

**PLANNING COMMITTEE – 23 JULY 2015**

**PART 3**

Report of the Head of Planning

**PART 3**

Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 14/506248/OUT</b>		
<b>APPLICATION PROPOSAL</b>		
Outline (Access not reserved) - Mixed use development of up to 580 residential dwellings, circa 400sqm (Use Class A1) retail, landscape, public open space and associated works		
<b>ADDRESS</b> Land South Of Swanstree Avenue Highsted Road Sittingbourne Kent ME10 4LU		
<b>RECOMMENDATION</b> – Refuse planning permission. This application is the subject of a planning appeal against non-determination. As such this application will not be determined the Swale Borough Council, however, the decision of the committee will indicate to the Secretary of State the Council’s intended decision.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION:</b>		
<p>The development does not amount to sustainable development for the following reasons;</p> <ol style="list-style-type: none"> <li>1. Likely significant adverse impact on the landscape quality and value (Special Landscape Area);</li> <li>2. The application fails to secure necessary measures to mitigate against impacts on the Swale SPA and Ramsar site;</li> <li>3. Due to the topography and sensitive nature of the landscape, the development would result in a poor design that fails to appropriately respond to/take the opportunities for improving the character and quality of the area and the way it functions as required by para 64 of the NPPF;</li> <li>4. The significant, permanent and unnecessary loss of best and most versatile agricultural land (including its economic and other benefits);</li> <li>5. Air pollution from vehicle emissions, particularly nitrogen dioxide, resulting in cumulative air pollution levels that would be inconsistent with the local air quality action plans for the Canterbury Road AQMA, St Paul’s Street AQMA and the Ospringe Street AQMA;</li> <li>6. Poor walking routes to the town centre with no footways at junctions, dangerous cycle route to the town centre and infrequent bus service;</li> <li>7. The development would result in the loss of a mineral safeguarded area without justification;</li> <li>8. The adverse environmental impacts, particularly the impact on the Special Landscape Area, outweigh any benefits; and</li> <li>9. The submitted Transport Assessment is inadequate, making unlikely assumptions on the likely trip generations of the proposed accesses to the site. As such, there are concerns that these assumptions are flawed and the assessment inaccurate. As such, the proposal would result in harm to highway safety and convenience.</li> </ol>		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Significant application/ wider public interest		
<b>WARD</b> West Downs	<b>PARISH/TOWN COUNCIL</b> Rodmersham	<b>APPLICANT</b> Gladman Developments Ltd <b>AGENT</b>

<b>DECISION DUE DATE</b> 13/03/15	<b>PUBLICITY EXPIRY DATE</b> 13/03/15	<b>OFFICER SITE VISIT DATE</b>
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b> No relevant planning history		

## MAIN REPORT

### 1.0 DESCRIPTION OF SITE

- 1.1 This development is proposed on a green field, high grade agricultural site abutting, but outside of the southern edge built up area boundary of Sittingbourne. The site measures approximately 25.7ha making up four arable fields enclosed by shelterbelts and tall hedgerow field boundaries and some smaller fields currently used for intensive horticulture practices.
- 1.2 Swanstree Avenue defines the northern boundary of the site, whilst the eastern boundary would almost abut the rear gardens of housing in Blenheim Road (a public footpath runs between the two). To the south are agricultural fields and to the western boundary are further agricultural fields, Chilton Manor Farm and beyond that the Fulston Manor housing estate is separated by Highsted Road. There are no permanent buildings on the site. Two public footpaths cross the site; one runs from the A2 to the western end of Highsted Road; the other from Bell Road, Sittingbourne right through to Lynsted.
- 1.3 The landform of the northern part of the site is gently undulating, but overall it falls away very gently towards the south and east, before sloping down more steeply. The site levels are at their highest at 35m above Ordnance Datum in the south western corner, being at their lowest at just over 25m above Ordnance Datum near the front (south-east) of the site at the boundary with Swanstree Avenue. The land adjoining the south east boundary of the site elevates quite significantly above the site.
- 1.4 The site itself is located approximately 0.85km from the centre of Sittingbourne and approximately 6.8km north of the M2 motorway.
- 1.5 The site is currently relatively well screened by planting from Highsted Road, although is reasonably open from Swanstree Avenue.

### 2.0 PROPOSAL

- 2.1 This application has come forward in outline format with all matters reserved for future consideration, except for access, which is a detail to be assessed as part of this application. Therefore all other reserved matters can only be considered in terms of the principle of the development at this stage, not the detailed matters. As details of the use or uses, the amount of development and access points are all that is required to be submitted for an outline application, the layout plan should be treated as indicative and may be subject to change at reserved matters stage should Members resolve that they would have granted planning permission for this application should it not have been appealed. However officers have some concerns regarding the proposed layout of the development.
- 2.2 The application proposes up to 580 dwellings, a local convenience store, associated public access space and landscaping. Currently the illustrative plan shows an attenuation pond in the front (north-east) corner of the site close to the housing in Blenheim Road, three accesses to the site, all from Swanstree Avenue and a small

landscape buffer or 'structural planting' is proposed around the boundaries of the site. The plan shows a potential green corridor within the site, a sports area, three play areas and space for a convenience store at the front of the site. The existing public rights of way through the site would remain in situ and new public rights of way are shown on the submitted plan. Whilst the application makes reference to providing affordable housing, however, it makes it clear that this is negotiable with the Local Planning Authority and does not seek to state how many units would be provided at this stage.

- 2.3 No details of parking, detailed landscaping or specific materials have been provided at this stage.
- 2.4 The application is supported by a number of reports including a planning statement, a design and access statement, a framework travel plan, a housing impact report, a landscape and visual assessment, an air quality assessment, a statement of community involvement (SCI) an ecological appraisal, a Flood Risk Assessment (FRA) and water drainage strategy, a ground conditions desk study, a transport assessment, an arboricultural impact assessment and a noise assessment.

From these I draw the following key points:-

#### **Planning Statement:**

*'Swale Borough Council are unable to demonstrate a 5 year housing land supply. This is accepted by the authority within the 'Housing Information Audit (2014-2019)' published in October 2014. In accordance with NPPF Paragraph 49, relevant policies for the supply of housing should not be considered up-to-date if the planning authority cannot demonstrate a five-year supply of deliverable housing sites. The Council's deficit five year housing land supply is further compounded when taking into account the full objectively assessed housing needs of Swale. As a consequence, the presumption in favour of sustainable development as set out in paragraph 47 of the Framework is engaged.'*

*The accompanying reports show there are no adverse impacts associated with the proposal.*

*Conversely, the proposal provides significant material planning benefits, which weigh heavily in favour of the application proposal. These include;*

- Delivering market housing to meet an identified need and where there has been historical substantial under-delivery*
- Delivering affordable housing where there is an acute shortage due to historic underdelivery*
- Delivery of open space provision and children's play area for the benefit of new residents and the existing wider community*
- Provision of a new local convenience store to serve both new and existing residents to the south of Sittingbourne*
- Sustainable development - the proposal site has excellent public transport links to major employment centres such as London*
- New Homes Bonus of £4.4 million and the wider economic benefits associated with construction and job creation*
- Ecological benefits through the protection and enhancement of existing wildlife corridors and provision of new green infrastructure within the development*

*Policy E6 & E7 are housing supply related policies. Swale Borough Council are unable to demonstrate a 5 year housing land supply, and therefore these policies must be considered out of date, as directed by NPPF paragraph 49.*

*Given the significant under-delivery of housing, and acute affordable housing need, the proposal will address the poor housing land supply position by delivering homes in a sustainable location.*

*Whilst a matter for legal submissions, it has been clearly established through recent legal judgements that the need to meet objectively assessed needs is an important material consideration for development management decisions (as well as for plan preparation). Attention is drawn to the comments of Justice Hickinbottom in the Gallagher Estates judgement (Appendix 7) which refers to the earlier Hunston judgements (Appendix 6). He states [para 88] in his judgement that:*

*“...a number of points are now, following Hunston, clear. Two relate to development control decision taking. Although the first bullet point of paragraph 47 directly concerns plan-making, it is implicit that a local planning authority must ensure that it meets the full, objectively assessed needs for market and affordable housing in the housing market, as far as consistent with the policies set out in the NPPF, even when considering development control decision. Where there is no Local Plan, then the housing requirement for a local authority for the purposes of paragraph 47 is the full, objectively assessed need.”*

*In summary, it is evident that the Council cannot identify a five year supply when assessed against the full objectively assessed need of the Borough, either with a 5% or 20% NPPF buffer. The delivery of the proposal as proposed will assist Swale in addressing the significant shortfall in housing on a sustainable site. This is a significant planning benefit that should be given substantial weight in the planning balance.*

*Whilst the site is allocated as an ‘Area of High Landscape Value’ the LVIA submitted with this application demonstrates that the landscape impact will be moderate adverse and through an effective mitigation strategy set out within the development framework, the impact upon the landscape will be minimized*

*The loss of ‘best and most versatile’ agricultural land is the only impact, which cannot be satisfactorily mitigated. The BMV land is not a policy consideration that indicates that permission should be refused, rather the preference is for avoidance if possible. In this instance avoidance is unachievable, as growth at Sittingbourne will require BMV wherever it occurs at the scale envisaged within the objectively assessed needs of the Borough.”*

### **The Design & Access Statement**

*“The proposals have been developed to ensure that a carefully considered and sensitive development approach is achieved. From the outset the proposals have sought to respond to and where possible enhance the existing features which characterise the site and its immediate setting. Of key concern was the retention of the existing vegetation structures associated with the site boundaries, the Flood Risk Zone identified by the Environment Agency on the sites eastern boundary and views from the public rights of way from the east.”*

*The proposals briefly comprise:*

- *Up to 580 new homes, including policy compliant affordable properties;*
- *Three proposed new access points off Swanstree Avenue;*
- *Provision of extensive Public Open Space, including children’s play areas and recreational sports facilities;*

- *The provision of a convenience shop on the northern boundary;*
- *Improved connectivity between the proposed open space and the wider footpath network;*
- *New landscaping to enhance the site and boundaries;*
- *Creation of a permissive footpath links to the sites wider footpath network;*
- *Increased Biodiversity through the retention and enhancement of existing vegetation structures.”*

### **Landscape and Visual Impact Assessment**

*“The visual assessment has identified the following conclusions:*

- *The application site is well visually contained by a natural visual envelope formed by prevailing topography, and the established vegetative structures along Highsted Road to the west and along the eastern boundary with bridleway ZU35;*
- *The existing urban area of Sittingbourne affords a heightened degree of visual containment to the site, restricting views from the north;*
- *The intervening topography associated with the dip slope scarp, provides visual containment from the south and south east;*
- *Offsite vegetation structures relating to the established woodlands of the old chalk quarry pits restrict wider views from the south west;*
- *This visual envelope which substantially limits the visibility of the site to views from the immediate locality, namely Swanstree Avenue and the public right of way network within the site and directly south of the site along the dip slope;*
- *When viewed from the immediate site context, the site is seen within the context of the existing urban edge, particularly within views from the existing Public Rights of Way to the south and south east;*
- *The presence of the existing urban edge is a characterising feature within longer distance views as seen from the higher ground, defining the skyline within what is a broad, expansive landscape scene;*
- *The retention and enhancement of the existing site boundary hedgerows and internal field boundaries will maintain the character of the site setting, and ensure that the degree of separation and containment currently afforded to the site is maintained and enhanced;*
- *It is important that the development seeks to retain key views over towards the prominent local natural feature of the scarp dip slope, through enhanced channelled views wherever feasible, utilising the public footpath green corridors;*
- *The provision and location of proposed public open space will assist with integrating the proposals into the fabric of the localised context, maintaining an appropriate transition between the proposals and the wider countryside setting to the south whilst creating a robust green edge to the site. New key public open spaces should also wherever feasible retain and enhance good views out of the site towards the scarp and Highsted Valley to the south west; and*
- *Overall it is considered that the development will generally have a significance of effect of **moderate** upon the visual environment and that effects will be limited to the immediate setting of the site.”*

## Ecological Appraisal

*“The study area is part of a farm complex comprising of four arable fields; a fruit orchard and a semi-improved grassland compartment. Other habitats recorded include scrub, tall rural, hedgerows, windbreaks and mature standard trees.*

*Three statutory sites of international importance lie within 10km of the study area. These are The Swale SPA & Ramsar Site, Medway Estuary & Marshes SPA and Ramsar Site, and Queendown Warren SAC.*

*There are no statutory sites of national importance within 2km of the study area. One non-statutory site of local importance, Highstead Quarries LWS is located within 1km of the study area.*

*It is considered that there will be no likely significant effect on any of the European sites from the proposals following implementation of mitigation including contributions for management of the Swale and the Medway Estuary & Marshes.*

*No habitats of high biodiversity or high ecological value are present within the study area boundary. Habitats which have some conservation value were the native hedgerows and trees groups, which will be retained where possible; where loss will occur due to access issues, new planting will be undertaken and existing hedgerow enhanced through native planting.*

*No suitable waterbodies for supporting GCN were recorded within 500m of the site boundary; these species are not a constraint to the development.*

*An active main badger sett and annex sett were recorded along the eastern site boundary, associated with hedgerow H10; with associated field signs isolated to the western and southern site boundaries.*

*Two outlier setts were also recorded less than 100m outside of the site boundary. Setts within the site are to be retained within the green infrastructure; and protected via the erection of a post and wire fence and structural planting; which will provide a buffer restricting access by the public and dogs. The framework plan will incorporate open space around the eastern and southern site boundaries providing foraging habitats and provide corridors of movement around the site.*

*There are no features within the site that provide roosting potential as buildings were absent and trees were of negligible value. Bat activity across the site was generally low with commuting and foraging behaviour recorded by common bat species, with common pipistrelle being the most abundant recorded during the survey period. The development framework retains the majority of hedgerows, with only small losses for access roads. Recommendations for enhancement include additional planting of native tree and shrub species to enhance diversity and structure. Care should be taken to avoid inappropriate lighting of all retained hedgerow corridors, whereby illumination of tree canopies will be avoided.*

*Any clearance of vegetation should take place outside of the bird breeding season (March-August inclusive) or following a check by an experienced ecologist.*

*A ‘good’ population of slow worm and common lizard were recorded on the northern, western and southern site boundaries. The framework plan retains and enhances these habitats with additional structural planting, proposed wildflower meadows and an attenuation pond creating a mosaic of habitats. A period of supervised passive*

*displacement is recommended prior to works to prevent any disturbance to the onsite reptile populations.*

*No dormice were recorded during surveys.*

*Opportunities to increase the biodiversity within the site will include:*

*Boundary hedgerows and tree lines will be retained and enhanced with native planting wherever possible;*

*Landscape planting will include native species of a local provenance where not appropriate, flowers with a nectar source should be planted;*

*A balancing pond which primarily function of water sources will be designed with some biodiversity benefits, where appropriate, this will include wildlife friendly design and native planting;*

*Bat and bird boxes to be erected on buildings and / or nearby trees;*

*Habitat piles should be created to encourage the use of the development by invertebrates and small mammals;*

*Existing linear features such as tree groups and hedgerows will be adequately buffered to avoid light spill onto canopies, this will ensure corridors of movement for wildlife, but particularly bats.”*

### **Flood Risk Assessment**

*“The assessment has found the site to be at low risk of flooding from tidal, sewer, groundwater and artificial sources. There are some areas of medium to high surface water flood risk associated with the topographical valley along the eastern border. There will be no developable area within this area, therefore the risk of surface water flooding is low.*

*There is no residual flood risk from the study area to the surrounding area, due to the restriction of flow rates post attenuation. Therefore, the development does not increase the risk of surface water flooding to other adjacent neighbourhoods. Out of chamber or gully flooding for the extreme 100 year plus climate change storm event, may potentially occur within the study area and is classed as exceedance flows. Flood water from such events will be contained within the site but away from the residential units.”*

### **Archaeological Desk Based Assessment**

*“There are no designated heritage assets on the site. However, this study concludes that there is a high potential for burial features of Roman date associated with the Roman burial ground excavated on site in 1828, along with a potential for late prehistoric/Romano British field boundaries and Medieval artefacts.*

*Post-Medieval and Modern ploughing is likely to have had a widespread negative impact on any sub-surface horizons, as will the planting and subsequent removal of orchards on site.*

*Due to the recorded presence of human remains within the site, it can be anticipated that the planning authority’s archaeological advisor will seek further archaeological work. In the first instance it is anticipated that a geophysical survey be required.”*

**Transport Assessment**

*Each of the site accessed will be in the form of priority junctions and will be constructed to adoptable standards to include 2m footways linking the site to the existing pedestrian infrastructure on Swanstree Avenue. The junctions will provide 6m carriageways, minimum visibility splays of 2.4m x 43m, and junction radii of 8m.*

*The development will provide a site layout designed in accordance with current best practice to accommodate pedestrians and cyclists. A footway will be provided on the site side of Swanstree Avenue, to link the three access junctions for pedestrians.*

*The capacity assessments show that the development traffic would only have a marginal impact on the operation of the assessed signal junctions.*

*The proposed development would not exaggerate any pre-existing highway safety issues present on the local highway network.*

*Conclusion*

*It is concluded that the development proposals are acceptable in highways and transportation terms. There are no highway or transportation related reasons upon which a refusal of the planning application for the proposals would be justified.”*

**3.0 SUMMARY INFORMATION**

	<b>Proposed</b>
Site Area (ha)	25.7ha (63.5 or acres)
Approximate Ridge Height (m)	7.5 – 8.5m (indicative)
Approximate Eaves Height (m)	Unknown
Approximate Depth (m)	Unknown
Approximate Width (m)	Unknown
No. of Storeys	2 or 2.5
Parking Spaces	Unknown
No. of Residential Units	Up to 580
No. of Affordable Units	Unknown
Density	Approximately 30 dwellings per hectare
No of bedrooms	Range of 1-5

**4.0 PLANNING CONSTRAINTS**

4.1 The site is located outside of the built up area boundary of Sittingbourne, within the countryside. The eastern boundary of the site is located within a narrow wedge of a flood risk area (Flood Zone 3). It is designated as being within the North Downs Special Landscape Area, a local landscape designation, which is known as an area of High Landscape Value within the emerging Local Plan. It is also located within a strategic gap separating Sittingbourne from Rodmersham.



- 4.2 Two public right of way footpaths run through the site – ZU30 and ZU31.
- 4.3 There are no designated heritage assets on the site, or within the vicinity of the site, however, the site is within an area of Potential Archaeological Importance.
- 4.4 The site is located within 2.4km of the Swale SPA and Ramsar site and within 7km of the Medway Estuary and Marshes SPA and Ramsar site.
- 4.5 Highsted Quarry, a local wildlife site is located approximately 40m from the site.

## **5.0 POLICY AND OTHER CONSIDERATIONS**

- 5.1 Due to the advanced status of the emerging Local Plan position (Publication Version), this must carry significant weight in the determination of this application. This section will therefore deal with this first before moving on to the national policy position.
- 5.2 The adopted 2008 Local Plan, however, remains the primary consideration for determining this application. This will be discussed in further detail later in this section.
- 5.3 The key policies from the adopted Local Plan are:
  - SP1 (Sustainable Development)
  - SP2 (Environment)
  - SP3 (Economy)
  - SP4 (Housing)
  - SP7 (Transport and Utilities)
  - SH1 (Settlement Hierarchy)
  - TG1 (Thames Gateway Area)
  - E1 (General Development Criteria)
  - E6 (Countryside)
  - E7 (Local Countryside Gap)
  - E8 (Agricultural Land)
  - E9 (Protecting the Character and Quality of the Borough's Landscape)
  - E19 (Good Quality Design)
  - H2 (Providing for New Housing)
  - T1 (Providing Safe Access to the Highway Network)
  - C2 (Housing Developments and the Provision of Community Services and Facilities)
  - C3 (Open Space within Residential Development)
- 5.4 Relevant policies of the emerging Local Plan are;
  - ST1 (Delivering Sustainable Development in Swale)
  - ST3 (Swale Settlement Strategy)
  - ST5 (Sittingbourne Area Strategy)
  - CP2 (Promoting Sustainable Transport)
  - CP4 (Requiring Good Design)
  - CP7 (Conserving & Enhancing the Natural Environment – Providing for Green Infrastructure)
  - DM6 (managing transport demand and impact)
  - DM8 (Affordable Housing)
  - DM24 (Conserving and Enhancing Valued Landscapes)
  - DM25 (The Separation of Settlements – Important Local Countryside Gaps)
  - DM28 (Biodiversity and Geological Conservation)
  - DM31 (Agricultural Land)

The relevance of individual policies (both saved Adopted Local Plan and Emerging Local Plan), in the light of para. 49 of the NPPF, are discussed under housing land supply issues.

- 5.5 Policy SP1 (Sustainable Development) of the adopted Local Plan outlines the Council's approach to sustainable development stating:  
*"In meeting the development needs of the Borough, proposals should accord with principles of sustainable development that increase local self-sufficiency, satisfy human needs, and provide a robust, adaptable and enhanced environment. Development proposals should:*
1. *Avoid detrimental impact on the long term welfare of areas of environmental importance, minimise their impact generally upon the environment, including those factors contributing to global climate change, and seek out opportunities to enhance environmental quality;*
  2. *promote the more efficient use of previously-developed land, the existing building stock, and other land within urban areas for urban and rural regeneration, including housing, mixed-uses and community needs;*
  3. *ensure that proper and timely provision is made for physical, social and community infrastructure;*
  4. *provide a range and mix of housing types, including affordable housing;*
  5. *provide for sustainable economic growth to support efficient, competitive, diverse and innovative business, commercial and industrial sectors;*
  6. *support existing and provide new or diversified local services;*
  7. *promote ways to reduce energy and water use and increase use of renewable resources, including locally sourced and sustainable building materials;*
  8. *be located so as to provide the opportunity to live, work and use local services and facilities in such a way that can reduce the need to travel, particularly by car;*
  9. *be located to promote the provision of transport choices other than the car;*
  10. *be of a high quality design that respects local distinctiveness and promotes healthy and safe environments; and*
  11. *promote human health and well-being."*
- 5.6 The site is covered by Policy E7 (adopted Local Plan) which identifies this area as an important local countryside gap between Sittingbourne and Rodmersham Green. The proposals are a significant physical erosion of the gap and although topography diminishes the actual impact in views from Rodmersham Green, the urbanised proportion of the journey by walkers would be significantly increased. These are additional matters that should feed into overall conclusions on landscape and visual impacts.
- 5.7 Para. 4.2.2 of the applicant's planning statement considers the Adopted Local Plan to be out of date. This is not accepted. Policies that comply with the NPPF must continue to carry full weight.
- 5.8 Both policies E9 of the Adopted Local Plan and DM24 of the Emerging Local Plan should be afforded significant weight and are unaffected by the lack of a 5 year supply of housing land. Whilst the weight to be given to a local landscape designation is less than for nationally protected landscapes, its protection is nevertheless desirable and commensurate with this status (para. 113 of NPPF). Additional weight is provided by those matters relating to its uniqueness, accessibility and landscape type.
- 5.9 In the case of policies E7 of the Adopted Local Plan and DM25 of the Emerging Local Plan, their weight is diminished due to the land supply question, but weight can be given due to their overall intention and compliance with NPPF Core Planning Principal.

- 5.10 Policy E6 of the Adopted Local Plan and parts of ST3 of the Emerging Local Plan are considered to be out of date, but weight should continue to be given to their overall intention due to their compliance with NPPF Core Planning Principal.
- 5.11 The Emerging Local Plan has moved on since the applicant's assessment made at section 5 of the planning statement. The Emerging Local Plan was submitted for examination on 20 April 2015, with the examination expected to take place later in 2015. Policies of the Plan should therefore be given the weight afforded by NPPF para. 216.

### **National Planning Policy Framework (NPPF)**

- 5.12 Also of importance to the determination of this application is the guidance as set out in the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG).
- 5.13 The NPPF sets out the Government's position on the planning system explaining that *"The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219 of the NPPF, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision taking. For decision taking this means:*
- *Approving development proposals that accord with the development plan without delay; and*
  - *Where the development plan is absent, silent or relevant policies are out of date granting permission unless:*
    - *Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*
    - *Specific policies in this Framework indicate development should be restricted."*
    -
- 5.14 It further outlines a set of core land use planning principles (para 17) which should underpin both plan-making and decision taking including to contribute to conserving and enhancing the natural environment and reducing pollution and encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high value. It further states 'take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it'
- 5.15 At paragraph 18 it explains *"The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future."*

At Paragraph 47 it states that *"planning authorities should meet local housing needs and identify five year housing land supply with an additional 5% buffer"*. Paragraph 49 states *"that housing application should be considered in the context of the presumption in favour of sustainable development"* and that *"Relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites."*

- 5.16 Paragraph 64 of the NPPF states *“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.”*
- 5.17 Paragraphs 47-55 seek to significantly boost the supply of housing. NPPF para. 49 confirms that the lack of a 5-year land supply triggers the presumption in favour of sustainable development as set out by NPPF para. 14. It is necessary to determine what the relevant policies for the supply of housing are in order to identify which are out of date. What constitutes a policy for the supply of housing has been the subject of legal judgement, which can be interpreted as either policies that have specific and direct impacts on housing supply or more indirect, but significant impacts on supply. Regardless of the approach taken, decision makers can and do take into account whether certain aspects of policies accord with the NPPF. Importantly, the decision maker must apply themselves properly to para. 49 and in this regard, tabulated observations are offered in Appendix 1 in respect of relevant policies of the Adopted Local Plan, the Emerging Local Plan and the Kent Minerals and Waste Local Plan.
- Para 111 states ‘Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value. Local planning authorities may continue to consider the case for setting a locally appropriate target for the use of brownfield land.
- 5.18 Paragraph 112 goes on to say *“Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. 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.”*
- 5.19 Paragraph 113 explains *“Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged. Distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.”*
- 5.20 Paragraph 142: *“Minerals are essential to support sustainable economic growth and our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs. However, since minerals are a finite natural resource, and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation”.*
- 5.21 And at paragraph 144 it stresses that Local Authorities should *“not normally permit other development proposals in mineral safeguarding areas where they might constrain potential future use for these purposes”*

### **Swale Landscape Character and Biodiversity Appraisal Supplementary Planning Document’**

- 5.22 The Swale Landscape Character and Biodiversity Appraisal were adopted as a Supplementary Planning Document in 2011<sup>1</sup>. The descriptions and guidelines relating to relevant landscape types (page 95) and character areas (CA40 and CA42) are applicable as material considerations. Also material are the landscape designation

<sup>1</sup><http://www.swale.gov.uk/assets/Planning-General/Planning-Policy/Landscape-Character-Appraisal-Final-Sept-2011/Dry-Valley-and-Downs-Landscape-Types-reduced-size-.pdf>

reviews undertaken by Jacobs consultants in 2003<sup>2</sup> and again, by SBC, in 2014<sup>3</sup>. These give the context and justification for the local landscape area designation applied to the application site since 2000. Although not adopted by the Council, a relevant material consideration for its consideration of general locations for growth is the Urban Extension Landscape Capacity Study prepared by Jacobs and published in June 2010<sup>4</sup>. Finally, alongside the applicant's own landscape evidence, consideration should be given to the SBC commissioned landscape evidence from David Huskisson Associates dated May 2015.

### **Kent Minerals and Waste Local Plan 2013-2031 (KMWLP)**

- 5.23 The KMWLP is currently undergoing examination and is likely to be adopted later this year. Given the advanced nature of the plan it is now a material consideration in development management decisions. Once adopted the KMWLP will form part of the development plan.
- 5.24 The NPPF has expanded the requirement to safeguard minerals, such as brickearth, to not only protect areas for potential extraction but all areas where the mineral is known to be. The NPPF also introduced the need for Mineral Safeguarding Areas (MSA) to be identified. For Swale the Safeguarding Area covers deposits of brickearth which cover a large proportion of the Borough.
- 5.25 Policies within the KMWLP require development to demonstrate that extraction of brickearth prior to building would not be practicable. Applicants have to submit a minerals assessment which KCC would assess as part of the consultation on a planning application.
- 5.26 Policy CSM5 outlines the approach of safeguarding minerals and sets out the need for to consult KCC on applications which fall within the safeguarded area. Policy DM7 requires all development within the safeguarded area to demonstrate the minerals is either not there, been worked out or that it is not viable to extract. Essentially this is the mechanism to ensure prior extraction of brickearth is explored before development on top of it is built. Within the proposed modifications there is the caveat that the need for development (e.g. housing delivery need) could override the policy.
- 5.27 The KMWLP is at an advanced stage, and the debate that took place at the Examination strongly indicates that the direction of travel of the plan will be accepted by the Inspector and that it will be adopted by the time of any planning appeal Inquiry into these development proposals.

### **The Strategic Housing Land Availability Assessment 2013/14 (SHLAA)**

- 5.28 The Council published its 2013/14 SHLAA update in May 2015. As with previous SHLAA since 2008, the application site is rejected (SW/050 refers) as not suitable for development, principally due to landscape and visual impacts. Also relevant are the inclusion and rejection of two adjacent sites (SW/107 and SW/204) on similar grounds. These matters are considered as material considerations in the determination of this application because of the likelihood of cumulative impacts. Members may wish to note that the loss of agricultural land is not an issue considered by the SHLAA.

<sup>2</sup><http://www.swale.gov.uk/assets/Planning-General/Planning-Policy/Local-Plan-2013/Misc/Swale-Landscape-Designation-Review.pdf>

<sup>3</sup><http://archive.swale.gov.uk/assets/Planning-General/Planning-Policy/Evidence-Base/Local-Plan-2014/Technical-Paper-6-pages-1-8-with-cover.pdf>

<sup>4</sup><http://www.swale.gov.uk/urban-extension-landscape-capacity-study-june-201/>

## 6.0 LOCAL REPRESENTATIONS

45 letters of objection have been received from neighbouring residents and 1 letter of support. Their comments can be summarised as follows;

### Objection

- Site not within the Local Plan nor recent Bearing Fruits – should not be allowed
- High quality agricultural land – against advice in NPPF
- Site in countryside/ outside built up area boundary/ Special Landscape Area
- Will erode gap between Sittingbourne and Highsted Valley/ Rodmersham
- Public footpaths across the site and just outside
- Site is in area of High Landscape Value
- Swale SPD explains the landscape here same as AONB and is of high sensitivity
- In important Local Countryside gap
- Put extra strain on health care
- Concern about water supply – cant' cope
- Confident new local plan will deal with housing requirements
- Area between Sittingbourne and Rodmersham would no longer be a valley, would be a hill
- Local Plan seeks to prevent perception of coalescence not just physical coalescence
- NPPF intends to promote growth of communities in informed and considered manner – not build as many homes as quickly as possible no matter the cost
- Would set a precedent for other nearby sites to come forward
- SHLAA 2011-12 said it did not meet suitable criteria for development
- Footpaths a much used local amenity
- Will cause noise nuisance to existing houses
- Siting of store will cause problems to residents
- Traffic assessment flawed
- Visual impact assessment does not include views of what it would look like after the development
- Crime and unemployment in Sittingbourne on the increase
- Sittingbourne has no facilities for young people
- Town is in decline
- Loss of local farm shop and business
- Need for low cost starter homes not more of the same
- Retail part will never come to fruition
- Affordable housing should be rented
- Building on Greenfields not sustainable
- Swale has lack of high paid jobs
- Tory Council more interested in new homes bonus than providing proper facilities and infrastructure
- Abundance of wildlife on site
- Use chalk pits to build on
- Overdevelopment means rainwater not soaking away
- Fuelled by greed not logic
- Should never be built on as is a Roman burial ground
- Lose my views, will devalue property
- My home will be overlooked
- My property will be affected by increased drainage/ flooding

## Support

- Hope this gets go ahead as Swale needs more houses to support growing population
- Will help economy grow

## 7.0 CONSULTATIONS

**Tunstall Parish Council raise objection to the application. Their comments can be summarised as follows:**

- A similar application was refused two years ago and same reasons apply today
- Capacity of physical infrastructure inadequate to supply water (according to Southern water)
- Kent police say development is “*unsustainable and unsound*”
- According to SBLP2008 site is in SLA policy E9, in Countryside Gap, policy E7 and in Countryside policy E6
- Highway issues – traffic generation, vehicular access, highway safety. Will put pressure on Swanstree Avenue
- No primary schools in area – will need to be driven
- Grade 1 agricultural land – goes against Government choice to use brownfield first
- Land is important if we are going to grow our own food- cannot keep affording to lose to developers
- 

**CPRE consider that the application should be refused. Their comments can be summarised as follows;**

- Planning applications need to be determined in accordance with the development plan unless there are other material considerations
- Saved policies of SBLP2008 remain up to date as are consistent with policy objectives of NPPF
- Do not accept applicants claim the provisions of whole plan out of date because it precedes NPPF
- Sole justification is SBC do not have a 5 year housing land supply
- SBC current housing land supply calculation does not take into account windfalls
- Recent guidance says OAN should not be taken as final housing target as not tested until examination – therefore not an agreed housing target for Swale
- P/g' s 14&47 of NPPF does not mean any development should automatically be given permission where no 5 year supply
- Consider adverse impacts here do outweigh benefits
- Application is deliberate attempt to undermine emerging local plan and the plan led approach
- Seeks to pre determine matters that are to be considered through the local plan process
- Grounds for refusing application on prematurity despite realising this reason cannot be used lightly refers to Annex 1 NPPF which provides advice on prematurity. Council can satisfy both these reasons
- Proposal is significant large scale development in open countryside contrary to E6 – disagree E6 out of date. Policy clearly environmental not supply
- Built up area boundaries have been defined to steer development to most appropriate and sustainable locations – this site consistently excluded from built up area due to landscape quality

- Under emerging LP the dry valley is focus of a strategic gap between Sittingbourne urban area and the AONB. Important green infrastructure to be protected under CP7 of new plan
- P/g 17 NPPF requires LPA's to recognise "intrinsic character and beauty of the countryside" and "prefer land of lesser environmental value". Therefore E6 is relevant and a primary consideration
- Should be refused for not complying with para 17 NPPF, E6, E9 and E11 of SBLP2008 and ST3, CP7 and DM24 of new LP and impact on setting of Kent Downs AONB
- E7 seeks to prevent coalescence of Sittingbourne and surrounding villages – here Sittingbourne and Rodmersham at risk. Important gap continues to be protected by DM25 of new LP. Gap would be reduced to 350m at closest point. Significant encroachment.
- These again are not housing supply policies but about maintaining character of settlements
- Site is mix of best agricultural land grades 1&2 – it enables wide range of agricultural and horticultural crops to be grown. Paragraph 112 NPPF seeks to use poorer quality land for this reason. 11g of ST1 echoes this
- Applicants have not shown there are no alternative sites involving lower quality land- this means not just Sittingbourne but throughout Borough
- Also not provided assessment as to how loss of site would affect viability of remainder of farm holding
- Proposal not sustainable as it results in environmental losses

**Environmental Protection Team Leader raises objection on basis of information submitted. Their comments can be summarised as follows:**

- Air quality and noise reports are inadequate and need to be more detailed
- Further work required to eliminate adverse impacts from contamination
- Air quality report brief and quite dismissive – concludes development of this size will have no adverse impact on air quality. However proposal is one of several proposals in and around Sittingbourne. When taken individually may not be significant but cumulatively they will. This is not dealt with in report
- Would have expected a recognised AQ modelling technique (such as ADMS Roads) to be used for large scale application like this
- A2 is only major route near site and inevitable traffic to and from this site will have to use this route
- There would be adverse impacts on the AQMAs at Ospringe Street and St Paul's Street
- To say only 4% of traffic from site will head westwards and 35% eastwards on A2 is difficult to believe
- Report is well meaning but too brief for development of this size and importance
- Recommend condition requiring a report be submitted
- Noise report is also brief assessment which is similarly dismissive
- Should be a noise assessment on how this residential development might be affected by traffic noise – recommend conditions
- A comprehensive desktop study is included that concludes low probability of contamination but recommends further work still required – as such recommend condition



### **Environment Agency**

Raise no objection to the proposal but recommend conditions regarding contamination. They also recommend a SUDS scheme be incorporated and several informatives.

### **Council's Tree Consultant raises no objection**

- The submitted reports appear detailed and accurate
- In principle, provided the recommendations and guidance detailed in the documents are followed I have no objections to the outline scheme
- If permitted I would like to see landscaping conditions attached together with a condition requiring the submission of an arboricultural method statement and all tree protection to be undertaken in accordance with the plans shown in the arboricultural impact assessment.

### **KCC Archaeology**

Currently in discussions with the applicant's archaeological consultant.

- The site has a particular archaeological potential regarding Roman burials in one area in the south west of the site and a general background potential for prehistoric and Roman remains.
- A geophysics survey has been carried out on the site recently and I have been provided with advance figures and await the full report in due course. The report proposes some targeted evaluation trenching on the site to inform the planning decision and I would agree with that approach

**KCC Public rights of Way Officer** does not object but raise several points that they consider need addressing prior to the grant of any permission including:

- Site would severely impact on the local walking resource. Path ZU31 is overlooked, however, the more developed setting will inevitably result in it losing its value as a recreational resource
- However, the additional circular routes and links will offer good amenity value
- They expect the PROW's to have surfaces to the standard of the County Council
- Cycling does not appear to have been considered. Provision must be made within the site
- Recommend a new Toucan Crossing is provided across Swanstree Avenue to connect to the footway/cycleway on the North side of that road
- That Path ZU30 is kept open and available to the public at all times.
- That those parts of existing footpaths ZU30 and ZU31, indicated on the attached plan, are upgraded to cycle track, including the off-site link to Peregrine Drive.
- That any necessary PROW changes and surfacing is agreed with KCC's PROW and Access Service prior to commencement

### **Rural Planning Consultant**

- A post 1998 Agricultural Land Classification survey shows it to be mainly Grade 1 (excellent) and Grade 2 (very good) quality ie. "best and most versatile" land for land use planning purposes, apart from a small area along the boundary

- Para 112 of NPPF states “Local Planning Authorities should take into account the economic and other benefits of the best and most versatile (BMV) agricultural land, and that 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.”
- High quality agricultural land is valued because of its important contribution to food production and it also offers much greater potential than poorer land for growing alternative fuel/ energy crops
- Firstly must decide if the development is necessary
- If it is necessary the next stage is to decide whether sufficient arguments have been presented for overriding the NPPF guidance such as in this case, poorer land should not be sought in preference to higher quality land.

### **Kent Police**

- Supporting information makes no reference to Crime Prevention Through Environmental Design (CPTED)
- Would welcome a meeting with the applicant/agent to discuss Crime Prevention in more detail
- If the applicant fails to contact us, this may have an effect on the development with regards to Secure By Design (SBD), Codes for Sustainable Homes (CfSH) and BREEAM, as awarding these items retrospectively can prove difficult and costly. This could also have knock on effects for the
- future services and duties of the Community Safety Unit (CSU) and local policing
- Suggest conditions/ informatives

### **Swale Footpaths Group**

- several public footpaths cross the site.
- One is particularly useful as it is a direct route into the countryside from Sittingbourne and offers extensive views from the top of the hill.
- Is an "Area of High Landscape Value", and is not allocated for housing

### **Lower Medway IDB**

- The site of this proposal is outside of the IDB's district and, as the applicant proposes to restrict off-site runoff to 7l/s, is unlikely to directly affect the Board's interests
- I note that the proposals include the use of water butts which, whilst supported, should not be relied upon when calculating on-site storage (as butts can already be full prior to a storm)

### **Southern water**

Request if planning permission is granted an informative is included stating the developer must enter into a formal agreement with southern water to provide the necessary sewerage infrastructure as initial investigations indicate insufficient capacity and suggest conditions

### **Sittingbourne Society**

- Site outside built up area and in SLA
- Is an important countryside gap – proposal would significantly reduce the gap
- Site is high quality agricultural land – NPPF steers development to areas of lower quality land
- No assessment has been carried out to demonstrate impact on rest of holding

- Impact on public services including health
- Seriously affect traffic flows
- Increased hazards for children
- Strain on car parking in town
- Concern about water supply
- Confident new local plan will provide sufficient housing

**Rodmersham Parish Council** raise objection. Their comments can be summarised as follows:

- The site is in SLA as set out in policy E9
- It is within a countryside gap as designated under policy E7
- Site is within countryside as designated under policy E6
- We fully support these parts of the LP and do not feel mitigation could overcome these considerations
- A similar app was refused 2 years ago and same reasons apply
- Proposed exits will cause traffic problems, congestion, safety problems
- Schools oversubscribed
- Building here uses Grade 1 agricultural land when we have brown field sites
- Need green field agricultural land for growing food
- Dangerous for pedestrians
- Does not meet local need – people from outside will move in

**KCC Highways raise objection;**

- Transport assessment includes tandem parking and garages – do not accept garages as parking spaces and discourage tandem parking
- Although amenities nearby, not all roads here are suitable for walking
- Daunting route to town by bike involving crossing the A2
- Public transport not as frequent as necessary to encourage people to use it
- Trip rates used in transport assessment robust
- Report suggests the three accesses would be used equally – this is highly unlikely and cannot be considered properly until internal road layouts are decided
- Report not robust

**KCC Ecology**

- Satisfied the ecological surveys have considered on-site impacts from development, however, insufficient information submitted relating to assessing recreational impacts on European Designated Sites.
- Satisfied sufficient surveys carried out for protected/ notable species but if planning permission granted the finalised layout must ensure areas of highest ecological interest are retained

**KCC Minerals and Waste raise objection to the application. They state;**

*The site 'lies within the Swale Borough-Mineral Safeguarding Areas map for Brickearth (Faversham- Sittingbourne Area) and is not within an allocated site in an adopted development. On this basis it should be accompanied by a geological assessment that demonstrates the acceptability of non-mineral development against the tests set out in emerging policy DM7 of the MWLP'*

*'Please note that they may be subject to further minor modification by the Inspector. The MPA considers that in the absence of the tests in DM7 being met, then the County Council raises an objection to the non-mineral development on grounds of sterilisation of economically important minerals.'*

## **8.0 APPRAISAL**

8.1 I consider that the key material considerations in assessing this application are as follows:

- The housing target and land supply position for Swale
- The principle of the proposed development/ impact on character of countryside
- Is the development sustainable?
- Implications for landscape and visual amenity
- Impact of development on Swale SPA/ Ramsar site
- Implications for loss of BMV land
- Implications for sterilisation of a mineral safeguarded area
- Archaeology
- Residential amenity implications
- Highway implications
- Air Quality
- Flood Risk
- Developer Contributions

### **What is the housing target and land supply for Swale?**

8.2 The adopted Local Plan 2008 forms the basis for calculating housing land supply. As of 2013/14, Kent County Council's Housing Information Audit showed that Swale had a 3.17 years of housing land supply and therefore does not currently have a 5-year supply of housing land as required by paragraph 47 of the NPPF. Paragraph 47 explains that where a Council is unable to demonstrate a 5-year supply of housing due to persistent under-delivery, a Council will be required to provide a 20% buffer. However, in the case of Swale, whilst recent delivery has been below achieving a 5-year supply, this is simply a reflection of the post 2010 recessionary period and should not be used to characterise performance as a whole and I therefore make the case that the 20% buffer is not intended for cases such as ours.

8.3 Paragraph 49 of the NPPF confirms that the lack of a 5-year land supply triggers the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the Local Planning Authority cannot demonstrate this. It is necessary to determine what the relevant policies for the supply of housing are in order to identify which are out of date. What constitutes a policy for the supply of housing has been the subject of legal judgement, but can be interpreted as either policies that have specific and direct impacts on housing supply or more indirect, but significant impacts on supply. Regardless of the approach taken, decision makers can and do take into account whether certain aspects of policies accord with the NPPF. Importantly, the decision maker must apply themselves properly to paragraph 49 and in this regard, tabulated observations are offered in Appendix 1 in respect of relevant policies of the Adopted Local Plan, the Emerging Local Plan and the Kent Minerals and Waste Local Plan.

- 8.4 To conclude on the issue of housing land supply, the Council cannot currently demonstrate a five year housing land supply. However, this is not due to persistent under delivery, but has been a recent problem compounded by the effects of the recession and therefore the 20% buffer should not be engaged. The supply calculations have been calculated cautiously using the Sedgefield method rather than using the Liverpool method and by using the need figures from the Local Plan. This is the correct approach as to state that the five year supply should be calculated using figures from the Emerging Local Plan would be seeking to pre-determine the outcome of housing need ahead of the Local Plan Inquiry.

### **The principle of the proposed development/ impact on character of countryside**

- 8.5 The site is located outside of any built up area boundary, within the designated countryside, although it does abut the built up area boundary of Sittingbourne, as set out in the adopted Local Plan. As had already been established, policies relating to the supply of housing in both the adopted and the emerging Local Plans are to be considered out of date as the Council does not currently have a 5-year supply of sites and this causes means we need to consider whether policies relating to the protection of the countryside are housing policies and could be considered to be out of date. It has been argued recently in planning appeals by planning agents that Policy E6 of the Adopted Local Plan relating to 'The Countryside' is to be considered out-of-date due to the fact it refers to 'development' which could include housing. However, it is important to note that the overarching aim of the policy is to protect and enhance the quality, character and amenity value of the wider countryside and that aim fully accords with the NPPF Core Planning Principle *'to take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities'*. As such, I do not consider the overall aim of the policy to be out-of-date and give it significant weight in assessing the impact of the proposal on the character of the countryside.
- 8.6 The site is also located within an important local countryside gap between Sittingbourne and Rodmersham Green. The proposal would result in a significant physical erosion of this important gap which Members were very keen to see remain under the Emerging Local Plan and policy DM25 of the emerging Local Plan retains this important gap. Adopted policy E7 is also considered to be consistent with the NPPF Core Planning Principle to take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities and can be afforded significant weight. The policy aims to retain the individual character of settlements and in order to do that states planning permission should not be granted where it would result in the merging of settlements or result in piecemeal erosion of land or its rural open and undeveloped character. In this case, although the topography of the area reduces the impact in views from Rodmersham Green, the impact on views from Swanstree Avenue towards Rodmersham and the journey for walkers would be significantly changed and urbanised, resulting in a significant loss of openness and rural character.
- 8.7 The site is also defined as containing best and most versatile land (BMV). A post 1988 Agricultural Land Classification survey of the site shows it mainly to be a mixture of Grade 1 (excellent) and Grade 2 (very good) quality (BMV land in planning terms) apart from an area of 5.7ha along part of the northern boundary which is Grade 3b (moderate quality). The issue of loss of BMV land is addressed within the NPPF whereby it states that Local Planning Authorities should seek to use areas of poorer quality land in preference to that of a higher quality for necessary development.

- 8.8 As well as economic benefits, as indicated within the NPPF, there are other benefits of BMV land. These include social/ strategic benefits in terms of securing the best land for local and national food production and environmental benefits in that better quality land is generally easier and more efficient to work, and not unduly subject either to drought or to bad drainage and more likely to achieve good and consistent yields. Its unnecessary loss should therefore be strongly resisted, particularly in cases where it results in a significant area of land.
- 8.9 It is therefore important to consider firstly whether this development is necessary (as required under para 112 of the NPPF), which it could be argued it is, due to the lack of 5-year housing land supply. Secondly, it becomes necessary to consider whether there are alternative more suitable sites available. As already discussed earlier in the report, the Council has a trajectory of alternative sites which are considered to be available. Lastly it is important to consider whether there are any material considerations that mean the advice as set out within the NPPF in this respect should be overruled. I am of the opinion that there is no justification in this case to allow the loss of such a significant area of BMV land where there are clearly options to provide a development of this size on alternative sites that are available elsewhere in the Borough.

### **Is the development sustainable?**

- 8.10 In terms of the three dimensions of sustainable development – namely economic, social and environmental considerations - NPPF, paragraphs 8 and 9 expects development to seek improvements across all three.
- 8.11 It should be acknowledged that the proposals will achieve social gains in terms of the provision of substantial numbers of new housing (including the provision of affordable homes) in an area with an acknowledged shortfall and with good access to existing and possible new services. In turn these make a positive contribution toward the economic role of sustainable development. However, the benefits achieved under this latter role are significantly diminished by a reduction in the economic benefits of BMV. They are also significantly impacted upon given the sterilisation of the land in terms of minerals; given the statement in NPPF paragraph 142, such economic dis-benefits could be very significant indeed. However, given that improvements across all three of the sustainable development dimensions is necessary, the contribution toward the environmental dimension also needs to be examined.
- 8.12 It is under the environmental role that the development most significantly fails to positively contribute. The applicant's assertion on page 5 (under the heading sustainable development) of the planning statement that "*The accompanying reports show there are no adverse impacts associated with the proposals*" is clearly not demonstrated by the actual likely impact as highlighted by the Council's own landscape evidence. To these already significant impacts (discussed further on in this report) is added the major loss of BMV (as discussed earlier).
- 8.13 As there is a failure to secure improvements across all three strands of sustainable development, the proposals would not amount to sustainable development as clearly required within the NPPF, irrespective of whether a 5-year supply of housing sites can be demonstrated or not.

### **Implications for landscape and visual amenity**

- 8.14 The application site forms part of a local landscape designation. For the Adopted Local Plan it is part of the North Downs Special Landscape Area (Policy E9), whilst for the Emerging Local Plan the area is part of an Area of High Landscape Value (Kent Level) (Policy DM24). The area has been designated for its special landscape qualities for many years which has been supported by landscape consultants, is not challenged by the applicant's evidence and its status has been endorsed by successive Local Plan Inspectors.
- 8.15 The value of the landscape here is increased by three matters:
- 1) Whilst the site is not subject to a national landscape designation, dry valleys and downland landscapes abut the site and adjoin the AONB. These landscapes have been recognised as a county landscape resource of more than local value.
  - 2) There is excellent accessibility to the landscape provided to the local population by the several public footpaths that cross, adjoin or give views of the site. People are able to rapidly access the countryside from the urban area, giving them considerable opportunities to appreciate the wider countryside.
  - 3) The combination of accessibility, the type of landform with its dramatic views, the stark change between urban and rural areas and its relative remoteness and tranquillity are unique to Swale.
- 8.16 With respect to the footpaths running both through and nearby to the site, they are well used for dog walking, rambling and for general walks. Although the footpaths would be retained, their qualities will be dramatically diminished if the development were to go ahead.

### **Applicant's landscape evidence and SBC review**

- 8.17 As confirmed by the landscape evidence commissioned by Swale Borough Council, the landscape report submitted by the applicant is lacking in a number of respects:
- an incorrect assessment of views and the significance of impacts;
  - inappropriate commentary on the balance between landscape impact and housing need leading to judgements beyond the remit of its authors; and
  - a failure to consider the landscape qualities of the designation and the guidelines from the Swale Landscape and Biodiversity Assessment Supplementary Planning Document.
- 8.18 The independent report commissioned by Swale Borough Council takes a counter view to the applicant's assessment and confirms the presence of significant and permanent harm to landscape interests, with the proposals clearly demonstrating an almost total disregard for their landscape and visual contexts. Such harm will also lead to irreversible pressures to develop adjacent sites included within the Council's SHLAA 2013/14, adding further significant cumulative impact upon the landscape designation.

### **Swale Landscape Character Assessment SPD 2011**

- 8.19 The proposals do not specifically consider the guidance contained within the adopted Supplementary Planning Document. For example, page 95 provides generic guidelines for dry valleys and downland stating:

*“Valleys are frequently tranquil and largely undeveloped. They are distinct features of the natural landscape that should be conserved.”*

- 8.20 Page 108 provides the following guidelines for the Rodmersham and Milstead dry valley area:

*“Conserve the rural setting of the Kent Downs AONB and the southern edge of Sittingbourne.”*

*“Conserve the distinctive and predominantly enclosed landscape character of valleys and hillsides (including panoramic views), together with the remaining landscape structure of hedgerows, shelterbelts, woodland and mature and remnant orchards. Additionally look for opportunities to restore this structure and to link features, especially within locally denuded parts of the area and along roads and lanes.”*

- 8.21 Page 112 provides the following guideline for the Tunstall Farmlands area:

*“Conserve the remote character belonging to the dry valley along the eastern edge of the area.”*

- 8.22 The proposals very clearly display significant and irreversible landscape harm, principally arising from their development of the valley side, their impact in views and the diminishment in the use, quality and role of the public footpaths in the area. The proposals also fail to address the Council's landscape SPD and specific guidelines and neglect their landscape context by their scale and indicative strategy for developing of the site. Albeit not a significant matter in its own right, the adverse impacts upon settlement separation also feed into the overall adverse conclusions. As a result the proposals fail to protect or enhance the quality, character and amenity value of the countryside as required by adopted and emerging Plan policies.

- 8.23 The proposals fail to accord with NPPF Core Planning Principle to take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities. Additionally, they fail to protect and enhance valued landscapes as required by NPPF para. 109 and do not accord with NPPF para. 64 which states that permission should be refused for development of *“... poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.”*

### **Impact on Swale SPA/ Ramsar site**

- 8.24 The site is located within close proximity of the Swale Special Protection Area (SPA) and RAMSAR site, sites designated under European legislation for the conservation of wild birds. Under this legislation the Council has a duty to safeguard the habitats of migratory birds. Recent evidence commissioned by Swale Borough Council in conjunction with other Kent authorities has demonstrated that for all housing developments within a 6km distance from an access point onto the SPA there is the potential for disturbance to birds, principally (but not entirely) due to dog walking. For large projects this geographical influence may be even wider.
- 8.25 As such, in order to meet our European duty, for all planning applications relating to residential development, the Council needs to undertake a Habitats Regulations Assessment to determine whether there are likely to be significant adverse impacts on the SPA. Where this is confirmed, a full Appropriate Assessment (AA) would then be triggered.



- 8.26 The North Kent Councils have agreed a draft approach by which developments may be able to provide mitigation to enable development to proceed and fulfil the necessary duty under the European legislation. This will normally take two forms (both needing to be achieved):
1. The mitigation of impacts on site – normally by the creation of dog walking areas within a new development; and
  2. For those remaining off-site impacts the payment of a per-dwelling tariff – currently £223.58 per house.
- 8.27 Member should note that despite this issue being raised with the applicants at a meeting during the application process that no information has been provided to enable a Habitat Regulation Assessment (HRA) to be undertaken. Whilst the submitted ecological assessment refers to a mitigation payment, no draft legal agreement has been submitted and despite the issue being raised with the applicant during the application process, there has been no agreement that the payment would be made or suggestion of appropriate projects. As such, I am unable to fulfil the Council's duties under EU law and cannot establish whether there would be significant effects on the SPA.
- 8.28 The requirement for the Council to consider this is set out in European Law, however, it is clarified in planning terms in paragraphs 118-119 of the NPPF, together with Policy E12 of the adopted Local Plan and Policies CP8 and DM28 of the emerging Local Plan provide this.

### **Implications for loss of BMV land**

- 8.29 Natural England Technical Information Note TIN049 confirms that BMV soils are the most flexible, productive and efficient in response to inputs and which can best deliver future crops for food and non-food uses such as biomass, fibres and pharmaceuticals. Current estimates are that Grades 1 and 2 together form about 21% of all farmland in England; Subgrade 3a also covers about 21%. Around 80% of Swale's land is managed through agriculture and it is estimated that the Borough has about 17% of Kent's grades 1 and 2 resources.
- 8.30 The Government re-affirmed the importance of protecting soils and the services they provide in the Natural Environment White Paper *The Natural Choice: Securing the value of nature* (June 2011), including the protection of best and most versatile agricultural land (paragraph 2.35).
- 8.31 Paragraph 109 of the NPPF looks to the planning system to contribute to and enhance the natural and local environment by "*protecting and enhancing valued landscapes, geological conservation interests and soils*". When allocating land for development, paragraph 110 looks to Council to allocate land with the least environmental or amenity value. This can be regarded as applying to agricultural land. The glossary to the NPPF confirms BMV land to comprise grades 1, 2 and 3a of the Agricultural Land Classification.
- 8.32 Paragraph 112 of the NPPF provides further guidance specific to agricultural land. It has three elements:
- 1) taking into account economic and other benefits of BMV land;
  - 2) whether significant development of agricultural land is necessary; and
  - 3) seeking to use areas of poorer quality land.

**Taking into account economic and other benefits of BMV land**

8.33 The benefits of BMV land will include<sup>5</sup>:

- Food security and self-sufficiency.
- Food quality.
- The economy.
- The environment and climate change.
- The countryside.

8.34 Many of these benefits are not quantifiable in monetary terms and when considering the economic benefits alone, there is currently no available published evidence on the value of agriculture to the Swale economy, although its value nationally is very significant indeed. With some of the largest and most successful fruit producers present in the Borough, the value at the local level is likely to be very significant indeed. There are some published data sources to indicate its relative importance:

- 2013 Defra statistics for 2013 show Swale having 1,867 persons engaged in agriculture (approx. 4.3% of total Swale jobs) - the 4<sup>th</sup> highest in South East England. This amounts to around 4% of the total involved in agriculture for the whole of the South East and higher than the South East average of 899 persons per district.
- 2013 Defra statistics for 2013 show Swale has having 22,815 ha of farmed land, the 4<sup>th</sup> highest amount of farmed land in Kent and slightly above the average for South East England.
- If farm prices were used as an indicator, the average value of English farmland rose by 4% in 2014 to £10,200 per acre, breaking the £10,000 per acre barrier for the first time in its history. Pre 2014, there was strong demand for land of all qualities, but since farmers have aimed for high quality land<sup>6</sup>.

8.35 Given the benefits of the resource locally, the loss of such a considerable area of BMV land, together with the pressures on other nearby land, weighs against the proposals. Furthermore, the applicant's assessment of economic benefits has not taken these issues into account and the loss of this land must offset the stated economic benefits of the development.

**Whether significant development of agricultural land is necessary**

8.36 The application involves a significant loss of agricultural land (including significant levels of BMV) that in turn places pressure on adjacent similar land. The site area is 25.7ha of which approximately 20ha is considered to be BMV land. I consider the loss of such a large area of BMV land to be significant in terms of the intention of the NPPF at paragraph 112. There does not appear to be any specific guidance on what amounts to 'significant' development. However, taking into consideration the fact that Natural England are statutory consultees on applications for the loss of 20ha or more of BMV land, this signifies the loss of land this size is considered to be significant by the Government.

8.37 It is accepted that it has already been necessary to release significant levels of agricultural land to meet development needs in the Borough and that this will remain the case to meet any of the housing targets currently being debated at the local plan level. However, more suitable sites involving less significant areas of BMV being lost and have

<sup>5</sup>[http://www.ukagriculture.com/the\\_importance\\_of\\_agriculture.cfm](http://www.ukagriculture.com/the_importance_of_agriculture.cfm)

<sup>6</sup>[www.smithsgore.co.uk](http://www.smithsgore.co.uk).

been identified and put forward for allocation ahead of this site on the basis that they are more suitable and involve less harm.

### **Seeking to use areas of poorer quality land**

- 8.38 Although the use of agricultural land may be inevitable in order to meet our housing targets going forward, the loss of BMV land is not inevitable, even if higher housing targets are pursued. The Council's 2013/14 SHLAA identifies sites on lower quality land to the north of the Borough that are equally available and will comfortably replace the dwelling numbers proposed by the application site.
- 8.39 The applicant's conclusions on this issue are not shared. NPPF paragraph 112 does not require Councils to "*take into account the preference to use poorer quality land*", but to "*seek*" to use areas of poorer quality land. This is more proactive than that suggested by the applicant, i.e. it would imply a need to look for or to try and find or achieve. It is clearly a policy consideration and is considered as such by Inspector's.
- 8.40 The application involves a significant loss of BMV; compounded by the pressure it would create on adjacent land of similar value. The significance of such land, both to the UK, but to the Swale economy in particular, are likely to be significant and significant weight should be given to its loss in circumstances where there were no alternative to it. In this case, there are available alternatives and therefore significant weight should be attached to Emerging Policy DM31 and NPPF paragraph 112.

### **Implications for sterilisation of a mineral safeguarded area**

- 8.41 The site is located within the Swale Borough Mineral Safeguarding Area map for Brickearth (Faversham – Sittingbourne Area), as defined in Policy CSM5 of the emerging Minerals and Waste local Plan for Kent. The submitted application contained no geological assessment that demonstrates the acceptability of non-mineral development in accordance with Policy DM7 of that Plan or any commitment to remove any resources prior to development taking place. These policies are not judged as affected by para. 49 of the NPPF and without them being addressed, development would result in the sterilisation of economically important minerals. Whilst this is a matter upon which planning permission could be refused, Members should note that policies are subject to change and the developer may choose to address the issues prior to any appeal being considered.

### **Archaeology**

- 8.42 The site is located within an area of potential archaeological value and a desk based archaeological assessment has been carried out and submitted as part of the application which indicated there was a moderate to high likelihood of archaeological potential. The report also recommended further archaeological evaluation be carried out to inform is mitigation would be necessary. This has not been carried out to date. However, KCC Archaeology have confirmed that they have been in discussions with the applicant and are awaiting a full report. The approach suggested by the applicant's archaeological consultant involves a targeted evaluation trenching approach which KCC consider appropriate.

### **Residential amenity implications**

- 8.43 In terms of residential amenity, the impact can only be looked at in general terms due to the fact this is an outline application with only indicative plans. The development would have a significant impact upon the character of the street scene in Swanstree Avenue altering the outlook for pedestrians using the street and those living in Swanstree Avenue and will affect the character of the street by introducing urban development into what is currently an undeveloped natural area. This will inevitably have an impact on the amenity of the nearest properties. However, it is likely that this could be successfully mitigated by the approval of suitably-designed reserved matters.

### **Highway implications**

- 8.44 Access to the site is an issue that is to be considered at this outline stage. Kent Highways Services have raised objection to the application. In respect of the proposed new accesses, they say that the application indicates that the three accesses would operate equally between the three. Kent Highways consider this conclusion to not be based on robust evidence and to be most unlikely. They further comment that this cannot be considered properly until the internal layout of roads has been submitted. This has raised the issue of how thorough the submitted transport assessment is and whether its conclusions are accurate. As this is a matter that needs to be considered at this stage and Kent Highways have serious concerns regarding how this would impact on traffic flows in and around the site and the submitted evidence is lacking, this is a serious concern.
- 8.45 Kent Highway Services have also raised concerns regarding how/ whether buses would access the site and explain that right turn lanes would help if that was the intention. They also note that the applicants state that garages would be used towards parking provision, which is not accepted locally due to the fact so few people use garages for parking cars. They also have raised concerns regarding access to and from the site by cyclists and pedestrians explaining that it is not a pleasant journey for either to the town, requiring crossing of the A2. As such, I am concerned that the lack of accessibility of the site to pedestrians, cyclists and public transport results in the development failing to achieve the Government's overall aim of sustainable development.

### **Air Quality**

- 8.46 The large-scale nature of the proposed housing development will result in an increase in air pollution from the additional vehicular traffic that would be generated by these proposals. The Environmental Protection Team Leader has commented that the submitted air quality assessment is brief and quite dismissive of the issue of air quality. The site is in close proximity (approximately 800m) to an Air Quality Management Area (AQMA), on Canterbury Road and East Street (the A2). As the A2 is the only main route near to the site, it is inevitable that some traffic arising from the proposed housing will use this route. The conclusions of the report that only 4% of the traffic from the site will head westwards and 35% eastwards on the A2 is challenged. It is also likely that the development would result in adverse impacts on air quality in the AQMA's at St Paul's Street, Sittingbourne and at Ospringe Street on the A2, immediately to the west of Faversham.

- 8.47 Paragraph 17 of the NPPF require the planning system to contribute to reducing pollution, whilst para. 111 requires that new development should not contribute to unacceptable levels of air pollution. Paragraph 124 states that planning policies should sustain compliance with and contribute towards EU limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and the cumulative impacts on air quality from individual sites in local areas. Finally, paragraph 124 also requires that decisions should ensure that any new development in Air Quality Management Areas is consistent with the local air quality action plan.
- 8.48 Both Adopted Local Plan policy SH1 and Emerging Local Plan ST3 and ST5 highlight air quality as a constraint to development. The development is considered to be contrary to the NPPF and these policies, alongside Adopted Local Plan policy E1 and Emerging Local Plan policies ST1 and DM6. These policies are considered to be up-to-date and unaffected by the NPPF paragraph 49 issue.

### **Flood Risk**

- 8.49 The eastern boundary of the site is located within a narrow wedge of a flood risk area (Flood Zone 3), however, there does not currently appear to be any development proposed within this area. The remainder of the site is in flood zone 1. The Environment Agency have not raised objection to the proposal considering the proposed SUDS an appropriate management method.

### **Developer Contributions**

- 8.50 The applicant has not made clear at this stage what developer contributions they would be willing to enter into. However, they have made clear that they would enter into any that are reasonable and meet the necessary tests and can be delivered without rendering the development unviable.

### **Other matters**

- 8.51 Members will note that there is no provision towards on-site gypsy/traveller sites. Taking into consideration the recent appeal decision under APP/V2255/A/14/2224500 for the residential site at Brogdale Road, Faversham, I note the Inspector's conclusion in respect of this issue, which was as follows:

*"I accept that in accordance with paragraph 216 of the Framework, account can be taken of emerging policies. However the SBLP has not yet been submitted for examination and there are unresolved objections to that part of SBLP Policy CP3 relating to the provision of gypsy and traveller sites. Furthermore the particular approach to site provision inherent in the policy is not one that is set out in the Framework or in the Planning Policy for Traveller Sites. Consequently I believe that very little weight can be attached to SBLP Policy CP3. As a result I find no policy justification for the Council's approach of seeking the provision of a gypsy and traveller pitch on the site."*

- 8.52 I am therefore of the opinion that it is not appropriate to pursue the provision towards gypsy/traveller pitches in this case.

- 9.0 RECOMMENDATION – REFUSE.** As noted above, this application is the subject of an appeal against non-determination. As such this application will not be determined by the Council, however, the decision of the Committee will indicate to the Secretary of State the Council's intended decision. The reasons for refusal recommended would have been as follows:

- (1) The proposed development, due to its location, scale and form, will not represent sustainable development as it fails to seek positive improvements across the three dimensions as required by paragraphs 7-9 of the National Planning Policy Framework 2012. Furthermore, notwithstanding the lack of availability of a 5-year supply of housing land, in accordance with paragraph 14 of the National Planning Policy Framework 2012, the proposals do not achieve the presumption in favour of sustainable development as the adverse impacts of development would significantly and demonstrably outweigh any benefits as a result of:
  - (i) The likely significant adverse impacts on the landscape character, quality and value (including the contribution made by tranquillity and the amenity value of accessible countryside close to the urban area) of a designated local landscape area, as well as on the visual amenity enjoyed by users of the local public rights of way network;
  - (ii) Due to the topography and sensitive nature of the landscape, the development would result in a poor design that fails to appropriately respond to/take the opportunities for improving the character and quality of the area and the way it functions as required by para 64 of the NPPF;
  - (iii) The significant, permanent and unnecessary loss of best and most versatile agricultural land (including its economic and other benefits);
  - (iv) The failure to provide information to determine and address the mitigation necessary to avoid likely significant effects upon Special Protection Areas contrary to Article 4 of the EC Birds Directive.
  - (v) The site lies within the swale Mineral Safeguarding Area for brickearth and is not within an allocated site for development. The applicant has failed to demonstrate that potential sterilisation of this land and the loss of the wider economic benefits is acceptable
  - (vi) Air pollution from vehicle emissions, particularly nitrogen dioxide, resulting in cumulative air pollution levels that would be inconsistent with the local air quality action plans for the Canterbury Road AQMA, the St Paul's Street AQMA and the Ospringe Street AQMA;
  - (vii) Poor walking routes to the town centre with no footways at junctions, dangerous cycle route to the town centre and infrequent bus service.

(As a result, the proposals do not accord with the National Planning Policy Framework, being contrary to policies set out in paragraphs 14, 17, 64, 109, 112, 113, 117-119 and 142 - 144, nor with the Development Plan, being contrary to policies SP1, SP2, SH1, TG1, E1, E6, E7, E9, E12, E19 and H2 of the Swale Borough Local Plan 2008, together with guidelines of the Swale Landscape Character and Biodiversity Appraisal 2011 SPD. The proposals are also contrary to emerging Development Plan policies ST1, ST3, ST5, CP2, CP4, CP7, DM24, DM25, DM28 and DM31 of Bearing Fruits 2031: The Swale Borough Local Plan April 2015, together with policies CSM5 and DM7 of the Kent Minerals and Waste Local Plan 2013-2031.

- (2) The submitted transport assessment is inadequate, making unlikely assumptions on the likely trip generations of the proposed accesses to the site. As such, there are concerns that these assumptions are flawed and the assessment inaccurate. As such, the proposal would result in harm to highway safety and convenience, contrary to policies E1 and T1 of the Swale Borough Local Plan 2008 and emerging Development Plan policy DM6.

**Council's approach to the application**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

- Offering pre-application advice.
- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

This application was considered to be fundamentally against the aims and provisions of the Development Plan and NPPF and the issues so fundamental that the application could not be amended to address these.

Case Officer: Claire Dethier

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.