving up precious high quality 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.”*

Point 11g of Policy ST1 of the new Local Plan echoes this requirement.

Further guidance on using agricultural land is provided in Policy DM31 of the new Local Plan, which states:

*“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. Development on best and most versatile agricultural land (specifically Grades 1, 2 and 3a) will not be permitted unless:*

- 1. The site is allocated for development by the Local Plan;*
- 2. There is no alternative site on land of a lower grade than 3a or that use of land of a lower grade would significantly and demonstrably work against the achievement of sustainable development; and*
- 3. The development will not result in the remainder of the agricultural holding becoming not viable or lead to likely accumulated and significant losses of high quality agricultural land.”*

The proposal does not comply with this Policy.

In his response to the previous application Mr Lloyd-Hughes of Rural Planning Limited advised the Council in his comments on the application that:

*“...the NPPF states that necessary development that impacts on agricultural land should take place on poorer land in preference to land of higher quality. Firstly, therefore, it must be decided whether this development is "necessary"; that would be a Planning matter outside my own advisory remit. If "necessary", the next stage is to decide whether sufficient arguments have been presented for overriding the NPPF guidance, such that, in this case, poorer land should not be sought in preference to this higher quality land.”*

Even if it is accepted that there is an overriding or necessary need for development, as claimed by the applicant, they have not shown that there are no alternative sites involving lower quality land. In accordance with the NPPF, it is the responsibility of the local planning authority to make sure that other lower quality land is not available – not just in Sittingbourne, but throughout the Borough.

The applicant has also not provided any assessment as to how the loss of this site would affect the viability of the remainder of the farm holding, which is a further important consideration.

We consider that the Council does not have sufficient evidence to conclude that the proposal should override paragraph 112 of the NPPF or the requirements of policies ST1 and DM31 of the new Local Plan. For this reason the application should be refused.

#### 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 important landscape character and connectivity with the AONB, high agricultural land quality and green infrastructure purposes.

The site comprises a large area of greenfield land. It is the policy of the SBLP, as expressed in saved policies SP1, SP4 and TG1, that the amount of greenfield land needed for development should be kept to the minimum in order to promote efficient use of previously-developed land. This focus is continued under policies ST1 and ST3 of the new Local Plan. This approach accords fully with the Core Planning Principle listed in paragraph 17 of the NPPF which seeks to “*encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value*”. This is reiterated in paragraph 111 of the NPPF.

Therefore, for this reason and for the reasons we explain above, the proposal does not comprise sustainable development as required by the NPPF. It fails to ensure the most effective use of land to meet the future development needs of Sittingbourne and it involves the use of land of best and most versatile quality when alternative land of lower quality should be used in preference. The loss of this high quality agricultural land will be an environmental, economic and social loss. Consequently, the proposed development is contrary to paragraphs 8, 17, 111 and 112 of the NPPF; saved policies SP1, SP4 and TG1 of the SBLP; and policies ST1 and DM31 of the new Local Plan in these regards.

As stated previously, even if housing supply policies are considered out-of-date according to Paragraph 47, it remains that the rest of the development plan should not be deemed out-of-date and will continue to represent sustainable development for the purposes of Paragraph 14 of the NPPF. Sustainable development is key and in this case, we believe that the adverse impacts of development outweigh the benefit of addressing a shortfall in housing supply. This is not a sustainable site and this is evident in the Council's assessment of the site in its evidence to the Local Plan Inquiry (both the SHLAA and SA). The Council's evidence to Matter 4.10 of the Inspectors 'Matters Issues and Questions' (consideration of housing omission sites) neatly summarises the Council's position on sites in this locality:

*“Three sites (SW/0501, 107, 204 Chilton Manor Farm and environs) are located to the southeast of the town (Tier D) within the Kent Downs Area of High Landscape designation. These sites perform well in terms of their access to services and scope to provide circa 900 homes, but there would be significant landscape and visual harm that can and should be avoided by use of other sites (NPPF*

*para. 110). Given these factors, together with the significant loss of BMV, these sites should not be a priority, unless it can be shown that alternative sites of lesser environmental value would be inconsistent with the NPPF. The Council does not currently believe this to be likely”;*

There are clearly sites that the Council believes are preferable. At this advanced stage of the Local Plan preparation it would not be appropriate to permit (prefer) a site simply because the application has sought to pre-empt and undermine the plan-led approach.

#### 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 be submitted as part of the application. Where it relates to the North Kent Marshes, it is essential that an appropriate contribution to the SAMM is agreed with Natural England before the Council conclude ‘no likely significant effect’ on the SPA. 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. All sites could potentially be affected should be considered, including the North Kent Woodlands.

#### Conclusion

It is our very strong view that the applicant’s claim 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, the application should be refused for being contrary to important Core Planning Principles and requirements of the NPPF and for being contrary to a range of policies in both the adopted SBLP and in the new Local Plan. Because of these adverse impacts we do not believe that the proposal comprises sustainable development, and thus the ‘presumption in favour’ of development does not apply. We also consider that the application should be refused on the grounds of prematurity because it will fundamentally undermine the Plan-led approach, and the spatial strategy of the new Local Plan and its emerging policies that have been prepared in consultation with the community. This is particularly so if regard is given to the cumulative effects of this application and other applications that have been made in Swale which similarly seek to undermine the local plan strategy.

CPRE also notes the putative reasons for refusal to the previous undetermined application, some of which are in addition to the reasons set out in this letter. CPRE Kent endorses these reasons for refusal, including those relating to air quality and minerals safeguarding. They have not been adequately addressed in this application.

We trust that the Council will give full regard to the points we make in this response and that the planning permission will be refused.

Yours sincerely,

Jillian Barr  
Planner, CPRE Kent

Cc Peter Blandon, Chairman of the CPRE Swale District Committee