

NE/7

TOWN AND COUNTRY PLANNING ACT 1990
Town and Country Planning (Inquiries Procedure) (England) Rules 2000

**APPEAL BY
KENT INTERNATIONAL GATEWAY LTD**

AGAINST MAIDSTONE BOROUGH COUNCIL'S FAILURE TO DETERMINE A
PLANNING APPLICATION RELATING TO

THE KENT INTERNATIONAL GATEWAY

RAIL / FREIGHT INTERCHANGE, WAREHOUSING AND OTHER WORKS

LAND TO THE NORTH AND SOUTH OF THE ASHFORD TO MAIDSTONE EAST
RAILWAY LINE, AND BETWEEN THE M20 AND A20, BEARSTED, MAIDSTONE,
KENT

**PRELIMINARY COMMENTS ON DRAFT
S106 UNDERTAKING / OBLIGATION
FOR**



PINS reference APP/U2235/A/09/2096565/NWF
Maidstone BC reference MA/07/2092
DTA ref: 1727 Prel obs conditions S106 19 Nov 2009

1. Natural England has considered the draft S106 obligation circulated on 5th November and dated 3rd November 2009; we have received at 19.30 hours on 19th November a further version of the obligation but there appears to be no difference between it and the earlier version in respect of ecological matters. Natural England has the following observations.
2. In principle, Natural England is content with the Undertaking and its obligations subject to the following points.
3. Clause 1.7(c) needs to be modified because, as stated at present, if any plant or equipment of a statutory undertaker, of any kind, and of any amount or scale, was located in any building, such as Unit IND 01, it would appear to render that building immune from the obligations. We have no objection to the clause referring to buildings the sole purpose of which is to house such plant or equipment.
4. Schedule 6, clause 6 should be reworded. What is required for ecological mitigation is an area equivalent to 75% of the roof area of Unit IND 01 as shown on the plans. That is what has been agreed between the parties. The agreed 75% is only valid if the building is as large as proposed on the submitted drawings. If Unit IND 01 was significantly smaller, at detailed planning stage, a roof area of 75% would not achieve the same level of mitigation. The proportion of the roof would therefore need to be greater, or the habitat would need to be made up in some other way, for example by a green roof on a substantial part of Unit IND 02. Unless the appellants are confident that an area of mitigation of 7.4ha will be achieved through a single area of living green roof on IND 01, whatever proportion it might be of that building's roof, in which case the area should be specified, the clause should include reference to how the mitigation habitat would otherwise be proposed. Alternatively, Natural England would accept clause 6 as it stands if, in some other way, it is secured that building IND 01 will be a minimum area of 9.86ha.
5. At the end of clause 8, in Schedule 6, reference will need to be made to a plan in more specific terms. Before Natural England can agree to the Obligation's terms and withdraw its objection, the plan must be an agreed plan and attached to what we are agreeing. The obligation is vague and the plans sent to be attached to it are inconsistent.
6. Natural England has considered Plan ECO3 Rev G v2 circulated by Marrons on 18th November 2009. It should be referred to as REV H because there is a significant change. The area of Mitigation Land Area A is smaller and the dark corridor in this location narrower than previously shown on agreed plans. The plans attached to Mr Goodwin's proof appendices, which is the original ECO3; and the revised plan attached to Mr Goodwin's letter to Mr Andrews of Jacobs dated as recently as 6th November, and incorporating the Environment Agency's requirements (the actual REV G plan) both showed the extent of Area A going to the rear boundaries of the adjacent houses. We understand that this was an error. Mr Goodwin believes that the stand –off from the houses had been raised with us, but unfortunately we have no recollection of that. Plans should be properly marked in sequence to show that there have been amendments and should be dated.
7. The phasing of the mitigation land comprising the proposed landscape planting to the south and west of Building D, being prepared concurrently with the Parkland and Area C enhancements, pre-clearance, before any suitable newt habitat is removed, has been referred to in my opening statement and evidence in chief. In his letter to Mr Andrews of 6th November, Mr Goodwin said he could confirm that he saw no reason

why this could not be done. This is not the same as agreeing that it will be done. Given the importance of this phasing, we would wish to see this explicitly referred to in Schedule 6 (or a condition) so that when details of phasing of construction mitigation are submitted there is no doubt that this will be included.

8. Although we were hoping to receive them today, Natural England has not received a copy of the draft conditions and regrettably therefore we cannot offer any comment on them. When received, and we have had reasonable time to consider them, we will respond as necessary.
9. In light of the limited number of points in respect of the undertaking, and the fact that we cannot make any considered contribution to the preliminary discussions about conditions, we will not attend the preliminary conditions session tomorrow, but will be pleased to contribute further to discussions on conditions and the obligations as matters move forward.

David Tyldesley MIEEM FRTPI FRSA
19th November 2009