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## Extraordinary Planning Committee

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**MINUTES** of the Meeting held in the Council Chamber, Swale House, East Street, Sittingbourne, ME10 3HT on Wednesday, 28 June 2023 from 7.00 pm - 9.44 pm.

**PRESENT:** Councillors Mike Baldock (Chair), Andy Booth, Simon Clark, Kieran Golding, Mike Henderson, James Hunt, Elliott Jayes (Vice-Chair), Ben J Martin (Substitute for Councillor Claire Martin), Charlie Miller, Julien Speed, Paul Stephen, Angie Valls, Karen Watson and Tony Winckless.

**OFFICERS PRESENT:** William Allwood, Robin Harris, Joanne Johnson, Kellie MacKenzie, Cheryl Parks, Carly Stoddart, Emma Wiggins and Ceri Williams.

**OFFICERS PRESENT (VIRTUALLY):** Simon Algar, Philippa Davies and Larissa Reed.

**ALSO IN ATTENDANCE (VIRTUALLY):** Councillor Carole Jackson.

**APOLOGY:** Councillor Claire Martin.

153 **Emergency Evacuation Procedure**

The Chair outlined the emergency evacuation procedure.

154 **Declarations of Interest**

Councillor Kieran Golding declared a Disclosable non-pecuniary interest in respect of item 2.2 20/500015/OUT Land at Abbeyfields, Faversham as he was a member of the Faversham Society. Councillor Golding said he had not been involved in any meetings when the application had been considered and had an open-mind and would listen to all sides before voting.

155 **Schedule of Decisions**

**PART 2**

Applications for which **PERMISSION** is recommended

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<b>2.1 REFERENCE NO 22/503935/REM</b>		
<b>APPLICATION PROPOSAL</b>		
Approval of Reserved Matters of access, appearance, landscaping, layout and scale for erection of 205 dwellings on land at Parcels D, E & F pursuant to outline application SW/13/1455 (Outline planning application for the residential development (of up to 431 dwellings)).		
<b>ADDRESS</b> Land at Harps Farm, Parcels D, E & F Thistle Hill, Minster-on-Sea, Sheerness, Kent		
<b>WARD</b> Sheppey Central	<b>PARISH/TOWN COUNCIL</b> Minster-on-Sea	<b>APPLICANT</b> Jones Homes (Southern) Ltd <b>AGENT</b> DHA Planning

The Planning Consultant introduced the application as set-out in the report. She reported that the Environment Agency (EA) had no further comments.

Matthew Blythin, the Agent, spoke in support of the application.

The Chair moved the officer recommendation to approve the application, and this was seconded by the Vice-Chair.

A Ward Member, also a member of the Planning Committee, was disappointed that the Members that had called in the application were not in attendance. He was also disappointed that flats were included within the development, but he welcomed the suggestions from the Active Travel Officer as set-out on page 14 of the report and queried whether the suggestions had been fully incorporated.

In response the Planning Consultant confirmed they had apart from the suggestion in paragraph 6.9 on page 15 of the report, in respect of restoring the small strip of land at the north of the development with a wide surfaced path and lighting. She explained that officers could investigate the exact location of the railway line but if it traversed dwellings and rear gardens the suggestion could not be incorporated. She suggested officers be given delegated authority to impose a suitably worded condition for it to be looked at and incorporated if possible. This was agreed by Members.

The Ward Member considered condition (12) of the report in respect of submission of the travel plan was “generous” to the developer. He asked that it be amended to read “Prior to the first occupation of the 10th dwelling...” not the 100<sup>th</sup> as stated. This was agreed by Members.

The Ward Member also requested an amendment to condition (11) installation of the Local Area of Play (LAP) should be implemented “...prior to the occupation of the 10<sup>th</sup> dwelling” not the 150<sup>th</sup> dwelling as stated. The Planning Consultant sought delegated authority to discuss whether that was possible with the agent. This was agreed by Members.

Members considered the report and points raised included:

- Supported this application as it was within the built-up area of Minster;
- did not support the application as the infrastructure on the Isle of Sheppey was at capacity;
- the Kent County Council (KCC) Highways & Transportation’s directive had indicated that there would be no more highway improvements on the Isle of Sheppey;
- the nearest junction to the development had an average of 12,000 vehicle movements per day; and
- anti-social behaviour was an issue in the area and Kent Police were non-existent.

Councillor Andy Booth asked that it be minuted that he was not in favour of the application.

***Resolved: That application 22/503935/REM be delegated to officers to approve subject to conditions (1) to (12) in the report, the amendment to condition (12) to read “Prior to the first occupation of the 10th dwelling...”. The imposition of a suitably worded condition if investigations concluded that the suggestion from***

***the Active Travel Officer as set-out in paragraph 6.9 on page 15 of the report was possible, and officers to discuss with the applicant's agent whether the LAP implementation in condition (11) could be brought forward to occupation of the 10<sup>th</sup> dwelling not the 150<sup>th</sup>.***

<b>2.2 REFERENCE NO – 20/500015/OUT</b>		
<b>APPLICATION PROPOSAL</b>		
Outline application for the development of up to 180 dwellings with associated infrastructure including internal access roads, footpaths, cycleways, parking, open space and landscaping, drainage, utilities, and service infrastructure works (All matters reserved except Access).		
<b>ADDRESS</b> Land at Abbeyfields, Faversham		
<b>WARD</b> Abbey	<b>PARISH/TOWN COUNCIL</b> Faversham Town	<b>APPLICANT</b> New Homes and Land <b>AGENT</b> JB Planning

The Interim Major Team Leader introduced the application as set out in the report. He drew attention to the tabled updates which had previously been circulated to Members.

Councillor Mike Henderson raised a point of order that the application was invalid. He referred to a government document called “Valid Planning Applications” which stated that the application must show the sites connection to the “public” highway. Councillor Henderson said Abbeyfields was connected to a private road and the nearest connection to the public highway was at the junction of Whitstable Road. This should be indicated but had not been included within the report which made the application invalid and should not therefore be considered.

The Interim Major Team Leader said that a Ward Member had previously raised the issue and the response was that the Development Management Procedure Order (DMPO) did allow the Council to determine the application where access was being considered, it was access onto the “highway” and not the “public highway”.

The Senior Legal Advisor – Planning stated that the DMPO was a piece of law that stated access had to be onto a “highway”. The planning practice guidance did not carry the weight of law. She referred to the Planning Inspectorate’s training manual which was clear that access was onto a “highway”.

Following the advice from officers Members agreed that the application should be considered.

Rob Preston, the Agent, spoke in support of the application.

Town Councillor Julian Saunders, representing Faversham Town Council, spoke against the application.

Harold Goodwin, an Objector, spoke against the application.

A Ward Member spoke against the application.

Councillor Andy Booth moved the officer recommendation to approve the application, and this was seconded by the Vice-Chair.

The Chair invited Members to make comments, and these included the following points:

- The application did not comply with paragraph 5 of Policy ST3 (The Swale settlement strategy) of the Swale Borough Local Plan 2017;
- it was not included within the Bearing Fruits Local Plan, the draft Local Plan or the Faversham Neighbourhood Plan (NP) and emerging NP's should not be ignored;
- the lack of a five-year housing supply was not an overriding consideration and not a reason to approve a "lousy" plan;
- did not understand the logic of the first sentence in paragraph 9.7 on page 74 of the report which said the Council should approve an application which did not comply with Local Plan in order to put the Council back in control with applications that did not comply with the Local Plan;
- questioned the 4.83-year housing supply, as the Fernham Homes development added 154 homes, and the Council were told that its' approval would bring the Council up to a five-year supply. The Preston Fields development had added 70 homes and The Lady Dane development 88 homes; and the Faversham Lakes would add 70 homes;
- the land was of high ecological value as stated in paragraph 8.26 in the report and the chalk streams were rare and important for biodiversity;
- there were bats, rare birds, and trees on the site;
- the site provided a gap between the built-up area of Faversham and the Site of Special Scientific Interest (SSSI) and the Ramsar site;
- there might be not a "killer" harm but there are several "substantial" harms and the closest to being a killer harm was that the site was totally outside the built-up area of Faversham;
- important to maintain the built-up area boundary of the town and breaking it was a "big" harm;
- serious harm to best and most valuable agricultural land, and far too much of that has already been lost;
- would cause damage to the local landscape;
- would cause harm to local heritage including the ancient monument on the site;
- this was not included within the Faversham NP which had reached Regulation 16 and therefore should be given considerable weight;
- this would cause loss and harm to local amenity for local residents;
- the flood risk information was out of date and referred to the letter from Mr Atkins regarding further advice in respect of flooding;
- there were at least 10 significant areas of harm the application would cause and the two benefits of: getting closer to the 5-year housing supply and some affordable housing did not balance that;
- the Faversham NP had not been tested, processed or scrutinised so understood why the officer had not given it much weight;
- considered that the 4.83-year supply of housing was incorrect, it was much less;
- the site was considered under the Strategic Housing Land Availability Assessment (SHLAA) and could still be considered as a possible site within the Local Plan;
- the Council needed to start approving housing to get near to the 5-year housing supply;

- an interpretation board would not replace the setting of the two listed medieval barns;
- considered the report had been rushed and contained errors;
- the Council's Planning Department had warned against submitting the NP to Regulation 16 earlier because of the election and risk of judicial review and now had rushed through this application which was deemed by the NP committee to be inappropriate;
- there was no consideration of the Whitstable Road junction and suggested deferment for independent highway advice from KCC, or a site meeting;
- the proposed access was not safe;
- this was not a balanced report;
- risk that Network Rail could close the public right of way ZR95;
- queried the benefits of the Section 106 Agreement towards the Faversham waste recycling site which was earmarked for closure;
- concerned about the impact of flooding on the site;
- this would cause demonstrable harm to the local area; and
- the road access was inadequate.

Councillor Kieran Golding moved a motion for a site meeting. This was seconded by Councillor Tony Winckless. On being put to the vote the motion was lost.

In response to comments about the committee report the Interim Head of Planning said that she considered that it was a comprehensive evidenced report, and whilst Members might have disagreed with the arguments and conclusion presented, she, on behalf of officers disagreed that it was a poor-quality report.

The motion to approve the application was lost.

The Chair asked Members if they wished to defer the application until the 5-year housing supply position had been clarified. A Member did not consider that would be necessary and Members could make a decision on the information provided.

Councillor Mike Henderson moved the following motion to refuse the application: That the application be refused on the grounds that the 4.83-year housing land supply was not an overriding consideration and not a major benefit and would cause the following harms: damage to land of high ecological value; adverse impact on the Ramsar and SSSI in particular the chalk streams, bats and birds; outside of the built-up area of Faversham; damage to best and most valuable agricultural land; and serious harm to the landscape to the east, west and north of the site; harm to local heritage with important Roman and Saxon archaeology. The application had not been part of the Local Plan process and had been rejected as part of the 2017 Local Plan and not put forward as a proposal in the Faversham NP. Would cause harm to local residential amenity with the loss of a very popular walking area and risk of flooding. This was not seconded.

The Development Manager said that in terms of the reasons for refusal put forward, the Council could continue on the impact on the local landscape and being outside of the built-up area of Faversham. She said that in her opinion given that the Council did not have a five-year housing land supply the prospect of winning any subsequent appeal was low. The loss of agricultural land could also be considered and the impact on the local heritage asset, but she did not consider that archaeology, ecology or flood risk

could be included as no objections from statutory consultees had been received.

The Design & Conservation Manager said that he had found it a difficult application to comment on from a heritage perspective and he was sympathetic to concerns raised, and had considered the views of the Faversham Society, the relevant national guidance and the heritage statement and related supporting information provided by the applicant's heritage consultant. He said there were virtually no visible remains of the Abbey and limited intervisibility between some parts of the application site and the surviving Abbey Farm barns. The Design & Conservation Manager explained that national guidance on assessing harm to heritage significance advised that the threshold for when substantial harm was high, and would not arise in many cases and was, in his experience very difficult to sustain on appeal. He concluded that in his opinion the level of heritage harm was between a low to medium level of less than substantial harm and difficult to support refusal of the application on a heritage related reason at any subsequent appeal.

The Senior Lawyer – Planning confirmed that there was a condition within the report to mitigate archaeological matters and she suggested it not be included as a reason to refuse the application. She warned against including increased recreational impact on the SPA, SSSI and Ramsar Site as a reason for refusal as that impact would be dealt with via the Bird Wise Strategy, a tariff-based payment system specifically designed to address increased recreational disturbance on those European designated sites. The Senior Lawyer also considered that including, as a reason for refusal that the site had not been included in the existing local plan, emerging local or Faversham NP would not be reasonable as there was nothing in local or national policy or law that prevented the application on what was deemed a 'windfall' site or to grant permission on a 'windfall' site.

Councillor Mike Henderson considered the comments of officers and moved the following reason for refusal: That the application be refused on the grounds that it was outside the built-up area of Faversham would result in the loss of best and most valuable agricultural land; it would cause serious damage to the local landscape, and the impact and damage to the local heritage asset. This was seconded by Councillor Ben J Martin.

Members considered the motion for refusal and points raised included:

- Had not heard any good planning reasons for refusing the application;
- the flood data was five years out-of-date so should be included as a reason for refusing the application; and
- there was no evidence to support refusal on loss of local heritage grounds.

At this point the meeting was adjourned to allow officers to draft suitably worded reasons for refusing the application that directly reflected Members concerns.

The Development Manager suggested the following wording for the reason for refusal: That the application be refused on the grounds that the development by virtue of its location outside of the built-up settlement boundary of Faversham was contrary to Policy ST3 of the Swale Borough Local Plan 2017 and consequently would give rise to encroachment into and urbanisation of the open countryside and the loss of best and most versatile agricultural land contrary to Policies DM24 and DM31 and paragraph 174 of the National Planning Policy Framework. The harm would significantly and demonstrably outweigh the benefits of the delivery of housing.

The Development Manager also suggested an additional reason be included in relation to not securing a Section 106 Agreement. She explained however that it was likely the reason would “fall-away” during any subsequent appeal.

The proposer and seconder of the original reason for refusing the application accepted the officer wording for their reason for refusal.

In response to a question in relation to why Policy DM21 (Risk of Flooding) had not been included, the Development Manager said that the Environment Agency had raised no objection and the scheme had been designed so that the housing was in Flood Risk Zone 1 which was at the least risk of flooding.

**In accordance with Council Procedure Rule 3.1.19(2), a recorded vote was taken, and voting was as follows:**

**For: Baldock; Booth; Clark; Golding; Henderson; Jayes; B Martin; Miller; Speed; Stephen; Valls; Watson; Winckless. Total = 13.**

**Against: Hunt. Total = 1.**

**Abstain: Total = 0.**

***Resolved: That application 20/500015/OUT be refused on the grounds that the development by virtue of its location outside of the built-up settlement boundary of Faversham was contrary to Policy ST3 of the Swale Borough Local Plan 2017 and consequently would give rise to encroachment into and urbanisation of the open countryside and the loss of best and most versatile agricultural land contrary to Policies DM24 and DM31 and paragraph 174 of the National Planning Policy Framework. The harm would significantly and demonstrably outweigh the benefits of the delivery of housing and the inclusion of a Section 106 Agreement.***

## 156 **Adjournment of Meeting**

The Meeting was adjourned from 7.15 pm until 7.20 pm, and from 9 pm until 9.15 pm.

### Chair

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All minutes are draft until agreed at the next meeting of the Committee/Panel