



Ms C Dethier
Swale Borough Council
Swale House
East Street
Sittingbourne
Kent, ME10 3HT

13 January 2015

Dear Ms Dethier

Planning Application SW/14/506248 – Proposed Development of land off Swanstree Avenue, Sittingbourne

As you will know, CPRE Protect Kent is the Kent Branch of the Campaign to Protect Rural England which is part of the national CPRE charity. 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. 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 (published for consultation in December 2014) will be important material considerations.

We consider that the relevant saved policies in the adopted Local Plan remain up-to-date as they are consistent with the policy objectives of the NPPF. Consequently we do not accept the claim made in the applicant's planning statement that the provisions of the

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.

Protect Kent, Queens Head House, Ashford Road, Charing, Kent, TN27 0AD Fax: 01233 714549 Email: info@protectkent.org.uk

Phone: 01233 714540 www.protectkent.org.uk

whole plan should be considered out-of-date simply because the Plan pre-dates the NPPF.

We note that the sole justification for making the application is that Swale does not have a five-year housing land supply. We are unsure that this is actually the case. The most recent Housing Information Audit (HIA) for Swale published by Kent County Council in October 2014 shows that against a housing target based on that set in the adopted local plan, but projected forward to 2031 (i.e. a target of 12,120 dwellings), the Council does not have a five-year land supply. This assessment however, is based on an arbitrarily derived housing target, rather than one derived from a proper and NPPF compliant assessment of housing need. The calculation of the five-year supply also makes no allowance for windfall sites, as explained on page 4 of the HIA, which is a failing.

The applicant, however, relies on the information included in the HIA, thought they additionally claim that the shortfall will be even higher if regard is given to full assessed housing need, which they state is 18,626 dwellings. However, in a recent letter from the Planning Minister to the Chief Executive of the Planning Inspectorate¹ it is explained that the objectively assessed housing need figure should not be taken as a proxy for the final housing target that will be included in a local plan as it has not been tested. At the moment, therefore, there is not an agreed housing target for Swale, though we do have a target of 10,800 dwellings proposed in the new local plan, which has been determined having regard to constraints in the Borough (including those at this site). Neither KCC nor the applicant has undertaken a five-year supply assessment against this target. It is uncertain, therefore, what the current situation is with regard to five-year land supply and the Council needs to be quite clear of what it is.

However, 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. This is quite clear in the final bullet point of paragraph 14 of the NPPF which states that planning permission should be granted 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.*”

We consider that in this case the adverse impacts do outweigh the benefits.

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

¹ See:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390029/141219_Simon_Ridley_-_FINAL_SIGNED.pdf

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. Because of this we consider there are 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 that would predetermine decisions about the scale and location of development at Sittingbourne contrary to the spatial strategy being promoted in Policy ST3 of the new Local Plan and Policy TG1 of the SBLP. In particular this large greenfield site will undermine the Council’s efforts to secure town centre regeneration and the emphasis on the use of previously developed land that the strategy of both the adopted and new local plans seek to secure. The application also needs to be seen in the context of the cumulative effect of other planning applications in Swale 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 an advanced stage, with the pre-submission plan now out for consultation and due to be submitted for examination in the near future. Although paragraph 014 of the NPPG concludes by saying that refusal on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, it does not rule it out. We believe that because this application, and other similar greenfield applications elsewhere in Swale which raise similar issues on housing land supply, the Council is in an extremely unusual situation that can fully justify invoking refusal on grounds of prematurity because of the impact that approval would have on the spatial strategy of the new local plan.

Specific Points

We would raise the following specific points:

1. Location – loss of countryside and impact on landscape character

The site is located outside of the built-up-area of Sittingbourne as defined on the Proposals Map of the SBLP. Consequently, the proposal comprises significant and large scale development in the open countryside contrary to the provisions of saved Policy E6 of the SBLP.

The applicant submits that Policy E6 is a housing supply policy and thus should be considered out-of-date under the terms of paragraph 49 of the NPPF. We disagree with that view, as the policy is clearly an environmental one rather than a housing supply one. If the applicant is correct in saying that Policy E6 is out of date, it would essentially mean that housing development would be seen as acceptable in principle anywhere in the countryside, which is clearly an untenable position and contrary to the NPPF.

The applicants view is a simplistic one and should not be accepted as it has no regard to the quality and character of the countryside in this location. As explained in Policy E6 of the SBLP and in Policy ST3 of the new local plan, built-up area boundaries have been defined to ensure that planning proposals protect the quality of the countryside, and thus steer development to the most appropriate and sustainable locations. In this location the application site has been consistently excluded from the built-up area in large part because of its landscape quality. 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 a distinctive part of the local landscape and comprises part of the setting of the AONB. The SPD explains that as such 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.

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. Therefore it is entirely inappropriate for the applicant to suggest that Policy E6 should be seen as out-of-date and disregarded, as it seeks to protect an area of countryside that has been recognised and designated for its important landscape quality for many years, and which also forms part of a strategic green corridor. As such it is an area of countryside that the NPPF would see as inappropriate for development. Policy E6, therefore, remains a primary consideration that accords fully with Core Planning Principles referred to above.

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 closet 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.

Again, the applicant simply dismisses these policies as being ‘housing supply policies’, but this is wrong. 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.

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.

Mr Lloyd-Hughes of Rural Planning Limited advises 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.

Furthermore, because it does not comprise sustainable development, the ‘presumption in favour’ of sustainable development, as outlined in paragraph 14 of the NPPF, does not come into play.

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 explain in this letter. 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 spatial strategy of the new Local Plan and the focus it places on the use of previously developed land and the regeneration of Sittingbourne town centre. 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.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'B Lloyd', with a stylized flourish underneath.

Brian Lloyd BSc (Hons) MSc MRTPI
Senior Planner
CPRE Kent

Cc Peter Blandon, Chairman of the CPRE Swale District Committee