

Comments for Planning Application 17/505711/HYBRID

Application Summary

Application Number: 17/505711/HYBRID

Address: Land At Wises Lane Borden Kent ME10 1GD

Proposal: 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 with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq m GIA and up to 560sqm GIA of "flexible use" floorspace that can be used for one or more of the following uses - A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse / community building of up to 375 sq m GIA, three standard RFU sports pitches and associated vehicle parking; 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.

Case Officer: Andrew Byrne

Customer Details

Name: Mr Mike Baldock

Address: 8 Wises Lane, Borden, Sittingbourne, Kent ME10 1YN

Comment Details

Commenter Type: Councillor

Stance: Customer objects to the Planning Application

Comment Reasons:

Comment: Comments on Wises Lane Hybrid Planning Application.

A) Questionable legality of the Local Plan.

This Application should be rejected as it is not in line with Swale's Adopted Local Plan. This is made clear by comments in at least two of the Applicant's submitted reports.

In 17_505711_HYBRID-Environmental_Statement_Addendum-4461235 the following statements are made:

"3.2 The Applicant considered a scheme consistent with policy MU3 of the Local Plan in some detail prior to dismissing this option in preference of the application site."

This report concludes: "Development of MUX1 (MU3) would adversely impact air quality in the above sensitive locations, with no positive effects on the surrounding area, whereas MUX1a provides 'Medium Positive' effects in these sensitive locations. Given that existing concentrations of NO2 are very close to the objective in some of these areas, MUX1a is the preferred option in terms of air quality as this can offer betterment. On the basis of the above findings, MUX1 (MU3) was therefore dismissed as the least preferable option."

In addition, the KCC submission dated 3rd Jan 2019 describes the Local Plan policy as 'fundamentally flawed'. In this comment, the KCC Highways Officer comments:

"The above highlights the fundamental flaw in the Local Plan option where the main point of access is through Wises Lane/A2 junction which would be unable to operate with the volumes of traffic expected. There is no mitigation solution that I am aware of that could make this junction work in a MUX1 scenario.

The analysis shows the expected changes in distribution following the introduction of the link road. Conversely the MUX1 application has the following Highway issues; 1. There are significant increased volumes and congestion through the Keycol roundabout Key St arm in both peaks without the alternative link and site access. 2. Significant movements through the A2/Wises Lane junction taking this over capacity. The junction analysis shows excessive queues backing back on the A2 and the Wises Lane arm. 3. The effect on the villages of Borden and Oad St would be exacerbated due to both existing and new development traffic choosing to avoid the A2 heading South to the A249/M2."

It is worth noting one comment again: "There is no mitigation solution that I am aware of that could make this junction work in a MUX1 scenario." Clearly this shows that the allocation of MUX1 was erroneous, and that the points raised by residents at the time - which highlighted these very issues - were incorrectly dismissed by the Council.

This evidence, that has been submitted in support of the current application, has demonstrated that the adopted MU3 site was fundamentally flawed - as indeed was pointed out by many people at the time. It is seen as having an adverse impact on local air quality.

Consequently, MU3 must now be removed from Swale's Local Plan, and this application must be seen as an application outside that permitted in the Local Plan. Consequently, it must meet all the requirements for a non-identified site, in respect of the whole application site and not merely the 34% of the Application Site that added to the area previously designated for development.

To not act in this way would be a clear breach of every principle of responsible decision making. To have pushed through, despite severe public opposition, a site very late on in the Plan-making

process, which is then rejected by transport and air quality measures, but which is used as a means of permitting an even bigger site that was not subjected to the Local Plan process, could appear to border on collusion with the Applicants by the Council.

B) Inadequacy of the Application.

This application should not be allowed in only Outline. Policy MU3 of the Swale Local Plan requires that there is a need for the whole site to be properly designed and agreed according to a Masterplan that has been the subject of extensive consultation. To leave the majority of the site as simply outline, with huge issues to be decided at a later date and further planning applications is both contrary to the Local Plan, and is also poor planning. A number of promises and claims have been submitted with this application, but which have not been subjected to adequate testing. For example, suggestions have been made that the site could incorporate a dropping off area for Westlands School, but no detailed design has been shown or consulted on that demonstrates how this 'benefit' could be delivered. These are the sort of issues that need to be nailed down definitively before any planning permission should be granted. There are many similar such issues which have been left to future possible applications, but which should be the subject of this initial application, which should be a detailed plan for the whole site, demonstrating the feasibility of the project as an integral whole, and not vulnerable to piecemeal future delivery or lack of, which has been the fate of many similar developments across Swale.

1) Landscape issues

The Landscape and Visual Assessment (LVA) paper carried out by Husskison in Dec2016 had the following issues:

Rugby Pitches

2.9 - "the issues in respect of the landscape setting of Borden are also pertinent, because the central northern part of both SBC's site and the Site Promotor's extended site are located near to this village, on higher, more visually sensitive land than much of the rest of both sites which are more visually contained by existing development and vegetation"

2.13 ' "it is considered that, if the artificial, flood lit, fenced rugby pitches were to be included in the location proposed near Borden, then the landscape capacity to accommodate this type of development would be low, taking account of the higher landscape sensitivity of this location."

2.14 - "The impact of these [the rugby pitches] would be very difficult to mitigate without resulting in unacceptable landscape and visual impacts."

The School -

2.15 - "Furthermore, it is noted that a consequence of the site promotor's proposals would be that the location of the primary school would be altered from that proposed on SBC's Policy MUX1 site, immediately to the east of Wises Lane to one on higher more undulating topography to the west of Wise's Lane, where levelling and earthworks of an artificial appearance are likely to be necessitated. This relocation is also not considered appropriate in landscape and visual terms(see Appendix G)."

It is far from clear how the submitted designs have considered the above concerns, let alone sought to adequately mitigate them. The rugby pitches remain in the very vulnerable area that the Assessment condemned, and the attempt to fudge the issue by simply grabbing more of the land closer to Borden Village and claiming that constitutes a buffer area is perverse in its logic. The rugby pitches should be located in a less sensitive part of the application area as the assessment itself proposed. Equally, the school should be located in a less prominent site, as was recommended in the assessment, but apparently ignored by the applicants.

Most of the site is also within The Tunstall Farmlands Landscape Character Area (TFLCA). This states "There is a strong sense of place. The well defined urban edge of Sittingbourne is locally visible and here, the integrity and setting of some rural settlements is sensitive." This is of clear relevance to this application which would completely change the 'well defined' urban edge of Sittingbourne, having a highly significant impact on the sensitive integrity and rural setting of Borden Village.

It is hard to see how this application addresses the guidelines for the TFLCA which are: "Conserve the remaining landscape structure of hedgerows and shelterbelts, woodland, former parkland trees, vegetated quarries and mature and remnant orchards. Additionally, look for opportunities to diversify and restore such features to create a more enclosed landscape, whilst additionally creating links between existing features."

It is therefore clear that the application breaches this policy.

The unallocated extra portion of the site that is outside the area allocated in the Local Plan lies within the Borden Mixed Farmland Landscape Character Area (BMFLCA), the guidelines for which are to "Conserve and Create... Within this area actions should encourage the conservation of

existing traditional features and the creation of elements to strengthen the character of the area". This application clearly fails to meet this guideline, and as this portion is not in the Local Plan, would be expected to meet very high tests for permission. The unallocated new road and the new housing would clearly do nothing to strengthen the character of the area, and would indeed severely undermine it. Would this be permitted as a stand-alone application and not tagged onto an allocated site?

2)Range of housing availability

The extra land that is beyond that allocated in the Local Plan is outside the settlement area and is a rural classification. Therefore this should be require a 40% Affordable housing allocation in line with the policy in the adopted plan, and policy DM9 This has not been recognised by the Applicant, and therefore it should be refused on this basis.

With regard to the overall housing plans, it is difficult to see that the application is compliant with Policy CP3. Policy CP3 states "a wide choice of high quality homes that extend opportunities for home ownership and create sustainable, inclusive and mixed communities".It is difficult to see how this is being delivered when over 50% of the houses are planned to be 4 or 5 bedroom houses. This is far in excess of what one would expect in such a large development, and will not meet local need. As the Local Plan states: "The SHMA highlights the greatest future demand is for two/three bedroom owner-occupied dwellings and one/two bedroom private rent and affordable dwellings."Therefore the application does not meet the requirements of Policy CP3 and a more diverse range of house sizes should be ensured before being accepted by the Council.

The Local Plan says with specific reference to Sittingbourne it's overall objective's are: "Overall Objective 1 - Create: extending or re-balancing the housing stock, market offer and appeal. Design playing the leading role to achieve this. Local variance within more prosperous areas should achieve Objective 2 - Reinforce: not changing an area's housing offer, Design - protecting and enhancing existing characteristics of a neighbourhood area." Given that this site is the only major site in South Sittingbourne it is essential these objectives are met on this site - the local area is largely semi-detached housing with many bungalows. Having over 300 4/5 bedroom houses in this application does not reinforce the area's housing offer - it dramatically changes it which is contrary to the Plan.

Policy CP3 also states "Meet the housing requirements of specific groups, including families, older persons, or disabled and other vulnerable persons" The Local Plan also says: "Some 18.6% of the resident population in Swale have a long-term health problem or disability, with 46.5% of all those aged 65 or over and 84.5% of those aged 85 or over. It is therefore relevant to consider the ability

of specialist accommodation to meet the requirements of this group. The current rate of provision for specialist accommodation is much lower than the base recommended and, in light of an ageing population, the Council will seek to support proposals which improve the levels of sheltered housing and extra care accommodation in the Borough." This application shows no specific housing consideration for older persons or disabled and other vulnerable persons. On a site of this size it is essential that such specific housing provision be made, ideally as part of the required Masterplan, otherwise it has to be seriously doubted that Swale will meet its requirement to provide this kind of housing. The application should include a number of bungalows, and housing designed for persons with disabilities. Without this provision, the application fails to meet policy requirements and should be refused permission.

3) Market considerations

The House Builders' Federation advice is that "consideration should be given to issues of market saturation in areas where a number of housing sites are in close proximity." One has to have regard to the credibility of the assumed market appetite for concurrent delivery of housing on the scale assumed for the west of Sittingbourne over this timeframe.

As has been acknowledged by the Applicant's solicitor in a document (APP/V2255/W/17/3172378 (SBC Reference: 16/505118/OUT) "4.64.8 Market saturation directly affects deliverability. This is a particular consideration where proximal largescale developments are being relied upon to deliver new dwellings concurrently."

Further, in their closing submissions in their Appeal regarding the aforementioned site, Quinns' solicitor Jeremy Cahill QC argues that even the predicted delivery of houses in Sittingbourne will "lead to saturation of the market". (point 43)

In light of this, adding another 80 houses to a development in this location that is already due to take several years to complete, and which is in an area with severe market competition from sites at eg Kemsley, Iwade and Newington these extra houses will not help the council achieve its 5-year supply and deliver new homes in a timely fashion, and will not provide the market the variety sought for from allocations spread more disparately around the Borough, or indeed from windfall sites.

Therefore it is clear that the unallocated area of the site does not meet the stringent requirements needed to be given permission as an unallocated site and the whole application should be refused on that basis.

4)Wildlife Issues

With the passing of the Manor Farm application, there now needs to be a serious assessment of the impact of this site on the existing badger population, and the legal protections that are supposed to be met.

There is a large badger sett close to the application land, and there is recorded evidence that this sett accesses the unallocated land that has come forward as the extra land within this application. With the loss of Manor Farm, it is not clear that adequate steps have been taken to ensure there can be sufficient mitigation to allow this sett to continue to forage at its current population density.

Badgers are protected under the Protection of Badgers Act 1992 as amended by the Hunting Act 2004. Government guidance can be found at: <https://www.gov.uk/guidance/badgers-surveys-andmitigation-for-development-projects>

This requires survey reports and mitigation plans for development projects that could affect protected species, as part of getting planning permission or a development licence.

Mitigation plans need to show how you'll reduce or compensate for any negative effects to protected species.

Mitigation measures can include:

- maintaining foraging and watering areas, or creating new areas if needed
- maintaining habitat connectivity, for example with tunnels or underpasses
- excluding badgers from an area temporarily using badger fencing, provided you don't exclude access to setts
- creating badger crossings for roads

The law states that you can't translocate badgers for a development project. You're breaking the law if you intentionally capture, kill or injure a badger and you could be prosecuted and fined. This puts into question the applicant's suggestions that setts could be closed.

The Applicant's submissions states:

Identification and Evaluation of Key Effects

3.19 The majority of Badger setts recorded lie outside of the built footprint of the proposed development. Subsidiary sett S5 and outlier setts S6 and S7 are located within the main development area, although can likely be retained within a proposed green corridor, avoiding the loss of these setts. This would be confirmed by update survey prior to construction works commencing, allowing the precise location of active sett entrances relative to construction areas to be determined. Nevertheless, if the closure of these low status setts is required, this is considered

unlikely to result in any significant effect on the local Badger population. Accordingly, prior to mitigation, construction effects on Badger are considered to be moderate, adverse and short-term and non-significant (probable).

3.20 No additional effects are identified on Badgers during the operational phase of the development. As such, the assessment in terms of operational effects is considered to remain valid, with effects on Badgers prior to mitigation considered to be minor, adverse and long-term and non-significant (probable).

3.23 There is no change in the overall significance of residual effects from the previously submitted ES, with residual effects on Badger following implementation of mitigation expected to be minor, adverse and short-term and non-significant (probable).

It has to be made quite clear - the law has not been complied with in the current application and as such, to pass this planning application would open the Council to potential legal action.

The existing survey is inadequate, and fails to recognise the level of badger activity on this site. The Govt Guidance clearly states that "Extra surveys must be done if there are active setts or foraging grounds" - in this case there is an active sett within 40 yards of the site, and the site is an active foraging ground. There is no mention in the report of the required estimate of the existing territorial area of the sett.

This has led to a failure to adequately mitigate for the damage done to the badgers within the sett. "Development should not be permitted unless it is possible to take steps to ensure the survival of the badgers in their existing range and at the same population status, with provision of adequate alternative habitats if setts and foraging areas are destroyed."

No such steps have been taken to ensure the survival of the badgers in their existing range and at the same population status. It is clear that foraging areas are going to be destroyed, and it is difficult to see where adequate alternative provision has been made.

When this site was originally included within the local plan, the field now added as an extra development area was not designated for development, which left the badgers with an alternative foraging area and a corridor to further countryside enabling younger badgers to go off and establish new setts. As this area is now due for development it is necessary for the developers and for Swale Borough Council to guarantee adequate alternative foraging areas that will be available to these badgers. This has yet to be done.

For this reason, I would ask that the existing application be deferred until such time as the site has been properly surveyed according to legal standards, and adequate mitigation proposed - if indeed such mitigation is even possible.

C)Traffic and Highway issues:

There are many unresolved traffic and highway issues with this application that have yet to be satisfactorily dealt with.

1)The new link road

The new road from Borden Lane to Chestnut Street will have a significant impact on traffic flows across southern Sittingbourne and these impacts have not been fully considered within the surveys submitted. There are a number of untested assumptions which if found to be false have the capacity to cause mayhem on our already overstretched roads. Already the applicants have had to remove some of their earlier assumptions, such as the flow of traffic from the Chalkwell area using the new road, and their remaining assumptions have not been rigorously assessed.

2)Chestnut St roundabout

The issue of the roundabout connecting the new link road to the A249 would seem to be an essential part of the development proposals, yet the 4th arm of this roundabout is not being funded by the applicants. This roundabout is fundamentally associated with this planning application, and would not be necessary if this development was not being proposed. Therefore the burden of paying for the 4th arm must entirely lie with the developer. To leave the funding of this essential 4th arm open is simply reckless. No other developer would accept any responsibility for it, and Government funding although applied for is far from certain. Without that 4th arm, all the traffic generated by the new development, plus any extra traffic using the new road - a significant amount if the applicant's claims prove correct - will be forced to use Chestnut Street - either going through the conservation area of Chestnut Street - a road not capable of carrying that amount of traffic - or will have to turn right and join the already over-capacity Key Street Roundabout. Neither of these scenarios have been considered or addressed by the submitted traffic assessments yet without guaranteed delivery of the 4th arm these serious issues will occur. Therefore, until funding of the 4th arm is secured it is premature to grant planning permission or the development, because the alternative scenarios have not been adequately considered and whether any mitigation of their impacts is even possible.

Further, there are very worrying questions relating to the redesign of Key Street associated with this application. A HIF bid has been made for these works, yet there are claims that the Applicant has agreed to provide the funding for the changes if the HIF bid is not successful. This needs clear public clarification before agreement can be given. If the scheme is dependant on a HIF bid being successful, the Application should wait until the outcome of that bid is known - which is some months off. However, if the development is NOT dependent on the HIF bid and the Applicant has indeed agreed to underwrite the costs of the road changes required, then the question of even making the HIF bid is of dubious legality. Effectively, the County Council is seeking Government Money to save a private company money - given that the company concerned - Quinn Estates - helped draft the bid and Swale Borough Council and KCC were complicit in that happening, there could be a serious contention that the Council had colluded with a private company to seek Public

Money purely to save that company money. This needs very clear and detailed explanation before planning permission is given in order to avoid future allegations that might arise.

3) Danaway junction

There is also a conflict between what Quinns are proposing as an interim solution, and what could become the de facto position if the 4th Arm of the Roundabout is not completed, which is the proposal to use Danaway / Maidstone Road as a dedicated slip road for the London bound M2 traffic. This does not take into account the Highways England scheme for the improvements to Stockbury Roundabout which will see the Danaway Road link up with Oad Street and then join the Roundabout. There appears to have been no consideration of the impacts of this change in the traffic presumptions of the application. To allow planning permission for a scheme that relies on a road configuration we know will not exist would be extremely premature. The actual future road layout that will exist needs to be factored in, and the deliverability of the M2 J5 scheme guaranteed before permission for this scheme should be considered.

4) Wises Lane

The suggestion that a certain number of houses can be built without the provision of the Borden Lane - Chestnut Street link road is also wholly unworkable. For 200 extra houses to use Wises Lane in its absence would be well beyond what Wises Lane could cope with and would be in excess of the guidelines for the number of houses that the road is capable of servicing. If the future delivery of the housing was to slow down or stop, then we would be left with a wholly unsustainable situation, and this is not responsible planning. Therefore the requirement for the provision of the link road should be tied to the extra housing number that Wises Lane can be expected to cope with - a figure which is considerably lower than the 200 suggested in the recommendation, and is nearer to 40. A figure that is lower than the 80 proposed in the detailed part of the application.

There is also a requirement for the delivery of a junction change which to date cannot be guaranteed to be delivered. The Wises Lane / A2 junction relies on the securing of land which is currently the subject of a Village Green application. If that application is successful then it will be difficult for the land to be acquired. Even if the Village Green application is not successful, there are a number of issues arising from it that could still prevent the acquisition of that land for highway changes. It would therefore be premature to grant planning permission reliant on this change until it is ascertained whether or not the junction change can be delivered.