

THE KENT INTERNATIONAL GATEWAY
PROPOSAL

CLOSING SUBMISSIONS ON BEHALF OF KENT
COUNTY COUNCIL

APPEAL REF- APPU2235/A/09/2096565/NWF

INTRODUCTION

1. Mr Martin reminded the Inspectors and the parties that the County Council (“KCC”) attends this inquiry as the highways authority and also as strategic authority with responsibilities in regional planning and economic development, notwithstanding the loss the Kent and Medway Structure Plan.¹

2. It is KCC’s view that the appeal proposal would have a devastating effect on the community of Bearsted and its surroundings but it also would have an impact and significance well beyond the Borough of Maidstone. KCC has long experience of major developments linked to the international and regional transport role of Kent. Its views should be accorded considerable weight having regard to its role, responsibilities and experience.

3. It is the KCC’s conviction that the major damage that the appeal proposal would cause is certain and severe, and that the claimed benefits are illusory.

4. KCC strongly supports the Maidstone Borough Council’s (“MBC”) refusal of the appeal application, but has sought not to duplicate evidence. KCC has given evidence on Strategic planning policy, highways, archaeology and PROWs. I will address those matters in turn in these submissions.

¹ Section 2 of his proof KCC/1.1

STRATEGIC PLANNING POLICY

Introduction

5. Mr Martin's evidence in relation to strategic planning policy is commended to the Inspectors and to the Secretary of State. Mr Martin has considerable experience of strategic policy formulation. He has also been involved in managing studies into major transport projects in Kent, including the ports, the Channel Tunnel and the Channel Tunnel Rail Link.² He is therefore particularly well qualified to advise on this matter and his evidence should be accorded significant weight.

6. His proof of evidence³ provides a comprehensive and cogent review of strategic policy and relevant guidance. His oral evidence provided additional valuable information that will assist the Inspectors in interpreting and applying the relevant strategic policies. The following submissions are based upon his evidence and are intended to complement the submissions to be made on behalf of MBC.

The interpretation and application of SRFI policy

7. Strategic development plan policy is set out in the adopted South East Plan 2009 (the "SEP"). The SEP has been approved by the Secretary of State, as recently as May of this year. Accordingly, the policies within it should be regarded as up to date and, where relevant, they should carry full weight in terms of S38(6) of the Town and Country Planning Act 1990 (the "TCPA 1990").

² Mr Martin's proof KCC/1.1 para 1.1

³ Mr Martin's proof KCC/1.1

8. The interpretation and application of policies T11, T12 and T13 in the SEP has been the subject of debate during the inquiry. This debate has been prolonged, but the words in the policies are clear and easily understood.
9. It is the Appellant's case that "Policies T11 and T12 set out the overarching Development Plan policy framework in this case"⁴, and there is an obvious attempt by the appellant to focus on these policies rather than Policy T13.⁵ However, this approach is patently wrong.
10. Policy T11 relates to the railway system and freight movements. In particular, it proposes that priority be given in relevant regional strategies and local policies to providing enhanced capacity for the movement of freight by rail on four corridors.⁶ It is not addressed to the provision or location of rail freight interchanges.⁷ Location of SRFI on these routes may be appropriate where they are endorsed by Government and Network Rail as priorities for investment and providing suitable capacity, but Policy T11 does not preclude the location of SRFI on other suitable freight routes. Nor does it indicate where on the four routes SRFI might be located – the reference to the Dover route in Policy T11 for example includes "through/around London" and this provides considerable latitude within and beyond the South East region.
11. Policy T12 requires regional strategies and local development documents and transport plans to include policies to safeguard sites "critical to" developing the capability of the transport system to move freight by rail, and to safeguard and promote sites adjacent to railways, particularly for new intermodal facilities and rail related industry and warehousing that are "likely to maximise" freight movement by rail. The policy is therefore selective towards the sites to be safeguarded and implies clearly that there should be a

⁴ Mr Bullock's proof KIG/1.1 para 6.6

⁵ See generally Mr Bullock's proof KIG/1.1 section 6.

⁶ Para 8.36 of the supporting text explains that "there is a need to protect routes...that benefit freight movements and to address bottlenecks...".

⁷ Mr Bullock accepted in cross-examination by TCQC that the policy does not purport to state where such interchanges should be located.

comparison between sites to identify the most suitable. It is not an automatic endorsement of all such locations.⁸

12. Again, the policy does not state the locations for interchange facilities. It does encourage the location of development with a high generation of freight to be close to intermodal facilities, rail freight facilities, or ports and wharves. A SRFI could achieve this by providing warehousing within the same site as an intermodal terminal. However, the policy has a more general application. For example, the location of intermodal and rail freight facilities would preferably be where freight generators such as large factories, depots or warehouses could be satisfactorily located nearby on suitable sites.⁹ Mr Garratt states: “In effect the third bullet of Policy T12 encourages planning authorities to adopt strategies that will mean that large new warehouses in the South East can be accommodated on rail linked sites”.¹⁰ However, Policy T12 (iii) encourages “development with a high generation of freight...movements to be located close to intermodal facilities etc.” (my emphasis). Therefore, although it provides support in principle for rail linked distribution parks, its objectives are wider and relate to the provision of convenient access to intermodal facilities for land uses with high freight generation.
13. Policy T13 is the only policy providing specific criteria against which intermodal interchanges can and should be assessed. The policy was retained in the SEP and amended by the Secretary of State precisely because of the need for more specific guidance on SRFI than provided by T11 and T12.¹¹
14. Policy T13 requires a process at the regional level to identify broad locations within the region for up to 3 facilities, involving the Government, the rail industry, private sector and local authorities.

⁸ Mr Bullock accepted in cross-examination by TCQC that the word “maximise” suggests that a comparison is to be made with other sites.

⁹ Mr Martin’s proof KCC/1.1 para 3.6

¹⁰ Mr Garratt’s proof KIG/3.1 para 6.50

¹¹ See paras 9.16 to 9.19 of the Panel Report (Mr Bullock’s appendix 18 KIG/1.5)

15. Policy T13 requires that interchanges “should have the potential to deliver modal shift” as well as being “well related” to:

“Rail and road corridors capable of accommodating the anticipated level of freight movements;

The proposed markets; and

London.”

16. The supporting text to policy T13 is also important, not only in helping explain the rationale for the policy but also in providing further guidance as to the number and location of intermodal interchanges.

17. Paragraph 8.37 refers to the need identified in the Strategic Rail Authority Policy of 2004 (the “SRA Policy”) for between three and four inter-modal interchange terminals to serve London and the wider South East, including Bedfordshire Hertfordshire and Essex outside the SEP area.

18. The Secretary of State also recognises that potential sites for new intermodal interchange terminals will need to meet a number of criteria, drawing on the site characteristics referred to in the SRA Policy. The SEP states that sites for terminals “in particular must”: (my emphasis)

“be of sufficient size and configuration to accommodate an appropriate rail layout, transfer operation and value added activities

be already rail connected or capable of rail connection at a reasonable cost

have adequate road access or the potential for improved road access

be situated away from incompatible land uses.”

19. The Government draws further on the SRA Policy for guidance on the broad location of interchanges. Paragraph 8.38 states:

“Suitable sites are likely to be located where the key rail and road radials intersect with the M25.”

20. The Government's express endorsement of the SRA Policy for SRFI and the need for three to four new SRFI to serve the wider region is significant. It indicates that the Secretary of State is not only concerned that there should be interchange facilities in the South East but also that these should be provided consistent with the identified required capacity for such facilities in the wider area. The Regional Spatial Strategies for London, the South East and the East of England have all been recently approved by the Secretary of State and each has policy support for the provision of SRFI. Each refers to the SRA Policy for three to four interchanges to serve the wider region. In the London Plan, two locations are identified with potential for the provision of strategically important inter-modal freight transfer. In the East of England Plan, provision should be made for at least one SRFI.¹²
21. The Appellant's case has been that Policy T13 addresses regional as opposed to national intermodal interchange facilities.¹³ In his proof of evidence Mr Bullock, on the advice of Mr Garratt and Professor Braithwaite, considers the appeal proposal as primarily a national distribution facility and contends that Policy T13 is relevant only to the regional function of the proposal, which is seen as secondary.
22. This approach is based upon a fundamental misreading of the SEP. There is no such distinction in Policy T13 (in its terms, in its scope or in its purpose) or anywhere else in the SEP. As Mr Bullock accepted in cross-examination¹⁴, the policy does not distinguish national and regional distribution and the policy is of general application to intermodal interchanges. The policy embraces the provision of SRFI for both regional and national functions and its criteria should be applied directly and fully to the KIG proposal.
23. Mr Bullock also draws on the evidence of Mr Garratt and Professor Braithwaite to suggest that Policy T13 and the SRA Policy are concerned with regional distribution centres and not with the national distribution role

¹² Mr Martin's proof KCC/1.1 pages 17 to 19

¹³ Mr Bullock's proof para 6.42 KIG1.1

¹⁴ By TCQC

envisaged by the appellant for KIG. In particular, the appellant's witnesses argue that the SRA policy does not take account of inbound international freight, the concept of inland ports and the role of warehousing in developments such as KIG. These arguments appear as further attempts to disassociate the KIG proposal from the application of Policy T13. All these arguments are bad and I address each in turn.

24. First, Mr Bullock refers to the evidence of Professor Braithwaite for the assertion that the SRA strategy did not address "the specific implications of the continental in bound freight leg in logistics analysis".¹⁵
25. However, as Mr Martin noted in his oral evidence in chief, the SRA policy statements of 2001 and 2004 both indicate that account was taken of the relationship of SRFI to ports and the Channel tunnel, and there is no indication that their scope omits consideration of "continental in bound freight". This is made clear at pages 36-37 of the 2001 SRA Freight Strategy¹⁶ and in paragraphs 4.4 and 4.9 of the SRA 2004 Policy document¹⁷.
26. The Appellant's witnesses gave further relevant evidence in relation to this matter and in effect confirmed the evidence of Mr Martin. Mr Garratt accepted in cross-examination that the SRA was well aware of the national context in the SRA 2004 Policy for SRFI.¹⁸ He also agreed that the Policy shows awareness of national and regional distribution roles, as reflected in definitions of NDC and RDC in the glossary. Mr Bullock made similar acknowledgments.¹⁹
27. Mr Garratt also accepted²⁰ that the modelling for the SRA Policy included both UK and international dimensions, and that the model includes components for maritime and cross Channel freight. He also accepted that the SRA did consider the impact of goods for national distribution, and that there

¹⁵ Mr Bullock's proof para 5.19 KIG/1.1

¹⁶ CD 6.5.14

¹⁷ CD 6.5.15

¹⁸ In cross-examination by TCQC

¹⁹ In cross-examination by TCQC

²⁰ In cross-examination by TCQC

are no proposals for the development of SRFIs that distinguish NDCs and RDCs; the Policy refers to SRFI demand generally in London and the wider South East.

28. Professor Braithwaite agreed²¹ that the 2001 SRA Freight Strategy modelled commodity types (see Appendix C). He also agreed that the 2004 SRA strategy included new work subsequent to the Radical CAST model referred to in the earlier strategy. (See Paragraph 6.10 page 17).
29. Mr Bullock's assertion should therefore be rejected.
30. Secondly, Professor Braithwaite suggests that in modelling the optimum location for freight distribution for the SRA Freight Strategy 2001, there were omissions in the cost of transport into potential SRFI sites, and that the work did not recognise the "port centric" or "inland port concept".²² Mr. Garratt suggests that the technical work by Radical Ltd. for the 2001 SRA Freight Strategy "was bound to lead to the identification of locations suitable for regional distribution centres based on the destination of goods (i.e. RDC's) and not for either national, European or port centric distribution centres that stand between producers and RDCs".²³
31. There is in fact no such deficiency in SRA policy, as Mr Martin explained in his oral evidence in chief. Indeed, Professor Braithwaite himself acknowledges this elsewhere in his proof when he says "The concept of inland ports and terminals is embodied in the 2004 SRA's SRFI strategy"²⁴ and "the SRA actively recognised the importance of port centric logistics to the adoption of rail and the use of the Channel tunnel"²⁵.

²¹ In cross-examination by TCQC

²² Professor Braithwaite's proof para 5.52 KIG/5.1

²³ Mr Garratt's proof para 6.33 KIG/3.1

²⁴ Para 5.41 KIG/5.1

²⁵ Para 11.3 KIG/5.1

32. Moreover, Professor Braithwaite agreed in cross examination²⁶ that his company was engaged by the SRA to look at road flows to national distribution centres, and that the SRA had taken account of inland ports.
33. It is abundantly clear that the SRA policies were formulated in the knowledge of port centric rail logistics.
34. It should be noted here that the SEP also identifies International Gateways (on the Key Diagram) and Gateway Ports (in Policy T10), and that these do not include Maidstone. Moreover, the Plan identifies freight routes from the ports on which enhanced capacity for the movement of freight should be provided (Policy T11).
35. Professor Braithwaite's suggestion should therefore be rejected.
36. Thirdly, Mr Garratt argues that the use of the term "Rail Freight Interchange" (RFI) in the SRA 2004 Policy does not fully reflect the role of warehousing in rail linked distribution parks.²⁷
37. The SRA approach, however, subsequently endorsed by the Secretary of State, does consider the role of warehousing: "[Strategic RFI] should not be seen simply as locations for freight to access the railway but also sites for the accommodation of businesses capable now or in the future of supporting their commercial activities by rail".²⁸ The document considers it to be a key characteristic of SRFI's that warehousing and intermodal facilities are provided at the same site.²⁹
38. Mr Garratt's argument should therefore be rejected.
39. In short, there is no basis for arguing that the policy framework is in any way deficient in terms of determining the appeal proposal.

²⁶ By TCQC

²⁷ Mr Garratt's proof para 6.28 KIG/3.1

²⁸ CD6.5.15 para 4.5

²⁹ CD6.5.15 paras 4.11 to 4.19

40. There are three additional arguments put forward by the Appellant on which I would wish to comment.
41. First, Mr Garratt refers to the conclusion of the 2004 SRA Policy that there was no immediate need for new (SRFI) capacity in the East Midlands (my emphasis). He argues that “the best locations for rail linked NDC’s lie between major centres of population (e.g. between Paris/Ruhr/Belgium and London, and between London and Birmingham)”
42. As Mr Martin pointed out in his oral evidence in chief, closer reading shows that the SRA conclusion with regard to the East Midlands and other regions was that they “will need development of Interchange capacity during the term of the 10 Year Plan”.³⁰ Indeed, Mr Garratt himself recognises that the East and West Midlands, and North West regional plans identify zones for such projects.³¹
43. The SRA Policy has not therefore restrained SRFI development in one of the “best locations for rail linked NDC’s” as suggested by Mr Garratt. He did in fact agree that the SRA had not ignored the need for SRFI in the “Golden Triangle” in the Midlands.³²
44. Secondly, Mr Garratt comments that the policy for SRFI to be located “where key rail and road radial intersect with the M25” is a reference to an SRA report that in his view does not represent Government policy.³³ However, Mr Garratt overlooks the fact that in recently adopting the South East Plan the Secretary of State has expressly endorsed this guidance, and that it is similarly endorsed in the adopted East of England Plan³⁴ and the London Plan³⁵.

³⁰ CD 6.5.15 para 6.16

³¹ Mr Garratt’s proof para 6.7 KIG/3.1

³² In cross-examination by TCQC

³³ Mr Garratt’s proof para 12.5

³⁴ CD2.10 para 7.25

³⁵ CD1.2 para 3.259

45. Thirdly, Mr Garratt suggests that the SRA Policy can be dismissed on the basis that it has a limited 10 year timescale. However, the SRA Policy is in the process of implementation, and it has been endorsed by the Secretary of State in three recently approved Regional Spatial Strategies, among which the SEP runs to 2026.

KIG and compliance with SRFI policy

46. As set out in Mr Martin's proof of evidence³⁶, the appeal proposal can and should be assessed against the criteria in Policy T13 of the SEP together with those additional criteria taken from the SRA Policy and which are referred to in paragraph 8.37 of the supporting text. Mr Martin has made this assessment and his conclusions remain sound in the light of the evidence that has been presented to the inquiry. I make the following submissions in relation to each.

Broad locations for up to three facilities:

47. First, the appeal proposal does not arise as a result of the process which the Secretary of State envisages for the identification of broad locations for SRFI. It falls to be considered as a candidate outside of that process.
48. Secondly, although Policy T13 refers to "up to three inter-modal interchange facilities" and, in numerical terms alone the proposal would not conflict with the policy, consideration must also be given to the progress that has been made towards meeting the identified need for 3 to 4 interchanges in the wider region. At present there are no SRFI's with planning permission proceeding in the South East Plan area. However, there is a planning permission for an SRFI at Howbury Park in London; there are active proposals at Radlett in the East of England and Colnbrook within the South East region; and there is strong policy support for the provision of a SRFI at Barking, also within London which has the advantages of existing rail interchanges, access to the CTRL

³⁶ Pages 29 to 30 KCC/1.1

(High Speed 1) and large brown field sites nearby. These 4 locations would together meet the South East Plan policy for “up to three” locations and meet the SRA policy for 3 to 4 in the wider region, as explained by Mr Martin in his proof of evidence³⁷.

The potential to deliver modal shift from road to rail:

49. There is ample evidence before the inquiry and others will no doubt make detailed submissions. I wish to make only 4 brief submissions having regard to Mr Martin’s position on this issue.
50. First, the basic point is that the appeal site is located at an intermediate point on international freight journeys. It is neither an origin nor a destination. As Mr Martin observes with regard to cross Channel traffic through Kent ³⁸, “Changing mode from road to rail at the appeal site, or breaking the rail journey, would add to overall journey costs and duration, while removing the flexibility to serve multiple destinations by road.” There would need to be very strong economic or logistics reasons to make such a change. It is Mr Martin’s view that the Appellant has not been able to demonstrate the case in favour of such mode changes.³⁹ He considers that the estimates of transport costs and the conclusions of Jacobs Consultancy for MBC demonstrate that the proposal will not be successful in transferring freight from road to rail.
51. Secondly, the appellant’s claims for modal shift to rail also rely on the majority of the warehousing being used as national distribution centres. However, Mr Bates’ evidence shows that the appeal site would in fact be much more likely to attract regional distribution, with onward distribution by road.
52. Thirdly, Mr Garrett and Professor Braithwaite agreed in cross examination⁴⁰ that there is no available data to demonstrate the origin and destination of

³⁷ Pages 31 to 32 KCC/1.1

³⁸ In his proof at para 4.8 KCC/1.1

³⁹ See pages 32 to 33 of his proof KCC/1.1.

⁴⁰ By TCQC

cross Channel freight and the proportions of goods sent to regional or national distribution centres, to factories or other destinations. They also admitted that the appellant has undertaken no market research to establish at first hand the interest in the market place for the KIG concept. The letters expressing support for the KIG concept submitted by the Appellant in evidence and during the Inquiry amount to no more than qualified interest in the proposal, subject to commercial consideration, and do not provide clear support to for modal shift from road to rail.

53. Fourthly, the appellant has failed to provide evidence of “port centric” distribution by rail that provides a precedent for KIG, nor any reliable evidence that gives confidence in the Appellant’s case. For example, there have been frequent references by the Appellant to the warehouse complex developed by Tesco at Teesport as an example of port-centric distribution. However, these facilities handle deep sea, non food commodities for storage prior to removal inland. The commodities are not fast moving consumer goods, nor are they perishable or chilled like much of the cross-channel freight. Moreover, Professor Braithwaite informed the Inquiry⁴¹ that Tesco no longer operate a RDC at Daventry. The rail service is therefore between an import centre and an inland NDC, and is no guide to the operation proposed for KIG, which seeks to intercept goods in transit between the continent and the UK.

54. The appellant’s witnesses also offered a number of examples of domestic and international rail transport. However, few of their examples involve cross Channel freight, and none involves use of an NDC in the South East.⁴² On the other hand, the new cross Channel rail freight service from Valencia, introduced to the Inquiry by the by the Appellant, is not daily, does not rely on a green field NDC in the South East, and will continue to a northern region –

⁴¹ In cross examination by TCQC

⁴² Examples by Mr Russell in his Proof of Scottish rail services and the Barking service for Tate and Lyle

in contradiction of Mr Garratt's contention that consolidation of freight at KIG is needed to support inland rail services for cross Channel freight⁴³.

55. As Mr Martin explained in his oral evidence⁴⁴, the Appellant's case for modal shift is unconvincing. His view was that the fundamental problem with the KIG case is that the site is in the wrong location to achieve the modal shift as sought by national and regional policy. There can be no planning control over the type of distribution activity on which the appellant's case depends. There being no convincing economic case, it would likely operate as an RDC rather than a NDC; there would be no genuine modal shift; and there would be a risk of increased road traffic from trains terminating at the appeal site.⁴⁵

The relationship to rail and road corridors capable of accommodating anticipated freight:

56. The appeal site complies with Policy T13 in that it is located on the transport corridor that it seeks to serve and that sufficient capacity for the number of freight trains exists on this part of the rail network. However, a small number of SRFI are envisaged for the wider region, and sites well located for more than one transport corridor, as suggested by Policy T13, would be preferred as part of this network. The appeal site is certainly not well related to the major container ports, notably Felixstowe and Southampton, nor to the main rail and road routes serving London and the South East, and links to other regions.

The relationship to the proposed markets:

57. The appeal site is an intermediate point for the main trade that it seeks to serve, which is the transport of goods from the Continent to markets in the UK, notably the main urban centres. Geographically the proposal is not "well related" to its ultimate markets.

⁴³ Mr Garratt Rebuttal para. 2.42 (iii) and table on page 13 (KIG 3.4)

⁴⁴ In chief and in re-examination

⁴⁵ As Mr Martin explained in oral evidence, he was also concerned about the reference to the potential for piggyback services subject to gauge clearance works and the possible consequences of this in terms of increased traffic into Kent for onward movement by road.

58. Mr Garratt agreed that an NDC operator may value access to other ports in selecting a location. He accepted in cross-examination⁴⁶ that the appeal site would not be attractive to operators handling goods other than cross Channel goods. No evidence is presented by the appellant comparing the cost of routes via KIG compared to the East coast ports which handle approximately half of cross Channel traffic.

The relationship to London:

59. The Secretary of State has endorsed the conclusion of the SRA Policy that “suitable sites are likely to be located where the key rail and road radials intersect with the M25 motorway.”⁴⁷ The appeal site is 35km from the M25 and does not meet the Secretary of State’s expectation. Moreover, the appeal site is to the south east of London where the only major freight route is the cross Channel route. It is remote from other major routes, and its location in relation to London would impose additional transport costs on freight bound for the metropolis.

Size, configuration, layout and operation:

60. The area of the appeal site is 112 ha and is within the range suggested by the SRA. The SoCG on rail⁴⁸ states that trains of 775 m length can be dispatched in either direction. It is proposed that the formation of the intermodal area and rail sidings would precede creation of the first development platforms for Units A-D (CD 3.28 para. 1.15)] and the proposed conditions would require provision of the rail infrastructure at the outset. The proposal therefore complies with the South East Plan and the SRA Policy in these respects.

⁴⁶ By TCQC

⁴⁷ Para 8.38 of the SEP CD2.1. See also the SRA representation to the Kent and Medway Structure Plan in 2004, which stated: “The SRA would prefer such interchanges to be located in and around London to minimise HGV movement through Kent.” (Mr Martin’s proof pages 15 to 16 KCC/1.1 and appendix 1 KCC/1.3). See also the RSS Panel Report’s suggestion that a suitable broad location could be identified as “at the north west end of the Dover-London corridor” (Mr Martin’s proof pages 16 to 17 KCC/1.1 and Mr Bullock’s appendix 18 KIG/1.1)

⁴⁸ CD8.5

61. However, in other respects the appeal site is not well suited for development as an SRFI. The site is elongated and bisected by the rail line. It also has a varied topography. These are clear constraints on design and these are compounded by the existence of adjoining residential uses, public rights of way across the site, and watercourses. The configuration, topography and situation of the site limit the number of units that could be rail connected and contribute to the harm that the proposal would cause to amenity, countryside and landscape.

62. The site does not therefore comply with the criteria.

Rail connection and road access:

63. A rail connection can be made to the main line. However, although there is the physical ability to access the road network, the appeal proposal will exacerbate future congestion in Maidstone, as demonstrated in the evidence of Mr Rosevear. There is therefore no “adequate road access” to the site as stated in the SEP.⁴⁹

Incompatible land uses:

64. Other witnesses have considered in detail the effects of the proposed development in terms of character and amenity. However, in this context, Mr Martin is concerned about and emphasises the importance of the cumulative impact of the proposal on Bearsted.⁵⁰ The nature of an SRFI is such as to require clear separation from those land uses which would inevitably be harmed. Thus the criterion in paragraph 8.37 of the South East Plan is that new inter model interchange terminals “must...be situated away from incompatible land uses” (my emphasis). The criterion is unequivocal in seeking a separation of land uses. There is no such separation in this case. The appeal site in fact adjoins residential uses and the proposal does not therefore meet the criterion

⁴⁹ Para 8.37 CD21

⁵⁰ Mr Martin’s proof pages 38 to 39 KCC/1.1

of the SEP. As a result of this juxtaposition there will be a cumulative and unavoidable impact on the Bearsted community.

Compliance with other strategic policy

65. Again, KCC's case supports MBC's case. The following submissions are made to complement those to be made on behalf of MBC.

The appeal proposal, Maidstone's strategic role and Policy AOSR7:

66. Mr Bullock contends that Maidstone's relationship with strategic rail and road networks is consistent with the framework provided by Policies T11, T12 and T13 of the SEP.⁵¹ He concludes that as a matter of principle the development of the appeal site would not be inconsistent with the RSS.⁵² However, Maidstone's designation as a regional transport hub, and the emphasis in Policy AOSR7 on development of the Maidstone economy, do not support this conclusion.
67. Maidstone is located outside the sub regions of the SEP, where development is to be focussed under Policy SP1. Maidstone is neither a Growth Area identified in the Government's Sustainable Communities Plan, nor an area for regeneration. Maidstone is a New Growth Point⁵³, and the SEP requires that the LDF and other programmes ensure the delivery of 11,080 dwellings from 2006 to 2026. Policy H1 places a clear responsibility to plan for and deliver this housing provision. Maidstone is a regional transport hub but this is not concerned with freight.
68. The strategic role for Maidstone is amplified in Policy AOSR7. This gives clear guidance for the LDF to provide for employment of sub regional

⁵¹ Mr Bullock's proof para 7.10 KIG/1.1

⁵² Mr Bullock's proof para 7.17 KIG/1.1

⁵³ Para 4.10 of the SEP CD2.1

significance but “with an emphasis on higher quality jobs to enhance its role as the county town and a centre for business”.

69. The appeal site is an inappropriate location within the regional spatial strategy for a major new concentration of employment on the scale proposed. The scale of the proposal in terms of employment is not to be underestimated. At paragraph 4.39 of his proof, Mr Martin’s estimates that the appeal proposal in its development stage would absorb more than the annual increase in workforce arising from the SEP dwelling provision. But as important as the scale of the proposal is the type of employment to be offered. Whilst some higher skilled jobs may be available, the majority will be of unskilled labour, contrary to Policy AOSR7.

70. The supporting text to Policy AOSR7 provides that “An indicative 90% of new housing should be in or adjacent to the town. Associated infrastructure to support growth should include the South East Maidstone Relief Route and Maidstone Hub package.”⁵⁴

71. In accordance with this guidance, MBC seeks through the LDF to create a new mixed-use community to the south-east/east of the town. Key infrastructure to support development includes the South East Maidstone Strategic Link (SEMSL). MBC is also developing the Hub Package in order to ensure that the transportation system in and around Maidstone can accommodate such growth. The Local Transport Plan for Kent adopts the same approach.⁵⁵

72. The effect of the appeal proposal on the ability to deliver the growth required by the SEP is entirely negative, as explained by Mr Rosevear. In particular, the necessary road capacity to be created by the SEMSL would be pre-empted by the KIG proposal, thereby threatening the planned dwelling and commercial provision to meet SEP policy targets. The KIG proposal would therefore frustrate the policy of the recently adopted RSS.

⁵⁴ Para 25.31 CD2.1

⁵⁵ Para. 9.194 CD 5.1

The appeal proposal and strategic policies to protect landscape and countryside:

73. There is substantial evidence before the inquiry in relation to this matter. I do not intend to rehearse or refer to this evidence in any detail. I confine myself to two concise submissions to reflect the strength of KCC's objection on this ground.
74. First, the protection and support of the countryside is a fundamental objective of the SEP. In particular, Policy C3 gives high priority to the conservation and enhancement of the natural beauty in the region's Areas of Outstanding Natural Beauty, but it also states that "planning decisions should have regard to their setting". Policy C4 sets the overall objective for landscape and countryside management as "to protect and enhance, the diversity and local distinctiveness of the region's landscape...".⁵⁶ These policies have been recently approved by the Secretary of State and are consistent with the Government's overall aim in PPS7 to "protect the countryside for the sake of its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife". They should therefore carry significant weight.
75. Secondly, the proposed development would have a major adverse impact on the countryside and the setting of the AONB. The existing rural landscape would be replaced by massive warehouse units standing in their extensive parking and loading areas. The mitigation that has been put forward will not succeed in ameliorating the damage to any material degree. The loss of countryside and the effects on landscape and visual amenity would be serious and permanent. The serious harm caused by the proposal is not justified by the Appellant's claims to achieve modal shift of freight to rail.
76. There are also policies in the SEP relating to PROW and archaeology, on which KCC has provided detailed evidence, and the proposal causes serious

⁵⁶ In para 8.4 of his proof (KIG/1.1) Mr Bullock does not recognise this requirement on local authorities.

harm to these interests of acknowledged importance as well. I will return to these issues later in these submissions.

The alleged need for and benefit of an SRFI near Maidstone

77. KCC supports MBC in relation to this matter also. Mr Corner will no doubt make detailed submissions on this having regard to the comprehensive evidence given by Mr Bates. I confine myself to a limited number of observations that derive from Mr Martin's consideration of the matter in his proof⁵⁷ and oral evidence.
78. Mr Bullock claims that "given the established, adopted policy framework, it is not necessary to demonstrate general need" for the proposal.⁵⁸ However, Mr Martin considers that it is necessary for the appellant to demonstrate the need for an SRFI to be located at Maidstone in view of the harm that the proposal would cause, and to comply with the requirement in SEP Policy T13 that such locations should be selected on the basis of their ability to deliver modal shift. In making the assessment it is necessary also to consider whether or not the SEP policy support for SRFI in general could better be met in an alternative way to that proposed.⁵⁹
79. In relation to the Appellant's business case, Mr Martin relies in his evidence on the analysis of transport costs by Jacobs Consultancy for MBC, which demonstrates that the proposal would not shift cross Channel freight from road to rail.
80. The Inquiry has heard considerable evidence on important detailed matters, such as the calculation of rail break even distances. Mr Bates has responded in full and convincingly to all the arguments deployed by Mr Garratt, Professor Braithwaite and Mr Russell.

⁵⁷ Mr Martin's proof section 5 KCC/1.1

⁵⁸ Mr Bullock's proof paras 12.3 and 6.5 KIG/1.1

⁵⁹ See INQ/7.

81. However, the weakness of the Appellant's case in this regard is evident not only from Mr Bate's technical and detailed analysis. It is revealed also by the absence of any significant supporting independent evidence of the market that is intended to benefit from KIG.
82. In relation to the Appellant's case for CO2 saving, there is little that needs to be said. As became clear in cross-examination of Professor Braithwaite by Mr Corner, there were several deficiencies in his study of modal split. In essence there was no detailed evidence to justify the forecasts made. Far from persuading the inquiry that there would be CO2 savings, there is a concern that the appeal proposal would have the opposite effect (as a result of diversion of the attraction of regional distribution to an off centre location within the south east and the termination of cross Channel rail freight at the KIG site to off load freight onto road).

Alternative sites:

83. The policies of the South East Plan and the SRA Policy require consideration of whether other sites could meet policy objectives, and in a superior manner. This is evident in that the SRA Policy of 2004 defines an SRFI in terms of "optimising" rail transport and "minimising" onward transport by road⁶⁰; Policy T12 of the SEP requires that sites are to be safeguarded and promoted which "maximise" freight movement by rail; and Policy T13 requires that up to three locations be identified that should have the potential for modal shift and be well related to transport routes, markets and London.
84. Moreover, having regard to the serious harm caused by the KIG proposal it is incumbent on the Appellant to demonstrate that the purported benefits of the scheme could not be achieved in a different and less harmful way. This necessitates an examination of alternative sites.

⁶⁰ SRA Policy 2004 para 4.1 CD6.5.15

85. The Appellant's position in relation to the question of alternative sites is that there is no obligation on them to prove that there are no alternative sites.⁶¹ However, it is also part of the Appellant's case that in the context of Policy T13 and the SRA Policy "The need to achieve a significant modal shift from road to rail will require a network of interchange facilities. The site compares favourably with other sites which might be considered for such a purpose".⁶² Even on the Appellant's case, the issue of alternative sites is squarely before the inquiry.
86. Mr Bullock refers to the interchange facilities anticipated by the SRA and the "port centric" nature of the appeal proposal, and he suggests that these would be complementary facilities.⁶³ However, the Appellant's case on this is not accepted. As set out by Mr Bates, KIG will not operate in the way that the appellant intends (and there is no means by which planning permission can control this in terms of the RDC and NDC mix of distribution activity and the balance of inward and outward train movements). The appeal proposal should therefore be considered on the basis of the other plausible outcomes were it to be permitted. In his oral evidence Mr Martin said that in his view, based on his experience of the port industry and the Channel Tunnel in Kent, these would include a concentration of regional distribution with little rail use, and an emphasis on the termination of Channel tunnel trains with freight discharged to road.
87. In any event (and even on the hypothesis that KIG would operate as intended) it is inevitable that the facilities would compete with one another for traffic. Given the small number of SRFI endorsed by each RSS, and proposed by the SRA Policy, consideration should be given to the identification of the best sites, both in operational transport terms and to minimise the harm that could be caused by such developments.

⁶¹ KIG/0.10

⁶² KIG Rule 6 Statement page 4 at vii)

⁶³ Mr Bullock's proof para 6.36 KIG/1.1

88. The Appellant has singularly failed to carry out a proper evaluation of alternative sites, in particularly failing to examine that issue in the light of the clear policies so recently adopted by the Secretary of State. That is a very significant failure.
89. In this context it should be noted that there are numerous deficiencies in the Appellant's site search study, as pointed out by Mr Martin in his proof.⁶⁴ In particular, the process does not include planning policy criteria from the outset, and nor does it apply its own criteria consistently to the appeal site and other sites.
90. Thus, the Appellant's approach to the question of alternative sites is flawed in principle and the Appellant's work on other sites is unhelpful.
91. It is KCC's case that there are sufficient environmental and other policy grounds to dismiss the appeal without evidence that other sites can meet the need identified in policy for up to three sites in the South East Plan area, and 3 or 4 sites in the wider region. However, notwithstanding that position, it is clear, on the basis of Mr Martin's evidence⁶⁵, and that of Mr Bates, that there are sites coming forward to meet the need identified in the SEP and SRA Policy. Jacobs Consultancy concludes: "Barking, Howbury Park, Colnbrook and Radlett would realise the regional network of 3-4 SRFI ... being of adequate size and located near intersection points of the M25 with radials".⁶⁶
92. The Inquiry has been provided with plenty of evidence on this issue, and the Inspectors have carried out site visits to further inform their consideration. They also have Mr Martin's assessment to assist them.⁶⁷
93. I also draw attention to the cross-examination of Mr Garratt by Mr Corner. Mr Garratt agreed that the planning system should provide sites that deliver the maximum mileage benefit with the least environmental cost. He agreed that he

⁶⁴ Mr Martin's proof paras 5.20 to 5.45 KCC/1.1

⁶⁵ Mr Martin's proof paras 5.20 to 5.45 KCC/1.1

⁶⁶ CD4.8 page 39

⁶⁷ Mr Martin's proof paras 5.20 to 5.45 KCC/1.1

had not undertaken an exercise to identify locations that would maximise savings in road mileage and minimise environmental damage. He had not compared the environmental benefits and CO² savings of sites that meet the SRA Policy and criteria. Mr Garratt also accepted many of the positive attributes of the sites at Barking, Howbury Park and Radlett. He also agreed that a further planning application could be anticipated at the Colnbrook site.

94. There is uncertainty about the future of the London Gateway development but it was agreed that a very large quantity of “port centric” warehousing is proposed, and that a short sea roll on roll off terminal had been part of the project. Given that rail traffic into KIG would be in competition with East coast ports, it follows that rail connected facilities at ports provided with warehousing could provide an alternative to the KIG concept, at least for traffic on some routes. Moreover, such a facility would meet the criteria for SRFI and contribute towards SRA policy as endorsed by the three RSSs.
95. The conclusion that KCC invites the Inspectors and Secretary of State to reach on the evidence is that they need not be concerned that sites can be found to meet the policy commitment in each RSS to provide SRFI in the wider South East region. However, this must be achieved in a manner that identifies an efficient network of sites as envisaged by the SRA, and with the minimum harm. The Secretary of State can firmly reject the appeal site on these grounds. There is also an imminent process to identify broad locations in the South East through a Single Regional Strategy, and there is currently no urgency in the market place for new distribution space.

Conclusions in relation to strategic policy

96. My conclusions here are very short.
97. Policies T11 and T12 whilst relevant do not specifically address the requirements for SRFI. The key and only policy to do this is Policy T13.

98. The proposal does not meet the criteria in Policy T13 or that contained in the supporting text (deriving from SRA Policy). In particular, having regard to the evidence produced by Mr Bates on behalf of MBC, the proposal will not deliver modal shift as required by the policy. Nor will it be well related in terms of key rail corridors, proposed markets or London. In short, it is in the wrong location.
99. More than this, the proposal conflicts with other important strategic policies and undermines the spatial strategy of the SEP, particularly the future role set out for Maidstone.
100. More than this, the proposal causes very serious harm to various interests of acknowledged importance that are sought to be protected by SEP policies, particularly that of the countryside and landscape as well as the setting of the AONB.
101. The appeal proposal therefore conflicts with the SEP in many important respects.
102. The Appellant has not demonstrated a sound business case for KIG. Nor has it demonstrated a need for a SRFI at Maidstone. Nor has it demonstrated that there are benefits arising from the scheme that could outweigh the serious harm that it would cause.
103. There are sufficient environmental and other policy grounds to dismiss the appeal without evidence as to the ability for other sites to meet the need identified in strategic policy.
104. The Secretary of State need not be concerned that sites can be found to meet the policy commitment in each RSS to provide SRFI in the wider South East region. There are sites already permitted and proposals coming forward that will ensure that the identified need is satisfied.

HIGHWAYS AND ACCESS

Introduction

105. Maidstone has a complex highways network, with many parts of the urban area being congested, especially at peak times. That is the result of traffic growth in a constrained and in parts historic urban environment.
106. The KIG proposal is by any measure a very large development, which has the clear potential to have a significant effect on the network. The implications of KIG are of very considerable concern to KCC.
107. KCC supports MBC in its reasons for refusal. In particular, it supports Reasons for Refusal nos. 5, 16 and 18, each of which refers to transport related matters within the remit of KCC as local highways authority. These submissions are set out to address those matters under the following headings: accessibility and in-commuting, site access and operational concerns, traffic impact, the LDF and delivery of the development targets set out in the SEP.
108. Mr Rosevear gave evidence on behalf of KCC on all these matters. I do emphasise that not only is he appropriately qualified as an engineer and transport planner but he has unrivalled knowledge of the highways and transportation system in Maidstone, with over 30 years experience in the area. No-one was better placed to inform the inquiry, in particular on the question posed in the Inspector's list of issues: whether or not the proposal would have an adverse effect on the highway network serving the area and whether the traffic generated by it would threaten other proposals for new housing development in Maidstone.⁶⁸

⁶⁸ INQ/7

Accessibility and in-commuting

109. There can be no dispute that the KIG site is poorly located in terms of sustainable modes of travel. Indeed, the Appellant expressly acknowledges this.⁶⁹
110. The Appellant's case is that there is potential to enhance non-car modes of travel to the appeal site. However, this potential is limited by its location in relation to its likely employee base.
111. The prospect of significant access by employees on foot is limited because the proposed main access is over 2 kilometres from the urban area⁷⁰ and the other pedestrian accesses are removed from the main A20 thoroughfare and convenient for only from a limited number of side roads. Only a small area of population is within the 2 kilometres threshold referred to in PPG13.⁷¹
112. The prospect of significant access by employees on bicycles is limited for similar reasons. Mr Rivers's drawing 6⁷² graphically shows the locational disadvantages of the site. The 5 kilometre isochrone (derived from PPG13⁷³) for the most part encompasses rural areas of low population.
113. It is plain too that the Appellant does not expect significant employee travel to the site by public transport. There is hardly any reference in its evidence to train travel⁷⁴, and the travel plan acknowledges the inadequacy of the existing bus services by proposing "bespoke" shuttle bus services.
114. The proposed shuttle services would operate between the site and the town centre. They would not serve other areas further afield such as Medway or

⁶⁹ Mr Rivers' proof para 6.5.1

⁷⁰ Mr Rivers' drawing 5 KIG/2.3

⁷¹ Para 75

⁷² KIG/2.3

⁷³ Para 78

⁷⁴ The travel plan refers to the possibility of a shuttle bus to Ashford train station but this is subject to viability (para 9.2.11 draft 7 section 9).

Swale, nor would they serve residential areas beyond the borough boundary. There is no opportunity for employees in these areas to travel to the site by any other means than the car (and the possibility of car sharing appears as the only hope for mode shift⁷⁵). In this regard it should be remembered that the Appellant estimates that over 40% of the workforce (of 2900 employees) will live outside the borough.⁷⁶

115. The proposal is expected to employ a minimum of 2900 people, using the Appellant's figures, or many more on the basis of the evidence presented by Jacobs Consultancy. It seems clear that the majority of these employees will travel to work by car. The Appellant has proposed targets for car use⁷⁷ but these are only targets and there is no certainty that they will be met, as Mr Rivers accepted in cross-examination.⁷⁸ There are no "teeth" to the mode share targets (ie no penalty if these targets are not achieved).

116. The conclusion here is that the site location is unsuitable for such a large generator of employee trips. The appeal site is not well located in terms of sustainable travel options. Whilst the Appellant has proposed measures to improve mode choice, the ability to do so is limited and the likelihood is that the large majority will arrive at work by car. There will be significant levels of in-commuting by non-sustainable modes of travel. This is directly contrary to government policy in PPG13, particularly the aim to reduce the need to travel, especially by car.⁷⁹

Site access and operational concerns

117. As set out in Mr Rosevear's proof⁸⁰, the concern of KCC relates to two matters: first, the capacity of the site accesses to manage the arrival of vehicles

⁷⁵ The travel plan draft 7 section 9

⁷⁶ Transport Supplementary Information table 19.2 CD3.24

⁷⁷ The travel plan draft 7 at section 7.2 and clause 1.8 of schedule 1 in the s106 11.12.09

⁷⁸ By CHWQC

⁷⁹ PPG13 para 4

⁸⁰ Section 8 KCC/4.1

at the security barriers; secondly, the ability of the site operator to deal with emergencies and exceptional events.

Site access:

118. In his proof of evidence Mr Rosevear made clear his concerns that there was no “sterile area” for HGVs to wait for process and that “unless every vehicle can be processed very quickly, there is clear potential for queues to block back from the barrier onto the A20”.⁸¹
119. In his oral evidence in chief Mr Rosevear confirmed that, having regard to the paragraph 10.1 of the Statement of Common Ground relating to security issues between KIG and the Police⁸², he was satisfied that a condition would suffice to provide the necessary sterile area for waiting HGVs. The current agreed conditions do in fact provide for this⁸³ and Mr Rosevear is content that this specific matter has now been addressed.
120. However, his general concern about site access arrangements remains. This is because of Mr Keeling’s evidence that the length of time required to process an HGV through security barriers would be up to 3 minutes.⁸⁴ This evidence and the possibility that the access plan would have to be redesigned was of immediate concern to KCC, having regard to the danger of HGVs queuing on the A20. The need to revise the plan suggests that the KIG team had not taken into account or properly considered Mr Keeling’s advice.
121. An inquiry note has now been submitted following the Inspector’s request for further information on this matter.⁸⁵ Unfortunately, the note does not dispel the concerns. Indeed, it raises more questions than it gives answers, as Mr Rosevear’s note in response indicates. In particular, the note states that 20% of HGVs will need 3 minutes process time, but there is no evidence to support

⁸¹ Para 8.4

⁸² CD8.13

⁸³ Condition 17 of draft 17.12.09

⁸⁴ During cross-examination by Mr Saunders

⁸⁵ KIG/2.18

this “assumption”. Common sense would indicate that the time taken for checks would be expected to vary taking into account the level of threat. There is no clear basis for the precise assumptions in the KIG note.

122. Mr Rosevear’s opinion is that there is insufficient evidence before the inquiry upon which to conclude that the access design can adequately cope with the number of HGVs expected to access the site and that there is a real risk that the consequence of the current proposal will be vehicles backing up onto the A20. That prospect is of course unacceptable and his original objection remains.

Emergencies and exceptional events:

123. Mr Rosevear’s concerns here related to Operation Stack and the ability of the emergency services to access the site in case of accidents or other incidents.
124. In relation to Operation Stack, it appears that the Highways Agency is now satisfied that arrangements can be made so that the difficulties inherent with Operation Stack can be managed to an acceptable level on the motorway even with the additional KIG traffic on the road network.⁸⁶ Mr Rosevear’s concern, as set out in his proof⁸⁷, and reiterated in his oral evidence in chief, is that there needs to be an agreed and properly funded management protocol between the site operator and the Police, to ensure that the disruption to traffic on the road network during Operation Stack is kept to a minimum. The concern remains that the existence of KIG at this particular location would inevitably add to the difficulties experienced in time of Operation Stack, an infrequent but regular occurrence, especially that of Stage 2⁸⁸. Mr Rosevear’s concern is worsened by the KIG’s failure to carefully plan the access arrangements.

⁸⁶ See the Bilateral Statement of Common Ground section 10, Mr Harwood’s oral evidence and the travel plan appendix A.

⁸⁷ Paras 8.9 to 8.12 KCC/4.1

⁸⁸ See Mr Rosevear’s appendices 9 and 10 KCC/4.2.

125. In relation to Mr Rosevear's concern about emergency access to the site, the Appellant has now proposed a condition to specifically address this concern.⁸⁹ KCC welcomes this condition.

Traffic impact, the LDF and delivery of the development targets set out in the SEP

Introduction:

126. As I have already pointed out the Maidstone highways network is complex and already suffers congestion at peak times⁹⁰ There can be no dispute about that. Maidstone residents are all too familiar with the problems that are encountered on a daily basis. It is no surprise that the KIG proposal, an exceptionally large traffic generating development on one of the main radial routes into the town centre, is of huge concern to KCC and to members of the public alike.

127. KCC is responsible for the management and maintenance of the local network. It seeks not only to protect it from the adverse effects of inappropriate development, but also to ensure that necessary and planned future developments can be accommodated in a satisfactory way. A particular concern, against the background of existing conditions and the obvious constraints on the network, is the obligation to assist MBC in its delivery of the development targets set out in the SEP.

128. The SEP is part of the statutory development plan. It is agreed to be up to date and relevant in terms of its transport policies and its strategy for Maidstone. Indeed, the Secretary of State has only recently approved it.

⁸⁹ Also see Kent Fire and Rescue Service letter to the Inspector INQ/10 and KIG/0.15.

⁹⁰ The travel time information in tables 7E and 7F in the Local Model Validation Report (CD5.5) shows very slow journeys at peak times

129. Maidstone has been identified as a Growth Point to assist in the Government's initiative to support high rates of housing delivery in the South East region.⁹¹ Policy H1 responds to the broad strategy set out in the SEP. It provides that local authorities will allocate sufficient land and facilitate the delivery of 11080 houses in Maidstone by the SEP time horizon of 2026, being the amount of housing that the Secretary of State has concluded is necessary to meet future needs. This is no aspirational figure. The plan states that local authorities "will allocate..." sufficient land for housing and "will prepare plans, strategies and programmes to ensure the delivery..." (my emphasis) of the required housing. It is a policy imperative for Maidstone.⁹²
130. Whilst there is no specific figure for the provision of employment in Maidstone, the SEP states that local authorities must plan for employment and business needs as well.⁹³
131. Policy AOSR7 of the SEP states that the LDF "will: i. make new provision for housing consistent with its growth role, including associated transport infrastructure" as well as making provision for employment. The supporting text gives clear guidance as to the provision of housing and infrastructure: "An indicative 90% of new housing at Maidstone should be in or adjacent to the town. Associated infrastructure to support growth should include the South East Maidstone Relief Route and Maidstone Hub package."
132. The policy obligations that the Secretary of State has set for Maidstone are therefore clear and MBC is now planning to fulfil those obligations. The LDF process began some time ago. Notwithstanding, or even because of, the initial delay, a great deal of work has been done to advance the programme, as the Local Development Framework document records⁹⁴, and the critical path towards decisions about future developments and their location is well under way. As will be submitted on behalf of MBC, the KIG proposal is precisely

⁹¹ As part of the Government's Growth Points initiative in 2006. See para 4.10 of the SEP CD1.2.

⁹² Para 7.6 of the supporting text serves to underline the importance of Policy H1.

⁹³ Policy RE3

⁹⁴ See para 3.10 CD2.3. Further work has been completed since the publication of the LDS eg the Strategic Housing Land Availability Assessment CD5.12.

the type of substantial development, the planning permission for which, would predetermine decisions about the scale, location and phasing of new development which are being addressed in the LDF process.⁹⁵ However, my submissions here are not only to do with the issue of prematurity, they relate to ability of MBC to carry out the obligations placed upon it by the SEP. It is KCC's case that the planning permission for KIG would jeopardise the ability to deliver the development that the Secretary of State has so recently said is required to be provided to meet future needs. This is obviously a very important issue.

133. In principle, the future transport strategy for Maidstone must support the delivery of the LDF targets set out in the SEP. The development of KIG is not an SEP target. Indeed, as set out elsewhere in these submissions, it is a proposal that is to be considered as being outside of the statutory development process, and one that is in conflict with the spatial strategy of the SEP. The task that faces the local authorities in meeting the SEP obligations is difficult enough (as Mr Rosevear has explained) and the KIG proposal must be considered as an additional burden that has been foisted upon the local authorities.

Approach:

134. KCC consider that the assessment of the effects of the KIG development on the highway network should not be limited to 2017. In this case, the assessment should be for a longer period to 2026. There are 4 reasons for this.
135. First, DfT Circular 02/07 and the DfT Guidance on Transport Assessment do not constrain assessments to any particular period. Far from it, the guidance expressly invites consideration of longer assessment periods, the primary advice being that assessment years should be consistent with the size, scale and completion schedule of the proposed development.⁹⁶ Each case should be

⁹⁵ See para 17 of The Planning System: General Principles.

⁹⁶ See para 35 of DfT Circular 02/07 and paras 4.45 to 4.49 of the DTp Guidance on Transport Assessment.

considered on its own merits, and the relevant time period for assessment should be governed by the likely extent of the transport implications of the proposal. The KIG development is a prime example of a scheme that warrants assessment dates over a longer period.

136. Secondly, the effects of the KIG development would be felt most particularly after 2020. Even if planning permission is granted in 2010 and assuming that there is no delay in obtaining reserved matters approvals or in the 7 years construction period (as the Appellant contends), full operation could not be expected before say 2019. However, there is every prospect that the scheme would not be complete until long after that. The Appellant has requested an extension to the normal condition relating to the length of the planning permission for a number of reasons, including the substantial upfront costs required, the current economic climate, the necessity for pre-let procurement, and the very nature, scale and complexity of the project.⁹⁷ Obviously, the Appellant has no confidence that the development would be complete even in 10 years. The assessment of the effects of KIG must therefore look well beyond 2020.
137. Thirdly, it would be wrong to restrict the time horizon to any lesser period than 2026. Such an approach would be perverse in the light of the fact that the full effects of the KIG scheme on the highway network might not be felt until then.
138. Fourthly, especially having regard to the uncertain timescales of the development, it is essential that the Secretary of State be informed as to whether or not the traffic to be generated by KIG could be accommodated in addition to that development which is required to fulfil the SEP obligations.
139. These reasons lead to the conclusion that the KIG scheme should be assessed at both 2017 and 2026.

⁹⁷ KIG/016

140. The approach adopted by KIG is different. I make the following two submissions on the KIG approach.

141. First, Mr Rivers adheres to a 10 year horizon for assessment; that is, 10 years from the date of the original planning application. Indeed, he stated in cross-examination⁹⁸ that it is “not relevant” to look beyond 2017. The KIG approach is fundamentally wrong. It is based upon a misreading of the guidance, as I have explained. It also ignores reality. As Mr Rivers himself acknowledged in cross-examination⁹⁹, the construction programme is uncertain and the development might not be complete until well after 2017.

142. Secondly, Mr Rivers does not consider the potential impact of KIG on the delivery of the SEP targets for housing and employment development. He stated in cross-examination¹⁰⁰ that this issue is “not relevant”. The KIG approach ignores the SEP – not only the important housing targets, but also the requirements in Policy AOSR7 and the supporting text relating to the distribution of the required housing and the infrastructure to support it, specifically the South East Strategic Link. Again, the KIG approach is fundamentally wrong. It ignores S38(6) of the TCPA 1990 and the guidance in PPS1 relating to the primacy of the statutory development plan. The SEP and its policy obligations are a very important material issue before the inquiry.

143. The KIG position as adopted in Mr Rivers’ evidence is surprising enough in its forthright dismissal of the need to examine the effects of KIG beyond 2017 and on the ability to deliver the SEP targets, but it is the more curious in the light of positions adopted earlier in the application process. The assessment year of 2026 was accepted as relevant in the Environmental Statement June 2007.¹⁰¹ The draft SEP and the local draft Core Strategy were regarded as relevant, and 2026 was expressly chosen as a design year, in the Traffic

⁹⁸ By CHWQC

⁹⁹ By CHWQC

¹⁰⁰ By CHWQC

¹⁰¹ See section 5.8 of the ES Chapter 5 CD3.1

Assessment Report September 2007 (the “TAR”).¹⁰² In the Transport Supplementary Information September 2008 the delay to the LDF was given as a reason for not acknowledging the LDF’s Core Strategy Preferred Option.¹⁰³ However, as Mr Rivers acknowledged in cross-examination, this provides no clear explanation since the decision to defer the Core Strategy was made on 30 July 2007 and known about at the time of the TAR in September 2007 to which I have just referred. The document does however continue to look to the year 2026 (but on the basis of general growth assumptions only).¹⁰⁴ By July 2009 the decision had been taken firmly to exclude 2026 as an assessment year. The Supplementary Transport Information No2 states that the design year is 2017, “being 10 years from submission in accordance with the relevant circular”.¹⁰⁵ As Mr Rivers acknowledged in cross-examination, the DfT Guidance referred to was in existence in March 2007, well before the TAR in September. This could not have been a reason for rejecting 2026 as a design year. Mr Rivers said that there was no reason to change the approach except for the fact that an appeal had been lodged.¹⁰⁶ That was a surprising answer, to say the least. The fact of an appeal should not determine the question of assessment years.

144. The best that can be said of this background is that the Appellant’s approach to the issue of design years and the impact on the LDF process has been inconsistent and confused. Certainly, there was no policy or highways related reason, nor any other good reason, to change the approach that had apparently been adopted at the start of the application process. The Inspectors should have little confidence that the appellant has properly addressed the impact of the KIG site in relation to the challenge that lies ahead for the Borough and County Councils in formulating a transport strategy that supports the delivery of the SEP targets.

The VISUM model, its purpose and function:

¹⁰² See paras 4.35 to 4.36, 4.4.11 and 10.3 CD3.3. These matters were accepted by Mr Rivers in cross-examination by CHWQC.

¹⁰³ Para 3.2.1 CD3.24

¹⁰⁴ Sections 6 and 7 CD3.24

¹⁰⁵ Para 2.3.2 [REF/CD?]

¹⁰⁶ In cross-examination by CHWQC

145. In order to provide a sound evidence base for the LDF process, KCC has used a traffic model. Jacobs (the consultancy arm of Kent Highways Services) has developed for this purpose a VISUM multi modal transport model. This work has been funded partly by KCC and partly by the Department of Communities and Local Government Growth Point grant to MBC (which emphasises the importance of joint working to ensure the SEP development targets are achieved).

146. The VISUM model is an established and respected model. It is one of the most sophisticated and robust traffic models in use today.¹⁰⁷ Its great strength is its ability to replicate the real world transportation system and simulate actual travel patterns and demand conditions; this it can do over a wide area taking into account relevant land use data, socio-economic influences, and changes to the road network and to public transport. In this respect, it is second to none, as explained by Mr Srivastava.¹⁰⁸ Nor is its use limited to assessment of transport strategies such as those put forward in LDF processes. It has in fact been used widely in the planning field in the UK and is the most suitable model for assessing large scale development proposals in a complex urban network such as Maidstone.¹⁰⁹

147. Mr Rivers in his proof made some passing comment which might be read as seeking to cast doubt on the use of VISUM (rather than the VISSIM model) for assessing KIG.¹¹⁰ However, any such notion should be dismissed. There are three points to bear in mind in this respect.

148. First, as Mr Rosevear said¹¹¹ and Mr Srivastava confirmed¹¹², the VISUM model is entirely appropriate to measure the likely wide scale impacts of KIG

¹⁰⁷ Mr Rosevear's oral evidence in chief and KCC/4.12 section 1, as well as Mr Srivastava's oral evidence

¹⁰⁸ KCC/4.12 section 1 and para 4.12. See also section 4 of the Jacobs Local Model Validation Report CD5.5 and Mr Srivastava's oral evidence.

¹⁰⁹ KCC/4.12 sections 1 and 2

¹¹⁰ Mr Rivers Rebuttal para 1.1 KIG/2.5

¹¹¹ In his oral evidence in chief

¹¹² Paras 2.2 to 2.4 of KCC/4.12

in the urban area of Maidstone and in the context of the LDF. It is much to be preferred to any isolated junction capacity assessments which are based on fixed assumptions. This is further explained in the Jacobs note in September 2009 Modelling Response to the Highways Agency.¹¹³

149. Secondly, Mr Rivers himself has accepted the VISUM as an appropriate tool to use for assessing KIG, and without qualification. As he acknowledged in cross-examination¹¹⁴, he had agreed during the course of the application process that VISUM would be an appropriate model to use, and that it is suitable for the purpose of assessing “the implications of KIG for wider development in the area”¹¹⁵; he had never suggested that it would be inappropriate to use VISUM for this purpose.¹¹⁶

150. Thirdly, he did not in his proof of evidence develop any argument to contend that VISUM should not be used. The “reservations” that he referred to related not to the principle of the use of VISUM, but to specific concerns about the detailed modelling work, particularly the inputs into the model.¹¹⁷

The Maidstone VISUM model, its calibration, validation and working components:

151. The Maidstone VISUM model “is robustly calibrated and validated for the multi-modal traffic and variable demand, and is not only fit for purpose but the best available tool to test any forecasting scenario in Maidstone including KIG and the LDF”.¹¹⁸

¹¹³ Mr Rosevear’s appendix 4 KCC/4.2, esp. pages 2-1- to 2-11 and sections 3 and 4

¹¹⁴ By CHWQC

¹¹⁵ Para 3.2.4 of the Transport Supplementary Information Sept 2008.

¹¹⁶ The Highways Agency also agreed that it would be an appropriate model to use.

¹¹⁷ Mr Rivers’ proof para 13.3.3 (KIG/2.1) and his rebuttal proof sections 2 and 3 (KIG/2.5)

¹¹⁸ Para 2.8 of KCC/4.12. See also the Jacobs report Sept 2008 in Mr Rosevear’s appendix 4 (KCC/4.2) and the Jacobs Local Model Validation Report May 2009 (CD5.5)

152. The Highways Agency has accepted that the model is adequately calibrated for the assessment of strategic transport issue across the network.¹¹⁹ The model has been stabilised at 2026.
153. Mr Rivers does not argue that the model is not adequately calibrated or validated, or that it is not stabilised at 2026. As I have already indicated, his reservations relate to specific concerns about the detailed modelling work. Mr Rosevear (with Jacobs) has responded to all Mr Rivers' points and the Model has been re-worked where appropriate to take into account constructive comments. The material that is contained in the latest VISUM documents are therefore correct and complete, including for example a re-run assuming that the HGV routing restrictions offered by the Appellant are in place, and are effectively enforced.¹²⁰
154. The detailed workings of the model were explained during the round table session to address the Inspector's queries about the model. Mr Srivastava of Jacobs Consultancy responded to these queries in writing¹²¹ and in inquiry session. It is hoped that his detailed knowledge of the model and his explanation of the technical components of it aided the Inspectors' understanding. It is perhaps worth emphasising the following points.
155. First, the model is a "demand" model. It assigns traffic to the network on the basis of the shortest, quickest and cheapest route options taking on board the level of delay at junctions and links. In this way the model reflects travel behaviour.
156. Secondly, the model does not work on generalised assumptions. It is sophisticated, so that for example it takes into account specific junction

¹¹⁹ Para 1.2.4 of Mr Harwood's proof HA/1/1. See also para 2.5 of Mr Rosevear's supplementary proof KCC/4.7 and para 2.6 of KCC/4.12.

¹²⁰ See in particular KCC/4.4, KCC/4.9 (as well as the "spider diagrams" included in Mr Rivers' appendix 1 (KIG/2.8) and KCC/4.12.

¹²¹ See KCC/4.12

capacities¹²² and optimises improvements on the network as well as allowing for increased public transport availability.¹²³

157. Thirdly, it may be that the resulting demand flow shown may exceed actual capacity at a particular point on the network. That is a reflection of reality in that the model indicates that, notwithstanding the constraints, that route is still the most attractive route for many and that therefore people will choose to use it.¹²⁴ The “unexpected” flows shown in the model that were put to Mr Srivastava were all explicable as the result of the model correctly re-assigning demand on the basis of changes in optimum route choices.

158. The model will show likely travel behaviour. It will also show the network problems that will arise all across the town from likely travel patterns. This enables the assessment of the impact of new development and its traffic distribution. The model can indicate the problems that will exist given a particular set of circumstances. In relation to KIG, the model is invaluable in that it can indicate the likely impacts that the development would have on travel patterns and on the network. As with all models, there is the need to apply professional judgment in order to draw conclusions from the results.

The model results:

159. Against that background, what does the model show us about the impact of KIG in 2026? Mr Rivers contends that the model results show that the impacts of KIG are not significant. However, that is far from the case.

160. The adverse impacts that KIG would have on the highway network as shown by the Maidstone VISUM model are described in Mr Rosevear’s supplementary proof¹²⁵ and in the Jacobs Forecast Model Summary¹²⁶. There are six main conclusions that can be drawn from the model results.¹²⁷

¹²² Arcady is built in.

¹²³ As Mr Srivastava explained these more fully in his oral evidence

¹²⁴ Mr Srivastava referring here to back mathematical modelling said that “actual” is always based upon “demand”. See also KCC/4.12 section 4.1 to 4.2.

¹²⁵ Section 8 of KCC/4.7

161. First, the model shows that in 2017 with the KIG development implemented, the highway network would be under significant pressure, especially on the A20 Ashford Road corridor.
162. Secondly, the model shows that in 2026 there will be an increase in demand on the highway network as the borough fulfils its obligations to meet the SEP targets.
163. Thirdly, the model shows that SEMSL will provide further capacity to facilitate the planned south east urban extension and also assist in reducing the impact of new development on local roads.
164. Fourthly, the model shows that KIG would increase pressure on the network, in particular adding to the traffic on the A20 and thereby forcing other traffic onto unsuitable roads.
165. Fifthly, the model shows that KIG would result in increased travel times in the town and greater delays at junctions.
166. Sixthly, the model shows that KIG would reduce the benefits brought by SEMSL in terms of enhanced capacity and in terms of reducing the use of unsuitable roads.
167. The Appellant's approach to the model results, as illustrated in cross-examination of Mr Rosevear¹²⁸, was to take figures from the screen lines and assert that the net impact of KIG is "small". The approach appears to derive from both a misunderstanding of the "demand" flow basis of the model and from a failure to apply sound professional judgment to the model results. The assertion is simply wrong.

¹²⁶ KCC/4.4 (together with the tables in sections 5 and 6 in KCC/4.9, including those showing the results assuming the KIG HGV routing restriction)

¹²⁷ See KCC4.4 and esp section 5.

¹²⁸ By CKQC

168. First, the approach relied on selected figures which were not representative of the KIG effects. A full and fair analysis of tables 4-C and 4-D in the Forecast Model Summary¹²⁹ (showing flows on selected links and across screen lines), as carried out by Mr Rosevear and Jacobs Consultancy, shows that the KIG development has net impacts that are large.¹³⁰ For example, across the A20/Bearsted Road screen lines KIG adds 66 and 286 vehicles in the am/pm peaks respectively (in 2026). Having regard to the location of KIG on the congested A20 radial into the town centre, these increases cannot reasonably be regarded as small.
169. Secondly, the approach ignores the fact that the implications of the additional KIG traffic are not localised but felt across the network. This is shown in Table 4-C. In particular, the approach ignores the effect that the KIG would have in terms of forcing traffic (nb KIG and non-KIG traffic) onto numerous unsuitable roads. This is shown most graphically in Table 4-C.
170. Thirdly, the approach ignores the effect of KIG in reducing the benefits of SEMSL in terms of providing capacity for new development and in limiting the traffic on unsuitable roads. This too is shown in Tables 4-C and 4-D. As Mr Srivastava explained, SEMSL is performing its function but KIG undermines its positive results.
171. As Mr Rosevear and Mr Srivastava emphasised, the adverse effects of KIG are beyond mathematics. Even small increases in traffic in a busy network will have widespread and exponential effects. Close and fair analysis of the model results does not lead to the conclusion that the adverse effects of KIG are small. On the contrary, the adverse effects are varied, wide and very significant.

The model results, further comments:

¹²⁹ KCC/4.4

¹³⁰ See in particular sections 5 to 8 of Mr Rosevear's supplementary proof (KCC/4.7) and KCC/4.4

172. As I have said, Mr Rivers' criticism is not of the model itself, nor its calibration or validation. His residual concern related to the fact that "matters are changing and not allowing KCC to run the model with a confirmed set of circumstances for inclusion in the 2026...it provides a snap shot of the modelling work done at this point in time." In particular, he was concerned that there was insufficient allowance for the beneficial effect of future demand management measures.¹³¹ As Mr Rivers confirmed in cross-examination¹³², "it all comes down to demand management".
173. The model input does include an allowance for future demand management measures. It includes the A274 Sutton Road bus lane, a new park and ride site in the vicinity of the proposed south east urban extension and a general increase in bus frequency on all the main radial routes into town.¹³³ As was explained by Mr Rosevear, it does not include an allowance for further "negative" demand management measures that might be introduced in the future. Nor can it, since these are unknowns at this time.
174. The Inspector asked about the possibility of future increases in network capacity to alleviate the problems that the model is showing, in particular at the Willington Road junction and the A20/M20 Link Road junction with the SEMSL. Mr Rosevear explained the difficulties about seeking to increase the capacity of the Willington Road junction. He explained that the KCC highway view is that the growth in Maidstone required by the SEP would be best accommodated, as identified in the SEP itself, by the SEMSL linking the propose urban extension with Junction 8 of the M20. The desired role of the SEMSL is to serve the urban extension, relieve town centre congestion, relieve Willington Street, relieve the B2163 through Leeds and Langley, and relieve the rural lanes and minor residential roads from the impact of future traffic growth. It would not be appropriate to adopt an alternative strategy of improvements to the route to Junction 7 via Willington Street, Ashford Road, New Cut Road, and Bearsted Road. The northern end of this route is already

¹³¹ Section 7 of Mr Rivers' further rebuttal section 7 KIG/2.8

¹³² By CHWQC

¹³³ See para 2.5 of Mr Rosevear's supplementary proof KCC/4.7 and Mr Srivastava's oral evidence.

heavily congested in the vicinity of J7, and Willington Street is a residential road with high density housing and local shops at the southern end.

175. So far as the A20/M20 Link Road junction with SEMSL is concerned, the model assumes a full traffic signalled gyratory which would be necessary to accommodate the higher future flows and allow coordination with future signal control and M20 J8 to prevent queuing back onto the main carriageway of the M20. The final layout has, understandably, not been designed as yet. It may be that in engineering terms the final design would increase capacity, but what will be feasible will depend on factors that are not known at this stage.

176. It is true that the model is limited to the information that is available. But that is true of any forecasting work. It is not the fault of the model, but an inherent limitation in the task of forecasting. It is not a reason to dismiss the model results and their conclusions. The relevant question that must be asked, using professional judgment, is whether or not the points raised alter the conclusions about the effects of KIG that can be drawn from the model results. Mr Srivastava made his view clear that the conclusions drawn from the model results would not change.¹³⁴ Mr Rosevear's opinion, informed by his considerable experience and knowledge of the local network, is obviously the same. The Inspectors and the Secretary of State are invited to reach the same view in relation to the conclusions that have been drawn from the model results, specifically those referred to in paragraphs 161 to 167 of these submissions.

177. There is further matter that needs to be raised in this context. The questions of further or "negative" demand measures and the question of highways capacity to accommodate the south east urban extension are not the sole province of the engineer. It is axiomatic that such questions involve a variety of considerations for planners as well as engineers. However, in this context they raise the very issues that are for debate in the wider LDF process – about the scale, nature and distribution of development and the infrastructure to support it. It is

¹³⁴ Mr Srivastava's oral evidence

obvious that the existence of KIG would affect those questions. The points raised only serve to prove that KIG is premature – it would pre-empt questions that are being considered in the LDF process. This was the very point that Mr Rosevear made in the round table session.

Further conclusions:

178. The model results therefore indicate clearly the negative effects that KIG would have on the highway network. But there are further conclusions that must be made in relation to the LDF process and MBC's ability to fulfil its obligations in the SEP.

179. As set out in the SEP, there is a need to provide for 11,080 new homes in the period 2006 to 2026, of which some 2,000 have already been completed; hence the further 9000 new homes required from now, and new employment development between 2006 and 2026. There are many constraints on Maidstone's prospects for growth and considerable work has been carried out to date in order to accommodate this new development. From this work it is evident that, consistent with paragraph 25.31 of the SEP, the vast majority of the proposed new housing will be located to the south east of the town and SEMSL will be provided to serve the new development.¹³⁵

180. The Core Strategy preferred option¹³⁶ sets this out and sets out to ensure that the new development and the infrastructure that will have to support it is properly planned – not only in a sustainable way and to provide safety on the road network but also to ensure that Maidstone remains an attractive place to live in, work and visit, in accordance with its status as the County Town of Kent and its identified role in the SEP.

181. That task is a challenging one, as Mr Rosevear has explained. The Hub Package will contain a range of possible measures to assist, such as road

¹³⁵ Mr Rosevear has explained, without challenge, that this follows the conclusion that there is no realistic prospect for major capacity improvements at motorway junctions other than junction 8 (section 4 of his proof KCC/4.1).

¹³⁶ CD2.4

building and public transport improvements and demand management measures. However, there are limits as to what can be achieved in these respects. There is no carte blanche. Far from it, the urban area of Maidstone imposes very great constraints and a balance has to be struck between the creation of additional capacity and careful use of demand management measures.

182. The presence of KIG, generating a minimum of 400 vehicles in the am peak and 440 in the pm peak on the main radial route in the south east of the town where the south east urban extension and SEMSL are proposed, will inevitably make the task harder.

183. The model shows the effects that KIG would have on highway network. It would take away capacity on the road network in peak times, particularly for longer distance trips using the motorway and in the vicinity of Junction 8, and also increase the pressure on unsuitable rural and residential roads. That capacity is needed to accommodate the development required by the SEP. The range of benefits that SEMSL would bring would be rapidly eroded, undermining its value and its ability to attract funding. The network would be unlikely to operate satisfactorily and the prospects of achieving a successful transport strategy would be significantly reduced. In particular, having regard to its location and traffic generating potential, KIG would also reduce the benefits of demand management measures. The prospect of accommodating the required level of housing and commercial development as proposed in the SEP would undoubtedly be jeopardised.

184. In practical terms, as Mr Rosevear has stated¹³⁷, the potential outcomes would be as follows:

a. The capacity constraints would deter house builders and other private sector investment. Severe demand management measures would add to the deterrent.

¹³⁷ See in particular paras 5.27 to 5.35 and section 6 of Mr Rosevear's poof (KCC/4.1) and sections 8 and 9 of his supplementary (KCC/4.7).

b. The capacity constraints would lead to the refusal of planning applications that would provide housing or commercial development that would otherwise contribute towards the SEP targets.

c. Some of the urban extension would be built, but in insufficient numbers to meet the SEP targets or even to fund SEMSL

d. The urban extension is built out and served by SEMSL but the network becomes increasingly congested with widespread use of rural lanes and residential roads

185. With these considerations to bear in mind a planning permission for KIG would certainly undermine the LDF process. The ultimate conclusion that the Secretary of State is asked to reach is that KIG would prevent the achievement of the development targets as set out in the SEP.

ARCHAEOLOGY

Introduction and approach

186. The relevant statutory development plan policy is contained in the recently approved SEP. Policy BE6 provides that local authorities will adopt policies and support proposals which “protect, conserve and, where appropriate, enhance the historic environment...”. The supporting text also recognises that the region includes an “outstanding archaeological heritage” in the area.¹³⁸ It also advises that “Sustainable management of the historic environment through the planning system...should be based upon an understanding of its significance and vulnerability to change”.¹³⁹ Beyond that there is no guidance as to the approach to take to planning proposals that have the potential to affect archaeological remains. Reliance is therefore placed upon PPG16 and other relevant guidance.

187. PPG16 provides the overarching advice on the planning system and archaeology. So far as planning applications are concerned, the main principles arising from the government’s advice can be summarised as follows:

- a. Archaeological remains are a finite resource; they should not needlessly be destroyed (paras 3 and 6).
- b. There is a presumption in favour of preserving in situ nationally important archaeological remains (paras 8 and 27).
- c. Other important archaeological remains may warrant preservation in situ, depending on the circumstances (paras 8 and 27).

¹³⁸ Para 12.17

¹³⁹ Para 12.19

d. There is a clear emphasis on preservation in situ, which is “nearly always to be preferred” (paras 8 and 13).

e. In all cases a balance has to be struck between the value of the archaeological remains and other material considerations (for and against the proposal) (paras 8 and 27).

f. The “key” is to have an “informed” decision i.e. sufficient information in order properly to evaluate remains, their presence, extent, condition and significance so as to enable the balance to be struck (paras 12 and 19 to 22).

188. Mr Chadwick, on behalf of the Appellant, agreed to each of these propositions.¹⁴⁰ However, the interpretation and application of the guidance in PPG16 as set out in his rebuttal proof¹⁴¹ and speaking notes¹⁴² does not sit comfortably with those basic tenets. Mr Chadwick states¹⁴³ that because there is no policy presumption in favour of all remains, “the test” is one of national importance. That is a misleading interpretation of the guidance. He states that for remains of lesser importance the presumption does not apply and “other mitigation measures can be considered”. That too is a misleading interpretation of the guidance. To be clear, the question of mitigation is not determined by whether or not the remains are of national importance or by the presumption, but by the circumstances of the individual case; remains of lesser importance may warrant preservation in situ. In cross-examination Mr Chadwick was confused on this matter. It was also clear that his interpretation had influenced his approach. His evidence appears to assume that in this case it is only if nationally important remains are found that the balance could be struck in favour of preservation in situ. He actually said at one point that he had made more effort in seeking to identify nationally important remains.¹⁴⁴ The right approach is to be fully informed about all important archaeological remains so that the balance can properly be struck.

¹⁴⁰ In cross-examination by CHWQC

¹⁴¹ Para 2.4 KIG/7.4

¹⁴² Paras 4 and 5 KIG/7.5

¹⁴³ In para 4 of KIG/7.5

¹⁴⁴ In cross-examination by CHWQC

189. In his rebuttal evidence Mr Chadwick argued, towards the same conclusion, that mitigation by record is acceptable for non-nationally important remains because there is no statutory development plan policy for their in situ preservation. This is of course plainly wrong. PPG16 states that preservation in situ is “nearly always to be preferred” and does not say that remains of lesser importance can only be preserved in situ if there is local plan policy to that effect.

190. Nor does it help him to refer to the cases of Springhead and New Haine Road. As Mr Mason has explained, the facts of those cases are specific. In both cases provision had been made in the planning conditions attached to the development for preservation in situ of archaeology where such measures are appropriate. In both cases there was realistic scope to accomplish this through redesign of the development, but this is not the case with the KIG site. In the case of New Haine Road the main focus of archaeology, which was of local importance, was preserved beneath the new road. In the case of Springhead the initial intention had been to preserve the Saxon cemetery referred to by Mr Chadwick, but following evaluation, which included a geophysics (magnetometer) survey that shed no light on the true potential of the site, it was decided by the County Archaeologist to allow the excavation of the cemetery which eventually turned out to be far greater than had been anticipated. There is no principle established here, nor any precedent set.

Archaeological potential

191. There is clearly a very high potential for important archaeological remains on the KIG site.

192. Mr Mason’s proof sets out in a comprehensive way the potential that exists.¹⁴⁵
I do not refer to that evidence in any detail. It suffices to say as follows.

¹⁴⁵ See in particular section 4 of his proof KCC/SM1.

193. In terms of general potential, it is a fact that the Vale of Holmesdale has seen considerable historic activity due to its geographical position (it has been an important communication route) and its topography (it has always been sheltered by the North Downs, fertile and has available water sources). This historic activity is reflected in the many archaeological records that exist, which confirm that national and regionally important archaeological sites have been found in the local area around the site. In particular, areas to the north and south of the site have revealed a valuable archaeology. It is clear that the landscape in which the KIG site lies was an important communication route and settlement area even from pre-historic times.
194. Mr Mason also considers the potential for archaeology on the site by reference to historic periods.¹⁴⁶ His findings confirm that there is the potential for nationally and regionally important remains particularly relating to the Mesolithic, Bronze Age Iron Age, Roman and Saxon periods. The general picture is that archaeological remains, from pre-historic times onwards are widespread throughout Holmesdale and in close proximity to the site.
195. The information which Mr Mason has taken into account to determine the potential for on-site archaeology is all contained in readily available and published record sources, for example the Kent Historic Environment Record and the database of the Portable Antiquities Scheme, or event specific records, such as the excavations carried out for the Channel Tunnel Rail Link. Finds continue to be made and published, for example by the Lenham Archaeological Society, reinforcing the conclusion that the appeal site is situated in an area rich in terms of important archaeology.
196. It should be emphasised that the Appellant has in the past acknowledged the high potential for important archaeology on the appeal site. CGMs, in a report dated 2004¹⁴⁷ covering a large part of the current appeal site (which document

¹⁴⁶ Pages 31 to 43 of his proof KCC/SM1

¹⁴⁷ Mr Mason's rebuttal appendix 1 KCC/2.4

only came to light in September of this year¹⁴⁸), acknowledged the potential for important archaeology. Moreover, WSP, who were advising KIG in 2005 and 2007, clearly acknowledged the potential for national and regionally important remains on site.¹⁴⁹ “The site obviously has considerable archaeological potential (which may be an underestimate!)”¹⁵⁰

197. In his evidence Mr Mason¹⁵¹ refers to a number of specific areas of archaeological potential that he has identified through his own limited research of the site. He identifies eight specific areas of potential.

198. First, there is a high potential for the camp sites of Mesolithic hunter-gatherers to occur on the site. The topographic conditions of the KIG site with its three valleys and available water resource would have been attractive hunting and camping grounds for such peoples. Mr Chadwick recognised this potential in his 2004 desk based study and in cross-examination.¹⁵² He did not agree, however, that such sites can be anything more than disturbed artefact scatters in the ploughsoils. Mr Mason has submitted evidence to demonstrate that the site at Sandway Road revealed a site that had survived ploughing, with the remains contained in hollows sealed beneath subsoil.¹⁵³ Sites such as that at Sandway Road could be of national importance. Mr Chadwick also suggested that the presence of a Mesolithic site just to the south of the KIG development indicates that there is likely to be a low potential for further sites. This ignores the fact that the Mesolithic peoples were transient and would have moved around the landscape in pursuit of the natural resources for thousands of years. It would be wrong to assume that they would have returned only to the same precise spot over such time scales.

199. Secondly, there is a high potential for early Bronze Age barrows on the KIG site. Mr Chadwick in his 2004 desk based study recognised this potential based on the topography of the site and the proximity to the barrows that were

¹⁴⁸ Para 1.1 of Mr Mason’s rebuttal KCC/2.4

¹⁴⁹ WSP report ES 2007 CD3.1 Chapter 13

¹⁵⁰ E-mail dated 17.4.07 Mr Mason’s appendix 1

¹⁵¹ Paras 4.35 to 4.58 of his proof KCC/SM1 and in his oral evidence

¹⁵² By CHWQC

¹⁵³ KCC/2.12

excavated in the 19th century at White Heath. As Mr Mason has demonstrated in his evidence, at least one of the known barrows at White Heath straddled the road and partially would lie in the KIG development site. This has not been recognised by Mr Chadwick. Mr Mason acknowledges that the remains of that barrow, which has been heavily severed by the A20, are unlikely to be sufficient to warrant preservation in situ. He remains of the view, however, that other barrows that contain assemblages comparable to those recovered at Whiteheath may exist and be of national importance.

200. Thirdly, The remains of Bronze Age and Iron Age settlement and farming could be widespread across the three valleys covered by the KIG site. Indeed, evidence for such activities occurs in all three of the valleys. Remains of local, regional and national importance could be present. The valley of the Lilk at the east end of the site has a particularly high potential for nationally important remains given the rich Iron Age coinage found immediately north of the motorway by metal detectors.
201. Fourthly, There is potential for Roman rural settlement, farms and communication routes on the KIG site. While such remains are likely to be of local or regional importance, there is some potential for nationally important remains, particularly in the valley of the Lilk, where, as recorded at Thurnham, evidence for the transformation between Iron Age and Roman Kent may be present.
202. Fifthly, the potential for a Saxon burial ground on the site is very clear. The importance of the area in the 6th to 8th centuries has been explained in correspondence received from Dr Andrew Richardson, a leader in the field of early medieval Kent.¹⁵⁴ The Saxon cemetery found by Beale Poste at White Heath in the 19th century could very well extend into the site and as Mr Mason has explained in his evidence such cemeteries could be extensive. The potential for remains of national and regional importance is clear.

¹⁵⁴ See Mr Mason's appendix 16 KCC/2.2

203. Sixthly, there is a very high potential for the remain medieval farmsteads, field systems and trackways to lie within the KIG site. Indeed the hollow way identified by KCC (but not by CgMs or WSP) in the tree belt to the east of Crismill Lane is likely to be remnant of a track dating back to at least medieval times and potentially earlier given the proximity of known Roman burials at Crismill Farm. Individual remains of this period are likely to be of mainly local importance but cumulatively taken over a landscape as substantial as the KIG site could be of more value.
204. Seventhly, the last remnant of the Hollingbourne Union Workhouse, a small mortuary building, was recognised by the County Council but not by CgMs. While this building remains a rare surviving example of its type, KCC have clarified with English Heritage that the importance is likely to be limited to strong local (REF KCC 2/10).
205. Eighthly, Mr Mason has recognised that a number of features can be seen aerial photographs that cannot be simply dismissed (as Mr Chadwick does) as field drainage or boundaries that occur on historic maps. The Inspector's attention was specifically drawn during Mr Chadwick's cross examination to a number of crop mark features that occur at the west end of the site in Field 15. These features neither occur on historic maps, nor were they identified by the geophysical survey of the area.

The KCC specification

206. In 2007, WSP contacted KCC to ask for advice as to the archaeological investigations that should be carried out, recognising that field evaluation would be required. KCC produced a specification for further work (the "Specification") and provided this to WSP.

207. The Specification¹⁵⁵ is an important document. The request by WSP (and the apparent preparedness to follow KCC advice) and KCC's response is precisely what is contemplated by PPG16.¹⁵⁶ The Specification sets out what KCC considered would be required in order to evaluate the archaeology on site and properly inform the planning decisions to be made.
208. It is a detailed document which provides for a staged approach to investigation employing a range of techniques. Mr Mason explains the rationale for it in his proof of evidence.¹⁵⁷ It was recognised that the site was so large that to require trial trenching of between 5% to 10% (as generally required) would be unreasonable and unpragmatic. The Specification therefore sets out a number of studies and surveys to be carried out, the combined results of which would be used to inform the following stages. "Given the varying topographic, soil and site conditions reliance on a single technique is very likely to be misleading."¹⁵⁸ A combination approach is often the adopted approach, as recognised by English Heritage.¹⁵⁹
209. The Specification therefore puts forward an iterative approach. A desk-based assessment was required, but this should include not only notes of archaeological records but also geotechnical reports and an historic map regression exercise. In addition, a walkover survey was required to identify any upstanding historic features and landscape elements present to inform later reporting. A topographic model of the site was also required, which would draw together geotechnical information, geological map data and hydrology with observations from the walkover survey, and be combined with a detailed surface survey of the site's surface. "The modelling work will attempt to mark out the known and likely extents of buried deposits and features as well as likely areas of colluvial and alluvial masking as affected by the site's topography...".¹⁶⁰ A magnometer survey was also required over areas "comprising a total of 25% of the site, spread across differing geologies and

¹⁵⁵ Mr Mason's appendix 3 KCC/SM3

¹⁵⁶ Paras 19 to 21

¹⁵⁷ Section 5 of his proof KCC/SM1

¹⁵⁸ Paras 5.8 and 5.37 of Mr Mason's proof KCC/SM1

¹⁵⁹ Page 3 of CD6.7.3

¹⁶⁰ Para 4.2.4 of the Specification

topographies as identified in the desk-based assessment”.¹⁶¹ The final results of the geophysics work will inform the applicability of “further geophysics, the locations of the evaluation trial trenches in the next phase of work as well as the overall interpretation of the site.”¹⁶² A field walking survey was also required as well as scanning by metal detector. Other detailed requirements were also set out.

210. It is necessary to refer to the Specification in some detail in the light of Mr Chadwick’s claim that the Appellant’s investigation has been broadly in line with the staged approach required by KCC¹⁶³ and “iterative”¹⁶⁴. This claim is rejected as Mr Mason explains in his proof and rebuttal evidence.¹⁶⁵ The evaluation work carried out by the Appellant has not taken account of the site conditions, a topographic model or adequate desk study, as explained by Mr Mason.¹⁶⁶

211. I have also referred to the Specification in some detail because of the claim by the Appellant that he has exceeded the Specification in relation to the magnetometer survey work because this was carried out for over 90% of the site and not just over 25% of the site. This claim fails completely to recognise the express terms in and the rationale for the Specification. As Mr Mason was at pains to stress in his proof of evidence¹⁶⁷ and in his oral evidence, that the Specification was designed as an “iterative” or “staged” programme, where one part would inform the next part of the investigation. This was to recognise the particular attributes of the site and to avoid over reliance on one evaluation technique. There is nothing wrong with carrying out a magnetometer survey over a large part of the site, indeed it could be useful, but it is not enough to do this without carrying out other elements of the Specification. As I shall explain later in these submissions, the Appellant has over relied on one element of the Specification. The need to carry out other elements of the Specification is

¹⁶¹ Para 4.2

¹⁶² Para 4.3

¹⁶³ Mr Chadwick’s appendix 3 KIG/7.4

¹⁶⁴ Para 4.7.5 of Mr Chadwick’s proof KIG/7.1

¹⁶⁵ See in particular KCC/2.9.

¹⁶⁶ Para 3.8 of Mr Mason’s rebuttal KCC/2.4 and section 6 of his proof KCC/SM1

¹⁶⁷ See for example para 5.37 of his proof KCC/SM1

critical not only to assist judgment on the interpretation of the magnetometer survey results (for example in terms of the extent of masking soils etc) but also to inform the overall judgment of archaeological potential on this site.

212. It should also be noted that the Specification was also prepared in the light of advice from English Heritage. The Specification followed specific advice given by Dr Neil Linford of English Heritage. In an e-mail dated 13 March 2007¹⁶⁸, Dr Linford advised a “staged approach”. He referred to a magnetometer survey as a “first technique to trial...” and to other evaluation techniques such as earth resistance survey work. That is why the Specification refers to the possibility of “further geophysics”.¹⁶⁹
213. Mr Mason also explains¹⁷⁰ how the Specification was informed by the work carried out in the Planarch report¹⁷¹ (to which Dr Linford contributed) and the English Heritage document Geophysical Survey in Archaeological Field Evaluation 2008¹⁷².
214. Furthermore the iterative approach requires that the effectiveness of a particular technique such as the geophysics be critically reviewed and tested rather than accepted, as the Appellant has done, at face value as reliable. There is no evidence of this approach neither in the reporting of the fieldwork that has been carried out on behalf of the Appellant nor in the strategy for the subsequent very limited trial trenching which sought only to target the minimal positive results of the geophysics.

The relevant guidance

¹⁶⁸ Mr Mason’s appendix 19

¹⁶⁹ Para 4.3 of the Specification

¹⁷⁰ Section 5 of his proof KCC/SM1

¹⁷¹ The Planarch Report - Evaluation of Archaeological Decision-making Processes and Sampling Strategies 2001 by Hey and Lacey CD6.7.2

¹⁷² CD6.7.3

215. The Planarch document¹⁷³ is a well established and well regarded work recording the findings of various studies into field evaluation techniques. It concludes that “there is no doubt that combinations of techniques can provide very powerful tools for evaluating archaeological sites which far outweigh the sum of their individual values” It recognises that each technique provides slightly different kinds of information and that each may have a weakness. “A suite of methods will probably be appropriate for larger projects with more diverse physical conditions...”.¹⁷⁴
216. The document reports on the survey findings. For example, desk based assessment was proven to be much better at indicating the presence of sites than it was at showing their precise location, intensity and character. Fieldwalking is stated to be good at indicating the presence of archaeological sites and suggesting their date, especially for the Neolithic/Bronze age and Roman periods.¹⁷⁵ Metal detecting was proven to be useful, again especially over Roman sites.¹⁷⁶ Geophysical survey is noted to be useful in some cases but has a poor record for evaluating Neolithic and Bronze Age remains; it did not pick up on most early medieval/Anglo-Saxon and some later medieval remains.¹⁷⁷ Machine trenching was significantly better at finding and assessing Roman, Iron Age and medieval sites but, interestingly, only a marginal improvement on fieldwalking for Neolithic and Bronze Age remains.¹⁷⁸
217. Mr Chadwick suggests that the study is not relevant to the issue at inquiry on the basis that it sought to test techniques that would find “the full range of archaeological material present” rather than what PPG16 relates to for determining whether or not sufficient investigation has been carried out for “(national) important archaeology” in the course of a planning application. I have already commented on Mr Chadwick’s focus on nationally important archaeology. As to the rest of the point made, it has little force. In this case,

¹⁷³ CD6.7.2

¹⁷⁴ Para 3.3.7

¹⁷⁵ Para 3.3.2

¹⁷⁶ Paras 3.3.1 to 3.3.3

¹⁷⁷ Para 3.3.4

¹⁷⁸ Para 3.3.6

the question relates to whether or not the Appellant has carried out sufficient investigation work. The Planarch report gives relevant and valuable guidance in relation to the available techniques and their advantages compared one with another. It is self-evidently useful. Mr Chadwick does not dispute any of the findings in the report or argue with any of the guidance within it to which reference was made during the inquiry.¹⁷⁹ With this in mind it is curious that he seeks to belittle the weight to be attached to the document. Reference to the Mereham decision is not helpful. Mr Chadwick contends that the Planarch report was considered to carry no weight and that the decision makes a general proposition that desk study, geophysical survey and small scale trenching is normally sufficient to enable informed decisions. Upon analysis these contentions were not made good. In short, the Inspector and the Secretary of State decided on the facts of that case sufficient investigation had been carried out and that the failure to carry out trial trenching on over 5% (by area) of the site was not a sufficient reason to reject the scheme. The decision had nothing to do with the question of weight in relation to the Planarch report. Indeed, neither the Inspector nor the Secretary of State passes criticism on the document. Moreover, this inquiry has nothing to do with a requirement on the Appellant to carry out a particular level of trial trenching.

218. The English Heritage document¹⁸⁰ gives detailed guidance on the use of geophysical survey techniques. It states that the choice of survey methods will vary from site to site. It also confirms that combinations of geophysics and other field evaluation methods can optimise results. There is also variation in terms of geophysics and different techniques can and should be used together. “For example, magnetometer survey may provide a distribution of pits, ditches and industrial features, but it will usually be necessary to combine this with more targeted earth resistance survey and/or GPR to identify building foundations.¹⁸¹ There is further guidance in relation to the choice of geophysical survey techniques; this contains important advice about the merits of the magnetometer survey technique and the relevance of issues such as

¹⁷⁹ Either in his written evidence or in cross-examination

¹⁸⁰ CD6.7.3

¹⁸¹ Page 13

response strength and geology.¹⁸² There is also some brief guidance on data interpretation.¹⁸³

The Appellant's investigation

219. The Appellant's archaeological investigation on the site has been late and inadequate.

220. Notwithstanding the fact that KCC sent the Specification to the Appellant in May 2007, nothing was heard from the Appellant until the production of the Environmental Statement in October 2007. The ES¹⁸⁴ refers to consultation with KCC but fails even to mention the Specification. The majority of what had been specified had not been carried out. The desk based assessment fell short of what was required. There was no comprehensive walkover and no topographic or deposit modelling. As I have already noted, the desk based assessment ES concluded that there was potential for national and regional remains on the site. However, paragraph 13.9.1¹⁸⁵ acknowledges the lack of on-site investigation and states that "The presence or absence of buried archaeological remains at the site, their date, character, extent, depth and significance is unknown". The desk based assessment concludes that further evaluation is therefore required, including geophysics, fieldwalking, a deposit model, and trial trenching. But instead of recommending that this work is carried out to inform the planning decision it suggests that mitigation, including redesign of the proposals, will ensure that important remains, including any nationally important remains, are protected. This of course puts the cart before the horse. It also wrongly assumes that the proposals can be redesigned to avoid any important remains. There is no basis for this, where the presence or absence of remains on the site is "unknown" and where, having regard to the very substantial cut and fill operations involved in the

¹⁸² Pages 13 to 16, 20 to 21 and 24 to 25

¹⁸³ Page 49

¹⁸⁴ Chapter 13 CD3.1

¹⁸⁵ See also para 13.8.10

scheme, there is no realistic scope for redesign of the scheme to avoid remains that might be found.

221. KCC set out its views on the planning application in November 2007 and further advised in January 2009 on the planning supplementary information¹⁸⁶, but KIG made no further contact with KCC until April 2009. Notwithstanding the Specification and the clear advice of KCC, the Appellant carried out no further investigative work (that is known to the inquiry) until May 2009.

222. Mr Chadwick was instructed but very late in the day. As the e-mail exchange¹⁸⁷ shows, time was running out fast for the Appellant. It is obvious that Mr Chadwick advised that further work would have to be carried out in advance of the appeal inquiry. There appears to have been a rush to complete that further work. As Mr Chadwick put it in cross-examination¹⁸⁸, there was an urgency to get things done.

223. The Appellant sought confirmation of the Specification that had been provided¹⁸⁹, but the Appellant chose not to follow it. The Appellant did not follow the carefully designed staged approach set out in the Specification and failed to carry out important elements within it. Contrary to the impression given by the Appellant in its evidence, the County Council and Maidstone Borough Council had confirmed in a meeting with Mr Chadwick on the 13th May 2009 that the Specification should be followed in order to properly assess the site.¹⁹⁰

224. Instead of following the advice given by KCC and instead of following the general guidance that combinations of methods are more useful, especially for large sites, the Appellant decided to rely on a desk based assessment, a magnetometry survey and a very small number of trial trenches. This is a

¹⁸⁶ See Mr Mason's appendix 2

¹⁸⁷ Mr Mason's appendix 4

¹⁸⁸ By CHWQC

¹⁸⁹ See e-mail 30.4.09 page 11 of Mr Mason's appendix 4

¹⁹⁰ Para 6.3 of KCC/SM1 and para 3.6 of KCC2.4

singularly inadequate response to the identified potential for important remains on the appeal site.

Field work:

225. There was no field walking survey, metal detecting work or topsoil testing. The value of these methods is described in the guidance documents to which I have already referred and the reasons why they were specified is explained clearly by Mr Mason in his proof¹⁹¹. They were a necessary, and relatively inexpensive, element in the specified combination of work.

The desk based assessment and walkover:

226. There was no thorough desk-based assessment incorporating a site walkover and topographical model (including geotechnical information). The reasons for these and their importance is set out clearly in the Specification and based upon the relevant guidance to which I have referred. Mr Mason also explains in detail why this work was necessary, in particular the need for this work to inform subsequent survey work and interpretation (eg topographical and geological information).¹⁹²

227. CgMs' Archaeological Deposit Model was produced on 5 August 2009. The following points are made in relation to this document.

228. First, the document is not a proper response to the topographic model requested in the KCC Specification as asserted by Mr Chadwick¹⁹³. The topographic modelling information referred to in the Specification was required to inform later stages in the survey work, whereas this document appears to have been written on completion of the survey works and has not helped in the strategy.

¹⁹¹ Paras 5.43 to 5.44 of his proof KCC/SM1

¹⁹² See section 5 of his proof KCC/SM1, especially para 5.42

¹⁹³ Para 1.3 of the SES Appendix 4 CD3.30

229. Secondly, the geotechnical information in the document is too limited to be of any genuine use. There is a description of the geology but this is very limited in extent and what information is provided does not support the claim that hillwash is unlikely to be a reason for the absence of anomalies on the geophysical survey.¹⁹⁴ Nor has the testing of the site been comprehensive enough to determine the extent of plough damage.¹⁹⁵
230. Thirdly, the description of the site's topography is very brief and the conclusions are not related to the geophysics work.¹⁹⁶
231. Fourthly, there are a number of conclusions drawn from archaeological resources which are not accepted by Mr Mason.¹⁹⁷
232. In addition there is no evidence that a comprehensive enough site walkover has been undertaken by either WSP or CgMs.¹⁹⁸ Features of potential interest, for example the hollow way to the east of Crismill Lane would have been identified through a robust inspection¹⁹⁹

The magnetometer survey:

233. Apart from the limited trial trenching, this is the main element of field evaluation upon which the Appellant relies to conclude that there are no archaeological remains that justify in situ preservation or indeed that there is very little archaeology present on the site at all. Mr Mason has explained in some detail why such reliance is not justified.²⁰⁰ I make the following submissions on this matter.
234. First, the Specification required magnetometer survey work but this was to be informed by the geotechnical and topographical material gathered by earlier

¹⁹⁴ See paras 6.44 to 6.46 of Mr Mason's proof KCC/SM1

¹⁹⁵ See para 6.56 of Mr Mason's proof KCC/SM1

¹⁹⁶ See para 6.47 of Mr Mason's proof KCC/SM1

¹⁹⁷ See paras 6.48 to 6.57 of Mr Mason's proof KCC/SM1

¹⁹⁸ Para 1.5 KCC/2.9

¹⁹⁹ Para 4.18 KCC/2.1

²⁰⁰ In particular paras 6.15 to 6.33 of Mr Mason's proof KCC/SM1 and his oral evidence

stages in the process.²⁰¹ The size of the site and its varying profile were taken into account in stipulating that requirement. There was, however, insufficient material for that purpose.

235. Secondly, the Specification did not require magnetometer survey work as the sole field survey methodology. It was made clear that the results of this work would “inform the applicability of further geophysics, the locations of the evaluation trial trenches in the next phase of work as well as the overall interpretation of the site”.²⁰² In terms of any further geophysics, there was no restriction to the magnetometer survey method.
236. Thirdly, this aspect of the Specification was designed following the advice of Dr Linford, as I have already emphasised. Dr Linford’s advice was clear that a staged approach should be adopted having regard to the variable success of different geophysical methods.
237. Fourthly, it is clear from the English Heritage guidance document²⁰³ and from the Planarch document²⁰⁴ that the success of magnetometer surveys depends very much on the features that are being targeted and the geology of the land in question. The value of results is therefore governed by not only a good appreciation of the particular archaeological potential but also a full understanding of site conditions, including geotechnical and topographical information. In this case the inadequate desk based assessment and the lack of sufficient information about site conditions significantly reduces the usefulness of the magnetometer survey work that has been carried out.
238. The English Heritage guidance states that the following is relevant to geophysical surveys: Solid Geology, drift geology, soil type, land use and surface conditions. That information should be available because it is important for interpretation.²⁰⁵ This is further explained later in the document

²⁰¹ See in particular paras 4.2.2 to 4.2.4 and 4.2 of the Specification (Mr Mason’s appendix 3).

²⁰² Para 4.3 of the Specification

²⁰³ CD6.7.3

²⁰⁴ CD6.7.2

²⁰⁵ Pages 6 to 7 CD6.7.3

where it is noted that different geologies allow for different qualities of magnetic response.²⁰⁶ Elsewhere in the document, combinations of geophysics are recommended, and earth resistance technology is recognised as a useful partner.²⁰⁷

239. The Planarch document not only gives valuable guidance as to field evaluation techniques but includes a report by Dr Linford²⁰⁸ on the results of magnetometry and earth resistance at the Thurnham Villa archaeological site. Having regard to its nearby location, the findings are very relevant. The results show that magnetometer surveys can fail to pick up important remains and that earth resistance can be more successful.

240. It was with this guidance in mind that the Specification emphasised the importance of site conditions and expressly required that the topographical model should provide information on geology, soil conditions and topography.²⁰⁹

241. With this in mind what was the Durham University team provided with in terms of site conditions? The only relevant documentation referred to in the report is the WSP 2005 report.²¹⁰ This document says nothing on geology. It is true that there is reference to BGS mapping information, but this information is not site specific. Section 4 of the report refers to the “underlying solid geology of the area” comprising Folkestone Formation sandstone and Gault mudstone, but there is no indication of any information specifically relating to on-site soil and ground conditions. Nor is there any topographical plan. This falls well short of the information requirements in the Specification and the EH guidance.

242. There is no criticism of Durham in so far as they carried out the work at an acceptable standard given the field conditions at the time. However, Mr

²⁰⁶ Page 14 to 16

²⁰⁷ Pages 14 to 15, 20 to 21 and 24 to 25

²⁰⁸ And Mr David of English Heritage - see appendix A CD6.7.2

²⁰⁹ See eg paras 3.2c, 3.2d, 4.1.j, 4.2.2, 4.2.3, 4.2, 6.6.3, 6.6.6, and 6.6.13.

²¹⁰ Para 3.1 of SES appendix 3 CD3.30

Mason's concern is that the site conditions may have affected the results of the survey and that sole reliance on magnetometer survey is not justified.

243. As set out in the guidance, the magnetometer survey relies upon picking up the magnetic signals from buried archaeological remains. Different features will provide signals of different strengths, in some case strong, in other cases weak. These have to be distinguished against the background "noise" from the underlying and surrounding geological soils. The addition of overlying soils such as colluvial subsoil can add to the problem. It can introduce noise and it can add depth (so called masking). There is therefore no hard and fast rule as to what can or cannot be detected by the magnetometer survey, but it is clear from the guidance that the technique has its weaknesses in these respects.

244. As set out in his evidence²¹¹, Mr Mason states that the lack of any proper consideration of ground conditions on the site and the way in which these may have affected the reliability of the survey results is a significant failing in the Durham report. The simple point is that it is well known that site conditions can have an unwanted effect (the Durham report itself refers to this possibility in the section entitled "technique selection") but the report pays little heed to subsurface site conditions in its interpretation section. For example, there is no discussion about the potential for the geology to "mask" results, as referred to in the English Heritage guidance.²¹² That guidance is particularly relevant because the geology here contains sandstones (Folkestone), mudstones (Gault) and Drift (Head), as well as alluvium/colluviums. Mr Mason provides an illustration of how the topography and soils may have an effect on the reliability and interpretation of the magnetometer survey. The report identifies ditches in Fields 8 and 9 but there is no recognition that the ditches are situated on higher ground or that subsoil downslope may be masking their continuation. This is an example of a key area for further investigation.

245. This concern is heightened by the information in the borehole logs and test pit data that was available to KIG but not provided to Durham University. As

²¹¹ See in particular paras 6.15 to 6.33 of his proof KCC/SM1

²¹² See in particular pages 15 to 16

explained by Mr Mason²¹³, there is serious concern over Durham's understanding of the subsoil structure on the appeal site. The borehole logs included in the Archaeological Deposit Model²¹⁴ show Head in a number of locations and the test pit information in 2007²¹⁵ identified additional subsoil deposits. But this information was not supplied to Durham to assist in their report. Indeed, the latter information was not supplied to Durham even for the purpose of their response to Mr Mason's concerns. This information clearly demonstrates the variability of soil profiles on site and the existence of Head and subsoils that may seal or mask archaeological remains on a magnetometer survey. Mr Mason considers that Mr Chadwick is wrong to assert that archaeological remains would not be situated within or below the subsoil²¹⁶ and a demonstration of this can be found in paragraphs 2.9 and 2.10 of the note relating to Springhead²¹⁷. That the geophysics has not picked up the cemetery to which Mr Mason refers in his assessment of the appeal site's potential is not difficult to explain as such sites can be missed by magnetometer as the Springhead case demonstrates.

246. Mr Mason is also concerned about the limitations of the geophysical survey and its interpretations. He gives examples in his proof of evidence.²¹⁸ The inquiry will recall in relation to Area 15 the fact that the geophysical survey has failed to pick up many of the features that are visible on aerial photographs as crop marks. This is another key area where further investigation should be carried out.

247. Mr Mason uses the phrase: absence of evidence is not evidence of absence.²¹⁹ This is a truism but one that is pertinent here. Words used in the Durham report itself also stick in the mind: "Excavation may or may not identify further archaeological features". That is not so much a truism. It is though a telling sentence in the context of Mr Mason's concerns.

²¹³ Para 6.12 of Mr Mason's proof and paras 2.3 and 2.9 of his note on the Durham report KCC/2.8

²¹⁴ SES appendix 5 CD3.30

²¹⁵ ES chapter 13 appendix 13.8 CD3.1

²¹⁶ As he did in cross-examination

²¹⁷ KCC/2.11

²¹⁸ Paras 6.31 to 6.32 of Mr Mason's proof KCC/SM1

²¹⁹ Para 2.26 of KCC/2.8

248. Mr Mason is not alone in his concerns. He is supported by Dr Linford of English Heritage. English Heritage's original representation was that there was insufficient information to assess the impacts of the proposal on buried remains²²⁰ and that position does not appear to have changed. Dr Linford's opinion is set out in his correspondence²²¹, and as recorded in Mr Mason's evidence²²², and requires no further clarification. It was Dr Linford's recommendations that guided the Specification. Dr Linford advised that the field evaluation should be based on a staged approach. Dr Linford advised as to the known weaknesses of magnetometer survey. Dr Linford has also as to the problems that are encountered with certain geologies and subsoils. Dr Linford expressly questions the sole use of magnetometry survey, especially in the light of his experience elsewhere, in particular at nearby Thurnham Villa. Dr Linford also questions why no consideration was given to the Planarch report (and Durham's response on this point suggests a serious misunderstanding of its findings in relation to Thurnham Villa²²³). Dr Linford recommends the additional use of earth resistance survey investigation. It is absolutely clear that he does not consider that the magnetometer survey results alone should be relied upon and that there should be additional field evaluation.

Trial trenching:

249. It is not correct to say that the written scheme of investigation for trial trenching was approved by the County Council. Adam Single's email to Mr Chadwick of the 17th July 2009²²⁴ made it very clear that it was not possible to comment on the scope of the trial trenching works without the benefit of the geophysics report that it was targeting. That the report was only handed on to the County Council after the start of the trial trenching, despite being available

²²⁰ See letters 18.12.07 and 2.2.09

²²¹ See Mr Mason's appendices 19 to 20, section 6 of Mr Mason's proof KCC/SM1. See also JPG13.3

²²² In his proof and also in his note on the Durham report KCC/2.8

²²³ See paras 2.8 and 2.9 of KCC/2.8 and as discussed in cross-examination of Mr Chadwick by CHWQC.

²²⁴ Appendix 4 KCC/2.2

by the 2nd July²²⁵ has not allowed the County Council the proper opportunity to comment and influence the scope of the trial trenching works.

250. Relatively little needs to be said in relation to this element of the Appellant's investigation. Mr Mason's comments are contained in section 6 of his proof.²²⁶

251. The short submission is that the trial trenching exercise was extremely limited and shed little light on the archaeological potential of the site. Moreover, it did nothing to demonstrate the reliability of the magnetometer survey. Only 5 trenches were dug, on higher ground rather than lower ground where subsoil may have built up and masked features in the magnetometer survey. Vast areas of the site were not covered.²²⁷ It tested only a small number of anomalies and did not test any area where there were no anomalies.

252. Again, Dr Linford's advice supports Mr Mason's position. In the correspondence²²⁸ he clearly suspects that the trial trenching is insufficient to fully test the fidelity of the magnetometer survey results. Dr Linford advises that there has been too little testing by trial trenching of the geophysics to draw any meaningful conclusions about its reliability.

253. Finally, it is to be noted that the conclusions of the report serve to support Mr Mason's position and underline his concerns. The report states that the evidence could be indicative of a nearby later prehistoric occupation site in Field 9 and of the potential proximity of a Neolithic or Bronze Age site in Field 1. Again, this points to the need for further assessment in these areas.

Concluding comments

²²⁵ As confirmed by Mr Chadwick during cross-examination

²²⁶ KCC/SM1

²²⁷ Mr Mason calculates 0.03% of the 112.4 ha site – para 6.35 of his proof KCC/SM1

²²⁸ See Mr Mason's appendices 19 to 20, section 6 of Mr Mason's proof KCC/SM1, KCC2.8. See also JPG13.3.

254. The Inspector has posed the question: whether or not the proposal should be refused planning permission on account of the site's potential to contain important archaeological remains? The answer to this question is firmly – yes. The reasons for this in short are as follows.
255. The Appellant argues that its investigation accords with the process set out in PPG16. However, PPG16 gives only general guidance as to the approach to take to archaeological investigation. It does not purport to give detailed guidance and leaves that for consideration on a site by site basis.
256. KCC set out a detailed programme for investigation. That Specification was based on advice from EH and reflected the rich archaeological resource in the locality and the clear potential for important remains on the site.
257. The Appellant has paid little if any regard to that Specification. It has carried out too little investigation and too late. The assessment has not been sufficient to properly inform the Inspector and the Secretary of State about the presence and significance of important archaeology on site so that a balance can be struck and a decision made as to the grant of planning permission. Not only would a planning condition as suggested by the Appellant present a serious risk to important archaeology, but also, having regard to the main principles in PPG16, a condition as suggested by the Appellant it would be fundamentally wrong to do so. Planning permission should therefore be refused.
258. The only other comment to make in this section of my submission is to remind the Inspectors of Mr Mason's note in relation to the setting of Thurnham Castle²²⁹. The note comments on Mr Chadwick's narrow archaeological interpretation of the setting of the Scheduled Ancient Monument. The information within it is important in determining the boundaries of the setting.

²²⁹ KCC/2.1

PUBLIC RIGHTS OF WAY

Policy and approach

259. The draft order has undergone significant change and the technical details have finally been agreed with the local highway authority. In this context it should be noted that paragraph 10.11 of Defra's Circular 1/09 states that if the Secretary of State proposes to modify the order he "would be bound by the requirements of section 252 (of the TCPA 1990) to treat the order as a new order, and so would ensure that the owner of the land and anyone who made representations or objections to the original draft order was given the opportunity to make further representations or objections." It is KCC's view that an opportunity should indeed be given for any representations or objections to the order as proposed to be modified.
260. Of course, the fact that agreement has been reached on the technical details of the draft order does not mean that our objection to the Order is met. As set out in Mr Rusling's proof, KCC's objection is root and branch opposed to the planning application and to the Order that is dependent on it.
261. The broad matter for consideration is that set out in the Inspector's note at matter no.5.²³⁰ My submissions in relation to this matter are relatively short. The issue does not call for detailed analysis and involves straightforward planning judgment based mostly on agreed facts and with the benefit of the documentation and illustrative material.
262. The approach to this issue is governed by the statutory development plan. The applicable policies include Policy C6 of the SEP and Local Plan Policy ENV26.²³¹

²³⁰ INQ/7

²³¹ Other relevant policies are referred to in section 2 of Mr Rusling's proof KCC/3.1.

263. The objective of Policy C6 is to “encourage access to the countryside”. That is to be achieved by other amongst other things “maintaining, enhancing and promoting the Public Rights of Way system...and to facilitate access within, to and from the countryside for visitors and all members of the local community.” As Mr Rech agreed in cross-examination²³², a relevant question is therefore: will KIG contribute to this aim or detract from it? Although in cross-examination Mr Rech asserted that he had addressed this question it is difficult to find where he has done so in the precise terms of the policy.
264. Local Plan Policy ENV26 states that planning permission “will not be granted for development affecting any public right of way unless the proposals include either the maintenance or the diversion of the public right of way as a route no less attractive, safe and convenient for public use”. In cross-examination Mr Rech agreed that this was a relevant policy but he said that he had not specifically addressed it since he had been informed that it carried significantly little weight compared to the SEP.²³³ This may have been Mr Rech’s understanding, but it is wrong. The policy has been saved and is up to date and relevant. Mr Bullock confirmed his view in cross-examination that the policy carries full weight in accordance with S38(6) of the TCPA 1990.²³⁴ As a result of this mistake, Mr Rech’s proof is deficient in that it does not squarely address the specific criteria in the policy. The relevant question is: does the proposal maintain or divert rights of way as routes that are “no less attractive, safe and convenient”.
265. Mr Rech’s evidence is also deficient because it give no consideration to the government’s policy set out in paragraph 32 of PPG17, which states that local authorities should “protect and enhance” rights of way.
266. Mr Rech does not refer to important guidance either. For example, he takes no account of the Countryside Access Improvement Plan (2007), a statutory document adopted after full consultation in March 2008. This document sets

²³² By CHWQC

²³³ See also paras 7.14 and 7.15 of Mr Rech’s proof KIG/6.1.

²³⁴ By CHWQC. See also Mr Bullock’s appendix KIG/1.3

the vision “to increase the usage and enjoyment of public rights of way and open green space in Kent”.²³⁵

267. Mr Rech’s consideration of relevant policy and guidance is incomplete.

268. It does seem as if the Appellant has taken a rather cavalier approach to the question of footpaths and bridleways. There was no separate consideration of the impacts on PROWs in the ES. The original illustrative master plan showed little detail, especially in relation to bridges and rail crossings and there has been continuous change to a number of aspects during the inquiry. Moreover the original Order was deficient in various respects and that too has undergone several changes. The other explanation is simply that the Appellant has given insufficient thought to a very important material consideration.

The value of the existing PROWs

269. The following broad submissions are made in relation to the value of the existing cross-site PROWs.

270. First, the cross-site PROWs are likely to be of historic origin.²³⁶

271. Secondly, they are well used. This is made clear not only through Mr Rusling’s evidence but also through the evidence of the local residents who have made representations to the inquiry. Mr Rech acknowledged that the routes are “evidently well used”.²³⁷

272. Thirdly, the routes are primarily recreational routes rather than destination routes.

273. Fourthly, the routes are particularly valuable in providing links to the AONB.

²³⁵ Page 7 of Mr Rusling’s appendix 2 KCC/3.3

²³⁶ Para 3.1 of Mr Rusling’s proof KCC/3.1

²³⁷ In cross-examination by CHWQC

274. Fifthly, the routes include bridleways that are of special value to equestrians in providing circular off road riding. The value to equestrians is of particular importance. Only 15% of the PROW network in Kent is available to horse riders.²³⁸ There are also riding establishments in the locality which rely on these routes (to the north of the M20 and to the south of the A20).
275. Sixthly, the routes are enjoyable on account of their amenity. Mr Rech agreed in cross-examination²³⁹ that the views over the countryside and towards the AONB are of particular value. They also have a rural atmosphere and a feeling of space, particularly KM81, KM82 and KH131 (and KH131 also has attractive enclosed views of trees and vegetation).

The impacts

276. The impacts on the cross-site PROWs during the construction period would without any doubt be most severe whatever the phasing and however good the management. No further submission is required in this respect. The Inspectors and the Secretary of State are asked to take into account the inevitable and huge disruption and loss of enjoyment that would be caused to the local community over a very long period.
277. The following submissions are related to the permanent effects of the scheme, in particular the effects of the proposal on the existing cross-site PROWs. Mr Rusling has provided evidence on the impacts of the scheme on PROWs off-site²⁴⁰, and this is commended to the Inspectors, but for the most part I defer to the submissions to be made by Mr Corner on behalf of MBC on these matters relating as they do to landscape and visual effects.

²³⁸ Para 2.7 of Mr Rusling's proof KCC/3.1 and page 60 of the CAIP KCC/3.3

²³⁹ By CHWQC

²⁴⁰ In particular pages 40 to 43 of his proof KCC/3.1

278. Mr Rusling describes in detail the impacts on cross-site PROWs in his proof of evidence.²⁴¹ My comments are as follows.

279. In relation to KM81 and KH123A, the current route provides clear views to the North Downs across open fields. There is a rural atmosphere and a sense of space despite the presence of the M20. The effect of the proposal is to divert the route around the development. The views across fields towards the North Downs would largely be removed. A close and large embankment would replace them. The rural atmosphere would be lost and the sense of space would be replaced by a feeling of being hemmed in (the more so adjoining the M20). Mr Rech admitted in cross-examination²⁴² that around Unit 1 where there is no mounding there would be no rural atmosphere. In short, the existing amenity would be lost and there would be a complete and very negative change to the user experience.

280. In relation to KM82, the current route is enjoyable for the same reasons as KM81. Again, the existing amenity would be lost and there would be a complete and very negative change to the user experience. The replacement environment would be nothing like that which exists. The route would be placed between two massive industrial units with their car parking. The landscape would not be that of the countryside but be typical of modern large warehousing sites. Fencing, wherever placed, would only serve to emphasise the industrial sense of place. Lighting, of the kind that would serve a security purpose, would also affect the experience in a negative way. There would be little enjoyment to compare with what exists now, and the added disincentive for equestrians of unpredictable sudden noises. Of particular concern here is the underpass arrangement. This has undergone a number of iterations and it is now clear what is proposed. It may be that the structure would be feasible in engineering terms and could properly be maintained²⁴³. However, it is its suitability for pedestrians, cyclists and equestrians that remains of primary concern. There can be no reasonable doubt that for all types of user the tunnel

²⁴¹ KCC/3.1

²⁴² By CHWQC

²⁴³ See KCC/3.8

and the ramp with its high embankments would be most unattractive. The latest design has softened the right hand bend but there would still be a risk of accidents. It should also be remembered that Mr Keeling was clearly not happy with the design from a security point of view.²⁴⁴ Lighting and CCTV would reduce but not eliminate the risk. In all respects therefore this is a most unfortunate design, but one that cannot be improved.

281. In relation to KH131, the position is similar. The current experience of rolling agriculture and woodland would be gone. The diverted footpath would run close to the large Warehouse Unit E and through the site. Rural views would be replaced by views of industrial premises and the intermodal area. Pedestrians and cyclists would be within close proximity to noise, dust and fumes. There would be significant detriment here. Notwithstanding the conclusion in the ES²⁴⁵, Mr Rech was reluctant in cross-examination to agree that the environment would not be pleasant. He did though agree that the majority would not like it (some people he said might find the intermodal area interesting (if they could see it)).
282. The impacts on KH134 Crismill Lane and KH641 would also be negative and severe. The surroundings would dramatically change and the character of the routes significantly altered for the worse.²⁴⁶
283. There are only two further comments to make here. First, it cannot reasonably be contended that the integrity of the PROW system has been maintained, as Mr Rech sought to say at one stage.²⁴⁷ He made it clear that this point was limited to the fact that people could still use the network. Put that way it is a very small claim. Moreover, the reality is that since the routes will become far less attractive, they will be enjoyed and used far less. Secondly, the attempts by KIG to minimise the harm to the cross-site PROWs do nothing to remove the objections, and offers to provide “permissive routes” for short stretches are

²⁴⁴ In cross-examination by SW

²⁴⁵ The ES assesses the impact on the route as substantial adverse in terms of significance at year 10 (Chapter 6 appendix 6D Rev A CD3.1)

²⁴⁶ See pages 38 to 40 of Mr Rusling’s proof KCC/3.1

²⁴⁷ In cross-examination by CHWQC

worthless in that respect. The bottom line is that the character and appearance of the PROWs would be fundamentally altered.

Concluding comments

284. I make the following brief submissions in concluding.

285. First, the existence of PROWs across the site supports KCC's general position that the appeal site is not suitable for a SRFI.

286. Secondly, to answer the questions posed by the statutory development plan: KIG would detract from the aim in Policy C6 of encouraging access to the countryside by maintaining, enhancing and promoting the PROW system; KIG would not maintain or divert rights of way as routes that are "no less attractive, safe and convenient" as required by Local Plan Policy ENV26. The proposal is therefore contrary to the statutory development plan and permission ought to be refused subject to other material considerations.

287. Thirdly, the harm that would be caused to on-site and off-site PROWs by the appeal proposal would be severe and permanent. That harm should weigh heavily in the balance that has to be struck, assuming that any benefits are found to arise with the scheme.

OVERALL CONCLUSION

288. The KIG proposal does not accord with the statutory development plan, in particular it would, if approved, undermine the regional spatial strategy and conflict with important policies in the SEP. It would cause severe and lasting harm to interests of acknowledged importance. Planning permission ought therefore be refused. There are no material considerations that would indicate otherwise.

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