



YOUR PARTNERS IN LAW

LYNSTED WITH KINGSDOWN PARISH COUNCIL

REG 19 RESPONSE

INTRODUCTION

1. These representations are made on behalf of Lynsted with Kingsdown Parish Council (“LKPC”) in response to the proposed submission draft of the Swale Local Plan Review dated February 2021 published by Swale Borough Council (“the Council”) under regulation 19 of the Town and Country (Local Planning) (England) Regulations 2012 (“the Local Plan Regulations”)
2. LKPC objects to the Plan as a whole because it is:
 - a. Based on a flawed and inappropriate growth strategy which is unjustified, not supported by evidence, is predicated on an unlawful use of Supplementary Planning Guidance to allocate development, and is mutually inconsistent with the Plan’s own settlement hierarchy and other policies within the Plan;
 - b. Has not been informed by a sustainability appraisal that meets the relevant legal requirements.

- c. Will not be effective, because the growth strategy selected, which includes the Teynham Area of Opportunity (“TAO”) is not deliverable.
 - d. Has not been consulted upon in accordance with the legal and procedural requirements set out in the Local Plan Regulations.
3. In addition to the above, and specifically, LKPC objects to the inclusion of the TAO in Policy AO1. The inclusion of the TAO is entirely unjustified and unsound, unsupported as it is by proportionate evidence. It is also unlawful, as it assumes that an SPD can be used to guide and regulate Planning Permission for development at Teynham and Lynsted.
4. The flaws in the Plan identified in this representation are fundamental. They have arisen because the politically driven selection of the growth strategy in the Plan was taken at a very late stage in the Local Plan preparation and the failure to include that strategy in the initial Regulation 18 draft Consultation. Nor was this preferred growth strategy subjected to Sustainability Appraisal before it was selected by the Council. That has led to fundamental and irremediable evidential and legal deficiencies.
5. The Plan should therefore be withdrawn. The Council should recognise now that the radical changes to its growth strategy it now seems to want to adopt, and in particular its desire to bring forward development at TAO, are speculative and unsupported by anything like the level of evidence and analysis required to justify development in the TAO at the scale now proposed. Rather than waste further public money and time by pushing forward to examination, the Plan should be withdrawn now, and a fresh Reg 18 consultation prepared once the requisite evidence has been produced. The failure to do this will inevitably mean the Plan will founder at examination, further delay the adoption of an up-to-date Plan for the Borough, with all the negative consequences that will ensue when speculative applications for development come forward in reliance of the lack of an up to date Plan.

(1) **The growth strategy is fundamentally flawed**

6. It is clear that the growth strategy is fundamentally flawed, essentially because it is (a) inconsistent with national policy (b) relies on an unlawful mechanism to allocate land via an SPD and (c) relies on the TAO to deliver housing in circumstances when there is clearly insufficient evidence justifying the allocation of housing in Teynham and Lynsted.

Use of the TAO to meet the Council's housing needs inconsistent with the NPPF

7. The preferred strategy, predicated as it is upon the TAO delivering 1,100 houses (at least on the Council's analysis) is fundamentally inconsistent with the NPPF.
8. The growth strategy in the Plan states that it is designed to meet the identified housing need in Swale for the plan period (i.e. until 2038) which is a requirement under the NPPF. The starting point (as set out in the Plan) is the need to *allocate* enough land to accommodate 6290 additional dwellings through this Local Plan Review (para. 4.1.2). Policy ST1 states that the Council seeks to meet its development needs through "*the additional sites as set out in this Local Plan Review*".
9. Section 5 deals with land allocations for new development. Included within that section is the TAO Policy AO1. It is clear that the Council is therefore attempting to rely on the delivery of housing in the TAO to meet its identified housing need, in circumstances where:
 - a. It plainly cannot justify the inclusion of the land in the TAO as an actual housing allocation; and
 - b. That allocation is completely inconsistent with the Council's own acknowledged settlement hierarchy.
10. The lack of justification for the TAO is plain on the face of the Plan, which states (at para. 5.5.44-5.5.48) that:
 - a. The boundary of the area of the TAO is "*highly indicative at this stage*";
 - b. A more definitive area of opportunity "*will need to be refined following further evidence gathering including comprehensive assessment of any new routes as well as landscape and biodiversity mitigation*".
 - c. "*Evidence will be needed to support*" a Teynham masterplan SPD, including transport modelling, air quality modelling.
 - d. A southern link route "*is being modelled*", "*although no specific potential alignments have yet been identified*".
 - e. Connections to the north of the A2 "*need to be explored*"

- f. A feasibility study needs to be undertaken for these new links.
11. Those extracts of the Plan on its face highlight the complete lack of evidence that has been prepared to support the inclusion of the TAO, and therefore the wholesale flaw in the Plan which relies on delivery of housing on this site to meet housing need for the Plan period. That is entirely inconsistent with the NPPF which requires plans to identify land for development to meet housing needs over the Plan period. That plainly has not been done here.
12. The flawed “quasi-allocation” approach to the TAO results in some fundamental inconsistencies. Policy A01 suggests that the TAO could accommodate 1,100 homes. How that fits in with the existing actual allocation of 300 homes is entirely unclear. The Parish Council does not know if what in fact is being suggested in the TAO is 800 homes or 1,400 (i.e. how the existing allocation has been taken into account when alighting upon the 1,100 figure in the draft Plan). It is also entirely unclear whether or how the Council has considered what happens if that existing allocation comes forward before the master-planning process has been completed for the rest of the TAO.

Proposed use of an SPD to bring forward development at the TAO is unlawful

13. Critically those extracts of the Plan referred to above also demonstrate that in fact the Plan proposes to use a SPD (described as a masterplan) to allocate land for housing. That is entirely unlawful.
14. A local development document under Regulation 5 of the Local Planning Regulations is
- “(a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, which contains statements regarding one or more of the following—*
- (i) the development and use of land which the local planning authority wish to encourage during any specified period;*
- (ii) the allocation of sites for a particular type of development or use;*
- (iii) any environmental, social, design and economic objectives which are relevant to the attainment of the development and use of land mentioned in paragraph (i); and*
- (iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission”*

15. The following legal principles are relevant here:
- a. The allocation of a document to the correct legal category of DPD or SPD, in accordance with the criteria set out in Regulation 5 of the 2012 Regulations is a question of law not planning judgment: R (Wakil) v Hammersmith and Fulham LBC [2012] EWHC 1411 (QB) at [81]-[82]; Skipton Properties Ltd v Craven DC [2017] EWHC 5. Regulation 5(1) of the 2012 Regulations is not concerned with documents containing statements that merely repeat the policies already contained in the adopted local plan or in another LDD by way of background or for the sake of clarity. What is relevant is what in substance is new in the document: *RWE* at [67] and [69]; *Skipton* at [67].
 - b. To ascertain whether a document “*encourages the development and use of land*”, regard must be had to the type of statements a document contains, not on what the effect of such statements may be in practice: RWE Npower Renewables Ltd) v Milton Keynes Borough Council [2013] EWHC 751 (Admin) at [70].
 - c. If the document at issue contains statements which fall within any of (i), (ii) or (iv) of regulation 5(1)(a), it is a DPD. This is so even if it contains statements which, taken individually, would make it an SPD. This conclusion flows from the wording “one or more of the following”, notwithstanding the conjunction between (iii) and (iv): *Skipton* at [75].
 - d. The real question arising in (iv) is therefore whether the document in question contains development management policies which guide or regulate applications for Planning Permission – unlike in (i), there is no need to find any encouragement; the provision is neutral: *Skipton* at [93(5)].
16. In this case, there is no doubt that the SPD that the Council is envisaging will be required to deliver housing in the TAO would as a matter of law fall within Regulation 5(1)(a)(iv). Its contents would have to be in a DPD in a local plan subjected to full examination. It is plain from the Council’s own description (at paragraph 5.5.51) of what it envisages that purported SPD would contain, that it is describing a development management policy which would guide applications for permission, including, for example:

- a. the Council states in terms of the requirements of the “masterplan” would have to include “*provision of new housing*” and “*provision of economic land uses*” at paragraphs 5.5.50ff.
 - b. The boundaries of the TAO are not yet defined: so the “masterplan” would set out those boundaries and in effect allocate land.
 - c. The provision of open space (at paragraph 10 on page 87).
17. In summary, the Council’s proposed approach to the TAO here is fundamentally misconceived as a matter of law. The policies set out in this proposed “SPD” could not be lawfully adopted through the back door in a SPD. A masterplan could only be produced as an SPD if the land itself has been allocated.
18. Any Inspector examining this plan would plainly need to assess whether the mechanisms in this Plan intended to deliver housing are lawful. In circumstances where the Plan relies on an SPD whose adoption would self-evidently be unlawful, there is no prospect whatsoever of an Inspector concluding that the Plan is sound. The Council should withdraw this Plan now, gather the evidence it has itself highlighted as necessary to justify housing development of this scale at this location, and reconsult if and when any such evidence becomes available.

The growth strategy is entirely unsupported by evidence in any event

19. National planning guidance on plan-making (“the NPG”) is clear about the requirements of an evidence base to support the development of a preferred strategy. It states:
- “Authorities preparing local plans should assess future needs and opportunities for their area, explore and identify options for addressing these, and then set out a preferred approach (except where this has already been dealt with through a spatial development strategy). This involves gathering evidence, carrying out a Sustainability Appraisal to inform the preparation of local plans and effective engagement and consultation with local communities, businesses and other interested parties”* (para. 34)
20. The preferred growth strategy, reliant on the TAO, is not supported by evidence. The very fact that the Plan itself identifies on pages 82 - 84 assessments and studies that have to be carried out in relation to nearly every type of impact that a proposal of this scale would have demonstrates the complete lack of evidence to support the inclusion of the TAO in the Plan. In particular, by its own admission, the Plan says that the inclusion of the TAO has not been carried out on the basis of any:

- a. Transport modelling. The Plan says that “*the inclusion of a southern link route for Teynham is being modelled as part of the transport modelling outlined above, although no specific potential alignments have yet been identified*” (para. 5.5.47);;
 - b. Air quality modelling. The Plan says that “*...further air quality modelling may need to be undertaken. Both transport and air quality modelling will need to inform the development of the masterplan*” (para. 5.5.47);
 - c. A feasibility study for new transport links apparently identified as necessary to bring forward development at the TAO;
 - d. A landscape and visual assessments of the impact of new development at this location.
21. Specifically in terms of transport modelling, Kent County Council have confirmed to a County Councillor that it “*has consistently advised SBC officers that they need to have the local plan highway modelling before going to Reg 19*”.¹ Yet this modelling has not taken place prior to the Plan’s publication. Kent County Council Highways confirmed that the modelling they have relied on is not adequate and stated as follows:
- “SBC have not completed any highway modelling for their Reg 19 test and this is similarly acknowledged in the draft plan document. They will argue that it is close to their 1054 test which loosely it is, but our view is that it is not close enough. They have added significant amounts of employment across the Borough and additional housing at Teynham, potentially the worst location in terms of traffic impact on the AQMA's at East St and Ospringe. Neither does that modelling reflect anything in the Draft Transport Strategy, which was prepared after that "option" modelling was completed. Finally we didn't agree on the mitigation they included. Highways England have yet to agree to anything other than the Base 2017 model.”*
22. That evidence from Kent CC Highways alone demonstrates that the Plan has been published prematurely at Regulation 19, and that decisions have been made not based on the evidence but based on political expediency. This has been confirmed by comments made by the Chair of the Local Plan Panel at the meeting of 18 January 2021. He stated in terms :

“I think it is fair to say that the new administration took over in 2019, the Local Plan Team had to work to a radically different strategy. Meaning that much of the work they had done for the previous year, didn't really contribute much to this, to the direction that the new administration went”.

¹ See e-mail dated 8 March 2021 at Appendix 1

23. The wholesale deficiency in the evidence base identified above, both generally and relating to the inclusion of the TAO, is as a result of changes being made between the Regulation 18 stage and Regulation 19 stage on the basis of political decisions not on the basis of evidence. This renders the selection of Growth Scenario C (as it was originally described) as the preferred growth strategy option fundamentally flawed.
24. In terms of analysis of what would be an appropriate development strategy for Teynham and Lynsted as “a sub-area”, the Sustainability Appraisal itself admits that the work was only undertaken in late 2020, again, “subsequent to a decision on the emerging growth strategy by the Swale Borough Council on 28 October 2020” (para. 5.4.4). The SA merely states the following in its description of how the growth scenario for the TAO was selected:

The emerging preferred growth scenario, following the Cabinet decision of 28th October, is to support an ‘area of opportunity’ at Teynham, expected to deliver around 1,100 homes. There is a need to explore lower growth scenarios involving one or more discrete allocations, in place of an area of opportunity.

5.4.17 Of the seven site options supported by the SHLAA, four have been identified that are judged to perform relatively well, for the purposes of arriving at growth scenarios, namely sites 18/106, 18/116, 18/122 and 18/123. The combined yield of these sites is c.350 homes. This is lower growth scenario 1.

5.4.18 Additionally, there is the option of nil allocations, given: committed growth; A2 traffic and air quality issues; and few clear infrastructure opportunities short of delivering a bypass. This is lower growth scenario 2.

25. Therefore, the SA set out and acknowledged the difficulties in bringing forward development of this site (i.e. in its reference to nil allocations), but it is clear that the “TAO” had already been selected as an option. There is no explanation at all, whether in the SA or otherwise, as to why or on what evidential basis the highest level of growth scenario for Teynham was selected. Given the wholesale lack of justification, the provision of 1,100 houses at Teynham cannot possibly be described as a “reasonable” growth scenario.
26. Appendix VI of the SA likewise does not provide any further justification. It sets out that the only sources of evidence are the SHLAA, the GIS analysis, discussion of sites presented at the Officer’s Report to 8th October Local Plan Panel, and “discussions with officers” (SA page 126). That again points to the wholesale lack of any modelling evidence to analyse the impacts of development of this scale at the TAO.

27. Worse still, when considering Teynham, the SA (at 137) merely repeats the Cabinet decision of 28th October. It then states that:

"There is also a need to explore scenarios involving one or more discrete allocations, in place of an area of opportunity, which in practice means exploring lower growth scenarios.

28. The SA has therefore by its own admission failed to explore those other growth scenarios or to point to any evidence that the TAO was justified as a “reasonable” growth scenario. Furthermore, it cannot possibly be argued that the SA has set out reasonable alternatives to the TAO that was predetermined already by the Council as the only option for Teynham and Lynsted.
29. In that regard, it is evident that rather than the need for a TAO being identified as part of the strategic growth scenario analysis and the appropriateness of any such TAO being considered in principle in that strategic context, what appears to have driven the identification of the TAO (and its scope and level of housing) has simply been an arithmetical exercise derived from the SHLAA. The Council has merely calculated a number based on what sites came forward and on that basis decided that a “TAO” of that level of housing is justified. That simplistic, arithmetical approach and the convenience of a cluster of sites being promoted via the call for the sites that informed the SHLAA cannot possibly justify the de facto “allocation” of 1,100 homes in this location.
30. The above deficiencies in the evidence base have been focussed on the inclusion of the TAO in Policy AO1. However, they also go to the fundamental soundness of the Plan. The SA acknowledges that the preferred growth scenario 1 (i.e. containing the TAO) was very similar in terms of its sustainability score to Scenario 4. The SA states in terms that “*it is immediately apparent that Scenario 1 (the emerging preferred scenario) and Scenario 4 (two strategic growth locations) perform well in a number of respects (page 35).*”. Given the fundamental flaw in Scenario 1 due to the inclusion of the TAO, the selection of the preferred growth strategy is likewise fundamentally flawed. The Council therefore needs to go back to the start of the process and, with the requisite evidence, reconsider if Scenario 1 should remain its preferred strategy.

(2) The preparation of the Plan has not been subject to a legally compliant Sustainability Appraisal

31. National guidance is also clear that the preparation of a Local Plan must be informed throughout by Sustainability Appraisal. It states:

“Every Local Plan must be informed and accompanied by a Sustainability Appraisal. This allows the potential environmental, economic and social impacts of the proposals to be systematically taken into account and should play a key role throughout the plan-making process. The Sustainability Appraisal plays an important part in demonstrating that the local plan reflects sustainability objectives and has considered reasonable alternatives.”

32. Planning policy guidance on SA at paragraph 6 also makes it clear that:

“Sustainability appraisal is integral to the preparation and development of a Local Plan or sustainable development strategy, to identify how sustainable development is being addressed, so work should start at the same time that work starts on developing the Plan. “

33. This accords with the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004, i.e. the Strategic Environmental Assessment Regulations (“the SEA Regulations”).
34. The SA submitted with the Local Plan reveals that the selection of the growth strategy that now forms part of the preferred strategy was taken by members in the absence of any sustainability appraisal to inform that choice. That is no doubt as a consequence of the decision not to re-consult and republish a Regulation 18 draft Plan (an issue which is explored further in the section below).
35. LKPC sets out below the sections of the SA that make it clear that the selection of the preferred strategy (and the inclusion of the TAO within it) was taken well before any sustainability appraisal was carried out and therefore without consideration of reasonable alternatives (both at a strategic level and within the preferred strategy).
- a. The SA describes at page 17 how *“the Local Plan Panel provided a clear steer in support of Growth Scenario C”* in July 2020;
 - b. It then states that *“consequently, in late 2020, AECOM completed an appraisal of the five broad growth scenarios – see Appendix III. In light of the appraisal, the Council (in discussion with AEPCM) [NOTE IS IT AECOM OR AEPCM] decided that, in addition to taking forward Scenario C (as per the Cabinet decision), there was also a need to give further consideration to scenarios involving: a more even distribution of LPR allocations across the two*

broad planning areas; and two strategic site options (one in each planning area), as per Scenario E.”.

36. That evidence in the SA confirms that SA has not been carried out throughout the plan-making process. Essentially, the Council took a decision and then, and only then, carried out an SA on the scenarios it had already selected.
37. Such an approach is completely contrary not only to national guidance on sustainability appraisal, but it is also unlawful as it is contrary to the Environmental Assessment of Plans and Programmes Regulations 2004, i.e. the Strategic Environmental Assessment Regulations (“the SEA Regulations”)
38. It is clear that the SA has not been integral to the development of this Plan. It has been carried out as an afterthought, to “tick the box” on the options already chosen by the Council in mid-2020.
39. The SA that was carried out (after the preferred option was selected) in any event reveals fundamental flaws in the evidence used to justify both the selection of the preferred strategy and inclusion of the TAO within it, for the reasons set out above.
40. In particular, as set out above there has been no reasonable assessment of alternatives to the TAO. This in itself constitutes a further legal flaw with the Plan and the SA that accompanies it.

(3) The Plan and in particular the development envisaged in the TAO is not deliverable.

41. A key requirement for the Plan to be found sound is that it has to be effective.
42. It is clear, not least for the reasons set out above in respect of the lack of evidence gathered to justify the inclusion of the TAO in the Plan, that development at the scale envisaged in the Plan in Teynham and Lynsted is not deliverable. More detail on the specific impacts that have not been assessed and the constraints to development to the TAO that render it unsuitable for development at this scale are set out in Section 5 below. However, for present purposes, this section focusses on the complete lack of any evidence or assessment that the infrastructure necessary to deliver the TAO will come forward.
43. As an initial point, LKPC has queried how the Plan could be deliverable with the Council and received a written response from the Council’s Chief Executive which shows that the

Council does not consider the Plan is deliverable. LKPC questioned how the Plan could be deliverable when there are no agreements with landowners, no transport modelling, no air quality modelling, no infrastructure planning, no agreement with KCC to a Joint Transport Strategy and no identified source of funding for the bypass. The answer it received from the Chief Executive suggested that the Council needed merely to identify “deliverable” sites for the first 5 years, and “developable” sites thereafter.² That betrays a fundamental misunderstanding of the requirements of the NPPF in respect of what a Plan should contain.

44. The Plan envisages a substantial bypass or relief road described as a “Southern Link Route” being required. It also envisages significant works to junctions on the A2. The Plan states at para. 5.5.47:

“Transport and mobility mitigation works will need to be developed for the A2 between Sittingbourne and Faversham. This will need to include A2 junction improvements, bus prioritisation schemes and the development of a dedicated cycle and pedestrian route from Sittingbourne to Faversham (via Teynham) as an alternative to the A2. Those with interests in developing sites across Teynham will need to work with Kent Highways and Swale Borough Council on transport and mobility mitigation and incorporating it into the masterplan”

45. There is no evidence at all that the provision of this significant additional highways infrastructure would be feasible. There is a wholesale absence of any feasibility studies (even if only initial studies) or any evidence as to the costs of these additional improvements (even if only indicative at this stage). This deficiency is exacerbated by the fact that the Swale Transport Strategy is “*currently in development*” (page 83). In the absence of that strategy, and in the absence of any evidence that the costs and feasibility of these highways and public transport schemes are feasible, it cannot possibly be argued that the proposals in the TAO are likely to be deliverable.
46. Worse than that, it is clear that KCC Highways have already expressed significant reservations on the implications of Local Plan growth along the A2 corridor between Teynham and Newington. As noted in the Council’s own Housing Delivery Test Action Plan July 2019 document,³ at the last Local Plan Examination Kent County Council Highways is on the record as having stated the following (see para.3.20):

² See Appendix 2

³ Appendix 3

“At the Local Plan Examination, Kent County Council Highways expressed concerns as to the implications of local plan growth for the local highway network, principally the A2 corridor between Teynham and Newington and at the Key Street and Groveburst junction on the A249. Highways England and Kent Highways confirmed that the growth identified in Bearing Fruits could be accepted in the short to medium terms to ensure that the five year housing supply was maintained, with appropriate interim mitigation, but with the suggestion than an early review should take place to deal with the post five year situation. This early review is already underway with new modelling being undertaken”.

47. If that is its position when the last Plan was adopted, it is hard to see how the position can be any different now in 2021.

(4) Lack of consultation

48. In April 2018 the Council published “Looking Ahead” the Reg 18 consultation⁴. Section 3 of “Looking Ahead” provided that *“...in Summer 2019, we will be publishing a statutory Issues and Options consultation document which will include a series of strategic spatial alternatives – these are the choices potentially available for addressing the amount and distribution of development across the Borough. These will be subjected to scrutiny and testing and we want to get as many early thoughts as possible on how we should be going about this next stage.”*
49. Section 5 (“What are the stages in preparing the next Local Plan”) of “Looking Ahead” references this “Issues and Options Consultation” (Regulation 18) as being planned for Summer 2019. The purposes of this Consultation was described as being *“To test and seek opinions on a series of alternatives for the distribution of development in the Borough. This stage may also include an initial indication of our preferred approach and an early draft of the new local plan”*.
50. The Council’s Final Statement of Community Involvement (“the SCI”) provides at 5.7 that the Council would be preparing and consulting on an issues and options document. At 5.8 the SCI sets out: *“Engagement will be carried out with all of our stakeholders and the general public prior to any Consultation at the issues and options stage of plan making. It will look to gather ideas on the issues, opportunities and challenges facing Swale.”*

⁴ <https://swale.objective.co.uk/portal/la/looking-ahead?pointId=4850459>

51. On 20th September 2018, the Council's Local Plan Panel ("the LPP") adopted the Local Development Scheme⁵ ("the LDS"). Appendix I to the LDS⁶ provided that the further Regulation consultation would take place between October-December 2019. This consultation did not take place.
52. Instead, the LPP met for an Extraordinary Meeting on 25th February 2020 where they were informed by the Local Plan Manager that the Council would not proceed to a further options and issues stage but proceed straight to Reg 19⁷. A revised LDS was adopted, removing reference to the Issues and Options Reg 18 Consultation.⁸
53. The LPP met on 19th January 2021 (another Extraordinary Meeting) and agreed the Local Plan Review pre-submission draft⁹ ("the PSD"). This included policy AO1 and the TAO. The PSD was accepted by the Council's Cabinet on 26th January 2021 and the Full Council approved the PSD on 3rd February 2021 (again via an Extraordinary Meeting).
54. Those affected by the Local Plan Review were clearly promised - from at least April 2018 - that there would be a second Reg 18 Consultation. This second Reg 18 Consultation was quietly dropped in February 2020 during an Extraordinary Meeting of the LPP. This is clearly a breach of the legitimate expectation that arose in respect of the promised second Reg. 18 Consultation¹⁰.
55. This Reg 19 Consultation is the first time that the TAO has been put forward for Consultation. It is not referenced at all in "Looking Ahead". It is the first and only time

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<https://services.swale.gov.uk/meetings/documents/g2034/Printed%20minutes%20Thursday%2020-Sep-2018%2019.00%20Local%20Plan%20Panel.pdf?T=1>

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<https://services.swale.gov.uk/meetings/documents/g2034/Public%20reports%20pack%20Thursday%2020-Sep-2018%2019.00%20Local%20Plan%20Panel.pdf?T=10>

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<https://services.swale.gov.uk/meetings/documents/g2284/Printed%20minutes%20Tuesday%2025-Feb-2020%2019.00%20Local%20Plan%20Panel.pdf?T=1>

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<https://services.swale.gov.uk/meetings/documents/s14065/Local%20Development%20Scheme.pdf>

⁹

<https://services.swale.gov.uk/meetings/documents/g2423/Printed%20minutes%20Tuesday%2019-Jan-2021%2019.00%20Local%20Plan%20Panel.pdf?T=1>

¹⁰ We are aware (not least from KCC's response to the PSD consultation) that this failure to deliver a second Reg.18 consultation is a point being raised by others in response to this consultation.

those affected by the Local Plan have had the opportunity to consider and comment on the proposal. The TAO, together with all other preferred options set out in the PSD, has been decided on without the promised and required level of community engagement and in very clear breach of s.19(3) of the Planning and Compulsory Purchase Act as the Council has not complied with its SCI by not producing, and consulting on, an issues and options document. There has been no opportunity for the local community to consider and shape the final options set out in the PSD.

56. The PSD presents to the Secretary of State a rushed and ill thought through Local Plan that has not been properly and lawfully consulted on. The Council appears to have acted in haste in order to put forward a PSD. LKPC's position is that no Plan is better than a bad Plan. This is a bad Plan. The risk of it being rejected by an Inspector following an examination is extremely high and as such the Council is exposing itself to significant reputational and costs risk (at a time when Council finances are under particularly high levels of stress and uncertainty).
57. Further, the Reg 19 Consultation is being undertaken (in haste) during a period of lockdown during the COVID-19 pandemic. The Council has recognised this by way of an Addendum to the SCI¹¹. However, in addition to curtailing the original Reg. 18 Consultation period, the PSD currently being consulted upon has not been subjected to any of the usual engagements expected during the preparation of Local Plans. Public exhibitions and roadshows have not been possible because of the lockdown. Opposition Councillors and Parish Councils have had to request attendance by Council officials at virtual meetings. Those officials have for the most part simply turned up to answer questions – no presentations or visual aids were prepared to assist those attending (or viewing) these virtual meetings in order to help them understand the proposals.
58. Further, the Addendum to the SCI makes it clear that the focus of the consultation will be via the Internet. Hard copies of the documents being consulted upon are not being made available unless requested, and initially a charge of £25 was to be levied. That was at the risk of those who are unable to access a computer, who cannot use a computer and/or cannot afford the cost of hard copy documents being excluded from this Consultation.

¹¹

<https://services.swale.gov.uk/assets/Planning%20Policy%202019/SCI%20Addendum%20COVID19%20February%202021.pdf>

The Council did not produce evidence that it had considered its duty under s.149 Equality Act 2010.

59. In respect of the £25 payment, it was only after urgent intervention by LKPC, Ward Councillors and residents that the Council disapplied the requirement of payment in respect of hard copy documents.
60. In respect of the Council's use of the Internet and virtual resources to set out the details of the pre-submission Plan - initially the Council failed to prepare any explanatory documents, on-line resources or attempt direct engagement using Social Media or Zoom/Skype tools. As with the issue surrounding the £25 payment, it was only after further public pressure that the Council made use of these tools.
61. Prior to the commencement of the Regulation 19 Consultation, the Council failed to engage at all with either Teynham or Lynsted with Kingsdown Parish Councils, despite the fact that the TAO would have a major adverse effect on the two Parishes. When challenged, the Council's Planning Officer claimed this was because of a "lack of resources". Initially it appeared that the only written communication announcing the Consultation to local residents planned by the Council comprised six sentences in the Spring edition of their newsletter 'Inside Swale'. It was only after a vote (narrowly carried) in Council that the Borough Council agreed to write to all residents. This was six weeks after the Reg 19 Consultation began. Even this letter was inadequate: it failed to mention the end date of the Consultation and failed to mention the proposal to build a Southern relief road through Lynsted.
62. Six weeks into the Consultation period three "interactive webinars" were arranged for Parish Councils¹². However, these were poorly publicised and we understand that attendance was therefore low. The Council failed to send out meeting links to Parish Councils unless they emailed in to request it. The Council's approach throughout has been one of 'passive discovery' as opposed to 'active engagement'.

¹² The Inspector should note that these events were planned at a time when the original six-weeks set aside for the consultation period would have expired.

63. Further, the Consultation is being run during the period of campaigning in the Local Elections. There is no material justification for the Council's rush of Reg 19 rather than wait until after the May 6th 2021 Local Elections before consulting on the PSD.
64. In closing, it is also right to draw attention to the fact that the Council's Consultation Portal is extremely "user unfriendly" and residents are finding it difficult to navigate and have been contacting the Parish Council for assistance. An example of this is contained within an email from a Parishioner to the Clerk of the Parish Council in which the Parishioner asks:

"Please can you forward a link to enable me to comment on the TAO proposals directly to SBC. Their website is a nightmare and I need a link that takes me straight to a page where I can type in my comments. Many thanks from a befuddled oldie!"

The Clerk provided advice, to which she received the following response:

"I am defeated! I was interrupted whilst registering and logging on and the email link to enable me to activate expired - since when I have been unable to access the portal!"

65. The Parish Council has retained screenshots from Social Media in which Parishioners complain about the difficulties they have faced in accessing the Consultation Portal. Clearly the way in which the Portal has been set up by the Council has been hindering consultees' ability to submit their comments on the PSD.

(5) Further reasons why the inclusion of the TAO in Policy AO1 is unsound

66. The specific impacts caused by the proposed development in the TAO are set out below.
67. However, as an overarching point, the inclusion of the TAO in Policy AO1 appears inconsistent with a number of other policies in the Plan. In particular, the identification of the TAO is not consistent with the following policies:
 - a. Policy ST2 and the settlement strategy, with Teynham referred to as a village service centre which will provide the "tertiary focus for growth". Policy ST5 states that development proposals will be steered to locations in accordance with Policy ST2 including "at Local Plan Allocations". That is entirely inconsistent with Policy AO1.
 - b. Policy DM 27. The Plan states (at 5.5.37) that "*Important Local Countryside Gaps ("ILCGs") have been identified between Teynham and Bapchild to the west and between*

Teynham and Lynsted to the south due to the role these areas play in providing a sense of separation between the villages, to safeguard the open and undeveloped character of the land and to prevent coalescence. These are shown in Policy DM 27.” Policy DM27 states that to retain the individual character and setting of settlements: “Within these gaps, unless allocated for development by the Local Plan, Planning Permission will not be granted for development that would undermine one or more of their purposes”. However, the TAO will result in precisely the sort of coalescence that Policy DM27 is intended to prevent.

Failure to consider the evidence and outcome of the LGS call for sites

68. On 4 August 2020 the Council issued a call for sites for Local Green Spaces expressly referring to the review of the Local Plan creating an opportunity to identify potential LGS designations.
69. However, after the Local Green Space submissions had been received by SBC in response to that call for sites, LKPC understood from Minutes of an October SBC meeting that they had been overwhelmed by the number of Local Green Spaces proposed by Parish Councils and that they would not be able to process the LGS proposed sites and consider them prior to the Plan being published under Reg 19. So, the 2020 LGS information has simply not been used to inform the Local Plan. A report with the decisions on LGS designations was not published until February 2021.
70. That approach is clearly unsound. The Local Plan has clearly not been prepared on the basis of evidence that the Council itself had called for.

Coalescence

71. The proposed Sites are the embodiment of “coalescence”. If permitted, the new “estate block” will utterly destroy the unique sense of space and historic patterns of development of the communities along Lynsted Lane as well as the A2. Those communities will lose their relationship with BMV agricultural land that dictated a pattern of “one building deep”. The importance of that relationship is conceded around Lynsted Village but forgotten when assessing development south of the A2. The addition of 50 new homes behind the Dover Castle pub with its connection to the very hazardous A2 junction would break the one-building deep pattern in a distinct historical community that contains ten listed buildings.

Air Quality.

72. The proposals within AO1 and the TAO present a real issue for air quality within the Parish and beyond. The strip of the A2 London Road that forms the border between Lynsted and Teynham Parishes falls within an Air Quality Management Area, that has been in place since 2016 – the Teynham AQMA No.5 (“AQMA5”). It sits between two other AQMAs – AQMA 3 and 6 – along the same road. The A2 London Road is the main link between Faversham and Sittingbourne, the two nearest and biggest commuter and shopping centres. AO1 envisages the development of 1,100 homes. Given the location of the settlement (rural countryside) it is highly likely that the residents of this substantial new housing development will depend heavily on cars, particularly in view of inadequate local rail and bus services. In turn, the ease of commuting via the A2 onto the M2 and into London, and to the local commuter rail stations and centres of Faversham and Sittingbourne, will inevitably lead to an increase in road traffic (discussed later in this response) and an inevitable increase in air pollution within areas already recognised to be problematic.
73. It should be noted that any air quality measurements made since March 2020 will need to be considered in the light of the fact that there was a significant fall in traffic due to the lock down measures put in place over the past year.
74. Air quality is a very real and very public concern that needs to be considered in respect of AO1 and it does not appear that the Council has properly assessed the potential impact on the air quality within the locality and beyond. The Parish Council is of the view that the Council’s data on air quality is unreliable. There is a failure to measure Particulate Matter (“PM”) in AQMA5. The Council uses diffusion tubes to measure NO2 within AQMA5 and 3. Only a single tube is used in AQMA5 – raising doubts as to the accuracy of the data being obtained. Greater accuracy can be obtained through the use of multiple tubes.
75. In any event, these diffusion tubes only measure the monthly NO2 pollution to determine an annual mean pollution figure. AQMA6 has the ability to be continually monitored. However, there are proposals to move the monitoring site in AQMA6 to a more optimal and representative site. As such the historic (and current) data from AQMA6 (although continually monitored) is clearly inaccurate.
76. The Parish Council also understands that the Council has never tried to engage with accurate and adequate monitoring of PM2.5, which remains suspended in the air and

recirculated for longer than most other harmful particulates. As such, it is one of the most harmful pollutants and is expected to rise within the locality (and certainly significantly if the TAO is brought forward).

77. In all due to insufficient and inaccurate monitoring methods, the data that is available to the Council is insufficient to provide a robust evidence base to consider the very real impact that development of the TAO presents to air quality. To suggest that pollution levels in Teynham are falling is almost comical in the way it is asserted without any robust evidence and the Council's own modelling contradicts this.
78. Indeed, Table 9:1 of the Air Quality Modelling Report demonstrates that by 2037, the air quality at Teynham (99 London Road) will have worsened – and this is, in the Parish Council's view, calculated using a poor evidence base.
79. CPRE, KCC and Mid Kent Environmental Health frequently raise concerns about air quality within the local area in response to planning applications, so the Council is well aware of the impact smaller scale (albeit some for development of over 80 houses) development potentially has on local air quality. It is surprising, therefore, that the Council appears to have produced or commissioned very little evidence by way of air quality studies in order to justify the inclusion of TAO in the PSD as being a sustainable option. Whilst progress is clearly being made in respect of air quality within the AQMAs, the development of the TAO poses a real set-back and possible further, greater, exceedance of NO₂ levels within the local area. Potentially there will be a need to declare further AQMAs if the TAO is developed.
80. Poor air quality within the locality is inextricably linked to traffic issues that the TAO presents. Paragraph 181 of the NPPF is very clear about the way in which the Council should be taking into account AQMAs and the cumulative impact from individual sites and looking to improve air quality. It is not clear that this has been considered by the Council in putting forward the PSD for consultation – given the proposals within it suggest an approach that would significantly worsen air quality within the Borough.
81. At the time of finalising this representation, we became aware of KCC's submission in response to the PSD. We note that it has raised the concern that in respect of the link road to the South of Teynham:

“...no details have been provided within the consultation as to its location. The Local Plan Review consultation is also not presenting any evidence as to how this would affect the traffic along the A2. The existing Air Quality Management Area (AQMA) in the centre of the village, and past modelling evidence presented to the Local Plan Panel and within planning applications, clearly demonstrate substantial traffic related concerns regarding air quality, safety and congestion both on the A2 and for the Station Road and Lynsted Lane junctions.

Whilst there is no evidence presented to support the proposal, it can reasonably be assumed that a link road for through traffic would facilitate increased flows of vehicular traffic along the A2 corridor. In turn, this would be expected to have considerable detrimental impacts of congestion and poor air quality particularly for the communities of Bapchild and Ospringe, two of the A2’s other AQMAs. The evidence presented in the submitted Air Quality document demonstrates that the AQMAs with the most detrimental impact for both NO2 and PM10 are at Ospringe, Teynham and East Street. The air quality modelling report uses the 1054 transport model that would appear to have considerably less housing allocated in the village of Teynham than is proposed within this Regulation 19 Consultation. As such, it can only be assumed that the air quality data is not providing a true reflection of the traffic related air quality levels for the housing strategy proposed.

The proposals in this chapter appear to promote private vehicular use and overall, are in contrast to policies ST 7, 4 and 9 in respect of promoting active travel, public transport and addressing air quality concerns.”

Traffic

82. Traffic counts based on Teynham alone demonstrate an average of around 14,000 vehicles in 2019 passing through the area (largely thanks to the A2) per day. This is estimated to grow to 19,000+. As set out above, the appeal of using private motor vehicles to commute via the A2 is of concern in respect of residential development within the area. This does not appear to have been sufficiently considered by the Council in its preferred option for the TAO. Indeed, at 5.5.18 of the PSD the Council simply floats the idea of a comprehensive strategy in respect of the impact of private vehicles – it does not appear to have undertaken much by way of investigation into this issue in drafting the PSD.
83. The area that will be affected by the development of the TAO already suffers from difficulties with traffic. Traffic is heavy during commuting hours, quiet on a Sunday and can be seasonal. During the day there are peak times for commuting and school runs and then a constant flow of traffic throughout the day as people visit shops, each other and deliveries are made.
84. Traffic can become easily and quickly congested through the existing infrastructure within the area proposed for the TAO and beyond. The narrow lanes can be easily blocked with traffic due to parked cars, deliveries, bus stops, HGVs, cyclists (often using pavements as a

result) and agricultural vehicles, as well as the effects of junctions on slowing down traffic and traffic lights and pedestrian crossings. Further, being so close to the M2, accidents and maintenance works can lead to all sizes of vehicles diverting along the A2 causing congestion, noise and air pollution. Seasonal agricultural vehicles (harvesters, tractors and trailers) also have detrimental effects on traffic flow.

85. Barrow Green Farm, Teynham is promoted by KCC for the extraction of brickearth. In 2012, KCC consulted on minerals and waste sites and identified a 25 year supply of brickearth at Barrow Farm¹³. The sustainability appraisal provided in respect of Barrow Green Farm as part of that consultation sets out that:

"This site is proposed for brickearth extraction and will be restored to agricultural use. The mineral would be transported by lorry via the A2 to its end use location. Approximately 200 daily lorry movements are proposed and their impact on nearby residential properties will need to be considered..."

86. It should, of course, be noted that traffic flow can have a further adverse effect on air quality. Slow moving traffic burns fuel for longer and with less efficiency. Particles of rubber and brake pads and discs are released through repeated braking and with wear over tarmac. The most harmful components are PM2.5 friction particles that are readily recirculated and captured in narrowly built "canyons" within the TAO along the A2. The Council's lack of analysis of this particulate are discussed earlier in this representation.
87. The Council's "Highway Model" seems to be light touch and does not specifically address the TAO development. It is noted that the conclusion to that document suggests that a good *"..understanding of the model strengths and weakness was obtained which will help SBC to enhance the model platform/application in the future"*. From this closing statement, it appears that the document is more about evaluating the method, rather than the effect of the increased traffic posed by the proposals in the SDP.
88. We note that KCC in their response to the Reg. 19 consultation have stated that it is

"...concerned that the consultation is missing critical highway evidence to justify the Local Plan strategy and as a consequence the Local Plan is currently supported by an inaccurate evidence base. There are fundamental changes from the modelling used as evidence for the Local Plan and the housing proposals within this

¹³

https://consult.kent.gov.uk/portal/sites_plans_2012/supplementary_sites/site_options?pointId=1318325837080

Regulation 19 Consultation. Specifically, the housing numbers are higher in the Teynham area, greater levels of employment land and a reliance on a design solution for Brenley Corner that cannot at this stage be relied upon. The County Council, as Local Highway Authority, requires further supporting transport modelling that accurately reflects the proposed housing and employment strategy as presented before it can make a fully informed comment on the proposals. KCC is seeking to continue working with the Borough Council over the coming months on the provision of accurate modelling and commensurate and viable mitigation such that would move the proposed plan from its currently unjustifiable position.”

Landscape impact.

89. LKPC questions the soundness of the SBC Landscape Sensitivity Assessment carried out in 2018. It is clear to LKPC that the picturesque nature of the Borough (and indeed locally to Lynsted and Teynham) is one of the key appeals of the area to tourism (particularly sustainable tourism) and helps to ensure that the local area and local business can attract revenue from tourism. To destroy the character of the area, in the way that appears to be proposed in the PSD, will have a detrimental effect on this revenue stream for the local community. The area should not be as undervalued as it appears to be from the PSD and care needs to be taken to preserve, and enhance, the attraction and character of the open countryside within the Borough and particularly within the area of concern to LKPC. By way of example, it is clear that the TAO and associated bypass will play havoc with the existing network of footpaths and the openness of views that are real tourist attractions.

Loss of BMV / agricultural land.

90. The loss of BMV land in the TAO has not been properly considered or assessed. Paragraph 170 of the NPPF states that:

Planning policies and decisions should contribute to and enhance the natural and local environment by:

- (a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*
- (b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;*

91. SBC's Agricultural Land Classification Report dated Code 2011/133/9414, describes detailed research that was done on the land south of Teynham (Site DD). Approximately 47 hectares of land relating to the then SBC Local Plan was surveyed in 1994. A total of 41 borings and 2 soil inspection pits were assessed in accordance with MAFF's revised guidelines. The findings show that the dominant grading of agricultural land was Grade 1 (excellent). 78.4% of the Agricultural Area of the site surveyed was rated as the Grade 1 agricultural land. The remaining agricultural land was almost all Grade 2, 21.4%. The conclusion was that the vast majority of land surveyed south of the A2 (LKPC Parish) was then and still does constitute excellent or very good agricultural land. 'Best and most versatile' (BMV) agricultural land is defined as Grades 1, 2, and 3a agricultural land by policy guidance (the Agricultural Land Classification - ALC) (DCLG, 2012).¹⁴ BMV agricultural land is therefore threatened by the Teynham Area of Opportunity. The potential sites of both housing and/or a 'movement corridor/bypass' within the TAO would result in loss of BMV land.
92. Nowhere has this impact been properly assessed or considered by the Council in reaching its decision to include the TAO in the local plan.

(6) Conclusion

93. For the reasons set out in this Representation, the Parish Council does not consider the Draft Local Plan to be sound and as such it should be rejected in its entirety. It is based largely on a flawed and insufficient evidence base, there has been a real lack of meaningful consultation and engagement by the Council and has the feel of a Plan that has been "thrown together" at the last possible moment before submission for examination.
94. The strategy put forward by the Council in the PSD presents proposals that should be considered to do more harm than good within the Borough.

Knights Solicitors

29th April 2021

¹⁴ Publications, Natural England: Agricultural Land Classification Report, Swale Borough Local Plan, Land south of Teynham (Site DD) 2011_133_94_REPORTS.pdf

¹⁵ <http://archive.swale.gov.uk/assets/Planning-General/Planning-Policy/Evidence-Base/Local-Plan-2014/Further-evidence-2015/Agricultural-Land-Value-SBCPS0888.pdf>