

SHOLDEN PARISH COUNCIL

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Lucinda Roach,
Principal Planning Officer

Dover District Council,
White Cliffs Business Park,
Dover
Kent CT16 3PJ

[By e-mail]

27 May 2020

Dear Lucinda,

20/00419 | Outline application with all matters reserved for up to 210 dwellings including up to 12 self-build plots, together with up to 2,500 sqm of office (Use Class B1) floorspace and up to 150 sqm of retail (Class A1) floorspace | Almond House Betteshanger Sustainable Parks Sandwich Road Sholden CT14 0BF

Introduction

Sholden Parish Council objects to this application. There are numerous breaches of Local Plan and NPPF policies. In addition, Sholden Parish Council (SPC) fully supports the objections raised by Northbourne and Worth Parish Council and the 57 objections from the members of the Public. In addition, Sholden Parish Council believes that the “holding” objections from KCC (Highways) and KCC (Flood and Water Management) are grounds in themselves for refusing planning permission. SPC also fully supports the case for refusing planning permission made by the Campaign to Protect Rural England (CPRE).

Detail

Breaches of Local Plan Policies

1. The starting point for decision making, in accordance with Section 38(6) of the

Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 is the adopted development plan. Decisions should be taken in accordance with the policies in such plans unless material considerations indicate otherwise.

2. Policy DM1 states that development will not be permitted outside the settlement boundaries, unless it is justified by another development plan policy, functionally requires a rural location or is ancillary to existing development or uses. The potential Betteshanger Grove site is located outside the defined settlement confines (and is not supported by other development plan policies and is not ancillary to existing development or uses). As such, the application is contrary to Policy DM1.

3. In addition to this proposed development breaching policy DM1 of the adopted local development plan, policy DM11 is also breached. No one can dispute that the proposed development is outside the settlement confines. In view of the distances of the proposed site from the nearest town centres and their amenities/facilities (shops, recreational facilities, beaches, castles, medical facilities, schools, waste recycling etc.) it is most likely that the occupants of the development would be reliant on the use of a car or cars to travel to reach all these necessary day to day facilities and services. Car travel will especially be increased by the bisection of the Miners Way. Because the development is not justified by other development plan policies, the development is contrary to Policy DM11 – the generation of high vehicular travel outside confines. Others have also clearly stated, with evidence, that there are neither reasonable nor realistic alternatives to car travel available to the future residents of Betteshanger Grove.

4. In this planning application, decision makers also need to refer to Policy DM15 of the adopted local plan (applications which result in the loss of countryside, or adversely affect the character or appearance of the countryside, will only be permitted if it meets one of its exceptions criteria). Thus, Policy DM15 resists the loss of countryside (i.e. the areas outside of the settlement confines) or developments which would adversely affect the character or appearance of the countryside as well as not resulting in the development losing ecological habitats. Ecology is further dealt with at paragraphs 17 and 18 below. But a potential development of this size can only result in the loss of countryside. That is incontrovertible.

5. And so for the reasons outlined above, the development, in principle, is contrary to Policies DM1 DM11 and DM15 of the Core Strategy. Decision makers should not forget the primacy of the development plan.

6. In anticipation of a challenge that paragraph 11 of the NPPF is invoked (basically out of date policies and that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits), Sholden Parish Council respectfully refers Members to the High Court Judgement (Gladman Developments Ltd Vs SSHLCG & Corby BC & Uttlesford DC [2020] EWHC 518 (admin)). In that High Court Judgement, it is our understanding that Judge Holgate concluded that paragraph 11(d) (ii) of the NPPF did not exclude consideration of development plan policies in favour of the “tilted balance”. In essence, Members can give weight to Policies DM1, DM1 and DM15. In addition, Paragraph 177 ensures that the presumption in favour of sustainable development does not apply when proposed developments impact on Special Protection Areas, Ramsar

sites and possible Special Areas of Conversation. Without the evidence of an Environmental Impact Assessment (see below) this proposed development does just that.

Breaches of NPPF Policies – Summary

7. Notwithstanding that SPC considers that planning permission should be refused on breaches of adopted Local Plan/Core Strategy policies alone, it would be unwise not to consider NPPF policies. The revised NPPF was published in July 2018 and was subsequently updated in February 2019. The Framework provides the planning policies for England and how these should be applied. Thus, in terms of the tilted balance, if the NPPF is active its policies (material considerations) should be given significant weight in decision making. In this application there are numerous conflicts with the material considerations of the NPPF.

Detail

NPPF Section One: Introduction

8. Paragraph 6 of the NPPF states that “Other statements of government policy may be material when preparing plans or deciding applications....”. The government has quite clearly stated that planning applications (including outline applications) should have minimal conditions. This application, should it be granted, has the potential for many conditions thus conflicting with not only paragraph 6 of the NPPF but also paragraph 55: “Planning conditions should be kept to a minimum....”. In addition, central government has said that the views of those affected by the proposed development should be taken into consideration. Planning Members should note that, from members of the public, there are 57 objections and only one in support.

NPPF Section Two: Achieving Sustainable Development

9. Paragraph 7 of the NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 identifies that achieving sustainable development means that the planning system has three overarching objectives, all of which should be interdependent and therefore need to be pursued in mutually supportive ways. These are:

- (i) an economic role (contributing to building a strong, responsive and competitive economy). Unfortunately, because of the current pandemic both nationally and locally (loss of jobs at Dover port etc.) there is no evidence that either the number of dwellings or business area of the proposed development will be occupied in the foreseeable future.
- (ii) a social role (supporting strong, vibrant and healthy communities). As in (i) immediately above, unfortunately there is the distinct possibility that the whole proposed development, if permission is granted, could become an uninhabited blight on the landscape that could rapidly have a negative impact on the surrounding communities.

- (iii) an environmental role (contributing to protecting and enhancing our natural, built and historic environment). Alas, because of (i) and (ii) above that is not going to happen.

10. Paragraphs 10 and 11 of Section Two of the NPPF deal with the presumption in favour of sustainable development. As detailed above the adopted Local Plan/Core strategies is/are active and thus the “tilted balance” is inactive.

11. In addition, as will be demonstrated later, the application of policies in the NPPF (should the tilted balance be applied) when related to this development, protect areas and assets of particular importance and thus will provide clear reasons for refusing the proposed development. That is, there are many adverse impacts that significantly and demonstrably outweigh the benefits of this development when assessed against the policies in the NPPF.

NPPF Section 8: Promoting healthy and safe communities (especially crime and disorder)

12. Paragraph 91 of the NPPF states that planning policies and decisions should aim to achieve healthy, inclusive, and safe places which promote social interaction, safe and accessible neighbourhoods and enable and support healthy lifestyles. Unfortunately, at present none of those virtuous places can be guaranteed by either conditions or Section 106 agreements quite simply because no one knows the economic and social impact of the current pandemic. We do know that the Chancellor of the Exchequer has said that nationally we are heading for a deep recession. In addition, for cycling and walking, the current Miners Way (which would be the main route of cyclists and walkers) will be bisected by the proposed development on the land to the North West of Pegasus (DOV/19/00216).

13. Members should also note the details of the Kent Police letter of 14 May. Kent Police have some serious concerns about this application and Sholden Parish Council is unaware that these have been addressed. As such, the application breaches NPPF paragraph 91 b).

NPPF Section 9: Promoting Sustainable Transport

12. The applicant (via its formal application on 20 April) has submitted a comprehensive Transport Assessment (TA) attaching some 25 + reports to that TA. The size of such an exercise, whilst on the positive side seeming to exercise due diligence, on the negative side, quite clearly indicates that the applicant has serious concerns that its proposed development may conflict with paragraphs 109 and 110 of the NPPF. These concerns are now confirmed by the “holding” objection submitted by KCC (Highways) on 15 May. Even in its opening bullet point 1, KCC (highways) recognises that the applicant has failed to comply with NPPF Section 109: the proposed residual traffic impact will conflict with paragraph 109.

13. The KCC (Highways) letter then lists another 10 serious transport related issues which, in SPC’s view, even with mitigation will not comply with paragraph 109 and so the application must be refused.

14. Residents both within and without the proposed development area have further transport concerns on increased traffic movements in the outer road areas, particularly (i) Upper Deal Roundabout and (ii) extra traffic through Sholden. In addition, there are serious concerns about additional vehicular movements caused by increased regular school attendance (once normal service has been resumed). Further to that, SPC notes that there is also the possibility of traffic holdups on the Eastry/Sandwich By- Pass.

15. Conflicts with paragraph 110 (pedestrian and cycling movements) have been covered elsewhere in this letter. Bus transport, as noted by KCC Highways, is also a subject of contention (paragraph 110 a) refers).

16. The Dover District Council 2020 Housing Economic Land Availability Assessment (HELAA) is quite clear on the transport/traffic issues that this proposed development will bring. The full details can be found here <https://www.dover.gov.uk/Planning/Planning-Policy-and-Regeneration/PDF/Housing-and-Economic-Land-Availability-Assessment-Site-Survey-1.pdf> and in Mr Peter Cutler's e-mail to the Chairman of the Planning Committee on 19 May. As above, these concerns would warrant refusing the application because of the unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Section 12 of the NPPF: Achieving well-designed places

16. Paragraph 127 details how planning applications should ensure that the proposed development will (amongst other things):

- (i) add to the overall quality of the area and be visually attractive
- (ii) be sympathetic to local character and history...
- (iii) create places that are safe, inclusive and accessible and which promote health and wellbeing, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

As stated in paragraph 9(i) the proposed development is highly likely not to evolve (economically, socially, or environmentally) as planned, even though it is only an outline application and as such conflicts with Paragraph 127.

Section 15: Conserving and enhancing the natural environment

17. Paragraph 175 (and other paragraphs of Section 15 of the NPPF) states, inter alia, that when determining planning applications, the local planning authorities should apply certain principles:

- (a) if significant harm to biodiversity resulting from a development cannot be avoided...or adequately mitigated or, as a last resort, compensated for then planning permission should be refused.

(b) development on land within or outside of a Site of Special Scientific Interest and which is likely to have an adverse effect on it (either individually....) should not normally be permitted.

18. Members of the Planning Committee when considering this application, will be aware of the vast amount of ecological expertise from the local community and beyond. Five of the key points are listed below and in and of themselves constitute significant harm to, and adverse effects on, the biodiversity resulting from the proposed development. Thus, the proposed development will not protect sites of biodiversity value, will conflict with Paragraph 170 a) and therefore planning permission refused. The five key points (amongst others detailed elsewhere) are:

(a) the proximity of the development to the Thanet Coast and Sandwich Bay RAMSAR site and the Sandwich Bay to Hacklinge Marshes SSSI. These sites are among the most important for nature in the UK. Their urbanisation is recognised by Dover District Council as being likely to cause a 'significant adverse effect'.

(b) the Sandwich Bay Bird Observatory Report of 25 May is quite clear in that the proposed development will seriously impact a rare and endangered bird.

(c) there are now reports that the rare lizard orchid exists on the proposed development site.

(d) Overall, the proposed site will decimate a flourishing, ecologically diverse re-wilded natural area which neighbours other key ecological sites.

(e) bearing in mind all the above, some of which supercedes the decision not to have an EIA (DOV/20/00180), there is now an extraordinarily strong claim for a formal, independent Environmental Impact Assessment. Another issue (apart from the additional information from stakeholders such as the Sandwich Bay Bird Observatory) is that ecological reports tend to look at issues specific to the area to be developed. As Planning Committee Members will be aware, there are, in the vicinity of the proposed site, other major developments (proposed and agreed). As the CPRE say (and SPC agree) this is important as one must look at the accumulative effect on nearby protected sites. Proposed developments should not be considered in isolation. An EIA will give a better-informed holistic view of the area.

Conclusion

19. All the above cannot but lead the Decision Makers to refuse planning permission. The evidence of conflict with Local Plan Policies of the Dover District Core Strategy and NPPF Policies is overwhelming. There are two serious "holding" objections and no evidence of mitigation. Other statutory consultees have reservations of such a serious nature, that many conditions are being requested. It is now government policy that conditions need to be kept to a minimum. As such central government policy is being breached. In addition, there are, from the members of the public there is only one person supporting the application and 57 wanting the application refused.

Yours Sincerely

Kevin Lynch

**Kevin Lynch
Clerk, Sholden Parish Council
On Behalf of Sholden Parish Council**

**CC. Sholden Parish Councillors
Cllr Steve Manion
Clerk, Northbourne Parish Council
Clerk, Worth Parish Council
Clerk, Deal Town Council
Clerk, Walmer Parish Council
Mr P Cutler
Mrs S Sullivan**