

REFERENCE NO - 14/506248/OUT – SUPPLEMENTARY REPORT FOR ITEM 3.1
APPLICATION PROPOSAL 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
ADDRESS Land South Of Swanstree Avenue, Highsted Road, Sittingbourne, Kent, ME10 4LU
RECOMMENDATION – 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.

1. Additional Supporting Information

- 1.1 Members will note the report at 3.1 of the agenda, on pages 54 to 84. As noted in the report, the applicant has lodged an appeal against non-determination of the application, and the applicant will now be determined by the Secretary of State rather than by this Council. It is anticipated that a Public Inquiry will be held in early 2016. However, the report sets out the reasons that officers would have recommended to Members that the application be refused had the appeal not been made; the reasons are on pages 82 and 83 of the agenda.
- 1.2 The planning implications of the proposed development are appraised on pages 73 to 82, and officers are firmly of the view that the development would have unacceptable impacts and that planning permission should be refused.
- 1.3 This report updates Members on the following:
- (i) Housing land supply – Paragraph 49 of the NPPF;
 - (ii) The assessment of sustainable development – Paragraph 14;
 - (iii) The implications for the Swale Special Protection Area and the Habitat Regulations Assessment; and
 - (iv) The wording of the reason(s) for refusal.
- 1.4 With regard to the housing land supply, Members will note that Paragraph 49 is referred to in paragraph 5.17 of the main report. It is suggested that observations in respect of relevant adopted and emerging plans are appended. This reference is an error, and there is no such appendix to the report. Paragraph 49 is also discussed at paragraphs 8.3 and 8.4 of the main report, and no further comment is required here.

- 1.5 With regard to sustainable development and the requirements of Paragraph 14 of the NPPF, paragraph 5.13 includes part of the text of Paragraph 14, albeit without referencing that paragraph number. For the avoidance of doubt, the full text of Paragraph 14 is as follows:

*“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 **plan-making** this means that:*

- *local planning authorities should positively seek opportunities to meet the development needs of their area;*
- *Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:*
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
 - *specific policies in this Framework indicate development should be restricted.*

*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 this Framework taken as a whole; or*
 - *specific policies in this Framework indicate development should be restricted.”*

- 1.6 Members will note that the principle of the proposed development and the question of whether the development can be considered sustainable are grappled with at paragraphs 8.5 to 8.13, on pages 74 and 75, of the main report. Although Paragraph 14 of the NPPF is not referred to in the 'appraisal' section of the main report (though Members will note the reference to it in the first part of the first refusal reason, on page 83) it is clear that the report addresses the question of whether or not the proposal amounts to sustainable development and concludes that the “*three strands of sustainable development*” (see paragraph 8.13 of the main report) - namely economic, social and environmental facets - are not satisfied by the development that is proposed. Furthermore, it is clear that the proposed development does not meet the tests in the final bullet point of Paragraph 14: instead, the harm arising from the development (which is environmental and is itemised in the main report) would significantly and demonstrably out-weigh the benefits (namely social and limited economic gains as discussed at paragraph 8.11 of the main report), and the Council considers that the development offends specific policies in the NPPF.

1.7 With regard to the implications for the Swale Special Protection Area, Members will note that this issue is addressed at paragraphs 8.24 to 8.28, on pages 77 and 78 of the main report, and the anticipated harmful impact of the development in this regard is reflected in part (1)(iv) of the reason for refusal. In support of this, a Habitats Regulations Assessment has been carried out and this is appended here.

1.8 With regard to the reason(s) for refusal, I have reflected on this and propose that the second reason - which relates to highway safety and convenience - be integrated with the first reason, such that the amended reason would read as follows, rather than as set out on Page 83 of the main report:

“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; and

(viii) 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.

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, T1 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, DM6, 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."

- 1.9 Finally, Members will note that paragraph 5.3 of the Policy section includes reference to Policy E8 of the adopted Local Plan. This policy has not been saved, and is therefore no longer part of the Development. However, Members will note that the policy is not referred to in the relevant part of the refusal reason – (1)(iii) - on Page 83 of the agenda.

APPENDIX: HABITATS REGULATIONS ASSESSMENT

Context

This HRA has been undertaken without information provided by the applicant.

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires *Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.*

For proposals likely to have a significant effect on a European site, the Conservation of Habitats and Species Regulations (2010) requires the Council to make an appropriate assessment of the implications for the site. Para. 119 of the NPPF states that "*The presumption in favour of sustainable development ... does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.*"

Given the scales of housing development proposed around the North Kent SPAs, the North Kent Environmental Planning Group (NKEPG) commissioned a number of reports to assess the current and future levels of recreational activity on the North Kent Marshes SPAs and Ramsar sites. NKEPG comprises Canterbury, Dartford, Gravesham, Medway and Swale local authorities, together with Natural England and other stakeholders. The following evidence has been compiled:

- Bird Disturbance Study, North Kent 2010/11 (Footprint Ecology).
- What do we know about the birds and habitats of the North Kent Marshes? (Natural England Commissioned Report 2011).
- North Kent Visitor Survey Results (Footprint Ecology 2011).
- Estuary Users Survey (Medway Swale Estuary Partnerships, 2011).
- North Kent Comparative Recreation Study (Footprint Ecology 2012).
- Recent Wetland Bird Surveys results produced by the British Trust for Ornithology.

- Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014).

In July 2012, an overarching report summarised the evidence to enable the findings to be used in the assessment of development. The report concluded (in summary):

- There have been marked declines in the numbers of birds using the three SPAs.
- Disturbance is a potential cause of the declines. The bird disturbance study provided evidence that the busiest locations support particularly low numbers of birds.
- Within the Medway, the areas that have seen the most marked declines are the area north of Gillingham, including the area around Riverside Country Park. This is one of the busiest areas in terms of recreational pressure.
- Access levels are linked to local housing, with much of the access involving frequent use by local residents.
- Bird disturbance study - dog walking accounted for 55% of all major flight observations, with a further 15% attributed to walkers without dogs along the shore.
- All activities (i.e. the volume of people) are potentially likely to contribute to additional pressure on the SPA sites. Dog walking, and in particular dog walking with dogs off leads, is currently the main cause of disturbance.
- Development within 6km of the SPAs is particularly likely to lead to increase in recreational use.

Natural England's advice to the affected local authorities is that it is likely that a significant effect will occur on the SPAs/Ramsar sites from recreational pressure arising from new housing proposals in the North Kent coastal area.

The agreed response between Natural England and the local authorities is to put in place strategic mitigation to avoid this effect – a 'strategic solution.' This provides strategic mitigation for the effects of recreational disturbance arising from development pressure on international sites and will normally enable residential development to proceed on basis of mitigation provided avoiding a likely significant effect.

This strategic approach is set out in the Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014). It will normally require the creation of on-site mitigation, such as the creation of open space suitable for dog walking and, secondly, via payment of a dwelling tariff for off-site impacts. The money collected from the tariff would be used by the North Kent Councils and its partners for mitigation projects such as wardening, education, diversionary projects and habitat creation. The policy context for such actions is provided by policies CP7 and DM28 of the ELP.

Associated information

The applicant's ecological appraisal dated November 2014 contains some information to assist the HRA. These matters have been considered, particularly those contained in Section 4. However, the appraisal does not include sufficient information to enable the HRA to be undertaken in its own right. As an example, it does not appear to contain a full assessment of the evidence collected by NKEPG and although it does commit the applicant to a per dwelling payment for off-site mitigation it is not clear as to whether this is the full commitment as recommended by The Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014). This would need to be clarified before the granting of any planning permission.

As detailed in their letter of the 6 January 2015, Natural England has confirmed that a suite of strategic measures similar to those set out in the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy will provide appropriate

mitigation. However, they consider it is up to the local authorities to ensure that appropriate measures are in place to allow the strategic mitigation to be delivered. This would include consideration of the appropriate tariff.

The Assessment of development on land south of Swanstree Avenue, Sittingbourne

The application site is located within four kilometres of three access points onto the Swale SPA to the north-east of Sittingbourne, in the vicinity of Tonge Corner and the Saxon Shore Way long-distance public right of way. Whilst there is not a direct point to point footpath between the application site and the SPA, a mixture of footpaths and local roads make the SPA readily assessable on foot at these locations. In any event, recreational impacts are equally likely to occur as a result of visitors arriving by car.

This assessment has taken into account proposals for on-site mitigation, such as dog-walking areas and the availability of other inland public footpaths close to the site. Whilst these would no doubt supplement many day-to-day recreational activities, the coastal SPA is nevertheless considered likely to be a likely draw of activity for residents and as such these factors will not be sufficient to prevent off site recreation taking place on the SPA.

Conclusions

Taking a precautionary approach leads to the conclusion that the proposals would give rise to likely significant effects on the SPA. Although the applicant has indicated a willingness to address the off-site tariff, there is no commitment to the actual proposed tariff contained in the Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014).

At this stage it therefore cannot be concluded that the proposals can be screened out for purposes of Appropriate Assessment as without payment of the full off-site mitigation tariff the suite of mitigation measures across the SPA could not be guaranteed. These would lead to likely significant effects on the SPA. On this basis the proposals cannot be screened out for purposes of the HRA and the development should not be allowed to proceed without a full Appropriate Assessment. In the absence of the evidence required to justify this approach, planning permission should be refused.

23 July 2015