

Planning Services Manager  
Swale Borough Council  
Swale House  
East Street  
Sittingbourne  
Kent  
ME10 3HT  
FAO Ms Emma Gore

Gladman House  
Alexandria Way  
Congleton  
CW12 1LB

9<sup>th</sup> May 2022

Dear Ms Gore,

**Land at Swanstree Avenue, Sittingbourne (21/505498/OUT)**

I write to address Rural Planning Limited's letter to yourself dated 27<sup>th</sup> October 2021 concerning agricultural land loss and interpretation of Policy DM 31 in respect of Gladman's outline application for up to 135 residential units on Land at Swanstree Avenue, Sittingbourne ('the Site').

This letter seeks to underline Gladman's position in relation to loss of agricultural land, NPPF policy relating to best and most versatile land (paragraphs 174 and 175) and Policy DM 31 of the adopted Bearing Fruits Local Plan. This letter will explain that the NPPF does not restrict development on best and most versatile (BMV) agricultural land. With regard to Policy DM 31, an overriding need within Swale for housing development on agricultural land is demonstrated. Following this is an evaluation of the policy exemptions for developing on BMV agricultural land. Rural Planning Limited's consultee response focuses largely on the application of Policy DM 31 Exemption 2. Gladman will respond to points made in relation to Exemption 2, setting out its position that the release of BMV is inevitable in order to deliver sustainable housing development. Support for this position will be drawn from a previous appeal Inspector's decision relating to a site in Newington (which provides comment on the lack of non-BMV land around Sittingbourne) and Swale's own evidence base, which makes numerous references to this.

Rural Planning Limited letter states that the current application submission does not include any more detailed analysis to demonstrate that there are no other suitably sustainable sites of lower grade land than the application site in the area. In response, Gladman has undertaken an additional exercise, using the most up to date mapping information available (which is accepted by the Council as being robust for the purposes of land use planning and plan preparation) to prove this point. The letter will go on to explain the methodology applied to the exercise and the results found which demonstrate that the residential growth required cannot be met on land that is not BMV. The letter will conclude that Policy DM 31 Exemptions 2 and 3 are met, and that the proposed development is not contrary to NPPF BMV policies.

*Relevant NPPF Paragraphs*

Rural Planning Limited employs paragraph 112 of the 2012 NPPF as a starting point for evaluating development on BMV land. Rural Planning view the agricultural land 'loss as significant'.<sup>1</sup> Paragraph 112 of the 2012 NPPF stated that

*'Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is*

---

<sup>1</sup> Rural Planning Limited (2021). Consultation Response to Land at Swanstree Avenue, Sittingbourne.



*demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality*<sup>2</sup>.

This paragraph is no longer in the updated 2021 NPPF, although paragraphs 174 (point b) and 175 (footnote 58) contain wording that continues the thrust of paragraph 112 in the 2012 NPPF. Paragraph 174 (b) states that

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

*...*

*b) recognising ... the economic benefits of the best and most versatile land, and of trees and woodland*<sup>3</sup>.

Paragraph 175 (footnote 58) suggests that

*'Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality'*<sup>4</sup>.

This footnote in particular demonstrates that the general thrust of the Framework over the iterations regarding agricultural land remains unchanged and therefore, our view is that the principles established in *Telford & Wrekin v Secretary of State and Gladman Developments Ltd.* [2016] (relating to paragraph 112 of the NPPF 2012) remain relevant. This judgment confirms interpretation of this paragraph as

*'... simply an instruction (i) to 'take into account' the economic and other benefits of the best and most versatile agricultural land which does not confer any particular level of protection and (ii) to 'prefer' the use of poorer quality land if significant development of agricultural land is necessary, which applies to all agricultural land, not just BMV land. It is not a prohibition on the use of BMV agricultural land, nor a restriction on development in principle; it does no more than to encourage the relocation of proposed development onto poorer quality agricultural land if available*<sup>5</sup> (emphasis added).

Through analysis of Swale BC documents and preferred sites within the emerging Local Plan, Gladman posit that identifying suitable and sustainable land for housing development without using BMV is problematic. The current and emerging development plan documents make this point very clearly. There is not sufficient sustainable sites comprising lower quality land to meet Swale's housing need.

---

<sup>2</sup> NPPF 2012. Available at:

<https://webarchive.nationalarchives.gov.uk/ukgwa/20180608095821/https://www.gov.uk/government/publications/national-planning-policy-framework--2>, paragraph 112.

<sup>3</sup> NPPF 2021. Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1005759/NPPF\\_July\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf), paragraph 174 (b).

<sup>4</sup> NPPF 2021. Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1005759/NPPF\\_July\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf), paragraph 175 (footnote 58).

<sup>5</sup> *Borough of Telford & Wrekin v Secretary of State for Communities and Local Government and Gladman Developments Ltd* [2016] EWHC 3073. Available at: <https://www.bailii.org/ew/cases/EWHC/Admin/2016/3073.html>, paragraph 38.

## Policy DM 31

*'Development on agricultural land will only be permitted when there is an overriding need that cannot be met on land within the built-up area boundaries. Development on best and most versatile agricultural land (specifically Grades 1, 2 and 3a) will not be permitted unless:*

- 1. The site is allocated for development by the Local Plan; or*
- 2. There is no alternative site on land of a lower grade than 3a or that use of land of a lower grade would significantly and demonstrably work against the achievement of sustainable development; and*
- 3. The development will not result in the remainder of the agricultural holding becoming not viable or lead to likely accumulated and significant losses of high quality agricultural land'<sup>6</sup>.*

The starting point for this policy is that for development on agricultural land to be acceptable, there must be an 'overriding need' for housing that 'cannot be met on land within the built-up boundaries'. In their response, Rural Planning Limited admit that defining overriding need is 'not a matter within [its] advisory remit'<sup>7</sup>. The clearest indicator of whether or not an overriding need for housing can be met within Swale Borough's built-up areas is the state of its five-year housing land supply. As acknowledged by Swale BC, the Council is unable to demonstrate a minimum of five years housing land supply as set out by the NPPF. This demonstrates that potential housing sites within built-up areas are not meeting demand and therefore sustainable sites beyond built-up areas are necessary in order to respond to overriding housing need at this point in time. Given the general high-quality of agricultural land across Swale and along the A2 corridor, sustainable sites beyond the built-up area will comprise best and most versatile agricultural land.

The following considers the proposal in the context of the Policy DM 31 criteria.

### Policy Exemption 1

Gladman agrees that the Site is not allocated within the Bearing Fruits Local Plan and that this exemption therefore does not apply. However, it is relevant context that a high proportion of adopted housing allocations are located on best and most versatile land, further underlining the lack of opportunities to release sustainable sites for housing without using BMV land. Not surprisingly, this continues in the emerging Local Plan. In any event, the allocated sites within the Bearing Fruits Local Plan are evidently not delivering the housing required for Swale and therefore other sustainable sites must be turned to.

### Policy Exemption 2

An appeal decision in nearby Newington, also on the A2 corridor, is relevant to this proposal and the issue as to whether alternative sites that are not BMV are available for development. The appeal Inspector in this case (applications 15/500671/OUT and 15/510595) concluded that

***'... it would probably be difficult to find larger developable sites of lower-quality land not only around Newington but around Sittingbourne as well. This is borne out by the fact that***

---

<sup>6</sup> Policy DM 31 in Bearing Fruits Local Plan (2017). Available at: <https://services.swale.gov.uk/media/files/localplan/adoptedlocalplanfinalwebversion.pdf>, p. 282.

<sup>7</sup> Rural Planning Limited (2021). Consultation Response to Land at Swanstree Avenue, Sittingbourne.

*greenfield development sites around both settlements that are proposed for allocation in the ELP [Emerging Local Plan] contain substantial areas of BMV land*<sup>8</sup> (emphasis added).

The appeal Inspector also found that loss of BMV land would not be significant because of the extensive resource of BMV in Kent. These circumstances remain unchanged and our view is that the Newington appeal Inspector's findings provide strong support for our position that there is little in the way of sustainable housing sites on land of a lower grade than 3a.

We draw further support for our position from the evidence base for the emerging Local Plan. For instance, the emerging Local Plan Sustainability Appraisal (2021) states:

*'... all of the reasonable growth scenarios would lead to ... significant loss of best and most versatile agricultural land, including grade 1 land... all would lead to loss of land that is currently used for fruit growing'*<sup>9</sup> (emphasis added).

With regard to other available land of lower quality, the Sustainability Appraisal goes on to state that:

*'... the only realistic strategic growth options that avoid best and most versatile agricultural land are on the Island of Sheppey, yet it is difficult to envisage a reasonable high growth strategy for the Island'*<sup>10</sup> (emphasis added).

The Sustainability Appraisal released in October 2021 reiterates that fact that growth requirements cannot be met sustainably without building on BMV land and stresses the difficulties of relying on land on the Island of Sheppey (which is relatively unconstrained by BMV):

*'The belt of grade 1 agricultural land in the Borough – known as the fruit belt – is centred on the A2 corridor, hence it is very challenging to identify any realistic broad growth scenario that would direct growth away from the area of agricultural land constraint. Sheppey is relatively unconstrained, with low-lying land shown by the nationally available dataset as being non-BMV (grade 4) and higher ground shown as grade 3 (which may or may not be BMV); however, BGS-A would involve only a modestly increased focus of growth at Sheppey, recognising that there are wide ranging barriers to growth on the Island'*<sup>11</sup> (emphasis added).

Rural Planning Limited argue that Gladman's planning statement *'does not include any detailed analysis to demonstrate that there are no other suitably sustainable sites of a lower grade'* so as to comply with Policy Exemption 2<sup>12</sup>.

To provide further evidence to support our position that policy DM 31 Exemption 2 is met, we have assessed the agricultural land value of all of the sites currently being proposed by Swale BC to be allocated for housing development. These have been assessed using the most up to date evidence available, which is the information being relied upon by Swale BC for plan preparation purposes (i.e., it is clearly deemed to be suitably up to date and accurate for land use planning purposes).

---

<sup>8</sup> Joint Appeal Decision 3067553 and 3148140. Available at: [https://pa.midkent.gov.uk/online-applications/files/5424DC6032DCC45E57AE1DA92DC42BC3/pdf/15\\_510595\\_OUT--3869571.pdf](https://pa.midkent.gov.uk/online-applications/files/5424DC6032DCC45E57AE1DA92DC42BC3/pdf/15_510595_OUT--3869571.pdf),

<sup>9</sup> Sustainability Appraisal February 2021. Available at: <https://services.swale.gov.uk/assets/Planning%20Policy%202019/Swale%20Local%20Plan%20Review%20SA%20-%20SA%20Report%20210209.pdf>, p. 37.

<sup>10</sup> Sustainability Appraisal February 2021. Available at: <https://services.swale.gov.uk/assets/Planning%20Policy%202019/Swale%20Local%20Plan%20Review%20SA%20-%20SA%20Report%20210209.pdf>, p. 58.

<sup>11</sup> Sustainability Appraisal October 2021. Available at: <https://services.swale.gov.uk/assets/Planning%20Policy%202019/Swale%20Local%20Plan%20Review%20SA%20-%20SA%20Report%20210209.pdf>, pp. 20-21.

<sup>12</sup> Rural Planning Limited (2021). Consultation Response to Land at Swanstree Avenue, Sittingbourne.

## Methodology

Gladman analysed the preferred sites within the Local Plan Review Site Selection document dated October 2020<sup>13</sup>. It is reasonable to assess the sites within this document as this is the result of evaluation undertaken by Swale BC of the SHLAA 2018 to determine sustainable housing sites. Sites from the SHLAA discounted at this stage are not considered as Swale BC has not determined them to be sustainable; and thus, their agricultural land quality becomes irrelevant.

Within the Local Plan Review Site Selection document, there are nineteen preferred sites. Gladman discounted sites on urban land and non-agricultural land as these are not formally on the scale of agricultural land quality (grades 1-5) that is applicable to Policy DM 31. The sites discounted for this reason include Land at Lion Field (SHLAA reference 18/030) on urban land a and Land at Brett House (18/108) on mostly non-agricultural land. Gladman also discounted land at Lamberhurst Farm (18/154) which whilst promoted for employment land plus three hundred dwellings, is only supported for commercial development in the Site Selection document. Gladman then cross-referenced the site outlines with the 'Kent Landscape Information System' (K-LIS) mapping software to determine their agricultural land quality.

The exercise undertaken by Gladman employed up-to-date data and software; Gladman has used Kent County Council's K-LIS mapping software which was created in 2014<sup>14</sup>. The use of K-LIS in this exercise is clearly acceptable for land use planning as it has informed the emerging Local Plan evidence base, namely the Sustainability Appraisals of February and October 2021. The agricultural quality of the sites assessed using the K-LIS software is no different from the DEFRA 2020 download for agricultural land classification data<sup>15</sup>, therefore further demonstrating the dataset's validity to undertake this exercise.

## Results

These comparisons have been recorded and are appended to this letter. Of the sixteen applicable sites progressed as preferred housing allocations, only one site does not contain BMV. This site is Rushenden South on the Island of Sheppey (SHLAA reference 18/113), which comprises 850 units. This (perhaps unsurprisingly) aligns with the conclusions reached in the current and emerging development plans, including the Sustainability Appraisal, as detailed above (i.e., that the A2 corridor is essentially comprised of BMV and the only area that is relatively unconstrained is Sheppey, where (due to broader sustainability and viability reasons) further growth is to be limited). In respect of the fifteen sites that contain BMV, the majority contain either Grade 1 or Grade 2 BMV land. This further evidences our position that there is no land capable of accommodating sustainable housing sites on agricultural land of lower quality than 3a or of that at Land at Swanstree Avenue, Sittingbourne.

## Policy Exemption 3

For ease of reference, this policy exemption states that *'the development will not result in the remainder of the agricultural holding becoming not viable or lead to likely and accumulated and significant losses of high quality agricultural land.'*

Taking the points of this policy exemption in turn, firstly Gladman has received confirmation from our landowner partners that the development of the proposed site would not affect the viability of their agricultural operation, including their farm shop, given their wider agricultural landholdings. Indeed, the landowners intend to keep a connection from the farm shop and operation to the west of the Site to the wider agricultural holdings to the east

---

<sup>13</sup> Local Plan Panel Meeting: Local Plan Review Site Selection (2020). Available at: <https://services.swale.gov.uk/meetings/documents/s15712/LPR%20site%20selection.pdf>.

<sup>14</sup> Kent Landscape Information System (2014). Available at: <https://webapps.kent.gov.uk/KCC.KLIS.Web.Sites.Public/Default.aspx>.

<sup>15</sup> DEFRA Download (2020). Available at: <https://environment.data.gov.uk/DefraDataDownload/?mapService=NE/AgriculturalLandClassificationProvisionalEngland&Mode=spatial>.

of the Site. Secondly, in relation to 'accumulated and significant losses', given the unaffected viability of the agricultural unit the development of the proposed site would not lead to accumulated losses of wider agricultural land. Turning to whether the loss is significant, given that the site is only 5.9 ha in size and only 4.3 ha of this is BMV, this falls far below the 20 ha threshold of BMV land at which planning authorities must consult with Natural England as required by the Town and Country Planning (Development Management Procedure (England) Order) (DMPO) 2015<sup>16</sup>. Given that Swale has a large amount of high-quality land (approximately 15,000 ha according to the Bearing Fruits Local Plan<sup>17</sup>), development on 4.3 ha would represent a BMV percentage loss of 0.03% when rounded up, which is not a significant figure. Policy Exemption 3 is therefore met.

### *Conclusion*

Policy DM 31 is intended to ensure that BMV is only released where there is an overriding need for development and when other options have been examined first, having regard to other sustainability considerations. In this context, it is clear that there is an overriding need to release additional agricultural land (beyond the built-up area boundaries) in order to meet housing requirements. This is evident from:

- The inability of the Council to demonstrate the minimum 5 year supply of housing, as required by the NPPF; and,
- The emerging Local Plan and the evidence base that accompanies it, which currently clearly anticipates the release of high quality agricultural land outside of existing built up area boundaries, in order to meet housing requirements.

With specific regard to BMV (and the relevant Policy DM 31 criteria which allow the release of BMV for development), it is acknowledged that the site is not allocated for housing (Exemption 1). However, it is also evident that current development plan allocations are not capable of delivering housing needs. In any event, it has been demonstrated that:

- Having regard to the latest evidence available (being used by the council for land use planning purposes), there are no alternative sites on lower grade agricultural land to the application site, which the Council consider to be suitable and sustainable housing sites. The exception to this is in Sheppey, where the Council's sustainability appraisal does not support additional growth (beyond currently proposed allocations) due to broader sustainability and viability issues. Policy DM 31 Exemption 2 is thus met.
- Confirmation has been received from our farmer-landowners that the development proposals would not affect the viability of the current agricultural operation, including the farm shop. Furthermore, the Site represents a loss of only 0.03% of Swale's high-quality agricultural land, which is not a significant amount. Policy DM 31 Exemption 3 is therefore met.

Given compliance with Policy DM 31 Exemptions 2 and 3, the proposal at Land at Swanstree Avenue, Sittingbourne complies with Policy DM 31 as a whole. The acknowledged loss of BMV does not results in conflict with the development plan or national policy on BMV in the NPPF.

Yours sincerely,



**Oliver Lloyd**  
**Planner**

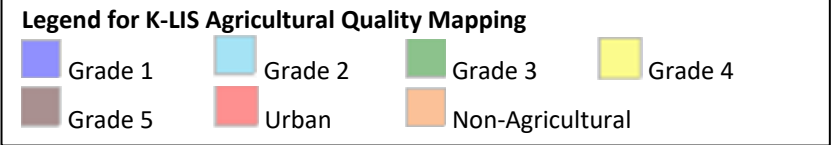
---


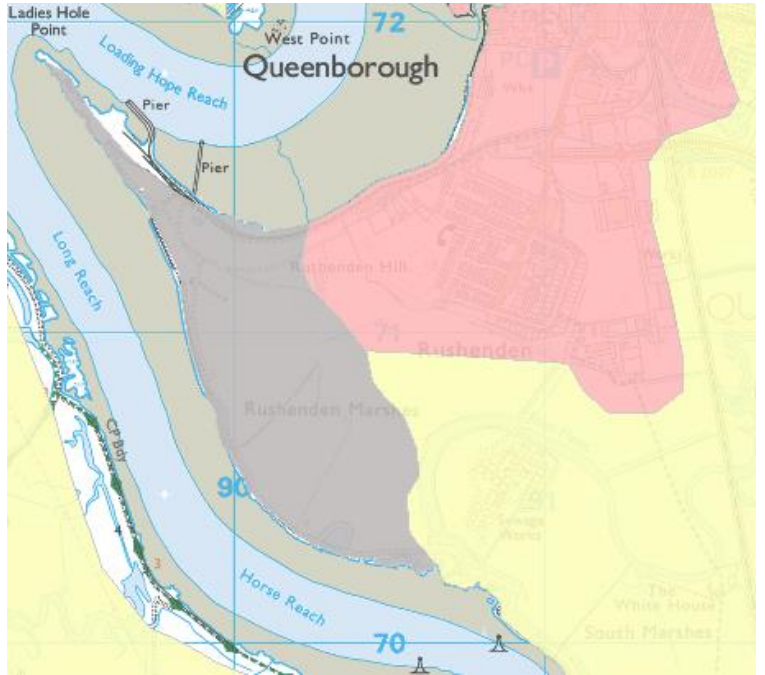
<sup>16</sup> Natural England (2021). Available at: <https://www.gov.uk/government/publications/agricultural-land-assess-proposals-for-development/guide-to-assessing-development-proposals-on-agricultural-land>, paragraph 1.3.

<sup>17</sup> Bearing Fruits Local Plan (2017). <https://services.swale.gov.uk/media/files/localplan/adoptedlocalplanfinalwebversion.pdf>, p.77.

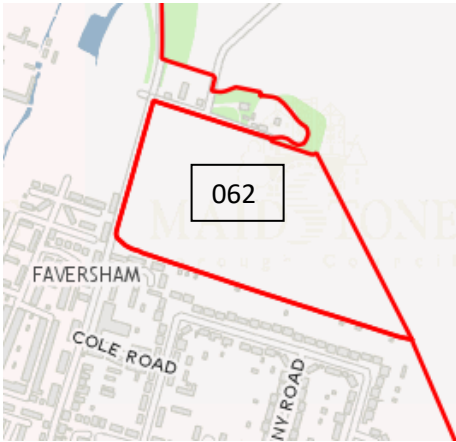
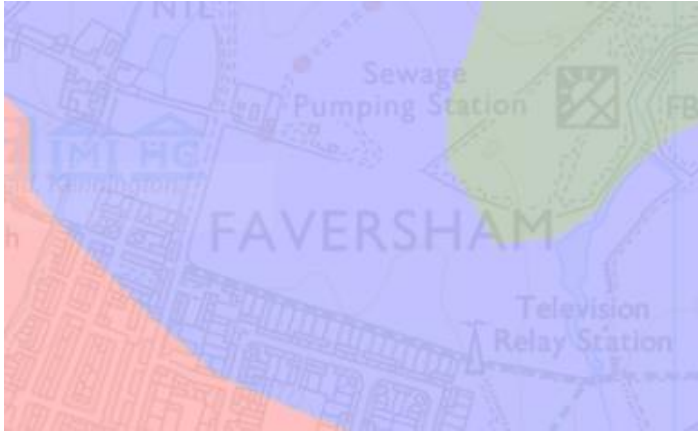


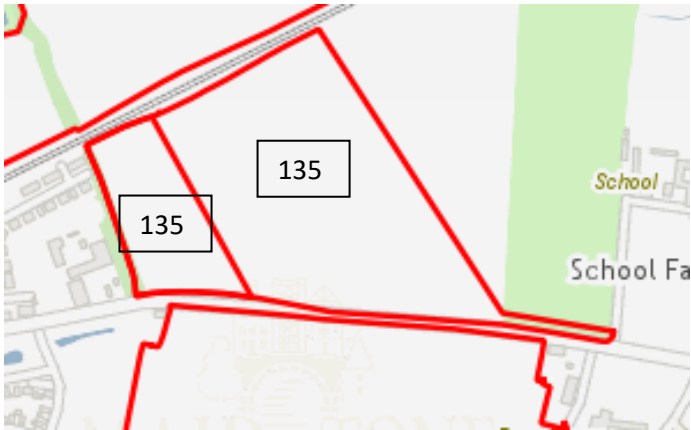

**Appendix: Agricultural Quality of Preferred Sites from the Local Plan Review Site Selection Document (October 2020) using Kent County Council's K-LIS Mapping Software**



| Site Selection (October 2020) Page | Site Name (Reference)    | Map ( <a href="#">SHLAA Map</a> is on the left, <a href="#">KLIS Map</a> on the right)   |
|------------------------------------|--------------------------|--|
| Isle of Sheppey                    |                          |  |
| 10                                 | Rushenden South (18/113) | <div>   </div> <p>850 units located on Grade 5 and Grade 4 agricultural land, and urban land.</p> |

Faversham

|    |                   |        |  |  |
|----|-------------------|--------|--|--|
| 13 | Abbey<br>(18/062) | Fields |  <p>A map showing a residential development site in Faversham, outlined in red. The site is labeled '062' in a black box. The map includes labels for 'FAVERSHAM', 'COLE ROAD', and 'IV ROAD'. A large 'MIDLANDS' watermark is visible across the map.</p> |  <p>A planning map of the same site, showing various colored zones. Labels include 'Sewage Pumping Station', 'Television Relay Station', and 'FAVERSHAM'. A large 'IMH' watermark is visible.</p> |
|    |                   |        | 175 units all located on Grade 1 land.   |  |

|    |                                |  |   |   |
|----|--------------------------------|--|---|---|
| 13 | Land at Graveney Road (18/135) |  |  <p>A map showing a residential development site at Graveney Road, outlined in red. The site is labeled '135' in a black box. The map includes labels for 'School' and 'School Fa'. A large 'MIDLANDS' watermark is visible.</p> |  <p>A planning map of the same site, showing various colored zones. Labels include 'Television Relay Station', 'Chambers Crossing', 'School Farm', and 'Graveney Road'. A large 'IMH' watermark is visible.</p> |
|    |                                |  | 240 units, all on Grade 1 land.   |   |



14

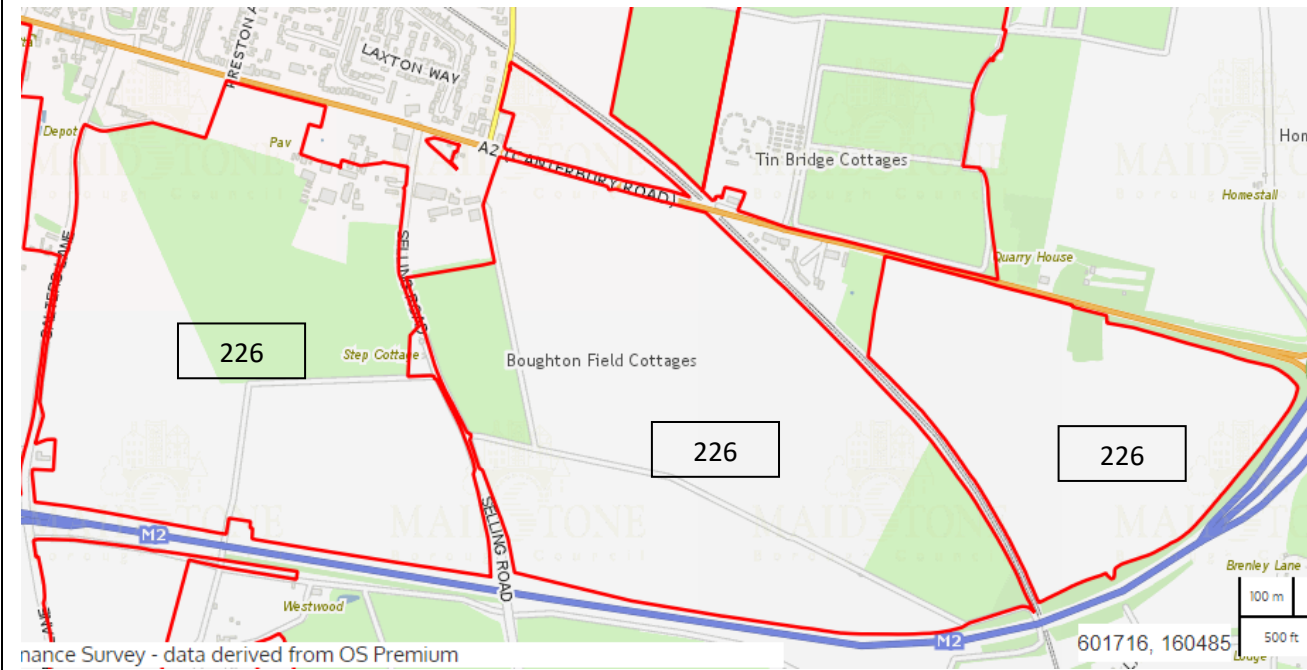
Land to the east of  
Faversham (18/091)



600 units, all on Grade 1 land.


14

South East  
Faversham (18/226)



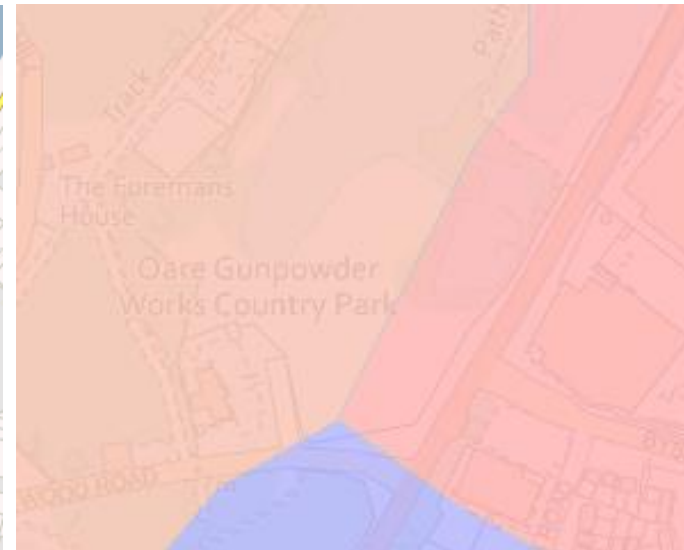


2,500 units on mostly Grade 1 land and minimal amount on Grade 2.

|    |                                |   |
|----|--------------------------------|---|
| 16 | Land at Lion Field<br>(18/030) |  <p>50 units on urban land.</p> |
|----|--------------------------------|---|

17

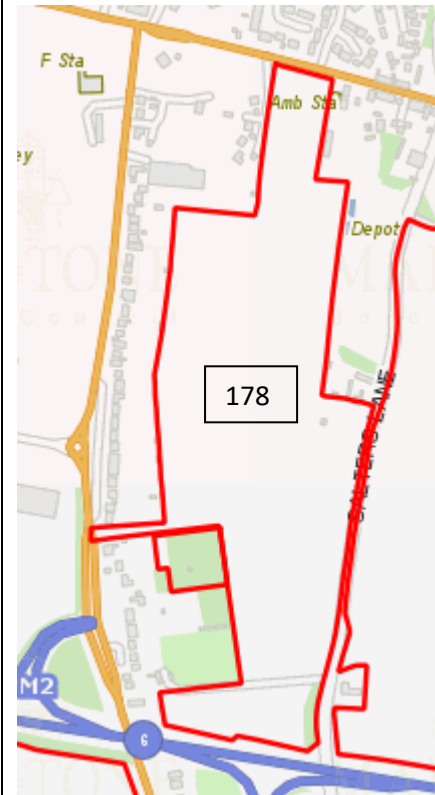
Land at Brett House,  
Bysingwood Road  
(18/108)



16 units on mostly non-agricultural land and urban land, a fraction on Grade I.

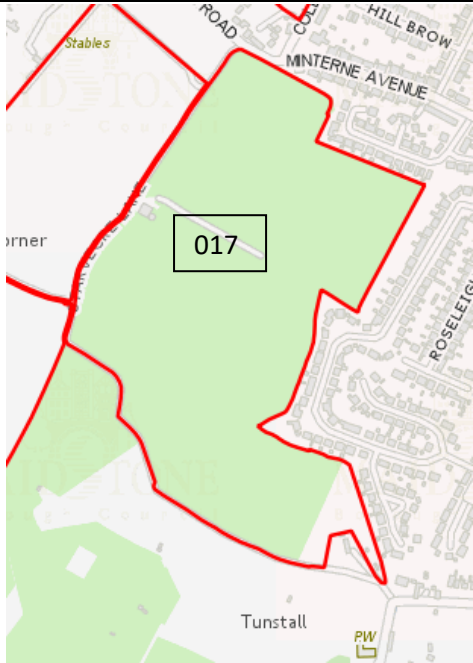

17

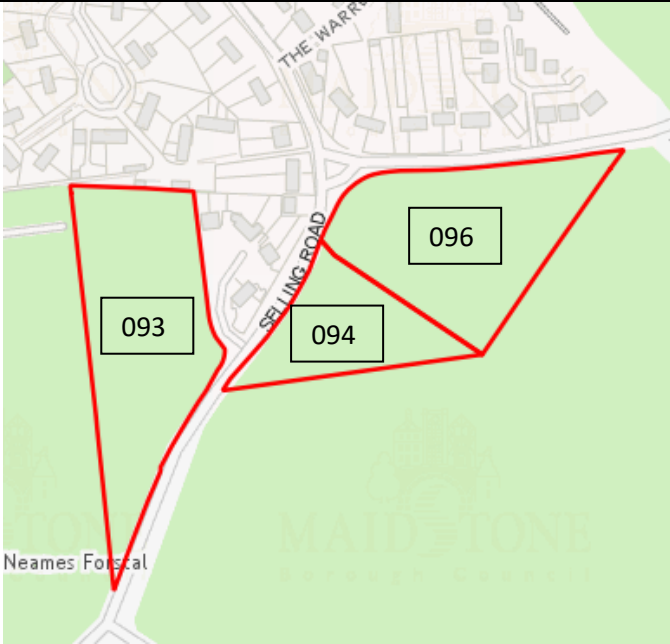

Land at Preston  
Fields (18/178)



70 units on mostly Grade 1 land, some on Grade 2 and a fraction on urban.



| Sittingbourne |  |  |
|---------------|--|--|
| 19            | Land at Ufton Court Farm, Starveacre Lane, Tunstall (18/017) |   <p>200 units on 50-50 split between Grade 2 and urban land.</p> |

| Neames Forstal |   |  |
|----------------|---|--|
| 23, 24         | <p>Land east of Selling Road (18/096)</p> <p>Land east of Selling road (18/094)</p> <p>Land adjacent to Monica Close (18/093)</p> |   <p>Total of 90 units all on Grade 1 land.</p> |

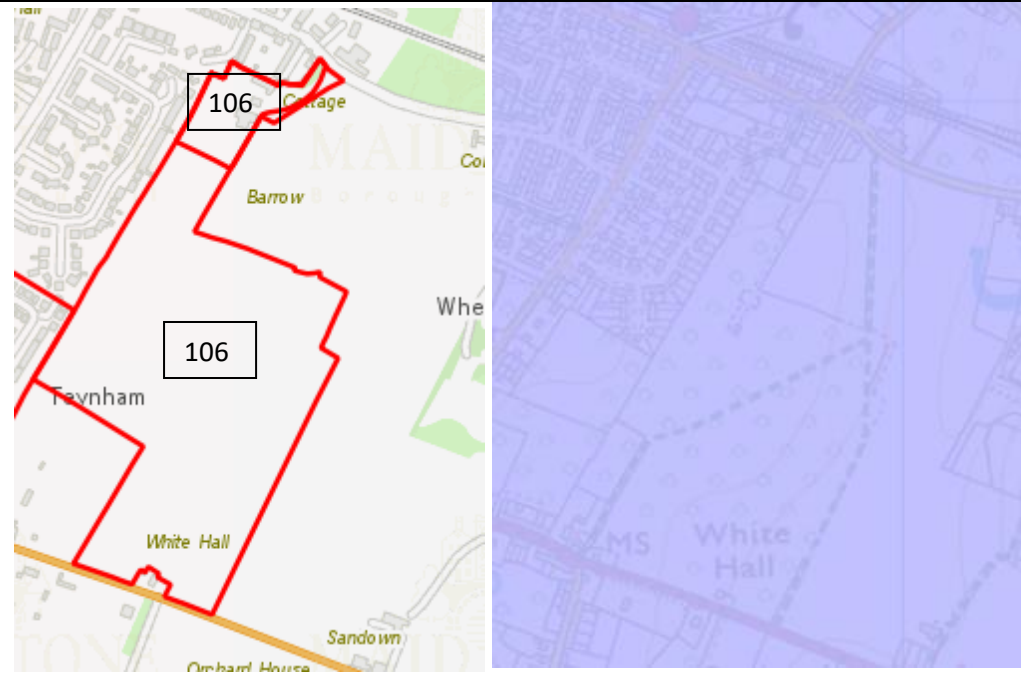
| Teynham |                                    |  |
|---------|------------------------------------|--|
| 27      | Land west of Frogmal Lane (18/025) | <div data-bbox="633 264 1155 957" data-label="Image"> </div> <div data-bbox="1178 264 1619 951" data-label="Image"> </div> <p>630 units all on Grade 1 land.</p> |

|    |  |   |
|----|--|---|
| 28 | Land to the east of Claxfield Farm (18/123)  |  <p>15 units on Grade 1 land.</p>   |
| 28 | Land to the north of Claxfield Farm (18/122) |  <p>180 units on Grade 1 land.</p> |

|    |   |  |
|----|---|--|
| 28 | Land south of London Road/west of Lynsted Lane (18/116) |  <p>60 units on Grade 1 land.</p>  |
| 29 | Land south of Dover Castle Inn/Cellar Hill (18/153)     |  <p>50 units on Grade 1 land.</p> |

29, 30

Land at Barrow  
Green Farm, east  
Teynham (18/106)



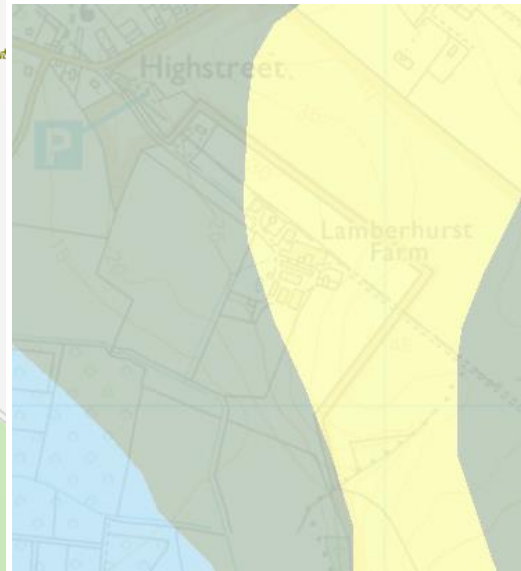
100 units on Grade 1 land.



Large scale strategic site (not included in figures as only being supported for employment rather than residential)

33

Lamberhurst  
Farm  
(18/154)



300 units on Grade 3 and Grade 4 land.