

APPEAL BY KENT INTERNATIONAL GATEWAY LTD ARISING FROM MAIDSTONE BOROUGH COUNCIL'S FAILURE TO DETERMINE AN APPLICATION FOR PLANNING PERMISSION FOR A PROPOSED RAIL/ROAD FREIGHT INTERCHANGE, WAREHOUSING AND OTHER WORKS ON LAND BETWEEN THE M20 AND THE A20, TO THE WEST OF JUNCTON 8 AND EAST OF THURNHAM LANE, MAIDSTONE.

Revised Proof of Evidence on behalf of the Joint Parishes Group (JPG)

Hydrology

Peter Waite

5 October 2009

JPG

c/o Clerk to the Joint Parishes Group
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1. PERSONAL DETAILS

- 1.1 My name is Peter Waite and I appear at this public inquiry on behalf of the Joint Parishes Group (JPG).
- 1.2 I am a builder and property developer and specialise in residential and commercial developments. I am resident in Thurnham and am a Parish Councillor where I act as Vice Chairman. I am a member of the Mid Kent Downs Steering Group. I am an ex Member of Maidstone Borough Council and acted as their Vice Chairman of Planning.
- 1.3 I am not an expert in planning law or any other technical matter relevant to this public inquiry. I appear as a local resident/Parish Councillor and a member of the JPG.

2. SCOPE OF EVIDENCE

- 2.1 This proof considers the scheme's impact on flooding, foul water capacity, run off water supply and contamination. It shows how the scheme will breach PPS25, Maidstone's Strategic Flood Risk Assessment and the LDF.
- 2.2 We also show that the Statement of Common Ground CD3.1 para 6.5 is misleading because MBC's SRFA specifically acknowledges that these tributaries to the Len may flood but that the flooding goes unreported because they pass through Greenfield land. We can confirm that these tributaries do flood, and worse, Water Lane is sometimes made impassable by flooding. Areas of this site are designated Flood Zone 3b for a reason, desk top surveys that ignore key passages of MBC's SRFA should not be allowed to persuade you otherwise.

3. HYDROLOGY

3.1 Introduction

- 3.1.1 The JPG's overarching objection is that far too many of the Appellant's plans to mitigate the effects of this development remain subject to decisions they say will be made after cut and in-fill work on the site has been completed. This lack of detailed work makes it difficult for the inspector to make a properly informed decision about the viability and suitability of the proposed development – a contradiction of planning policy guidance.
- 3.1.2 This site deserves better. The three watercourses within the site boundary are tributaries of the River Len, home to many protected and rare species as described in our proof of evidence on ecology. Furthermore the site lies within the catchment of an Environment Agency Source Protection Zone (SPZ). However, it seems the appellant has paid only lip service to the complex hydrological challenges this site presents.

3.2 Water Supply

- 3.2.1 Development of this site will require much cut and fill. The cut is mostly in the Gault Clay which will be spread over both Gault Clay and Folkestone Sands. Such amounts of earthmoving inevitably create variations in the hydrological properties of the ground.
- 3.2.2 Folkestone Beds have the capacity to absorb and retain large amounts of water, thereby serving as a significant aquifer for Maidstone. The covering over of the Folkestone Beds by the impermeable Gault Clay will greatly reduce that capacity to gain water from precipitation and surface runoff, yet if the permeability is safeguarded there is a very great risk from contamination. This dichotomy has not been resolved in the AXA/KIG submissions and indeed in the Supplementary Environmental Statement (SES) the Appellant has conceded that there is a potential affect upon the public water supply catchment - the Aquifers- and this could also preclude efforts to reuse water on the site.
- 3.2.3 We already have acute water supply problems and any compromise of the existing aquifers must be viewed with great concern especially as Maidstone has been accepted as a growth point with an increase in the number of dwellings of 11,080 by 2026.
- 3.2.4 Even in the SES insufficient attention is paid to the underlying Geology, especially the interface between the Gault Clay and Folkestone Beds. For example, there is little detailed indication of the depth of the various strata beyond a non site specific cross section from Geological Sheet 288¹.

3.3 Flood Risk

- 3.3.1 The appellant underestimates the flood risk on site and the role the site plays in minimising the flood risk downstream in Bearsted. The Environment Agency Flood Plan Map shows that two of the three watercourses on the site are categorised as Flood Zone 3b (the appellants accept this in their own Environmental Statement). Maidstone Borough's Strategic Flood Risk Assessment figure 5.4² also classifies parts of the water courses as Functional Flood Plain, Flood Zone 3b.
- 3.3.2 PPS25 states that only water compatible uses and essential infrastructure (for example transport escape routes) should be permitted in areas classed as Flood Zone 3³. Development could only be permissible where an Exception Test has been applied. No such test has been applied.
- 3.3.3 In Chapter 10 of the Environmental Statement the appellant states that despite the Flood Zone 3 classifications neither the Environment Agency, nor Maidstone BC, have recorded flooding incidents in relation to this site. It is worth noting that the Maidstone SRA specifically notes that they may not have records of tributaries to the River Len flooding as they are often Greenfield and therefore floods go unreported⁴. Paragraph 6.5

¹ Proof of Evidence on Geotechnical Issues, KIG 15.1, figure 3

² Maidstone Borough Council Strategic Flood Risk Assessment figure 5.4

³ Planning Policy Statement 25: Development and Flood Risk. Table D1

⁴ Maidstone Borough Council Strategic Flood Risk Assessment May 2008, page 6-2

of the Proof of Evidence KIG 9.1⁵ is misleading as it does not explain that the local authority admit that they have no records of flooding simply because no one has looked, not because it doesn't happen:

"There have been few flood incidents reported, however this may be due to some of these areas currently being undeveloped and therefore incidents not being reported."⁶

As local residents we can assure you that flooding does occur (up to chest height on a horse). The appellant appears to use the fact that there are few reports of flooding to dismiss the Flood Zone 3 classification on parts of the site and unilaterally it seems, ignore the provisions of PPS25. The JPG asserts that table D of PPS25 means that a Strategic Rail Freight Interchange is not compatible with Flood Risk 3 status of the areas around the two water courses concerned. The South East Plan Regional Spatial Strategy Policy NRM4 reiterates that unsuitable developments, as defined by PPS25, should not be built on areas designated Flood Zone 3.

- 3.3.4 This site plays an important role in mitigating the flood risk to Bearsted and beyond, by providing a 'safety valve' and it also seems that Maidstone's SFRA, the South East Plan Policy NRM4 and PPS25 are clear - this is not the place to build a Rail Freight Interchange, particularly as the site has no access to HS1 and no direct access to a motorway and so does not represent a special case.

3.4 Sustainable drainage systems.

- 3.4.1 The Sustainable Urban Drainage Systems (SUDS) being proposed amount to little more than the creation of on-site ponds. The proposal contains vague suggestions that in future they may be augmented by other mitigation techniques, but no commitment. Given the current propensity for two of the three water courses on site to flood, techniques such as rain water harvesting, pervious surfacing, green roofs, and infiltration trenches will prove essential, not optional.
- 3.4.2 Maidstone's Strategic Flood Risk Assessment states that 'cost effective flood SUDS must be designed at the feasibility stage of any development'⁷. It also makes it clear that basins, ponds and wetlands are just one of five SUDS that should be considered. The appellant's decision to wait until 'initial cut and fill operations' are complete before giving proper consideration to the full range of options they have at their disposal therefore contradicts the Maidstone LDF and in turn PPS25 and the RSS.
- 3.4.3 This is not the first time we have been told that expert techniques could mitigate the effects of increased run off into our villages. The construction of the M20 motorway

⁵ KIG9.1 Proof of Evidence on Behalf of Kent International Gateway page 20, para 6.5

⁶ Maidstone Borough Council Strategic Flood Risk Analysis May 2008 Page 6-3

⁷ Maidstone Borough Council Strategic Flood Risk Analysis May 2008 Section 8-3, page 8-3

section and more recently the construction of the CTRL were accompanied by plans for balancing ponds and run off. Yet we still suffer from increasing water run off on both the Thurnham Lane and the Water Lane. The latter can be rendered impassable in Winter, with floods as high as a horse's chest at times. In summary; none of the expert solutions have worked in practice.

- 3.4.4 We do not accept the EA have the right to waive the Appellant's obligation to provide details of the surface water drainage systems at the planning stage as claimed in the SoCG⁸. It is not appropriate for information that you, as Planning Authority, require in order to make your decision to be deferred until after the planning stage. The Appellant's accept they are obliged to provide adequate information on surface water drainage in the SoCG (CD8.9, paras 11-17) and yet the document itself goes on to say that such information will be provided at the detailed design stage.

3.5 Culverting

- 3.5.1 Contrary to EA policy, over 178 meters of water course W2 is to be culverted. It is proposed that the culverting is carried out using pre-cast concrete box sections but neither the Environmental Statement nor Supplementary Environmental Statement appear to acknowledge the Flood Zone 3 status of parts of the site or consider the off-site implications of the changes to flow volume caused by the pre-cast concrete culverting. The impact of downstream wildlife of proposed diversion of the other two watercourses has not been properly considered anywhere.

3.6 Foul Water

- 3.6.1 No existing foul drainage sewers cross the site. Nearby foul drainage sewerage capacity is not sufficient for a development of the size of the KIG. Indeed, foul water sewerage capacity across the whole South and East Maidstone is already under extreme pressure.
- 3.6.2 In their response to the consultation over the Maidstone Local Development Framework Southern Water have presented a solution to tackle this lack of capacity. This would see foul water from any development on this site and other nearby developments combined and taken to Aylesford Wastewater Treatment Works. Instead the appellant proposes a solution that simply serves its own needs. The JPG is dismayed that KIG do not propose to take advantage of this opportunity which would provide capacity, not just for this site but also for other new developments in this area.
- 3.6.3 The appellants defend this decision because they say Southern Water's plan, and other new developments that may benefit from it are not yet sufficiently advanced. A decision that may condemn huge swathes of south and east Maidstone to years of foul water sewerage under capacity should not be taken because a single developer is in a hurry. The JPG agrees with Southern Water's submission to the Maidstone LDF - only a

⁸ Statement of Common Ground 8.9 page 6 para 30 and page 8 para 34

holistic approach to foul water sewerage flows in south and east Maidstone will work for the area we represent and while the appellant's solution may, or may not, provide capacity for the site alone, it will mean scuppering a solution to the capacity problems of Maidstone. This failure to reflect the emerging LDF puts this development at odds with the South East Plan so yet again this development contradicts local and regional strategy.

- 3.6.4 The construction of an 11km rising main for a single development, and the associated environmental damage it will cause is disproportionate, particularly when, with a little patience, a holistic solution for the area is possible. We would also like the Inspector to consider the implications of *R v Cornwall County Council ex parte Jill Hardy* [2001 JPL 786]⁹ which questions the notion that an environmentally harmful condition, like an 11km rising main, can be imposed through a planning condition without forming part of the EIA of the scheme which made it necessary. The rising main is fundamental to this scheme, it should therefore form part of this scheme's EIA.

3.7 Contamination Risks

- 3.7.1 The appellant assesses risk of contamination of the major aquifer as 'moderate'¹⁰. There are three water abstraction points which are used to obtain the water that myself and my family drink within 250 meters of the site.
- 3.7.2 This presents a considerable dilemma. Due to the instability of the underlying geology any significant structure on this site will require major earthworks and needs to be built on deep pilings. Yet the deeper these works and pilings go the greater the risk of damage to, or contamination of, the aquifer.
- 3.7.3 The in-fill used for the existing railway cutting, the fuel tanks beneath the unused fuel station on site and the disused gas works in the south eastern corner of the site all provide potential sources of contamination; disruption caused by the earthworks, pilings and the creation of embankments will create a new pathway; and the proximity to the public water abstraction generates a great number of potential receptors.
- 3.7.4 The dangers of the by-products associated with disused, but unremediated, gas works are well documented. The risk to the aquifer and abstraction points is a good reason not to build such large structures on this site, particularly given the difficulties of building on Gault Clay and potential need for deep pilings and massive in-fill work. The JPG notes that PPS 23 requires a precautionary approach to be adopted where "there is good reason to believe that harmful effects may occur to human, animal or plant health, or to the environment"¹¹. We believe that promised proper investigation of the risks should

⁹ *R v Cornwall County Council ex parte Jill Hardy* [2001 JPL 786]

¹⁰ Environmental Statement Chapter 9 Ground Conditions

¹¹ PPS23: Planning and Pollution Control page 2.

have been completed prior to the application being submitted and should certainly be available now if any decision reached is to be compliant with the precautionary principle.

- 3.7.5 Contrary to EA recommendations only limited bore holes trials took place (not where the EA suggested) for the SES and still no soil sampling has taken place despite the EA asking for it.
- 3.7.6 Once again the Statement of Common Ground avoided any ‘technical matters in dispute’ simply by deferring decisions until after cut and fill operations. There are countless examples of a ‘fingers crossed’ approach to this plan which would may be acceptable on non-environmental issues but which is outlawed when it comes to EIAs. For example, ‘deep bored soakaways would only be permitted where discharge would not have a detrimental impact’ or ‘use of pervious paving may be considered subject to detailed design...’. We are all stuck if none of the options prove feasible which is why the law is so clear, this work must be done now – at the planning stage - not by condition¹².

4. **Conclusion**

- 4.1 We are very concerned about the sustained pretence that this site does not flood. If the flooding is not acknowledged it cannot be properly mitigated. But to summarise all our concerns, this development would:
- Breach PPS 25 as it has failed to recognise the Flood Zone 3 Status and take actions to mitigate or even apply an Exception Test.
 - Increase the chances of flooding downstream because of the culverting and inadequate SUDS (which the SFRA says must be designed at the feasibility stage).
 - Put the Thurnham aquifer at risk of contamination.
 - Increase pressure on Maidstone’s foul water capacity and may make the proposed holistic solution unviable.
- 4.2 It therefore breaches PPS25, PPS23, the South East Plan, the LDF and MBC’s SFRA. It also ignores case law which indicates that further Environmental Impact Assessment can no longer be mandated through planning conditions.

¹² Aarhus Convention, (United Nations, 1998); Directive 2003/35/EC (European Commission); R v Cornwall County Council ex parte Jill Hardy [2001 JPL 786]