

## **POST 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. against the decision of Maidstone Borough Council ('MBC') in respect of application ref. 23/504068/OUT.

### **Introduction**

1. Thank you to everyone who attended and participated in the CMC on 20 September, and for endeavouring to work constructively on various issues in the run up to the inquiry (along with ensuring any relevant exchanges of correspondence are copied to everyone necessary). This post-CMC note follows, roughly, the points set out in my pre-CMC note of 12 September. It picks up the key points from our discussion.

### **Participation**

2. Richard Turney KC and Emma Dring are the advocates for the appellant and MBC respectively.<sup>1</sup> Richard Turney KC intends to call the following witnesses:
  - i. Marc Tomes (landscape)
  - ii. Daniel Wood (ecology)
  - iii. Peter Rainier (planning)
  - iv. Mark Gillingham (transport)
3. Emma Dring intends to call:
  - i. Peter Radmall (landscape)
  - ii. Helen Forster (ecology)
  - iii. Marion Geary (planning)
4. Depending on the outcome of discussions regarding highways matters, and any planning agreement(s)/ obligations, there may be further witnesses or participants.
5. Although there are no 'Rule 6' parties to the inquiry, and no interested/ third parties were present at the CMC, as agreed the opportunity for third parties to speak will be principally at the outset of the inquiry (to enable points raised to be reflected upon as the inquiry progresses). I will set out arrangements for third party participation at the inquiry itself.

### **Preliminary matters**

6. The appellant and MBC are continuing to discuss the production of a core document library, which will ensure all relevant documents are present and

---

<sup>1</sup> For brevity I refer to the appellant and MBC, the 'main parties', subsequently in this note (recognising that neither of the advocates are those organisations).

referenced. Provided that is publicly accessible in advance of the inquiry, ideally before the submission of proofs, I have no preference as to whether it is hosted by the appellant or by MBC. Please could I be provided with a link to it in time. With thanks in advance for uploading my decision ref. APP/W3330/W/22/3304839 to it, which references case law of potential relevance.<sup>2</sup> This note, and my pre-CMC note, should also be uploaded to that library.

7. With thanks to both MBC and the appellant for looking to refine the areas of dispute between them in the run up to the inquiry. I note that the appellant is running consultation on amendments to the scheme between 17 September and 8 October related, in summary, to matters of access.<sup>3</sup> I also note that there are ongoing discussions between the appellant and Kent County Council ('KCC') in that respect, and in respect of potential planning obligations. As discussed at the CMC, any responses to the appellant's consultation directed to the Inspectorate will be circulated on or before 9 October. I will keep under review whether it may be worthwhile inviting someone from KCC to attend the inquiry given the focus in many interested parties' representations on access and highways. We discussed briefly the principles in *Wheatcroft* and *Holborn Studios* in respect of any amendments to the scheme.<sup>4</sup>
8. Again thank you to the main parties for noting, and addressing in due course, the points on my mind set out at paragraph 5 of my pre-CMC note. We discussed how the tree plan at appendix 2 to the appellant's Arboricultural Implications Assessment should be provided raw or at higher resolution. I note the appellant's intention to provide an overlay of the original proposal and amended proposal in respect of access. That would also be useful of the tree plan also, if any differential effect is proposed relative to the original scheme.

## **Main issues**

9. There was broad agreement that the main issues set out under paragraph 6 of my pre-CMC note were appropriate working titles for the inquiry. Provisionally, and the basis upon which the associated draft programme (v.1) for the inquiry is set out, the following process was agreed upon for each issue:
  - i. Landscape character: cross examination,
  - ii. Pedestrian and cycle access: roundtable,<sup>5</sup>
  - iii. Vehicular access and the local highway network: roundtable,<sup>6</sup>
  - iv. Ecology on and off site: roundtable,
  - v. Open space provision: roundtable, (as part of section 106/ obligations session)
  - vi. Infrastructure provision: roundtable, (as part of section 106/ obligations session).

---

<sup>2</sup> Having noted at the CMC the points made in paragraphs 5.14 and 5.21 of MBC's statement of case in that respect.

<sup>3</sup> <https://beyondhomes.co.uk/consultations>

<sup>4</sup> *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37] and *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin).

<sup>5</sup> Noting the content of this session will be contingent on responses to the appellant's consultation referenced above and the position of KCC, who I may invite to attend the inquiry in due course.

<sup>6</sup> *Ibid.*

10. The main parties were agreed at the CMC that a 'planning balance' session would best proceed via cross examination (and that there is presently no need for a housing specific session separate to that). The foregoing reflects that there is some fluidity as to what will be the substance of matters in dispute at the inquiry, and therefore the format for certain sessions may change over time to best fit the circumstances.

## **Procedure**

11. For the purposes of clarification, principally for interested parties, during roundtable sessions I will lead the discussion and questioning. In respect of cross-examination, the relevant advocate will call a witness who will be cross examined by the opposing advocate (before re-examination by the advocate who has called them). I may have some questions for witnesses as part of that process, and indicated at the CMC the form those may take (typically clarifications, references to sources of evidence, or devil's advocate questions). In the eventuality that third parties are present and wish to ask questions of a witness, that should be done following cross-examination.
12. Thank you to the main parties for noting the points raised in third party representations that I will want to touch upon at the inquiry if they are not covered in the course of sessions. Where no one is present to speak on a particular matter, and I have no questions myself to ask, I will be guided by the evidence I have in writing. With reference to the provisions of section 20 of the Business and Planning Act 2020, I may ask for responses in writing to certain questions, for example in the eventuality areas of dispute become very narrow in the run up to the inquiry.

## **The inquiry itself**

13. The inquiry will open at 10:00 on Tuesday 12 November at the Town Hall, Maidstone (ME14 1TF). It will be an in person event. Whilst there will be some fallback potential for going digital, I understand that the inquiry will not be broadcast or recorded, nor will there be provision for participants to join online. If that poses a difficulty for anyone, for example in respect of accessibility, please contact MBC (who I would in turn ask inform me of that).
14. With thanks to MBC for securing the venue for 6 days, namely 12 to 15, 19 and 20 November. I understand public WiFi will be available. I have no need of any physical documents. It may be prudent to have hardcopies of documents available during the inquiry, a matter which I will leave principally to the appellant to decide upon. As in the pre-CMC note we will start each day around 10:00 and aim to conclude around 17:00 with some time for lunch and breaks (arranged so as to, as far as practical, avoid breaking sessions or cross examination).

## **Timing**

15. At the CMC we agreed that any proofs of evidence should be submitted on or before 24 October. Any rebuttal proofs, if absolutely unavoidable, should be submitted on or before 5 November. I would welcome a statement of common ground, or statements of common ground on specific matters, before the inquiry opens. Those may of course be refined during the course of the inquiry itself. Closings will be in writing following in-person sessions, as will the submission of any planning agreement(s). The inquiry will need to

accommodate the potential for the appellant to apply for costs. As discussed at the CMC ideally, whilst not inviting any, I would very much encourage the submission of any costs applications in writing.

### **Site visit**

16. We will return to site visit arrangements at the inquiry, though both the appellant and MBC were provisionally content with my undertaking an unaccompanied site visit following the adjournment of in-person sessions (with the necessary authorisation from landowners to enter their land).

### **Any other procedural matters**

17. Please keep me informed as to discussions or exchanges in respect of evidence and the main parties' positions in the run up to the inquiry, along with any correspondence refining the associated programme. It would be helpful for the advocates to provide estimates of timings on the programme, although in my experience they are only ever indicative.
18. If there are any points which are incorrect above, if there are any difficulties encountered in meeting the foregoing dates for whatever reason, please let me know. I will happily address any other administrative matters. With thanks.

*Tom Bristow*

INSPECTOR

23 September 2024