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CHARTERED TOWN PLANNERS

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Matter 3: 1012050

Borden Residents Against Development: Liz Alexander, Bell Cornwell LLP

Further Representations to address Matters, Issues and Questions

Matter 3 MUX1: South West Sittingbourne

3.1: Is the MUX1 allocation justified by robust evidence, including landscape character assessment and sustainability appraisal as the best option for delivering the borough's housing?

1. We raised concerns through our modification representations about the assessment of the site through the site selection and SA/SEA processes; specifically, how the assessment has changed over time from the initial conclusion that the site was not developable to the proposed allocation of the site without justification.
2. In the initial Sustainability Appraisal (CD/003) the site is highlighted as having 2 areas of significant constraint; the first of these is landscape and the second is transport and accessibility.
3. Within the Ranked Assessment of Reasonable Non-Allocated Site Options to inform Modifications (SBC/PS/106) the site was assessed as being in Tier G, which is a category of sites which have a significant environmental constraint (Tier A are the best performing sites). It is assessed in the rankings as 62nd out of a total of 116 sites, with heritage highlighted as a significant constraint, and scoring a 2 for the landscape constraint (this is a constraint level that is assigned to those sites that intersect a 'Swale-level' Area of High Landscape Value'). Taking those sites in tier H out of the rankings (as they are smaller settlements, inappropriate for a large scale of development) reduces this number to 90 sites – therefore the site would be ranked 62nd out of 90 sites.
4. It is unclear, therefore, why the SA Report Addendum of June 2016 then made an assumption that SW Sittingbourne should be allocated, meaning that it was not properly assessed as a reasonable alternative, instead being assumed as a constant in the allocations process. This is not the correct process and represents a flaw in the assessment process, as the site was not assessed on a comparative basis with other sites that could be reasonable alternatives. There is no explanation as to how a site which is ranked so poorly can be assumed as appropriate for allocation. The

necessary justification for the decision has not been demonstrated, and therefore the selection of the site fails this test of soundness.

5. In terms of reasonable alternatives, the studying of alternatives is a key part of the SA assessment and failure to comply will leave this plan vulnerable to future legal challenge. Chapter 9 of this report appraised the proposed modifications, including SW Sittingbourne, taking account of proposed policy MUX1 when reaching conclusions on significant effects.
6. We have assessed the most recently published information from the Council; firstly, we raise concerns about the timescales of the publication of this, and whether the Council should be publishing information at this stage of the plan preparation process, particularly where this would appear to be a retrofitting exercise; to support decisions already made, and to explain, at this late stage, how they were made.
7. SBC/PS/120 is the post submission SA Report which was published in December 2016 and deals only with South West Sittingbourne. It sets out, in paragraph 3.1.2 that the aim is to explain the work undertaken in 2016. This document also starts to assess options which came forward during the main modifications consultation, appraising three different options – firstly, policy MUX1 as published, then option 2 which is the site promoters proposed amended Policy MUX1, and then option 3 which is HBA's proposed amended policy MUX1. It is not clear why this assessment is being carried out now.
8. In terms of landscape character assessment, at the time of the allocation of the site, a landscape and visual impact assessment had not been carried out. Given the findings of the initial sustainability appraisal (CD/003), which highlighted landscape as a considerable constraint, this work should have been carried out before the site was assessed as appropriate for allocation.
9. The site lies within a local landscape designation which is an identified Important Countryside Gap between Sittingbourne and Borden. This gap would be considerably physically reduced by the allocation, however, this has been assessed by the Council as being acceptable, and it is proposed that the remainder of the gap should be protected.
10. A landscape and visual impact assessment was finally published in December 2016, which sets out measures for landscaping and visual mitigation. Producing this at this very late stage again gives an impression of retrofitting the evidence to support conclusions already made, rather than informing the decision making process. The outcome of this work also advises on an alternative site concept diagram which also takes into account the larger site now being promoted by the site promoter.

3.2 Is the MUX allocation deliverable within the Plan period?

1. The NPPF paragraph 182 sets out that in order to be found sound, a Local Plan must be deliverable. The Planning Practice Guidance re-iterates this, stating that Local Plans should pay careful attention to both deliverability and viability.

2. Advice to the Council from consultants PBA (CD/03/a and b) is that sites in the Sittingbourne area are broadly only marginally viable (check) when taking into account the CIL requirements together with the affordable housing as set out in policy DM8. However, MM191 and MM192 are both clear that substantive developer contributions in the form of section 106 payments will also be required. This indicates that the developer may experience viability issues. Viability values therefore have the potential to undermine the delivery of the site. Additionally, we have reviewed MM254 which appears to allow the Council to stipulate higher levels of affordable housing. Not only is this contrary to Government policy, but it would lead to uncertainties in terms of applicants not knowing what they are required to do to submit a successful application in terms of this policy issue.
3. The Plan period runs from 2014-2031. In terms of the Council's housing trajectory, the site is phased to start delivering in 2018/19. However, the site has more than one landowner involved which has the potential to complicate the delivery of the site. As yet, we understand that there is no housebuilder on board, which would provide a useful reality check regarding build out rates and viability. Our experience is that a site promoter will often make unrealistic assumptions about what can be achieved on site in order to help to achieve an allocation, and then rely on negotiations through the planning application process to reduce this down in order to achieve a profitable development.
4. A joint masterplan/development brief has been set out as a requirement for the site which is a further factor which can cause delay. In general, strategic sites have a very long lead in time and in this case, there are significant infrastructure requirements (see below), including the need for substantive transport improvements, to be resolved. In particular, we refer to the impact on Junction 5 of the M2/A249, which the Council has indicated will be necessary to take into account in the phasing of the development. The information provided by the Council indicates that over half the completions are likely to occur after the currently planned J5 improvements. There is a lack of clarity about how much development can come forward in advance of the necessary improvements to the transport network overall at this stage.
5. Additionally, there is a lack of certainty about the other junction improvements as set out within Chapter 8 of the Local Plan and within the Implementation and Delivery Schedule (SBC/PS/103). The Council has confirmed that their timing is dependent upon developer and public sector funding. In terms of the former, this is generally subject to protracted negotiations and viability issues. In terms of the latter, there are ongoing issues of constrained public sector finances which are unlikely to improve in the foreseeable future. This means that the necessary certainty about delivery of the infrastructure to support the allocation does not exist.
6. Given the major infrastructure and viability issues that exist to the south of Sittingbourne, the Council ought to have provided allocations in other areas which were not dependent on such large and expensive necessary infrastructure in order to deliver them.

7. Additionally, the scope of the necessary infrastructure improvements and their impact is not yet confirmed, with a different set of site requirements now being proposed by the site promoter as part of the MM consultation, associated with a higher housing number and different site area.
8. There are also a very high number of sites proposed for development or already in the planning pipeline in the Sittingbourne area (approximately 4,417 dwellings) which is likely to influence build rates due to market saturation.
9. We are aware that through their representations to the proposed modifications to the plan that Mulberry Estates, the site promoter has objected to MM192 on the basis that the site should be allocated for a higher number of dwellings, 700 homes rather than 565 homes. This would take place by extending the allocation west to Chestnut Street. The Council has indicated that it is considering this proposal and we are concerned about the process for this, and for the necessary opportunity for objectors to make further comments on any new evidence that has been published. We assume that there would need to be a further Main Modifications consultation to properly explore this matter.
10. The representations to the Main Modifications from Mulberry Estates cast doubt over whether the allocation is deliverable in its current form. The representation states that a direct additional connection from the allocation to Chestnut Street would offer advantages to traffic. A number of other points are made about an increased size of allocation being able to better provide facilities.
11. We note that Mulberry Estates have set out an intention to provide pitches and other facilities for Sittingbourne Rugby Club. However, we understand that the Rugby Club is not currently in a legal position to go ahead with this as it is not currently set up as a legal entity.
12. In conclusion, we consider that the Council's intended timescales for the delivery for this site as set out in the 5-year housing land supply schedule of November 2016 are entirely unrealistic and their estimates cannot be relied upon. The site will not start to deliver in 2018/19 and it is currently unclear if it can be delivered in its totality within the plan period at all. This does not give the necessary certainty that is required as part of the Local Plan. The Plan is not therefore effective, and fails this test of soundness.

3.3 Is the MUX 1 allocation supported by robust infrastructure planning? Have all the infrastructure implications been identified and addressed in appropriate detail?

1. Our answer to this has partially been addressed by the matters above; our main concern is over the timing and the delivery of the necessary significant infrastructure to support this allocation, and the concerns that this raises regarding the viability of development and the timescales for delivery.

2. We note the contents of the Implementation and Delivery Schedule which was published in June 2016. We understand that there are some proposed updates to this schedule. We have a number of concerns about this schedule as follows:
 - a. Firstly, the schedule is based on the housing figure that was used in the submitted Local Plan – i.e. it is based on 540 dwellings per annum rather than 776 dwellings per annum. The Council’s comment that this doesn’t make any difference to the scope of the infrastructure requirements seem unlikely.
 - b. A key concern is the identified funding gap, which is currently £79 million. There is considerable uncertainty about whether this gap can, in reality be met. We understand that some of the shortfall is expected to be met by developer finance, but the extent of this is unclear, as is the impact upon viability. The Council’s Community Infrastructure Levy (CIL) is also quoted as a source of funding, as is the scope to raise this in the future. However, the CIL has not yet been adopted by the Council, and the scope for this being raised in the future is extremely uncertain, given the viability evidence that has been published to date.
 - c. We consider that the schedule is unclear on some elements of funding such as what will be funded by CIL and what is expected to be funded by section 106 contributions. Section 106 contributions are not subject to pooling restrictions, which is a limiting factor.
 - d. We also note that objections have been raised by Southern Water with regard to infrastructure requirements, and found the Council’s response to this important consultee rather lightweight and dismissive.

3.4 Is the MUX 1 allocation supported by evidence at this stage to have reasonable certainty that the amount of development proposed will be deliverable within the plan period?

1. This question appears to overlap with MIQ 3.2 and we have not, therefore written a separate response.

3.5 Is the MUX 1 allocation supported by clear and deliverable measures to address transport implications of the proposed development?

1. No. Main modifications 191 and 192 recognise that the site is a sensitive one in terms of potential transport impacts. The response from the Council officers to the MM consultations confirms that further work is being undertaken within the A249 corridor west of Sittingbourne to determine what further measures are required. This does not give the necessary certainty about deliverability, therefore raising soundness issues on whether this is a justified or effective allocation.
2. Additionally, a statement of common ground was due to be published on 6 January 2017 regarding highways issues, giving very limited time for the completion of statements – copies of which have to be with the Programme Officer in both hard copy and electronically by 12 January 2017, meaning that they need to be posted by 10 January at the latest. We chased this up on 6 January when it didn’t appear on

the Council's website and were told by the Spatial Planning Manager that the statement was now unlikely to be published much before 12 January. We do not consider that this late completion is acceptable as the information should have been published to a timescale that enables respondents to use it in their statements. It is directly relevant to this matter as the A249 corridor is a particular accident blackspot.

3. We note that the delivery of necessary transport infrastructure has implications for the rate of housing delivery and how much can come forward ahead of their provision. We have set out above, in our response to question 3.2, that there are concerns about the timing and funding of the necessary infrastructure.
4. We also note that a Transport Assessment will be necessary as part of a planning application – this is too late in the process to effectively consider whether the allocation can be implemented.

3.6 Have flood risk, heritage, wildlife and biodiversity aspects of the site been taken into consideration?

1. No. A number of these factors have not been sufficiently taken into consideration. These issues should be assessed at the outset of the site selection process, to inform whether or not an allocation is sound. Instead, the Council's approach is that the issues will be 'addressed' or 'mitigated'. This assumes that all the matters can be satisfactorily overcome; which may not be the case.
2. Whilst the policy requires the developer to undertake a detailed heritage assessment and reflect the findings in the scheme, this ignores the fact that there is considerable potential for heritage assets to be present on the site. Heritage was flagged up as a significant issue by the SA/SEA work.
3. Borden is historically important with evidence dating from the iron Age and Roman era. The historic significance of the area can already be seen through the designation of a conservation area covering large parts of Borden and Chestnut Street. A listed building lies close to the south eastern site boundary at Cryalls Lane.
4. Paragraph 3.135 of the report to the LDF Panel and Cabinet which considered the Local Plan proposed modifications (SBC/PS/108) concluded that "...there are a number of unknowns at present – transport, contamination and archaeology, which present some risk to the allocation until such times as they are addressed by the site promoter ahead of the re-convened Examination". We have not seen any information that has been published on these matters, so, in relation to heritage, cannot conclude that this has been sufficiently taken into consideration. Again, this is a matter which should have been considered at the outset of the site selection process, rather than one which is proposed to be mitigated.
5. We consider that the Council's approach is contrary to paragraph 141 of the NPPF which sets out that local planning authorities should make information about the significance of the historic environment gathered as part of plan-making publicly

accessible. The Council did not gather this evidence as part of the Plan making process.

6. It is not clear what biodiversity assessments have been carried out to date through the site assessment work.
7. In terms of flooding, whilst the site is not within Flood Zones 2 or 3, we have not seen any evidence of the proper consideration of surface water or groundwater flooding issues, or critical drainage areas. It is highly likely that the development will have an impact on the capacity of the area to store floodwater and so this remains an unknown factor in terms of the future management of surface water.

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