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## Appeal Decisions

Inquiry sitting days: 6 - 8, 12 - 14 and 18 - 21 May 2015

Site visits made on 12 & 21 May 2015

**by Katie Peerless Dip Arch RIBA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 23 July 2015**

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### **Appeal A: APP/U2235/A/14/2224036**

#### **Land south of A20/M20 Link Road Roundabout (Waterside Park) Ashford Road, Hollingbourne, Kent ME17 1RE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant part outline part detailed planning permission.
  - The appeal is made by Gallagher Properties Ltd, Automotive Distributors Ltd and Scarab against the decision of Maidstone Borough Council.
  - The application Ref MA/13/1549, dated 6 September 2013, was refused by notice dated 27 February 2014.
  - The development proposed is a hybrid (part outline, part detailed) application for re-grading of the site to form development platforms including the creation of new bunds and batters; the development of a new industrial estate comprising up to 56,000 m<sup>2</sup> of B1 office/light industrial, B2 general industrial and B8 storage and distribution uses; ancillary café and crèche facilities; creation of a new access to the A20; new internal access roads; parking, internal drainage, structural landscaping and the diversion of the existing public footpath. Detailed permission sought for erection of new warehouse building (23,533 m<sup>2</sup>) and associated offices (4,145 m<sup>2</sup>) with access, service yard parking and landscaping.
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### **Appeal B: APP/U2235/A/14/2229271**

#### **Land south of A20/M20 Link Road Roundabout (Waterside Park) Ashford Road, Hollingbourne, Kent ME17 1RE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant part outline part detailed planning permission.
  - The appeal is made by Gallagher Properties Ltd, Automotive Distributors Ltd and Scarab against the decision of Maidstone Borough Council.
  - The application Ref 14/501895/FULL, dated 16 July 2014 was refused by notice dated 22 October 2014.
  - The development proposed is a hybrid (part outline, part detailed) application for re-grading of the site to form development platforms including the creation of new bunds and batters; the development of a new industrial estate comprising up to 45,528 m<sup>2</sup> of B1 office/light industrial, B2 general industrial and B8 storage and distribution uses; ancillary café and crèche facilities; creation of a new access to the A20; new internal access roads; parking, internal drainage, structural landscaping and the diversion of the existing public footpath. Detailed permission sought for erection of new warehouse building (21,990 m<sup>2</sup>) and associated offices (2,995 m<sup>2</sup>) with access, service yard parking and landscaping.
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## Decisions

1. The appeals are dismissed.

## **Main Issues**

2. I consider that the main issues in these cases are the effect of the proposed developments on:
  - (i) the landscape character and visual amenity of the surrounding area, including the setting of the Kent Downs Area of Outstanding Natural Beauty (AONB) and
  - (ii) the setting of nearby heritage assets.

## **Procedural matter**

3. At the opening of the Inquiry it became clear that, although the impact on the setting of heritage assets had been raised as a reason for refusal by the Borough Council, Historic England, (formerly English Heritage) the Government's statutory consultee on heritage matters, had not been contacted about the proposed developments. It was agreed that they should be given the opportunity to comment and any response would be passed to the parties for their consideration, even if they were received after the close of the Inquiry.
4. Historic England has indicated that, following confirmation that the heritage matters were fully discussed at the Inquiry, it does not wish to make any further comment. I have therefore proceeded to determine the appeals in accordance with the relevant statutes and planning policy including the requirements of the Town and Country Planning Act 1990 (as amended), the Planning and Compulsory Purchase Act 2004, the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) and the National Planning Policy Framework (the Framework).

## **Site and surroundings**

5. The appeal site is an agricultural field situated close to junction 8 of the M20 motorway. It is bounded to the north by the A20, which gives access to the motorway junction and to the west by Old Mill Lane. In the vicinity of the site are a motorway service area (to the north), a storage facility run by Biffa for waste containers (to the north west) and a hotel (to the east). The river Len flows to the south, through a local wildlife site adjacent to the group of historic buildings at Old Mill Farm. A public footpath crosses the site, from the A20 to Old Mill Lane.
6. The site is about 1.5km as the crow flies from the buildings of the Grade I listed Leeds Castle and about 1km from one of the main entrances to its Grade II\* listed Registered Park and Garden. It can also be seen from the group of buildings at Brogden, the farmhouse and cottages of which are listed Grade II. Another Grade II listed building, Old England Cottage, lies to the north east of the site, on the opposite side of the A20 dual carriageway. At the Inquiry, all parties accepted that, although the site is not within the North Downs AONB, it lies within its setting.

## **Appeals proposals**

7. The 2 appeal proposals that were considered at the Inquiry are for similar schemes for the development of the site, and are within the same 'red line' area, although that for Appeal A envisages a larger area of built development. Both schemes incorporate a significant amount of ground remodelling to alter the level at which the ground floor of the buildings would be set. According to the Environmental Statement (ES) prepared for the proposals, about 740,000 tonnes of topsoil and sand/gravel/clay would be excavated and exported from the site as part of this operation.

8. The building for which both applications seek full planning permission was originally intended for use by Automotive Distributors Ltd (ADL), a local company that distributes automotive spare parts and which is currently operating from Wheelbarrow Industrial Park at Marden, some 18km from the Waterside Park site. However, ADL has now confirmed that the timescale for the Waterside Park proposals is too long for the company to now consider relocating there and they are no longer proposing to occupy the building, even if planning permission is granted. The storage and distribution operations for ADL are now, apparently, moving to the Midlands, with the offices remaining in Marden.
9. The outline applications are mainly for the western part of the site where the largest proposed unit would be for another company located on the Marden site, Scarab Sweepers Ltd. This company is still hoping to relocate to custom built facilities at Waterside Park.
10. The plan of the existing ground levels shows a maximum level for the site of 65m above ordnance datum (AOD). The building that was formerly intended for ADL would be located to the east of the site and would rise to a maximum height of 17.7m (Appeal A) or 15.7m (Appeal B) above AOD. The 50m AOD contour runs roughly through the middle of the proposed development platform for this building. In Appeal A, the development platform for the buildings would be at an average level of 51.3m AOD meaning that the ground floor level of the ADL building would, over the majority of its area, be at, or above, the existing ground level. The outline application for the west of the site shows that the building intended for Scarab would be on a platform level of 52.3m AOD with a maximum height of 16.7m. This would consequently be about 4m above the highest existing ground level.
11. In Appeal B, the level of the platform for the former ADL building would also be 51.3m AOD, and the comments in the previous paragraph would again apply here, albeit the overall height of the building would be 2m lower. The Scarab building would be set on a platform with a ground level of 53.75m AOD, which would mean that, at the point of deepest excavation, the land would be 11.25m below the existing levels. The proposed maximum height of the building on this land would be 15.25m AOD; again about 4m above the highest existing ground level.
12. The schemes also include a separate office building, car parking and a café and crèche for use of workers on the site. The larger of the 2 schemes shows illustrative proposals for an additional 2 buildings, one to the east of the Scarab building and one to the south of the former ADL unit and both schemes would result in the diversion of the public footpath. In the larger scheme the route would follow the perimeter of the site but in the smaller version, the southernmost section of the path would run south/north through the eastern part of the site before joining the route of the larger scheme to the north. Both schemes would include landscaping proposals and envisage that the 2 main buildings would be phased to allow for future expansion.

### **Planning policy**

13. The development plan for the District includes the saved policies from the Maidstone Borough Local Plan 2000. Policy ENV 28 relates to the protection of the countryside and limits the categories of development that can take place outside the defined development boundaries.

14. The emerging Local Plan is at Regulation 18 consultation stage and a date for its adoption has not yet been set. Consequently, the Borough Council and the appellants agree that it can be accorded only limited weight. This Plan does not contain any specific policies or proposals relating to the appeal site although Waterside Park was considered for an employment use when the allocations were being assessed but it was not selected.
15. The Plan does however contain policy SP5, which is a countryside protection policy that includes, amongst other things, the requirement to protect the distinctive character of the Kent Downs AONB and its setting. The precise wording of this policy may be subject to challenge, as it does not fully accord with that of the National Planning Policy Framework (the Framework) in that it requires the 'rigorous' protection of the countryside. However it nevertheless seems likely that the broad aims and objectives of policy ENV 28 will be carried forward into the new Local Plan to protect areas designated as countryside.
16. In relation to development that could affect the setting of listed buildings, section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA Act) places a duty on decision takers to pay special regard to the desirability of preserving that setting before granting planning permission.
17. Section 85 of the Countryside and Rights of Way Act 2000 requires a relevant authority, when exercising any functions in relation to, or affecting land in, an AONB to have regard to the purpose of conserving or enhancing the natural beauty of the AONB.
18. The Framework is a material planning consideration that sets a presumption in favour of sustainable development with a view to building a strong competitive economy, creating a high quality built environment and protecting and enhancing the natural, built and historic environment.

## **Reasons**

### ***Landscape character***

19. The Inquiry heard evidence from 3 specialist landscape witnesses who drew varying conclusions on the impact that the proposals would have on the landscape character of the area and the setting of the AONB. All parties accept that there would be a conflict with policy ENV 28 because the developments would be in the countryside and the loss of the site to built development would damage the rural nature of the site.
20. The Council has commissioned various landscape studies to inform decisions about future allocations of sites for development, to foster the protection and enhancement of valued landscapes and to ensure that changes to the landscape maintain its local character. The most recent of these, the Maidstone Landscape Character Assessment, dates from July 2013 and includes the appeal site as part of the Ashbank Fields Detailed Landscape Character Area within the Leeds Castle Parklands Borough Wide Landscape Character Area. It seems to me that it is this document that is most helpful when evaluating the site, as the study is the latest available and takes account of the existing situation that has evolved since the Channel Tunnel Rail Link (CTRL) was constructed in the early part of this century.

21. The key characteristics of the Ashbank Fields are noted as being open views across arable fields and pasture, streams and ditches, lines of riparian woodland along streams with field boundaries marked by contours and watercourses. The description of this landscape notes that it is dominated by the transport corridor of the A20, M20 and the CTRL which interrupt views towards the North Downs.
22. The landscape is said to be coherent, although the heavy infrastructure provides many visual detractors, resulting in a condition assessment of 'very poor'. The sensitivity assessment is 'moderate' and this combination leads to the conclusion that the landscape needs to be restored and improved. It also states that, within the area itself, views are relatively open and uncluttered. Infrastructure is said to have a significant impact on the AONB and that the restoration of this rural landscape is a priority.
23. Although, when in proximity to the site, or when on it and looking out from its higher levels, it is the transport corridor that has the greatest impact on the character of the surroundings, this feature is much less obvious than might be expected in longer views from the national trail of the North Downs Way and the Pilgrims Way, within the AONB, from where moving vehicles and trains can be seen but are largely hidden by vegetation and the topography.
24. From along these public rights of way and from open access land nearby, there are vantage points from which the site can be seen centrally amongst largely undeveloped countryside. Apart from the transport corridor, which is heard more than it is seen, the only industrial or commercial intrusions into the wide vista seen from the scarp slope of the North Downs are the waste container site to the west of the site, the tower of the Great Danes Hotel to the east, and the Leeds sewage treatment works and a series of polytunnels further away to the south.
25. These features already draw the eye towards the vicinity of the appeal site to a certain extent but are relatively isolated from each other and I am concerned that, because the proposed developments would serve to narrow the gaps between them, they would accentuate their impact and consolidate the built form into a larger mass that would prove disruptive and seriously harmful to the character of the wider landscape. The change in landform would lower the existing ground level on some, but not all, of the areas where the buildings would be sited. However, as noted above, the heights of the buildings would be such that they could still be clearly seen in these longer views.
26. It is intended that the new buildings would be coloured to minimise their impact but, whatever decorative scheme is chosen, the changing colours of the vegetation in the surrounding landscape during the year would make it very difficult to camouflage the buildings to any great extent, given their height and the expanse of roof and side wall that would be visible. A landscaping scheme would help to screen the buildings but would take years to establish and would not be fully effective when the leaves were not on the trees.
27. The impact of the schemes would be further exacerbated by the extent of the earthworks that would be needed to create the development platforms and the surrounding bunding. These would be engineered, obviously man-made features that would contrast unfavourably with the gently rolling hills leading towards the scarp of the North Downs and would permanently change the topography of the landform.

28. From the south, in views north from Old Mill Lane where it rises up towards the Brogden group of buildings, the developments would be seen a backdrop to the Old Mill Farm cluster of buildings and the AONB landscape beyond. The scale of the developments would be significant, dominating the foreground in these views, such that the views to the AONB would be interrupted. This would have a detrimental impact on the setting of the AONB that, in my view, would be *'moderate adverse'*, given the sensitivity of the appeal site to change.
29. There was evidence given at the Inquiry by the appellants that the footpath across the site was little used, but the survey relied upon was carried out during a week in March at a time of year that might not be expected to be the most popular with walkers. Users of the diverted footpath would lose the present views across open countryside towards Leeds Castle and would instead pass between the industrial park and the Biffa site. This change would, I consider, be detrimental to the experience of the walkers on this section of footpath.
30. I have noted the varying views of the landscape experts who have all, in broad terms, followed the guidance in the Landscape Institute's Guidelines for Landscape and Visual Assessments version 3 (GLVIA 3) albeit with variations in their methodology. The main differences in their conclusions relate to the perceived level impact of the developments on their surroundings rather than the sensitivity of the landscape.
31. There is a difference between the direct effects on the landscape itself and the visual impacts that the developments would have on the surroundings and this is recognised in the assessments. As noted above, the landform would be significantly altered and the gentle rolling contours of the site would be lost. There is already a distinct and steep change in level between Old Mill Lane and the highest point of the site and this would be exaggerated by the changes proposed in Appeal A but less dramatic in Appeal B.
32. In the longer views from the AONB it is true that there is little that is distinctive about the landform of the site and it can only really be identified by reference to the tower of the hotel and the containers on the Biffa site. This seems to me, however, to be precisely why the developments would cause harm to both the visual and landscape qualities of the surroundings. The site does not, at present, draw the eye and is seen as part of a homogenous wider vista and this would change, as described above, if the proposed developments went ahead.
33. In terms of the visual impact of the developments, the rural character of the site would be lost and the sensitivity of those receptors most affected, the walkers using the public rights of way, particularly those within the AONB, would be high. With a moderate sensitivity to change, as found in the Maidstone Landscape Character Assessment, the resultant effect would, I consider, be much greater than the *'moderate adverse falling to minor adverse over time'* as assessed by the appellants' witness. This harm is, in my opinion, a significant factor weighing against both the appeal proposals.
34. There was much discussion at the Inquiry on whether policy ENV 28 was out-of-date in terms of the Framework. In relation to the aim of protecting the countryside, by controlling harmful development within it, the policy is not out of step with the Framework. Although the supporting text makes reference to wording from policy guidance that has now been superseded, the core of the policy does not depart from the aim of the requirement, set out in paragraph 17 of the Framework, to recognise the intrinsic character and beauty of the countryside.

35. ENV 28 could be considered as a relevant policy for the supply of housing, and might therefore be out-of-date in relation to paragraph 49 of the Framework, as this paragraph requires the local planning authority to demonstrate a 5 year supply of housing, which will need to be confirmed through an adopted LP.
36. However, paragraph 49 makes no reference to policies for employment sites; although the Borough Council agrees there is an unmet need. It is therefore possible, but not inevitable, that the development boundaries set in the adopted LP will be revised in the emerging version, to satisfy the identified need for additional industrial development.
37. However, until these boundaries have been agreed and it is confirmed that the appeal site no longer falls within an area designated as countryside, I consider that policy ENV 28 still carries significant weight in accordance with its consistency with the Framework. I find therefore that the proposals do not accord with the adopted policy in the Development Plan that relates to the protection of the countryside.

### ***Settings of heritage assets***

38. In my opinion, the greatest impact on the setting of a heritage asset would be that on Leeds Castle and its Park. Whilst there is little intervisibility between the castle buildings and the appeal site, with the only available glimpses being to and from the highest level of one of the towers, the appeal site can be seen clearly from the Park. Leeds Castle has a largely unspoilt, romantic setting in a landscaped hollow surrounded by agricultural countryside with views to the Downs beyond.
39. From the golf course in the park, there is an iconic view of the castle complex and its moat set in the wide expanse of the park. Photomontages of the proposals show how the buildings would intrude into the centre of the background, immediately behind the Castle. Leeds Castle is Grade I listed and is therefore in the highest category of heritage assets; its parkland setting is also Grade II\* listed in its own right.
40. The intrusion of substantial industrial development into an otherwise well-preserved setting seems to me to be particularly harmful. Whilst this harm to the setting might be experienced only from a narrow field of view, it would nevertheless detract from the largely unspoilt and tranquil scenery in which the castle is experienced and which has historically surrounded it. The castle has, up to now, been fortunate in retaining this setting and the intrusion of modern development into this particular view would, I consider, diminish the significance of the heritage assets.
41. From the entrance to the Park from Penfold Hill, the developments would also be clearly visible to visitors entering and leaving the property, albeit only for a very short time and from limited viewpoints. I have noted the concerns that the approach to the Castle along the A20 would be blighted by views of the new developments and that this could reduce the popularity of the tourist attraction. However, I am not persuaded that visitors would avoid the Castle and its grounds, together with the numerous special events that are hosted there, only because they would see an industrial park on their drive to and from the venue.

42. However, the developments would also affect the setting of the non-designated heritage asset at Old Mill Farm, where they would, at the closest point, be only some 25m from the boundary of the converted oast house on the complex. The approach along the public footpath towards the complex would change dramatically from a path through an open field to one that skirted a large industrial development and passed close to the Biffa waste site.
43. The proposed new buildings would also be within the setting of Old England Cottage, although this property is, as previously noted, separated from the site by the A20 and also by a 1.8m high close boarded fence and set at a lower level than the road. The setting of this cottage has already been seriously compromised and, whilst the proposed developments would not improve the situation, I consider that the additional harm would be very limited.
44. Also as noted above, the site is within the visibility zone of Brogden Farmhouse and its surrounding buildings, which could be seen in conjunction with the proposed new buildings in long views from the north. The buildings are, however, some distance from the site and, whilst the industrial developments would detract from the rural setting of the farm complex to a certain extent, the overall impact would still be slight.
45. Nevertheless, where harm to the setting of a heritage asset has been identified, the case of *East Northamptonshire DC, English Heritage & National Trust v SSCLG & Barnwell Manor Wind Energy Ltd [2013] EWHC 473 (Admin)* has confirmed that the LBCA Act requires 'considerable importance and weight' to be allocated to that harm when considering whether to grant planning permission. Also, the Framework, in paragraph 134, makes clear that even if the harm is judged to be less than substantial, as in this case, it must still be weighed against the public benefits of the proposal.

### **Other matters**

46. Although not raised by the Borough Council, other parties, including Kent County Council (KCC), the Kent Downs AONB Executive, the Campaign to Protect Rural England (CPRE) and the Joint Parishes Group (consisting of representatives of 18 local Parish Councils) and Natural England (NE) (who together formed 2 groups, each with Rule 6 (6) status), as well as the Trustees of Leeds Castle and a number of local councillors and residents have other concerns that were discussed at the Inquiry.

### ***Need for the development***

47. Although the Borough Council accepts that there is a qualitative need for additional industrial and employment floorspace in the Maidstone administrative area, the other parties submit that it has not been demonstrated that the proposed developments could not be located elsewhere, either in the Borough or within the wider local area under the 'duty to co-operate' set out in the Framework.
48. The appellants produced a specialist economic witness on the topic of the identified need whose evidence was unchallenged by the parties. She drew attention to the fact that the proposals were strongly supported by the Borough Council's Employment Development team who concluded that, whether or not ADL and Scarab took possession of the site, the proposed developments on it would provide significant economic benefits and fill a gap in the qualitative demand.



49. She also demonstrated that the land required for industrial development was likely to be greater than originally identified in the latest studies produced by GVA, which are criticised for separating the assessment of the quantitative and qualitative needs. This, she submits, means that the Employment Land Review (ELR) understates the quantitative need.
50. She estimates that there will be a requirement for a total of 15.2 hectares of industrial land to meet the need for the emerging Local Plan and, as noted above, this conclusion was not challenged by any of the parties at the Inquiry. She also points to the fact that the requirements of Scarab alone would amount to 80% of the whole requirement identified by GVA for the 20 year period of the Plan and considers that there are at present no sites within their identified supply that could accommodate this need.
51. Nevertheless, the extent of the proposed developments on the site would satisfy a large proportion of the need identified by the appellants' witness and there were concerns that this would pre-empt the choice of locations in the Local Plan. The proposal in Appeal A is for a development area of 11.7 hectares and that for Appeal B is for 10.2 hectares, both on a site with a total area of 16.1 hectares.
52. The general area around junction 8 has been considered for allocation for employment uses in several studies and iterations of the emerging Local Plan, between 2011 and 2014. It was removed from the consultation of the Draft Local Plan in March 2014 but, in October 2014, the Council's Cabinet approved the draft Economic Development Strategy for consultation and this document envisaged the allocation of land along the M20 corridor for industrial development.
53. Of course, this does not mean that this land will necessarily be considered suitable for allocation in the emerging Local Plan or that, even if it is, the appeal site would be the preferred location. Neither is it definite that the identified need, whatever quantum is eventually adopted, would have to be satisfied through the allocation of a greenfield countryside site. There are other competing sites, such as the existing business park at Detling Aerodrome that might possibly come forward as a preferred location.
54. It must also be noted that there is, at present, another recently submitted application for industrial development on land<sup>1</sup> to the south of the M20 to the north west of junction 8, which also seeks planning permission for large scale industrial development that could accommodate a building of a size that would suit Scarab. It is one of the 3 sites close to junction 8 (including the appeal field) that were included in the Core Strategy Strategic Site Allocations Public Consultation 2012 but which, following consideration of the results of the consultation, were subsequently omitted from the 2014 Consultation version of the emerging Local Plan.
55. However, the National Planning Policy Guidance (NPPG) notes that arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account.

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<sup>1</sup> Woodcut Farm, application ref: 15/503288/OUT

56. Such circumstances are likely, but not exclusively, to be limited to situations where both the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Plan and the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.
57. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination. If planning permission is to be refused on grounds of prematurity, it will need to be clearly explained how the grant of permission for the development would prejudice the outcome of the plan-making process.
58. The advice on prematurity is guidance, not adopted policy, and whilst it is an important material consideration, it does not preclude a conclusion being reached that granting a planning permission for a development would be premature, even though both identified criteria may not be met. In this case, the proposal is clearly significant and substantial in scale, to the extent that it would predetermine the decision on where the vast majority of the industrial development required in the Borough for the whole of the Plan period would be located.
59. However, the emerging Local Plan is not at an advanced stage and the appeal site may eventually be included as an industrial land allocation. It has also taken over 10 years for the Plan to reach the stage it is at present and it is clearly unsatisfactory that there is a vacuum of allocated land for employment uses when local companies are keen to grow and remain in the Borough. I therefore conclude that refusal on the grounds of prematurity in the face of this policy vacuum would not be justified.
60. Nevertheless, one of the original reasons for promoting the appeal site was the desirability of retaining the business and employment opportunities that ADL brings to the Borough. Now that this is no longer a possibility, there seems to me to be less urgency in confirming a specific and strongly contested allocation, the majority of which would be for a full planning permission for a speculative development that does not have a confirmed end user.
61. One of the studies relied upon by the appellants, the data in the Locate in Kent document, identified a need for sites of over 100,000 sqft, with 3 potential users, neither of which were Scarab or ADL, stating that they were looking for facilities of this size in the whole of Kent. One expressed an interest specifically, but not necessarily exclusively, in Maidstone but it is not clear whether this need was for premises of between 200,000 – 250,000 sqft, such as would be provided by the appeal site.
62. It is also the case that, even if not ideally suitable for ADL or Scarab, there is available industrial floor space in neighbouring boroughs and this will need to be taken into account under the 'duty to co-operate' set by the Framework, when determining the precise requirement that Maidstone will need to provide.
63. There were also suggestions made at the Inquiry that it could not be assumed that Scarab would necessarily take the space allocated to it on the site. There is no formal agreement in place between the company and the developers to this effect and, without this, opponents of the proposals note that all the development is effectively speculative.

64. However, one of the critical matters for Scarab is the retention of its existing staff. The business builds bespoke street sweepers, in a variety of sizes, for customers at home and abroad. The staff members need specialist skills that have been developed over the many years that the company has been in its present location. The operation has expanded over time and is now spread over 4 different buildings on the industrial estate. This causes logistical problems and inefficiencies through having to move the sweeper units from building to building and the company also now need more space to develop further.
65. The managing director of the company confirmed that, although considered, none of the alternative sites that have been suggested by the third parties as being possibilities for Scarab's relocation was suitable for their needs. Having considered the evidence put forward by the company, I find no reason to assume that it would not relocate to Waterside Park, if it was available and proved commercially viable.
66. The fact that ADL has decided to relocate out of the area is further evidence that there is no site available to meet the specific needs of that company in terms of size and location. However, whilst the company also stated that staff retention was a major concern, it is now obvious that other commercial considerations eventually outweighed the desire to retain the workforce working in its distribution warehouse.
67. As noted above, several existing sites were suggested by the Rule 6 parties for the possible re-location of the 2 businesses for which the proposed development was originally intended and these were discussed at the Inquiry. The largest of these, the Aylesford Print Works at Allington, where the company has recently gone into receivership, is not on the market and there is no information at this stage on what might happen to the site. There is, of course, a possibility that it may come forward in the future, but it cannot at this stage be relied upon as a possibility to satisfy the needs of Scarab, or any other business looking to relocate in the near future.
68. I also note the reasons why a number of sites outside the Borough were found unsuitable for both ADL and Scarab and why the appeals site proves so attractive. Junction 8 is obviously a highly sustainable location in terms of accessibility to major road transport links. The site offers the possibility of building a prestigious and custom-designed company headquarters that, in the case of Scarab, would be suitable for its existing staff.
69. Conservative estimates of the numbers of jobs created would be 197 for Scheme A and 79 for Scheme B. These figures assume that the buildings would be occupied by identified companies rather than being a wholly speculative scheme and that the premises currently occupied by ADL and Scarab at Marden will not be re-occupied once they were vacated.
70. If alternative criteria were applied, for the reasons set out in paragraphs 4.22 to 4.27 of the appellants' economic witness's proof of evidence, the job totals would rise to 675 for Scheme A and 520 in Scheme B. Even taking the worst case scenario, the numbers of jobs are clearly of importance in a Borough that is aiming to encourage growth in order to become less reliant on public sector employment and out-commuting. Therefore the proposals would be of considerable economic benefit to the Borough and would be supported by those policies in Chapter 1 of the Framework aimed at building a strong competitive economy.

## **Traffic**

71. Objectors, particularly the CPRE and the Joint Parishes, are concerned about the impact of the traffic generated by the proposed developments during the construction period and when the site is occupied. A construction period of up to 6 years is envisaged and, on the appellants' calculations, 740,000 tonnes of excavated material would need to be taken off the site during the first 3 years, in order to create the development platforms. It is estimated that, to meet the planned timescale, 60 loads a day in 17.5 tonne lorries working 5½ days a week, would be needed to be taken off site.
72. It was confirmed that the lorries would use the M20, which would be only a short distance from the site via the new access onto the A20 roundabout, and that no vehicles would travel through the nearby villages. However, objectors were still concerned that if Operation Stack was in operation, which happens on average 2 or 3 times a year, or should there be other problems on the motorway, the vehicles would be re-routed, adding to the traffic problems that already occur at these times. There is also concern that employees travelling to the site would use local roads and worsen congestion at peak times.
73. I can understand these concerns, given that local residents obviously have experience of the disruption that occurs when the main transport arteries do not run smoothly. However, there have been no objections from the Highways Agency (now Highways England) or KCC Highways and Transportation Services and the Borough Council did not refuse the schemes on transport grounds. The Traffic Assessment (TA) in the ES has taken account of the levels of vehicle use, parking requirements and the implementation of a Travel Plan and concludes that the schemes would not have any unacceptable impact on local roads during normal operations.
74. The TA has considered the routes most likely to be used by staff accessing the appeal site from the surrounding area based on different scenarios. The first considered the postcodes of existing ADL and Scarab staff, the second looked at the journey to work statistics for employees of similar developments around Maidstone to give an indication of where employees are likely to travel from and the third is more detailed and includes factors such as salary levels, housing costs and the wards where each employee group is likely to live.
75. In very brief summary, the TA finds that, discounting the ADL/Scarab existing employee scenario, which is now out of date due to ADL's withdrawal, between 69 – 73% of employees arriving by car would travel via junction 8 and the strategic network with between 31 – 27% using the local road network, that is down Penfold Hill or through Bearsted on the A20.
76. In terms of vehicle numbers, this equates to a maximum of 3 additional car trips to Eyhorne Street in the morning peak hour and 2 in the evening and 26 trips through Leeds village in the morning peak and 15 in the evening. These numbers are below the variations experienced on roads such as this and do not indicate that the proposed development would cause unacceptable problems on a daily basis.
77. I do, however, note that the Interim Report on the Maidstone Site Allocations Sustainability Appraisal 2012 noted that new strategic economic development at junction 8 had the potential to have a *'significant adverse effect on the transport network due to the increased traffic generation . . . adding to existing*

*congestion issues*'. The report notes that volume to capacity ratios between junctions 6 to 7 and 7 to 8 are forecast to exceed 90% by 2028 and this exceeded the maximum acceptable limit set by the Highways Agency at the time the Appraisal was prepared.

78. I also accept that at times when Operation Stack is in place, whilst access to the westbound carriageway of the M20 should not be a problem, any traffic from the appeal site travelling eastwards would have to use the A20, adding to congestion levels. This indicates to me that, despite the findings of the ES, there nevertheless remains a possibility that developments on the scale proposed could have an adverse impact on congestion levels on the main traffic arteries.
79. It is also the case that the site is located away from the urban fringe of Maidstone and public transport access to it is limited. There is a bus stop some 400m from the site served by services 10X and 13. Route 10X runs between Maidstone and Ashford once an hour in each direction and route 13 runs between Hollingbourne and Maidstone 5 times a day and in the opposite direction every 2 hours. Although I accept that the provision of a shuttle bus to and from Hollingbourne station, from where there are between 1 and 2 services an hour between London and Ashford, via Maidstone East, could increase the sustainability of the location in respect of staff access by public transport, it nevertheless seems most likely that the vast majority of staff would come to work by private car.
80. A travel plan could encourage car sharing and make provision for the shuttle bus but given that the proposed parking provision for the larger proposal site on the site is 916 spaces for cars, 47 mobility impaired spaces and 51 spaces for motorcycles, compared to 279 cycle spaces, it can be seen that the traffic generation in respect of private car/motorcycle journeys would be high. In this respect the proposed development would not, I consider, meet the sustainability aims of the Framework.

### ***Other environmental matters***

81. There is concern that the substantial remodelling of the landform would have an impact on the Kent Wildlife Trust local wildlife reserve and the river Len, through the deposit of silt. This has apparently already proved to be a problem following the construction of the M20 and the CTRL, although the ES found that there would be negligible impact.
82. NE has not objected on these grounds but I have noted the arguments of the CPRE witness on this topic who is a well-informed and enthusiastic supporter of local wildlife conservation projects. He made the point that he is likely to have more direct and detailed experience of the specific effects of similar construction sites on the River Len and the wildlife in its environs than may be available to other, less local consultees. I consider that his evidence raised valid concerns, particularly given the proximity of the proposed development platforms to the river and the consequent changes in land levels that would result from their construction.
83. Following on from this, the occupant of Old Mill Farm has raised concerns over the location of the new buildings to his property boundaries. At its closest point, this would be only about 25m and, whilst the garden is currently well screened visually by tall hedges, there is likely to be considerable noise and

disturbance caused during the construction period and beyond. I have no doubt that the occupants of the property would experience some adverse impacts because of the developments.

84. In respect of the possibility that measures to protect an accidental contamination of local water sources would not be totally manageable, I note that the Environment Agency (EA) has raised no objections and is satisfied that conditions could ensure that all reasonable precautions are taken. There is always a risk that preventative measures could fail and the CPRE witness on this topic accepted that his precautionary stance would preclude any development within the catchment area of a public water supply such as that 1km away at Thurnham.
85. Although contamination of the water supply would be a very serious matter, I am satisfied that this fact would not have been overlooked by the EA who would, had it had serious concerns, have recommended refusal of the proposals.

### **The balancing exercise**

86. I have concluded that the proposed developments are not in accordance with the adopted Development Plan, in particular policy ENV 28, and there is consequently no automatic presumption that planning permission should be granted for them. The proposals would mean a loss of designated countryside to development and harm to landscape character and visual amenity. They would also cause harm to the setting of heritage assets, which is an important factor weighing against the grant of planning permission, as set out in the LBCA Act.
87. However, there are other material considerations that must be set against this non-conformity with the Plan. The Framework is one such material consideration and, in paragraphs 6 to 10, it explains that the purpose of the planning system is to achieve sustainable development. These paragraphs also set out the 3 dimensions, economic, social and environmental, that contribute to such development and confirm that these roles should not be considered in isolation. The policies of the Framework are to be taken as a whole when considering what sustainable development means in practice for the planning system. The public benefits of the proposals must also be considered against the '*less than substantial harm*' to the setting of the heritage assets, as explained in paragraphs 132 and 134.
88. The appellants' economic witness put forward a detailed explanation of why she considers the GVA report to be flawed and why it underestimates the identified need for industrial sites in the Borough. This evidence was not challenged by the parties at the Inquiry, none of whom produced an expert witness on this topic, although the need to use this particular site rather than others in the vicinity, albeit outside the Borough, was questioned. The appellants' evidence puts a clear economic case for the proposals.
89. There is a strong imperative for Scarab to find a site where the company can expand and improve efficiency, and their understandable preference is to retain their existing, highly specialised staff. However, the area of land needed for this is considerably less than the total development proposed in both alternative schemes. Now that ADL has withdrawn, if the appeals were to succeed, about ½ the site in Appeal A and over ½ in Appeal of B would have full planning permission for a warehousing use with associated offices but no identified end user.

90. The total areas involved in the schemes are about 600,000 sq ft for Appeal A and 484,000 sq ft for Appeal B. The projections from Locate in Kent note that there are 3 firms looking for sites over 100,000 sq ft in the county and the appeal site could therefore potentially satisfy the whole of that need. It is not known whether other companies looking for sites of this size would have the same constraints in relation to their location as those identified by ADL and Scarab. If not, the development of the appeal site for employment/industrial use could result in an over-provision, as it was demonstrated at the Inquiry that there is still significant unoccupied industrial space elsewhere in the county.
91. The proposed loss of this green field site is clearly controversial and, although the appellants consider that the number of objectors to the development are relatively small, I nevertheless note that it is strongly opposed by all the local Parish Councils, the County Council, the CPRE, the Kent Downs AONB Executive and Natural England as well as the Borough Council.
92. Considerable environmental harm would result from the loss of this area of countryside to development through the combined impact on the landscape setting of the AONB and the heritage assets. The developments would fail to protect the setting of the AONB and therefore also conflict with the aims of Section 85 of the Countryside and Rights of Way Act 2000.
93. There would also be a risk of harm resulting from traffic impacts, ecological damage and a detrimental impact on residential amenity at Old Mill Farm which, although on their own might not be sufficient to refuse planning permission, nevertheless together add considerably to the overall weight of objections to the proposals. There would consequently be a conflict with the Framework paragraphs 17 (residential amenity, countryside), 34 (need to travel), 37 (minimising journey length), 118 (biodiversity) and 134 and 135 (heritage assets).
94. I consider that the need for developments on these scales in this location and the consequent loss of greenfield land within countryside has not been fully justified for proposals that would not accord with the adopted development plan and result in significant environmental harm. I have taken into account the economic and social benefits of the proposals in terms of the provision of jobs and employment premises as required by the Framework but, while there does appear to be a need for more employment land allocations, it has not yet been demonstrated that these will necessarily result in the allocation of land in the countryside.
95. Even if this proves to be the case I consider that it has also not been shown, for the reasons set out above, that Waterside Park would be an acceptable location for developments of this size. It was the site of choice for ADL and Scarab, but I am not persuaded that, now ADL has withdrawn, proposals of this scale are justified because of the needs of Scarab, given the harm identified above.
96. The conditions suggested by the parties and discussed at the Inquiry and the section 106 undertakings submitted by the appellants could ensure that a number of the concerns of objectors could be satisfactorily dealt with and various benefits such as an employee transport scheme and the employment of a local workforce could be secured. However, they would not be able to mitigate the harm caused by the visual and landscape impacts of the schemes identified above.

97. In conclusion, I find that the environmental harm would be greater than the identified economic advantages and the adverse impacts would significantly and demonstrably outweigh the benefits. Whilst Scheme B would be less harmful than Scheme A due to its reduced scale, there would not be enough differences between the 2 proposals to overcome the concerns outlined above or to tip the balance in favour of the smaller proposal. Therefore neither of the proposals amount to sustainable development as defined in the Framework, due to the extent that they would conflict with the environmental policies contained within it, particularly in relation to the impact on the landscape character and the setting of the heritage assets. I therefore conclude that planning permission should not be granted for either scheme.

*Katie Peerless*

**Inspector**



## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Stephen Whale Of Counsel instructed by Maidstone Borough Council

He called  
David Green BSC (Hons) MA  
Michael Goddard BA DipTP  
DMS MRTPI

### FOR THE APPELLANT:

Craig Howell Williams QC  
Isabella Tafur of Counsel, instructed by DHA Planning

They called  
Michael Alderton BA (Hons) TP MRICS Jones Lang LaSalle  
Jonathan Buckwell BA (Hons) MA MRTPI AIEEMA DHA Planning and Development Consultants  
David Cassingham Scarab Sweepers Ltd  
Jon Etchells MA BPhil CMLI Jon Etchells Consulting Ltd  
Ellie Evans BA MA (Cantab) Volterra Partners  
Laurie Handcock MA (Cantab) MSc IHBC CgMs Consulting  
Jason Lewis MSc MITL MIHT DHA Transport

### FOR THE KCC/KENT DOWNS AONB EXECUTIVE/NE RULE (6) PARTY:

Neil Cameron QC Instructed by Kent Legal Services, Kent County Council

He called  
Colin Cottage BSc (Hons) MRICS IRRV Glenny LLP  
Philip Russell-Vick Dip LA CMLI Enplan Planning and Environmental Consultants  
Martin Carpenter MRTPI Enplan Planning and Environmental Consultants

### FOR THE CPRE/JOINT PARISHES GROUP RULE (6) PARTY:

Richard Knox-Johnston

He called  
Bill Lash CEO Leeds Castle Foundation  
Cllr. Tony Harwood Maidstone Borough Councillor  
Cllr. John Cobbett Hollingbourne Parish Council  
Brian Lloyd BSC (Hons) MRTPI CPRE  
Graham Smith Maidstone Ramblers  
Robert Sinclair CPRE  
Gareth Thomas MA (Hons) IME CPRE  
Graham Warren BSc MSC/DIC FGS MICE MCIWEM CWEM CPRE

Helen Whately MP	Member of Parliament for Faversham and Mid-Kent
Robert Sinclair FRICS FCA	CPRE

**INTERESTED PERSONS:**

David Jarman	Hobbs Parker Property Consultants Ltd for Roxhill Developments Ltd.
Dr. Felicity Simpson	Local resident
Cllr. Val Springett	Borough Councillor, Bearsted Ward

**DOCUMENTS**

- 1 Notes of Mr Howell Williams' opening statement
- 2 Notes of Mr Cameron's opening statement
- 3 Notes of Mr Knox-Johnston's opening statement
- 4 Notification of Inquiry
- 5 Comments on Statement of Common Ground by KCC/KDAONB/NE
- 6 Email trail between Matthew Blythin and Mr Russel-Vick
- 7 Extract from GLVIA 3
- 8 Extract from Government Planning Practice Guidance
- 9 Letter to Historic England from Maidstone Borough Council
- 10 Notes of Dr Felicity Simpson
- 11 Traffic Management Plan from event at Leeds Castle
- 12 Extract from Sustainability Appraisal 2014 of Maidstone Local Plan
- 13 Extract from GLVIA 3
- 14 Notes of Cllr. Springett's statement
- 15 Letter from Dr. Brian White
- 16 Footpath survey
- 17 Notes of Ms Whately's statement
- 18 Report of congestion on M20 due to Leeds Castle event
- 19 Details of available industrial site at Swanley
- 20 Letter from KCC to MBC dates 20 January 2015
- 21 Letter from Bearsted Parish Council dated 18 May 2015
- 22 Appeal decision 2206866
- 23 Schedule of saved policies from the Maidstone Local Plan 2000
- 24 List of suggested conditions
- 25 Appeal decision 2219076
- 26 Letter dated 14 May 2015 from Ian Thompson
- 27 Notes of Mr Jarman's statement
- 28 Draft Unilateral Undertaking
- 29 Historic Environment Good Practice Advice Notes 2 & 3
- 30 Emails between Mr Russell-Vick and Mr Etchells
- 31 Emails between Mr Etchells and Mr Green
- 32 Emails between Gallagher Ltd and Locate in Kent
- 33 Note from Ms Evans on GVA figures
- 34 Notes of closing submissions for CPRE/Joint Parishes Group
- 35 Notes of closing submissions for KCC/KDAONB/NE
- 36 Notes of closing submissions for MBC
- 37 Notes of closing submissions for the appellants
- 38 Legal authority *Stroud DC v SSCLG & Gladman Developments [2015] EWHC 488 (Admin)*

- 39 Legal authority *Mark Wenman v SSCLG & Waverley BC [2015] EWHC 925 (Admin)*
- 40a Signed Unilateral Undertakings
- 40b

## **PLANS**

- A Leeds Castle Estate
- B Highways issues
- C Plan showing drive times from Marden
- D Plan showing location of Leeds Castle pedestrian 'no entry' sign
- E Agricultural land classification study
- F Cornish Architects' plan 6 - Site Constraints

## **PHOTOGRAPHS**

- 1 Shepherd's viewpoint North Down AONB
- 2 Enlarged views of View Point 50