

Paragraph 1.0.8

We have been advised by Swale Planning Officers that general arguments against the “soundness” of the whole Plan should be lodged here. Especially if you are not sure where else to put your thoughts and arguments.

“If ever there was a reason for a Local Plan to fail, Swale Borough Council’s (SBC) decision to include an entirely untested idea of the Teynham Area of Opportunity (TAO) and Policy AO1, without any supporting evidence of local need or deliverability is just such an example. The idea arrived so late in the process that none of the other policy documents and reports support this idea; so we are introduced to the sugar-coated notion of a “masterplan” to disguise the bitter pill while making ‘facts on the ground’ by defining the housing target/allocation of 1,100 (plus the non-TAO allocations from “Bearing Fruits”). The “masterplan” describes something akin to Reg18b – the irony is not missed by most of us. There is no justification for TAO beyond an allergic response to any Ward served by Conservative councillors – a theme that the Chair of the Local Plan Panel (LPP) often returns in Committee and Zoom meetings. The Chair and Committee are so focused on witch-finding that they have lost all perspective. LPP is guilty of fighting a battle over the bodies of local communities rather than focusing on winning the war – getting a Local Plan through Reg19. Without this ridiculously self-serving approach by the LPP and Council, they might have had a fighting chance with the Local Plan. As it is, they are guilty of risking years of good work. But all the evidence of SBC behaviours and handling leads inevitably to the conclusion that SBC never thought that REG19 would be noticed over their preferred short consultation of six weeks – and TAO would be the bed made only to avoid housing elsewhere while we choke on pollution and suffer from fractured communities. Now that we have had time to explore their thinking, it appears they have not been thinking.

Swale Borough Council (SBC) made an undertaking to residents, businesses and parish councils that it would follow an early Regulation 18 (“Looking Ahead”) Consultation with a second, Regulation 18b (“Issues and Options”) Consultation. The second stage (Reg18b) community involvement would also be supported by documented analysis and ‘proportionate’ evidence-base. This has not happened.

In 2018, residents, parish councils and businesses were invited to respond to a series of very high-level and generalised questions on a wide range of issues. They included the Government policy favouring innovation around Garden Communities.

Regulation 18b was supported by the previous SBC Administration and the incoming Administration between May 2019 and late 2020. Completely hidden from public view, in 2020, everything changed.

SBC has ignored the ‘**Sedley criteria**’ as repeated in the Supreme Court (R (Moseley) v London Borough of Haringey [2014] UKSC 56). *The Supreme Court addressed what fairness requires when consulting on a ‘preferred option’ – this step REG18b) has been ducked by SBC since 2020 without fanfare or rational explanation.* SBC did not prepare details of rejected options and the reasons for the rejection. Choosing, instead, to launch Reg19 very quietly. What is missing, as part of **fair consultation**, in particular, is the need to **provide consultees with sufficient and accurate information**. Most emphatically in the context of the disastrously harmful Teynham Area of Opportunity (TAO).

The key features of the judgments are:

(1) The Supreme Court formally endorsed the ‘Sedley criteria’ for a fair consultation, namely:

- Consultation must be at a time when proposals are still at a formative stage
- The proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response
- Adequate time must be given for consideration and response
- The product of consultation must be conscientiously taken into account [para 25].

(2) The degree and specificity of information which must be provided to consultees will depend on the context, including:

- (i) the identity of the persons being consulted [para 26];
- (ii) whether the proposal would deprive consultees of an existing benefit [para 26];
- (iii) the purpose of the consultation, such as whether it is to ensure procedural fairness for individuals or to permit public participation in a democratic process [para 38]; and
- (iv) whether consultees can be expected to be familiar with the decision-making process and reasons [para 39].

(3) It may be permissible to consult on the basis of a preferred option but fairness may require consultation on other, previously discarded options [para 27].

(4) Even if, as here, it is proper to consult on a preferred option (i.e. the draft CTRS), proposers must not give the impression that other options are no longer on the table [para 31]. Indeed, fairness may require passing reference to be made to other options [para 28]. Even if the other options would have been reasonably obvious to those consulted, it may be necessary to explain

why those other options were rejected [para 31]. The key question is whether such reference or information is necessary in order for the consultees to express meaningful views on the proposal [para 40, 41].

(5) Proposers should nevertheless seek to avoid unduly lengthy or complex consultation documents [para 41].

Swale Borough Council's behaviour

Swale Borough Council (SBC) has operated secretly and deviously. SBC has relied on a policy of "passive discovery" of their minutes and their decisions as indicative of 'openness'. "Passive discovery" as an administrative practice is negligent. SBC's website is dysfunctional without adequate indexing (metadata structure); they have failed to prepare explanatory material for Regulation 19 Consultees; there was resistance against extending the initial 6-week deadline declaring that the period was "legal" even in a time of Covid19; misdirection and conflicting messages in Zoom/Skype meetings in Committee and with parish councils and residents' groups – for example, saying that comments could be made on any aspect of the Plan with the prospect of opinions being taken into account in revisions (a line that Councillors only recently seem to have understood the limitation of Reg19 procedures). Incomplete key supporting data, analysis and reports that are either in "draft" or absent (Traffic modelling and pollution for TAO). It is astonishing that the Local Plan has gone forward to Reg19, without the support of a properly constituted "Issues and Options" (Reg18b) stage as first promised under both Administrations since 2018. It is particularly disturbing, with respect to the appearance of the TAO, without "actively" engaging Parish Councils (Teynham Parish Council (TPC) and Lynsted with Kingsdown Parish Council (LKPC) who are Statutory Consultees. During a Zoom Meeting on 22nd March 2021, an SBC Official explained that SBC simply did not have sufficient resources to engage with parish councils!).

Only following cries of "foul" from residents, at least 11 Parish Councils [stated by Cllr Bowles to KCC Planning Committee], MPs, and CPRE did SBC show any interest in public engagement

Even at Regulation 19 Stage, the evidence-base is incomplete and we are denied any influence over key decisions like the surprise announcement of the Teynham Area of Opportunity (TAO) that will add up to 1,400+ new homes to engulf rural communities on each side of the A2, against all the advice from our Highways Authority (KCC) and SBC Environmental Officers (on a significantly smaller and opportunistic development of 86 homes on the edge of the community south of the A2 – (<https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PZ0FP4TYJ4L00>), and the declaration of our Air Quality Management Area No.5 (AQMA5).

Without the Reg18b *Issues and Options* consultation stage, the choices made by Swale Borough Council to create the **TAO** and **Policy AO1** have absolutely no history of community involvement [defined in SBC Statement of Community Involvement] nor any robust analysis or evidence supporting “need”.

Conclusion – I Recommend removal of TAO and rejection of arguments for any further housing between Ospringe and Sittingbourne as the A2 is beyond capacity even before “Bearing Fruits” allocations are built-out and three AQMAs are at increased risk under existing and proposed policies.

The concept of an AoO was never declared under the Regulation 18 consultation, thus singling out the Parishes of Teynham & Lynsted with Kingsdown for a treatment that has no equivalence in the Local Plan. An untested and undemocratic innovation without the level of analysis or the rigour of strategic thinking applied elsewhere in the Local Plan. At the time of development of the Policy AO1, there were no Covid-19 or other reason to exclude the two affected Parish Councils from consultation. These facts render the abuse of the SPG mechanism illegal and immoral.

I recommend removal of the **Teynham Area of Opportunity (TAO) (Local Plan paragraphs 5.5.31 – 5.5.51)** and the **Policy AO1 (page 88-89)**. If TAO and Policy AO1 are not removed, SBC will have introduced significant “allocation as facts on the ground” – the inappropriate use of Supplementary Planning Guidance (SPG) inside the Local Plan imposes restrictions on expectations and freedom of movement dressed up a “consultation”. The “masterplan” permits only limited movement for residents and parish councils as to how the developments will be achieved not whether the Policy should exist at all. **This is an abuse of administrative process by SBC.**