

CASE MANAGEMENT CONFERENCE ('CMC') NOTE

Tom Bristow, BA MSc MRTPI AssocRICS

Appeal ref: APP/U2235/W/24/3346817

Land east of Albion Road and north of Copper Lane, Marden TN12 9EG

An appeal made by B. Yond Homes Ltd.¹ against the decision of Maidstone Borough Council in respect of application ref. 23/504068/OUT.

CMC online at 10:00, Friday 20 September 2024

Introduction

1. The CMC is to plan for the efficient management of the appeal. There will be no discussion of the merits of the scheme. I will issue a summary of the discussion and points arising subsequently.

Participation in the appeal

2. I will ask the appellant and Council to provide details of their advocates and witnesses at the CMC (if known). I will use that information from the main parties, and the discussion more broadly, to form a draft programme for the inquiry. That programme will inevitably change over time.
3. There will be the opportunity for interested parties to speak at the inquiry and to ask questions of witnesses. My intention is to schedule the principal opportunity for interested parties to speak after main party opening statements. Anyone is welcome to attend and observe.

Preliminary Matters

4. At the CMC I will seek clarification in respect of the following:
 - i. progress towards establishing a core document library for the inquiry,
 - ii. that my decision APP/W3330/W/22/3304839 is added to the core document library, as is an appeal decision referenced in the Council's officer report in respect of Northdown Business Park, and
 - iii. whether there are any updates in terms of the evidence likely to be put forward before the inquiry opens.²
5. Based on my review of the evidence before me there are a number of matters on which I will seek clarification at the inquiry (if they are not naturally covered in proofs or otherwise):
 - i. whether all necessary notifications of the inquiry have been served,
 - ii. whether the boundaries of the appeal site, site allocation, and 2 sites assessed via the Strategic Housing Land Availability are all the same,

¹ Formerly Rydon Homes Ltd. (company no. 04773137).

² Notably in respect of pedestrian access, traffic information, biodiversity data and engagement with Kent County Council on education provision.

- iii. whether a higher resolution version of the tree plan at appendix 2 to the appellant's Arboricultural Implications Assessment can be provided,
- iv. connectivity with Russet Grove to the north,
- v. which sub-grade of agricultural land classification grade 3 the site falls within (in whole or part),
- vi. whether the representation of Maidstone Borough Council's Parks and Open Spaces team in respect of the application can be made available,³
- vii. if there are any Habitats Regulations Assessment issues at play, and
- viii. whether there are pre-existing studies hereabouts in respect of tranquillity or illumination.

Main issues

6. Based on the evidence before me, and the implications of the adoption of the Maidstone Borough Local Plan Review 2021-2038 on 20 March 2024 (in respect of which policy/ site allocation LPRSA295 is particular relevant), the main issues for the inquiry are likely to be the implications or appropriateness of the proposal in respect of:
 - i. landscape character,
 - ii. pedestrian and cycle access,
 - iii. vehicular access and the local highway network,
 - iv. ecology on and off site,
 - v. open space provision, and
 - vi. infrastructure provision.⁴
7. It would be worthwhile having a planning 'balance' session to aid me in establishing, if I ultimately find that some harm would result, how to address any benefits of the scheme. It appears there is no need for a housing specific session (as opposed to that matter being covered within an overarching planning balance session). I would very much welcome views from the parties present at the CMC in terms of the nature, ordering and format of sessions.
8. For clarity, however, my decision will likely not be structured in the foregoing way. It will also focus on the principal important matters, rather than covering the breadth and depth of discussion at the inquiry or evidence before me.
9. I will want to lead various sessions at the inquiry in respect of any clarifications related to the evidence before me drawing on the points in paragraph 5 of this note, and on conditions and obligations (without prejudice to the outcome of the appeal).
10. The inquiry will also entail consideration of third parties' views. I will want, in particular, to touch upon the following matters which do not fit neatly into the main issues set out above: neighbouring living conditions, utilities provision (notably water, sewerage, surface-water related flooding, internet), and the capacity of services and facilities at Marden (third parties having mentioned in particular healthcare, dentists and shops).

³ It does not appear that I have this currently, as opposed to a copy of their being notified of the application.

⁴ Whilst primarily focussed on education, I note that the Council's decision notice in respect of application ref. 23/504068/OUT, in respect of the seventh reason for refusal, refers to 'including primary and secondary education...' (my emphasis).

11. I would ask that all parties communicate with one another on an ongoing basis to seek to narrow the issues for discussion at the inquiry and to refine a programme (as has clearly occurred to date).

Procedure

12. The appeal is proceeding by way of inquiry, albeit that some sessions in might best be dealt with via roundtable format where I lead the questioning as opposed to cross-examination. There is provision to vary procedures, and to deal with an appeal via different procedures also.⁵ In terms of proofs of evidence, and as a guide for the inquiry itself, I do not want repetition of points already made in writing (unless to draw my attention to a particular matter, to amplify or qualify it, or to challenge a point).
13. With that in mind, I will ask for views at the CMC as to the anticipated duration of the inquiry. That will be contingent on the number of witnesses the main parties intend to call and the format of sessions. We will also need to discuss whether the inquiry should be in-person, virtual, or some combination thereof. I will rely on written evidence in respect of matters not discussed at the inquiry. I would suggest closings in writing, sequentially. We will discuss that, the foregoing, and timings at the CMC.

Timing

14. I suggest we sit each day between 09:30 and 17:00 with approximately an hour for lunch and short breaks otherwise. I will try and avoid breaking cross or re-examination if possible, and will shorten or lengthen sessions accordingly (all contingent on participants' availability and venue constraints).⁶ I will subsequently circulate an initial programme on that basis. I would like to populate the programme with estimated timings, where possible.
15. The inquiry is, as I have it, scheduled to open on 12 November 2024. I would therefore suggest that proofs should be received on or by 17 October. We will need to discuss timings in respect of any Statements of Common Ground. The annex below sets out the preferred format and content of proofs, of evidence, statements, and other material.
16. In my view rebuttal proofs are of limited utility and should only be submitted where they are absolutely unavoidable; the inquiry itself is the best means by which to test and evaluate evidence rather than additional written submissions. If rebuttal proofs are, however, felt to be absolutely unavoidable, they should be received by 31 October.

Documentation

17. All documents should be available digitally. Please can the main parties liaise to ensure there is a common numbering system for inquiry documents to aid referencing in proofs and at the inquiry. Please provide me with a link. A copy of this note should be included on the relevant webpage, as should any subsequent notes from me.

⁵ By virtue of section 20 of the Business and Planning Act 2020.

⁶ Noting that there may be some constraints in terms of the availability of the Council's landscape witness.

Conditions, obligations and costs

18. Without prejudice to the outcome of the appeal we will need to consider conditions and obligations. A draft of any legal undertaking should ideally be submitted by 31 October also. For those obligations which are agreed, there should be a statement explaining the need for the matters covered by planning obligations and how they meet the tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 as amended and paragraph 57 of the NPPF. Arrangements in terms of the execution of an agreement or undertaking will be made at the inquiry.
19. I will ask the parties at the CMC whether they intend to make an application for costs. All costs applications must be made before the inquiry is closed, but ideally in writing before the start of the inquiry.

Site visit

20. I will undertake a site visit after the inquiry taking account of any relevant points raised in the information before me or during the inquiry. I have noted where individuals have already indicated relevant features that I should take account of. I would welcome views as to the best approach to undertaking a site visit, my strong preference being to do so unaccompanied.

Any other procedural matters

21. I will happily address any other administrative matters at the CMC not set out above. With thanks in advance for your participation.

Tom Bristow

INSPECTOR
13 September 2024

Annex – recommended content and format of proofs/statements and appendices

Content

Proofs of evidence and statements should:

- focus on the main issues identified, in particular on areas of disagreement,
- be proportionate to the number and complexity of issues and matters that the witness is addressing,
- be prepared with a clear structure that identifies and addresses the main issues within the witness's field of knowledge and avoids repetition,
- focus on what is really necessary to make the case and avoid including unnecessary material, or duplicating material in core documents or another witness's evidence,
- where case law is cited in the proof, include the full court report/ transcript reference and cross refer to a copy of the report/ transcript which should be included as a core document,
- where data is referred to, include that data, and outline any relevant assessment methodology and the assumptions used to support the arguments.

Format of proofs/statements and appendices:

- All documents should be submitted digitally
- Front covers to proofs/ statements and appendices should be clearly titled, with the name and qualifications of the witness on the cover,
- Pages, paragraphs and appendices should be paginated/ numbered, and
- All appendices should be compiled separately from proofs/ statements.