

Statement in response to Swale BC document SBC/PS/129a

Resumed hearings - MIQ5

FAO: Sue Turner Planning Inspector

BRAD response to SBC-PS-129a

It is clear that this is the final submission in a process that has seen Swale Borough Council effectively try to by-pass the appropriate Democratic Process and the regulatory Local Plan system. Having submitted fundamental modifications to the submitted Local Plan without prior consultation, they then sought to undermine the obvious public opposition to their modifications with patronising and inadequate responses. Further, they sought to introduce a Developer-led alternative modification and, when told that this would not be entertained by the Inspector, have sought to introduce elements of coercion into the process through very late transport submissions and frankly dubious assertions that alleged consistency with another area's Local Plan's inspector's Interim Findings should become the over-arching priority. BRAD do not feel that this approach is justified by either the process or the contents of SBC-PS-129a.

The underlying issue that comes forth from this document is that Swale Borough Council are now effectively admitting that the evidence which they initially gave to the Examination regarding the proposed allocated sites was wrong, as was the SoCG that was submitted to the Examination in mid-January. This is a worrying position to be in at this stage of the process, and is not how the process should work at all. The Plan is fundamentally flawed and undeliverable. The evidence base for all technical areas should have informed the allocation of sites, which should also have been assessed through the SA/SEA which is prepared alongside the Plan. This very late transport submission supports our previous comments regarding Swale choosing a strategy and associated allocations and then retrofitting the evidence around it. In short, it is surely too late in the day for Swale to be considering such dramatic changes. If these changes are deemed necessary, Swale is saying that the Plan, including the proposed modifications, is not currently deliverable. This means that it is unsound and must fail. Surely the better approach would have been to not include allocations for which the deliverability and sustainability were so unsound. We would suggest that the removal of allocation MUX1 in any form, and thus the associated problems caused by the allocation would render the plan sound again. If the Inspector is minded that a review of the Plan is a solution to its major flaws then we suggest that she instructs the Council to revert to the submitted Plan and to then prepare evidence, through the appropriate Plan-led process, to advise on what additional allocations should be included for the longer term.

To address the documents in detail, Swale are now effectively admitting that the Council gave incorrect information to the Examination - both through published information in the SoCG and through their verbal evidence. It has also come so late into the process that not all respondents have been given any chance to comment on it. Normally something as significant as this would be sent out by the Programme Officer to all Examination participants, but obviously this cannot happen with such a late submission.

It is also obvious that they have become overly reliant purely on information produced by site promoters. Their own objective (independent) Transport Assessment work and other evidence should be detailed enough to inform and advise them about the deliverability of sites from the

outset. Paragraph 158 of the NPPF – ‘each local planning authority (lpa) should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence....’ It is highly relevant that the Planning Practice Guidance emphasises that ‘the evidence needs to inform what is in the Plan and shape its development rather than being collected retrospectively’. The timing and process for the production of the evidence has been a key issue throughout this Examination.

However, paragraph 2 of the February 2nd letter makes it clear that it is Developer evidence which is being used to justify a requirement for additional mitigation. This is then artificially and erroneously equated with mitigation required by Highways England regarding the A2 corridor. It is clear that this has become a circular argument – the developer’s work has shown a need for their own allocations to be mitigated and that mitigation is then argued to be best served by the very developments requiring the mitigation. The obvious solution to this would be to remove the development requiring mitigation and then the need for that mitigation has gone. In this case, as paragraph 2 of the SBC note illustrates, it is obviously MUX1a and indeed MUX1 itself, that is the problem development, and as such they could easily be removed and the negative impact caused on the highways also be negated. The only development that could in anyway significantly impact on the A2 is MUX1 or variant MUX1a. From this it is clear that both of these allocations have an entirely negative impact on the Local Highways Network.

Kent Highways also state that the traffic issue would affect omission sites and so could not be addressed by alternative spatial options. However they have not substantiated this – it is a very sweeping, general comment, which supports our points regarding process and the need for conclusions to be clearly based on evidence. Where is the evidence to back these comments up? Despite repeated requests KCC have refused to produce any reports or analysis to support their conclusions. One also has to ask how such extensive analysis would have been conducted in what is a relatively short timeframe – the period between the SoCG and the Highways England comments, themselves based on developer analysis of their preferred allocations. BRAD have argued that if the allocation MUX1 cannot simply be removed, an alternative spatial distribution (i.e. putting sites elsewhere rather than SW Sittingbourne) should have been properly explored to see if it could be accommodated with less detrimental impacts. At a minimum this should have been conducted by KCCH to see if the mitigations requirements they have identified could best be achieved by such an approach.

The conclusion reached by KCCH and mentioned in Paragraph 7, namely that the Plan should require a Review flies in the face of accepted procedure and the tests of soundness options cannot be included in the Local Plan if they are not deliverable across the plan period. They suggest a review of the Plan over the next few years. However, a commitment to an early review should never be used to resolve matters that are critical to the Plan’s strategy. BRAD has argued all along that the transport problems thrown up by development in Wises Lane are incapable of mitigation. All the work by the Highways Authorities and the developers has simply shown this to indeed be the case. It cannot be mitigated now, in 5 years or in 20 years. Unless the Council can come up with solid evidence that mitigation is possible, albeit in 5 years’ time, then such aspirations based on nothing more than hope should be set aside - the issues need to be resolved now – not left to chance to see if they can be ‘fixed up’ later on.

There is also a flaw with the submitted technical work, and the SoCG, in that it does not take into account the allocated housing at Manor Farm near the Key Street Roundabout along Chestnut Street. This allocation - for about 70 houses - will have an obvious impact on the traffic modelling that has been undertaken, especially with regard to MUX1 and any associated variant.

The reference to the Maidstone Local Plan is somewhat misleading – the issues are very different; the scale of the points requiring possible review in that local plan are partly triggered by external factors beyond the Council’s control and are of a relatively minor impact. As the Interim Findings state at Paragraph 128 – “A commitment to an early plan review has been used elsewhere to deal with identified shortcomings in plans and to allow them to proceed to adoption. Advice by the Planning Advisory service in ‘Early Reviews’ and Local Plans suggests that they should not be used to resolve matters critical to the Plan’s strategy and that they are not a panacea for addressing the difficult issues.”

The problems facing Swale’s local plan are, we would suggest, critical to the Plan’s strategy and not really covered by the approach taken in the Maidstone example, which are to an extent dependent on actions taken by an outside body.

To conclude, we would argue that this new information gives further weight to our arguments that with the inclusion of MUX1 or indeed any of its variants, the Plan does not meet the tests of soundness and is not justified, effective or consistent with national policy. The evidence does not support the strategy and the plan is not deliverable. The Council’s evidence to the Examination has been inconsistent and has now been shown to be incorrect. BRAD respectfully requests that the Inspector instructs the Council to withdraw policy MUX1 and all its variants, as the only means by which the Plan itself can be rendered sound.