

CONFERENCE NOTE - [with post conference annotations]

Inspector – Darren McCreery BA MA MRTPI

Appeal Ref : APP/U2235/W/23/3329481

Site address : Land north of the A20, Ashford Road, Hollingbourne, Kent, ME17 1XH

Proposal : Outline application for the erection a building for storage and distribution (Class B8 use) with a floorspace up to 10,788sqm (Gross External Area), ancillary offices, associated car parking, HGV parking, landscaping and infrastructure (All matters reserved except for access).

Case management conference (CMC) : 11.00, 27 November 2023, online

1. Introduction

1.1 I will lead the CMC, with this note providing the agenda/basis for the discussion.

[The CMC went through this note. I have annotated the note with bracketed comments in blue to summarise anything additional from the CMC].

[On the CMC call we had Paul Tucker KC, on behalf of the Appellant, and Emmaline Lambert on behalf of the Council. Others were in attendance from both sides but did not contribute to the discussion].

1.2 The purpose of the CMC is to assist with the efficient management of the upcoming event in the interests of making the best use of inquiry time.

1.3 The merits of any party's case must not be discussed at the CMC. I will need to interrupt if I feel the discussion is straying into that.

1.4 I will issue a further short note summarising the discussion following the CMC (likely to also repeat some of the material from this note). The Council should arrange for that note to appear on their website alongside other appeal material.

2. Preliminary Matters

- 2.1 At the CMC I will ask for clarification/confirmation on the following procedural points:
- i. No postcode for the site appears in the Application Form or the Decision Notice. ME17 1XH has been used in correspondence. I will ask for agreement as to whether that is the postcode that should be used in the Appeal Decision. [ME17 1XH was agreed and will be used in the decision].
 - ii. Progress on agreeing an initial overarching statement of common ground. [The parties are close to finalising the statement of common ground. It is anticipated that the statement will be submitted this week (i.e. week commencing 27 November)].
 - iii. The significance of the Council's error in relation to RFR2 and the reference to DM20, rather than DM30(ii). [The parties submitted and agreed that this is a minor error that does not create prejudice when seen in the context of the other evidence. I will consider the matter further once I have heard the evidence but, in principle, will proceed on the basis that the error is non prejudicial].
 - iv. Confirmation of which of the reasons for refusal in the decision notice remain in dispute and whether areas of dispute are likely to be narrowed further ahead of the inquiry. [In light of continuing discussions between the parties it is possible that reason for refusal 3 will not be defended by the Council. Although this is yet to be formally confirmed, I will work on the basis that it will be for the purposes of Inquiry programming (on a without prejudice basis). If the Council do not defend reason for refusal 3 that will not prevent other parties from raising it at the inquiry. The Appellant and the Council should be prepared for this eventuality].
 - v. The likely progress of the Maidstone Local Plan Review by the time of the event/decision. [Timings are unclear. It is theoretically possible that the Plan may be adopted by the time of the decision. The parties will continue to communicate on this issue].

3. Inquiry dates, participation and venue

- 3.1 The Inquiry start letter was sent to parties on 13 October 2023. It states that that the inquiry is scheduled to open on 8 January 2024 at 12:00 and sit for 4.5 days. [Start date and sitting days were agreed, with an intention to hear closings virtually on Monday 15 January pm – 2pm start for closings

is suggested. Arrangements should be put in place for distribution of written copies of closings].

- 3.2 I will ask about these timings in light of my expectation that the Council and the Appellant have continued to work proactively together to narrow the areas of disagreement and will now have a clearer idea on timings/witnesses/etc.
- 3.3 I will ask the main parties to provide details of their advocates and witnesses, during the CMC and afterwards in writing. I will use that information, and the discussion more broadly, to form a draft programme for the inquiry (which will be iterated over time with the main parties).
- 3.4 [Mr Tucker will appear for the Appellant and Ms Lambert for the council. I will use these pronouns at the inquiry unless notified differently. Mr Tucker may call on expert evidence from Andrew Cook (Landscape) and Asher Ross (Planning). Ms Lambert may call Peter Radmall (Landscape) and Richard Timms (Planning). Others will assist during roundtable sessions, including on economic need Martyn Saunders for the Appellant and Matthew Kinghan for the Council].
- 3.5 At the CMC I will ask the Council to confirm details of the venue (I will also ask some general questions about the venue – e.g the size and suitability for the likely number of attendees, adaptability to accommodate different event formats and needs of attendees, provision for people to dial in, Wifi availability, flexibility in the event that we need to sit later than expected).
- 3.6 I will ask the Council to confirm feasibility should arrangements for sitting virtually be necessary/desirable (for example to accommodate closings, see below). In responding the Council should be mindful of the Planning Inspectorate’s Guidance for hosting virtual events¹. [The Council provided reassurance on the suitability of the venue and capacity to host closings virtually over Teams. Although I didn’t specifically raise the point in the CMC, the Council should make sure that the venue is suitable in terms of its ability to facilitate both round table and formal evidence formats. It was noted that ability to accommodate late sitting (i.e. after 5pm) on some days may be more limited due to other meetings taking place. All parties should work together to ensure that sitting after 5pm won’t be necessary, which is my normal expectation of multi day events].
- 3.7 I will be giving interested parties the opportunity to speak at the inquiry, and will set out how that will be arranged at the start of the inquiry itself. My intention is to schedule a dedicated opportunity for interested parties to speak after main party opening statements (likely on day one – 8 January 2024). Anyone is welcome to attend. At the CMC I will ask the parties to give a

¹ <https://www.gov.uk/government/publications/guidance-for-local-planning-authorities-hosting-virtual-events-for-the-planning-inspectorate/guidance-for-local-planning-authorities-hosting-virtual-events-for-the-planning-inspectorate#introduction>

general feel for likely levels of participation from other interested parties, in order to help inform the inquiry programme and timings. [We discussed likely levels of wider interest in the context of timings].

- 3.8 Unscheduled adjournments will be avoided if possible, but do happen. All parties can help keep us on track by arriving on time and ensuring that any issues that may need consideration (no matter how small they may seem and including adjustments to the venue layout to accommodate specific needs) are raised ahead of the event.

4. Main Issues

- 4.1 Based on my review to date of the material currently submitted, the main issues appear likely to be:

- Whether the proposal accords with local and national policy when regard is paid to the location of economic development (RFR1)
- Effects on the character and appearance of the area, when regard is paid to local landscape impact and impact on the setting of the Kent Down Area of Outstanding Natural Beauty (RFR2).
- The effectiveness of the proposal when regard is paid to net gains for biodiversity (RFR3).

- 4.2 At the CMC I will ask whether the above represents a fair description of the main issues as they currently stand. [The parties agreed that 4.1 is a fair reflection of the main issues].

- 4.3 I would ask that all parties continue to communicate with one another on an ongoing basis in the run up to the event to seek to narrow the issues for discussion further and refine a running order.

- 4.4 Regardless of the matters in dispute (including any issues that have subsequently been resolved in the view of the Council) matters raised at the event by local residents and other interested parties will also need to be responded to. As mentioned above, my intention is to schedule an opportunity for interested parties to speak after opening statements. [Noted]

- 4.5 There will also be time at the event to consider the benefits of the proposal. I am suggesting that will happen as part of a scheduled planning balance discussion towards the end of the event. I will ask about that at the CMC. [Noted]

5. Dealing with main issues and related matters

- 5.1 At the CMC we will discuss the most appropriate format for the main issues and related matters, whether they should be heard by main party or topic-based, and the running order. My starting assumption is that it is usually best to handle the issues topic by topic (rather than by party or witness), but I will ask the parties for views on that. My other initial thoughts set out below.
- 5.2 My initial view is that all main issues identified at 4.1 are dealt with via presentation of evidence and cross examination. An overall planning balance session would be dealt with on the same basis. Other elements of the inquiry (obligations, conditions, and costs if applications are made) be dealt with via roundtable where I lead the questioning.
- 5.3 I will rely on written evidence submitted as part of the application documents, statements of case and statement of common ground to address matters not discussed at the inquiry. Main parties should be prepared to answer questions on other matters where appropriate, and may of course make comments on matters which the programme has not expressly identified.
- 5.4 At the CMC I will ask the parties about their views on closings. Specifically, in light of timings, whether it would make best use of inquiry time for closings to be delivered by the respective advocates virtually shortly after we conclude the rest of the agenda in person.
- 5.5 [The following format for hearing the evidence was agreed in principle at the CMC:
- Landscape - presentation of evidence.
 - Economic need – roundtable
 - Planning – presentation of evidence
 - Third party comments and other matters – roundtable
 - Conditions and obligations – roundtable
 - Closings– Virtual (2pm 15 January 2024)
- 5.6 I will review the evidence further and notify the parties should I have further thoughts about how the evidence should be presented.
- 5.7 Based on the above, and the discussion on timings at the CMC, I have set out an indicative inquiry programme at **Annex 2** of this note. That programme is a starting point for further discussion about timings, it is subject to change and final consideration of timings by the parties. I have set out who I understand may be giving evidence. I will use the pronouns set out at the inquiry unless notified differently.]

6. Timetable for further submissions

6.1 The inquiry start letter sets out the following deadlines and dates. At the CMC I will ask about this, including any anticipated implications arising from the Christmas period.

Date	To be submitted
11 December	- Proofs from both parties.
7 March 22 December	- A copy of the inquiry notification letter from the Council
19 22 December	- A final copy of any s106 agreement
8 January	- Inquiry opens
1 March	- Decision is expected to be issued (on or before)

6.2 The attached **Annex** sets out the preferred format and content of proofs and other material. I will ask the parties if they have any questions about this.

6.3 Any matters raised by interested parties will, initially, need to be addressed in a written proof on behalf of the Appellant who may need to field a witness/witnesses at the inquiry to take questions from local residents and/or me.

6.4 I would like estimated timings for opening and closing statements, evidence in chief and cross examination from the advocates. I will suggest submission of that by ~~19~~ 22 December, and would be grateful for views at the CMC. The efficient running of the inquiry of course relies on advocates keeping to their time estimates as far as possible and notifying me early of any issues they see. As ever, I am very grateful for this assistance.

6.5 At the CMC I will ask about progress on agreeing the overarching statement of common ground and whether topic specific statements of common ground are anticipated and the best timings for submission of the latter to ensure they can appropriately inform respective proofs.

6.6 I have noted the reference to heritage assets in paragraph 3.4 of the Council's statement of case, effects on which appears to be covered only briefly in the officer report. In light of the statutory duties upon me in relation to assets, I will ask at the CMC for a more detailed written statement on heritage (including effects on significance). If this can be agreed as common ground that would be an advantage. [\[Noted and likely to be included in the statement of common ground\]](#).

6.7 I am not inviting rebuttal evidence, but will ask about that at the CMC. [\[Agreed deadline is 22 December for any rebuttals\]](#)

7. Documentation and core documents

- 7.1 All documents should be available digitally, hosted on the Council's website. The main parties should liaise to ensure there is a common numbering system for inquiry documents, which can be referenced in proofs of evidence, and is consistent with the core documents web page. The Council should provide me with a link to the web page as soon as possible after the CMC. I would emphasise the importance of an agreed core document library, and will ask about timings for putting that together at the CMC (I usually ask for the Appellant to lead on that and for a deadline for an initial list to be sent to the Council to be agreed as the CMC). [\[The Appellant will lead on putting together a Core Documents list, the Council will agree and publish it. The deadline for the initial list from the Appellant is 4 December. Once published, additional documents may only be added by exception and with my agreement\].](#)
- 7.2 A copy of this note should be included on the relevant webpage, and any subsequent note or notes from me.
- 7.3 In terms of hard copies, I would ask that main parties provide one hard copy of all proofs to be available at the face to face portion of the inquiry itself. The appellant is also requested to provide one hard copy of the application plans in the same manner. Hard copies of the proofs and the plans for me as soon as they are available is also helpful.

8. Planning conditions

- 8.1 Without prejudice to the outcome of the appeal we will need to consider conditions. No suggested conditions have been submitted by the Council to date, although I note the intention to include them in the statement of common ground (which is helpful). I will ask about that at the CMC. [\[An agreed list of conditions is imminent, which may be in a separate document to the statement of common ground\].](#)
- 8.2 I find it helpful to the running of the Inquiry if the Council provides a statement setting out the justification for the conditions to show that they accord with paragraph 56 of the NPPF. In many cases the usual reasons suffice, but in others more detailed justification is helpful/required (i.e. removal for permitted development rights).

9. Obligations

- 9.1 Submission of a legal undertaking by the appellant should follow the advice in Annexe N of the Procedural Guide to Planning Appeals. A draft of any legal undertaking should be submitted no later than 10 working days before the inquiry (i.e. before 19 December). [\[22 December was agreed\].](#)

9.2 For those obligations which are agreed, I ask that the Council submit a statement explaining the need for the matters covered by planning obligations and how they meet the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 and paragraph 57 of the NPPF.

10. Site visit

10.1 I will undertake a site visit. Given the timings and dependant on where we are with hearing the evidence, that would be most efficiently undertaken immediately following the face to face portion of the event. I will of course note where individuals ask me to pay attention to certain features. I would welcome views at the CMC as to the best approach to undertaking a site visit (including whether accompanied or not, and as to any suggested itinerary). [Parties are to consider further. The site visit may be unaccompanied with an agreed walking route/list of view points].

11. Costs

11.1 The parties will be asked whether they intend to make an application for costs. All costs applications must be made before the inquiry is closed, but as a matter of good practice costs applications should be made in writing before the start of the inquiry. [Nothing raised].

12. Any other procedural matters

12.1 I will happily address any other administrative matters at the CMC not set out above. All that remains is to thank you in advance for your participation in the CMC.

D.R. McCreery

INSPECTOR

Annex - Content and Format of Proofs and Appendices

Content

Proofs of evidence **should**:

- focus on the main issues identified, in particular on areas of disagreement;
- be proportionate to the number and complexity of issues and matters that the witness is addressing;
- be concise, precise, relevant and contain facts and expert opinion deriving from witnesses' own professional expertise and experience, and/or local knowledge;
- be prepared with a clear structure that identifies and addresses the main issues within the witness's field of knowledge and avoids repetition;
- focus on what is really necessary to make the case and avoid including unnecessary material, or duplicating material in other documents or another witness's evidence;
- where case law is cited in the proof, include the full Court report/ transcript reference and cross refer to a copy of the report/ transcript which should be included as a core document.

Proofs **should not**:

- duplicate information already included in other Inquiry material, such as site description, planning history and the relevant planning policy;
- recite the text of policies referred to elsewhere: the proofs need only identify the relevant policy numbers, with extracts being provided as core documents. Only policies which are needed to understand the argument being put forward and are fundamental to an appraisal of the proposals' merits need be referred to.

Format of the proofs and appendices:

- Proofs to be no longer than 3000 words if possible. Where proofs are longer than 1500 words, summaries are to be submitted.
- Proofs are to be spiral bound or bound in such a way as to be easily opened and read.
- Appendices are to be bound separately.

- Appendices are to be indexed using **projecting tabs**, labelled and **paginated**.

Annex 2

Early suggested draft of inquiry programme

- **Suggested based on CMC discussion. Subject to further consideration and discussion between the parties on timings and areas in dispute.**
- **The inquiry programme will be iterated and updated as we move closer to the event. This draft programme is for discussion purposes only.**

DAY 1: Monday 8 January 2024 – 12:00 start (face to face)

Subject	Item	Speakers/ participants/ witness
Introduction	Inspector	Mr McCreery
Opening submissions	Appellant	Mr Tucker
	Council	Ms Lambert
Statements	Interested parties	Various
Short clarification on: (i) extent of dispute (ii) evidence and documentation	Roundtable format	Various
Landscape	Evidence in chief	Mr Radmall
	Cross examination	Mr Radmall
	Re examination	Mr Radmall

DAY 2: Tuesday 9 January 2024 – 9:30 start (face to face)

Subject	Item	Speakers/ participants/ witness
Introduction	Inspector	Mr McCreery
Landscape (continued)	Evidence in chief	Mr Radmall
	Cross examination	Mr Radmall
	Re examination	Mr Radmall
Landscape	Evidence in chief	Mr Cook
	Cross examination	Mr Cook
	Re examination	Mr Cook

DAY 3: Wednesday 10 January 2024 – 9:30 start (face to face)

Subject	Item	Speakers/ participants/ witness
Introduction	Inspector	Mr McCreery
Economic need	Roundtable format	Various (including Mr Saunders (Appellant) and Mr Kinghan (Council)).
Planning	Evidence in chief	Mr Timms
	Cross examination	Mr Timms
	Re examination	Mr Timms

DAY 4: Thursday 11 January 2024 – 9:30 start (face to face)

Subject	Item	Speakers/ participants/ witness
Introduction	Inspector	Mr McCreery
Planning	Evidence in chief	Mr Ross
	Cross examination	Mr Ross
	Re examination	Mr Ross
Other matters and third party comments	Roundtable format	Various
Conditions	Roundtable format	Various
Obligations	Roundtable format	Various
Costs (if any)	Roundtable format	Various

Friday 12 January 2024

Subject	Item	Speakers/ participants/ witness
Site visit (likely to be unaccompanied)		

DAY 5: Monday 15 January 2024 – 2pm (virtual)

Subject	Item	Speakers/ participants/ witness
Closing submissions	Council	Ms Lambert
	Appellant	Mr Tucker
Inquiry close	Inspector	Mr McCreery