

# **SHOCK**

**STOP HOUSING OBLITERATING THE CHARACTER OF KEINTON**

**RESPONSE  
TO  
APPLICATION 22/01720/OUT**



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## **RESPONSE TO LVA APPLICATION 22/01720/OUT**

### **SUMMARY**

**The Applicant's Planning Statement (read with supporting documents) is, in SHOCK's view:**

- **error strewn**
- **misleading (deliberately, clearly, at times) and**
- **devoid of cogent reasoning or evidentiary substance**

**The Application is, moreover, materially incomplete and an inadequate basis for a substantive planning decision by SSDC on the principle of development at Kings Hill, KM. It should be rejected for those reasons, and for being premature.**

**In planning terms, it has no merit when set against all the policy, practice or appeal precedents relevant to KM.**

**The development is palpably unsustainable, and fails every limb of the sustainability test. Besides that, it carries with it a Pandora's box of significant and demonstrable harm to the village, its residents (humans and other wildlife) and the surrounding environment.**

### **INTRODUCTION & BACKGROUND**

1. This document is the Response of SHOCK to the application of Keinton Mandeville Land Value Alliances Limited Liability Partnership (KM LVA LLP) and the Chinnock Family (together 'the Applicants') to build an estate of 120 houses on land to the west of the village of Keinton Mandeville (KM). In particular it directs itself to their Planning Statement. SHOCK adopts, and incorporates in its response, the following individual or group submissions already made:
  - the CPRE Submission
  - the general submission by John and Margaret Cook (the Cook Submission)
  - the submission by Tony Elbourn with relation to the Transport Study (the Elbourn Submission)
  - the submission made by Keinton Mandeville Environment Group (the Environment Submission)

SHOCK has also commissioned a critique of LVA's Landscape Impact Assessment by Philip Hanson of The Landscape Practice of Sherborne. That critique has been submitted separately by Philip Hanson on behalf of SHOCK.

This Response should be read in conjunction with the Schedule hereto which comments paragraph by paragraph on the Applicants' Planning Statement.

2. SHOCK is an unincorporated, non-profit making campaign association of KM residents established to preserve and promote their interests and the character and environment

of the village. Since SHOCK's first public meeting on 12 July 2022 some 150 villagers have joined its mailing database, and, between then and 26 July 2022 (the deadline set by South Somerset District Council (SSDC) for comments), 440 objections had been made to the LVA estate (against 3 in support, none of whom are KM residents).

### **LAND VALUE ALLIANCES**

3. LVA is an investment vehicle whose syndicate members finance the promotion of developments for landowners whose land is available for house building. It has 70 projects on the go, according to its website, mostly in the South West, where it targets local planning authorities, such as SSDC, which allegedly cannot show that they are meeting the house building targets. LVA establishes a special purpose vehicle for each planning project in the form of a limited liability partnership. Investments are made into this partnership by those wishing to finance the project in the hope of the very high returns achievable. For example, the annualised rate of return for KM LVA LLP, if approval was granted and the land sold for its 'reserve price' within the professional fees budget, would be over 700 per cent!
4. The nature of the planning promotion vehicle is- unusually- a planning consideration for SSDC because it affects the ability of SSDC to rely on commitments made by LVA in the planning process. KM LVA LLP is a financially ring-fenced entity. It receives investors' money and pays out all profits as dividends once planning consent is given. Its financial resources are limited to its specific investment pot and are paid out to investor members as soon as the KM project is successful. This financial structure makes it very difficult for the LLP, for example, to hold a land bank for phosphate mitigation purposes which might benefit other syndicates. It also raises questions about how financial commitments would be secured from a planning applicant of this type. This difficulty is compounded when the subject for which those commitments would be needed is so vaguely described in the Application, as, for example, is the woodland proposed for screening, alleged habitat enhancement and open space. It is suggested that SSDC seek further explanation and detail as to how this apparent defect is overcome, including a copy of the members' agreement between the special purpose vehicle and an investor.

### **REFORM of UK PLANNING SYSTEM- THE LEVELLING UP & REGENERATION BILL**

5. The planning system on which the Applicants rely is one ripe for change. This was recognised in the Queen's Speech in April 2022, where the government announced the Levelling Up & Regeneration Bill (LURB). Its stated objectives include:
  - to 'curb speculative development' and development 'by planning appeal';
  - to abolish centrally-imposed housing targets;
  - to ensure infrastructure owners are properly engaged in the planning process; and
  - to give greater (legislative) weight to local plans and views by [i] requiring 'strong reasons' to depart from them, and [ii] introducing 'neighbourhood priority statements', a shorter and less formal mini-version of the Neighbourhood Plan.
6. These are radical changes, much welcomed by SHOCK. The LUR Bill will curtail the scope for speculative developers like LVA, as it is explicitly designed to do. It is before Parliament and is expected to become law by the end of 2022. It is likely to have substantial cross-party support.

### **THE APPLICANTS' PLANNING STATEMENT (PS)**

7. The radical reform of the UK planning system no doubt explains the Applicants' rush to submit their application to SSDC. The Applicants' Planning Statement is long on assertion and short on cogent reasoning. Schedule 1 to this Response contains a paragraph-by-paragraph critique of the PS. The major omissions and flaws are dealt with in paragraphs 8 to 17 below.

### **MATERIAL ERRORS- HOUSING & EMPLOYMENT LAND AVAILABILITY ASSESSMENTS**

8. The Applicants' estate is larger than, but encompasses, 4 blocks of land which have been the subject of HELA assessments by SSDC. The Applicants' case for a large estate on the whole site is based on the alleged suitability of the northernmost site, bordering the B3153, for 38 dwellings. (See PS paragraph 3.6 bullet 1.) Since these dwellings will necessarily involve an estate access onto the B3153 and estate roads, the Applicants argue that it is natural and logical to expand the development south onto the whole 25 acres of land at King's Hill owned by the Chinnock family. However, in the SSDC HELA assessments form for the northernmost site (E/KEMA/0013) the Panel states *'limited development potential to front part of site, projecting no further to the rear of adjoining properties. Suggest 6-7 units'*. This Statement was made in 2018 and was re-affirmed in 2020 and 2021, after Lakeview was built and occupied. The assessment is unsurprising since it would respect the linear nature of KM but recognises that there are 6 substantial dwellings (and one vacant plot) already bordering the B3153 to the north. The Applicants state, contrary to the facts (and the HELAA forms) that the northernmost site has been held suitable for 38 dwellings, and that two other plots are now found not to be isolated from the main settlement. This is simply wrong on all counts (see Schedule- critique of paragraphs 3.6 to 3.8 of the Planning Statement).

### **LEGAL DEFECTS**

9. The Land Registry title shows that, exceptionally, the Applicants' site is subject to unknown 'overriding interests' because the title deeds to the land have been lost, and were not available at first registration in 2016. No doubt a developer would be able to insure against the risk of the land, for example, being subject to a covenant against being used other than for agriculture.
10. A second legal defect cannot, however, be overcome by insurance. The Applicants' site has no rights over adjoining land. In particular, the village hall lane is owned by no one, as is the case with Blind Lane to the east. The village hall land (owned by the village hall trustees) has prescriptive rights over the land for the benefit of users of the hall. However, a developer purchasing the Applicants' site will not enjoy any rights over the lane and cannot confer any such rights on properties (and their owners) on the Applicants' estate. This needs to be borne in mind by SSDC when considering the site layout as residents would only be able to use the rights of way which already exist in favour of the public generally. Use of the public footpath along Chistles Lane between the Applicants' estate and the village school as a cycle way would not be a lawful use. Nor would the use of Chistles Lane to provide emergency access to the Applicants'

estate. This has significant implications for the proposal because these non-existent rights claimed by the Applicants are part of its case for claiming the King's Hill site is not too remote from the village to be developed.

### **CARBON FOOTPRINT**

11. The NPPF, SSDC and KM Parish Council are as one in recognising the importance of carbon neutrality and minimising the carbon footprint of every new development. Nothing in the Applicants' Planning Statement addresses this issue. Somerset has recently declared a climate emergency.
12. According to the application form, the size of the proposed development is 10.17 hectares. A site of this size is a valuable asset in terms of natural carbon storage. If disturbed by development this carbon would be exposed to the atmosphere and oxidised. Protecting and enhancing natural capital is vital to increase carbon sequestration in pursuit of net zero targets. If unmitigated, this carbon storage loss, added to the whole life carbon emissions from the development, creates a significant source of carbon emissions, in breach of Somerset's climate emergency, and associated local and national net zero commitments.
13. This is a carpark-to-carpark development; where residents will be car dependent. Development in open countryside triggers a high and permanent carbon footprint. Social/affordable housing of this scale is inappropriate in a rural settlement without adequate support services and amenities nearby for families on low incomes. Indeed, higher costs of living in such a location make families poorer.

### **UNMET LOCAL DEMAND**

14. This is the thread by which the Applicants' case hangs. As the Applicants state, the assessment of local housing demand in *adopted* plans for the SSDC area is out of date. The last time such a 'bottom-up' analysis was carried out was for the SSDC Local Plan 2006- 2026. In an effort to increase house building, local demand analysis was replaced by national housing targets imposed by central government without regard to local circumstances. The government now recognises the perverse incentives created by those targets and is withdrawing them and abandoning centrally-set targets in future. But the core of the Applicants' case rests on those soon-to-be-jettisoned targets.
15. This also means that local demand has not been tested for over 15 years. New data providing cogent evidence of local housing need is a pre-condition of low-density housing being built on open countryside. It is not appropriate for SSDC to approve a planning application without establishing local demand. This will be done as a priority by the Unitary Authority when it comes into being officially in April 2023. Moreover, the latest census details show no significant population rise in the SSDC area over the last 20 years. In fact, it is new house building which has itself generated a rise in population, as people move to Somerset, not a rise in local demand. The Lakeview development at Keinton Mandeville serves as a useful proxy for assessing the actual demand the LVA estate is likely to meet. The balance of executive homes to affordable/social housing is very similar and the sparse information on design given by the Applicants

indeed implies that Lakeview is something of a model for King's Hill. The results of a house-by-house survey of Lakeview residents (41 out of 52 houses) show that even the occupants of the social housing are not local (Bridgwater, Shepton Mallet and Yeovil). Of the 32 'open market' homes surveyed, 18 owners came from outside Somerset- (overseas [US, France and Turkey] 3, Bucks 2, Yorkshire 2, Hants 2, Norfolk, Essex, Sussex, Shropshire, Scotland-1 each) and 14 from within Somerset. Some of these occupants are parents of children at Millfield School, as is the case with Keinton Mandeville generally. Lakeview did not meet local demand, and nor will King's Hill. Any claim by the Applicants to the contrary is false.

16. Even working on existing 'targets' (not the same thing at all as established local demand) the lack of housing supply in SSDC's area is as illusory as it is temporary. It is created only by Natural England's embargo on new homes when phosphate neutrality cannot be guaranteed. This log-jam is about to be broken, either by a system of phosphate credits, or by legislation in the LUR Bill, or both. All this means that SSDC has no true unmet local demand which requires housing in Keinton Mandeville, and it would be irrational (in the public law sense) for it to give consent to a development for any unproven transitory circumstance when the consequences will be a significant irreversible loss of countryside and agricultural land with the accompanying major permanent harm to the character, amenities, facilities and infrastructure of Keinton Mandeville.
17. In *Crane* (*Crane v SOSCLG* [2015] EWHC 425) the High Court held that planning decisions must take account of '*the extent to which the policies actually fall short of providing for the required five-year supply, and the prospect of development soon coming forward to make up the shortfall*' (emphasis added). There is, therefore, no basis in fact or law for the Applicants to claim that this development needs to be built in advance of the anticipated strategic plan for the locality to be prepared by the Unitary Authority on the basis of up-to-date evidence on local demand.

### **THE APPLICANTS' CASE**

18. As the promoters of the development, the Applicants have the onus and burden of proof throughout the application/decision process. They must show that (i) the development (of its size and character) is sustainable in its location in KM (if so, raising a presumption in favour of its approval) and (ii) it causes no significant demonstrable harm (so the presumption is not rebutted). They have done neither. Since the Applicants admit that their development is contrary to national and local planning policies, they must show that SSDC fails to meet the 5-year demand for houses in its area, currently and in the foreseeable future, to such an extent that those policies which the Applicants contravene are to be given little or no weight. It is submitted that, following *Crane*, this is the correct way to formulate the test to be applied- the High Court emphasising the relativity of the judgement to be made in this context. It is also submitted that even where a planning authority cannot simply point to a particular planning policy (as if it were Ancient Greek no longer in use) as determinative, this cannot prevent it applying the factors which underpin those policies, relating to, for example, environmental harm or loss of countryside. Those factors do not cease to exist or be relevant: it is merely that they cannot be safeguarded simply and only by automatic reference to a stated policy.

## **LACK OF SUSTAINABILITY**

19. The Applicants cannot have their cake and eat it. If they demand a decision without delay on the basis of an unmet demand in the SSDC area then their application needs to include a fully-fledged phosphate mitigation strategy and a commitment to it. It does not do so. Natural England's ('NE') comments are to the same effect. NE also points out that the Applicants' nutrient assessment is incorrect, and that the application provides no details of any proposed mitigation strategy. As a result, no Habitats Regulation Assessment (HRA) is possible. This is not the only area where the application is deficient, so deficient, in SHOCK's view, that SSDC cannot proceed to make a substantive decision on it.
20. The NPPF also includes, as part of the sustainability assessment (and the environmental objective which is an integral element of it) a judgment about the carbon footprint of the development proposed. The Applicants have provided no such analysis, yet rely on sustainability as the foundation of their case. In SHOCK's submission if the Applicants omit to provide essential material to make a sustainability analysis, then SSDC should conclude that the development fails the 'sustainability' test, or reject it on the grounds of prematurity.
21. The Planning Statement by the Applicants also mis-applies the 'sustainability' test. This is clear from the 'Balancing Summary'. To establish 'sustainability', the Applicants must show that the development makes positive contributions to 3 objectives: economic; social; and environmental.

### **Economic**

If housing were always an economic benefit, as the Applicants' Summary alleges, every housing development would qualify under this objective just because it is housing. This is nonsense. In fact, the estate provides no employment or any commercial or industrial benefit, and jeopardises village infrastructure rather than improving it.

### **Social**

KM does not have the facilities or amenities appropriate for large scale affordable housing because: there is no nursery; the school is full; GP services are in abeyance (and may not return to the village). Poorer families living on the LVA car- dominated estate will be dependent on car use because of the absence of public transport and the need to travel to supermarkets, recreational facilities, and health and social services not available in KM. They will thus suffer higher living costs than if they lived in a more appropriate location. The proposal is socially damaging.

### **Environment**

This development is not an effective or appropriate use of land. It has a highly negative carbon footprint. It destroys a natural environment enjoyed by the local community and wildlife. It will result in more discharges into the River Brue and River Cary.

As regards the environmental objective it is also to be noted that there is:

- no phosphate mitigation strategy



- no management entity, mechanism, or financial commitment in relation to the woodlands and open space alleged to benefit the locality (in fact, of course. It only redresses to an extent harms consequent on the development). Nor are Woodland Trust guidelines recognised or adopted
- no workable plan to safeguard the SSSI site close to the estate's southern border.
- no habitat conservation measures e.g. boxes on houses are not a satisfactory habitat for bats because of noise and light pollution (see <https://www.templecombevillage.uk/sub-weststreet.html>).

Moreover, the claimed benefits are in fact only those that are required by the creation of 120 more houses in KM. The unsustainable nature of the development far outweighs the compensation offered by the Applicants. There are no benefits for the local community or environment. A greenfield site in open, productive countryside simply cannot meet the sustainability test, if properly interpreted and applied.

### **SIGNIFICANT AND DEMONSTRABLE HARM**

22. These are well-documented elsewhere, so a list will suffice, given that this development plainly fails the sustainability test. Adverse impacts:

- the excessive number of houses.
- the 'urbanisation' of the village destroying its character, traditional linear form and the open texture of paddocks and orchards- not surprising when The Urbanists of Cardiff were the design consultants.
- the unsympathetic 'back-land', suburban nature of the development, which is unlike anything in Keinton Mandeville.
- the high-risk road arrangements via a single point of access situated between a blind junction and a blind summit.
- the increased burden of traffic (with up-to-date numbers well in excess of the "applicants' 'pandemic' figures) through, in reality, a single lane village centre showing the wear and tear and more severe damage of heavy traffic.
- the increase in nursery age and school children for whom there are no facilities. The village school has enough space only for one expansion by one extra classroom to meet demand from the 92 houses already built in the village since 2016. There is no space for a 7<sup>th</sup> classroom, even if the Applicants were to fund it. There is no pre-school facility in Keinton Mandeville, only in Barton St David, a car drive away.
- the fragile foul water and sewerage infrastructure. The Lakeview development has already tripled the frequency of sewage overflows in the SE of the village. Wessex Water's existing system copes only by discharging into the River Brue at Tootle Bridge, and into the River Cary (via Bull Brook). The frequency of foul water discharges into local water courses is a factor in the effective closure of the swimming at West



Lydford because of the health risks, which generations of village children have enjoyed.

- the loss of footpaths with vistas across to Kingsdon, Kingweston and the Dorset hills. They provide many villagers with physical and mental recreation and dog-walking opportunities. They form exercise circuits around the west and south of the village.
- the creation of a hard western edge to the village where none exists at present. Box Cottage (fronting the B3153), Westfield House, and the village hall are isolated buildings amid green space which is not interrupted until the centre of the village is reached (i.e. Row Lane and Irving Road).
- the damage to, and interruption of wildlife habitats which currently extend to the village centre. The remedial measures suggested by the Applicants lack detail and commitment and contradict or ignore best practice as advised by the Woodland Trust.
- the site of Kingweston meadows an 11.5-acre SSSI is an excellent example of unimproved herb rich neutral grassland of a type now rare in Britain. The SSSI sits alone, near the woods and is a magnet for wildlife, flora and fauna all of which are recorded. In Somerset alone these sites were widespread but less than 10 sites of this size and quality are now known. The consequences of building 120 houses within 500 metres of the SSSI causing light pollution, water run offs and noise would be devastating to the meadows and to the wildlife.

All the 'harms' listed above are recognised in law as relevant planning considerations. While the Applicants may glibly suggest primary school children can be bussed out of the village, or an estate connected up to an inadequate foul water and sewerage 'system' (?) because that is Wessex Water's legal duty, a responsible planning authority cannot similarly brush them under the carpet if it is to meet its common law and statutory duties.

#### **PLANNING POLICY, PRECEDENT AND PRACTICE**

23. SHOCK expressly adopts pages 6 to 9 of the Cook Submission verbatim. There is no need to repeat the text itself here. It is clear that the Applicants' proposal contradicts the planning norms applied to Keinton Mandeville by local policy makers, planning officers and members of the Planning Inspectorate. To permit the King's Hill estate would break all those norms and precedents.

#### **AN INVALID OUTLINE APPLICATION**

24. SHOCK submits that there are three reasons why SSDC should reject the Applicants' proposal without making a substantive decision on the merits: incompleteness; abuse of the distinction between an outline application and an application dealing with reserved matters; and prematurity.

### **Matters of principle incorrectly relegated to ‘reserved matters’**

The Applicants are exploiting the distinction between outline permission and approval of ‘reserved matters’ to omit significant matters for which they are unable to offer an acceptable solution or explanation. These include: phosphate mitigation; habitat protection; sewerage and drainage treatment; and woodland and open space provision. These omissions are explained at more length in SHOCK’s documentation. In the absence of this material to make good the Application SHOCK submits that SSDC does not have sufficient information to judge *the principle of* whether LVA’s estate should go ahead – the very decision it faces.

### **Matters of principle incorrectly relegated to ‘reserved matters’**

SSDC is referred to the preceding paragraph. The Application should be rejected without decision as incomplete as to matters which are essential to a decision in principle on it.

### **Prematurity**

SHOCK submits that this Application is also one of those uncommon cases where the appropriate decision is that SSDC should refuse it on the grounds of prematurity, for a numbers of reasons. This important issue will be the subject of a separate legal paper prepared on behalf of SHOCK by Counsel.

### **CONCLUSION**

This response ends with a verse by John Clare, the Peasant Poet, which resonates deeply with those KM residents who regularly enjoy the western paths:

I love to walk the fields, they are to me  
A legacy no evil can destroy  
They, like a spell, set every rapture free  
That cheer'd me when a boy  
Play - pastime - all Time's blotting pen concealed  
Comes like a new-born joy  
To greet me in the field.

John Clare

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