

## Update Sheets Planning Committee 21<sup>st</sup> July 2022

### Relevant to all Items

As of the 27<sup>th</sup> July 2022 the Bearing Fruits Local Plan will be more than 5 years old which is the point that plan policies need to be assessed on a per case and per policy basis as to whether they are out of date.

Henceforth para 11. of the NPPF applies (the tilted balance)

For decision-taking this means: c) approving development proposals that accord with an up-to-date development plan without delay; or d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>8</sup>, granting permission unless: i. the application of policies in this Framework that protect ...

Footnote 8 clarifies in relations to housing

‘This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.’

The 27<sup>th</sup> July date will apply to any case requiring a section 106 agreement and where the decision notice therefore cannot be issued immediately.

### Relevant to all items relating to housing: i.e

Items Working Party 21/506474 Burntwick, Upchurch

Def Item 1 20/505921/OUT Land at Highfield Road

Def Item 3 21/503749/REM Land on the South East Side of Bartlett Close

2.1 21/503124/OUT Land to the North of Elms Lane

3.2 20/504408/OUT Land West of Elms Lane

As any decision requiring a S106 would be decided more than 5 years after adoption of Bearing Fruits a different method for calculating the supply and targets is used (see NPPG Paragraph: 002 Reference ID: 68-002-20190722). Once a plan is more than 5 years old the standard method is used and not the adoption figure for calculating the 5 year housing land supply.

The reports were drafted before a full audit of housing supply as of 27<sup>th</sup> July 2022 was completed or in default used the last published annual housing land supply figure (April 2020). The update is near completion and is provisionally put at 4.8 years. Please substitute the 4.8 year figure through out the agenda as of 27<sup>th</sup> July 2022.

### Relevant to All Items in Minster

Two Cllrs have raised issues relevant to all items on Sheppey i.e.

Def Item 1 20/505921/OUT Land at Highfield Road

Def Item 3 21/503749/REM Land on the South East Side of Bartlett Close

2.1 21/503124/OUT Land to the North of Elms Lane

3.2 20/504408/OUT Land West of Elms Lan

Cllr Beart has asked if Southern Water could be asked to update its responses in light of recent water emergency on Sheppey.

The following reply has been received from Southern Water.

This morning I provided the following commentary on growth for our Isle of Sheppey FAQ's which I have set out below and are relevant to the planning applications detailed in Cllr Cameron Beart's email ;

Southern Water plan for new development and population growth in accordance with water industry regulations and standards. We assess future demand through our analysis of Local Plan growth projections and population forecasts which are used to inform our long term Water Resources Management Plan (WRMP). Our WRMP sets out how we will maintain secure water supplies to our customers in the face of future growth and other pressures such as climate change. It is updated every 5 years to ensure any revisions to predicted growth for that plan period are captured.

Our most recent WRMP was published in December 2019 (WRMP19), based on population forecasts that were commissioned in 2016. We are now working on the next WRMP and have commissioned an updated population forecast in order to produce a Regional Resilience Plan that will feed into our WRMP update. More information can be found online at [Water Resources Management Plan 2020–70 \(southernwater.co.uk\)](https://www.southernwater.co.uk/water-resources-management-plan-2020-70)

Water companies are not statutory consultees on planning applications however planning authorities consult with us on developments and we undertake capacity checks and respond to planning applications to ensure water mains have sufficient capacity to meet the demands of the proposed development without impinging on the level of service provided to existing customers. If there is insufficient capacity to supply water to a development immediately we will provide new infrastructure to serve developments, we call this process network reinforcement.

I have reviewed the planning applications referred to and have added my observations in red;

20/505921/OUT (awaiting decision) - Land At, Highfield Road, Minster on Sea, Sheerness, Kent, ME12 3AZ Scheme comprises outline application for the development of up to 19 residential units (eight three-bedroom homes and 11 two-bedroom homes). The associated works include sewer systems, landscaping, infrastructure, enabling and access roads and car parking. **I checked our consultation response and see we have provided advisories on building around a water main in the vicinity of the development.**

21/503749/REM (outline planning app 19/503810/OUT granted on appeal) Land On The South East Side Of Bartletts Close Halfway Kent ME12 3EG Outline application for the erection of 17 dwellings with new access road, associated parking and landscaping. (Access being sought, all other matters reserved for future consideration). **I checked our consultation response and we have provided advisories on building around a water main if located on site.**

21/503124/OUT (awaiting decision) - Land To The North Of Elm Lane Minster-on-sea Sheerness Kent ME12 3RZ Outline application for proposed residential development for up to 44no. dwellings with vehicle and pedestrian access off Drake Avenue (Access only being sought). **I checked our consultation response and we have advised that Southern Water can facilitate water supply to service the proposed development.**

20/504408/OUT (appeal lodged, awaiting decision) - Land West Of Elm Lane Minster-on-sea Kent Outline application for residential development of up to 100 no. dwellings (Access being sought with all other matters reserved). **I checked our consultation response and we have provided advisories on building around a water main if located on site.**

I have attached a copy of our Policy Statement on Sustainable Development to ensure developers are achieving the building regs higher water efficiency standard of 110l/p/d in new development, in line with the EA classification of the South East as a water stressed area.

Vanessa Blackwell

**Senior Future Growth Planner**

Cllr Beart has also put forward a draft motion asking us to impose a moratorium on housing development on IoS and to get a reassurance from SW that they will be able to provide services.

The ability for planning to consider potable and foul water connections has been severely curtailed ever since the Water Act of 1989. Under what is known as the 'non duplication principle' planning cannot duplicate regulatory regimes (e.g. building control) and one such is water connections.

The current applicable regime is the [Water Act of 1991](#) which gives a statutory duty to water companies to make connections to potable and foul networks and to make a charge for that connection to developers. As such it is not normally possible to collect planning obligations for water supply or refuse applications on water supply/sewerage reasons.

There are a couple of exceptions. It is legitimate to consider infrastructure when it is of such a scale as to require new facilities and the impact of these facilities (such as on European protected sites) such as in the local plan and for very large scale applications.

Also, local plans subject to testing can impose consumption targets in water scarce areas (which includes Kent), then LPAs can impose conditions and the government have proposed in a recent consultation that this then triggers higher standards in the Building Regs. (part G)

Although resilience of local water supply and concerns over overloading of STPs and seawater outlets are critically important local issues they are controlled by OFWAT the water regulator in their oversight of Southern Water. Therefore, it would be beyond the powers of the council to impose a planning moratorium on these grounds. - Also the planning committee cannot determine planning policy. Every five years they must approve their capital expenditure programme and charges. As well as consumer issues OFWAT must also consider sustainability issues in exercising these duties. Southern Water's latest approved plan runs from [2020-2025](#) which includes measures to resolve a predicted demand deficit by 2030 equivalent to around 50% of the 2020 supply. The Environment Agency also regulates discharges and abstractions of Southern Water and subjected them last year to a record fine.

Finally, it should be noted that it is people that consume water not houses and that the latest housing data we have suggests that in 2019 -2020 there was one net in migrant to Kent for every 90 houses of all kinds (existing and new). We don't have data for Kent for immigrants to new houses but in other counties such as Oxfordshire and Surrey it has been found to be around 20%. Therefore the primary issue is the water consumption demands of existing Kent residents, with consumption arising from new houses a secondary (but still important) matter.

It is perfectly legitimate however for Swale BC to write to OFFWAT, Southern Water and the EA in the strongest terms regarding the resiliency of potable and foul water infrastructure on Sheppey and the Coast.

Cllr Martin has asked:

Hope you're well, I'm directing the question to you as the question relates to 2 separate application[s] on the agenda.

'Given that the previous adopted local plan, bearing fruits, adopted in 2017, is now beyond the required 5 years for review, it could be argued that less weight should be given to the policies within it, and that members should consider giving greater weight to the NPPF. Council policy DM8 from bearing fruits has a 0% affordable housing on the isle of Sheppey, yet paragraph 65 of the NPPF states that policies and decisions should expect atleast 10% of total homes to be affordable unless that would exceed the level required or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.

The draft policy from the local plan review at the previous consultation was for 30% affordable homes across the borough.

Given the need, the diminishing weight of adopted local plan policies due to the passing of time, should we not at this stage be seeking to secure 10% of homes in major developments on the island as affordable homes?

If so can we in these cases alter the recommendation to include a requirement to secure the 10% affordable unless the applicants are able to prove lack of viability? '

Response

Para 65 of the NPPF refers to affordable home ownership it was introduced in 2018 and is separate from the policy on affordable housing in para 63. However footnote 31 makes clear that this would

be 'as part of the overall affordable housing contribution of the site', so in cases where policy does not require affordable housing there is no need for affordable home ownership.

Para 58. Of the NPPF covers viability assessments and whether such assessment made for local plans are up to date. It does not cover the case you refer to where a plan is more than 5 years old.

Policy DM8 sets out a 0% requirement for affordable housing on Sheppey as a result of the viability evidence carried out at the time that plan was examined. The local plan review, once we get to the next stage (Regulation 19) will be of limited weight, the previous Reg 19 having no weight. The draft viability evidence that was published in late 2020 showed that 30% affordable housing in the lower land value part of the Borough could be achieved on greenfield sites, including on the Isle of Sheppey. Work is now underway to update the evidence and will look again at what could be achieved over all parts of the borough.

None the less the applicants can offer affordable housing in whatever form on a voluntary basis and this has been done for item 3.2 West of Elms Lane case 21/503124/FULL. The Council can also at appeal argue any change in viability circumstances although given the early stage of plan review this course of action is unlikely to be successful (notwithstanding the viability evidence).

#### Item 3.1 Land North of Elms Lane 21/503124/Out

Para 10.3 page 203, correct footnote ref to footnote 6 to footnote 7 7 (post July 219 NPPF revision). The wording 'policies relating to the supply of housing' is now substituted by 'policies which are most important for determining the application' in the current version, qualifying that for housing this applies when there is no 5 year supply of housing (footnote 8) where there is no 5YHLS and this is the key issue the effect is the same.

The 2017 case referred to in para 10.14 referred to the previous NPPF wording, but is still relevant when applied to the slightly broader wording of the latest NPPF referred to in the previous paragraph.

The report references in para 1.6 bus services. The data was taken from the national database of services servicing this stop which is apparently out of date as Arriva no longer service this stop and its island only routes as of June 16. Officers have contacted KCC to ask of the future of these routes. Chalkwell and Travelmaster off island routes continue.

As a response from Environmental Health is awaited delegated authority is sought to impose any requested conditions.

There are two late representations from members of the public mentioning traffic and other matters mentioned in the report.

Environmental Health Comments as per below

The Environmental Protection Team has assessed this application holistically as we would any other application. It is understood that due to the nature of prior notifications it is only possible formally raise certain issues. However, there are a variety of issues outlined in this response which we consider that the applicant and any potential occupant should be aware of that will result in the development being of a lower standard than would normally be achieved. These are listed below:

Related scale and location of the development an air quality assessment has not been included in the application which is acceptable. The transport statement does not go into any detail about other development that would go towards a cumulative impact to the area {Note according to NPPG this case would not qualify in requiring an Air Quality Assessment including cumulative assessment as it is not an EA case or directly affect an AQMA] }. This would be for KCC to raise. However, relative to the size of the development I would like to see more measures in place to promote sustainable travel options i.e., Travel Plan, cycle storage, car club provisions or promotional bus tickets, Construction management plan.

Lighting and noise are only addressed in condition relative to the construction phase, as during the operation phase there deems to be no significant sources to consider as adjacent to the site is agricultural land and residential.

I have no objection to the application subject to the following planning conditions:

#### **Contaminated land**

The Phase I Geo-Environmental Desk Study Report completed in September 2020 by hsp consulting assesses potential pollution linkages between sources of contamination, pathways, and receptors. This suggests the northern edge of the site was occupied by historical railway lines which gives rise to potential contaminated land. Therefore, the condition below has been included:

[Proposed conditions on construction noise/EV charging already added].

Add condition 24 on contaminated land below:

If during construction/demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed.

Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the Local Planning Authority. The closure report shall include details of;

- a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.
  
- b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.
  
- c) If no contamination has been discovered during the build then evidence (e.g., photos or letters from site manager) to show that no contamination was discovered should be included.

Reason: To ensure proper treatment of contamination in line with NPPG Land Affected by Contamination.

#### Item 3.2 Land West of Elms Lane 21/504408/OUT

As above and correct to 'tilted balance' in para 8.1 and in para 8.2

The wording 'policies relating to the supply of housing' is now substituted by 'policies which are most important for determining the application' in the current version, qualifying that for housing this applies when there is no 5 year supply of housing (footnote 8) where there is no 5YHLS and this is the key issue the effect is the same.