

5 August 2010

Ms M Thomson  
Marrons  
1 Meridian South  
Meridian Business Park  
Leicester  
LE19 1WJ

Our Ref: APP/U2235/A/09/2096565

Your Ref: 07/2092

Dear Ms Thomson,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78**

**APEAL BY KENT INTERNATIONAL GATEWAY LTD:**

**LAND TO THE NORTH AND SOUTH OF THE ASHFORD TO MAIDSTONE EAST RAILWAY LINE, LYING TO THE SOUTH OF THE M20, TO THE WEST OF M20 JUNCTION 8 AND TO THE EAST OF THURNHAM LANE, MAIDSTONE**

**APPLICATION: REF 07/2092**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Andrew M Phillipson BSc CEng FICE MCIHT, who held a public local inquiry on dates between 13 October and 23 December 2009 into your client's appeal against a decision of Maidstone Borough Council to refuse planning permission for the construction of hardstanding areas to form a rail/road interchange with freight handling equipment, new railway sidings in part with acoustic enclosure, earthworks and retaining walls, buildings for Class B8 warehousing and Class B1 uses, access works, internal roads and bridges, loading and manoeuvring areas, car and lorry parking, ancillary truck stop and gatehouse security facilities, electricity sub-station, realignment of public rights of way and watercourses, drainage works and landscaping at land to the north and south of the Ashford to Maidstone east railway line, lying to the south of the M20, to the west of M20 junction 8 and to the east of Thurnham Lane, Maidstone, in accordance with application Ref 07/2092, dated 5 October 2007.
2. On 2 March 2009, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990.

### **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed and planning permission refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and with his recommendation. A copy of the Inspector's report (IR) is enclosed for the main parties. For all other parties, a copy of his conclusions only is enclosed but the full 287 page report can be obtained upon request to the address at the foot of the first page of this letter. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Bridleway and footpath Stopping Up Order**

4. The Inspector also considered whether or not a related draft Order should be confirmed, under Section 247 of the Town and Country Planning Act 1990, authorising the stopping-up of the whole of bridleway KM81 and lengths of bridleway KM82 and KH123A, and the diversion of a length of footpath KH131 on land to the west of Junction 8 of the M20 motorway, at Bearsted in the Borough of Maidstone (IR1.10). A separate decision letter (enclosed) on whether the order should be made has been issued by the Secretary of State for the Environment, Food and Rural Affairs, as this matter lies within her jurisdiction.

### **Procedural Matters**

5. Since the original application for planning permission was submitted, the proposal was amended as set out in IR1.8 – 1.9. The Secretary of State considers that no prejudice has been caused to any party by this course of action and has determined the appeal on the basis of the amended proposal.
6. In reaching his decision, the Secretary of State has taken into account the Environmental Statement (ES) and Supplementary Environmental Statement (SES) which were submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. The Secretary of State agrees with the Inspector's reasoning and conclusions with respect to the adequacy of these documents (IR18.173 – 18.182) and he is satisfied that the ES and SES comply with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the application.

### **Matters arising after the close of the Inquiry**

7. Following the close of the Inquiry, the Secretary of State received the written representations listed at Annex A of this letter. He has taken account of these representations in his determination of this appeal but, as they did not raise any new matters not considered at the Inquiry, he has not considered it necessary to circulate them to all parties. Copies of representations can be made available upon written request.
8. On 6 July 2010 the Secretary of State revoked all Regional Strategies including the South East Plan (SEP) referred to at IR5.3 – 5.9. The SEP therefore no longer forms part of the development plan and the Secretary of State has taken

this into account in determining the appeal. In view of the general policy support for the provision of SRFIs in other policy documents, he does not consider that revocation raises any matters that would affect his decision or require him to refer back to parties for further representations prior to reaching his decision.

### **Policy Considerations**

9. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case, the development plan now comprises saved policies of the Maidstone Borough Wide Local Plan (LP), adopted December 2000. The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR5.10 – 5.14.
11. The Secretary of State has had regard to the Preferred Options document for the Maidstone Core Strategy, published in January 2007 (IR5.15). However, given its status as a draft document he has afforded its policies little weight.
12. Other material considerations which the Secretary of State has taken into account include Planning Policy Statement (PPS) 1: *Delivering Sustainable Development*; PPS: *Planning and Climate Change* (supplement to PPS1); PPS7: *Sustainable Development in Rural Areas*; PPS9: *Biodiversity & Geological Conservation*; Planning Policy Guidance (PPG) note 13: *Transport*; PPG17: *Planning for Open Space, Sport and Recreation*; PPG24: *Planning & Noise*; PPS25: *Development & Flood Risk*; Circular 11/95: *The Use of Conditions in Planning Permission*; Circular 05/05: *Planning Obligations*; and the *Community Infrastructure Levy (CIL) Regulations*, which came into force on 6 April 2010. Relevant policies in the 2008 London Plan and in the former Strategic Rail Authority's 2004 document *Strategic Rail Freight Interchange Policy* are also material.
13. Since the inquiry closed, the Government has published two other relevant policy statements, PPS4: *Planning for Sustainable Economic Growth* and PPS5: *Planning for the Historic Environment*, which replaced PPG15. The Secretary of State agrees with the Inspector's assessment of the implications of these statements for this appeal, as set out in IR5.16 – 5.20. He does not consider that there has been any material change in national policies on these matters to the extent that it would affect his decision or require him to refer back to parties for further representations prior to reaching his decision.
14. The Secretary of State has had special regard to the desirability of preserving the nearby listed buildings and their settings, or any features of special architectural or historic interest which they possesses, as required by sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. In view of the possible impact of the proposal on the Bearsted Green and Holy Cross Conservation Areas, he has also paid special attention to the desirability of preserving or enhancing the character or appearance of these areas, as required by section 72 of the same Act.

15. The Secretary of State has also taken account of the Bearsted Conservation Areas Appraisal and Management Plan. This document was adopted after the close of the Inquiry, on 22 March 2010, but the Secretary of State does not consider that it has introduced material changes to the extent that it would affect his decision or require him to refer back to parties for further representations prior to reaching his decision.

### **Main Issues**

16. The Secretary of State considers that the main issues in this case are those set out by the Inspector in document INQ7 and at IR18.1 – 18.7.

### **Prematurity**

17. For the reasons given at IR18.9 – 18.15, the Secretary of State agrees with the Inspector that there is no reason to refuse planning permission on prematurity grounds (IR18.16).

### **Employment & Travel to Work Issues**

18. Having taken account of the Inspector's reasoning and conclusions at IR18.17 – 18.19, the Secretary of State considers that the fact that the majority of jobs generated by the scheme would be lower-skilled should not tell against the proposal.

19. The Secretary of State has had regard to the Inspector's assessment regarding travel to work matters, as set out at IR18.21 – 18.27. For the reasons given he agrees that only limited weight should be given to the policy conflicts identified (IR18.28).

### **The Countryside, the Special Landscape Area and the AONB**

20. The Secretary of State agrees with the Inspector's reasoning and conclusions, as set out at IR18.29 – 18.52, regarding the impact of the proposed development on the countryside, Special Landscape Area and the AONB. He agrees that the majority of the appeal site is attractive open countryside and that, whilst the noise of the M20 / HS1 is a negative feature of the area, the site nonetheless has a strongly rural character and atmosphere (IR18.31). He further agrees that, overall, the proposal would cause substantial harm to the open countryside character and appearance of the site and would be in conflict with relevant development plan policies (IR18.34). The Secretary of State agrees with the Inspector's conclusion that the appearance and scale of the development would be alien and out of character with the countryside and the existing built-form of neighbouring settlements, and that it would cause substantial harm to the setting of the AONB (IR18.45). Given the importance and value of the open countryside which currently forms the appeal site and of the AONB which adjoins it, and given the harm the proposal would cause to them, the Secretary of State agrees that substantial weight should be given to these matters in the determination of the appeal (IR18.52).

### The Strategic Gap

21. For the reasons given by the Inspector at IR18.53 – 18.55, the Secretary of State agrees that only limited weight should be afforded in the overall planning balance to the conflict with LP policy on the Strategic Gap (IR18.55).

### On-site Footpaths and Bridleways

22. The Secretary of State agrees with the Inspector's reasoning and conclusions regarding the impact of the proposal on footpaths and bridleways (IR18.56 – 18.63). He agrees that the harm that the proposal would cause to the character and convenience of the on-site footpaths and bridleways is a matter that should also carry weight in the overall decision on the appeal (IR18.63).

### Ecology and Biodiversity

23. The Secretary of State agrees with the Inspector's reasoning and conclusions regarding ecology and biodiversity matters, as set out at IR18.89 – 18.93. He agrees that the scheme would not cause harm to most biodiversity and ecological interests and that the short-medium term harm likely to be caused to skylarks should carry only a little weight in the overall planning balance (IR18.94).

### Heritage Features & Archaeological Remains

24. The Secretary of State agrees with the Inspector's reasoning and conclusions with regard to the impact of the proposal on heritage features and archaeological remains, as set out at IR18.95 – 18.123. He agrees that the scheme would not preserve the settings of Barty Barn and Woodcut, but that the scheme's effect on the setting of these listed buildings would be only modest and accordingly should attract only limited weight (IR18.101). He agrees that the proposal would not harm the setting of Thurnham Castle (18.107).

25. For the reasons given at IR18.109 – 18.112, the Secretary of State agrees with the Inspector that the proposal would cause moderate harm to the character of the Bearsted Green Conservation Area (IR18.111) and some limited harm to the Bearsted Holy Cross Conservation Area (IR18.112). Consequently he agrees that the proposal runs counter to the desirability of preserving or enhancing the character of conservation areas, and, having regard to PPS5, he agrees that the harm should carry some weight (IR18.113).

26. The Secretary of State agrees with the Inspector that the potential for the site to contain undiscovered archaeological remains of sufficient importance as to justify preservation in-situ is not a matter that should attract significant weight (IR18.123).

## Highways

27. The Secretary of State agrees with the Inspector's reasoning and conclusions regarding the impact of the proposed development on highways (IR18.124 – 18.149). Overall, the Secretary of State concludes that there is no reason to refuse planning permission for the proposal on account of its impact on the highway network (IR18.149).

## Cumulative Impact on Bearsted

28. For the reasons given by the Inspector at IR18.183 – 18.185, the Secretary of State agrees that despite the mitigation proposed the overall impact would materially degrade the present ambience of Bearsted (IR18.186). He agrees that this is a case where the cumulative impact is greater than the 'sum of its parts' and that this is a factor that should attract corresponding weight in the decision (IR18.187).

## Policy Support, Need and Alternatives

29. Given the conflict between the proposal and the development plan, the Secretary of State agrees with the Inspector that in the absence of a strong 'need case' the overall planning balance would be very unlikely to favour a grant of planning permission (IR18.192). Like the Inspector, the Secretary of State has had regard to the former Strategic Rail Authority's (SRA) SRFI Policy. This suggests that three or four SRFIs in London and the South East would provide the required capacity (IR18.193) and indicates that suitable sites are likely to be where key rail and road radials intersect with the M25 (IR18.197). The Secretary of State agrees with the Inspector that the policy intends that sites should be well located to serve both the London and the South East markets, but that the location of the appeal site is plainly well below optimum with respect to the London market. He agrees that this reduces significantly the policy support that the proposal should otherwise be afforded by the SRA's SRFI Policy (IR18.197).

30. Notwithstanding the revocation of the SEP, the Secretary of State has had regard to the fact that the proposal is not primarily intended to serve the London market (IR18.201) but the wider UK role identified at IR18.202 – 18.203. The Secretary of State agrees with the Inspector's reasoning and conclusion at IR18.206 that there needs to be some reasonable assurance that the development would indeed function as the Appellant suggest, i.e. that it would operate as an SRFI intercepting goods from Europe, consolidating them in warehouses and moving them onward into the UK, at least in part, on trains. The Secretary of State agrees with the points that the Inspector makes at IR18.207 – 18.209 and with the Inspector's reasoning at IR18.210 - 18.227 and 18.229 regarding whether the proposal would function as an SRFI. He therefore agrees that he cannot be reasonably assured that sufficient traffic from Europe would be attracted to the site to make onward journeys by rail to other regions of the UK viable, and thus nor can he be reasonably assured that the proposed development would function as an SRFI (IR18.228).

31. The Secretary of State agrees with the Inspector's reasoning and conclusions on the 'port-centric' case at IR18.230 – 18.236 and with his conclusion that the

opportunity the site would offer for establishing port-centric warehousing should not attract any material weight in the overall planning balance (IR18.237).

32. Given the Secretary of State's agreement with the Inspector about the question of need, he also agrees that the matter of alternatives is not critical to whether the appeal should succeed (IR18.238). Nevertheless the Secretary of State agrees with the Inspector's assessment of alternatives at IR18.239 – 18.240.

#### Accordance with the Development Plan

33. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR18.242 – 18.246, in so far as they refer to remaining policies of the development plan after revocation of the SEP. He agrees that the proposal would be fundamentally at odds with policies ENV28 and ENV34 of the local plan (IR18.242) and also conflict with policy ENV26 (18.244).

#### Other Issues

34. The Secretary of State agrees with the Inspector's reasoning and conclusions with respect to a number of other matters: noise and vibration (IR18.64 – 18.68), lighting (IR18.69 – 18.71), visual impact (IR18.72 – 18.77), local and wider air quality (IR18.78 – 79 and IR18.163 – IR18.166), security, terrorism and crime (IR18.80 – 18.83 and IR18.150 – 153) construction matters (IR18.84 – 18.87), flooding and drainage (IR18.154 – 18.159), Gault clay and ground stability (IR18.160 – 18.162), tourism (IR18.167 – 18.172) and payments to landowners (IR18.188 – 18.189).

#### Conditions and S106 Obligation

35. The Secretary of State has had regard to the Inspector's assessment of the proposed conditions at IR Annex E and the policy tests in Circular 11/95. The Secretary of State is satisfied that the conditions proposed by the Inspector are reasonable and necessary, and meet the tests of Circular 11/95. He has also considered the planning obligation as executed by the appellant and made by Unilateral Undertaking under s.106 of the Town and Country Planning Act 1990. He considers that the provisions in the undertaking are relevant and necessary to the proposed development and comply with the policy tests in Circular 05/2005 and with the CIL Regulations. However, whilst both the conditions and the undertaking would assist in overcoming some of the harm that might otherwise result from the proposal, he considers that they would not overcome the reasons for dismissing the appeal (IR18.277).

#### Overall Conclusions

36. The Secretary of State agrees with the Inspector's summary at IR18.254 – 18.270 and with his conclusions on the overall planning balance at IR18.271 - 275). A number of factors weigh against the proposal, including the loss of a large area of open countryside, substantial harm to the setting of the Kent Downs AONB, serious damage to the attractiveness and amenity value of the bridleways and footpath that cross the site, failure to preserve or enhance the character of the Holy Cross and Bearsted Green Conservation Areas and the cumulative

adverse impact on Bearsted. The proposal conflicts with the development plan, being only the Maidstone Local Plan following revocation of the SEP.

37. The policy support that the proposal might otherwise enjoy from the SRA's SRFI Policy is significantly reduced on account of the site's distance from London and the M25. Whilst longstanding national policies to promote the transfer of freight from road to rail lend general support, the Secretary of State considers that he cannot be reasonably assured that, if permitted, the proposal would in fact function as an SRFI. Overall, in view of the certain harms that the proposal would cause, the Secretary of State concludes that there are no material considerations of sufficient weight to determine the appeal other than in accordance with the development plan.

### **Formal Decision**

38. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the construction of hardstanding areas to form a rail/road interchange with freight handling equipment, new railway sidings in part with acoustic enclosure, earthworks and retaining walls, buildings for Class B8 warehousing and Class B1 uses, access works, internal roads and bridges, loading and manoeuvring areas, car and lorry parking, ancillary truck stop and gatehouse security facilities, electricity sub-station, realignment of public rights of way and watercourses, drainage works and landscaping. at land to the north and south of the Ashford to Maidstone east railway line, lying to the south of the M20, to the west of M20 junction 8 and to the east of Thurnham Lane, Maidstone, in accordance with application number 07/2092 dated 5 October 2007

### **Right to Challenge the Decision**

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
40. A copy of this letter has been sent to Maidstone Borough Council and all parties who requested a copy.

Yours sincerely

**Julian Pitt**

Authorised by Secretary of State to sign in that behalf



## **ANNEX A – LIST OF POST-INQUIRY REPRESENTATIONS**

<b><u>Name</u></b>	<b><u>Date of representation</u></b>
Stephen Hammond MP	11 December 2009
J Cleaver	22 February 2010
Year 4 Students, Madingford Junior School	15 February
A Rehal	23 February
L Freakes	19 March
Maidstone BC	1 April
J Turner	8 May
Cllr Garland	25 May
Hugh Roberston MP	28 May
A Thom0as	3 June
A May	28 June
Bearsted PC	1 July