

## Inquiry Day 9

**Mr Howell Williams, Counsel for the Appellants, continued to lead Mr Jonathan Buckwell through his evidence**, much of which appeared to refute evidence given earlier by witnesses on the opposing side. Mr Howell Williams started with questions about surveys undertaken of the Appeal site in terms of agricultural quality, also the issue of prematurity. Mr Buckwell said it was clear that the test set in the National Planning Guidance re prematurity just wasn't met in this case. Scarab had a clear need, and really shouldn't have to wait for adoption of the Local Plan. He said that Mrs Evans' evidence yesterday had gone unchallenged by both KCC and CPRE.

**Turning to the issue of drainage and Mr Warren's evidence**, he said it was perfectly standard for the Environment Agency to suggest conditions and safeguards. Further, if they had been in any doubt they would have put in place a holding objection. All aspects of hydrology were set out in the Environmental Statement (ES) and effects on groundwater would be insignificant.

**The number of boreholes had been queried:** Mr Buckwell said he had submitted earlier today some email correspondence between DHA and Mr Thompson (who had written that part of the ES), in which the latter said it was his view that the proposed number of boreholes would be sufficient to determine sand quality across the whole Appeal site.

**On the subject of minerals**, Mr Buckwell said he couldn't see any conflict with requirements laid out in the NPPF.

**Hermitage Quarry was viewed as a possible destination for sand**, however the exact destination/s would not be known until much nearer the time. There could, for example, be places where land needed to be raised above its current level, perhaps a flood plain such as Swanscombe Marshes or West Hythe, both of which had such a requirement at present. It would clearly be sensible to send lorries to final destinations if at all possible rather than carry out double lifts.

**Two tree reports were included.** These showed that oak trees in the corner by the A20 roundabout would be retained, whilst others would be removed to make way for the access road. These were either dead or dying elms and several small oaks.

**Mr Howell Williams asked him how helpful references to the KIG decision might be to the Inspector** in forming her judgement. Mr Buckwell said they were not helpful since this proposal was of a different nature, in a different location and on a different scale. KIG would have been seven times the size, had nothing to do with supplying local economic need, and people travelling by train and road along the 2.5 km stretch would have lost any sense of being in the countryside due to the size of buildings, noise, cranes, shunting trains and lights. The Inspector's report was produced in the spring of 2010 and accepted by the SofS in August 2010, predating publication of the NPPF.

**Mr Howell Williams asked if a balance could be struck in this case**, to which Mr Buckwell replied that permission should be granted in accordance with para 14 of the NPPF.

**He went on to say it was clear that relevant local plan policies were out of date** and that harms did not demonstrably outweigh the clear benefits of the proposal.

**Mr Howell Williams asked if he had taken into account the sustainability proposals.** Yes. Have you taken into account approval in accordance with the law and policy regarding the setting of the AONB?

Yes. Have you taken into account heritage assets? Yes. Would your decision be any different if you hadn't applied para 14 (ie. presumption in favour of sustainable development)? No.

**Mr Whale commenced his cross examination by asking Mr Buckwell to clarify his role in the Appeal.**

Yes, he did rely on analysis and conclusions of other witnesses re landscape and visual matters. As a planner it was his job to draw a variety of threads together and to draw the Inspector's attention to policy and legal aspects.

**So, regarding the AONB:** you did not mention any part of the Countryside & Rights of Way Act (CROW) Report, or indeed, National Planning Guidance. Mr Buckwell replied the latter document was mentioned in general. Mr Whale asked where. This was discovered to be just one sentence-worth. Following this Mr Buckwell agreed there were no fewer than 37 paragraphs on the emerging local plan and its evidence base. Mr Whale continued with this theme suggesting Mr Buckwell had set out at length the evolution of MBC's cabinet's thinking, including discussions from MBC's Overview & Scrutiny Committee held in October 2014, all of which went towards preparation of MBC's emerging plan. Yet you agree it carries very little weight. Mr Buckwell replied, "In its current format, yes". In the meantime both you and my client agree it is not relevant. Mr Buckwell replied, "Yes, but the evidence base is highly relevant". Mr Whale then suggested there were no emerging local plan policies on which he relied. Mr Buckwell replied "no." Mr Whale asked if he agreed that a conflict with one development plan policy didn't necessarily mean the application was in conflict with the whole plan policy. Mr Whale tried to draw Mr Buckwell into a discussion by asking if he understood the distinction between conflict with a policy and the degree of weight to be given to that conflict ie. the distinction between not being in accordance with a development plan and the weight accorded to that.

**Mr Whale added that the Inspector had to reach a conclusion as to whether or not the Appellants' scheme was in accordance with the development plan. "You do not answer this anywhere in your written or oral evidence. You are very clear, though, about how you apply para 14 of the NPPF. I commend you for being very clear."**

**Mr Whale then asked Mr Buckwell to consider some of the bullet points he relied upon in his evidence.** Since the NPPF was a material consideration it was necessary to establish whether policy ENV 28 was out of date. "Is it because it is inconsistent with the NPPF?" Mr Buckwell admitted that there were some inconsistencies, adding that ENV 28 was a policy which protected the countryside (defined as any area not urban or allocated for some kind of development). Boundaries to which the policy applied were based on a policy which was completely out of date. Mr Whale queried considering a policy out of date just because it was adopted in 2000. Mr Buckwell said it did not meet current needs. Did the mere date of adoption of a policy or plan render ENV 28 out of date? Mr Buckwell said in theory, no, but things change.

**Mr Whale asked where in his evidence Mr Buckwell said ENV 28 was inconsistent with policy framework.** After a moment Mr Whale suggested that he would be struggling to find it as it was not there. Mr Howell Williams interrupted saying "That's not fair". Mr Buckwell suggested a paragraph in the document which suggested inconsistency. Mr Whale tried to explore reasons given for the policy

being out of date and divided the issues into two: ENV 28 and economic policies, but Mr Buckwell said they were linked, using MBC's current approach to housing locations as an example. Mr Whale asked him whether decisions made by MBC or an Inspector in a non-housing situation where employment policies were out of date, meant that ENV 28 was out of date? Mr Buckwell said it did not. Mr Whale continued by asking if economic policies would be relevant in a housing case. Mr Buckwell responded, "No." Mr Whale suggested that "nowhere in the NPPF was there a policy saying that if insufficient land was allocated for employment, then ENV 28 was out of date?" Mr Buckwell responded, "No." Mr Buckwell said it was clear that employment policies were out of date and that there was nothing in the local plan to help businesses develop.

**There followed a discussion about whether land had to be designated to have value as countryside.** Mr Buckwell said land had to be something intrinsically special for it to be a valued landscape. At this point Mr Buckwell began to struggle to find reasons why the site should be developed, following reiteration of the following five points conceded earlier:

- 1 setting of AONB
- 2 Setting of heritage features
- 3 footpath across site
- 4 open countryside
- 5 landscape cherished by local people

His reason for not accepting the fifth was that that local people did not flock to the Appeal site.

**Completely missing the point that the site is part of a large swathe of countryside!  
The area's character would be changed completely if it became a honeypot site.**

**Mr Whale asked if it were not the case that the cumulative effect** was what was important here. He pressed Mr Buckwell again: "Is this a valued landscape – Yes or No?" "No."

**Mr Whale asked if the proposal would neither protect nor enhance the landscape?** No. "If it comes to the Inspector making a simple benefits/harm judgement, you haven't included this in your evidence, have you?" "In oral, yes."

**Mr Buckwell added that his personal view was there was a strong general needs' case for this proposal.** Mr Whale asked if he would agree to a first occupation clause being added into an S106. Mr Buckwell responded that the Appellants would be happy to offer this. Mr Whale asked if this was a reasonable suggestion. Mr Buckwell responded: Not unreasonable given Scarab's stated commitment to Waterside Park. However, it was not necessary due to the significant general need case.

**Mr Cameron started his cross examination** with questions about Sittingbourne being a potential fall-back site.

**He continued by addressing the issue of Regulation 18** – Emerging Development Plan. Mr Buckwell said that SP5 did not appear to be fully compliant with the NPPF since it referred to developments being **within the setting of** an AONB, but the NPPF referred only to development actually **within** the AONB.

**Mr Cameron illustrated by reference to the Stroud Judgement that views out from an AONB should also be considered.** It could therefore be appropriate to have a policy to protect the setting of an

AONB. Mr Buckwell said it would be necessary to look back to the exact working of the Stroud Judgement.

**Mr Cameron then looked at ENV30** – design principles in the countryside. Mr Buckwell confirmed he did not take issue with the item 1 mentioned which referred to conserving and enhancing the Kent Downs AONB ..... and its setting.

**Mr Cameron referred to the Kent Downs AONB Management Plan.** Mr Buckwell agreed that this document was material in his evidence. Mr Cameron asked if material considerations should be taken into account when making a judgement about balance (*of harm/benefit*). Mr Buckwell said yes, he had taken account of this document but he didn't attach significant weight to it. He agreed that views out from the scarp were important but he relied on Mr Etchells to deal with this aspect. Mr Cameron asked if he had given consider of weight in his analysis to the views to and from the scarp. Mr Buckwell replied that he had but that the document did not carry anything like the amount of weight as a planning policy did.

The afternoon session of the inquiry saw Mr Knox-Johnston complete his cross-examination of Jonathan Buckwell Director (Planning) DHA Planning.

It was as if the two were speaking different languages as Mr Buckwell made it clear – often very pointedly so – that he had no time for the arguments Mr Knox-Johnston was putting forward. Mr Buckwell made it clear that he did not regard Waterside Park as a remote or isolated site – he once referred to it as within walking distance of the urban edge of Maidstone – i.e. Bearsted.

They fenced with one another over whether the site was designed for Scarab and ADL or was for general use and necessary to meet the future employment needs of Maidstone. But the exchanges became more interesting when they turned to the availability of identifying alternative sites. Mr Buckwell, in the dismissive way he developed for answering Mr Knox-Johnston's questions, stated that no one had been able to identify suitable sites **within the administrative boundary of Maidstone.**

But what about outside the MBC boundary; and, in particular, what about the Aylesford Newsprint site? Was this not a brown field site and should this not be developed before encroaching on green land?

Mr Buckwell accepted that it was brownfield land, but, he retorted, it was not available and therefore not relevant. He did not see that this line of questioning assisted the inquiry. Mr Knox-Johnston then drew attention to a quote in an article in the KM by Mr Buckwell's boss, David Hickin, who described the Aylesford site as an "amazing regeneration opportunity". Mr Buckwell asked to see the entire article which was then passed to him on a laptop. Having read it he said that DH was talking in general terms. The site was not on the market, no one knew what the owners wanted to do with it, or what plans Tonbridge and Malling might have for it.

This led to an exchange about the need for co-operation between authorities as the NPPF promoted and whether an authority might choose to see employment land for its residents provided outside its area. This Mr Buckwell thought highly unlikely since no authority would want to do that because it would mean giving up valuable business rates.

Unfortunately Mr Knox Johnston chose not to explore Maidstone's peculiar situation where its urban area and economic market extends well to the west of its administrative boundary which was an entirely artificial construct which made nonsense of strategic planning solutions to its problems. These exchanges only served to highlight how the current planning system causes planning authorities to

focus on their own narrow areas and interests and the damage that the absence of a strategic approach to planning brings with it.

Mr Howell Williams then used his re-examination of Mr Buckwell to try and further discredit MBC's standing as a planning authority.

HW: What weight should be given to the local plan?

JB: Little; it is out of date.

HW: And the saved policies such as ENV28?

JB: Again, little, they are out of date. ENV28 is not consistent with the NPPF.

HW: Is it reasonable to argue that KIG has delayed the process of preparing a new plan?

JB: No longer. KIG was five years ago.

HW: What about other planning applications MBC has had to deal with?

JB: Planning applications are a fact of life. MBC has to organise itself to deal with them and deliver a new plan.

HW: Is it reasonable to argue that sites are beyond the settlement boundaries of Maidstone?

JB: No. As there is no recent plan it is not possible to say where those settlement boundaries will be.

HW: Specifically, has there been any exercise to settle what is the setting of the AONB?

JB: No, this is still far from settled because the plan is at an early stage.

And so on and so on.....

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The inquiry then turned to the conditions that might be applied to the site if planning permission were granted. This was not easy to follow since copies of the document under discussion were not available to the public and because a new version of the conditions, different in a number of respects to the original submitted to MBC and others, had been tabled by the appellants.

The discussion focussed on fairly detailed, narrow and sometimes esoteric conditions relating to the infiltration of surface water and the resettlement of reptiles and badgers.

One point that did lighten the atmosphere arose from the wording of a condition about the provision of café and crèche facilities on the site for the use of workers. MBC was determined to ensure that these facilities could not be made available to the wider public. Both sides then realised that the inclusion of the phrase use of the site for..... could be interpreted as accepting that the entire site could be developed as a café and child care facility. All agreed to ensure that any permission granted could not be interpreted in that way!

The final act of the day was to agree the arrangements for the Inspector's visit to the Scarab site on the morning of 21 May. She plans to return to County Hall to hear closing arguments on Thursday afternoon – the last day of the inquiry.