

**IN THE MATTER OF AN APPEAL UNDER SECTION 78 OF THE TOWN AND  
COUNTRY PLANNING ACT 1990**

**APP/U2235/W/23/3329481**

**LAND NORTH OF THE A20, ASHFORD ROAD, HOLLINGBOURNE, KENT, ME17  
1XH**

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**OPENING SUBMISSIONS  
ON BEHALF OF  
THE COUNCIL**

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**The Site**

1. The appeal site (the Site) is approximately 2.9 hectares in area and comprises a single, roughly triangular arable field enclosed by hedgerows, scrub, tree-belts and post-and-rail fencing. It slopes gently from north-east to south-west. Despite its location adjacent to the Woodcut Farm employment development and being close to transport infrastructure, the Site is located in a sensitive location: it lies approximately 520m away from the Kent Downs AONB boundary and is agreed to lie within the setting of the Kent Downs AONB<sup>1</sup>, is within the setting of a landscape of local value and Mr Cook describes that “*the area is essentially countryside*”<sup>2</sup>. It is entirely in the open countryside for planning purposes and has not been allocated either in the current Local Plan or via the Local Plan Review.
2. It plays an important role in the restraint of further harmful intrusion into the character and appearance of the area<sup>3</sup>

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<sup>1</sup> Para 5.10 SOCG CD 7.3

<sup>2</sup> albeit it “heavily punctuated..with built infrastructure...having a strong urbanising influence” (para 8.15 PoE)

<sup>3</sup> Para 2.7 PR PoE

## **The Decision of the Council (SODC)**

3. The application was refused by a decision notice dated 28<sup>th</sup> June 2023 for 3 reasons<sup>4</sup>. Reason 3 is now overcome subject to conditions and/or the completion of a s106 agreement.

## **The Council's case**

### *Policy and strategy of the Development Plan*

4. The NPPF<sup>5</sup> sets out Government policy in a concise framework. Para 15 tells us that *“The planning system should be **genuinely plan-led**”* and that *“up-to-date plans should provide a positive vision for the future of each area; a framework for meeting housing needs and addressing other economic, social and environmental priorities; and a platform for local people to shape their surroundings”*. Under the heading “Plan Making”, the NPPF sets out that *“Strategic policies should set out an overall strategy for the pattern, scale and design quality of places (to ensure outcomes support beauty and placemaking)and make sufficient provision for (a) housing...employment, retail, leisure and other commercial development...(d) conservation and enhancement of the natural...environment including landscapes...”*
5. The national context of up to date local plans is well-known to be poor<sup>6</sup>. This Council benefits from a development plan adopted in October 2017<sup>7</sup> which is post NPPF and just over 6 years old. It has also made considerable progress with a timely Local Plan Review. Its Reg 19 draft submission plan is dated October 2021<sup>8</sup>, the Examination hearings have concluded, the main modifications consultation is complete and the findings have been submitted to the Examination Inspector. It is expected to be adopted early this year.

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<sup>4</sup> CD 2.17

<sup>5</sup> CD 11.1

<sup>6</sup> See para 2.20 RT Rebuttal PoE

<sup>7</sup> CD 3.1

<sup>8</sup> CD 3.2

6. Both plans (current and emerging) set out a clear spatial strategy identifying, in particular, where new sustainable development should and should not go. That strategy and the policies were examined and the plan was found sound i.e. in accordance with para 35 of the NPPF. The proposal conflicts with the strategy underpinning the adopted Local Plan and the emerging Local Plan Review which has been recently examined.
7. As Mr Kinghan sets out in his proof of evidence, the needs assessment for employment undertaken for the LPR is compliant with national guidance and is up to date, the supply response is wholly adequate to meet assessed needs, there is additional supply expected to be forthcoming in the wider functional economic market area and the appeal site is not required to meet needs as identified (para 2.5). The action to address economic needs is being taken (if that is relevant<sup>9</sup>).
8. Conflict with a recently made spatial strategy alone is capable of constituting substantial harm sufficient to outweigh benefits<sup>10</sup>. Here there is a fundamental conflict with the spatial strategy current and emerging.

#### *The harms and benefits*

9. The proposal would represent a large extension of the built up area into a parcel of open countryside, in agricultural use, which is not allocated for development. It causes obvious landscape and visual harm and harm is accepted by the Appellant<sup>11</sup>.
10. More importantly, the proposed development in the setting of the nationally protected Kent Downs AONB causes harm to the nationally protected Kent Downs AONB. One of the key reasons for its designation was the scarp slope<sup>12</sup>. The special qualities of the AONB include the dramatic landform and views, farmed landscape and geology and natural resources. The Local Plan quotes from the AONB Management Plan: “where the qualities of the AONB which were instrumental in reasons for its designation are

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<sup>9</sup> *Hallam Land Management Ltd v SOSCLG* [2018] EWCA Civ 1808

<sup>10</sup> See *Crane v SOS* [2015] EWHC 425 (Admin) – even where there was a lack of a 5 Y HLS

<sup>11</sup> See conclusions of the LVIA and see para 2.23 AC PoE

<sup>12</sup> See paras 8.9-8.10 PR PoE and page 29 Kent Downs AONB Management Plan CD 3.3

affected, then the impacts should be given considerable weight in decisions. This particularly applies to views to and from the scarp of the North Downs<sup>13</sup>”.

11. Although the site does not lie within the AONB, the proposals within the setting of the AONB have an adverse impact on it. Section 85 of the Countryside and Rights of Way Act 2000 has been amended effective from 26<sup>th</sup> December 2023: “In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority **must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty**” (emphasis added). This statutory duty goes further than the previous duty which imposed only a duty to have regard. Any harm resulting from the proposal that affects land in the Kent Downs AONB conflicts with the mandatory duty to further the purpose of conserving and enhancing the natural beauty of the AONB.
  
12. Mr Radmall sets out that there are long term (Year 15) significant effects: moderate/major adverse effects on the appeal site, the AONB Setting and moderate adverse effects on the White Heath Farmlands, the Len Valley LLV and the AONB.<sup>14</sup>. His opinion is that there would be long term significant adverse effects on 31% of the views/receptors (para 7.3). In particular, the Council has produced its own proper and accurate version of a visualization for Viewpoint 6<sup>15</sup>.
  
13. Although not a reason for refusal, there is further harm in the loss of agricultural land.
  
14. The most important policies can be afforded full weight and conflict with them is substantial in the planning balance. Assessing that conflict is still required even if the tilted balance is engaged<sup>16</sup> (not agreed).
  
15. There is also conflict with the NPPF §182 and 180(b). The setting of the AONB should be carefully considered and adverse impacts on the AONB should be minimised by virtue of para 176 NPPF. Furthermore, the statutory duty under CROW applies. The

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<sup>13</sup> Para 4.110 CD 3.1

<sup>14</sup> Table 8.1 PR PoE

<sup>15</sup> Appendix B.2 PR

<sup>16</sup> *Monkhill Limited v SOSHCLG* [2019] EWHC 1993 (Admin) [45]

harm caused in conflict with that duty should be afforded considerable weight in the planning balance.

16. The main benefits are economic resulting from the employment floorspace. Those benefits and the consequential economic benefits are not unique and will be delivered on sites allocated for employment use that will come forward over the plan period as will the non-unique resulting economic benefits. The environmental harms are not outweighed especially in the context of the nationally protected landscape to which the proposal causes indirect permanent harm.

### **Conclusions**

17. In this appeal, the proposals will bring permanent environmental harm to landscape, to agricultural land in food production and to the nationally protected Kent Downs AONB. There are benefits but these are overplayed and they will be delivered elsewhere through pipeline supply and local plan provision. There is no urgent need for a B8 logistics warehouse contrary to the strategy of an adopted local plan that can possibly justify such harms.

18. Even if the tilted balance is applied, the benefits are not significant and yet the harms are significant such that the balance weighs in favour of dismissing the appeal—especially in light of the harm caused by the conflict with policy, an emerging local plan and the environmental harms.

19. The proposal is in conflict with the Development Plan policies and there are no material considerations to outweigh the Development plan conflict.

20. In due course the Inspector will be respectfully invited to dismiss the appeal.

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8<sup>th</sup> January 2024