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20th July 2012

Dear Mr Wallace,

Planning Application DOV/12/00440 - Site at Western Heights & Farthingloe, Dover

Thank you for consulting CPRE Protect Kent on this application and for giving us a little longer to put our response together.

CPRE Protect Kent is the Kent Branch of the Campaign to Protect Rural England. CPRE is a national charity that seeks to retain and promote a beautiful and thriving countryside that is valued by everyone.

Having reviewed the application in detail it is our very strong view that the proposal comprises unacceptable and unsustainable development in the rural area, and that it will have significant detrimental impact on areas of designated importance for their landscape (AONB) and historical (SAM and Conservation Area) importance. The proposals are not supported by either the adopted development plan or by national planning policy. The application, therefore, should be refused.

Basis for Determining the Application

Planning legislation requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990). This requirement was not changed by the Localism Act 2011 – on the contrary the Localism Act and the subsequent National Planning Policy Framework (NPPF) have underlined the central importance of the Local Plan in the planning system with, for example, the very first ‘Core Planning Principle’ in paragraph 17 of the NPPF stating that *“planning should be genuinely plan-led, empowering people to shape their surroundings...”*. It goes on to state that *“they [local plans] should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency.”* Consequently, the Local Plan is the document to which local people (and developers) can look to see where development will or will not be permitted, as explained in paragraph 154 of the NPPF.

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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In articulating the plan-led approach, the NPPF requires local plans to be up-to-date. Paragraph 211 of the NPPF states that local plans should not be considered out-of-date simply because they were prepared before the publication of the NPPF, however, it does advise that plans may need to be revised to take into account the policies in the Framework (paragraph 213). It provides 12 months from the date of the publication of the Framework to allow any such revision to be made (paragraph 214). In the meantime, it stresses that *“decision takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework”* (paragraph 214).

The Dover Core Strategy, which at Annex 1 also includes detailed Development Management Policies, was adopted by the Council in February 2010 after extensive consultation and independent examination. In the context of the NPPF as explained above, it is an up-to-date plan. Under the terms of the NPPF, as explained above, the Core Strategy must provide the basis on which the planning application should be determined and full weight must be given to its provisions, unless there are very clear reasons why this should not be the case.

The rest of this response highlights firstly the key development plan considerations and secondly the regard to be given to other considerations, before giving our overall conclusions.

The Development Plan

The Proposals Map accompanying the Core Strategy shows that the application site falls entirely outside of the defined settlement boundary for Dover and it shows that the vast majority of the application site, including all of the proposed development area at Farthingloe, falling within the nationally important Kent Downs Area of Outstanding Natural Beauty (AONB). It additionally shows that the Western Heights part of the site comprises a Scheduled Ancient Monument (SAM), a Conservation Area and a Statutory Local Nature Reserve (LNR). It also includes areas designated as open space and defines areas covered by Ground Source Protection Zones 1 and 2.

The Core Strategy sets an ambitious growth strategy with a housing target of up to 14,000 new homes by 2026, which is significantly above the target of 10,100 new homes set in the South East Plan. To help deliver this ambitious target the plan makes four strategic land allocations at:

Dover Waterfront – 300 homes
 Dover Mid Town – 100 homes
 Former Connaught Barracks – 500 homes
 Whitfield urban extension – 5,750 homes

These are the key sites that the Council consider will form the backbone of the delivery of the Core Strategy of the plan over the period to 2026. In the context of PPS12, which prevailed at the time the Core Strategy was prepared, these are the sites considered to be *“central to achievement of the strategy”* (paragraph 4.6 of PPS12). The application site is not identified for development in the plan as a strategic site, and the applicant is entirely wrong to suggest that the site will *“provide an important contribution to Dover’s overall regeneration strategy”* (paragraph 2.3 of the applicants Planning and Regeneration Statement). If the Council considered that this was the case, a development proposal of this scale, and in such an environmentally sensitive location, would have been (and should have been) promoted as

such through the Core Strategy with all the necessary supporting evidence to justify it as a 'sound' proposition.

In addition to the strategic allocations made in the Core Strategy, the Key Diagram also identifies other locations of '*potential urban expansion*' at Aylesham, Deal, and Sandwich. These are areas to be explored in more detail by the site allocations plan. There is no such indication on the Key Diagram that the application site is a potential urban expansion to be considered in this way.

This non-identification of the application site in the Core Strategy is consistent with the findings of the Council's Strategic Housing Land Availability Assessment (SHLAA), which was a key part of the evidence base supporting the Core Strategy. This rejected proposed development at locations at both the Western Heights and at Farthingloe.

In the case of the Western Heights, the SHLAA addendum of October 2009 rejected five plots of open space that had been put forward at the Western Heights on the following grounds:

- access;
- landscape impact;
- biodiversity;
- impact on the historic environment;
- loss of open space; and
- a location divorced from the town centre.

Whilst no site map is provided in the SHLAA addendum to show the precise location of the five plots considered, and thus it is unclear whether or not these sites actually fall in the application site area, it is clear to us that these same objections must apply in principle to any development in the Western Heights area.

In the case of Farthingloe, the SHLAA (June 2009) considered a site referred to as '*the former workers village at Farthingloe*'. It is our understanding that this is the former Channel Tunnel site that forms part of the housing development proposal of the application. This site, though, was specifically excluded from the detailed SHLAA assessment process; it being considered inappropriate for development because of its location in the AONB.

Therefore, it is clear from the Core Strategy that this site is not identified for development, with the Council specifically rejecting sites for allocation in this location. Therefore, the application site has no role to play in delivering the spatial strategy of the plan. Consequently, we consider that the following Core Strategy policies are the prime considerations and that they mean that the application should be refused:

Policy CP 2: This policy sets out the overall provision for jobs and homes by 2026 and how, in spatial terms, the provisions will be met. As the plan does not allocate the application site for development as a strategic site, or indicate that it will be considered in the allocations plan, the application site has no role to play in meeting the housing or employment provisions set in this policy and thus comprises no part of the spatial strategy of the plan. Therefore the proposal does not comply with this policy.

Policy CP 6: This policy seeks to ensure that the necessary infrastructure is provided to deliver the growth strategy of the plan in a co-ordinated and timely way. It is supported by Table 3.3 which identifies the 'high level' infrastructure required to deliver the strategy.

These identified infrastructure requirements relate specifically to the spatial strategy of the plan and the strategic sites and other development opportunities identified. Such infrastructure planning is a key element of the planned approach to development required of the development plan. The fact that the significant development proposed in the application is not included in the spatial strategy of the plan means that its infrastructure requirements/demands have not been assessed as part of the plan's strategy. This means that the application does not comply with the essential infrastructure planning necessary in formulating the plan and is therefore contrary to the objective of Policy CP 6.

Policy DM1: This states that development will not be permitted on land outside the urban boundaries and rural settlement confines shown on the proposals map unless it is specifically justified by other development plan policies, or it functionally requires such a location, or it is ancillary to existing development or uses. The proposal does not comply with this policy.

Policy DM 5: The policy sets out the requirements for affordable housing and sets a target of 30% for sites of 15 or more dwellings. The scale of the need for affordable housing in the district is highlighted in the plan as a serious issue to be addressed, with the scale of need exceeding the total housing provision of the plan strategy (see paragraph 1.18 of the Core Strategy). Policy DM 5 is an important planning tool in addressing this issue. The applicants 'Planning and Regeneration Statement' does not say explicitly whether or not the 30% requirement will be provided by the development, but paragraph 5.9 of the statement suggests that this will not be the case. It states that *"It is expected that the scheme will be predominantly market housing in order to maximise the availability of resources to fund the restoration of the major heritage assets within the site."* The lack of commitment to providing the level of affordable housing required by Policy DM 5 means that the application does not comply with the policy.

Policy DM 11: This policy seeks to ensure that new development is located where travel demand can be managed. It states that *"Development that would generate travel will not be permitted outside the urban boundaries and rural settlement confines unless justified by development plan policies. Development that would generate high levels of travel will only be permitted within the urban areas in locations that are, or can be made to be, well served by a range of means of transport."*

The policy seeks to steer development that would generate high levels of transport to locations within the urban areas. The application proposals, being outside of the urban area, do not comply with this. Furthermore, they are of a scale that will generate high levels of travel, and it has not been adequately justified that they can or will be *"well served"* by a range of means of transport. Therefore, the proposal does not comply with this requirement of the policy.

Policy DM 15: This policy seeks to protect the countryside from development and states that development which would result in the loss of, or adversely affect the character or appearance, of the countryside will only be permitted if it is:

- i. In accordance with allocations made in Development Plan Documents, or
- ii. justified by the needs of agriculture; or
- iii. justified by a need to sustain the rural economy or a rural community;
- iv. it cannot be accommodated elsewhere; and
- v. it does not result in the loss of ecological habitats.

The development proposed in the application does not comprise any of these exceptions, and so does not comply with the policy.

Policy DM 16: This policy seeks to ensure that that development would not harm the character of the landscape, and that it will only be permitted if:

- i. It is in accordance with allocations made in Development Plan Documents and incorporates any necessary avoidance and mitigation measures; or
- ii. It can be sited to avoid or reduce the harm and/or incorporate design measures to mitigate the impacts to an acceptable level.

As we have already explained, the proposal does not comprise an allocation made in the development plan, so it clearly fails to meet the first criterion of the policy.

With regard to the second criterion, it has been explained in detail by the Kent Downs AONB Unit in their response to the application that the proposed development will cause significant harm to the AONB and that this harm cannot be mitigated. This was also the conclusion of the Council's own assessment of potential development in this location through the SHLAA process. CPRE Protect Kent agrees fully with the expert opinion presented by the AONB Unit and we are firmly of the view that the proposal does not comply with the second criterion of Policy DM 16. It, therefore does not comply with Policy DM 16 in its entirety.

Policy DM 17: This policy seeks to safeguard against possible contamination of Groundwater Source Protection Zones 1 and 2. As explained above, the Western Heights part of the application site is shown on the Proposals Map as failing in Zones 1 and 2. Whilst in paragraph 6.32 of their 'Planning and Regeneration Statement' the applicant acknowledges that Policy DM 17 is a consideration, there is no subsequent discussion of the compliance with the Policy and that the application meets its requirements. We have also reviewed the Environment Statement and, although reference is made to the Environment Agency's policy on Groundwater Source Protection Zones, again there is no analysis of the issue. We therefore consider that the applicant has not demonstrated compliance with Policy DM 17.

Other considerations

Planning legislation and the NPPF allows other material considerations to be considered in making planning decisions, and allows these to override the provisions of the development plan. In this part of our response we highlight what these other considerations are, and whether or not they override the provisions of the development plan and support the granting of planning permission.

Impact on Heritage Assets: As we have explained earlier in this response, the Western Heights part of the application site comprises land that is a designated Schedule Ancient Monument (SAM) and a Conservation Area. The Core Strategy does not give any policy guidance on how to deal with these matters; instead it defers to Policy BE6 of the South East Plan and national planning policy (at the time the Core Strategy was adopted this was PPGs 15 and 16, but now it is the NPPF).

Generally, the thrust of Policy BE6 and national policy is to protect designated historical heritage assets, particularly those of international and national importance. We have seen

the response of English Heritage to the application, and they are the key consultee on matters of historical heritage. It is their considered view that the proposals at Western Height will cause substantial and unnecessary harm to the SAM and the Conservation Area, and that it does not comprise sustainable development as set out in the NPPF. CPRE Protect Kent agree entirely with the assessment of the application made by English Heritage, and we believe that the advice that they have provided is an important material consideration that weighs heavily against the application and is a further reason for refusing planning permission.

Impact on Biodiversity: The Western Heights part of the site is also a designated Local Nature Reserve (LNR). As for the historical assets, the Core Strategy defers to the South East Plan (Policy NRM5) and national planning policy (at the time the Core Strategy was adopted this was PPS9, but now it is the NPPF). These again seek to provide protection for designated sites, though recognise that there is greater need to protect sites of international and national importance.

LNRs are statutory designations made under the National Parks and Access to the Countryside Act 1949, making them important local designations. The presence of the LNR is acknowledged in the applicant's 'Planning and Regeneration Statement', but it gives no regard to the potential impact of the proposed development on the LNR and how the impact will be dealt with in detail. We consider that the advice that the Council receives on this matter from Natural England and/or the Kent Wildlife Trust will be an important material consideration in deciding the planning application. From our assessment of the application, we find it difficult to see how the proposed development can have an acceptable impact, and that this is likely to be a further reason for refusing the application.

Presumption in favour of Sustainable Development: At the heart of the NPPF is the 'presumption in favour of sustainable development'. Paragraph 14 of the NPPF explains that in making planning decisions this means:

- *approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
 - *specific policies in this Framework indicate development should be restricted.*

A footnote to the policy indicates that designated areas, such as AONBs, are areas where development should be restricted in accordance with the second sub-bullet point and are therefore in effect 'exempt' from the presumption.

Whilst the NPPF and its 'presumption' is generally intended to support development, there is still a requirement for development to be sustainable – it is not a general presumption in favour of development. The NPPF seeks to define what it means by sustainable development and explains in paragraph 7 that there are three dimensions to it: an economic role; a social role; and an environmental role. The paragraph goes on to explain that these three roles should not be undertaken in isolation as they are mutually dependent.

Consequently, it concludes, that to achieve sustainable development, economic, social and environmental gains should be sought jointly.

Having regard to the requirements of paragraph 14 of the NPPF in regard to decision making, it is clear that the first consideration for the Council is compliance of the application with the development plan. As we have explained earlier in this response the proposal does not comply with the development plan, and thus it does not comply with the presumption and should be refused.

However, if the council takes the view (wrongly in our view) that the Core Strategy is silent or out-of-date, the sub-bullet points in paragraph 14 of the NPPF should lead the Council to the view that this is an unsustainable development because of the significant damaging environmental impacts that the proposal will have, especially on the AONB and the SAM. Again, the application should be refused as not complying with the presumption. Either way, it is clearly the case that this non-compliance with the 'golden thread' running through the NPPF is a strong material consideration for refusing the application.

Housing land supply: In paragraph 5.2 of their 'Planning and Regeneration Statement' the applicant states that: *"the scheme is expected to make a significant contribution to addressing the Council's 5-year land supply deficit"*. This suggests that the applicant sees this as an important material consideration in favour of the proposal. We fundamentally disagree with that suggestion, and we do not see this as a reason to override the clear conflicts that the application has with development plan policies and the need for development to be sustainable.

We fully accept the requirement placed on local planning authorities by the NPPF to ensure a five year supply of deliverable housing land, and we acknowledge that the Council is currently failing to do this. This though is not a justification for granting an unplanned, strategic scale, development that has not been considered through the plan making process.

In our representations on the Core Strategy we highlighted the fact the Council's high growth strategy was undeliverable and unachievable, especially in the current economic climate. However, the Inspector sided with the Council and found the plan sound. However, the early indications are that we were right in our assessment of the Core Strategy and that the ambitious high growth housing target is undeliverable.

At the Core Strategy Examination in Public, the Council pointed to the contingency plans built into the Core Strategy in the event that housing was not delivered as they expected. This contingency is set out on page 96 of the Core Strategy, and in regard to housing delivery comprises the following two actions:

- Consider innovative development partnerships and funding initiatives through the Homes and Communities Agency; and
- Potential expansion of Registered Social Landlord activity

There is no evidence to suggest that these contingencies have been explored by the Council, and it is these actions that should be followed in the first instance. If, after considering these options a remedy to the housing land supply situation cannot be found, the appropriate course of action is to review the Core Strategy, so that the housing target can be reviewed and/or additional or alternative strategic sites can be assessed and considered. This would conform with the plan-led approach that the NPPF promotes.

Therefore, the fact that the Council currently is failing to meet its five year housing supply is not a material consideration that outweighs the policy objections to the application contained in the adopted development plan.

Enabling development: Paragraph 55 of the NPPF states:

“Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- *where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets.”*

The principle of ‘enabling’ development to secure the improvement and continued viable use of a heritage asset is a long-standing planning principle. However, whilst the justification for the proposed development is in part on the basis that there will be the *“provision of significant funds to be used for the conservation and enhancement of existing nationally significant heritage assets at Western Heights”*, the application is not being promoted as an ‘enabling development’. The exact nature of the improvements to be made to the heritage assets is not defined and the funding to be provided is not stated. A true enabling development would be supported by robust financial evidence to demonstrate what improvements are needed, how much they would cost, and what the minimum amount of development is needed to secure the funding. Therefore, no support for the application can be obtained from paragraph 55 of the NPPF, and it is relevant that English Heritage does not support the application in this regard.

Previously development land: It is claimed by the applicant that the site at Farthingloe, which was used to house workers during the construction of the Channel Tunnel, is previously developed land – see for example paragraph 4.2 of the applicant’s ‘Planning and Regeneration Statement’. We strongly disagree with this interpretation and consider that the land is greenfield in status. It is clearly undeveloped land with natural vegetation, which is acknowledged in the Council’s own Employment Land Review of 2009 (see paragraph 4.53). It is also the case that its use during the construction of the Channel Tunnel was temporary, with the requirement for it to be restored. Whether or not the restoration has happened, and irrespective of the subsequent granting of planning permission for employment development, the site comprises undeveloped greenfield land. The submission that it is previously developed land is therefore wrong, and should be disregarded – it is a greenfield site in the AONB, and needs to be considered in that context.

The Site has an existing employment land permission: At various points in their ‘Planning and Regeneration Statement’ the applicant points to planning permission granted for the ‘Channel Tunnel workers’ site’ at Farthingloe in 1996, as if this provided some justification for the current proposals. Although it is unclear whether or not this permission remains extant (and we doubt that it is), the fact is that the site is undeveloped. It is also the case that the employment site was not allocated in the 2002 Dover District Local Plan because there was no prospect of it being developed and there was no justified need for it (see paragraph 6.26 of the applicants ‘Planning and Regeneration Statement’).

This 1996 planning permission is historic, and was considered at a time when both national and local planning policies were very different from they are today. The fact that planning permission was granted for employment development in 1996 is no justification for

alternative planning permission being granted now. The site must be seen for what it is – an undeveloped greenfield site in the AONB. This is certainly not a material planning consideration that would override the current development plan strategy.

Dover District Corporate Plan 2012-2016: In March 2012 Dover District Council published its new corporate plan for the next four years. The Council's web-site describes this as the council's "*main strategic document*". As a priority action, the plan proposes:

"To make land available at Western Heights / Great Farthingloe Farm to enable progress towards the comprehensive proposals for regeneration, linked to the Town Centre, and maximise the tourism potential of this area, enabled and facilitated through a Planning Performance Agreement."

This seems to be a direct reference to the current planning application, and the Council may use it to support and justify granting permission. In our view this would be entirely wrong. Whilst the Corporate Plan may comprise the Council's "*main strategic document*" in terms of its corporate priorities, it is not a statutory plan that has been subject to rigorous statutory consultation and public examination. It is not a plan that can override the Core Strategy that has been subject to this rigor, and to do so would undermine the purpose of the plan-led planning system promoted by the NPPF as explained at the start of this response. Therefore, the Corporate Plan does not comprise a material planning consideration of particular relevance in the determination of this application, and certainly would not override the Core Strategy.

Conclusions

In accordance with the National Planning Policy Framework (NPPF) and planning legislation, this application should be determined in accordance with the provisions of the adopted development plan. Given the unclear status of the South East Plan, and the Government's intention to abolish it, it is the Council's adopted Core Strategy that should form the basis of the decision on the application. As we have explained, under the terms of the NPPF the Core Strategy comprises an up-to-date plan to which full weight should be given.

The application site is neither allocated for development in the Core Strategy as a strategic site nor is it identified in the Core Strategy as a location where there is potential for urban expansion. It is not a site that is recognised in the Core Strategy as having any role to play in meeting the growth strategy of the Core Strategy. On the contrary, it is a location where sites considered through the Strategic Housing Land Availability Assessment (SHLAA) process were rejected primarily because of their environmental impact. Consequently, the amended Proposals Map places the application site entirely outside of the urban confines, in the countryside. Consequently, the proposal does not comply with policies CP2, CP6, DM1, DM11, DM15, DM16 and DM17 of the Core Strategy. We also believe that the proposal will fail to comply with Policy DM5 in relation to the provision of affordable housing.

In our view the application will comprise an unacceptable, unsustainable and environmentally damaging development that would significantly extend the urban confines of Dover into the countryside as a form of ribbon development. The Core Strategy seeks to prevent such damaging development. Consequently, the application should be refused for not being compliant with the statutory development plan.

With regard to other material considerations, we do not consider that there are any other considerations that would override the non-compliance with the development plan. In particular the application cannot be supported because it might be seen as:

- addressing housing land supply difficulties (which we consider should be a matter addressed by the contingencies set out in the Core Strategy and/or a review of the Core Strategy);
- comprising enabling development (the application is not promoted on this basis);
- it is in part previously developed land (this is not so);
- having existing planning permission on part of the site at Great Farthingloe Farm (which we consider is not clear); and
- a priority action in the Council's Corporate Plan (which we consider should be pursued by a review of the Core Strategy).

However, it is clear from the response to the application made by English Heritage that the development proposals will have an unacceptable and detrimental impact on the Schedule Ancient Monument and Conservation Area at the Western Heights. We also believe it will have unacceptable impact on the designated Western Heights Local Nature Reserve. In both of these regards the proposal will not comply with the National Planning Policy Framework (NPPF), and this together with its impact on the AONB means that it does not comprise sustainable development as defined by the NPPF. These are important material considerations that weigh heavily against the application, and provide further reasons for refusal.

We trust you will give full regard to our serious concerns about this extremely damaging proposal and refuse planning permission.

Yours sincerely

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