

Maidstone Local Plan Examination – Inspector Mr Robert Mellor

Response by Maidstone Borough Council to Kent County Council Note on Status and Weight to be Given to Allocation Sites Subject to Resolutions to Permit

1. It is submitted by Kent County Council that no weight should be attached to the 3 resolutions to grant permission for sites H1(7) (9) and (10) because the allocations are not sound.
2. It is claimed that they are not sound because if they are allocated and built out the residual (i.e after mitigation measures) cumulative impact of housing development in south east Maidstone would be severe on the A229 and A274 corridors. It is alleged that it would be contrary to paragraph 32 bullet 3 of NPPF and so the allocations would not be consistent with national policy.
3. It is postulated that if you were to make pronouncement that the allocations were unsound as part of this Examination process it would lead to the resolutions being returned to Committee for second resolutions.
4. The submissions also raise, by implication, the spectre of KCC applying to judicially review the 3 developments once their planning permissions are formally issued. This is also suggested in KCC's Response to Qu5.13 of Session 5B dealing with SE Maidstone Strategic Development. It is implied that judicial review has not already occurred because the planning permissions have not yet formally been issued and so the 6 week period in which to launch a challenge has not started running.
5. This is a smokescreen, however. There is, in law and practice, no reason why the resolutions of Maidstone Council could not already have been challenged by KCC if it is considered the decision to resolve to grant was in fact legally flawed. If KCC was genuinely of the view that Maidstone Members had, for example, come to a perverse or 'Wednesbury unreasonable' decision to grant permission or that its highway objections had been left out of account or misrepresented in some way, or if KCC had concluded that there was any other legal ground whatsoever on which to challenge that resolution, it could have done so and I submit, would have done so. It has long held the view that the Fully Objectively Assessed Need for housing is far less than the 18560 figure used in the emerging plan. This is a view Maidstone, of course, rejects.
6. It's not necessary in judicial review to wait for a formal planning permission to be granted. If you apply to quash a resolution to grant permission and succeed, then that brings about a re-determination of the planning permission. It's simply not necessary to wait for the formal permission to be granted. If the formal permission is issued whilst your application for judicial review is on foot you simply apply to the Court to add the decision to issue the permission to the JR proceedings and ask for that to be quashed alongside the resolution to

grant. So the potential for judicial review proceedings against these 3 resolutions to grant development is plainly a red herring.

7. The KCC legal submission goes onto submit that you cannot give any weight to the resolutions because to do so would be to treat a resolution to grant permission as if it was the issue of the planning permission itself.
8. That is a bad point for 3 reasons.
  - 1) You are not being asked by Maidstone to treat the three sites H1(7) (9) and (10) as if they have planning permission. Maidstone don't need to ask you to do that.
  - 2) You can however, contrary to the KCC submission, attach substantial weight to the fact that
    - a) all 3 potential allocation sites have resolutions to grant permission for housing and
    - b) none of those resolutions have been the subject of challenge in the statutory six week period following the date they were made.
  - 3) If there was good prospect of obtaining leave to bring a judicial review action seeking the quashing of those resolutions by the Courts then the time to do that was in the six weeks after they were made so that KCC could have come to this examination potentially armed with leave to bring a substantive judicial review challenge i.e the courts would potentially have said they have an arguable case (that being the threshold for leave to bring JR).
  - 4) However, KCC are not in that position. KCC has launched no proceedings. It has not even written a pre-action protocol letter in respect of JR asking Maidstone to re-consider the resolutions.

In those circumstances, it must be strongly concluded that KCC is well aware of the weakness of its position in respect of these allocations/resolutions to grant permission. You can, therefore, and *should* attach full weight to the fact that these resolutions have been made and that s.106 agreements are being discussed and refined and once signed will result in the issue of the permissions.

Megan Thomas  
Counsel for Maidstone Borough Council  
17/11/16