



MATTER No : 6
REPRESENTOR : 268343

SWALE BOROUGH LOCAL PLAN 2031
HEARING STATEMENT ON BEHALF OF G H DEAN & CO LTD
MATTER 6 : LOCAL GREEN SPACE DESIGNATIONS

- 1 **Introduction** – these representations are made on behalf of G H Dean & Co Ltd, the owner of Highsted Quarry, the subject of MM343 designation as LGS (LGS 002 of CD 086 refers).
- 2 The Inspector’s attention is drawn to the content of the written representations submitted by this practice, which is not repeated.
- 3 In Part 3 : Overall Interim Findings, the Inspector highlights her concerns about the “process used by the Council in designating such sites” concluding that “this process should therefore be reviewed to demonstrate that it has been consistent, transparent and inclusive”.
- 4 The Inspector’s question 6.1 reflects the above with the important addition of the fundamental test of “consistence with national policy”.
- 5 These representations take account of the Council’s procedural approach set out in CD 086 and its response to Representations in SBC/PS/117 and CD/086f.
- 6 We identify fundamental failings of the Council’s “process”, ie with regard to national policy. This criticism applies to all proposed LGS sites. Thereby, the Plan is unsound.
- 7 We now identify firstly the failings of “process” and secondly we review the assessment of MM343 in the context of the correct procedure.
- 8 **Failings of process** – we believe that the Council’s procedure for assessing sites for LGS designation (essentially 5 criteria derived from a précis of NPPF and NPPG advice) does not comply with national policy and is fundamentally flawed. This criticism can be summarised as follows:-
 - (i) the Council’s second assessment criterion is incorrect (does not consider demonstrably special attributes).
 - (ii) the Council’s assessment criteria are incomplete vis a vis (a) future management and (b) additional local benefit from designation.
 - (iii) the Council failed to contact the landowners at an early stage.
 - (iv) the Council’s procedure conflicts with its own procedures set out in its Statement of Community Involvement (SCI).
- 9 **Criterion 2** – here the Council assesses whether the site is “of special significance to community (sic) and of particular local significance”. However, the test in NPPF-77, (second bullet point) and reiterated in NPPG-009 and 012, requires an area to be “demonstrably special to a local community and holds a particular local significance”.



- 10 The advice in NPPF-77 is that “LGS designation will **not** (our emphasis) be appropriate for most green areas or open space”, and that designation should only be used “where (inter alia) the green area is demonstrably special to a local community and holds a particular local significance”.
- 11 It is because of the presumption against the inappropriateness of designation for most green areas that NPPF sets a high test of “demonstrably special etc”. In our view, the Council has not applied a test of “demonstrably special to a local community and holds a particular local significance”. Instead, it has applied a lower test of “special significance”. Clearly this lower test falls short of national policy. Thereby, the Council’s “process” is unsound.
- 12 **Incomplete criteria – “future management”**. NPPG-021 states that “if the features that make a green space special and locally significant are to be considered, how it will be managed in the future is likely to be an important consideration”.
- 13 This criterion is, we suggest, particularly important where the green area is not in public but in private ownership and, (we further suggest), that is why the advice advocates early engagement with landowners (NPPG-019).
- 14 Clearly the Council has not considered this aspect as it is not included in its assessment criteria and their “process” is unsound.
- 15 **Additional local benefit from designation** – (referring to the Council’s response to representations in SBC/PS/117,) the Council appears to misunderstand the point raised. Acknowledging that the site is indeed included within a designated area “Local Designated Site of Biodiversity”, ie of the sort referred to in NPPG-011. Bearing in mind the starting point for designation of LGS (that it will not be appropriate for most green areas or open spaces), in our view, it is incumbent on the Council to ask itself whether any additional local benefit would be gained by LGS designation.
- 16 This criterion (even for AONB, SSSI, SAM’s or conservation area) does not form part of the Council’s assessment criteria. The criteria are therefore incomplete and thereby the assessment is in conflict with national policy and is unsound.
- 17 **Contact with landowners at an early stage** – NPPG-19 advises Councils, particularly where the green space is not in public ownership, to contact landowners at an early stage about proposals to designate any part of their land as LGS. Although this is one of the Council’s criteria, it is noted as “to be undertaken”. Consequently, when the Council decided to designate these sites patently they had no understanding or appreciation of land owners’ views.
- 18 There are several points here. Firstly, “contact” with landowners is advised. Certainly with regard to MM343 (and another site that this practice represents) there was no “contact” with the landowners, despite the Council being fully aware of ownership from other Development Plan representations. Contrary to the assertion that “specific consultation with landowners and occupiers” has taken place (SBC/PS/101 para 7.5.10) clearly the Council has not “contacted” landowners (as required by national



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- policy) and at best has merely attempted to “notify” them by post. With certainty, there has been no “consultation” with landowners.
- 19 Secondly, “contact” is advised “at an early stage”, ie early in the Plan making process. Whilst the Council may have attempted “notification” as soon as possible, doing so immediately prior to publication of Main Modifications does not, in our view, constitute “an early stage”.
 - 20 Consequently, the Council’s procedure vis a vis contact and consultation with landowners falls well short of national policy requirements and thereby their procedure and the Plan is unsound.
 - 21 **Conflict with SCI** – it is clear that the Council merely “notified” landowners of Main Modification proposals after deciding on Main Modifications and without the views of landowners. In our opinion, this process conflicts with the Council’s SCI which states that “formal consultation with parties specified by Government, together with others who have given views, **must** (our emphasis) take place before submission of any document for formal examination”.
 - 22 Note this is a requirement set by Government and, in ID/9a para 1, the Inspector herself warned the Council that its consultation on MM’s must proceed in accordance with its SCI. Therefore the Council’s failure to consider the views of landowners before submitting the Main Modifications for examination is in clear breach of Government policy and the Council’s own SCI.
 - 23 In **conclusion** on process, for the reasons summarised in para 8 above, the Council’s designation of LGS through MM268 is not consistent with national policy and the process has been neither transparent nor inclusive.
 - 24 The Inspector is asked to note that the above issues have been brought to the Council’s attention. The Council was invited to consider these points in order to convert their “notification” into true “consultation” in time for the resumed hearings. However, the Council declined that opportunity.
 - 25 **MM343 Highsted Quarry** – we now reassess the Highsted site in the context of the Council’s criteria as amended and extended in order to comply with national policy.
 - 26 Examining first criterion 1 and the Council’s score; we raise no issue with the criterion but the inference in the right hand column is that the site satisfies this test. We disagree. The Quarry does not serve a community in close proximity. There are only a handful of dwellings nearby and there is no public access within or around the quarry. For example, Cromers Road and Highsted Road are without footways, offering no views of the site from a public place. Granted the quarry face is visible in some views from vehicles passing along Cromers Road but this is a temporary fleeting view and in landscape and visual terms, would not be considered a key view. Consequently, the quarry is not a “space” nor is it close to any identifiable “community”.



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- 27 The quarry has no public recreational value. It is not demonstrably special to a local community. The chalk pit is not special in that it does not contain a boating lake or special structures located therein nor is it a tranquil oasis (NPPG para 013).
- 28 Further, throughout NPPF and NPPG advice on LGS, the demonstrably special qualities of areas and their particular importance “to the local community” is stressed. The Council, rightly in our view, has rejected areas “as they were not championed by the community”. (CD086 para 27)
- 29 In our view MM343 falls into the latter category. It does not, and has not, “served” the local community and does not appear to be championed as LGS by the local community. Thereby the site fails the tests of criterion 1.
- 30 Regarding criterion 2, as set out in paras 9-11 above, the Council’s assessment is flawed because it has applied a test of “special significance” rather than the higher test of “demonstrably special” etc, required by NPPF and NPPG.
- 31 The Council has provided no evidence as to why the site is considered to be special in ecological terms. Highsted Quarry is a former chalk quarry which has seen extensive natural regeneration by birch. However, because of the limited soil horizon, trees tend to have a limited life. Notwithstanding ecological surveys that assessed the site as being of low ecological value, nevertheless the Council designated the site in its Local Plan (against objection by the landowner) as part of a “Local Designated Site of Biodiversity”.
- 32 Consequently, the site fails the “demonstrably special” etc test.
- 33 Regarding criterion 3, the quarry is an extensive tract of land which factor, para 015 of NPPG advises, militates against designation.
- 34 The Inspector should be aware that the site was rejected by the Council for LGS designation in the Submission draft Plan. Only at MM stage did the Council include the quarry as LGS.
- 35 The Inspector should also be aware that the quarry is one of three quarries at Highsted. At Submission stage, 2 of the 3 quarries (together) were rejected for designation because they were assessed by the Council as being “an extensive tract of land”.
- 36 The three quarries are similar and together clearly fail the “extensive tract of land” test. We see the Council’s designation of one quarry at a time as a “back door” way to try to achieve what would amount to a new area of Green Belt by another name, ie in direct conflict with the advice in NPPG-015.
- 37 There is no public access to the quarry. Whilst acknowledging that a lack of public access is not a determining factor, the site presents health and safety issues. The crumbling quarry faces and rough terrain in the quarry bottom would present a hazard to the public and in any event access is specifically excluded. Use of part of the site



- by a Gun Club presents another obvious danger to public access and a use incompatible with LGS designation (NPPG para 008).
- 38 NPPG para 008 indicates that LGS designation will rarely be appropriate where land has planning permission for development. At Highsted Quarry, a bona fide planning permission exists for the Sittingbourne & District Rifle Club who have occupied the site for more than 15 years. The use continues, and is likely to continue in what is a particularly suitable environment, for the foreseeable future. It would be difficult to find an alternative site suitable for the Rifle Club. NPPG advice therefore militates against the designation of Highsted Quarry as an LGS.
- 39 We now assess the site against the additional criteria of “future management” and “additional local benefit from designation”, the background to which is set out in paras 12-16 above.
- 40 Clearly the Council has not considered the implications of the future management of the features that make this green space (allegedly) “demonstrably special” and how they will be “conserved”. We contend that the site is not demonstrably special and, in that sense, there is nothing to “conserve”. However, the Council does not appear to have given any consideration as to how this extensive tract of land is to be managed and the source of funds for such management. Management costs are likely to be significant and in our view the site fails the “future management” test.
- 41 As for “additional local benefit from designation” as LGS, in our view the existing designation as a “Local Designated Site of Biodiversity” provides the community with sufficient protection of the site (NPPG para 011). That being the case, there is no additional local benefit to be gained from LGS designation.
- 42 Consequently, the site fails the test of “additional local benefit from designation”.
- 43 In **overall conclusion**, it has been demonstrated (summarised in para 8 above) that the Council’s process for the assessment and selection of green areas for LGS designation is fundamentally flawed. It is not consistent with national policy and is not transparent or inclusive.
- 44 A review of the assessment of MM343 against the proper application of LGS assessment criteria finds the site to be an extensive tract of land contrary to national advice. The site fails the assessment criteria. It does not serve the local community; is not demonstrably special to that community nor does it hold a particular local significance; it is not suitable for management or conservation and no consideration has been given to the cost thereof; its bonafide use by the Sittingbourne & District Rifle Club precludes public access and militates against designation and LGS designation would be of no additional benefit over and above its existing designation as a “Local Designated Site of Biodiversity”.
- 45 In addition, the Council appear to be using a “back door” approach to establish Green Belt by another name – contrary to national advice.



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- 46 **Consequently, the Inspector is requested to recommend to the Council:-**
- (a) that the LGS designation process should again be revisited by the Council using criteria consistent with national policy; that full and proper consultation with landowners should be carried out and representations assessed by the Council prior to draft designation; and**
 - (b) that MM343 be deleted from the Plan.**