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The Planning Inspectorate  
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**Our ref:** KT/2007/103853/02-L03  
**PINS ref:** APP/U2235/A/09/2096565/NWF  
**LPA ref:** MA/07/2092  
**Date:** 24 September 2009

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990**

**OUTLINE PLANNING PERMISSION FOR THE CONSTRUCTION OF  
HARDSTANDING AREAS TO FORM RAIL/ROAD FREIGHT INTERCHANGE  
WITH FREIGHT HANDLING EQUIPMENT, NEW RAILWAY SIDINGS IN PART  
WITH ACOUSTIC ENCLOSURE, EARTHWORKS AND RETAINING WALLS,  
BUILDINGS FOR CLASS B8 WAREHOUSING AND CLASS B1 USES, ACCESS  
WORKS, INTERNAL ROADS AND BRIDGES, LOADING AND MANOEUVRING  
AREAS, CAR AND LORRY PARKING, ANCILLARY TRUCK-STOP AND  
GATEHOUSE SECURITY FACILITIES, ELECTRICITY SUB STATION,  
REALIGNMENT OF PUBLIC RIGHTS OF WAY AND WATERCOURSES,  
DRAINAGE WORKS AND LANDSCAPING WITH ACCESS TO BE CONSIDERED  
AT THIS STAGE AND ALL OTHER MATTERS RESERVED FOR FUTURE  
CONSIDERATION.**

**KENT INTERNATIONAL GATEWAY, LAND WEST OF JUNCTION 8, M20,  
MAIDSTONE.**

Please find enclosed our holding proofs of evidence by Peter Neil Waring and Claerwyn Florence Hughes relating to the above appeal. These two proofs explain our position in terms of surface water drainage and planning policy. I would draw your attention to paragraphs 4.8 and 5.3 of Peter Waring's proof. If Drawing No. 9T4125-FRA-12 TEMP (rev A) is not accepted and the ecology issue remains live, we may need to call our biodiversity officer and include a short proof from him in our supplemental proofs. We hope, however that the drawing is accepted by the Inspector and that this will not be necessary.

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Cont/d..



INVESTOR IN PEOPLE



Yours faithfully

*Niall Connolly*

**Niall Connolly**  
**Planning Liaison Officer**

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# ENVIRONMENT AGENCY PROOF OF EVIDENCE: PLANNING POLICY

Date  
24 September 2009

## Statement headings

1. Personal details: Name, qualifications, experience
2. Introduction
3. Statutory and policy background
4. The Agency's position on the appeal

### **1. Personal details**

- 1.1 My name is Mrs Claerwyn Hughes. I have a BSc (Hons) degree in Geography from Plymouth University.
- 1.2 After leaving University I began my career within the Nature Conservation section of Shepway District Council.
- 1.3 I have worked for the Environment Agency in the Kent Area Planning Liaison team since 2000, starting as a Planning Officer then as the Technical Specialist. I have been in my current role as Planning Liaison Team Leader since November 2007.

### **2. Introduction**

- 2.1 I have seen a draft of the proof of my colleague Peter Waring. I refer to his Section 2. Before discussions with the Appellant progressed to the point where the Environment Agency was able to withdraw its in-principle objection to the revised appeal scheme, I had intended to give evidence at the inquiry on issues relating to the Environment Agency's statutory duties and the policy framework applicable to the appeal proposal, particularly in relation to the culverting of watercourses. This is therefore my holding proof, which I will supplement in the event the inspector rules that Drawing No. 9T4125-FRA-2 TEMP cannot be considered in the inquiry so that the Environment Agency maintains its objection in relation to the key issue identified at Mr. Waring's Section 3.

### **3. Statutory and policy background**

- 3.1 The Agency's principal aims, derived from its statutory objects under the Environment Act 1995, are to protect and improve the environment, and to promote sustainable development. We play a central role in delivering the

environmental priorities of Central Government and the Welsh Assembly Government through our functions and roles.

- 3.2 As a statutory consultee in the planning process we provide technical advice to Local Planning Authority's (LPAs) and developers on how best to avoid, manage and reduce the adverse impacts of development on the environment. We do this during the preparation of spatial plans as part of the Local Development Framework process as well as in response to individual planning applications. Within our decision making on any planning application we refer to both Environment Agency policy documents and National Planning Policy documents.
- 3.3 Planning legislation was amended on 1 October 2006 to make the Agency a statutory consultee for specified categories of development where flood risk is an issue and requiring the LPA to consult us on any culverting operation or development that could have an impact on any river or stream, including the flow of water. As such, we were consulted on this planning application to offer our expert opinion and advise the Local Planning authority so that they could make an informed decision.
- 3.4 This planning appeal raises significant issues in relation to surface water disposal, and the proposed watercourse diversion and culverting proposals and their impact on flood risk and the riverine environment.
- 3.5 In making our assessment of the appeal proposal we have had regard to our policy, the *Environment Agency Policy Regarding Culverts* ("Culverting Policy"), which has been supplied as Annex 7 to our Supplemental Statement of Case submitted on 16 September 2009. This document was published in March 1999. It is designed to provide guidance on how our statutory duties in relation to the environment will be applied to proposals for the culverting of watercourses, having regard to government planning policy advice.
- 3.6 In the light of our statutory duties we are in general opposed to the culverting of watercourses because of the detrimental effects that are likely to arise. At the time our Culverting Policy was published MAFF Circular 30/92 (published December 1992) on Development and Flood Risk provided guidance to local planning authorities and others in England on this issue.
- 3.7 In July 2001 Planning Policy Guidance Note 25 (PPG25) on Development and Flood Risk was published in England replacing and cancelling Circular 30/92. The Environment Agency Policy Regarding Culverts was specifically referenced in PPG25. The principles of our Culverting Policy are still reflected in National Planning Policy and we have used the two in conjunction to arrive at our decision.
- 3.8 We have placed weight on the use of the Culverting Policy in our arguments because the Policy draws together key objectives and principles from Planning Policy Statement 1: Delivering Sustainable Development (PPS1), Planning Policy Statement 9: Biodiversity and Geological Conservation (PPS9), and Planning Policy Statement 25: Development and Flood Risk (PPS25). These key principles are:
- The aim for planning to facilitate sustainable development by '*protecting and enhancing the natural and historic environment*' and

that planning decisions should be based on *'the potential impacts, positive as well as negative, on the environment of development proposals'* (PPS 1).

- The need to recognise the value of networks of natural habitats *'for migration, dispersal and genetic exchange of species in the wider environment'* (PPS 9), and that such networks should be protected from development, and, where possible, strengthened by or integrated within it.
- The responsibility for those proposing development to produce *'designs which reduce flood risk to the development and elsewhere'* (PPS 25).

3.9 Those policies and their aims are also reflected in the development plan policies applicable to the appeal scheme.

3.10 Our Culverting Policy is therefore a material consideration in the determination of planning applications and appeals, and the Environment Agency invites the Secretary of State to accord the Policy and its aims considerable weight in this appeal.

3.11 The Culverting Policy is a material consideration for the additional reason that it informs the exercise of the Agency's powers and duties not only as consultee on planning applications but also as decision-maker in its own right on applications for Land Drainage Act and Byelaws consent for works affecting a watercourse. As agreed at paragraph 52 of the Statement of Common Ground – Foul and Surface Water Drainage and Flood Risk/Watercourse Accommodation, the Agency's consent to such works would be required in order to implement any planning permission granted by the Secretary of State for the appeal scheme. Hence the viability of the scheme depends, among other things, on the prospect of our granting that consent. I respectfully suggest therefore that the Secretary of State should be slow to grant planning permission for a scheme that conflicts with the Culverting Policy.

#### **4. The Agency's position on the appeal**

4.1 The Agency has been in negotiations with the Appellant and we have come to an agreement on a way forward. Our agreement relies on Drawing No. 9T4125-FRA-2 TEMP being submitted and accepted at the inquiry. If this Drawing was accepted then we would be in a position to remove our objection. However, if it is excluded, then our position would be that we do not believe that the revised appeal scheme before the inquiry is in line with the above Planning Policy or our Culverting Policy.

4.2 On the revised appeal scheme without the further amendment proposed in Drawing No. 9T4125-FRA-2 TEMP, the proposal would be unacceptable for the reasons summarised in Mr. Waring's Proof of Evidence.

# **DECLARATION AND SIGNATURE**

**CLAERWYN FLORENCE HUGHES**

**24<sup>th</sup> September 2009**