

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

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

**OPENING COMMENTS ON BEHALF OF KENT COUNTY COUNCIL**

**Appearances for KCC**

David Forsdick KC instructed by the County Solicitor will call:

David Adams BA (Hons) on Education

Matt Hogben MA (Hons) MA

**Introduction:**

1. In the light of reason for refusal 5 (“RFR”) on the flooding/sustainable drainage, further details have been provided in an updated FRA and RFR5 is thus resolved as explained in the Statement of Common Ground [CD1-14].
2. There are some separate s.106 outstanding drafting issues (unrelated to the A28 or bus issues) and a disagreement as to whether the waste contribution under KCC’s Developer Contribution Guide [CD12/2] is CIL compliant. Those matters will be discussed in the roundtable. A CIL compliance statement in respect of all required obligations has been provided [CD1/9B].
3. Thus, KCC now appears on three main issues:
  - a. RFR2 in terms of the sustainability of the location from a travel perspective;
  - b. RFR3 – the severe impact on the capacity of the local highway network (“LHN”) and how that should be addressed;
  - c. RFR9 – the need for the secondary school contribution and whether sch 16 of the draft S.106 agreement [CD1/10] is reg 122 compliant.
4. All those issues are related to, and interact with, the development at Chilmington Green (“CG”):
  - a. the delivery and timing of social and community facilities including shops at CG - the CG Social Infrastructure (“CGSI”) and access to that CGSI as well as bus services provision;

- b. the provision of the A28 dualling scheme (“the A28DS”) as shown in CD9.15 for the section of the A28 between and including the Matalan Roundabout (“MR”) and Tank Roundabout (“TR”) – “the A28 Section” to address the impacts of housing growth at CG on the A28; and
- c. the impact on schools and demand for school places from CG.

### **Inter-relationship with CG**

- 5. CG has outline planning permission for 5750 units and approval of reserved matters for 763 of which just short of 400 are occupied.

#### *The A28 Dualling Scheme for CG under the existing CG S106*

- 6. The short point is that pursuant to a *Grampian* style provision in the CG section 106 agreement (“the CG S106”) development at CG cannot go beyond 400 until the provision of a bond which unlocks the delivery of the A28DS. If that is provided, the A28DS will be delivered pursuant to the CG permission, this development will benefit from it, will be made acceptable by it<sup>1</sup> and should be required to pay towards it. If the bond is not provided, the CG development will necessarily stall and the CGSI on which the appeal proposals depend will not be delivered. As things stand there is no route to CG proceeding without provision of the A28DS. Yet the Appellant here assumes CG proceeds, the CGSI is delivered but the A28DS is not delivered. That cannot arise under the current legally binding framework. This appeal cannot proceed on the basis that that framework will be displaced on the CG S106B appeal.
- 7. More detail is now provided.

#### *Provision of the Bond to release delivery at CG*

- 8. Under the negative obligation in sch 18 para 1 of the existing CG S106 [CD15/14], occupations at CG beyond 400 are prevented until the bond (required under the s.278 agreement incorporated into the CG S106) has been delivered to KCC. That bond is to secure the costs of the construction of the A28DS (as anticipated in 2017) – the A28DS being necessary to make the CG development acceptable. Once the bond is

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<sup>1</sup> And should therefore only be occupied once it is provided

provided, and an accompanying s.278 agreement entered into, KCC will construct the A28DS. The anticipated timeline for delivery was (and is) about 2 years from the provision of the Bond.

9. The CG development is approaching that 400 figure [FTR/2.10] and the bond is thus imminently required under the terms of the CG S106. Whether provided now (or with some limited leeway with ABC/KCC's agreement), the Bond will be the trigger to commence delivery of the A28DS.

10. Under the CG S106 therefore (unless CG stalls in which case no more of the CGSI would be provided), this Development would rely on the A28DS to mitigate its impact on the LHN.

11. In those circumstances there is a requirement for this development to pay its proportionate share of the total costs of the A28DS. The s.106 should require this contribution (not make it optional - see option B in the draft [CD1/10]). Occupations should be tied to delivery of the A28DS.

No A28DS

12. However, the Appellant ignores this part of the current binding legal framework and appears to proceed on the basis that the A28 DS will not be provided anytime soon.

13. It must therefore be assuming either that:

- a. CG stops at 400 (or such other figure as as ABC/KCC allow); or
- b. Hodson's s.106B appeal to discharge the obligations re: A28DS is successful (C15/14 and CD15/15) and the A28DS will not then be delivered.

14. Either situation has significant implications for the acceptability of the appeal proposals.

15. If CG stops at 400 then the CGSI relied on to make the appeal proposals sustainable will not be provided. The triggers for almost all the CGSI on which the appeal

proposals will rely are well above 400 and so the CG development will not proceed far enough to trigger the obligations in respect of them.

16. It is not possible for this inquiry to proceed on the assumption sch 18 para 1 is discharged on the s.106B appeal and it does not have any evidence to allow it to reach even a tentative view in favour of the Appellant on that. Its own evidence points decisively the other direction.

17. However, if the Appellant is proceeding on the basis that the A28DS obligations on CG are discharged (the merits of which we are told is not for this inquiry: Appellant Planning Proof para 1.3.6 [CD1/21]) then the A28 will have the flows from all development at CG to 2032 on it (according to the Appellant apparently a further 1886<sup>2</sup> or so but MH considers that it may be considerably more than that<sup>3</sup>) without any mitigation. The modelling for that scenario is then relevant.

18. In that scenario, the appeal proposal's main traffic corridor - the A28 north of the site - would be severely congested (on the Appellant's own figures) and would make this an inappropriate location for development at all.

19. Further adding the traffic from the appeal proposal to that already oversaturated position would significantly lengthen queues and increase delays.

20. The very limited proposed mitigation works latterly proposed by the Appellant would not be successful in mitigating that sever impact, are inappropriate and do not address a key problem - namely the lack of adequate link capacity between the Matalan and Tank roundabouts ("the A28 Link").

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<sup>2</sup> KCC cannot work out where this figure comes from.

<sup>3</sup> The relevant figure for the purpose of the education assessment is different and is 1799.

### CGSI and the S106A

21. The sustainability of this development (and the internalisation traffic factors assumed in the transport case) assume the full suite of district centre and other provision in the CG S106.
22. In its s.106B appeal, the Appellant is seeking to remove/reduce/delay the relevant obligations at CG in respect of the CGSI. It is therefore not appropriate to assume in this appeal that the CGSI will be provided.
23. Instead it is necessary to tie any development here to delivery of the full suite of CGSI there - so that the CGSI relied on and necessary to make this development less unsustainable and which underpins the internalisation factors in the traffic case is secured.

### CG and Phasing

24. The phasing and timing of delivery of phases of CG has significant implications on the sustainability case here – not least: (1) in respect of the timing of delivery of pedestrian, cycle (and highway) links to the key CGSI; (2) in terms of the future viability of any bus service.

### The Result

25. Given all that it is incorrect to claim that this development can be considered on its own merits without consideration of progress at CG. The ability of the appeal proposals to meet basic sustainability requirements is intrinsically connected to the delivery of CGSI at CG. Its traffic impacts and the requirements for the A28 are intrinsically linked to the CG obligations in respect of the A28DS and whether they are discharged. The conditions and s.106 obligations to be imposed on it cannot be assessed in isolation from CG – or (at least) cannot be approached on the assumption that CG will deliver what is required.
26. It will therefore be necessary to examine the interactions between this development and CG in some detail.

27. As things stand, KCC considers that there are fundamental disconnects between:

- a. the current position at CG; the proposals in the s.106B appeal there and the acceptability of development here; and
- b. the obligations in respect of the A28 there and the modelling of traffic impacts here.

**Sustainable location - RFR2**

28. The development site is isolated. It is wholly dependent on CGSI to meet the needs of its residents and even if that CGSI is all provided and in an appropriate timescale, the development will still be out on a limb from that CGSI.

29. ABC is leading on this issue and the points can thus be shortly stated:

- a. the CG District Centre is not in place and there is no evidence it will in place anytime soon. Hodson is seeking to push it back from the 1250<sup>th</sup> unit there to the 2700<sup>th</sup>. The provision of a foodstore (of unspecified scale – if the s.106B is approved) alone before any occupation here (as appears to be being proposed) is no substitute for the CGSI which the development requires and which was the basis of the internalisation factors for the traffic modelling;
- b. the pedestrian and cycling links to the CGSI and schools have not been thought through. There is not now and is not proposed to be any appropriately located crossing facility of CG Road – currently a rural road with no street lighting and with a 60mph limit<sup>4</sup>. The routes to the schools and CGSI are inappropriate (at least as long as the CG development is being carried out) and long;
- c. the site is currently poorly served by buses . A regular ½ hourly bus service to Ashford town centre and station is necessary throughout the day. The Appellant is only proposing a limited funding of a limited bus service. The bus service envisaged is not adequately funded, is insufficiently frequent and will

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<sup>4</sup> The crossing proposed as part of the SS is not on the main desire line as ID route map confirms – IDP p142.

be unsustainable at least unless delivered in tandem with bus services through CG (but those bus services in CG are being sought to be pushed back to 2684 dwellings in the S106B appeal and, if accepted, will not be available until after the relevant period to 2032).

## **Highways and the A28**

### *Current conditions on A28*

30. MR and TR are currently operating above practical capacity. There is a dispute as to whether Loudon Road lights are operating at capacity – KCC’s evidence shows that they are not; the Appellant’s suggests they are.

31. ID relies on trends in traffic on the A28 since 2009 as supporting his apparent case that as to current conditions. On analysis that analysis is shown to be misplaced and not to demonstrate that what it purports to show.

32. ID does not allow for any growth from the current day apparently because an inappropriately confined area has been considered in assessing growth in traffic on the A28: see MHR appx A.

### *Journey Purpose from the Development*

33. The TRICs vehicle trips from the development are agreed - two alternative basis being used. The next stage is to assess journey purpose which is important in then properly assessing trip distribution.

34. Here the Appellant uses NTS trip data which is concerned with *person* trips to assess the proportion of *car* trips for various journey purposes. Because school car trips tend to have an education escort as well as the child/children attending the school, this tends to significantly exaggerate the proportion of *car* trips for education purposes (which tend to be local) and thus understate trips on the A28 – for the short reason that a single *car* trip for a parent and 2 children will be 3 *person* trips. Using unadjusted NTS data is therefore wrong. IDR has purported to rectify this mistake but the source

of the data he relies on is not understood and the exaggeration of school trips remains. NH does not agree with ID's approach [CD4/10]

### Trip Distribution

35. The experts have agreed internalisation factors which assess the extent to which TRICs car trips will stay within CG and thus not impact the wider LHN.
36. Those internalisation factors are dependent on the provision of the full range of CGSI and do not apply in a world where that CGSI is either not delivered or is significantly delayed as sought in the S106B appeal [CD 15/15 sch 14].
37. The trip distribution assigns the remaining trips to routes on the LHN according to journey time and distance. The material provided by ID in appx ID5 significantly exaggerates the extent to which routes other than the A28 Section<sup>5</sup> would be used and thus understates impacts on the A28 Section.
38. Combined the above factors result in a significant under-statement of development trips on the A28 in peak hours and thus of the impact of the development.

### The fundamental problem with the A28

39. The short point is that the link between the Matalan and Tank Roundabouts ("the A28 Link") is a bottleneck with insufficient capacity to carry additional traffic from the development or CG with:
  - a. from the Matalan roundabout, three arms of traffic converging into a single lane which is the main desire line for all three to travel north-east to Ashford town centre or beyond;
  - b. from Tank roundabout, two arms comprising 3 lanes predominantly trying to travel south east; and
  - c. a hump back bridge limiting forward vision and a narrow carriageway on the link itself restricting capacity.

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<sup>5</sup> The A28 Section is the key part of the A28 for present purposes from (and including) Matalan Roundabout to Tank Roundabout.



40. It is these fundamental features which underpin the need for the A28DS, which make roundabout improvements alone ineffective and inappropriate and which, unless resolved, create a major impediment to further development in this area including this development and CG.

*Modelling*

41. The above flaws in the assessment of future flows from the development are exacerbated when they are inputted into the modelling.

42. The following headline issues with ID's modelling will be considered in the evidence:

- a. the correct assumptions for development at CG and triggers for the delivery of the A28DS (as discussed above);
- b. the use of a flat profile for the peak hour assuming the flows through the peak hour are consistent - they are not. That is why the flat profile is not the default profile in Arcady. Use of it understates impacts;
- c. the modelling of the exit from the Matalan Roundabout NB is inappropriate;
- d. there is an assumption that a key problem is queuing backing up from the Chart Way/Loudon Way traffic signals back to Matalan roundabout. That is not the problem in this area. The problem is insufficient capacity on the A28 Link as summarised above. That issue will not be resolved by addressing the signals at Loudon Way or tinkering with the Matalan roundabout. It requires dualling - hence the A28DS.

43. Even with the flawed inputs and the flawed modelling, ID shows (with CG and without the A28DS) the A28 Section being well above capacity and breaking down as queuing blocks back to the previous junction.

44. Given procedural failings by the Appellant with the application and the appeal, KCC has had to undertake its own modelling (with 400 at CG) correcting the above matters. It shows:

- a. severe impact on three arms of MR in both the am and pm peak (MHR table 1);

- b. severe impact on three arms of TR in the am peak and two in the pm peak.

45. The proposed mitigation schemes do not work:

- a. fundamentally at MR, it does not address the A28 Link capacity issue whilst making queuing significantly worse on the Brookfield Road arm. The proposals for pedestrians there are not acceptable;
- b. at Loudon Way, the mitigation scheme does not appear to mitigate the impact of the development. KCC does not support a mitigation scheme which does not improve capacity at the junction;
- c. at TR, KCC does not accept the installation of MOVA on pedestrian junctions as a matter of principle. There has been no modelling to show how the proposals would mitigate the impacts. There is no physical improvements at TR and TR will continue to operate with a RFC of well over 1 as a result of the development.

46. By contrast, it is considered that the A28DS would resolve all these issues even with the development and CG combined.

### **Education**

47. The two experts are helpfully now using the same standard framework so that the key differences between the parties can be identified and focused on.

48. Applying a standard approach, secondary schools including grammar schools in relevant planning groups do not have any capacity in the base case - namely even without this or any other unconsented development – in the period to 2032 under consideration.

49. In this base case:

- a. it is necessary to include forecast capacity and pupils on role at grammar schools so that the exercise properly understands capacity across all secondary schools. BH excludes them. About 1/4 of the children from the development will attend grammar schools. The forecasting shows a base case

shortfall in capacity of grammar schools of about 100. Excluding them thus artificially understates the base case shortfall;

- b. consistent with guidance, one cannot assume historic bulge classes are repeated because whether or not to accept one is a matter for the academy. The assessment should be carried out on the basis of the approved pupil admission number (“PAN”). BH wrongly includes bulge classes in his capacity assessment thus overstating future capacity and understating the base case shortfall;
- c. the base case includes current and forecast student numbers from 766<sup>6</sup> units at CG (on the basis that those all have approval of reserved matters). CG is said to deliver a further 1800 or so houses by 2032<sup>7</sup>. That will generate 300 SS age pupils in that timeframe. Under the CG S106, CG is paying for 900<sup>8</sup> places which are thus reserved for it and not available to other developments. Row 89 [CD12/7] shows the large shortfall of secondary school spaces in all future years even without this development or any other development in the planning areas.

50. That base case shows the scale of the shortfall. There are no spaces to accommodate the 86 SS age children from the development (and that is the case from 2026 even if no spaces are reserved for CG).

51. Further, KCC operates a well understood system of notionally allocating spaces to applications in the planning process. That would add a further requirement of 400 spaces and increase the shortfall accordingly.

52. To avoid this consequence, BH seeks to argue that the following:

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<sup>6</sup> There is a slight discrepancy with 763 because of different data sources – the 763 should probably be used for consistency

<sup>7</sup> See table 10.2 CG future phasing p195 CD15/15

<sup>8</sup> BHR3.2 has identified a possible mistake in the SS DoV for CG [CD15/17] which he says means CG is required to pay for fewer spaces and that thus fewer spaces are reserved for CG. . That makes no difference here - even if that point was good 489 places would still need to be reserved for CG and there would still be a significant shortfall. In any event this point raised very recently is to be the subject of action by KCC with a view to rectification – it was clearly never intended to let CG off the Phase 2 SS contributions – there was simply an apparent error in drafting.

- a. that the pupil yield at CG is less than expected when the CG S106 was entered into. That is wrong – the pupil yield has turned out higher than expected;
- b. that because this is a long phased development, and because newly built homes generate more children (“the new rate”) than established housing stock (“the stock rate”) there will be a rolling effect with the full number of spaces for CG never being required. That effect is already taken into account in the forecasts; is significantly exaggerated by BH and does not assist.

53. It is understood that discussions between the parties are ongoing and the Inspector will be kept up to date of any progress.

### **Conclusion**

54. KCC officers are here to try to facilitate further discussions to narrow issues. However, there are multiple fundamental problems with the proposals and KCC as highway authority and local education authority strongly objects to permission being granted because there is no basis to conclude that those problems can be overcome.

David Forsdick KC

7<sup>th</sup> October 2024