

## MAIDSTONE BOROUGH LOCAL PLAN EXAMINATION

### NOTE ON STATUS AND WEIGHT TO BE GIVEN TO ALLOCATION SITES

#### SUBJECT TO RESOLUTIONS TO PERMIT

1. Sites H1 (7), (9) and (10) are subject to resolutions to permit, subject to s.106 agreements.
2. No weight should be attached to these resolutions.
3. A resolution to grant planning permission does not constitute the grant of permission, see *R v West Oxfordshire DC ex p Pearce Homes Ltd* [1986] JPL 523. As the JPL note explains: “a valid planning permission requires two main conditions. First a substantive decision by an authorised body or person with the requisite jurisdiction and second the necessary steps of formal notification. Both are required.”
4. Until the formal notification of the permission is issued, no planning permission exists. Until it is formally issued the application can be called in. Moreover, the 6 week period (formerly 3 months) for a challenge to the grant of planning permission by way of an application for judicial review in the High Court does not begin to run until the permission is formally issued. The terms of the section 106 may never be agreed. The Committee may also change its mind and decide to revoke its decision.
5. As KCC’s Written Statement correctly says at paragraph 5.13.2: “If the Inspector considers the relevant Local Plan policy allocations to fail the tests of soundness and as the planning permissions have yet to be issued, the decisions would also most likely have to be referred back to the Planning Committee to redetermine due to the material change in circumstances”. Authority for this proposition is to be found in the Court of Appeal decision in *R (on the*

*application of Erine Kides) v South Cambridgeshire DC and others* [2003] JPL 431. At paragraph

125 Parker LJ said:

...Where the delegated officer who is about to sign the decision notice becomes aware (or ought reasonably to have become aware) of a new material consideration, s 70(2) requires that the authority have regard to that consideration before finally determining the application. In such a situation, therefore the authority of delegated officer must be such as to require him to refer the matter back to the committee for reconsideration in the light of the new consideration. If he fails to do so, the authority will be in breach of its statutory duty”

6. The *West Oxfordshire* case, mentioned above, is also referred to in paragraph 73 in *Kides*.
7. The resolutions to grant permission therefore cannot be given any weight because to do so would be to equate a resolution to grant planning permission to the grant of planning permission, and that is wrong as a matter of law.
8. This would apply a fortiori in relation to allocation sites where there is as yet no application or where there is a pending appeal against non-determination.

**JOHN HOBSON QC**

**LANDMARK CHAMBERS**

**12<sup>th</sup> October 2016**