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Members of the Swale Borough Council Planning Committee
Swale Borough Council
East Street
Sittingbourne
ME10 3HT

28 January 2019

Dear Members,

Land At Wises Lane Borden Kent ME10 1GD - 17/505711/HYBRID | Hybrid planning application with outline planning permission (all matters reserved except for access) sought for up to 595 dwellings including affordable housing; a two-form entry primary school; local facilities comprising a Class A1, A2, A3, D1 as well a link road between Borden Lane and Chestnut Street / A249; allotments; and formal and informal open space incorporating SuDS, new planting / landscaping and ecological enhancement works. Full planning permission is sought for the erection of 80 dwellings including affordable housing, open space, associated access / roads, vehicle parking, associated services, infrastructure, landscaping and associated SuDS. For clarity - the total number of dwellings proposed across the site is up to 675.

This letter is submitted on behalf of the Borden Parish Council who are extremely concerned that support is being given to proposals that breach policies of the strategic mixed-use allocation MU3 as set out within the adopted Swale Borough Council Local Plan. As Members will be aware the application is contentious in nature with numerous representations received from statutory bodies, Parish Councils, a range of professional consultants and importantly, the wider local community. Despite the high level of concern and clear conflicts within the application, Swale Borough Council planning officers have recommended that the application be approved, and in doing so, are directly undermining the Swale Borough Local Plan and its policies, setting a precedent for future applications of this size.

Decision Making Framework

It is firstly important to set out the decision making framework in context of determining this application. The starting point in the determination of every planning application is Section 38 (6) of the Planning and Compulsory Purchase Act which states **that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise.**

Having reviewed the key documents submitted as part of the planning application, as well as the recently published Committee Report, it is clear that the proposals conflict with the adopted Development Plan. We consider that Members must be made aware of the fact that no material considerations have been found to outweigh the conflict with the Development Plan.

Whilst it is acknowledged that the site is the subject of a mixed-use allocation within the Swale Borough Local Plan, the Council acknowledge themselves that the application departs from the Local Plan, causing harm on a number of fronts and as a result should be refused.

Serious concerns are raised in relation to the following matters;

- Lack of masterplan and formal engagement process;
- Design and layout;
- Impact on local air quality;
- Impact on strategic countryside gap/detrimental impact on surrounding landscape;
- Impact on local highway; and
- Material considerations.

I. Lack of masterplan and formal engagement process

Cerda Planning has raised concerns before in relation to the master planning process that accompanies this submission, providing constructive feedback on the public engagement/consultation process that has fallen considerably below the required standard for an application of this magnitude and importance. Paragraph 6.6.46 of policy MU3 states that;

Given the different landowners involved and the landscape, phasing and infrastructure issues needing to be addressed, including the potentially complex transport issues, preparation of a joint Masterplan/development brief for the site is required. At all stages use of the Council's Design Panel will be required.

The above policy wording is clear that a masterplan is required. Whilst the policy does not go into detail on the timings or state that it should be adopted prior to an application, it is our view that the very nature of masterplan requires its completion prior to application being designed, let alone submitted. This process allows effective and transparent stakeholder engagement devising a scheme that responds to the sites opportunities and constraints. Having reviewed the timeline of the masterplan, it is important that Members attention is drawn to the fact that the masterplan and submission documents have been amended throughout the determination period as a result of formal consultation with Swale Borough Council and statutory consultees, essentially seeking to **retrofit the masterplan**.

The Case Officer seeks to address this point within the committee report and whilst he acknowledges that amendments have been made throughout the determination period, and that further public consultation has taken

place, there is no detailed examples of this or evidence of how the local communities views have been considered. Somewhat alarmingly, the Case Officer states ***that the masterplan principles have evolved during the course of the application, primarily through discussions between the applicant and my officers, and through a Design Review process***, further casts doubt on whether appropriate stakeholder/community engagement consultation has taken place prior to the submission of the planning application. It is respectfully suggested to members that the approach taken by the applicant and Council has made it very difficult for key highly material stakeholders (such as Borden Parish Council, BRAD and local residents) to engage and influence proposals with any degree of weight ensuring that the proposals respond effectively to a set of collaborative design codes.

The applicant's approach in submitting the application prior to having a formal masterplan in place and subsequently making amendments during the determination process directly conflicts with inclusive and transparent stakeholder engagement as directed by National Planning Policy as well as the Swale Borough Local Plan.

Furthermore, the application does not accord with an adopted masterplan and nor could it, given the application was submitted ahead of the very masterplan process adopted policy requires. On this basis the application in its current form conflicts with the first paragraph of Policy MU3 of the Swale Borough Local Plan.

II. Design and layout

The Committee Report reveals further conflicts with the Swale Borough Council Development Plan when making assessment of the applications design and layout. The additional land included within the application (some 13.8 hectares) which falls outside of MU3 allocation appears to have given rise to the creation of a spine road running east to west throughout the development site. Given that Policy MU3 specifically seeks to avoid Local Distributor Roads (LDR) it is somewhat surprising that this forms a major design and layout feature. The case Officer concedes further conflict with Policy MU3 stating that the ***spine road would be a more dominant feature through the site as would the roundabouts at each end of the site. This would not accord with the supporting text under Policy MU3, which seeks to avoid use of an LDR altogether.*** Whilst the spine road creates immediate conflict with policy MU3, it is perhaps the reliance on future Reserved Matters applications which is more concerning, with the report seeking to 'dodge' the design issues associated with the bulky spine road commenting that future Reserved Matters application will address this issue. It is put Members should suggest that further details on the 'dominant spine' road and its relationship to dwellings to provide comfort that the spine road can integrate into an area that currently acts a rural transition area between Sittingbourne and Borden.

The above casts further doubt on the legitimacy of an outline submission being the most appropriate method to progress the application as it leaves key aspects of the allocation site to be determined at a future stage, rather than provide confidence that the proposals are achievable and deliverable as directed by the National Planning

Policy Framework. Given that allocation MU3 is one of only two allocations within the Swale Borough Local Plan that require a masterplan, it is logical to expect that the Council would require such a plan to be in place setting out the parameters of the development with a subsequent Full application coming forward detailing how these parameters have been met. Policy MU3 provides comprehensive policy criteria in relation to landscape, heritage, green infrastructure and housing mix, criteria that cannot be fully addressed by an Outline submission and instead relies upon future submissions to address the required level of detail.

III. Impact on local air quality

Air Quality has and continues to form a major area of contention for the proposals with an independent air quality assessment being commissioned in order to ensure that the applicants air quality data is robust and can be relied upon. Whilst the Committee Report sets out that the Environmental Protection teams' latest position is that the independent air quality assessment produced by the University of Kent is unreliable due to measuring period and equipment, it fails to comment/acknowledge the actual results within the University of Kent's report, which show clear differences and conflicts when compared against the applicant's data. It would appear that the Environmental Health team have sought to discredit the results on technicalities rather than actually engage with the data helpfully provided and funded by Borden Parish Council.

Given that the latest comments from Environmental Protection team have not been received in response to the University of Kent's rebuttal, it is surprising that this application is being taken to Planning Committee. As the determination of this application relies on a planning balance exercise, all final consultee comments should be received prior to making a recommendation. To do so suggests that limited weight is being given to the issue of air quality in the context of the whole application. In taking the application to Committee without the final comments from the Environmental Protection Team, it has denied Borden Parish Council the right to consider comments and provide a response accordingly. Equally, it may have compromised their committee speech which has been written without the latest response to hand.

IV. Impact on local Highways

The Committee Report goes into detail on the range of highways mitigation required in order for the application to be deemed acceptable in terms of traffic flow and road capacity. Despite this level of detail, it is perplexing as to why a comparison exercise in relation to highway upgrades has not taken place given that the proposal ignores guidance within Policy MU3. The Case Officer makes numerous references to the benefits of the spine road and how they exceed the benefits delivered through a Policy MU3 compliant scheme. In the absence of such a comparison exercise it is difficult to ascertain how/if any analysis has been completed and as such it is challenging

to determine whether the policy breaches of MU3 are outweighed by the current highway mitigation package, including the overly dominant spine road.

What is further alarming is the reliance on the J5 improvements of the M2 in order for the highway mitigation to be effective, this alongside the use of Grampian conditions to secure mitigation works is a red flag in terms of deliverability. Further references are made to an ongoing Village Green Application in relation to land between Grove Park Avenue and London Road. In light of this information and that the highways mitigation proposed may be unimplementable, it is questioned how the Council are in a position to determine the application. On this basis it is suggested that the application before Members is premature with several aspects of the scheme relying on mitigation which is outside of the applicants control.

Whilst the proposed highway mitigation is given significant weight in the determination of the application (a point addressed later in this report) the report fails to adequately address the impact on neighbouring Rural Lanes. Policy MU3 is clear when it states that any planning should demonstrate ***The retention and enhancement of any designated Rural Lane, in accordance with Policy DM 26***, therefore it is alarming for the Case Officer when referring to Borden Lane to concede that ***The proposal would have a substantial impact on this lane, most obviously through the design and layout which severs the lane, and removes part of it for use by vehicular traffic.***

Policy DM26 provides further guidance on this matter stating that that **planning permission will not be granted for development that would either physically, or as a result of traffic levels, significantly harm the character of rural lanes**. Surprisingly, the Council do not provide any justification for the policy breaches and simply attempt to dismiss this harm by stating it is an ***inevitable consequence arising from a large scale development***. Given that the proposals in the Council's opinion will ***sever the lane*** and that the ***very scale and nature of the housing development proposed would significantly alter the existing rural qualities of the lane***, it is difficult to understand how and why the council have failed to attribute significant weight to these policy breaches, which ultimately weigh heavily against the proposal. This is a major departure from the Local Plan and should be given consideration in overall planning balance.

V. Impact on strategic countryside gap/detrimental impact on surrounding landscape

The application site lies to the south west of Sittingborne with the sites southern boundary lying adjacent to a strategic countryside gap designation as outlined within the Swale Council Local Plan. The strategic gap provides an appropriate buffer to the neighbouring historic settlement of Borden which is located at a higher level to the application site located approximately 200-300 metres away.

The Council's own landscape study conducted in 2011 outlines that the strategic gap between the application site and Borden known as Tunstall Farmlands is an area of high sensitivity with a landscape of moderate visibility and that as a result the landscape demonstrates a strong sense of place and high visibility within the setting of the well-defined urban edge of Sittingbourne.

Given that the sites landscape sensitivity has been well documented and is protected by policy DM25 of the Local Plan, it is surprising the Council are willing to support the landscape proposal in its current form. Policy MU3 is clear that the development must ensure the long-term protection of the countryside gap between Sittingborne and Borden through the use of woodlands, green spaces, links and networks as well as breaking up the mass and scale of the development ensuring that perceptions of coalescence to neighbouring Borden are minimal. The allocation does not provide the applicants with justification to simply disregard landscape matters in the manner they have. Policy MU3 provides a concept plan for the site which clearly outlines the requirement for a substantial landscape buffer in order to mitigate landscape harm. Not only does the latest masterplan not provide an adequate landscape buffer, it seeks to use formal open space in the form of sports pitches to act as a landscape buffer. Whilst on face value sports pitches would appear open in nature, its use is clearly urban and therefore dilutes the existing rural character.

Policy MU3 is clear that the southern boundary should comprise a leafy character with a more rural feel, integrating with the landscape of the countryside to the south. Proposing sports facilities in this location is completely at odds with the supporting policy text.

The supporting text for Policy MU3 is clear that inevitably there will be a physical reduction in separation between Sittingbourne and Borden. However, given the high landscape sensitivity the remaining separation gap and setting should be respected and enhanced.

Clearly when assessing the above findings against the supporting policy text, there are clear breaches which should be given weight in the determination of the application. Once again, the Committee report seeks to dilute this harm commenting that some harm would occur but it would not be unacceptable in nature. Given that the application seeks to erode the rural nature of the wider nature and in doing undermine key landscape and open designations, the level of harm attributed should be at least moderate.

VI. Material Considerations

In terms of the decision-making process, Section 38(6) states that applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. This report has sought to demonstrate a number of failings and shortfalls within the application which clearly demonstrate that the application

is not accordance with the Development Plan. The Council themselves concede conflict with policies ST3, DM24, DM25 and DM31 of the Local Plan as well as numerous criteria within Policy MU3.

Section 38(6) outlines that where there is conflict with the Development Plan an **application should be refused, except for where material considerations can be demonstrated**. In this instance the Council are wholly reliant on the highway's benefits (traffic diversion, creating of spine road from Borden Lane to Chestnut Street) which they deem sufficient enough to be considered a material consideration. In our view this is a **fundamentally flawed** approach and a wrong interpretation of section 38(6). Regardless of the level of harm attributed, the Committee Report itself identifies harm in relation to strategic landscape designations, agricultural land, traffic congestion, open countryside and the Borough's overall development strategy. It is our view that further harm has been found in relation to air quality, design, rural lanes and the surrounding rural character.

Clearly when undertaking the planning balance exercise, the harm identified above in addition to the numerous policy breaches and complete disregard for Policy MU3 cannot be outweighed **by highways mitigation alone**, especially as the full highways mitigation package has not yet been evidenced as deliverable. What is more astonishing is that the Council rely on the highway's mitigations to balance in favour of granting the permission despite highways mitigation itself leading to an increase in air quality pollution and traffic on a number of neighbouring roads as well as identified heritage harm.

It is our view that the proposals show a complete disregard to the recently adopted (and therefore up to date) Swale Local Plan. It is extremely concerning that only a year after its adoption, Officers are recommending approval for an application which clearly breaches numerous policies including its own specific mixed-use policy. Regardless of whether or not the highways mitigation package is deemed a material consideration, it does not outweigh the harm that the proposals will deliver.

As result in accordance with section 38(6) of the Planning and Compulsory Purchase Act it is respectfully requested that Members **refuse** this application and in doing so protect the development strategy of recently adopted Swale Borough Local Plan. Refusal would allow the applicants to work with the local community and address the issues raised throughout this report.

Yours faithfully,

Cerda Planning
January 2019