

Cllr Andrew Bowles

cc Cllr Bryan Mulhern
Cllr Colin Prescott, Vice Chair, SBC
Cllr Lloyd Bowen
Cllr Mike Whiting
Cllr David Simmond
Cllr Mike Baldock,
Gordon Henderson MP
Clerk to Lynsted with Kingsdown Parish Council
Clerk to Teynham Parish Council
Clerk to Newington Parish Council
Clerk to Ospringe Parish Council
Mr Richard Knox-Johnston CPRE
Jillian Barr, Planner, CPRE Charing
Teynham & Lynsted Community Contacts

Dear Cllr Bowles,

Premature adjudication!

I read with real alarm, the newspaper article (Sittingbourne News Extra, 4th May 2016) about the performance of James Freeman and his planning department colleagues when discussing development plans in Newington. The reported judgements are, in my view, negligent and craven. Surely Messrs Freeman and colleagues are aware of **the policy guidelines on “prematurity”** as a reason to challenge poor planning decisions in exactly the circumstances you now find yourself?

The fact that SBC is still trying to nail down the **number** of proposed homes to build across Swale, does not invalidate your pre-existing **policies** and your responsibilities under those and national policies.

On the question of relationships between Strategic Housing Land Availability Assessments and the Local Plan, Ministerial guidance was issued to the Chief Planning Inspector on 19th December 2014. He wrote,

“the outcome of a Strategic Housing Market Assessment is untested and should not automatically be seen as a proxy for a final housing requirement in Local Plans. It does not immediately or in itself invalidate housing numbers in existing Local Plans. Councils must consider SHMA evidence carefully and take adequate time to consider whether there are environmental and policy constraints, such as Green Belt, which impact on their overall final housing requirement.”

In other words, Swale **does** have an existing body of **policy** guidelines and that remains valid while consideration of housing **numbers** remains still fluid. Planning Officers cannot duck their administrative obligations to promote sustainable housing in areas falling into Swale’s Strategic Development Plans (Sittingbourne to Sheppey) and defend communities that are threatened by opportunistic developers irretrievably destroying greenfield sites and distorting village evolution with out-of-scale proposals. If officials fail in delivering this balance of duties because they are fearful of legal challenge, then I should point out that they do not have even a draft policy on “giving in” without challenge –opportunistic developers can and should be challenged when proposals are in blatant conflict with due process found in the Draft Plan.

Technically, the grounds on which our communities should object to SBC’s abandonment of due process, local and national policy is “prematurity”. This ground for challenge rests in the National Planning Policy Framework (NPPF - 2012) that states:

*“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 where it is clear** that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations 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 Local Plan or Neighbourhood Planning**; and*
- b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.”*

The NPPF gives Swale clear grounds on which to reject opportunistic planning proposals that fall outside its own **policy** priorities – notwithstanding that the process of agreeing housing development **locations** is not yet complete. Officers should be reminded that the Planning Inspector’s report on Swale’s Plan was very positive regarding its process and the resulting **policy content**.

The current situation brings into question (a) what are we paying Council tax for if not to have fair and transparent planning, (b) why do we bother to have democratically elected councillors who are rendered impotent by officials’ weak and craven, pronouncements in any decision making, and (c) why do the Officers bother to ask for “expert advice” and then totally ignore it?

Ignoring legal obligations on harmful pollution.

If properly reported, by setting SBC’s legal obligations aside in favour of planning **at any cost** you must be joking! The responsibility on Swale is very clearly based in European and National Law.

Newington, Sittingbourne, Teynham, Lynsted and Ospringe, along the A2, have all measured “exceedances” in harmful pollution levels. Our communities are being encouraged to work with Swale Borough Council to explore ways of helping the Council meet its legal obligations. The position is very clear. At least it would be very clear if SBC were not telling us that their **legal obligation** to protect their residents’ health “**does not matter**” in their planning decision. Believe me, to those living in these areas “**it does matter**” and we look to **SBC’s legal obligations to protect us**.

NATIONAL POLICY

This flies in the face of established national planning policy framework, which clearly states that whenever an AQMA is adjacent to or close to a proposed development of ANY size the adverse impact from even small developments has to be considered on a ‘cumulative’ basis. In these circumstances, ALL applications along this stretch of the A2 (Newington to Ospringe) should comply with requirements for Environmental Impact Assessments (no matter if they fall below the 250 homes trigger where AQMAs are **not** implicated).

Surely there is negligence involved in an act of commission, which denies there is a legal obligation under AQMA Policy has a legitimate place in refusing opportunistic developments that “cumulatively” worsen existing harmful pollution. Planning Officer’s dismissal of these arguments are clearly negligent. Planning Officers should be reminded that the health of their communities is a very real legal responsibility that is clearly covered by National Planning Policy Framework!

Specifically, I should draw your attention to NPPF Chapter 11 (“Conserving and enhancing the natural environment”). Paragraph 124 regarding the importance of assessing cumulative impacts of pollution when evaluating development proposals:

124. Planning policies should sustain compliance with and contribute towards EU limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and the cumulative impacts on air quality from individual sites in local areas. Planning decisions should ensure that any new development in Air Quality Management Areas is consistent with the local air quality action plan.

Supported by Paragraph 120 of NPPF:

120: To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

To argue otherwise makes a mockery of your Council’s engagement with communities to find ways of protecting themselves and so help the national government achieve its targets. If you won’t defend this legal obligation, then why should communities waste their time in joining steering groups? If AQMA community Steering Group members try to engage their residents in taking action, they are most likely to be laughed at as ‘toothless’. Surely we must be able to rely on Swale Borough Council Officials joining up the dots better than they currently are?

Yours sincerely,

Nigel Heriz-Smith
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