

OBJECTION TO 19/505036/OUT | Outline application for the erection of up to 86no. residential dwellings, including 50% affordable housing (Access being Sought). Land South Of London Road Teynham Kent ME9 9QJ

Submitted by Resident: Nigel Heriz-Smith, Woodthorpe Cottage, 138 London Road, Lynsted, ME9 9QH. 22nd October 2019

Although this proposal primarily to seeks access to the site, para 3.1.1 clearly states this is an outline planning proposal for 86 houses. It is clear that we need to comment on this ultimate aim. I have studied this proposal in depth and my detailed comments are listed below.

Developer's Conclusions

Firstly I address the "conclusions" found in the Planning Statement written by DHA Planning (DHA) for M Scott Properties Ltd (MSP). It concludes:

- The development site is "sustainable" as it is adjacent to the built area of Teynham. (6.1.1).
 - To understand whether this proposal is "sustainable" because of its proximity to Teynham, you have to consider how the new population would take advantage of the goods and services along the A2 and in the centre of Teynham – namely, primary school, shops on the A2 and by the Station, public transport (road and rail), the last remaining GP Surgery (we have lost one recently), dentist, etc. It is pure fiction to claim "sustainability" when access to Teynham resources conflicts with road use, road layout, patterns of natural behaviour, etc.
 - This Proposal argues that it will erect signage that is often referred to in law as a "wooden lie" – an unenforceable edict "no pedestrian access" through the proposed access point. KCC, in commenting on 16/506237/OUT, made it abundantly clear that the 'natural route' for pedestrians would be through this access, which brings pedestrians into conflict with vehicles both on-site and along Lynsted Lane! This goes against all logic in terms of the "real world" that the developers seem intent on ignoring.
- The "indicative" build of 86 dwellings "optimises the site's capacity" that "enhances the character of Teynham and its immediate locality". (6.1.2).

However, I should remind SBC:

- **The best evidence of what constitutes 'optimal use of this site'** is provided by the Developers themselves in 16/506237/OUT. This was submitted only three years ago (2016) with an Outline Proposal for 120 dwellings.
- **The indicative figure of 86 dwellings** is not binding and represents **poor** build density in planning terms. It is more than likely that SBC Officials will be obliged to point this out, if they have not already done so in meetings between SBC and MSP.
 - The "indication" of 86 dwellings is a cynical ploy intended to allow a 'reboot' of the withdrawn 2016 Proposal in the hope that this will

lead SBC to “approve without delay” access into Lynsted Lane and, by implication, approve the opening gambit of development “to 86 dwellings”. If the first “hurdle” of “access” is cleared, it will be open to the developers to find ‘common cause’ with SBC Planners by increasing the density of development and invite additional developments in the surrounding Grade 1 agricultural land between Lynsted Lane and Claxfield Lane south to Batteries Close.

- **Lynsted with Kingsdown Parish Design Statement (LKPDS)**. This Proposal contradicts the democratically defined view of Parishioners in Lynsted with Kingsdown Parish regarding the “sensitive edge”.

The LKPDS was agreed with, endorsed and adopted by SBC at the time bringing it into the Planning process. The LKPDS defines the character of the Parish based on existing patterns of linear development and land use in the Parish and the economic and amenity value of the Grade 1 agricultural land south of the A2. Loss of that land, with the potential for arguments seeking further adjacent development plots, will degrade the amenity enjoyment of people from Teynham Parish too.

Introducing a new estate of 86 (or more) dwellings **absolutely does not “enhance the character of Teynham and its immediate locality.”**

The LKPDS is a definitive example of Community Participation that is being promoted by the ***new administration in Swale Borough Council***. Summary rejection of the current proposal by Councillors will be a *litmus test* of their desire to engage with local communities in their deliberations.

- **Paragraph 6.1.4**. The proposal argues that SBC cannot reject the application because SBC has not demonstrated a five-year supply of housing land. The Proposal thereby seeks to side-step due process within SBC (Officials and Councillors). This argumentation seeks to overturn the governing principles found in NPPF(2019) regarding precedence, responsibilities and the presumption of Planning Authority’s guardianship against “cumulative impact” arising from declared AQMAs. The onus is on SBC to protect its population (residents, visitors and workers) against harmful pollution – the subject of the five AQMAs in Swale Borough.

- **The developers (and SBC Officials) cannot simply duck the existence of the current Borough Plan which very clearly excludes housing development to the south of the A2 in the Parish of Lynsted with Kingsdown**. The unsuitability of this plot was reinforced in the Statutory Consultee responses to the 2016 Outline Proposal.

“Build out” of current approvals under the Borough Plan is progressing and presents this Proposal with another issue – the cumulative impact of existing approvals on the five AQMAs in the Borough – particularly, AQMA3, AQMA5, and AQMA6/2 that sit astride the ‘closed system’ of the A2 between Ospringe and Sittingbourne and the impact arising from this out-of-scale proposal that will feed onto Lynsted Lane as currently defined.

- **“Prematurity”**: This Proposal seeks to ‘void’ NPPF(2019) Paragraph 49 that argues against “pre-emptive strikes” against due planning processes that are

advanced and in train.

“Para 49. However in the context of the Framework – and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than in the limited circumstances where both:

a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and

b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.”

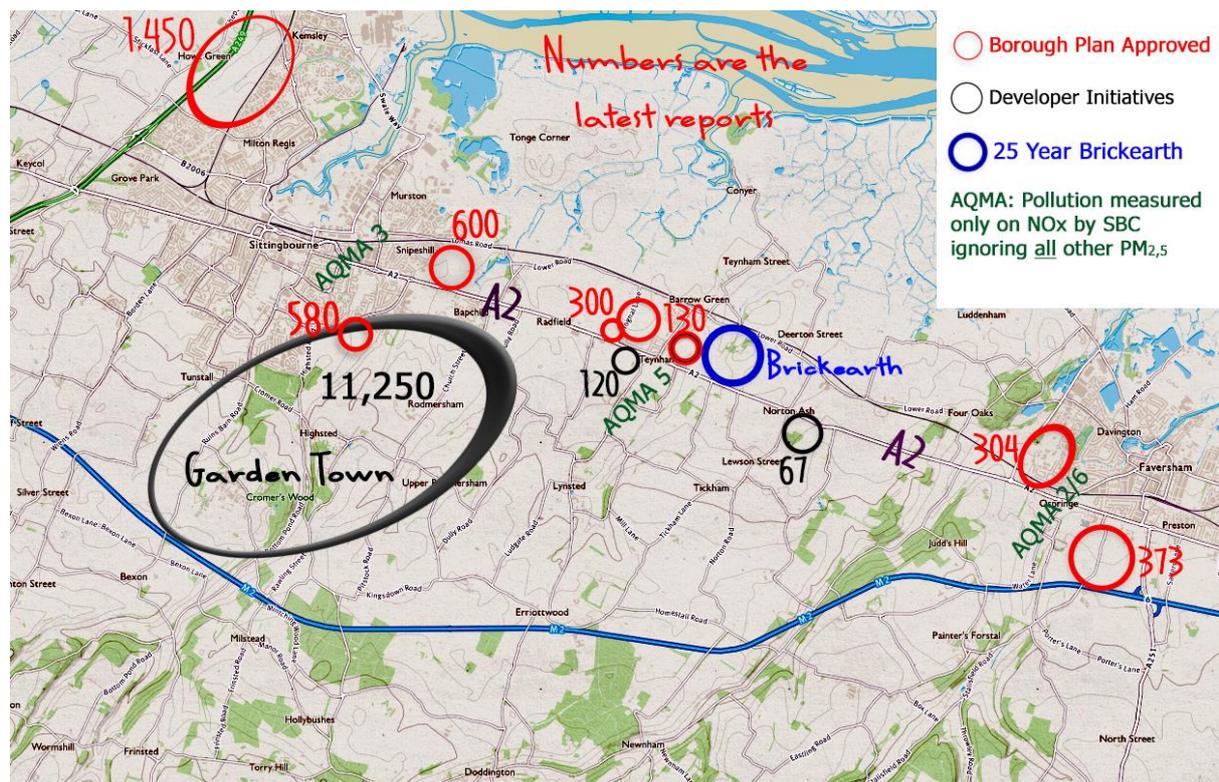
- **(a) In this case, there already exists a Borough Plan and ‘due process’ has been entered into by SBC to negotiate the elevation of housing numbers. This in no way invalidates the Borough Plan as it stands.**
- **(b) Neither the Developers, nor SBC, can argue the absence of a properly constituted Borough Plan. What is in hand is a discussion with the Planning Inspectorate on further increases – there is no question that the Borough Plan is invalid or in suspension subject to those discussions.**
- **If SBC were to permit this application outside the Borough Plan adjacent to one AQMA and feeding into the ‘bracketing’ AQMAs of Sittingbourne and Ospringe. SBC will be open to legal challenge (see below).**
- **Legal Framework governing interpretation and application of NPPF(2019) where AQMAs are implicated.** The attempt by DHA to minimise the impact of pollution and, by extension, dismiss “cumulative impact” must fail. I refer to the Court of Appeal judgement of 12th September 2019 [Gladman Developments Ltd. vs Secretary of State for Communities and Local Government (First Respondent), Swale Borough Council (Second Respondent), and CPRE Kent (Third Respondent)]. From that judgement, amongst other decisions, you may wish to visit **Paragraph 45 regarding Paragraph 122 NPPF 2019:** Paragraph 122 NPPF was not engaged by reference to the UK Government’s obligations under the Air Quality Directive. Paragraph 122 NPPF "*was directed to situations where some proposed process or operation liable to cause pollution is subject to control under another regulatory regime ... its purpose was to avoid needless duplication between two schemes of statutory control*". That was not the case with the national air quality regime.

SBC Officials and Councillors need not be reminded that developments outside an existing and valid Borough Plan are not subject to arguments amounting to ‘*force majeure*’ as implied by the Applicant in their **paragraph 6.1.4**. The Borough Plan is a valid instrument and continues in force even if there are discussions around future (uncertain) levels of additional development. Any potential amendments to targets

are under due process that must not be allowed to be pre-empted by opportunistic proposals such as the one confronting us in this proposal.

Because of ill-advised decisions to approve major developments and mineral extraction along the A2, the current measures of harm can only become worse as the Borough Plan approvals loom up before us alongside several other opportunistic bids like this one.

http://aqma5.co.uk/assets/MAP_OF_A2_PRESSURE.png – Update Note. This map is illustrative and includes the opportunistic proposal south of the A2 as it stood (120 dwellings) until this new Outline Proposal that contains an “indicative” 86 dwellings. It also places the idea of a ‘Garden Town’ comprising 11,250 dwellings that appears to be on hold for now.



Paragraph 6.1.8. The Developers wish to overturn the enjoyment of the Private Right of Way (PROW) attached to the two dwellings set back from the A2 in line with the “coffin path” and other dwellings in the “immediate locality” without making it plain who this might apply to and how they think it might be enforced. That coercive assertion of “access” over private land is high-handed and intended to open the way to direct access from the new development to the A2 against all current highways policies. Any such assumption should be resisted by SBC and KCC.

The Body of the Proposal

Turning to the body of this Proposal:

Para2.3.2 omits the Station Road development (130 dwellings) and 25-year brickearth extraction as material to the impact locally on congestions and resultant pollution as well as hazards to pedestrians and cyclists.

Para 3.3.2 says there was a meeting held with SBC on 4 November 2018. One year on they are now behind the curve of current thinking – scientific, legal and political. Swale Borough has a new administration that has different attitudes to pollution and inappropriate off-plan proposals. The Court of Appeal case referenced elsewhere in this document alters entirely the degree to which SBC and developers must address “cumulative impacts” and the lame attempts to “mitigate” impacts in a way that does not address the way pollution is experienced – direct absorption of pollutants at the kerbside. Planting trees or expanding junctions with the A249 will have no direct impact on the way pollution is experienced and damage caused.

Para 3.4.2 talks about a Facebook poll that no one knew about and disenfranchised those who are not on Facebook. The question asked was would you be interested in “an affordable home in Teynham”. Lynsted Parish was not referenced at all in that question so cannot be introduced in support of this Outline Proposal in the Parish of Lynsted with Kingsdown. In voting, the phraseology can only be interpreted as endorsement of the 52 affordable dwellings (Station Road development) and 72 affordable dwellings (Frognal Lane development). They might as well have been asked to vote for Christmas – as presented, the question is too vague to be helpful in the serious matter of democratic engagement that this Proposal implies it has met! **If they were serious about community involvement, the developers should have put a better question into the parish newsletters for each separate parish.**

Para 5.2.1 “the site lies outside of the village confines of Teynham” It’s so far out of the confines of Teynham that it is actually a different community with its own patterns of development and governance!!!! In fact, through the entire document the application gives reference only to what the Local Plan says about Teynham and disregards the neighbouring Parish and its inhabitants and businesses on the northern edge of Lynsted with Kingsdown Parish (including Lynsted Lane, Cellar Hill and Claxfield Lane).

Para 5.4.9 “the development would be viewed wholly within the context of the existing Teynham built up area” – This paragraph **alone** emphasises how little regard is being given to the character of the Parish and residents that sit in Lynsted with Kingsdown. The site is largely invisible to parishioners of Teynham but has been identified in Supplementary Planning Guidance (Lynsted with Kingsdown Parish Design Statement) as a “sensitive edge” that must be retained to protect the character and pattern of development found in Lynsted with Kingsdown Parish.

Paragraph 5.5. Impact upon the Character and Appearance of the Area.

The Proposal is carefully crafted to align the proposed development as a ‘natural extension’ of the built-up area of Teynham rather than an incursion into the rural Parish of Lynsted with Kingsdown. The barrier of the A2 London Road determines the edge of the built-up area of Teynham. The historic pattern of development along London Road to the south is entirely independent of the village of Teynham. The southern edge of London Road is predominantly one building deep to preserve the agricultural use of highest-grade and fertile land to the south of the A2 – this is not typical of Teynham as argued by the Proposal.

The Parish Design Statement for the Parish of Lynsted with Kingsdown determines (with SBC agreement and endorsement) as a “sensitive edge” in the context of historical patterns of development and local character of the Parish.

It is relevant to note that the proposed loss of open countryside as an amenity will adversely affect Teynham Parishioners.

The Parish Design Statement already mentioned (above) has been introduced by SBC in its own consideration of planning proposals under the heading of “Policy and Other Considerations”. SBC also continues to acknowledge the importance of this as a “Supplementary Planning Document” and can be inspected using their link - <https://www.swale.gov.uk/assets/Planning-Forms-and-Leaflets/Lynsted-Design-Statement-reduced-size.pdf> or <http://www.lynsted-society.co.uk/Library/Books/Lynsted-Design-Statement-reduced-size.pdf>.

Pollution levels and AQMA5 (and AQMA3 and AQMA 6/2 by extension)

The Proposal seeks to argue that this ‘out of scale’ development in the Parish of Lynsted with Kingsdown will have no impact on the levels of pollution along the AQMA5 and the whole built-up area along the A2. That is simply nonsense whether the development comprises the “indicative” 86 dwellings or 120 dwellings (previously argued in 2016 as the optimum use of this plot).

Para 5.13.1. The proposal seeks to diminish the significance of the Proposal for AQMA5 by reference to a “Pre-assessment discussion ... undertaken with the Environmental Protection Team of Swale Borough Council as requested, **to agree** the scope of the Air Quality Assessment submitted with this application.”

Para 5.13.2. Regarding the legacy of vehicle movements and additional pollution after construction is complete, the Proposal explicitly states: “There is also predicted to be a neutral impact/insignificant effect on air quality from the road vehicle emissions and as such it is not considered that air quality represents a material consideration to the development proposal.” The assertion defies logic and immediately makes the Proposal vulnerable to the test of “cumulative impact” stipulated in 2019 NPPF as reinforced by the *Court of Appeal on 12th September 2019.*

Paragraph 5.13.3. Concedes further that there is an impact on pollution by suggesting their willingness to “make a financial contribution(s) towards highway mitigation measures that would improve the free flow of traffic through the village centre.” This **admission** specifically opens the development proposal vulnerable to:

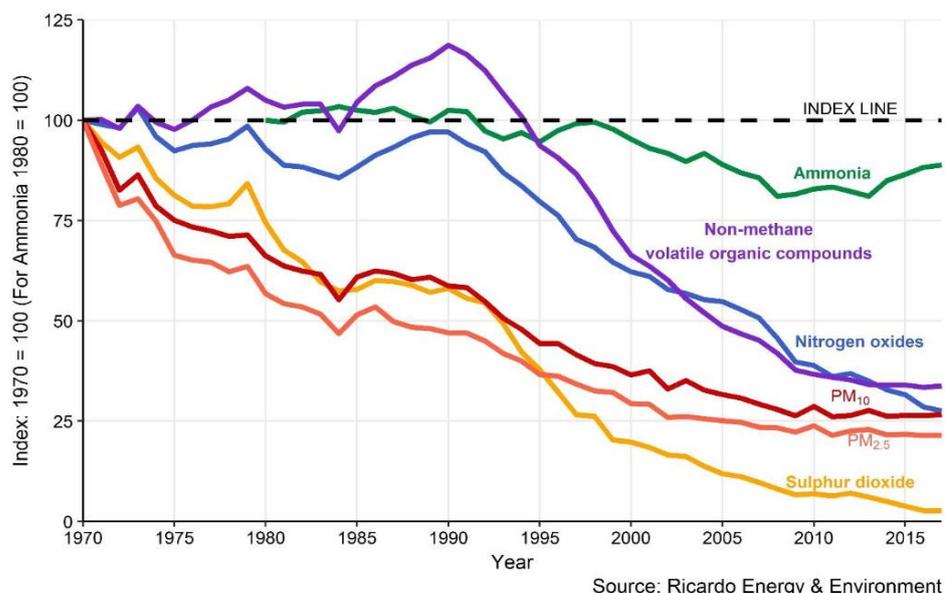
- **Para. 77 of the Court of Appeal Judgement** - As the essential purpose of the air quality action plans is to improve air quality in the Air Quality Management Areas development which was likely to worsen air quality in a material way was inevitably inconsistent with the relevant Air Quality Plans.
- **Para. 52 of the Court of Appeal Judgement.** As to the DEFRA damage-cost analysis: “[i]t was not the methodology that was in contention. It was the likely effectiveness of the financial contributions themselves when translated into practical measures”.

The Proposal from DHA Planning (DHA) on behalf of M Scott Properties Ltd (MSP) fails to establish that **any** financial contribution will diminish pollution harms along the built area in and around AQMA5.

Real-world measurement of pollution along the A2

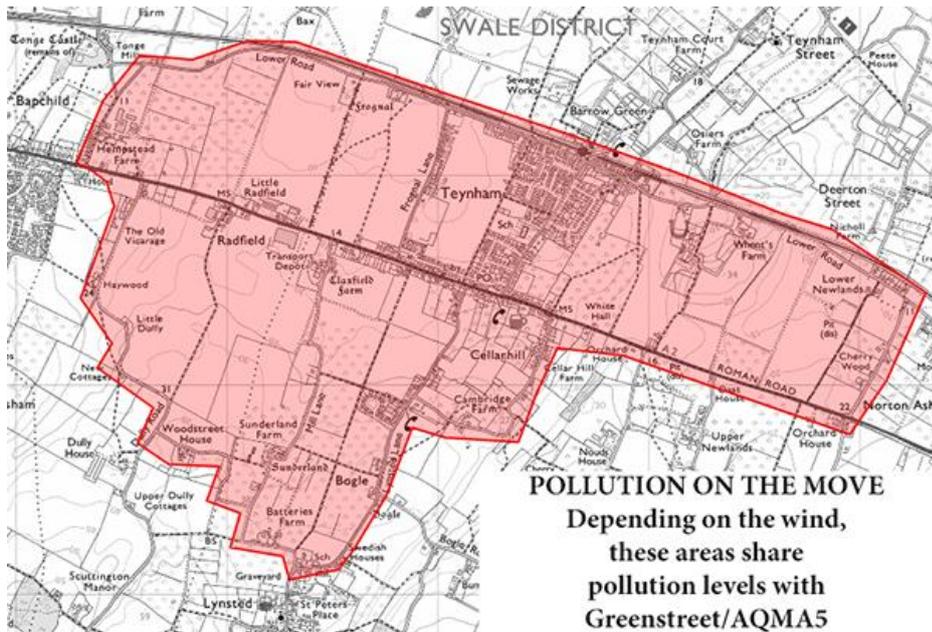
- **Metrics.** SBC data on pollution is crude, misleading and incomplete in AQMA5.
 - **Crude.** SBC relies on the notoriously inaccurate measurement of NOx through “diffusion tubes”. Until recently, those diffusion tubes were far above head height – SBC acknowledged their error and lowered the diffusion tubes. On 5th May this year, I undertook a survey at random of SBC diffusion tubes only to find 50% of diffusion tubes were not in place!
 - **Misleading.** SBC’s use of diffusion tubes is insensitive to “exceedances” in the categories of “High” (harmful if experienced for more than 24-hours) and Very High and higher (harmful if experienced for more than one hour).
 - **Incomplete.** SBC fails to make any efforts to measure the most harmful pollutants – particulate matter at both PM10 and PM2.5. Particulate Matter, especially at PM2.5 dimensions is particularly intractable and harmful **at any level**.
- **Pollution Mix and Direction of Travel.** In recent years, traffic volumes have been increasing – this is slowing the rate of decline in NOx experienced at the roadside - the gains from ‘low-hanging fruit’ such as closure of coal-fired power generation have run their course. Increases in the number of vehicles along this part of the A2 have been recorded by the Department of Transport and all projections at a national level confirm the number of vehicles will continue to grow.

Figure 1: Trends in annual emissions of sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and particulate matter (PM₁₀, PM_{2.5}) in the UK: 1970 – 2017



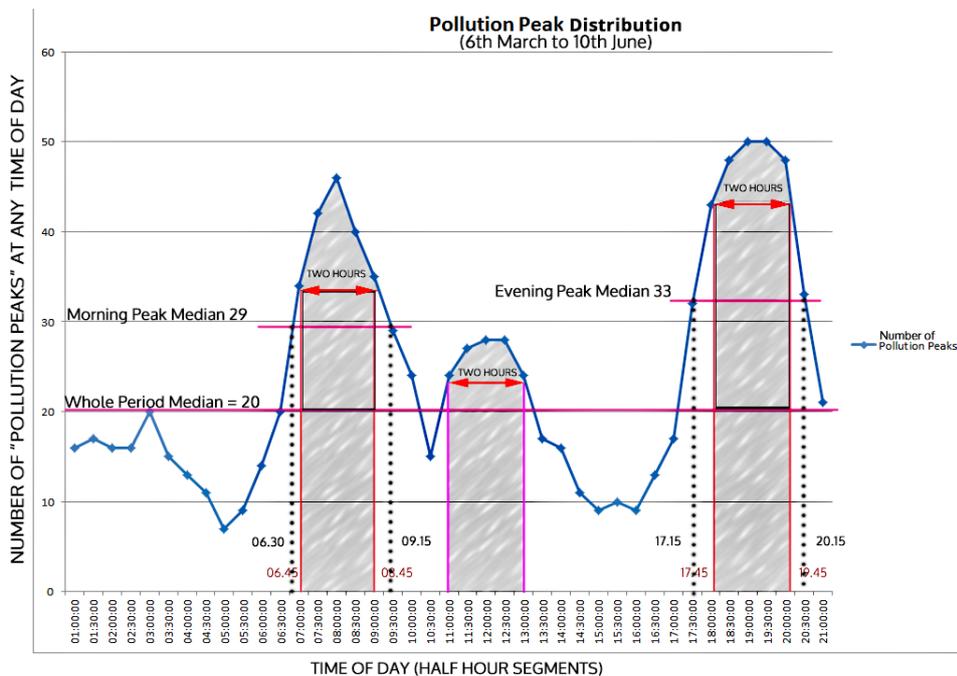
The index line is a comparator that shows the level of emissions if they had remained constant from the beginning of the time series.

- **Traffic Growth.** With increases in vehicle numbers, the level of harmful Particulates (PM10 and PM2.5) will increase even further through combustion (soot from both petrol and diesel), friction (brakes pads and disks) and abrasion (tyre and road surface compounds and minerals). Soot (PM2.5) also 'sticks' to Volatile Organic Compounds that are penetrating internal organs by migrating across lung membranes.
- **Real-time measurements of key pollutants.** The built-up part of London Road (A2) that contains AQMA5 has reached harmful levels of the three key harmful pollutants identified by the Government, EU, and World Health Organisation – PM10, PM2.5 and NOx. Measurements have been made for the three key pollutants along the A2 and down surrounding lanes using the W.H.O. categories of Moderate (harmful if experienced for periods of one year), High (harmful if experiences for periods of 24-hours) and Very High and above (harmful if experienced for periods of one hour). The results have been published to http://aqma5.co.uk/Pollution_Diary.html
 - **The data is collected in real-time using a Plume Labs “Flow” device** which automatically uploads that data to Plume Labs servers – this places the data beyond prejudicial manipulation. The burden of acute levels of pollution is ingested at pavement level, in dwellings and gardens along both sides of the A2 in Teynham and Lynsted and now we have real-time mapping data (see below) that establishes the principal that levels of harmful pollution experienced in AQMA5 frequently spreads as far as the Lower Road in Teynham and south towards the village of Lynsted. The direction of pollution is subject to wind direction and strength.
 - **Spread of harmful pollution at the levels measured in AQMA5 and along the A2.** I carry the “Flow” device when walking or jogging along the A2 and down local lanes. The data submitted to Plume Labs servers generate real-time maps that fully illustrate the spread of harmful levels of pollution at the same level as we experience along the A2. No amount of 'sympathetic planting' breaks the link of intense pollution at the roadside along the full length of the built-up area of the A2 and as hundreds of metres north and south. Taking all measurements into account, this map illustrates how the surrounding populations experience similar levels of pollution to those living and working along the A2/AQMA5. See, <http://aqma5.co.uk/index.html>



- Understanding Variability and Distribution of pollutants and harm experienced in real-time.**
 - From *continuous measurements* taken between 6th March 2019 and 10th June 2019 it is clear that the distribution of peaks in pollution occur between 06.30am - 09.15am, 11.00am – 13.00pm, and 17.15pm – 20.15pm. There is also a ‘mini peak’ on the A2 at 15.30pm that coincides with school runs.

<http://agma5.co.uk/Measurements - Peak Pollution Risks.html>



See **Appendix 1** of this document for examples of “exceedances” in pollutants considered the most harmful by our Government – especially particulate matter at PM2.5 and PM10.

Conclusion

This proposal is entirely predicated on an assertion that the proposed development is an extension of Teynham, without ever acknowledging that the impact will be in the neighbouring Parish where entirely different principles have defined the relationship between “Greenstreet” and its agricultural hinterland. The historic community of Greenstreet along the A2, Cellar Hill and Lynsted Lane evolved as a single-dwelling deep ribbon along a coaching route with housing serving what was a predominantly agricultural economy – this was the natural definition along the London Road.

Teynham as an entity, in contrast, evolved as a large industrial village to the north of London Road primarily around Frognal Lane, Station Road and Barrow Green. In the 20th Century a major development took place to create today’s idea of “Teynham”.

At all times, the A2 has acted as a natural barrier to development serving the interest of “Teynham” – **none** of the features now accepted as defining “Teynham” has extended south of the A2. The built environment along the southern edge of the A2 is much more closely allied to the characteristics of the Parish of Lynsted with Kingsdown that can be found in the Parish Design Statement. That design statement emphasises the importance of “one building deep” that protects the high-grade agricultural land to support food production in the region.

Frankly, nothing of material importance has changed with regard to 16/506237/OUT and the judgements made therein by Kent County Council and other Statutory Consultees concerning congestion, danger to pedestrians, pollution, and infrastructure.

Nigel Heriz-Smith, Woodthorpe Cottage, 138 London Road, Lynsted, ME9 9QH

22nd October 2019

APPENDIX 1: Examples of pollution “exceedances” along London Road [Source: http://aqma5.co.uk/Pollution_Diary.html] Colour coding is common practice to facilitate the different scales employed nationally, regionally and internationally [World Health Organisation, EU and HMG], so that the “degrees of harm” are made clear.

Daily Changes in Pollution Levels								
Date	Toxic Pollution Levels				Daily Average	Exceedances (time and duration)		Graphs, Maps and Comments
	PM2.5	PM10	NO2	VOCs		High (24 hours or more)	Very High + (1 hour or more)	
22 February 2019	51	48	9	19	HIGH	Exceedance	Exceedance:- 20.55pm - 21.55pm - PM2.5 & PM10 -	Graph ; Wind SW to SE
22 (13.00pm) - 25 (10.54am) February	54	53	25	17	HIGH	Exceedance over 2 days and 8 hours		Graph ; Wind SW to SE
24 February	52	49	16	18	HIGH			
25 February	56	55	25	16	HIGH	Exceedance	Exceedance:- 18.00pm - 20.20pm - PM2.5 & PM10 -	Graph ; Wind SE
26 February	56	58	27	17	HIGH	Exceedance	Exceedance:- 17.05pm - 18.20pm - PM2.5 & PM10 -	Graph ; Wind SE - E - SE
27 February	50	50	32	23	HIGH	Exceedance		Graph with map ; Wind S - SW
28 February	44	47	19	32	MODERATE		Exceedances:- Midnight - 03.50am - PM2.5 & PM10 - 17.25 -18.38 - PM2.5 & PM10 -	Graph & map ; Heavy overnight traffic. Wind SW - W

MARCH 2019

MARCH 2019								
	Toxic Pollution Levels					Exceedances (time and duration)		
Date	PM2.5	PM10	NO2	VOCs	Daily Average	High (24 hours or more)	Very High + (1 hour or more)	Graphs, Maps and Comments
1 March	74	98	21	19	HIGH	Exceedance	Exceedances:- 03.20am - 06.05am - PM2.5 - PM10 - 11.00 am - 21.30pm - PM2.5 & PM10 -	Graph ; Heavy traffic. Wind veering NW - SW. Rain 2.30mm
2 March	-	-	-	-	-			NO DATA
3 March	25	18	3	29	MODERATE			Graph ; Wind SW; Rain all day 14mm.
4 March	31	23	5	19	MODERATE		Exceedance:- 17.36pm - 18.53pm - PM2.5 & PM10 -	Graph ; Wind SW - WSW; Rain all day 13.2mm
5 March	37	30	4	16	MODERATE		Exceedance:- 17.47pm - 20.16pm - PM2.5 & PM10 -	Graph ; Wind WSW - S. Rain evening 0.9mm
6 March	28	20	5	28	MODERATE			Graph ; Wind S - SSW. Rain 2.9mm
7 March	24	13	5	28	MODERATE			Graph ; Wind SW - W (20kph). Rain 0.6mm p.m.
8 March	23	12	17	20	MODERATE			Graph ; Wind W - SW. Dry
9 March	29	27	8	25	MODERATE			Graph ; Wind SW - W. Rain 0.5mm
10 March	35	32	14	22	MODERATE		Exceedance:- 17.26pm - 19.18pm	Graph ; Wind S - W. Rain

							- PM2.5 & PM10 -	13.1mm (morning)
11 March	32	27	25	19	MODERATE		Exceedance:- 17.53pm - 19.56pm - PM2.5 & PM10 -	Graph with Map to Lower Road. Wind W - NW - SW (25kph). Dry.
12 March	32	29	3	32	MODERATE		Exceedance:- 17.43pm - 19.00pm - PM2.5 & PM10 -	Graph ; Wind SSW - WSW. Rain 17.20mm (all day)
13 March	27	22	7	36	MODERATE			Graph ; Wind WSW - W (35kph); Rain 1.5mm (pm)
14 March	28	22	4	42	MODERATE		Exceedance:- 18.24pm - 19.40pm - PM2.5 & PM10 -	Graph & Map (Dully Road- Lynsted Lane); Wind W - WSW. Rain 4.6mm
15 March	15	2	4	63	HIGH	Exceedance		Graph ; Wind SW - W - WSW (30kph). Rain 8.6mm (all day)
16 March	21	15	5	65	HIGH	Exceedance	Exceedance:- 19.21pm - 20.23pm - VOCs -	Graph ; Wind WSW - W. Rain 6.50mm (all day).
17 March	15	2	6	36	MODERATE			Graph ; Wind SW - W.