# LAND NORTH OF POSSINGHAM FAR HOUSE, ASHFORD ROAD, GREAT CHART

## APPEAL - APP/E/2205/W/24/334545

## CLOSING SUBMISSIONS ON BEHALF OF KENT COUNTY COUNCIL

1. KCC addresses two main issues: (1) the A28 corridor; and (2) Education secondary school ("SS") Contributions.

## A28 Issues

### *A: The Various Highway Baselines*

2. In assessing: (1) the locational acceptability of a proposed development in highway and sustainability grounds; (2) its implications for the local highway network ("LHN") generally and the the A28 MR – TR Section specifically; and (3) necessary mitigation, the *fundamental starting point* is the baseline for that LHN and A28 Section absent the development.

3. Normally establishing the baseline is straightforward. One simply assesses the LHN with committed development (with growth to base year) and that is the baseline.

4. Here, however, by virtue of: (1) the obligations in respect of the A28DS in the existing CG S106; (2) the s.106B appeal seeking to remove them; and (3) the current legal constraint of 400 units at CG, there are multiple permutations each delivering different baselines.

5. Those different baselines need to be considered, taken into account and reflected in: (1) the planning decision making - namely given that baseline should permission be granted?; and (2) the setting of any consequent conditions and s.106 obligations in the light of the various baselines. The Appellant refuses to engage with them (claiming they are for another day) and has no answer to them. They are not for another day – they are necessarily material to the decision making here.

6. The main potential baselines appear to be:
    a. *Unconstrained CG:* CG at 2426 by 2032 without it having delivered the A28DS. This is what ID assesses in his proof and is what the Appellant is seeking through its s.106B appeal [CD15/15 – sch 18 tracked changes]. Unsurprisingly this baseline has a very heavily congested LHN with the A28 Section being

overwhelmed in the am and pm peaks with each junction backing up to the previous one. It is not a baseline scenario in which further development dependent on the A28 could be contemplated. Yet on the Appellant's s106 framework here and s106B appeal there, this situation could arise – option C providing no protection against it. The Council proposed C10 is necessary to avoid this scenario arising. Given the s.106B application, it is *impossible* here to proceed on any inference that the A28DS works will be provided at some point and thus this development can go ahead pending it - and thus a legally enforceable framework is *necessarily required*. In any event very limited development at Possingham would, itself, trigger an additional severe impact [ID31 – 34] under this baseline [CD32 and CD34];

b. *Constrained CG:* reflecting the current legal framework under which CG cannot proceed beyond 400 until the mechanism to secure the A28DS (bond and associated s.278) is triggered. This then triggers two further possible baseline scenarios:
    i. *Constrained CG stopping at 400:* this would arise if the s.106B appeal is unsuccessful or not pursued and Hodson are then unable to deliver the A28DS. In this scenario, CG is not unlocked and Possingham is an isolated development without the necessary social infrastructure to help make it sustainable. This is the antithesis of a key claimed purpose of Possingham - namely to unlock housing in CG. Development at Possingham could contribute to resolving this problem by providing the £5.9m shortfall and only being allowed to go forward when the A28DS is secured. The Appellant would have added incentive and financial ability to unlock the A28DS if that was required;
    ii. *Constrained CG delivering A28DS at 400:* this would arise if the s.106B appeal is unsuccessful or not pursued or if Possingham helped make the A28DS deliverable, and Hudson then facilitated the A28DS by providing the Bond (and associated s.278). This is the only route to providing an acceptably located development at Possingham, and the necessary highway infrastructure to unlock both; and
c. *Some alternative A28 Scheme:* raised by ID in XX for the first time as the means by which CG might be unlocked but with a lesser A28 scheme than the A28DS. Whether this would just meet the needs of CG is unknown and unknowable.

7. There will be variations on these various baselines. The decision making here and the legal framework and conditions if permission is to be granted will have to ensure that the framework is fit for purpose in respect of the full range of baselines.

8. All the above permutations (save perhaps "Some alternative A28 scheme") are *necessarily material considerations* in the sense explained in the case law in determining this appeal such that the decision maker must take them into account:
    a. as to the unconstrained CG, the inspector did not allow cross examination on the prospects of this scenario arising because it would, he thought, "pre-judge"[1] the outcome of that s.106B appeal. This scenario is in any event in play and cannot be discounted or ignored. It is the basis of ID's modelling in his proof and is what is being sought through the s.106B appeal. It is thus a necessarily material consideration here – given its implications for the LHN and the A28 Section (on the Appellant's case) on which the appeal proposals depend. It is so obviously material to the decision making as to whether to grant permission here and on what highway terms that to leave it out of account could not be rationally justified. It dictates C10;
    b. as to the constrained CG this is what the current legal framework requires and, by definition, what the current legal framework requires in respect of the A28DS is a necessarily material consideration;
    c. as to a *constrained CG stopping at 400*, the risk of this outcome is a central argument in the s.106B appeal – that CG is not viable with the current obligations and cannot deliver that which the existing CG S106 requires. It is thus, to put it at its lowest, a reasonably foreseeable outcome and thus falls to be considered. It is of course the antithesis of unlocking CG;
    d. as to a *constrained CG providing the A28DS*, this is what the current legal framework provides for and (just as in b above) thus a necessarily material consideration;
    e. the fact that the Appellant may in the future seek to replace the A28DS with some other scheme has been raised by the Appellant in XX here is potentially material but the inspector has no basis to understand what is proposed or how it would work for the development here and none of its impacts have therefore been modelled. It will have to be parked for now.

*Baseline Scenario 1: The Unconstrained CG*

9. In the s.106B appeal the Appellant has applied to discharge (not modify) the obligations in respect of the A28DS. No lesser A28DS or later phased A28 DS is within that appeal[2].

[1] For the avoidance of doubt, addressing the prospects of X in inquiry A so as to assess the merits of appeal A is not to prejudge the outcome of X at inquiry B – it is simply a means to assess the relevance and significance of X at this stage in the appeal A decision making. Absent that exercise this inquiry must necessarily proceed on the basis that X is a realistic and reasonably foreseeable outcome and thus that it must be taken into account here and reflected in the decision making here.

[2] The inspector there has ruled that the application has to be either a "discharge" or a "modification" and not both. There is no modification application.

10. Baseline Scenario 1 is where the Appellant is successful on that S106B case[3] and where it removes the A28DS in its entirety (and provides no alternative). The Appellatn does not want to discuss this outcome here because it is fatal to its case for development here without C10.

11. Fundamentally, *ID's* modelling of that baseline shows the LHN and the A28 Section fails "in a very dramatic way"[4] in this scenario: see IDP T7.6 at MR; IDP T7.18 at TR and IDP T7.12 at LWJ.

12. All junctions of the A28 will be dramatically overcapacity (RFC or DOS) and the queues will back up to the previous junctions (see e.g. TR ID7.18 arm D; MR ID7.6 arm A) and way back before MR. This applies in the am and ph.

13. The A28 is of course the key transport link (A28) on which the proposed development depends. The appellant has not provided a corridor wide model to show whether alternative routes would be any less congested but the very limited evidence available as to the wider network that shows that other routes into Ashford Town Centre are already very congested. There is no evidence of there being any realistic alternative routes to replace the function of the A28 for the development[5].

*No Growth: LHN and A28 Section already overcapacity*

14. Those impacts of CG unconstrained are no surprise. The LHN generally and the A28 Section specifically are already over-capacity:
    a. ID and MH agree that MR and TR are operating in excess of practical (and at or about theoretical) capacity already in the am and pm peaks: for MR see MHP T2 p19; IDP T7.5 p73; for TR see MHP T6 p22 and IDP T7.17 p79);
    b. all the Google journey time [MHR; ID22 and ID25) show the network having very slow and highly volatile journey times in the am peaks;
    c. ID was at pains to explain that his no growth assumption was justified on the LHN post 2023 for the short reason that it was already full. "I have assumed no growth because *there is no capacity for additional traffic"* and if there is further growth it "can't get through". There is simply no wriggle room at peak times.

15. That latter point is fatal to any claim that this development can be permitted in this unconstrained CG scenario. Any further significant development on the A28 corridor is unacceptable for the simple reason that it is in the wrong location – at the end of an overwhelmed LHN with no prospect of the baseline being mitigated (and with further

[3] KCC of course has a lot to say about the merits of that appeal
[4] Accepted in XX by ID

growth at CG to 5750 to come without mitigation in the future). Yet this is what the Appellant is seeking when the S.106B and this application without C10 is seeking.

16. Baseline Scenario 1 shows why even the CG allocation was dependent on the A28DS and explains why the CG S106 is worded as it is, why the 400 threshold was imposed and why further development here without the A28DS is unacceptable.

*Baseline Scenario 2: The Constrained CG with A28DS:*

17. This scenario is where the current CG S106 obligations are complied with, the bond delivered and a s.278 entered into in a timeframe consistent with the timeline for the development at Possingham. There is no evidence that this is not viable for CG.

18. In this scenario, it is common ground that if this development contributes to the A28DS so as to ensure the final funds needed for its delivery (there is not claim that Possingham is not viable with that contribution at £5.9m), the A28DS will be delivered, the LHN and A28 Section will operate appropriately in the base year and that there will be capacity for all CG development and this development. No issue on the LHN capacity or impacts arises.

19. In this scenario, the full development potential of CG is unlocked in highway terms, Possingham becomes a suitable location for development in pure highway capacity terms and the two combined deliver the infrastructure required to unlock CG.

20. This is the scenario the Inspector should be focusing on securing because it is the only of the four scenarios which will serve to unlock CG whilst providing an appropriate LHN environment for further development.

21. The proposed mitigation here would not be relevant or appropriate – it would be abortive and wasteful, doing two sets of inconsistent works in quick succession.

22. Instead, the contribution to the A28DS (draft s106 sch 23 option B) is key along with appropriate *Grampian* conditions preventing: (1) development until the A28DS is committed via a construction contract; and (2) occupation - beyond a fixed number - until the works are complete.

*Baseline Scenario 3: The Constrained CG with no A28DS*

23. In this scenario, the traffic assessment is with CG just to 400. In this scenario para 14 above applies.

24. Absent mitigation, there is an agreed severe impact (the lack of agreement as to the impacts on TR being severe is addressed below). The proposed mitigation would have

to be effective to ensure that there is no severe residual impact. That raises the question as to the efficacy of the mitigation in that scenario which is addressed below. In short in this scenario the Possingham could not go beyond 150 or so [see ID31-34] without a severe impact.

25. Even if this scenario was acceptable in highway terms, it would give rise to wide-ranging issues both in terms of sustainability and planning. Planning implications have been considered by ABC. Sustainability issues are as follows:
    a. all the CGSI other than that secured by condition here, will not be delivered – for the short reason that CG will have stalled;
    b. as to bus service viability (on which the Inspector correctly focusses), there is no suggestion that, and all the Appellant's evidence is to the contrary, that (on the Appellant's case) the bus service will not be sustainable as a standalone without major development at CG with the buses serving both; and
    c. the development would be out on a transport limb isolated from the services and facilities it needs.

*Baseline Scenario 4: Some other highway solution for CG*

26. This scenario is not before the s.106B inspector - the appeal proposal there is just for discharge[6]. There is no explanation as to what it might involve, no modelling of it or what capacity would thereby be released on the A28 by it *for Possingham* and what if any mitigation Possingham would have to provide to ensure it did not have a residual severe impact with that alternative scheme.

27. It is not therefore possible to provide for this scenario in current drafting at this stage and if that situation were to arise, and if Possingham was to seek to rely on that scheme there would have to be a s.73 application in respect of any A28 conditions through which the ability of that scheme to appropriately accommodate Possingham would be tested.

**Consideration of these scenarios**

28. With the exception of the Baseline Scenario 4, all the other scenarios need to be considered in terms of the acceptability of development here in those scenarios and in terms of the conditions and s.106 obligations to meet and appropriately address those scenarios. In short, that dictates C10 and Option B. This Closing undertakes that analysis after considering Trip Generation and the Modelling.

[6] The inspector there has (correctly) made clear that the Appellant had to choose between those options and could not pursue both

***B: Trip Generation and Assignment***

*TRICs - trip generation*

29. Two trip rates are properly used in ID's assessment: what he terms the "base" and what he terms the "sensitivity" test. Both are agreed to be "appropriate trip rates to take into account"[7]. The old approach of base and sensitivity test is not appropriate – CD9.7 para 7.10 – 7.13. Consideration is to be given to a range of "plausible future scenarios" (para 7.13) as a "trip rate fan" showing a range of plausible trip rates. That is what the SOCG agrees to here and the two sets of trip rates thus provide a plausible range to be carried through the assessment.

*The Education Correction*

30. IDP uses a (non-credible and obviously wrong) 65% of am peak hour vehicle trips as education. He was told that this was wrong. His IDR did not accept that his approach involved double counting [IDR4/7/4.8] and wrongly claimed that KCC had adopted the same approach in *equivalent* circumstances at Heathlands[8]. He purported to run a sensitivity test on the education issue but used the wrong tables [ID26] and came up with a 45% share of total trips for education in the am peak.

31. All of that has now been correctly abandoned: (1) there is agreed to be a need for an adjustment to avoid double counting[9]; and (2) the correct figure is 24% as MH has always contended.

*Not corrected in modelling*

32. This major flaw arises at the outset of the modelling and has not been corrected in any of the modelling.

*Unquantified effect*

33. When the correction was made, ID was asked to provide overnight a table of the effect of the mistake – setting out the total vehicle flows from the development at the approaches to MR in the am peak with 65%; 45% and 24% with his "base" and "sensitivity test" TRICs data (see above) *on a consistent basis with his previous modelling*[10].

[7] Agreed by ID in XX

[8] That was a MMS case - as MH said in EiC and on which he was not cross-examined - not just a vehicle trip assessment.

[9] How ID ever thought such an adjustment was not necessary is unexplained. Basic logic requires such an adjustment when moving from a MM assessment and person trips to a vehicle trip assessment.

[10] Not taking the opportunity to make other offsetting changes in the modelling and in particular not to change the TRICs rates.

34. When asked the next morning he was unable to provide that information on a consistent basis with his previous modelling.

35. The inspector thus has no information from ID on the correct flows on that consistent basis with the education mistake corrected. The mistake is not then corrected in later modelling and all the later ID models are thus, by definition, wrong.

36. The flows assumed in ID's model are thus necessarily understated. The range (or fan) of plausible future scenarios has by definition increased but ID is unable to tell us what the figures are in the upper part of the corrected range.

37. It is said that that does not matter because on his modelling of the correction, the *base case* of TRICs with education correction (128) comes out lower than the *sensitivity case* TRICs trips (141). That point is wrong on two basis:

    a. It ignores the fact that the upper parts of the plausible range previously considered in his modelling (covered by all the "sensitivity tests" in his Proof has increased and is not now modelled and the effects assessed. In effect the the "base" has become the "sensitivity test" and there is no new "sensitivity" test above that new base[11] – the plausible range has been lost. All the "base" tables must by definition be deleted in his proof. The "sensitivity test" is not included to allow for basic mistakes in the modelling but to allow for a range of plausible assumptions given that traffic modelling is an inexact science;

    b. the figures he put forward orally were not on consistent basis with his previous modelling using the TRICs agreed rates at IDP table ID5.1 and have not been committed to paper as requested or justified in material he was (exceptionally) given the opportunity to provide overnight (in the middle of his XX).

38. Given that education trips are largely internalized, the result is significant under-estimation of trips on the network. But there has been no corrected modelling to show the impacts.

39. ID's modelling is wrong at the first step and significantly so. On the oral attempt to make the correction, the further increase from just 45% to 24% was 55 cars (73 – 128) in the am ph at MR.

[11] Moving from 65% to 45% increased flows by 55 cars at MR to 128; making the generous assumption that moving from 45% to 24% has the same effect takes the "sensitivity test" flows well above 141 modelled in the sensitivity test – 128 plus 55.

*Internalisation Factors*

40. The internalization factors applied by ID only make sense in a world where the comprehensive range of social infrastructure under the CG S106 agreement are delivered at an early stage in accordance with the existing CG S106 agreement triggers – see MHP para 7.2.

41. ID has wrongly and illogically taken those IFs promoted on that basis and used them in a world where the developer is only prepared to secure a foodstore of indeterminate scale (along with the PS/SS and existing Community portacabin).

42. That is a flawed approach – it is incorrect to use factors agreed on one factual assumption in a very different factual situation:
    a. it is impossible for 25% of personal business trips to be internal when there is no securing of provision of the District Centre or any "personal business" destinations;
    b. the 33% food retail was based on a large format store – the condition needs to be clear on the scale of the foodstore required if there is to be consistency between the IFs and what is required to be provided on the ground – as is now apparently conceded;
    c. 25% non-food retail was based on the range of facilities required under the CG S106B – including separate non-food retail shops. They are not provided;
    d. Similar points apply to leisure – it is not understood how the secondary school is said to meet the needs for this in the am (or pm) peak given that the school will be in school use – the community use agreement will be limited to use out of school hours.

43. The short point is that there is a significant disconnect between ID's assumed IFs and the provision to be secured at CG under this proposed permission.

*Trip Destination and Routes*

44. IDP Appx 5 (ID5) contains assumed trip distribution from the development and are used all scenarios (IDP - CG unconstrained 2426; and IDR - CG constrained at 400).

45. The Appellant has not provided a corridor wide assessment (as was done for CG and as was requested here) nor has it put forward assessments as to different journey routes in the future in the various scenarios as the whole network gets more congested.

46. The route assumptions in ID5 are used in all ID's modelling.

47. They are clearly wrong and significantly understate movements from the development at MR and on the MR – TR link in the am peak and in reverse in the pm peak. In what follows the "SE Routes" are routes heading east off the A28 south of the MR.

48. *School Trips:* ID5 shows 50% of education trips leaving the A28 on the SE Routes. The two major destinations are the grammar schools[12]. The SE Route to those schools makes no sense – it is longer, slower and more uncertain than the other routes. None of the Google journey time analysis before the inquiry except one for 13/11[13] show the SE Route and even that unique run only shows the SE Route as an option to NKS (not HGS) and then only as a third choice. HGS all routes on the A28 Section. HGS and NK are the same PAN. 50% of total external education trips using the SE Route is thus a mathematical impossibility and an absurd proposition. That SE route is longer, slower and more uncertain than the others. It is inconceivable that anything like 50% of trips even just to NKS (and thus 25% of the total) would use that route – so the highest it could properly be put is maybe some people will choose to be stuck in worse traffic jams on a longer route to NKS in the future and thus not contribute to traffic at MR or TR.

49. MH assumes 100% of external education trips use the MR-TR link. That is consistent with MHR images 1 and 2 and ID25. Even ID22 (13/11) shows the preferred route to NKS being on that corridor -shorter in distance and time. ID22 shows the only route to HGS using that route.

50. *Personal Business:* ID shows 50% routing to Ashford Designer Outlet ("ADO") for personal business. There are no "personal business" units there – banks/ professional services, hairdressers and similar[14]. That assumption is simply wrong.

*51*. *Ashford Town Centre:* ID appropriately assumes "commuting" is to ATC. It is accepted that 50% of non-food retail to ATC is appropriate. 100% personal business to ATC is appropriate (not 50%: see ADO above). The issue is what routes these ATC bound trips will take. ID5 assumes that 50% of the ATC bound trips will leave MR and use alterative routes to the MR-TR corridor to ATC. That route is only identified (but not preferred) in the ID22 13/11 run which KCC has been unable to replicate (and which inexplicably moves the destination from the middle of the High Street to the southern

[12] Obviously CGS will have moved from the location shown in ID5; the special school is very small. There is no evidence of any independent schools - a new point raised for the first time in re-exam of ID - on the SE routes or of them being significant draws.
[13] Which MH had not been able to replicate on any other day. The "default" claim is wrong – the default in Google maps is today and one has to consciously choose another date and month.
[14] EiC of MH not subject to XX.

end of it – favouring ID's route over the MR-TR route). ID25 shows the MR – TR to be the clearly preferrable route and MHR Images 3 and 5 do not even show the other route from MR but then turning east and thus avoiding TR.

*52*. In *all* respects ID's assumptions tend to understate trips at MR and on the MR-TR link. There are no assumptions he makes which even arguably go the other way. His assessment is now reliant on ID22 (13/11 8.15am) which KCC has not been able to replicate and even then his modelling assumptions are inconsistent with that document.

*53*. There is no evidential basis (and no case put) that as MR becomes more congested other routes will become *comparatively* more attractive. There is no corridor wide model (as there was for CG) and any assumption that other routes will become more comparatively attractive is belied by the obvious extent to which Ashford Town Centre routes from the south and south – east are heavily congested. But even if any such inference was possible where is there any consideration of the impact of any increased use of those alternative routes? It is obvious that reliance on those routes would introduce severe impacts elsewhere.

*Conclusion on Trip Generation and Distribution*

54. ID's modelling understates trip generation at MR/MR-TR link at every stage:
    a. ID has not produced evidence as to the effect of the correction of the education mistake on a consistent basis. The mistake is significant – even just correcting from 65% to 45% results in the changes at IDR 5.11. The correct position has not been modelled;
    b. the IFs are not consistent with the conditions on offer; and
    c. the trip distribution seriously exaggerates the proportion of trips which will avoid the MR/MR-TR Link on every element.

55. The result is that ID's trip generation cannot be relied on. It has multiple flawed inputs "the ID Flawed Inputs".

56. MH has used the correct (education adjusted) data throughout. His modelling assumes the IF rates even though the SI is not secured (so is conservative as to impacts). His trip distribution has been evidenced and justified throughout fits with all the material even now available and essentially makes sense. Departure from his assumptions and adopting ID's instead, involves assuming that significant numbers of people will choose slower, longer and more vulnerable routes in the future – that may be true for a few but a model which relies on the preponderance of that "choice" makes no sense.

57. MH trip generation and distribution should be preferred and should be used.

**C: Current Position on the LHN**

58. The common ground is summarised above [para 14a]. The A28 is already operating at capacity at peak times. When traffic uses alternative routes, those are evidently at capacity too[15].

59. There is a difference between the parties as to how LWJ is currently operating. MHP T4 p20 based on observed traffic flows (MHP Appx A para 3.9.18) shows the LWJ operating within practical capacity with limited length queues.

60. *Appropriate growth assumption:* The agreed base year is 2032. As is standard Tempro growth rates (adjusted to avoid double counting for CG committed – as MH has done[16]) should be used[17]. People still have to get to their destinations and there is no evidence of any better alternative routes.

**D: Modelling**

*"Flat"*

61. The Arcady default setting is to use direct flows – namely the flows actually arriving at the junction in each ¼ hour – because that ensures that one considers the build-up of queuing over the peak hour – as shown in e.g. ID9; ID16[18].

62. However, ID assumes a "flat" profile. No justification was given in his TA, TAA, IDP or IDR for this. Orally, he said that the reason was that the traffic arrivals are "basically the same" throughout the relevant peak hour. Here the MR specific peak hour is 8.15 – 9.15 [IDP para 7.20]. His TAA [CD2.27 Appx J PDF page 228] shows that the traffic arrivals build over that period. His use of the Flat profile is therefore wrong on his own logic for using it.

*Exit limitations already included in MH Model*

63. In order to derive a well calibrated base model of the Matalan roundabout, MH and C&A have used 'intercept value adjustments' to replicate observed queue behaviour

[15] See ID22; ID25
[16] Confirmed in answers to questions from the inspector, not the subject of follow up XX and not criticised by ID in EiC.
[17] For the avoidance of doubt, KCC does not accept ID's assessment of historic growth rates. First much of the traffic data is estimates not automatic traffic count. Second there was a major relevant change in the highway network in 2011 reducing flows on this A28 section. It is hardly surprising a dip is seen. Third, 2019 was a year of major road works elsewhere in Ashford displacing traffic to here. It is hardly surprising that that that year shows high traffic here – it is not a useful comparator. Fourth, MH is correct that COVID and WFH is not yet settled – as ID said twice travel patterns are "settling down".
[18] Agreed by ID in XX

at the junction. The adjustment of intercept or entry capacity values takes account of factors which impact the operation of the junction *including* exit constraint or unequal lane usage. There was no cross examination of MH on the appropriateness of this approach. As he said it is in accordance with Arcady guidance. MH has taken into account exit constraints albeit using a different modelling technique from ID.

**E: The Results including mitigation**

***Tank Roundabout***

64. IDP7.52 confirms that TR is "currently close to capacity with queues and delays". The current base (no growth and no further development at CG above the 2023 level) is at T7.17. The A28 limbs especially are above practical capacity.

65. ID's modelling is based on the ID Flawed Inputs and Flat modelling and cannot be relied on. However, even it and even without correcting for the Flawed Inputs, shows a severe residual impact at TR.

66. With CG at 2428, IDP T7.18 (even based on ID's flawed inputs) shows the junction failing - with queues and significant delays on all arms. When Possingham is added to that [IDP T7.20] queues, delays and RFC increase significantly – with MH's severity threshold (0.05 RFC and 1 min extra delay) clearly and very substantially exceeded in many respects. For similar scale of exceedances at MR and LWJ, ID concluded that the effects were severe. ID's own modelling shows a severe impact.

67. Importantly for the exit constraint point, the queues on the A28 [IDP T7.20 – 455 pcu] back up to MR – the *exit constraint is not lifted* even on ID's logic for inputting it in the first place. Even if LWJ is currently the cause of the constraint (and the bridge and width is not) in the development world it will be TR which causes an exit constraint on ID's unconstrained position on his evidence and his (flawed) modelling.

68. IDP para 7.56 contends that that is not significant because the model had already gone beyond an RFC of 1 and cannot be relied upon. But the point is that significant additional traffic is being added to a junction where he has already told us that there is no room for growth and where there is no way for additional traffic to get through and where it already backs up to MR. The result is that traffic from the development simply adds to the back of queues.

69. With CG at 400: even with ID's flawed modelling, the effect of the development [compare IDR T5.20 and IDP T7.17] is to increase queues, delays and RFC on all limbs in am and pm peak with delays increasing by up to 4 mins (SHBR am) and multiple

limbs queues increasing by between 3 mins (Carlton Way pm) and 2 mins (Chart Road E). These are severe residual impacts on any view.

70. MH's assessment at TR - does not have the Flawed Inputs and is therefore the appropriate model to use. It is important to note that MH's modelling at TR is not said to be incorrect by reason of the exit constraint at MR and (save for trip distribution) there is no claim that MH has made any mistake in modelling of TR. MH's approach is thus essential just correcting for ID's Flawed Inputs.

71. MHR T10 (unsurprisingly) shows the impacts to be greater than in IDR T5.20. The unmitigated impacts here are very substantial.

72. In the am peak the queues from TR back up to and *beyond the LWJ* – 119 pcu or about 684m (at 5.75m/PCU). LWJ will therefore be blocked. That blockage is not modelled or taken account by ID and *makes the mitigation at LWJ ineffective* in the am peak – for the short reason that the demerge to the lights and the merge immediately thereafter are both into a TR queue. Far from being free flowing (the essential point on ID's exit constraint point) it will be blocked back from TR. There is no evidence that combined the exit constraint at MR is thus resolved. The mitigation at LWJ thus fails because of the backing up from TR.

73. There is no mitigation at TR. The significance of the claimed improvement there if pedestrian detection and MOVA are introduced on the pedestrian crossing have not been modelled, assessed or demonstrated[19]. ID26 does not address the correct question – the question is how many "green man" phases are unused by *any* pedestrians - not have many individuals call a "green man" and do not wait. This is for the short and obvious reason that there may be more than one pedestrian - one of whom walks across before the "green man" and one who does not and thus relies on the "green man". In any event ID26 does not show the effect of the proposal and there is no modelling of it.

74. The short point is that even on ID's flawed model and no matter which scenario is used, there are unmitigated severe impacts on TR by virtue of the proposals.

75. Importantly for the other junctions, the A28 into TR is shown to have queues backing up to (and beyond) LWJ (MH) and MR (ID unconstrained) with the unmitigated TR

[19] In the am peak hour WB 5 pedestrians crossed having called a green man but not waiting for it. It is not said for how many of those "calls", other pedestrians waited for the green man which is relevant given that there are more than 2 pedestrians per call. There is in any event no assessment of the impact of that or how many green man phases would have been avoided or the impacts on the operation of TR.

therefore creating an "exit block" at LWJ which will not be free flowing and the mechanism by which the MR exit block is said to be lifted will not arise.

***Loudon Way Junction (LWJ)***

76. *Current Position:*
    a. On MH assessment (MHP p20) LWJ is operating well within practical capacity at present and is not therefore acting as the cause of any Exit Constraint at MR.
    b. ID by contrast shows LW is at or near theoretical capacity. There is no evidence of the significant queues he models [IDP T7.11] which in any event would not back up anywhere near MR [54 vehicles]. None of the Google work shows any red at LWJ. If there were significant queues there there would be stopped traffic and hence red.

77. CG at 2426: unsurprisingly IDP T7.12 shows very significant delays and queues. The queues amply back up to MR. IDP T7.16 adding the development shows the "mitigated" position still have significant delays and queues and backing up to and beyond MR.

78. CG at 400: ID modelling [IDR5.18] of LWJ as a standalone LinSig assessment does not take into account the fact that on correct modelling, TR backs up to LWJ in the am peak. This is a fundamental flaw – no "exit constraint" or similar is put into the LWJ by ID but we know there is one (see above). ID thus wrongly assumes the traffic can flow into the LW – TR link without constraint. It is hardly surprising that in that world a demerge and merge can increase capacity (at least to a limited extent) through LWJ if that traffic can then continue. It cannot.

79. MH does not claim a severe residual impact here [MHR1.21] but the TR backing up to LWJ has knock on effects for the release of constraints at MR meaning the mitigation at LWJ will not achieve that which is necessary to free up MR.

***Matalan Roundabout***

80. ID accepts a severe impact of the proposal on MR unmitigated. The figures are stark even with his Flawed Inputs which understate impacts.

81. For the CG at 2428 (before mitigation) cp IDP T7.8 and IDP T7.6. The 40 min queue on the A28 (SW) increases to 47 mins. Almost all the queues, delays and RFCs increase significantly by reason of the development.

82. For CG at 400: ID modelling cannot be relied on for reasons already addressed. In any event it assumes that the exit constraint from LWJ is removed but the analysis above

shows that that is incorrect. TR backs up to and beyond LWJ which *when looked at in combination* means that the fundamental free-flowing assumption at LWJ is wrong.

83. MHR T8 (400 at CG, none of ID's Input Flaws) shows that: (1) the unmitigated impacts are severe for essentially the same reasons as set out above (box 2 in table T8); and (2) that the mitigation does not work (box 3 in table T8).

*MR Mitigation does not work*

84. The fact that the mitigation does not work is hardly surprising;
    a. first, it is dependent on the exit constraint being at LWJ and that constraint being removed by improvements at LWJ. But the modelling shows that (even if the constraint is not - at least in part - capacity on the MR-TR link: for which see below) the constraint remains with the development for the short reason that TR backs up to and beyond LWJ.
    b. second the proposed mitigation prioritises the southbound A28 route without providing any additional capacity (except a small extra exit capacity - into a queue) on the A28NB exit. Prioritising a heavy stream of traffic over all other heavy streams inevitably has an adverse impact on queues, delays and RFC on those other limbs. That is what MH modelling correctly shows.

85. The proposals are in any event unacceptable in safety terms. A pedestrian will have to cross 2 x 2 lanes of very significant traffic including HGVs at a major roundabout without any pedestrian priority. The S1 safety audit does not address this matter – that is an obvious *lacunae*.

**Link Capacity as the constraint**

86. All the above assumes that ID is correct that LWJ is the cause of an exit constraint at MR.

87. However, MH is correct to contend that *link capacity* is, to put it at its lowest, a contributor to the problem on this section of the A28 and will not be resolved with anything less than the A28DS. An exit constraint will remain on this basis also.

88. *Link Capacity Guidance:*
    a. TAG guidance [ID21 section E6] assessment of capacity of links requires use of a formula which is defined at a width of 3.65m for the short reason that capacity is a function of and is related to width – see definition of Qc;
    b. The bridge is short of that width by about 40cm each lane and the equation is thus not applicable – the facts on the ground do not fit with the basis on which the equation is defined – a short but obvious point;

c. 3.65m is set because for all vehicles that is adequate to ensure no slowing down and thus no reduction in capacity. Anything less is not so adequate. The suggestion that there is only a reduction in speeds and thus capacity when the lanes are so narrow as to have risk of wing mirrors hitting is belied by the equation itself and is inconsistent with the basic position that reducing width is a key means to reduce speed;
d. the 1650 capacity is thus simply wrong and cannot be relied on[20];
e. In any event the equation does not reflect visibility constraints – the 1650 figure ignores the "slowing" constraint of the bridge – its visibility is well below the 120m stopping distance at 40mph.
f. Under the previous withdrawn guidance, this would be a UAP3 (or 2) [ID20 p 2/2] – so a capacity without the bridge constraint of 1110 - 1260 [ID20 p3/2]. The suggestion the A28 section MR – LWJ has features of UAP1 is difficult to understand.

89. The exit constraint used by ID is a current limit on exit of MR of 1223 [ID Appendices p477]. Whilst derived by ID on a different basis (LWJ constraint) this is well within the range of appropriate capacities for this link. The use of an Exit Constraint of 1233 is thus consistent with a correct understanding of link capacity. Nothing is done to address the core issues with link capacity or to increase it.

*Current and Future Link Flows*

90. The current flows are 1248 (am peak) on ID's assessment [ID's spreadsheet not in evidence but agreed in XX].

91. The future flows just with Possingham added are 128 more

92. The total flows are 1376 with the development - well above ID's exit constraint and well above a reasonable assumption of capacity.

93. The link is a key part of the capacity problems in this locality.

*The evidence base that link capacity is at least part of the issue*

94. The evidence does not support LWJ being the only cause of the exit problem at MR:
    a. Essentially there are three lanes at MR whose key desire line is A28N - they converge into a single lane;
    b. ID identifies an exit constraint from his observations - something is stopping traffic getting off MR - but his own base model calibrated by reference to his

[2020] The maths for it has in any event not been provided.

observations shows the LWJ getting nowhere near MR – so that cannot have been the cause;

c. ID9 shows traffic moving slowly until over the bridge and then accelerating to the LWJ – the constraint is before the LWJ;
d. none of the Google material shows any red (or orange) at LWJ currently (cp position at MR); and
e. the new ripple effect point cannot explain the green at LWJ and the orange well before it.

95. ID repeatedly stated that he thinks something has gone wrong with MH's model - but he has not identified any. He goes on to state orally that failing to use the exit constraint and then removing it with the LWJ mitigation is the basic flaw. But that: (1) assumes LWJ is the cause of the constraint; (2) fails to properly assess whether that constraint is removed by the LWJ mitigation given the TR queues which are unmitigated; and (3) ignores all the features of the link which limit the capacity of the link and which are all consistent with that being a cause of the constraint which will remain. It also ignores the basic fact that MH has reflected exit limitatios in his standard use of "intercept value adjustments" – see para 63 above.

**The Result**

96. There is a severe residual unmitigated effect at TR. On MH's correct modelling TR backs up to LWJ in am peak. LWJ is thus not free flowing which is the fundamental assumption behind ID's removal of the exit constraint. The exit constraint thus remains *on ID's own logic*.

97. The mitigation at MR does not work and there remains a severe residual unmitigated effect there.

98. The application falls to be refused on that basis *unless the A28DS is delivered*.

99. The only route to Possingham contributing to housing supply, to contributing to unlocking CG (as claimed) and being appropriate is thus via the A28DS scheme.

**Point at which "severe impact" is reached.**

1. Absent A28DS, with CG unconstrained any significant development at Possingham will itself have a severe highway impact above 50 [ID34] (even assuming that any development in such a location with such an overwhelmed highway network is appropriate).

2. MH shows that with CG limited to 400, the threshold of severe is hit below 150 units [ID33].

**The appropriate conditions**

3. It follows that the development should not proceed without surety that the A28DS will proceed. The appropriate conditions are thus:

   *No development to be commenced until a contract for the construction of the A28DS (to be defined) has been let*.

   *No occupation until the A28DS has been permanently opened to public traffic*

   *Alternatively*
   *No occupation beyond 50/150 units until the A28DS has permanently opened to public traffic*.

4. In terms of the S.106, option B should be triggered.

**A28DS Costs**

5. The costs were provided in 2017 and 2018 and there is still no rebuttal of them.

6. CG is currently obliged to pay a significant majority of this but there is a shortfall of £5.9m.

7. Obviously any developer benefitting from the A28DS in terms of making their development acceptable and mitigating their impacts can be expected to contribute and that applies to Court Lodge ("CL").

8. However, the *current* position is that the A28DS is needed now and very early in any Possingham build out. ID is not suggesting that Possingham built out waits until CL gets permission. There is no timing for CL and no evidence as to when its nutrient neutrality constraint can be overcome. KCC cannot forward fund any development without there being legal obligations in place to secure repayment[21]. If Possingham wants to get going and if CG is to be unlocked then the A28DS is required in a timeframe which cannot be reliant on CL coming forward.

9. In those circumstances the approach of requiring the full contributions now with robust provisions for repayment if/when contributions from CL and others are secured is both necessary and appropriate.

[21] Unchallenged EiC of MH

10. The only alternative is to have to wait for CL to come forward because there will be no A28DS construction contract entered into by KCC until the full costs are secured.

**The Various Permutations**

11. In the CG unconstrained 2426 without A28DS:
    a. The development location is unacceptable. On ID's modelling the development would be reliant on a saturated network with residents entering large queues on all key routes;
    b. Even if that is not correct, any development will have a severe impact beyond 50 [ID34] and therefore must be constrained to that figure.
    c. The mitigation does not resolve those fundamental points.

12. In the CG constrained stopped at 400, it is agreed that a standalone Possingham is not acceptable in design, landscape and other grounds[22]. So this scenario is a non-starter. In sustainability terms, Possingham would be out on a limb with very limited social infrastructure and no sustainable bus service (see below). This is not acceptable in highway and sustainable transport terms.

13. In the CG constrained at 400 but with A28DS, the above constraints are removed, CG is unlocked (free of the 400). Possingham could proceed in highway terms *as soon as this scenario is secured* by construction contract being entered into and could then be occupied from completion (alternatively could be occupied up to 150 before completion of the A28DS.

14. The new alternative option put forward of doing the mitigation first and then paying a small proportion of the required contribution (£1.75m) for the A28DS when and if it is delivered. This is for the fundamental reason that this option does not secure the A28DS. It would allow Possingham to come forward as an unacceptable standalone in planning, highway and sustainability grounds.

15. However, it would still require a Grampian condition at about 50 units [ID34] to prevent a severe impact. It would not unlock CG because it would not meet the funding shortfall. It would not "get things moving" – Appellant Counsel in condition discussions – because it would not unlock CG - the A28DS would not be secured and 400 would not be removed.

16. The inspector's fourth option will not unlock CG and will not secure the A28DS because it will not be enough to fill the gap in A28DS funding.

[22] See e.g. Tulley agreement in XX.

**Sustainability**

17. The CGSI is all necessary to make CG development sustainable. Possingham will act as an extension to, and is dependent on, CG social infrastructure. It is more remote and more distant from this and other SI than CG houses. It needs that infrastructure.

18. There is now a condition requiring the supermarket to be 2000sq m. Draft Condition 8 should be extended to ensure sustainability and to ensure consistency between the CGSI delivery and the IFs in the transport modelling.

*Mock Lane and Cyclists*

19. The only basis on which ID considered that the Mock Lane route was "just" acceptable was that it had a 30mph. It does not. The route is obviously unsatisfactory at 60mph. Any permission should be subject to a condition preventing any development until a TRO limiting speed to 30 mph is obtained.

*Chilmington Green Way Crossing*

20. No details having yet been provided and no safety audit having been carried out, a *Grampian* condition should be imposed requiring the approval of a plan for such crossing.

*Bus Services.*

21. The bus service will naturally operate as an extension to that to CG and is, on ID's case, highly unlikely to be viable without significant growth at CG. Realistically therefore,CG being unlocked is fundamental to appropriate access to sustainable transport modes at Possingham. A bus service to Possingham as a standalone far removed from other development makes no sense in bus service terms.

22. The bus service at CG is to start from a base of ½ hourly throughout the day. There is no justification for Possingham (more isolated and further removed from services via AT routes) being less well served. There is a clear need and logic for a ½ hour service from 100 units with a review mechanism.

## Education – Secondary School Contributions

23. "Securing Developer Contributions for Education" (Aug 23: CD12.1) sets out the basic principle that it is the housing developer's responsibility to mitigate the impact of its development on education (paras 11&7). DA's approach secures that; BH's patently does not.

24. If there is insufficient capacity in a planning area to accommodate the children from the development then a contribution towards building permanent accommodation will be required. The sole question is whether, applying government guidance to space planning, there will be sufficient capacity here such that the SS contribution is not required.

25. The short answer is that the only means by which BH demonstrates that there is sufficient capacity available is that he assumes that the 847 spaces to be paid for by CG at CGS to meets CG needs are free to meet Possingham's needs. That is wrong. The same spaces cannot be used to meet the needs of Possingham – Possingham cannot piggy back on provision paid for by others. That is the central thrust of CD12.1 para 66. Any contrary interpretation of para 66 defeats the purpose of it, is inconsistent with the words of it, makes no sense and defeats the requirement of paras 11 and 7. The correct reading of Para 66 is against BH's fundamental point.

26. Before we get to that point it is necessary to close off the multiple other blind alleys BH sought (inexplicably) to lead us down.

*The Area of Assessment*

27. The correct unit of assessment is the relevant planning area approved by the DFE: CD12/9 p5 first para.

28. Here it is common ground that the planning areas are Ashford North Non-Selective Secondary PG ("Ashford North NS PG") and the Ashford Selective Secondary Planning Group ("the Ashford Selective PG"): see BHP/1.8.

29. The correct unit of assessment is **not** the CG development and its environs or a 3 mile radius. Both are inventions of BH which have no relevance to school place planning, which are inconsistent with basic principles of place planning and are supported by not a single word of guidance. The funding for travel to school (based on 3 miles) is not used to address school place planning. The whole focus of BH's evidence was thus misconceived, flies in the face of all practice and Government policy/guidance and must be rejected.

*The Physical Capacity of Schools – inclusion of Sixth Form*

30. We are here concerned *only* with spaces for SS age children from Y7 – 11.

31. The exercise is not concerned with sixth forms (Y12-13).

32. The physical capacity and numbers capacity for sixth forms are not relevant and must be stripped out from the figures to ensure we are considering just Y7 – 11. BH has not done that.

33. BH's practical capacity exercise (T8[23]: BHP/26) for non-selective includes about 500 children on roll for sixth form (4858 minus 4327[24]) which by definition is not relevant to Y7 - 11. Both selective schools have six forms – of about 330 at NK and 450 at HG.

34. All of that sixth form space has been inexplicably included in BH's assessment of "published capacity" as if it is spare space. This is nonsense.

35. To state the obvious space needed for sixth forms is not available for Yrs 7 – 11 (and no claim to the contrary is made). BH's suggestion that the schools could reorganise to free up space including from sixth form is based on no evidence and inappropriate in principle. It is no part of the role of the planning system to force sixth forms to give up space for Y7 – 11 so that developers can avoid making contributions.

*Bulge Classes*

36. Bulge classes are agreed to be for the purpose of meeting short term peaks not long-term needs.

37. They may be accommodated in portacabins or by heads making ad hoc provision. There is no suggestion that permanent reliance on such ad hoc temporary solutions is appropriate.

38. They do not result in an increase in PANs or pupil numbers under Funding Agreements which would result in *permanent* expansions. Increased PANs would, of course, only be acceptable if there was adequate *permanent* accommodation.

39. Fundamentally PANs and bulges are different things with the latter by definition being in addition to PANs.

[23] T8 is in any event pupil rolls in the non-selective planning group and not places. BH has misused information in KCC's SCAP return and applied it in an inappropriate way and context.
[24] Being the total of roll of all NS between Y7 – 11 from CD12.7 in 2023/24.

40. Academies (which all of the SSs here are) have discretion as to whether to accept them and essentially for that reason they do not count for space planning purposes: CD12-8 p7 – 10. Example 4 is on point – where the admissions exceed the funding agreement capacity figure and PAN (namely bulge classes) that should not be included when doing assessments to determine capacity (p10 third para). BH ignores all this.

41. As to the numbers, CD12-7 box 2 includes (at peak) 455 bulge spaces (ID18 – para 1 p1). DA strips them out to comply with CD12-8 above but BH puts 250 of them back in.

42. He could not provide any justification for doing so. He had no evidence as to how those bulge classes are or had been physically accommodated (portacabins or ad hoc arrangements) and no evidence that any school was wanting or willing or able to make them permanent.

43. His adjustment to CD12-7 is misconceived but necessary to his case.

*PANs reducing*

44. BH asserted that PANs would be reduced for some schools (apparently on the basis of competition from CGS). That was an interesting contention – he needs to make that assertion to free up physical space in those schools.

45. On examination that point turned out to confuse not continuing bulge classes with reducing PANs – a fundamental and elemental mistake.

46. There is no evidence of any proposal of any school (or KCC or DFE) to reduce their PANs/funding agreement. There is nothing in the CD12-7 figures to show any school is operating or will operate significantly below their PAN. BH's point is backed by no evidence, defies the evidence and is misconceived but necessary to his case.

*Selective Schools*

47. The grammar schools provide spaces for about 25% of children in the area. Their capacity is not "uncertain" for the planning area[25]. They are the two selective schools serving the whole area. They will continue to provide for about 25% of SS age children.

48. His point was that given their selective admission criteria there was no guarantee 25% of children from Possingham would get places. That is to ask the wrong question – they are part of the capacity in the *planning area* and they must be included in the

[25] Agreed by BH in XX

assessment of capacity in the *planning area* and forecast rolls in the planning area. Children from the planning areas will attend them and they must be taken into account in the forecast roll (box 1) and forecast capacity (box 2).

49. BH could point to no guidance to support his position and he eventually correctly (appears to have) abandoned it. His approach was wrong, contrary to logic and yet necessary to his "no need" case.

50. DA's approach to selective schools is correct and must be included in the figures.

*Independent Schools*

51. BH correctly agreed that government guidance on pupil yield ("PY") was concerned with maintained sector PY only. It excluded independent schools. The 10% adjustment argued for was agreed to be wrong. It is not explained how any reputable expert would have made the 10% point and failed to draw the inspector's attention that PY was, by definition, for maintained schools only.

Conclusion at this stage

52. On all the above points BH flew misconceived "kites" to support his client's case. All his points collapsed on the most basic of testing/examination. Any education expert would have known the correct answer on all those points was the opposite for which he contended. BH has not presented as an independent expert but as a person who will say anything (no matter of how misconceived) to support his case. His evidence should be dismissed in its entirety.

*Kent Commissioning Plan*

53. The KCP with CGS shows no need for more spaces to 2028. That is hardly surprising – CG for which it is being built is not complete. KCP takes: (1) total Y7 spaces including CGS; and (2) current forecast rolls for year 7 *without* CG growth. It does not address the issue with which this inquiry is faced – CG and Possingham!

54. The KCP contains 180 year 7 places at CGS, its forecasts do not include the PY from the CG development.

55. There is no contradiction between the KCP and DA's case.

**Reserving Space**

56. CD12-1 para 66 is directly on point. BH's attempts to claim it did not apply: (1) misunderstood the words used and their purpose; (2) failed to reflect the facts; and (3) made no sense.

57. That para provides:

***"if a new school opens in a single phase below its full capacity while it awaits pupils moving to the development, this does not represent an available surplus for other developments assessing their impact o and mitigation unless circumstances have change for the original development..."***

58. CGS is being built as a single whole – not in phases. It is all built/provided in advance to meet the long term needs of CG as it comes forward – hence the DFE forward funded it and CG will have to pay back for those spaces over time.

59. CGS is opening below its full capacity "while it awaits pupils moving to the development" – that development being the development that pays for it – CG. CG will not yet fill it.

60. The unused spaces (the shortfall from "full capacity") does not "represent an available surplus for other developments assessing their own impact and mitigation...". That could not be clearer – the spaces are not to be treated as free for other developers to piggy back on; to avoid having to make their own contributions. This is a legal submission – the words used cannot have the meaning or effect BH contends for and which is fundamental to his case.

61. The example put to him proves why his approach is wrong on the facts too. A new town requiring 1000 SS places and two developers each generating in total 500 children. Developer A agrees with SoS for SoS to build and forward fund a 500 place school. Development A is coming forward over many years well beyond 2032. When the 500 school is first opened, Developer A only has 100 children in it. Developer B comes forward and on BH's approach could say that there were 400 spare spaces and that therefore it only had to provide 100. But the total spaces then provided would then just be 600 not 1000 and CD12.1 para 7/11/66 would not be complied with and the state (DFE or KCC) would have to step in to provide the further 400.

62. This example also works if Dev A and Dev B are the same person but applying under two different applications - as here.

63. Take the situation here too. On BH's argument, Possingham can take up the space in CGS. There would then be fewer spaces provided for CG and on its S.106B CG would then say – we should not pay for spaces used by somebody else. So KCC suffers a double hit – nothing from Possingham and discount from CG contribution.

64. BH has asserted the spaces paid for by CG will not all be needed for that development because over time the PY will reduce as homes move from a new rate to a stock rate. DA demonstrated the number of places being funded at CG represented a PY rate of 0.157, below the Kent average stock rate of 0.16 for houses (National Population census 2021), thus all funded places will be needed for that site. Conversely BH provided a spurious graph (BHP 23/graph 2) which was his own creation and for which no data or evidence is provided which vastly exaggerated the change in yield. BH did not, in the final analysis, seek to rely on that graph. BH also ignores that Possingham will create a demand in perpetuity (stock rate). DA also demonstrated that the initial phase of development at CG has yielded more pupils that originally expected. So the new vs stock rate argument is wrong.

65. Further, BH has made no attempt to account for the continued build out of CG. He acknowledged that KCC's forecasts complied with the DfE's guidance regarding only including developments with full planning consent, but has not followed that through for CG. DA's approach of reserving capacity for that development accords with para 66 and is in any event reflective of the basic fact that CG will be generating SS age children at increasing rates until complete.

*The figures*

66. The unchallenged and accepted maths is that 847 spaces are paid for (and reserved). Even with the BHR para 3.2 point the maths is 412 spaces reserved.

67. Even with the reservation being at 412, CD12-7 would still demonstrate a significant shortfall in the years to 2032 and no capacity for Possingham.

68. The correct figures are in CD12-7. The 250 bulge added by BH must be omitted from his assessment; the grammar school shortfall must be added back in.

69. Even if all that is rejected, CG will have taken 300 spaces by 2032: DA EiC unchallenged. Those are not available.

*The Result*

70. The full secondary school yield from this development needs to be provided for. There is no dispute on the figures. The full figure in the S106 draft must be required. Respectfully, there is no lawful alternative open to the inspector on this point.

**Conclusion**

71. The Education contribution must be provided for.

72. Delivery of this site without the A28DS being secured is unacceptable in principle on ID's own figures. The A28DS is the only route to unlock development at CG. Without it CG is also unacceptable.

73. The A28DS cannot be funded by KCC. The case set out above demonstrates that the correct answer here is that Condition 10 and Option B in the S106B should be required.

David Forsdick KC

Landmark Chambers

16th October 2024