

PLANNING COMMITTEE – 26 MAY 2016

PART 3

Report of the Head of Planning

PART 3

Applications for which **REFUSAL** is recommended

3.1 REFERENCE NO - 16/500627/FULL			
APPLICATION PROPOSAL Change of use of land for the stationing 3 residential mobile homes for low cost affordable homes.			
ADDRESS Marsh Bank Old Ferry Road Iwade Kent ME9 8SW			
RECOMMENDATION REFUSE			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The site lies within the countryside of the Borough where residential development is resisted in principle; it is remote from any shops, services, or public transport links and future residents would therefore be entirely reliant upon private vehicles; this is not considered to represent sustainable development. The proposal is therefore contrary to adopted and emerging local and national policy.			
REASON FOR REFERRAL TO COMMITTEE Parish Council objection and called in by Councillor Stokes.			
WARD Bobbing, Iwade & Lower Halstow	PARISH/TOWN Iwade	COUNCIL	APPLICANT Mr I Woolman AGENT BDB Design LLP
DECISION DUE DATE 30/03/16	PUBLICITY EXPIRY DATE 10/03/16		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
None.			

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site is a parcel of ground situated between Marshbank Farm and the Old Ferry Road, close to the Iwade speedway track. It is generally flat and had recently been cleared at the time of the case officer's site visit.
- 1.02 To the west and north are the buildings and external storage associated with the Willowbank Industrial Estate (which has permission for Class B1 light industrial use), with the speedway further to the north. To the south are a number of gypsy / traveller pitches (Cricket Meadow) and a small touring caravan site, and to the east is open countryside.
- 1.03 The site lies approximately 1.1km from Iwade village centre.

2.0 PROPOSAL

- 2.01 The application seeks permission for the stationing of 3 static mobile homes for the purposes of providing affordable housing. (The applicant has offered to enter into a Section 106 agreement to ensure the units are retained as affordable.)
- 2.02 The mobile homes would sit in a roughly north-south line in the centre of the plot. Site access would be from a single point to the west, adjacent to the existing neighbouring buildings, and a central access road will lead to parking between the units. Each unit will have 2 parking spaces and a garden area.
- 2.03 The proposed mobile homes are of a standard design common throughout the Borough.

3.0 SUMMARY INFORMATION

	Proposed
Site Area	0.21ha
No. of Residential Units	3
No. of Affordable Units	3

4.0 PLANNING CONSTRAINTS

- 4.01 Area of Potential Archaeological Importance.

5.0 POLICY AND OTHER CONSIDERATIONS

Swale Borough Local Plan 2008

- 5.01 Policies E1, E6, H2 and RC3 of the adopted Local Plan are relevant. E1 is a general development policy which sets out a number of criteria to which all developments are expected to adhere.
- 5.02 E6 is the Council’s main policy in terms of rural restraint and it aims to protect the countryside for its own sake. The policy restricts residential development within the countryside unless it is expressly for the purposes of satisfying an identified local affordable need in accordance with policy RC3; housing for agricultural workers (again in response to an identified need); or for gypsies or travellers.
- 5.03 The caveats of E6 are supported by policy RC3, which states that new housing within the rural area will be met within the existing built up area boundaries, or *“exceptionally at sites where planning permission for residential development would not normally be granted, where proposals are specifically and wholly intended to meet an identified local affordable housing need of the community provided the promoter of the scheme demonstrates that:*
 1. *the identified need cannot otherwise be met within the confines of the built-up area, or failing this, on previously developed land adjoining the built confines of the settlement;*
 2. *the development is of a size and type suitable to meet the needs identified in a local housing needs survey;*
 3. *the site is well related to available village services and public transport;*
 4. *the proposal contains no element of general market housing;*

5. *there are no overriding environmental or highway objections; and*
6. *the scheme has the support of the local Parish Council.”*

5.04 Policy H2 states that new housing development will be allowed within the built up area or at specifically allocated sites. Outside of those areas development is expected to accord with E6 and RC3, above. A stumbling block to this policy, however, is that the Council has an identified 5-year housing supply shortfall. In such circumstances national guidance advises that the policy is not compliant with the aims of the NPPF, para. 49 thereof stating:

“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.”

5.05 This shortage / NPPF non-compliance was recognised by the Local Plan Inspector (in her consideration of the emerging local plan, ‘Bearing Fruits’), who consequently increased our annual supply figure to 776 dwellings per annum. The end result of this is, in essence, that the Council has to consider sites outside of the defined built up areas and current adopted allocated sites for new housing development to assist in meeting our 5yr supply target. Some of this need will be met through new allocations currently under consideration by the Planning Policy team, while some will come through consideration of windfall sites (such as the current application site). This does not mean, however, that the other policies noted in this section do not apply.

The emerging local plan; ‘Bearing Fruits 2031, Publication Version December 2014’

5.06 Policy ST1, similar to E1 of the adopted plan, is a general policy aimed to achieve sustainable development throughout the Borough. The most relevant criteria are:

4. Accord with the Local Plan settlement strategy; and
7. Deliver a wide choice of high quality homes by:
 - a. balancing levels of forecast housing needs with that which is deliverable;
 - b. providing housing opportunity, choice and independence with types of housing for local needs; and
 - c. keeping vitality within rural communities with identified housing needs, proportionate to their character, scale and role.

5.07 ST3 sets out the Swale settlement strategy, and identifies preferred locations for residential development. Para.6 of the policy states that *“locations outside the built-up area boundaries shown on the Proposals Map fall in the open countryside where development will not normally be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and where appropriate enhancing the intrinsic value, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.”* In terms of the current application this means that, as with policies E6 and RC3 above, the proposed site is very much near the bottom of the list in terms of where officers would recommend new housing to be placed.

5.08 Policy ST5 sets the strategy for the Sittingbourne area, and reiterates the general thrust of ST3 with a localised focus. Para. 4 seeks to *“provide housing/mixed uses within the Sittingbourne town centre regeneration or other sites within urban and village confines, or where indicated by proposed allocations.”*

- 5.09 Policy CP2 states that new development will be located to minimise the need to travel for employment and services, and to facilitate sustainable transport choices.
- 5.10 CP3 aims to provide a wide choice of high-quality homes across the Borough. It aims to steer development to the built up areas and allocated sites, or to windfall sites *“except where the character of the site, its local context or environmental value determines otherwise,”* and to *“meet the housing requirements of specific groups, including families, older persons, or disabled and other vulnerable persons.”*
- 5.11 Policy DM8 of the emerging Plan aims to ensure an adequate supply of affordable housing within the Borough. It states that developments over 10 units will have to provide a percentage as affordable; the size and type of affordable housing units must be in accordance with the needs of the area; and homes should be designed for the elderly, disabled or vulnerable, where possible.
- 5.12 Policy DM9 relates to rural housing exceptions, and states that *“planning permission for affordable housing (including pitches for Gypsies and Travellers) to meet local needs in rural areas will be granted provided [amongst others]:*
1. *The site accords with Policy ST3 and/or is in a location where access to day to day services can be conveniently and easily achieved;*
 2. *The site and proposed development would not have a significant adverse impact upon the character of the settlement, the surrounding countryside and the amenity of the existing community;*
 3. *A need for the scheme is clearly justified by the applicant, to the satisfaction of the Council, by providing the following to accompany a planning application:*
 - a. *an up-to-date parish or village housing needs assessment undertaken or carried out by a recognised and appropriate body;*
 - b. *a thorough site options appraisal; and*
 - c. *a prepared statement of community involvement that has sought to include the significant input of the Parish Council.”*
- 5.13 DM14 is a general policy similar to E1 of the adopted Plan, and sets out a number of criteria all developments are expected to accord with.

National Planning Policy Framework (NPPF)

- 5.14 Paragraph 14 states that *“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.”* In respect of decision-taking it notes that LPAs should approve proposals that accord with the development plan without delay. It continues to note that where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted *“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.”*
- 5.15 This is particularly relevant in terms of policy H2 of the Local Plan, as noted at 5.04 and 5.05 above, as H2 is considered non-compliant and thus “silent” for the purposes of interpreting this paragraph. It does note, however, that adverse impacts need to be taken into account, and therefore does not present a carte-blanche to approving residential development within the countryside.

- 5.16 Paragraph 17 (11th and 12th bullet points only) of the NPPF are relevant, and state that *“within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking.*
- *actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and*
 - *take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.”*
- 5.17 Paragraph 35 encourages developments that *“protect and exploit opportunities for the use of sustainable transport modes.”* It states that development should be located and designed to give priority to pedestrians, create safe and secure layouts for pedestrian and cycle movements, and consider the needs of people with disabilities by all modes of transport.
- 5.18 Paragraph 50 states that LPAs should deliver a wide choice of high quality homes and create sustainable communities by taking demographic trends into consideration, provide housing reflecting local demand, and securing affordable housing provision. Further to this para. 54 states that LPAs should be responsive and reflexive to local affordable and rural housing needs.
- 5.19 Paragraph 55 of the NPPF is crucial in the consideration of applications such as this, and is worth reproducing in its entirety (my emphasis in bold):

*“To promote sustainable development in rural areas, **housing should be located where it will enhance or maintain the vitality of rural communities.** For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:*

- *the essential need for a rural worker to live permanently at or near their place of work in the countryside; or*
- *where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or*
- *where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or*
- *the exceptional quality or innovative nature of the design of the dwelling. Such a design should:*
 - *be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;*
 - *reflect the highest standards in architecture;*
 - *significantly enhance its immediate setting; and*
 - *be sensitive to the defining characteristics of the local area.”*

6.0 LOCAL REPRESENTATIONS

- 6.01 None received.

7.0 CONSULTATIONS

- 7.01 Iwade Parish Council object to the application, commenting:

“The impact on nature conservation (the SSSI and Ramsar sites are nearby) e.g., local sites (biodiversity and geodiversity); local landscape character; and local or national biodiversity priority habitats and species.

The development will be outside the built up boundary of the village.

There is no requirement for low cost housing in the village. Recent developments in Iwade have had low cost housing reduced to 10%, in the past it was 30% which supports this statement.

It is disconcerting to note that the site has already been cleared presumably in readiness for this development.”

7.02 Natural England note that the site lies close to the SSSI / SPA / Ramsar, and that a Habitat Regulations Assessment (HRA) should be carried out to determine whether or not a financial contribution to their upkeep is required.

7.03 Historic England has no objection.

7.04 Kent County Council Highways & Transportation have no objection.

7.05 The Lower Medway Internal Drainage Board has no objection.

7.06 The Council’s Environmental Health Manager notes that *“there is evidence of potentially contaminative activities in the area,”* and requests that the standard land contamination conditions be attached to any permission. They also suggest that a noise survey should be carried out to determine levels of background noise from the industrial estate, which will inform the need for mitigation measures on site.

7.07 The Council’s Strategic Housing & Health Manager commented:

“Mobile homes as affordable housing are not normally considered suitable. As far as I am aware there are no Housing Associations operating in Swale that currently manage mobile homes and I would think it highly unlikely that they would want to take such units or fund the purchase of these homes particularly in this location.”

8.0 BACKGROUND PAPERS AND PLANS

8.01 The application is accompanied by a full suite of supporting documents, available to view on file or via the public access system.

9.0 APPRAISAL

Principle of Development

9.01 The principle of development in this instance is complicated by virtue of the Council’s *current* lack of an identified five-year housing supply, but this is clarified through a recent (17 March 2016) court judgement: The Royal Court of Justice ruling in relation to i) Suffolk Coastal District Council and Hopkins Homes Limited and Secretary of State for Communities and Local Government, and ii) Richborough Estates Partnership LLP and Cheshire East Borough Council and Secretary of State for Communities and Local Government

- 9.02 At para. 32 the Court states that “relevant policies for the supply of housing” means all policies that would affect the outcome of an application for new housing development:

*“A “relevant” policy here is simply a policy relevant to the application for planning permission before the decision-maker – **relevant either because it is a policy relating specifically to the provision of new housing in the local planning authority’s area or because it bears upon the principle of the site in question being developed for housing.**” [My emphasis.]*

- 9.03 This is expanded in para. 33:

“Our interpretation...recognizes that the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed – including, for example, policies for the Green Belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty ... policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development.”

- 9.04 Para. 35 clarifies concisely:

“If a local planning authority is unable to demonstrate the requisite five-year supply of housing land, both the policies of its local plan that identify sites for housing development and policies restrictive of such development are liable to be regarded as not “up-to-date” under paragraph 49 of the NPPF – and “out-of-date” under paragraph 14.”

- 9.05 Where policies that restrict housing development are out of date, the NPPF’s overall presumption in favour of sustainable development, and providing new housing to meet the designated five-year supply target (currently 776 dwellings per annum) is considered to prevail. This opens up otherwise unacceptable sites to consideration for new housing development, e.g. sites outside of built up areas, in order to meet that target.

- 9.06 However, para 24 states that *“Lord Reed ... emphasized, however (in paragraph 19), that statements of policy “should not be construed as if they were statutory or contractual provisions”. He also said (in the same paragraph) that “**many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment**”, and that “[such] matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse...” ... It has been accepted in this court, and is not in dispute in these appeals, that the same principles apply also to the interpretation of national policy and guidance, including policies in the NPPF.”* [My emphasis.]

- 9.07 This affords the Council opportunity to consider the weight to be afforded to national policy in terms of its affect upon local policy on a case-by-case basis, and with reference to the particular circumstances of each application.

- 9.08 Furthermore the judgement notes at para. 42 that *“it is for the decision-maker to decide what weight should be given to NPPF policies in so far as they are relevant to the proposal. Because this is government policy, it is likely always to merit significant weight. But the court will not intervene unless the weight given to it by the decision-maker can be said to be unreasonable in the Wednesbury sense.”*

- 9.09 Crucial to the consideration of applications such as this is para. 43 of that judgement:

“When determining an application for planning permission for housing development the decision-maker will have to consider, in the usual way, whether or not the proposal accords with the relevant provisions of the development plan. If it does, the question will be whether other material considerations, including relevant policies in the NPPF, indicate that planning permission should not be granted. If the proposal does not accord with the relevant provisions of the plan, it will be necessary to consider whether other material considerations, including relevant policies in the NPPF, nevertheless indicate that planning permission should be granted.”

- 9.10 Consequently, my understanding of the ruling is that whilst a failure to demonstrate an up-to-date five-year housing supply opens up consideration of sites that would be otherwise unacceptable under **any** policies that restrict the supply of housing (rural restraint policies, for example), there is still a duty imposed upon officers to consider **all other relevant policies** within both local guidance and the NPPF when assessing the suitability of any sites that come forward as part of an application. The weight that is afforded to those individual policies needs to be balanced against the lack of a demonstrable five-year supply, but does not negate the validity or the intention of those policies in themselves.
- 9.11 Therefore the acceptability of the principle of development can't be established from the outset, and a conclusion needs to be arrived at following consideration of the individual matters as set out below, and the associated policies.

Housing supply

- 9.12 The Council cannot at the time of writing, demonstrate an up-to-date five-year supply of housing. The Local Plan Inspector has set us a target to provide 776 dpa (dwellings per annum) over the emerging plan period to 2031, and the policy department are currently examining additional allocations to meet this target.
- 9.13 Some of the outstanding need is being met by windfall sites, such as this, and in this (very specific) regard the application can be seen as acceptable in principle. However, it makes a very limited contribution to the five-year supply (a total of three units), and this limited gain needs to be weighed against a number of negative features of the proposal, as explored below.

Rural protection

- 9.14 The site lies outside of any built up area boundary and is thus considered to lie within the countryside of the Borough. Policy E6 of the adopted SBLP 2008 and ST3 of the emerging local plan aim to restrict the provision of housing unless for very specific circumstances – one of which is the provision of affordable housing to meet an identified rural need, with the support of the Parish Council.
- 9.15 Members will note, at section 7 above, that the application is not supported by either the Parish Council or the Council's housing team, and there is no identified need for affordable housing within Iwade (and, as noted by the Parish Council, affordable housing provision on new developments within the village has steadily reduced in recent years).

- 9.16 There is no suggestion or evidence put forward to suggest that the development would provide accommodation for gypsies, travellers, or rural workers, or fall within any of the recognised other rural housing exceptions. The proposal therefore amounts to unjustified and unnecessary housing within the countryside, with consequent harm to the character and amenity of the rural landscape in a manner contrary to established policies.
- 9.17 Caravans and mobile homes are, by their very nature and design, alien and intrusive features within the countryside in my opinion. I recognise the need for them to be permitted in some instances, such as for gypsy and traveller accommodation, but to do so without any justification here would, in my opinion cause harm to the character and appearance of the countryside. I note that the site has been, for many years, kept in an untidy state, but this could be addressed by means other than permitting new dwellings in the countryside and is not in any way a justifiable reason for approving this application. Given the presence of the adjacent gypsy / traveller sites and the small caravan site nearby, however, I do not consider them to be so harmful as to justify a reason for refusal in this instance.

Sustainable development

- 9.18 The site is located approximately 1km from the Iwade village centre. The Council normally considers anything within 2km of shops, services and public transport links to represent sustainable development. However in this instance the site is 1km away on an unlit, 60mph road, with no pedestrian or public transport links. These are very similar circumstances to the gypsy and traveller sites at Greyhound Road, Minster, which officers and Members have continually resisted.
- 9.19 Residents of the site would therefore be heavily reliant upon private vehicles for transport. Furthermore I consider the location to be unsuitable for vulnerable or elderly people who would be attracted to low-cost affordable housing of this type, as they would have no access to services. In this regard I consider the site location to be unsustainable and unsuitable, and contrary to established local and national policy

Residential amenity

- 9.20 I have no serious concerns in regard to the potential impact upon the existing neighbouring residents. The development would be well-laid out and spacious, and would be unlikely to give rise to any serious issues of residential amenity in this regard.
- 9.21 However, the site lies immediately adjacent to an existing industrial estate and close to Iwade speedway, where there is the potential for noise and disturbance. The industrial estate has planning permission for B1 light industrial uses which, by their nature, are not harmful to residential amenity. However the surrounding environment is heavily characterised by external storage, parked vehicles, and general industrial type activity. This is not, in my opinion, a good location for housing by virtue of outlook, noise, and general disturbance. It is particularly not a good location for vulnerable people that may be attracted to low-cost, affordable housing, in my opinion – were the site within a similar location in the built up area, immediately adjacent to Eurolink, for example, I would reach the same conclusion.
- 9.22 I therefore consider that the site is unsuitable for residential development and the application is contrary to local and national policy.

Other considerations

- 9.23 I have no serious concerns in regardsto parking, landscaping, or the provision of amenity space within the site.

Housing supply and the impact on policy

- 9.24 As noted above one has to consider the otherwise unacceptable nature of this development against the need for the Council to demonstrate a five-year housing supply. And, as at 9.09, it is for officers to determine whether or not the policies in the development plan (adopted and emerging Local Plans, the NPPF and the NPPG) outweigh the need for more housing.
- 9.25 Paragraphs 14 and 49 of the NPPF state that, in a nutshell, where the Council can't demonstrate a five-year supply the Council should "approve development proposals that accord with the development plan without delay," and where the development plan is absent (as ours is because of a lack of five-year supply), the Council should be granting permission.
- 9.26 However, paragraph 14 caveats this position by stating that permission should be granted **unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against policies in the NPPF, or specific policies in the NPPF indicate development should be restricted.**
- 9.27 As discussed above I consider the proposal to have several significant drawbacks. Section 5 above also sets out quite clearly that paras. 17, 35, 50, 54, and 55 of the NPPF advise against granting permission here, supported by policies E1, E6, H2 and RC3 of the adopted Local Plan, and policies ST1, ST3, ST5, CP2, CP3, DM8, DM9, and DM14 of the emerging Local Plan.
- 9.28 With regard to the harm caused by this proposal I consider that the above policies outweigh the need to meet the five-year supply target, and consider that refusing planning permission in this instance would be justifiable and correct in light of current policy and legal circumstances.

10.0 CONCLUSION

- 10.01 This application seeks planning permission for affordable housing within the countryside. No evidence has been submitted for such housing and the application is not supported by either the Parish Council or the Council's affordable housing team. The site is within an unsustainable location, and the caravans themselves would be harmful to the character and appearance of the countryside.
- 10.02 Taking the above into account I recommend that planning permission should be refused, and that the policies to support such a refusal, in this instance, outweigh the need for the Council to demonstrate a five-year housing supply.

11.0 RECOMMENDATION –REFUSE for the following reasons:

- (1) The site lies within the countryside of the Borough where residential development is resisted in principle. The site is remote from any shops, services, or public transport links. Future residents would therefore be entirely reliant upon private vehicles, and this is not considered to represent sustainable development. Furthermore the location of the site immediately adjacent to an industrial estate would give rise to a

poor level of residential amenity for future residents. The proposal is therefore contrary to Policies E1, E6, H2 and RC3 of the adopted Swale Borough Local Plan 2008; Policies ST1, ST3, ST5, CP2, CP3, DM8, DM9 and DM14 of the emerging Local Plan 'Bearing Fruits 2031;' and paragraphs 14, 17 (11th and 12th bullet points only), 35, 50, 54 and 55 of the National Planning Policy Framework.

The Council's approach to this 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 the application was considered to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and these were not considered to be any solutions to resolve this conflict. The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application. It is noted that the applicant/agent did not engage in any formal pre-application discussions.

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.