

Inquiry Day 6

Firstly a correction to the name of the Appellants' Junior Counsel. Following her failure to introduce herself to the Inquiry, we erroneously noted her name as Miss Stafford. It is, in fact, Miss Isabella Tafur.

An improved microphone system had been installed for some of the main players but sadly not for the witnesses.

Richard Knox-Johnston, leading the case for CPRE and the JPG, introduced Gary Thomas, formerly Chairman, CPRE Kent 2003-08, currently Chair CPRE Transport Specialist Group and also of the Maidstone branch. Gary described his extensive professional background in engineering at the highest level, also his earlier experience as a Maidstone Borough Councillor and as chairman of Boxley Parish Council during the time of the route planning and building of the CTRL.

His evidence about the impact of the proposal on transport was divided into three phases: removal of sand, construction and operational. Mr Thomas expressed astonishment at the sheer volume of paperwork produced by the Appellants to provide minimal information about traffic impact. He began by querying the small number of boreholes used to investigate soil contents, 18 over a 17 hectare site. He went on to describe briefly Gallagher's method of quarrying, in particular the company's efficient system for sorting sand products. He did, however, feel that the transportation section of the Appellants' case was inadequate, questioning the destination of all the sand to be removed. Lorries may well depart by the M20 but where would they end up? **He had uncovered a discrepancy in the calculation of materials left over from the quarrying and removal process, figures which had then been used elsewhere in paperwork. On questioning DHA, the response was that they (DHA) had forgotten to include figures representing the amount of topsoil requiring removal.**

With the weight restriction in place through Leeds village, Mr Thomas pointed out that for southbound lorries 20 ton lorries could not be used so 10 ton lorries would therefore double the number of lorry movements in that direction. Calculation of lorry movements could never be a precise art as companies would not necessarily order sand in 10 or 20 ton lots SO approximately 100,000 lorry movements were likely to be made ie. 50,000 out and 50,000 returning.

He also questioned the timescale up to occupation of the site ie. a shorter timescale would result in more frequent lorry movements and vice versa. Such large scale movements in the local area would be exacerbated by Maidstone Borough Council's apparent need for house building, also requiring large numbers of lorry movements. Mr Thomas mentioned the large hole in the middle of the road through Leeds, resulting in closure of the road for five months, and also the hole on the M2, this problem being a feature of Kent.

With ADL's withdrawal, this left the remainder (and by far the larger part) of the site completely speculative, which could attract up to 800-900 workers, most of whom for practical reasons would arrive by car. Major adverse effects on the local road system were likely, with just a few workers perhaps using the bus service.

Miss Tafur began her cross examination with the issue of sand quality, suggesting that laboratory grading tests from the boreholes showed that sand from this site was not of sufficient high quality for housebuilding projects. Mr Thomas responded that sand would have to be imported from somewhere for housebuilding, confirming his earlier point about lorry movements. A discussion ensued about the heavier weight of sand when wet than dry, resulting in even greater numbers of lorry movements. Mr Thomas also said using a

figure of 50 weeks p.a. to remove all the required materials off site took no account of Christmas and summer holidays, never mind hold ups during very wet or snowy weather. 48 weeks p.a. was a much more realistic figure. She queried his calculations employed to arrive at his total number of lorry movements, demanding that he do the basic calculations again there and then, using 5 ½ days per week instead of 5. She dismissed Mr Thomas' suggestion that the nearby Great Danes hotel and Leeds Castle might object to any such working at weekends, insisted that his figures still resulted in completion of the sand removal process in the Appellants' original 2-3 year timeframe.

In re-examination, Mr Knox-Johnston invited Mr Thomas to clarify one or two issues about materials to be removed from the site. Mr Thomas explained that as a layer of clay clearly existed amongst the sand, extremely careful scraping away of the topsoil would be needed if it were to be sold on and, as messy sand existed in the layer below he still felt that, in his view, the inadequate number of boreholes meant it was impossible to accurately calculate the amount of useful material available. He reiterated the point about it being impossible to make completely accurate calculations of lorry movements as nothing had yet been agreed in terms of numbers of days per week to be worked in sand extraction due to the Great Danes Hotel perhaps objecting to a half day being included at weekends.

Mr Knox-Johnston introduced the next witness, Robert Sinclair, FRICS, FCA, highly qualified and with over 40 years' experience.

It was his opinion that the loss of countryside would not outweigh the benefits of the proposed development even given the possible creation of additional jobs. He said that a change of tenant and method of working could easily result in a far larger number of workers on site. He based his figures, using his experience, on the differences uses proposed. For example office use would be more intensely occupied than say for example a warehouse use where the density might be 1 person for every 1,000 sq ft. He had arrived at a figure of about 1,684 members of staff ie. double the Appellants' numbers, leading to an insufficiency of car parking spaces. He cited the recent example of the KIMS development at J7 which had had to return to the planners requesting additional parking space, difficult for planners to resist once the buildings were all in place.

Would this succeed as a speculative scheme? Mr Knox-Johnston asked Mr Sinclair what his professional advice to ADL and Scarab would be. Mr Sinclair explained that he understood Scarab's needs and that he would consider the following:-

- 1 Timing** – it was very unusual for a company to wait such a long time; ADL had already withdrawn and he doubted that any building would be ready for occupation by Scarab until after 2020 - 2021.
- 2 Staff** – for some reason the Appellants, in their search for alternative sites, always appeared to return to sites within the borough of Maidstone, whereas consideration of a 30-40 minute drive from Marden could take one, for example, as far west as Swanley.
- 3 Access** - accessibility to a motorway junction did not necessarily mean being located immediately next to it.
- 4 Costs** – clearly an important consideration for any company wishing to relocate.
- 5 Local amenities** – the current trend for attracting and retaining staff looked increasingly at providing the right amenities, and he cited a scheme at Kings Cross. Whilst the Appellants had suggested offering a canteen and crèche, no mention was made of workers wishing to leave the site at lunch time. Where would they go, how long would it take and how would this impact on traffic movements? An increase in the current infrequent bus service was always a possibility but in his experience workers would soon be seeking alternative facilities. Due to its location it was highly unlikely that cycling would be a popular option for more than a very few and, for those using the once or twice per hour train service at Bearsted and even less frequent at Hollingbourne, how would the stations be accessed? Add Operation Stack into the mix and the

area becomes virtually gridlocked anyway since J8 was usually the point where traffic leaves the M20 to fill up local roads.

6 Method of tenure – rent/buy alternatives.

7 Style of buildings – were the resulting buildings fit for purpose?

As a final point – to correct the evidence put forward by all parties that this was the only site available for Scarab, Mr Sinclair suggested that this was not the case.

There was currently a 10.5 acre site in Hermitage Lane, offering 95,000 sq. ft. could be purchased for approximately £6 million. 95 acres at Aylesford Paper Mills would shortly be available, and if they wanted to be on a motorway junction there was a stand-alone building of 164,000 sq. ft. at Swanley, at J3 M25 and J1 M20, was available now.

Mr Sinclair completed his evidence with the suggestion that perhaps this proposal was a “Trojan Horse” to enable the applicant to remove the minerals (sand). Mr Sinclair suggested that if the applicant had had to apply for mineral extraction in isolation ie. not as part of the development, it would have been refused.

Miss Tafur’s attempts at cross examining Mr Sinclair fell mainly on stony ground as he made it perfectly clear very quietly and calmly that he was on top of his business and, whilst considering published figures such as those in the Homes & Communities Agency (HCA) guidance, (although government documents by their very nature tended to be somewhat out of date) he used his considerable experience of the current market situation when advising clients and, in particular, in studying the Appellants’ case. He reiterated the fact that the case excluded the use of mezzanine floors which could be added in post planning permission resulting in a higher number of workers. Miss Tafur tried to point out that the use of shift patterns in these types of businesses meant that there would only ever be half the number of workers’ cars on site at any one time. The issue of trip rates was discussed and Mr Sinclair pointed out that one could not assume the site would always be used in two discrete shifts. Miss Tafur responded that car parking spaces could be used by more than one car per day. Mr Sinclair agreed that that might be the situation for ADL and Scarab but not necessarily for other future occupiers.

Some light relief in the form of an impassioned plea on behalf of local people to the Inspector for refusal of the Appeal arrived in the form of a statement from Cllr Val Springett.

Mr Knox-Johnston introduced Mr Graham Smith from the Ramblers Association who described the Public Right of Way starting from the hotel which, at present, has no major roads to cross. The proposed diverted route would be significantly longer, less amenable and much more dangerous. He felt that the proposed development would have a negative impact on a large number of other public rights of way, including the North Downs Way, a national trail within the Area of Outstanding Natural Beauty (AONB). Looking south at present the whole view was more or less rural. He added that the Planning Officer’s advice had been that the diversion would offer neither inconvenience nor decreased safety to walkers. Mr Smith reiterated the fact that where no road crossing was currently needed to access the footpath, it would be needed if the Appeal were to be approved.

Miss Tafur said that KCC’s PROW team, a statutory consultee, had not objected to the proposed diversion and, indeed considered the proposed diversion to be entirely appropriate to the proposed development. Mr Smith responded that he hoped the Inspector would take into account his view too.

His concerns were threefold: having to cross a main access road, loss of amenity value even if the new path was 'landscaped', and having to walk adjacent to a secure high fence containing CCTV, where now it is a green field. Miss Tafur retorted that nothing had breached from the DEFRA guidance; did Mr Smith agree. He did. Although no figures existed proving that the footpath was not well used, photographs had been taken by the Appellants showing vegetation growing over the footpath. Mr Smith explained that as the last couple of months since March were the growing season it was not surprising that nettles etc. were growing across the footpath as, indeed, they were across all other PROWs.

In re-examination, Mr Smith confirmed to Mr Knox-Johnston that photographs of overgrown paths (with nettles) did not constitute evidence of little use and that this proposal, if allowed, would be a blot on the landscape.

At this point, Mr Whale, MBC's Counsel, pointed out that statutory notification would be made to the Ramblers' Association when the application to divert the footpath was lodged for determination. He asked the Inspector to add a sentence to her report to the effect that the application would be determined after these Appeals had been heard.

Mr Knox-Johnston reintroduced Mr Robert Sinclair to go through his evidence on impact on the landscape. Mr Sinclair explained that Brogden Ridge, south of the Appeal site, was higher than shown in the Appellants' evidence. Photographs had been taken from the slope of Old Mill Road, not from the top of the ridge, and were therefore misleading. Photographs supplied the previous evening (on a disc) were clearer, showing the Biffa boxes, demonstrating how much worse the scale of the proposal's impact could be, particularly on sunny days. The proposed buildings would be no less than 11 m, above Old Mill Farm. Mr Sinclair's concerns included reflection from the sun, particularly if solar panels were installed, also roof lights. He added that MBC's Conservation Officer, Mr Parkinson's, evidence had included the importance of protecting the Brogden complex. Mr Sinclair said that a model of the proposed site would have been helpful when trying to grasp the impact on the area but none had been forthcoming. He expressed surprise at this. Views towards the site would be disastrous from Leeds Castle and he cited the example of buildings at J7 where the Next building was 13.7 m high yet the Waterside Park buildings would be 4m higher at 17.7 m. **(The height of a six storey block of flats)**. He pointed out that the country has a responsibility to future generations to ensure they don't have to suffer such eyesores. He also pointed out that the CGI image of the development fronting the A20 omitted any description of external materials. Reflection from the sun and light leakage at night (from roof lights and side window panels) were distinct possibilities, as was light pollution from security lighting and moving vehicles.

Miss Tafur began her cross examination by pointing out that height differences had been taken into account in the Environmental Statement. In terms of lighting, cladding would be used to reduce reflection. She added that lights on the A20 roundabout were already visible from Brogden. Mr Sinclair responded saying that he accepted this but the proposed development would make the situation far worse. He concluded by saying that although many aspects of the case were subjective, the Inspector had visited the area on Tuesday and seen the current views for herself.

After lunch the Inspector said that she had received a request from a representative from Bearsted Parish Council to submit a statement to the Inquiry.

Mr Howell Williams, Counsel for the Appellants, introduced Mr John Etchells, who stated he had appropriate qualifications and 30 years' experience in landscape design. He began by saying that although the Appeal site was within the setting of the North Downs AONB, the landscape character was poor overall.

If allowed, the development would provide a low-medium degree of landscape change, with a few adverse effects on nearby houses, particularly in winter. Referring to his evidence he confirmed that his view of the area was completely different from that of earlier landscape witnesses. The presence of the A20/M20/HS1/traffic noise/Great Danes Hotel/Biffa site rendered the landscape NOT high quality. The North Downs Way between Thurnham Castle and Hollingbourne only offered open views to the Appeal site from a relatively short distance, and significant lengths offered no views at all. In summary the landscape area was dominated by transport infrastructure.

His lacklustre performance in cross examination really had to be heard to be believed. The phrase “attempting to defend the indefensible” comes to mind.

In cross examination by Mr Whale, Mr Etchells confirmed that there would be some roof lights and also some glazed panels to allow light in. **However automatic blinds could be fitted to prevent light spillage at night – REALLY?!** Mr Whale asked why cowls on an existing nearby oast house did not feature in Mr Etchells’ evidence. The response was that they were referenced in photographs.

A lengthy discussion ensued about Mr Etchells’ use of others’ documents to inform his research, one of which included a section on ‘proposed landscape actions’. Mr Whale asked if he could agree that these did not include industrial proposals of this sort, to which Mr Etchells agreed. Mr Whale asked a question about a document on which Mr Etchell had previously agreed he relied, and from which he had quoted extensively (and selectively), in particular the phrase “the Appeal site lies within the foreground of the AONB”. Mr Etchell’s response was “Foreground is the wrong word. It is the author’s opinion only”. Mr Whale went on to ask if he could agree that a proposed action to restore landscape character did not include development of a proposal of this kind? Mr Etchells agreed. Mr Whale then addressed a summary of actions from the document which included “Restore and improve the rural setting of the AONB”; this does not include such a development proposal? Mr Etchells agreed. Mr Whale asked Mr Etchells’ assessment of local landscape character assessment merited just one paragraph, to which the response was “Yes, I saw no need to break it down further”. Mr Whale wondered why Mr Etchells had not referred to the NPPF guidance document in his evidence. His response was that he did not deny there would be potential effects on the setting of the AONB but it was a question of assessing the degree of effect: it would be insignificant. Mr Whale asked about the implications for policies. Mr Etchells said the proposal offered no beneficial or neutral landscape or visual effects. Mr Whale said therefore this conflicted with ENV28.

Mr Cameron, KCC’s Counsel, subjected Mr Etchells to even more detailed cross examination for well over an hour. He concluded that Mr Etchells’ approach and methodology used in his assessment had not given the Inspector a view as to whether or not the effects of the proposal would be significant, whereas an earlier witness, Mr Russell Vick, had.

Mr Cameron suggested that as the AONB Management Plan had been agreed relevant then views from the AONB were relevant. Mr Etchells insisted that current views were not totally unspoilt and the setting of the AONB must decrease in strength with distance. Mr Cameron asked if there would be an adverse effect on the setting including views to and from the scarp. Mr Etchells’ response: “yes, but it depends on distance”. Would the effect be harmful? Mr Etchells agreed it would.

A lengthy discussion ensued about application of his methodology, including high sensitivity receptors such as users of the North Downs Way and visitors to Leeds Castle.

An even longer discussion developed about the meaning of “discernible”, “readily discernible”, “more readily discernible” and even “degree of discernibility”, also the effects of a view being “negligible”, “moderate” or “adverse”.

Mr Cameron wound up by asking “If you harm something, you neither protect nor enhance it. Do you agree?” Mr Etchells continued his line of agreement but only with qualifications: “Yes, but again it’s a question of degree”.

Mr Knox-Johnston’s cross-examination was confined to the Appellants’ photomontages and the difference in heights of buildings.

Eventually Mr Knox-Johnston said “There is a difference in opinion – we will have to leave it to the Inspector”. Mr Etchells confirmed there would be no perimeter security lighting. Mr Knox-Johnston initiated a point about possible resurfacing of the M20 and the introduction of Javelin trains resulting in a quieter landscape, the point being that introducing a new noisy neighbour might blend in with current noise levels but that the latter might well reduce in the future. Mr Etchells did not appear to be aware of either of these potential developments. There followed a discussion about one of the CGI images as to whether the building and/or the landscaping hid the Biffa boxes. Again Mr Knox-Johnston repeated the point that the model of the development should have been produce for the Inquiry.

The Inquiry closed at 5.40 p.m. with the Inspector advising it would re-open at 10 a.m. on Monday 18th May, although the room would have to be vacated by 4 p.m. latest for another activity.