

NE/10

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**

CLOSING SUBMISSIONS

FOR



PINS reference APP/U2235/A/09/2096565/NWF
Maidstone BC reference MA/07/2092
DTA ref: 1727 closing NE 12 dec 09

NATURAL ENGLAND'S POSITION AT THE END OF THE INQUIRY

1. Natural England's key interests in this Inquiry have centred on three of the main matters that the Inquiry would need to consider, described by the Inspector at the opening of the Inquiry (INQ/7), namely:
 - a) The effect the proposal would have on the countryside, the special landscape area and, in Natural England's case, particularly the nearby Kent Downs Area of Outstanding Natural Beauty (the AONB issue);
 - b) The extent to which the development would impact on footpaths and bridleways near to and crossing the site and people's enjoyment of the area for recreational purposes, in Natural England's case with an emphasis on the enjoyment of the North Downs Way (the National Trail issue); and
 - c) The extent to which the development would result in harm to trees, hedgerows and other areas of habitat and species of importance for biodiversity, in Natural England's case with an emphasis on protected species (the ecology issues).

Ecology Issues

2. It is regrettable that it took so much effort and persuasion, on the part of Natural England and Maidstone BC, for the appellants, at such a late stage, eventually to produce what Natural England consistently regarded as the necessary ecological surveys and mitigation (see for example, NE/2 Appendix A, NE/4, NE/5, NE/6, NE/7 and NE/9). This brinkmanship brings little credit to the planning system and is wasteful of resources. However, I am now able to confirm that the provisions of the draft conditions, the draft (as we last saw it) of the S.106 obligation, particularly Schedule 6 as illustrated by plan ECO 3 REV I, satisfies Natural England as to the mitigation of the significant impacts on protected species. Maidstone BC will have further views in respect of wider biodiversity issues.

The AONB and National Trail Issues

3. Let it be clear that Natural England continues to object to the potential impacts of the Kent International Gateway (KIG) on the enjoyment of the Kent Downs AONB, its setting and the North Downs Way. Nothing that we have heard at, or read during, this Inquiry abates that objection in the slightest.

4. Natural England is consulted on many proposed developments but, as I explained in evidence (NE/1 2.8), it does not object lightly to development proposals and only does so when a proposal raises substantial concerns in respect of nationally important designations and assets, which cannot be met by further mitigation measures. This is the case in respect of the appeal proposals' effects on the enjoyment of the Kent Downs AONB, its setting and the North Downs Way National Trail.
5. In light of the detailed evidence of other parties, Natural England has concentrated on the importance of, and the impacts of the appeal proposals on, the AONB, its setting and the North Downs Way. We have sought, I believe successfully, to avoid duplication with the detailed evidence of Maidstone BC, particularly that of Mr Lovell. We have welcomed the AONB unit's evidence, which appropriately takes the lead on detailed AONB issues. Natural England has taken an overview, from its national perspective, and drawn on that detailed evidence, and my evidence as a landscape planning consultant, to support its objection.

NATURAL ENGLAND'S ROLES RELEVANT TO THIS INQUIRY (NE/1 2.1 – 2.7)

6. Natural England is the Government's statutory adviser on the conservation of England's landscape and biological diversity and also on the promotion of access to the countryside and open space for recreation.
7. Natural England designates AONB and is the Government's adviser on proposals that may affect them¹. Consultations about development effects on AONB are routinely extended to include proposals located outside, but affecting the enjoyment or natural beauty of an AONB.
8. Natural England has the power to propose and helps to fund National Trails. Natural England is responsible for mapping open access land and encourages access to land as part of the administration of Countryside Stewardship.
9. Natural England and predecessor bodies have supported and often helped to fund the establishment and management of Country Parks since their inception in 1968.
10. The AONB issue and the key public access provisions relevant to this Inquiry, in addition to statutory public rights of way, arise from these provisions (NE/1 2.6).

¹ Section 84(1) Countryside and Rights of way Act 2000

11. Natural England's evidence on the importance of landscapes generally, and AONB in particular, and the importance of countryside access and recreation, and of National Trails in particular, was not questioned in Mr Katkowski's cross examination (NE/1 sections 3, 4 and 6).
12. This included reference not only to the more obvious aesthetic, cultural, recreational and health benefits of these assets but also to their economic benefit, albeit this is less easily defined and probably impossible to calculate. It is very difficult to provide a detailed economic case for not permitting development proposals that would adversely affect national assets such as AONB, because of the negative economic impact development projects may have, alone or cumulatively, through the diminution of the enjoyment of landscape quality and scenic beauty (NE/1 at 4.5 – 4.6).

THE LANDSCAPE AND VISUAL IMPACT EVIDENCE

13. The Inspectors have to advise the Secretary of State in respect of the landscape and visual impacts of the appeal proposals, based on the evidence before you and your site visits. There is a sharp contrast between the conclusions of Mr Lovell and those of Mr Rech. Which of these contrasting bodies of evidence should you prefer? I submit that Mr Lovell's evidence is obviously to be preferred. Mr Rech is alone in considering the effects on the landscape and visual amenity, in essence, to be slight, or at worst, modest, rather than major. My evidence and the evidence of Mr Lovell and Mr Bate, portrays a different picture of those effects, and one that is consistent with the views of the community, whose landscape would be affected.
14. After cross examination Natural England continues to find Mr Lovell's assessment of the proposals to be a more considered, comprehensive and accurate analysis, of the landscape character of the areas affected and the potential effects on landscape and visual amenity, than the environmental impact statement, the further submissions of environmental information, and the evidence of Mr Rech, submitted before or during the Inquiry.
15. Indeed, I submit that very limited weight should be given to the evidence of Mr Rech. Mr Lovell (in chief) said that some aspects of Mr Rech's assessment fall well short of what should be relied upon. I submit that it is incomplete and from the outset it was based on flawed information about the extent of visibility from the AONB. This became even more evident during the cross examination of these issues by Mr Corner. The landscape and visual impact assessment has not been resubmitted in

light of, for example, KIG 6.14. The evidence submitted by Mr Rech is not up-to-date, for example, no visualisation in KIG 6.16 (the latest) shows IND01 as it is actually proposed to be built, with a 'green' roof, the characteristics of which will change seasonally. The roof may at times be green and at other times straw coloured, It is highly unlikely ever to be olive green as shown (oral evidence of Mr Lovell).

16. I submit that Mr Rech's evidence undervalues the landscape resource of the area and understates the impacts of the development proposals. Euphemisms such as "the design has evolved in response to ongoing detailed analysis and evaluation" (KIG 6.1 at 4.1) really mean that the scheme has had to be changed and reduced to try to meet the sound objections raised by the Councils, statutory consultees and the community. Understatement of effects does little to instil confidence in Mr Rech's proof as a straightforward and balanced assessment of the massive impacts of the appeal proposals on landscape and visual amenity.
17. During Mr Corner's cross examination, Mr Rech conceded that the appeal proposals were out of scale with the rural countryside, would represent major changes to the site, and that various landscape components of the site would be completely changed. These are not conclusions we could easily have drawn from the environmental statement and supplementary environmental statement.
18. I submit that Mr Lovell's assessment (in chief) of the reductions conceded by the appellants in the summer of this year (the SES 2009) is a sound one. He said that they have no discernable effect on the "headline" conclusions. At best they provide minor, localised benefits to areas such as Bearsted. Natural England agrees.
19. But the scheme has changed again since then. During my cross examination of Mr Rech it was clear that he has not actually assessed the scheme that his clients now propose. During that cross examination, it became increasingly apparent that he and Mr Goodwin were singing from different carol sheets. Mr Rech did not have time, we are told, to assess the scheme as proposed when he submitted his proof; so he submitted his written evidence on an out-of-date proposal, without drawing this to anyone's attention. He did not remedy the matter in his rebuttal proof, or in his speaking notes. It was as if he was unaware of, or did not want to address, the finalised proposals in KIG 6.18 and Mr Goodwin's plan ECO 3.

20. It was not until my questions that we eventually learnt something about Mr Rech's assessment of the scheme that is to be the subject of the Secretary of State's decision. But all we were able to glean, was that none of the ecological mitigation measures, including the three areas of mitigation land and the green roof, make any difference to Mr Rech's landscape and visual impact assessment of the KIG development.
21. It follows that the appellants cannot therefore argue that they have any landscape mitigation effect at all.
22. An important part of the landscape planning process is site selection and good siting (see for example, CD 6.3.1 the Institutes' Guidelines for LVIA at 2.19 – 2.20 and Fig 2.2). Natural England criticises the location and siting of the development (NE/1 8.3). It is clear from Mr Rech's proof at 2.1, and in answer to Mr Corner's first question, that the location and siting of the development was already determined before Mr Rech and his landscape team were commissioned. I come back to the location of the development later, but I submit that a major opportunity to achieve a good landscape fit for this development was lost at the outset. The site was selected without any professional landscape advice.

THE POLICY CONTEXT

23. Government policy in respect of statutory landscape designations affords the highest level of protection for our nationally important landscapes, with the protection of the natural beauty of AONB ranking equally with that of National Parks.
24. Natural England considers (NE/1 at 4.28) that the appeal proposals:
 - a) would not be consistent with principles (iv) and (vi) of PPS7;
 - b) would detract from the scenic beauty of the AONB (para 21 PPS7);
 - c) would not be in accordance with policies in the development plan, specifically C3 and C4 of the South East Plan (CD 2.1) and ENV34 of the Local Plan (CD 2.2 and 2.5).

THE IMPACT ON THE CHARACTER AND ENJOYMENT OF THE AONB AND VIEWS FROM THE AONB

Significance of impacts

25. Assessing the significance of impacts is an integral part of landscape and visual impact analysis (CD 6.3.1 section 7, e.g. at 7.16 and the methodological Appendix to Mr Lovell's proof of evidence). Different landscapes and viewpoints will have different sensitivity to different changes. In considering the appeal proposals it is necessary to consider the sensitivity of the landscape resource and viewpoints, not to some change in agricultural management, but to a large scale strategic rail freight interchange (NE/1 at 5.3).
26. To give an idea of scale, the 9.7ha building IND01 would be the size of 14 (of the largest permissible) rugby union pitches and its external walls would be over 1.25km long. The total floorspace of only the industrial / warehousing buildings on the site (about 289,000m²) would be larger than the area of the White Horse Country Park (about 26ha) (NE/1 at 5.4).

Setting of the AONB

27. It is common ground that the appeal proposals are in the setting of the AONB (evidence of Messrs Bate, Lovell, Rech and Tyldesley). I submit that the appeal site forms an integral part of the setting of the AONB east of Maidstone. It is characteristic of its landscape type, has a strong sense of place and many distinctive features including a subtle undulating topography, with small streams, contrasting areas of intimate enclosure and large scale openness, a strong pattern of woodland, trees and hedgerows, linear routes which link it to the land around (including the scarp slope of the AONB), a rich cultural and historic heritage, and many features of aesthetic interest. It is open countryside, and attractive (NE/1 5.5).
28. Furthermore, the fact that it also forms the foreground setting of a dramatic and continuous chalk scarp, which is one of the most important topographical features in south-east England, and is designated as an AONB, makes the appeal site in the setting of the AONB of extraordinary sensitivity for such a large scale development (NE/1 at 5.6). Mr Rech agreed in answer to a question from me, that views from the White Horse Country Park, Thurnham Castle, and sections of the North Downs Way between Detling and Broad Street Hill, are "extremely important viewpoints of the very highest sensitivity".

29. When viewed from the most relevant sections of the Downs scarp Maidstone is not intrusive in views and sits well in the landscape in the setting of the AONB, there is nothing incongruous or strikingly intrusive about it, the higher buildings of the town centre are set well back from the AONB edge (NE/1 at 5.8 but see also broadly consistent evidence of Mr Lovell evidence in chief and Mr Rech Rebuttal proof at 2.8 and in answer to questions from Mr Corner).
30. Despite the wide linear tract formed by the juxtaposition of the M20 and CTRL, neither is intrusive in the landscape of the AONB, away from the immediate vicinity of the corridor, except for the distant hum of traffic noise. The Ashford to Maidstone East railway line is even better assimilated into the landscape and hardly noticeable at a distance (NE/1 at 5.9).
31. The transport corridor does not have the effect of severing the appeal site from the AONB, as might be assumed when looking at a map purely in two dimensions. The motorway service station is remarkably well screened from the scarp (NE/1 at 5.9 – 5.10 and both Mr Lovell and Mr Rech broadly concurred with this analysis in oral evidence).
32. The only intrusive feature in the views from the scarp is the poly-tunnels in the middle distance. These do not appear as part of the immediate setting of the AONB. They are not designed to be permanent structures, and their extent varies over time (NE/1 at 5.11). Some of these intrusions are seasonal; all are temporary and easily removed and have no effect on the fabric of the landscape, such as its topography (Mr Lovell in answer to the Inspectors' questions). They are not a reason to add further unattractive development to the landscape (Mr Rech in answer to Mr Corner's questions). They are, therefore, irrelevant to the Secretary of State's decision on the appeal.
33. The appeal site is wholly rural in character and forms a part of the open countryside east of Maidstone, indeed what can be seen of Bearsted gives the impression of a village in the countryside, detached from the town (NE/1 at 5.12). The appeal development would represent urban sprawl (Mr Rech in answer to Inspectors' questions).
34. The gently undulating, shallow rolling landscape of the Vale is not a topography appropriate to large scale levelling, the engineering of the site will destroy the natural land form which is an important landscape characteristic (NE/1 at 5.20).

35. The flatness, horizontal mass, line and scale of the buildings would be incongruous and out of proportion to the undulating, complex, detailed and mature landscape on the edge of the AONB, which contrasts with the dramatic sweep of the scarp slope, to form a distinctive edge to the designated area (NE/1 at 5.21).

The importance of views from the AONB and its amenity value

36. The scarp includes many rights of way and a country park as well as open access land and permissive paths open to the public under Countryside Stewardship. It is frequently visited by people who specifically come here to enjoy the views and the exhilaration and inspiration of the downland and its scarp. The viewpoints along the scarp in the AONB are the epitome of what protected landscapes and countryside access provision should be about (NE/1 at 5.13).

37. The enjoyment of this exceptional feature, in a nationally designated landscape, should be regarded as a matter of national importance and given great weight in a planning decision (NE/1 at 5.13 unchallenged in cross examination).

38. Views are important to people. We have a seemingly irresistible urge to go to viewpoints, and stand and look out. Views provide us with pleasure, inspiration, spiritual enrichment, exhilaration and fascination. They are evocative and uplifting. They add to our quality of life and to our sense of well-being. The enjoyment of viewpoints makes us study and appreciate the landscape even more. We return to the same viewpoints time and again, they are compelling destinations. The views to and from the AONB are of the highest order of sensitivity and fundamental to the enjoyment of this part of the AONB (NE/1 at 5.14)

39. Parts of the appeal site ground and vegetation are clearly visible in the foreground of the setting of the AONB in views from the scarp. Given the necessary engineering works and the scale of the buildings and infrastructure works, they are bound to be highly conspicuous from the AONB. The photomontages clearly show that large parts of the very large buildings will be visible (KIG 6.16 and NE/1 at 5.15).

40. Mr Rech argued during Mr Corner's cross examination that it would not be easy to pick out detail from the AONB, but you would see the bulk and mass of the development. It is, of course, the bulk and mass of the development that is objectionable in landscape and visual impact terms.

41. Contrary to Mr Rech's opinion (cross examination by Mr Corner), I concur with that of Mr Lovell, the cherry picker photographs demonstrate how uncontained the site is, when the surrounding landscape is viewed from proposed roof-top level.

Inadequacy of mitigation

42. Whilst the landscape design of the appeal proposals includes mitigation measures intended to reduce the impacts on landscape and visual amenity, the landscape design challenge is a considerable one. Nothing can mitigate the scale of the engineering works, even in the long term. The character of the appeal site, and this part of the setting of the AONB, would be permanently altered, beyond recognition (NE/1 at 5.16 and Mr Rech in answer to Mr Corner's questions, see para 16 above). The depletion of the vegetation pattern across the site would increase the conspicuousness of the development. Because the development would be so high, and overlooked from higher land, in the AONB, screening is not feasible (NE/1 at 5.17).

43. Some local and lower level views of the development can be filtered by new planting in the middle to longer terms. Some views may be reduced by screen bunds and fences; but these measures are alien to the landscape character and would obstruct views which are currently valued ((NE/1 at 5.18). I concur with Mr Lovell's observations in answer to the Inspectors' questions that the movement on the appeal site would draw the eye to the development; and that even after the landscaping had been in place for 10 years there would still be a large negative impact.

44. Whilst better than doing nothing to mitigate the effects of the vast wall and roof areas, colouring the cladding of the buildings has limited benefits and can make the buildings more noticeable rather than less, especially at different times of the year. The olive green selected may make the buildings recede in a summertime photomontage, but will not achieve the same effect in reality. The reality would be that even with the most carefully selected materials, finishes and colours the vast areas of buildings will be conspicuous in the landscape most of the time (NE/1 at 5.19). As I said in evidence, we cannot have chameleon-like buildings that can change their colour and reflective characteristics depending on the light conditions.

Green infrastructure

45. Natural England remains unconvinced by Mr Rech's claims for the extent and value of the proposed 'green infrastructure' on the appeal site. It is clear from my cross examination that all the landscaped areas are included in his calculations, regardless of location or function, and whether or not they would fit the definition of green

infrastructure. He clearly relies on a level of public access across the site that is inconsistent with that relied upon to achieve adequate ecological mitigation in the Biodiversity Management and Enhancement Strategy (KIG 10/3). Having been present and having heard Mr Rech's evidence, Mr Goodwin subsequently confirmed that the Strategy would not be subject to material change (my one question put to Mr Goodwin). Mr Rech once again appears to have a different carol sheet to Mr Goodwin, but it is Mr Goodwin's restriction of public access that is embedded in the binding S106 obligation. Mr Rech's evidence about the effectiveness of the green infrastructure needs to be treated with caution.

Construction impacts

46. Despite the assertions in the environmental statement that the development is designed with respect for the existing landscape, the development would be imposed on the landscape not a part of it (NE/1 at 5.22).
47. The Earthworks Construction Method Statement indicates that some 1.83m cubic metres of earth would need to be moved on site and the impacts of this would be exacerbated by the need to engineer the clay. Construction impacts could last seven years, but this may vary according to market conditions. I disagree with the oral evidence of Mr Rech, I submit that the impacts would be similar to a phased quarrying operation (NE/1 at 5.23).
48. The comparison made by Mr Rech (speaking notes) between the construction impacts of KIG and those of the dualling of the A46 trunk road in Nottinghamshire, is misguided owing to the contrasts between the types of schemes (my cross examination highlighted some of the important differences). It does nothing to inform the Inquiry, when the Inspectors are unfamiliar with that scheme and cannot make their own judgements as to the construction effects of that scheme.

Aylesford Print Works

49. Mr Rech raised the comparison with the Aylesford Print Works (KIG 6.4 2.7 and subsequent oral evidence of Mr Lovell, Mr Rech and myself). I will deal with this 'own goal' for the appellant very briefly. Although I described a few similarities (NE/6), there is no comparison between the urban context of the print works and the attractive rural countryside of the KIG site. In any event, I said in evidence in chief (NE/6) and Mr Rech agreed with Mr Corner during cross examination, that the presence of one area of industrial development that may be regarded as conspicuous and a negative impact from the North Downs Way, or the scarp of the AONB, is no justification for adding another.

50. It is, therefore, either irrelevant to the Secretary of State's decision, or a lesson about how intrusive large scale development can be, from which we should learn.

Location

51. The nature and scale of the KIG development would be inappropriate in this location. It would be an anathema to modern landscape planning. The sheer scale of ground engineering and landscape manipulation required in order to shoe-horn the buildings and infrastructure into this detailed, complex, mature, undulating, historical and sensitive landscape demonstrates that it is the wrong location (NE/1 at 8.3).
52. Add to that its close proximity to a nationally designated landscape, from which the visual impact would be a strikingly incongruous, obvious and harmful intrusion into spectacular and cherished views, including those from a National Trail, a Country Park and open access land, enjoyed by thousands of people each year, who come particularly to enjoy the views, and the wholly inappropriate location for this development becomes obvious (NE/1 at 8.4).

THE IMPACT ON THE ENJOYMENT OF THE NORTH DOWNS WAY

53. Having considered all the evidence I submit that the appeal proposals would have a significant adverse impact on views from this highly sensitive receptor. I submit that despite Natural England first raising the issue in November 2007 (NE/3 Appendix A), there is still no accurate and complete plan showing all the lengths of the North Downs Way from which significant parts of the development would be clearly visible. KIG 6.14 is an improvement on earlier attempts to map these lengths, for example in Figure 6.5 rev A of the Supplementary Environmental Statement of June 2009; but where the National Trail crosses (as opposed to running along the edge of) an area of open access land, the North Downs Way is still not shown (my cross examination of Mr Rech and Inspector's observations).
54. The KIG development would represent a serious, inescapable intrusion at almost every point on the Trail from where panoramic views, and often glimpsed views, of the landscape below the scarp can be obtained. Overall a length of about 6km is potentially affected, continuously or intermittently, from above Detling (to the north of the appeal site) to above Hollingbourne (to the east). Where the appeal proposals would be particularly prominent and form a significant impact, continuously or intermittently, on visual amenity, they would represent a serious negative impact on the amenity value of the National Trail (NE/1 7.2).

55. The KIG development would be visible which ever direction was travelled. More importantly, walkers pause to enjoy the views, looking in all directions, so the development would still intrude in views even after the walker had effectively walked past the appeal site (NE/1 7.2). Mr Katkowski chose not to test my evidence on the impact of the KIG proposals on the North Downs Way during my oral evidence.

CONCLUSIONS

56. I submit that Natural England's objection to the appeal proposals is well founded on a sound and substantial evidence base. I submit that the evidence before you, at the end of this Inquiry, even more strongly indicates that the appeal should be dismissed on landscape and visual amenity grounds, than was the case at the beginning.
57. The relative brevity and focus of Natural England's evidence should not be assumed to reflect a lack of detailed examination of the proposals, or of a light touch to the objection. There was simply no benefit in repeating the detailed evidence of others.
58. Rather, I have sought to emphasise the enormous importance of protecting the character and enjoyment of our nationally protected landscapes, from development proposals that are wholly out of place, either in or immediately adjacent to nationally important areas, such as AONB, and which would affect their sustainable use, management and enjoyment.
59. Natural England's advice is that the proposal is contrary to the development plan and national planning policy for landscape protection. It is inconsistent with the protection of the scenic beauty and enjoyment of the AONB and the safeguarding of the enjoyment of the countryside, especially from the National Trail.
60. Natural England's advice to the Secretary of State is that this appeal should be dismissed.
61. I would like to express my appreciation, and that of Natural England, for the courtesy, patience and care with which the Inspectors have heard (and read) the Natural England case. The help of the Programme Officer and the cooperation of all other parties are also appreciated.

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21st December 2009