



Gladman Developments Ltd

Swale Borough Council Local Plan Examination

Matter 1: Procedural matters

Question 1.1: Has the modified Plan been the subject of appropriate sustainability appraisal and strategic environmental assessment?

1 No. The SA and SEA, which are contained in the same document, are not 'appropriate' because:

- There has been a failure to consider reasonable alternatives in relation to the sites South, SW and SE Sittingbourne.
- There has been inadequate consideration of the issues around deliverability/viability in the assessment of the alternatives.

This raises issues of legal compliance (SEA) as well as soundness (whether the plan is 'justified' as being the most appropriate strategy when considered against the reasonable alternatives).

Consideration of alternatives

2 The Council note in SBC/PS/117, in their response to Gladman's comments on MM58 from our August 2016 representation, the findings of the sustainability appraisal process in relation to omission sites and particularly their choice to proceed with Option 1 from the sustainability appraisal rather than Options 2 or 3.

3 The key SA documentation is SBC/PS/105b, the Sustainability Appraisal of the Swale Local Plan Report Addendum June 2016 (SA) and SBC/PS/106 Ranked Assessment of Reasonable Non-Allocated Site Options to Inform Modifications to the Swale Borough Local Plan June 2016 (SASO). As the SA records, the main objective to be pursued by the plan at this stage (against which the 'reasonableness' of any alternatives falls to be considered) was to increase the OAN and therefore make additional allocations of c. 3000 additional dwellings in a manner which

was consistent with the settlement strategy set out in ST3 and the status of Sittingbourne as the main urban centre. The SA states in paragraph 5.35, when discussing Sittingbourne that:-

“Analysis of site options showed a number of sites in contention, and indeed showed there to be a number of stand-out sites that could be taken as a ‘given for the purposes of developing alternatives’. Specifically, ‘given’ sites identified were: Former Bell Centre, Bell Road (SW/343; 120 dwellings); and SW Sittingbourne (SW/703; 564 dwellings).”

4 As a result, each of the Options assessed included delivery of 564 dwellings the SW Sittingbourne site SW/703. The SA did not assess any option which did not include such an allocation, because that site was taken as a ‘given’. Specifically, the SA/SEA did not consider any option which involved a housing allocation on site SW/050 *instead of* SW/703, SW/050 was only considered as an option in addition to SW Sittingbourne. The failure to consider an option which involved allocating SW/050 instead of at SW/703 means that the SA/SEA is flawed. Such an option was a reasonable alternative because:

- Both sites could meet the objectives at this stage of plan preparation, in that they both proposed a development of a similar magnitude (and therefore with similar impact on the meeting of the OAN) and respected the settlement strategy. Each site had certain positive and negative aspects.
- In the ranked assessment of sites, the SW Sittingbourne site was actually ranked lower than site SW/050; all development options in the ranked assessment were described as “reasonable site options” (see para 1.24 of the assessment report).
- If site SW/050 was considered to be a reasonable option for the delivery of approximately 600 homes *in addition* to development at the SW Sittingbourne site, it must also have been reasonable to make such an allocation in the absence of development at SW Sittingbourne. It has never been suggested that SW/050 can only come forward in combination with SW/703.
- The LDF Panel Report (SBC/PS/108) clearly presented three ‘options’ for further growth at Sittingbourne. There was a detailed analysis of the relative merits and constraints of the SW and SE Sittingbourne sites (paras 3.119 – 3.131), and in conclusion the SW Sittingbourne site was recommended. This clearly shows that (i) both sites were seen as being reasonable alternatives for consideration in isolation and (ii) the SW Sittingbourne

site was not presented as a 'given' which should necessarily be allocated regardless of other development options.

- 5 In light of the approach taken in the LDF Panel report, it is unclear how and why the 'given' sites were accorded that status (and why other sites were not a 'given'¹). The decision making process is not explained in the SA, therefore it is unknown if they were 'given' due to a particular assessment by the SA authors or the Council, or were selected for some other reason. The rationale for the selection of alternatives is particularly opaque in this regard in light of the fact that the SA is accompanied by the SASO which does undertake a ranking of the sites listed as reasonable alternatives, SW/050 is ranked 43 in the list, considered to have no significant constraint and placed in Tier F whereas SW/703 is ranked 62 considered to have a significant heritage constraint and listed in Tier G. It is acknowledged that there remains a difference of viewpoint on the issue of landscape, but in light of the ranking it is very difficult to understand why SW/703 was treated as a 'given' for SA purposes and SW/050 was not.
- 6 Gladman would contend therefore that the SA should have (i) assessed, as a reasonable alternative, an option which involved allocating land at SE Sittingbourne and not allocating land at SW Sittingbourne (ii) given reasons for failing to assess such an option, if this was thought to be legitimate (iii) given reasons as to why no alternatives to an allocation at SW Sittingbourne were considered and why that site was a 'given'.
- 7 Taking the SA to the next stage it then considers the 3 options. The Council claim (see response LP1377 in SBC/PS/117) that Option 3 scores worse in terms of air, landscape, soil and transport, with significant negative effects for landscape and soil. We consider each of these issues in turn.

Air

- 8 The SA concludes that Option 3 is the worst for air quality, although all options are considered as being 'red'. The assertion that the Option scores worst for air quality is related to concerns that car movements would occur through the A2 AQMA, although the SA admits there is no certainty this will happen. As part of the determination of a planning application on SW/050 a significant amount of evidence was produced on transport and air quality. The Councils

¹ Compare for example the approach to Iwade, where the East of Iwade site was (like SW Sittingbourne) said to be a 'stand-out' option but nevertheless "it was not the case that its allocation could be taken to be a 'given, for the purposes of developing alternatives'".

Environmental Protection officer was consulted on the planning application, a copy of his comments are included as appendix 1. Within his comments he quite clearly states that:-

“The evidence is presented in a clear manner and appears to show quite clearly that the effect of the development in the future is minimal and that the predicted levels for the NO2 are below that of current guide levels. Because of this, the report concludes that no mitigation measure are necessary. That might well be true for 2026, but the position at present is not as clear-cut.

I do not object to the report as written, but would feel more assured if some offer of mitigation was included.”

- 9 The officer therefore offered no objection, subject to mitigation measures such as cycle routes and travel packs which form part of the application. Given that this information was known, and that the vast majority of the development which would come from Option 3 (in addition to the constant of 700 dwellings through the ‘given’ sites) was on the SW/050 site it is difficult to understand how the Council can maintain its position that the site would perform notably worse in terms of air quality than the other sites, in respect of which there is presumably less evidence to justify and outline the position.

Soil

- 10 Gladman would simply note that the soil implications, and loss of BMV land, will be the same for any site bordering Sittingbourne. Again when considering the relative merits of SW/703 as a ‘given’ site as discussed above there is little to distinguish either site. It is incorrect for the Council therefore to say in their response to LP1377 that the option which includes SW/050 is worse than the chosen Option 1 with regard soil, it is not, it is the same. Only the selection of the rejected Option 2 could be considered better as BMV levels on the Isle of Sheppey are of a lower grade, but this option is presumably rejected due to concerns about delivery.

Transport

- 11 The transport impacts associated with the site to the SE of Sittingbourne have been assessed through the planning application on the SW/50 site. Whilst it is fair to say that their remain principles to be agree with Kent County Council it is not considered that there is an in principal

objection. In fact contrary to the assessment by the Council in the SA the response from KCC, stated that:-

“From the information provided, the impact of the new development will be spread over the whole network and have minimal impact on it.”

It does not therefore seem appropriate to arrive at the conclusions the Council do in the SA. The access and transport arrangements for the ‘given’ site have been the subject of objection from a number of parties, it is noted that additional evidence on this matter is still awaiting and will be the subject of further comment upon its receipt and review.

Landscape

- 12 There is an acknowledged disagreement between the Council and Gladman on the landscape impacts of SW/050. This is discussed in detail in our Matter 3 statement, again however we would note that there is also a landscape impact associated with SW/70 (as well as other impacts such as heritage which do not affect SW/050) and its automatic inclusion does not seem to have been evidentially arrived at. For the purpose of landscape assessments in the 3 options within the SA, Gladman would point to the landscape assessment submitted with the planning application for the revised scheme on the SW/050 site and the conclusions discussed in our Matter 3 statement. Clearly there is nothing to justify the position arrived at within the SA that the site should be a ‘given’.

Cultural Heritage

- 13 The Council correctly conclude through the SA that the SE Sittingbourne option would not have any detrimental impact on cultural heritage. What is once more missing from the assessment of options is consideration as to how such factors in relation to SW/703 might influence a decision. The SASO concluded that heritage would be a significant constraint for SW/703, and the SA concludes that the site has impacts not only on listed buildings but on a conservation area and also areas of archaeological sensitivity, but as the site was a ‘given’ in SA terms it is not factored into the options assessment process.
- 14 What the above demonstrates, contrary to the Councils response, is that because site SW/703 was listed as a ‘given’ a complete assessment of the relative merits of it in SA terms has not been undertaken. The SA has failed to utilise evidence it already has in making its determination

as to the best Option and does so by excluding one site from the assessment of alternatives by treating it as a 'given'.

Deliverability/viability issues

- 15 The SA assessment involves considering the performance of different options against a range of objectives, including the extent to which any proposal will "Provide affordable and decent housing adaptable to future needs of the community".
- 16 It is obvious that issues around viability are key to the achievement of this objective. This is an issue which particularly affects allocations on the Isle of Sheppey and Iwade (given the scale of the proposed development and therefore infrastructure requirements). The SA Addendum correctly notes at para 5.3.13 that in West Sheppey "it is the case that development viability is poor", and accordingly in terms of the appraisal Option 2 is said to perform "notably poorly from a 'housing' perspective given poor development viability". However Option 1 (Iwade) is ranked equal best from a housing perspective and this is treated as a significant positive. There is apparently no consideration of the impact of infrastructure costs on viability.
- 17 At present there is a lack of clarity over infrastructure costs, and how such costs are to be funded. This uncertainty is demonstrated by MM285 and MM287, which refer to the Council's plans to lobby and bid for funding e.g. through the LEP.
- 18 As such it has not been possible to include accurate costs within the viability assessments carried out in 2014 and 2015 (in 2014 a notional sum for s. 106/s. 278 was applied and it was assumed that the majority of strategic infrastructure would be funded "through CIL receipts or other sources of funding" (para 4.2.46), in 2015 it was noted (para 3.2.3) that "some site promoters were also able to provide a figure regarding what they envisage s106 and s278 payments to be, which have also been incorporated into the model for those sites".
- 19 The IDS also demonstrates the level of uncertainty, but also the extent of the likely costs for some developments. Many of the transport infrastructure costs are currently unknown or unconfirmed; and funding sources are also unclear. For Iwade the infrastructure requirements include an expected contribution towards highway works at Grovehurst (anticipated to cost in the region of £37 million), a new health centre and education contributions (where there is currently projected to be a £1,152,000 funding gap). For Minster allocations, where viability is already accepted to be poor, this includes contributions towards A2500 works costing in the region of 6 million.
- 20 Given the level of uncertainty over cost and funding and the lack of clear evidence on viability, it is unclear what evidence and assumptions have been taken into account within the SA options

appraisal; and unclear how the Council can have properly weighed this critical issue up when deciding which new allocations should be proposed by way of Main Modifications. It is particularly difficult to see how any site in West Sheppey can have been treated as a 'given' for SA purposes in these circumstances.

Question 1.2: Has the modified Plan been subject to Habitats Regulations Assessment?

21 Yes.

Question 1.3: Is the modified Plan consistent with national planning policy in the NPPF?

22 As Gladman outline in our representations into the consultation in August 2016 we have considerable concerns about a number of aspects of the plan, and its consistency with the NPPF. Whilst these are the subject of detailed discussion in other hearing statements for the resumed hearings we outline below the areas in which we consider the plan to be in conflict.

- Housing requirement does not reflect the OAN for the district (paras 14, 47, 159, 182);
- Plan does not allow for the sustainable development needs of rural areas (paras 28, 54-55);
- Housing allocations are not realistic and deliverable, viability is uncertain (paras 47, 173, 182);
- Choice of housing allocations does not represent the best most appropriate strategy (para 182);
- Significant scale of change from submitted plan.

23 Gladman set out in our Matter 2 statement how we do not consider that the plan is not meeting its full objectively assessed need for housing.

24 The plan fails to adequately consider the role of rural areas. It does not support the needed growth in some rural settlements in order to maintain their important facilities and the vitality

of public services. The result will likely be a worsening of the demographic trends in some sustainable rural settlements. This is considered further in our response to question 2.1.

25 Gladman do not consider the allocations made at the plan to be the most appropriate strategy in accordance with paragraph 182 of the NPPF. We set out in our Matter 3 and Matter 4 statements the concern we have with regard to the choices made in allocating sites, and the way in which the Council has chosen to select sites with significant delivery risks attached and based on evidence not considered appropriate.

26 The plan furthermore contains more than 400 main modifications, it is in any assessment a fundamentally different plan than that submitted originally for examination. Whilst it is ultimately for the Inspector to consider the scope of change which has taken place, and whether or not the main modifications put forward by the Council are beyond those requested by the Inspector, we would note what the PPG² says with regard to the scale of modifications.

“Where the changes recommended by the Inspector would be so extensive as to require a virtual re-writing of the Local Plan, the Inspector is likely to suggest that the local planning authority withdraws the plan.”

27 An assessment must be made on whether or not there is benefit to be gained from the adoption of this plan, and whether or not due to the scale of change within the plan sufficient levels of public engagement have been undertaken to justify the position taken.

² PPG – Paragraph 24 – Reference ID: 12-024-20140306

**MIDKENT ENVIRONMENTAL HEALTH SHARED SERVICE
MEMORANDUM**

From: Steve Wilcock Environmental Protection	To: Jeff Sadler Planning Department
Date: 26th January 2016	Our Ref: 16/501038/GENPLA
<p>Planning Details and Application Ref: Planning Consultation rec'd</p> <p>Application Reference: 15/510254/OUT/JESA Proposal: Outline application for up to 540 residential dwellings (including up to 50 C3 retirement apartments) and associated community facilities, introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from Swanstree Avenue and associated ancillary works. (All matters to be reserved with the exception of site access). Revised Scheme to 14/506248/OUT) PLEASE NOTE THAT THE APPEAL AGAINST NON-DETERMINATION OF THE PREVIOUS APPLICATION 14/506248/OUT HAS NOW BEEN WITHDRAWN AND NO FURTHER ACTION WILL TAKEN IN REPSECT OF THAT APPEAL Location: Land At Swanstree Avenue Highsted Road Sittingbourne Kent ME10 4LU UPRN: 010023203883</p> <p>Comments required by 23.02.2016</p>	

MAIN POINTS CONSIDERED:

Air Quality, Noise, Contaminated Land

SITE VISITED:

No

COMMENTS:

Air Quality

I have commented previously on this proposal in January 2015 and I suggested the imposition of an air quality condition, and suggested that the ADMS–Roads modelling be included in it, even though I am aware that DMRB it is still the method of choice from DEFRA. It was my understanding that air quality was one of the reasons to reject the proposal and that the applicant decided to appeal against this decision.

I have since spoken to the air quality consultant working for the applicant who informed me that the appeal has now been withdrawn and another proposal has been submitted. We discussed the methodology for an air quality assessment which would include the ADMS – Roads.

The report is a thorough investigation of the perceived impact on and from this site from the effect of air pollution. Diffusion tube data is used for current and historic comparisons. There is also a future effect in the year 2026 with and without the development in place.

The evidence is presented in a clear manner and appears to show quite clearly that the effect of the development in the future is minimal and that the predicted levels for NO₂ are below that of current guide levels. Because of this, the report concludes that no mitigation measures are necessary. That might well be true for 2026, but the position at present is not as clear-cut.

I do not object to the report as it is written, but would feel more reassured if some offer of mitigation was included. Measures such as a travel plan, cycle routes etc. might be relevant here.

Noise

My initial memo also suggested the imposition of a traffic noise condition.

A brief noise screening letter report has been submitted with the paperwork and discusses the various standards and their suitability for use as a noise assessment. The report concludes that there should be no necessity for a noise assessment to be undertaken, as the effect of any such traffic noise can be mitigated by design and layout. I would agree with this conclusion.

RECOMMENDATIONS:

Air Quality

No air quality objection, subject to the offer of suitable mitigation measures as described above.

Noise

No noise objections.

Contaminated Land

My initial memo for 14/506248 in January 2015 made a reference to the existence of a comprehensive desktop study, but there was still work to do. With this in mind, I suggested the imposition of a partial condition. I can see no evidence that this condition has yet been complied with, therefore it must remain.

REQUESTED CONDITIONS:

- The air quality condition suggested in my memo dated 09/01/2015 for 14/506248 can now be considered discharged.
- The noise condition suggested in the same memo to be considered discharged.
- The Contaminated land condition suggested in the same memo to remain.

Please do not hesitate to contact me for further advice or information in relation to this matter.

Steve Wilcock
Environmental Protection Team Leader