

Maidstone Borough Council
Maidstone House
King Street
Maidstone
Kent
ME15 6JQ

Our ref: SAV5/1/LPF

Your ref:

12 April 2024

Attn. Claudette Valmond, Head of Legal Partnership

BY EMAIL: Claudette.Valmond@midkent.gov.uk

THIS LETTER REQUIRES YOUR URGENT ATTENTION

Dear Sirs

1. We are instructed by Save Our Heath Lands in relation to potential proceedings under s113 of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) against the adoption of the Maidstone Local Plan Review (“LPR”). Although there is no requirement for a Pre-Action Protocol letter, we consider it good practice to seek your views on the proposed grounds in advance of lodging proceedings.

Proposed Claimant

2. We are instructed by Save Our Heath Lands, who participated in the Maidstone Local Plan Review (“the Claimant”).

Proposed Defendant

3. The Proposed Defendants are (1) Maidstone Borough Council (“the Council”) and (2) The Secretary of State for Levelling Up, Housing & Communities.

Decision to be challenged

4. The decision of the Council to adopt the Maidstone LPR.

Date of Decision

5. The LPR was formally adopted by the Council on 20 March 2024.

Factual Background

6. This is well known to you and therefore we do not set it out in detail here. However, for present purposes, in summary:
 - (a) The LPR was submitted for examination on 31st March 2022. The examination hearings were held between 6th-8th September 2022, 8th-24th November 2022, 16th-25th May 2023 and 5th-9th June 2023. The LPR was examined under the National Planning Policy Framework 2021 (“NPPF”).

- (b) As modified by the Inspector, the LPR has a plan period from 1st April 2021 to 31st March 2038.
- (c) MBC has an existing Local Plan, adopted in 2017. The LPR updates elements of that plan including the spatial strategy, strategic policies, new site allocations and updated development management policies. These parts of the existing Local Plan were superseded on adoption of the LPR.
- (d) The context for the LPR was a need to address a 31% increase in housing need from 883 dpa in the existing Local Plan to an annual housing need figure of 1,157 dpa in the submitted LPR. This resulted in an overall housing requirement for the LPR of 19,669 – set out in Policy LPRSS1.
- (e) 60% of that planned growth is directed to the Maidstone Urban Area – and largely through existing completions and the extant supply since the beginning of the plan period in 2021. However, the LPR’s spatial strategy also includes two new large-scale garden settlements: at Lenham Heathlands (5,000 dwellings) and at Lidsing (2,000 new homes). As recognised by the Inspector these sought to *“deliver significant housing and employment growth”* (IR/75) and these two settlements delivered the bulk of the new allocated supply in the LPR.
- (f) The garden settlement at Lenham Heathlands is proposed by the Council, who has partnered with Homes England to deliver it. The allocation is at Policy LPRSP4(a) of the LPR. The submission version of the plan stated that the plan proposes approximately 5,000 new homes at Lenham Heathlands, of which 1,400 would be delivered in the plan period. Housing completions were anticipated to commence in 2029. So far as infrastructure is concerned, the submission version of the policy stated:

“Infrastructure will be delivered on a phased basis, when it is needed and as early as possible in the development process where key infrastructure is concerned, in accordance with an agreed phasing strategy”

- (g) The Inspector’s Report (“IR”) must be read as a whole. So far as is material for present purposes, the Inspector’s report stated as follows:
 - i. At IR/71, the Inspector summarised the approach he took to assessing the soundness of the submitted spatial strategy as follows – with emphasis added:

“One of the key soundness tests for the submitted spatial strategy is whether it would represent an appropriate strategy for securing a sustainable pattern of development in the Borough. In order to be an appropriate strategy, it needs to perform well against the SA objectives when compared against other reasonable options. It also needs to be effective (deliverable), although this needs to be considered proportionately, when reflecting on the long-term nature of the strategy.”

There is then a footnote to paragraph 59 of the Planning Practice Guidance (“PPG”) on Plan-Making.

- ii. So far as Lenham Heathlands is concerned, the Inspector recognised (at IR/108) that development of the site *“will not be straightforward”*. The Inspector then considered a number of pieces of infrastructure that would be required to ensure that the development proceeded.

iii. This included a new waste water treatment works (which the Inspector considered “at a level proportionate to plan making” would be “feasible and would be effective”, a new railway station (which the Inspector considered there was a “reasonable prospect that an additional station at Lenham Heathlands is a realistic option”) and off-site highway interventions on the A20 and Junction 8 of the M20 (for which the Inspector considered there was “a reasonable prospect of a deliverable solution”).

iv. At IR/129-130, the Inspector said this:

“129. Having regard to the NPPF, I am satisfied that infrastructure deficits in so far that they exist in relation to Heathlands have been appropriately identified at a level proportionate to what is a strategic, long-term development. Various deficiencies have been identified and Policy LPRSP4(a), subject to the recommended MMs, would set out in sufficient terms how those deficiencies will be addressed. PPG paragraph 61-059-20190315 refers to longer term growth through new settlements and recognises that there may not be certainty and/or the funding secured for necessary strategic infrastructure at the time the plan is produced. In these circumstances strategic policy-making authorities will be expected to demonstrate that there is a reasonable prospect that the proposals can be developed within the timescales envisaged.

130. In terms of ‘reasonable prospect’, PPG paragraph 61-060-20190315 refers to making realistic assessments around site delivery and engaging with infrastructure providers in terms of awareness of what is being planned and what can reasonably be considered achievable within planned timescales. Fundamentally, for this Plan, the final part of PPG paragraph 61-060 states that developments that extend outside of a single plan period (as is the case with Heathlands, and also Lidsing) that subsequent plans and plan reviews are an opportunity to provide greater certainty about the delivery of the agreed strategy. With this in mind, and whilst I understand local communities want to see greater detail and certainty as part of this Plan, I consider an appreciable degree of latitude needs to be extended to the infrastructure and viability evidence currently available. As the final sentence of PPG Paragraph 61-060 states, if it becomes evident that delivery at Heathlands is adversely affected by issues that are unlikely to be resolved, then that would be a matter for plan review.”

v. At IR/131, the Inspector concluded that first completions on the site should be moved back to 2031. So far as land assembly is concerned, the Inspector said as follows (at IR/132):

“132. From the initial inception of this project through to the Plan Examination, it appears that Homes England have made good progress in securing necessary land agreements. I am not unduly concerned that there remain ongoing land negotiations, with the likelihood that some landowners will be awaiting the outcome of this examination process. There remains a lengthy period for implementing Heathlands and a phased approach to delivery. All of which would allow time to coordinate remaining land assembly. Again, I refer to PPG paragraph 61-060 such that if there were unresolved delivery issues, including land ownerships, that would be a matter for a plan review.”

- vi. Finally, in relation to viability, the Inspector concluded as follows (at IR/134-135):

“134. At a high level Heathlands has been valued as a £1.8billion development. In headline terms, the latest viability work demonstrates that the scheme would be viable based on 40% affordable housing and approximately £100million for infrastructure. The viability appraisal update has taken a reasonably detailed approach in Appendix 2 in setting out infrastructure and construction costs which are taken from engagement with the site promoters and IDP costs. Not all costs are yet established and there are inevitably debates around how specific inputs have been calculated but it needs to be borne in mind that this is a strategic long-term development. As such that it is not necessary for the soundness of this Plan to overly-focus on specific costs and timings in 2024 on a scheme which is going to take many years to come to full fruition. The viability work is appropriately detailed for a strategic policy.

135. It is suggested that infrastructure costs do not appropriately reflect increases for inflation and that a higher contingency (circa 40%) should be factored in to provide more certainty that the scheme would remain viable. The viability surplus is modest and as the viability update acknowledges, any moderate movement of 5% increase in costs or decrease in sales values would present a viability risk. The viability assessment, however, takes a cautious approach to construction costs with a likelihood that economies of scale would add to viability. Receipts from employment development and further work at the detailed masterplanning stage could add further to the viability. The overall viability of Heathlands is slender and that is a matter that needs to be closely followed. The significant and direct involvement of Homes England should not be underestimated in terms of their ability to assist delivery, over the long-term, in contrast to standard development cashflow models. The viability of Heathlands does not assume any external funding or assistance.”

- (h) Following the examination, the Inspector proposed main modifications for the garden settlement proposals at Lenham Heathlands (and also Lidsing). These were principally in relation to: (i) the delivery and phasing of infrastructure to support sustainable growth; (ii) how development should address the proximity of the Kent Downs National Landscape (KDNL); and (iii) the specific measures required to ensure potential impacts on protected habitats are appropriately mitigated as required by the Habitats Regulations.
- (i) In particular, in relation to Lenham Heathlands, the main modifications recommended to make Policy LPRSP4(a) sound are summarised at IR/137-147 and in Main Modification 15.
- (j) So far as education provision is concerned, the Inspector addressed this when looking at the Invicta Park Barracks Strategic Development Location as follows (at IR/201-206):

“201. As submitted the plan refers to development on the site providing “requisite community facilities”, including a new through-school, “where proven necessary and in conjunction with housing.” As a starting point, I consider it positive that during plan-making, the potential of new secondary school provision on the site, which would be primarily for the wider needs of the town, is included in the allocated policy. 202. The KCC pupil forecasts should be taken as a reasonably reliable starting point. However, they are forecasts (which can change) and as such I consider it prudent and justified

that the policy identifies that the matter of secondary school provision should be kept under review. If the KCC forecasts (which presently show a steady, cumulative growth in pupil numbers over the plan period) remain robust and no alternative school capacity has been provided or identified elsewhere within urban Maidstone, then the SPD and masterplanning process must not disengage from identifying land for a secondary school (including the potential to deliver a new through school on the site) as identified as part of the first phase.

203. KCC advise that additional secondary school capacity for the wider Maidstone urban area is required by 2027. However, the main disposal of the Invicta site would be in 2029, with further site preparation work, agreements and planning applications thereafter. The alternative, which KCC refer to, would be the allocation of an alternative site for a secondary school in this Plan. That would require a call for sites for land for a new school with no guarantee that a suitable site would be presented. For this Plan, the Invicta Park Barracks site is the only reasonable development site option with the potential to provide land for a new through-school in the Maidstone Urban Area. It would do so in a highly sustainable location. Overall, the need and timing of any school provision is likely to be the subject of further work and scrutiny, including as part of the SPD.

204. The proposed conceptual framework diagram for the site shows undulating land currently occupied by service personnel housing, a play area and woodland being zoned for the school site. KCC consider the site challenging to deliver a new secondary school and that the costs identified in the IDP50 (c.£36 million) are an under-estimate, resulting in a prejudicial financial burden and potential wider viability issues⁵¹.

205. In terms of the proposed area of land shown for a school, this would be a starting point and further masterplanning would be required for the wider site. In land use terms, the location makes strategic sense for school provision, being located adjacent to the existing North Borough Junior School and towards the south-west of the site where access to the wider town and to the town centre (including trains and buses) would be better. Overall, I consider there are benefits to what is proposed that would need to be carefully balanced against potentially higher implementation costs. It would be premature to conclude the indicative area for the new school is undeliverable or unviable prior to masterplanning work. Based on the evidence, including the IDP, the need for a school, stems primarily from the wider catchment population. The Invicta Park site would only need to make a proportionate contribution. The IDP recognises that funding is likely to be a blend of Basic Need Grant from the government, prudential borrowing from KCC and S106/CIL monies collected on other developments within the wider Maidstone area. 206. Accordingly, I consider a suitably worded MM would be necessary to clarify the support in-principle for the delivery of school infrastructure at this location, whilst giving suitable flexibility for alternative uses should the school use no longer be required. In terms of the clarity, the policy should be modified to reference an 8 Form Entry (FE) through school comprising of 2FE primary and 6FE secondary. The need should be caveated as being subject to review of future educational need and an ongoing assessment of whether there are other sites in or around the town centre that could have scope to accommodate some or all of the need.”

- (k) On 19th March 2024, Kent County Council wrote to the Council. This letter stated as follows:

“In conclusion, the level of growth within the Borough will necessitate the

establishment of a new secondary school and the Local Plan does not secure it. This conclusion, its impact and all technical analysis has been provided to MBC Officers over the last four years and can be found in the Examination Library. At certain points in time, it had been agreed by Borough Council representatives that the relevant policy would be worded differently and it is unclear to the County Council why this was not taken forward. Should the Local Plan be adopted as proposed, the County Council would not be able to state if, and how, any additional secondary school pupils arising from development would be provided with a school place. In these circumstances, the County Council, as Local Education Authority would strongly advise that the Borough Council considers refusing all planning applications that will have an implication on education provision until a clear and deliverable plan is established.”

So far as the proposed new school at Invicta Barracks, the letter stated as follows:

“The indicative infrastructure schedule for Policy LPRSP4(A) 5 Invicta Barracks lists a new secondary school as being provided by 2037, this could be up to a decade too late. The likely need for a new school to be delivered prior to the MoD vacating the site and it becoming available was known to the Borough Council prior to submission of the Local Plan for Examination. It is unclear why the Borough Council has continued to progress with its allocation in this form.

Para 15 of policy LPRSP5 also conditions the inclusion of the school site within the proposed allocation subject to a continuing review of future educational need in Maidstone Borough. It also requires an ongoing assessment of other sites in and around the town centre with the scope to accommodate some or all of the educational need. It is the County Council’s view that the need has been firmly established, has not been disproved and the policy provides no criteria for how such a review should take place, by whom, or what actions should be taken on conclusion of the review. It is the County Council’s role to address the need and this is not reflected in the wording of the policy. This approach is therefore ineffective and seriously detrimental to the sustainability of the Borough. The referenced 'ongoing assessment of other sites' has been questioned by the County Council a number of times and it is understood the Borough Council is not conducting such an assessment and does not intend to. Therefore, reference to this within the policy is, at best, ineffective and, at worst, misleading.”

- (l) At a meeting of its Full Council on 20th March 2024, MBC accepted the Inspector’s recommendations and the plan was adopted.

Legal and Policy Framework

7. The Local Plan is a “development plan document” for the purposes of the 2004 Act. So far as material, s.19 of the 2004 Act provides:

“(2) In preparing a development plan document...the local planning authority must have regard to –

(a) national policies and advice contained in guidance issued by the Secretary of State...”

8. Section 20 of the 2004 Act deals with the examination and so far as relevant provides:

“20 Independent examination

(1) The local planning authority must submit every development plan document to the Secretary of State for independent examination.

(2) But the authority must not submit such a document unless –

(a) they have complied with any relevant requirements contained in regulations under this Part, and

(b) they think the document is ready for independent examination...

(5) The purpose of an independent examination is to determine in respect of the development plan document –

(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound; and

(c) whether the local planning authority complied with any duty imposed on the authority by section 33A in relation to its preparation.

(6) Any person who makes representations seeking to change a development plan document must (if he so requests) be given the opportunity to appear before and be heard by the person carrying out the examination.

(7) Where the person appointed to carry out the examination—

(a) has carried it out, and

(b) considers that, in all the circumstances, it would be reasonable to conclude—

(i) that the document satisfies the requirements mentioned in subsection (5)(a) and is sound, and

(ii) that the local planning authority complied with any duty imposed on the authority by section 33A in relation to the document's preparation, the person must recommend that the document is adopted and give reasons for the recommendation.

(7A) Where the person appointed to carry out the examination—

(a) has carried it out, and

(b) is not required by subsection (7) to recommend that the document is adopted, the person must recommend non-adoption of the document and give reasons for the recommendation.

...

(7C) If asked to do so by the local planning authority, the person appointed to carry out the examination must recommend modifications of the document that would make it one that—

(a) satisfies the requirements mentioned in subsection (5)(a), and

(b) is sound.

(8) The local planning authority must publish the recommendations and the reasons."

9. Despite the term "recommendations" in s.20 of the 2004 Act, a local planning authority has no choice other than either: (a) to accept the Inspector's recommended modifications (so-called "main modifications") and adopt; or (b) not to adopt: s.23(2A) – (4) of the 2004 Act.

10. "Sound" is not defined in the 2004 Act. In the NPPF, paragraph 35 states that plans are "sound" if they are:

*“a) **Positively prepared** – providing a strategy which, as a minimum, seeks to meet the area’s objectively assessed needs; and is informed by agreements with other authorities, so that unmet need from neighbouring areas is accommodated where it is practical to do so and is consistent with achieving sustainable development;*

*b) **Justified** – an appropriate strategy, taking into account the reasonable alternatives, and based on proportionate evidence;*

*c) **Effective** – deliverable over the plan period, and based on effective joint working on cross-boundary strategic matters that have been dealt with rather than deferred, as evidenced by the statement of common ground; and*

*d) **Consistent with national policy** – enabling the delivery of sustainable development in accordance with the policies in this Framework and other statements of national planning policy, where relevant.”*

11. Under the heading “Strategic Policies”, the NPPF states as follows – so far as is material:

“20. Strategic policies should set out an overall strategy for the pattern, scale and design quality of places, and make sufficient provision for:

a) housing (including affordable housing), employment, retail, leisure and other commercial development;

b) infrastructure for transport, telecommunications, security, waste management, water supply, wastewater, flood risk and coastal change management, and the provision of minerals and energy (including heat)...

...

22. Strategic policies should look ahead over a minimum 15 year period from adoption, to anticipate and respond to long-term requirements and opportunities, such as those arising from major improvements in infrastructure. Where larger scale developments such as new settlements or significant extensions to existing villages and towns form part of the strategy for the area, policies should be set within a vision that looks further ahead (at least 30 years), to take into account the likely timescale for delivery.”

12. Paragraph 33 of the NPPF states:

“Policies in local plans and spatial development strategies should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Reviews should be completed no later than five years from the adoption date of a plan, and should take into account changing circumstances affecting the area, or any relevant changes in national policy. Relevant strategic policies will need updating at least once every five years if their applicable local housing need figure has changed significantly; and they are likely to require earlier review if local housing need is expected to change significantly in the near future.”

13. Finally, so far as is material, the Planning Practice Guidance (“PPG”) on Plan-Making states as follows at paragraph 59:

“...Where plans are looking to plan for longer term growth through new settlements, or significant extensions to existing villages and towns, it is recognised that there may not be certainty and/or the funding secured for necessary strategic infrastructure at the time the plan is produced. In these circumstances strategic policy-making authorities will be

expected to demonstrate that there is a reasonable prospect that the proposals can be developed within the timescales envisaged.”

14. Paragraph 60 of the PPG on Plan-Making states as follows:

“How can strategic policy-making authorities demonstrate that there is a reasonable prospect that large scale developments such as new settlements, or significant extensions to existing villages and towns can be developed within a set timescale?”

In order to demonstrate that there is a reasonable prospect these large scale developments can come forward, strategic policy-making authorities are expected to make a realistic assessment about the prospect of sites being developed (and associated delivery rates). Strategic policy-making authorities will need to demonstrate they have engaged with infrastructure providers, ensuring that they are aware of the nature and scale of such the proposals, and work collaboratively to ensure that the infrastructure requirements are not beyond what could reasonably be considered to be achievable within the planned timescales. The authority can use statements of common ground, or other evidence, to detail agreements with infrastructure providers which confirm this and set out the further work which they will undertake to support the long-term delivery of the strategy.

Infrastructure providers should, so far as possible, seek to plan for longer-term infrastructure requirements set out within adopted plans and reflect this in their funding and investment decisions. Any agreement between the authority and infrastructure provider can be used as evidence when trying to secure funding.

It is recognised that these developments may have to extend outside of a single plan period. The strategic policy-making authority can use subsequent plans and plan reviews as an opportunity to provide greater certainty about the delivery of the agreed strategy. Annual reviews of the infrastructure funding statement should feed back into review of plans to ensure that plans remain deliverable. Should issues arise which would adversely affect the delivery of the adopted strategy then the authority should consider alternative strategies, through a plan review, if these issues are unlikely to be resolved.”

15. Pursuant to s.113(3) of the 2004 Act, a “person aggrieved” may challenge a development plan document on the grounds that the document is not within the appropriate power or a procedural requirement has not been complied with. It is well established that the jurisdiction of the Court on a s.113(3) challenge is akin to judicial review.

16. The approach that the Court will take to challenges of this nature is well known and were summarised in Barratt Development Limited v City of Wakefield MDC [2010] EWCA Civ 897 and Grand Union Investments Limited v Dacorum BC [2014] EWHC 1894 (Admin).

17. Section 113(7)-(7C) of the 2004 Act sets out the available relief where the grounds are made out, including: (a) quashing; and, (b) remission, wholly or in part.

Details of the Proposed Grounds of Challenge

Ground One

18. The Inspector erred in his interpretation of “deliverable” in paragraph 35 of the NPPF.

19. Policy statements should be interpreted objectively and in accordance with the language used, as read in their proper context: Tesco Stores Limited v Dundee City Council [2012] PTSR 983 at [18], per Lord Reed.

20. *“Deliverable”* in paragraph 35(c) is to be interpreted consistently with the word *“effective”*. The Collins English Dictionary states that: *“Something that is effective works well and produces the results that were intended”*. Similarly, the Oxford Dictionary defines effective as *“successful in producing a desired or intended result”*.
21. This is reinforced by paragraph 35(d) which explains the role of a sound plan in *“enabling the delivery of sustainable development...”*. This too is focussed on the actual achievement of the objectives of the plan.
22. This is further demonstrated by paragraph 20 of the NPPF which explains that strategic policies should make sufficient provision for, inter alia, housing and infrastructure.
23. Clearly, on a correct interpretation, to be found *“sound”* an Inspector must be satisfied that a plan will be successful in delivering its intended result. Plainly, the test is not whether there is a *“reasonable prospect”* that the plan will deliver what is intended.
24. The last sentence of the last paragraph of paragraph 59 of the PPG on Plan Making should be read both in the context of that paragraph as a whole, and also consistently with paragraph 35 of the NPPF. The PPG merely makes the obvious point that *“certainty”* of deliverability is not required for the Inspector to be satisfied that the plan will be successful in delivering its intended result. It does not modify the fundamental test of soundness in the NPPF – and set a lower threshold of there being a *“reasonable prospect”* that the plan will be *“effective/deliverable”*.
25. Further, the plan must be deliverable *“over the plan period”*. Therefore, to be found sound, the Inspector must be satisfied that, at the point of adoption, the plan has a deliverable strategy across the entirety of the plan period.
26. A subsequent local plan and local plan review can provide *“greater certainty”* in due course about the deliverability of development which falls outside of the plan period and deal with unanticipated delivery issues within the plan period (paragraph 60 of the PPG on Plan-Making). However, there is no support either in the PPG or the NPPF for finding that a plan which is not deliverable at the point of adoption is nonetheless *“sound”* because known but unresolved issues can be addressed through a plan review.
27. The Inspector erred by adopting a different and significantly less stringent approach to deliverability than that set out in national policy in the NPPF and PPG.
28. For a start, contrary to IR/71, the test of *“effectiveness”* is not modified where a plan proposes a long-term strategy. The Inspector states in that paragraph that deliverability *“needs to be considered proportionately, when reflecting on the long-term nature of the strategy”* – with reference to paragraph 59 of the PPG on Plan-Making. As set out above, there is nothing in that paragraph which modifies the fundamental soundness tests in the NPPF in circumstances where a long-term strategy is proposed.
29. Second, when considering the infrastructure requirements for Lenham Heathlands, the Inspector has asked himself whether there is a *“reasonable prospect”* that the infrastructure could *“realistically”* be delivered. In other words, whether it is reasonable to conclude that the prospect of infrastructure coming forward is *“real”* as opposed to *“fanciful”*.
30. To take one example only, in relation to the prospect of a new railway station being delivered (recognised as being fundamental to the delivery of the allocation), the Inspector finds that: *“Initial work demonstrates at a high level that a station is potentially feasible from*

locational, operational and timetable perspectives” and therefore “For the purpose of a strategic policy and demonstration of a reasonable prospect that an additional station at Lenham Heathlands is a realistic option, I consider that the evidential threshold has been met...” (see IR/123).

31. However, the test in the NPPF is not whether there is a reasonable prospect that a plan can realistically achieve the intended result. The Inspector must be satisfied that the plan will achieve its intended result. That is particularly relevant here where the identified infrastructure deficiencies are absolutely essential to make the Lenham Heathlands allocation sound; and the Lenham Heathlands allocations is essential to make the plan sound.
32. The “evidential threshold” set by the Inspector in assessing the deliverability of the Lenham Heathlands allocation therefore proceeds on a fundamental misinterpretation of national policy.

Ground Two

33. The Inspector’s conclusions in relation to secondary school provision are irrational within the meaning of that word set out in R. (Law Society) v Lord Chancellor [2019] 1 WLR 1649 (at [98]), i.e. there is a demonstrable logical error in the reasoning that led to the conclusion.
34. The Inspector rejected KCC’s position that an alternative site for a secondary school should be allocated to that proposed at Invicta Park Barracks on the following basis (at IR/203):

“...That would require a call for sites for land for a new school with no guarantee that a suitable site would be presented. For this Plan, the Invicta Park Barracks site is the only reasonable development site option with the potential to provide land for a new through-school in the Maidstone Urban Area”.
35. However, it does not follow from (i) there being “no guarantee” that there is an alternative site that (ii) the proposed site is “*the only reasonable development site option*”. Until a call for sites has been carried out, there is no rational basis for reaching that conclusion; it does not follow from the fact that the availability of other sites is unknown that there are no other reasonable sites.

Ground Three

36. Further, and in any event, the Inspector has failed to give adequate reasons to explain the mismatch in timing between the need for a new school by 2027, and the fact that the Invicta Park Barracks site school is only proposed to be delivered in 2037.
37. The Inspector, having recognised this potential decade-long gap in school place provision (at IR/203) merely states that “...*the need and timing of any school provision is likely to be the subject of further work and scrutiny, including as part of the SPD*”. However, that does not explain how a plan-led solution will be found to the identified problem – especially in circumstances where the SPD could not (lawfully) allocate land for a new school in that period. This issue was also not addressed by the Council at its meeting on 20th March 2024.
38. These errors affect the deliverability of the entire plan, since KCC has indicated in its letter of 19th March 2024 that it “*would strongly advise that the Borough Council considers refusing all planning applications that will have an implication on education provision until a clear and deliverable plan is established*”.

Details of Legal Advisors Dealing with this Claim

39. Richard Buxton Solicitors
Office A, Dale's Brewery
Gwydir Street
Cambridge CB1 2LJ

Attn. Lisa Foster & Hannah Norman

Tel: 01223 328933

Email: lfoster@richardbuxton.co.uk; hnorman@richardbuxton.co.uk

Counsel

40. Andrew Parkinson, Landmark Chambers.

What the Council is requested to do

41. The Council is requested to:

- (i) Consent to the Claimant's application for review pursuant to s113 of the Planning and Compulsory Purchase Act 2004; and
- (ii) Pay the Proposed Claimant's costs of and relating to this prospective claim.

Costs

42. If the claim proceeds the claimant will apply for a protective costs order pursuant to CPR 46.16 on the basis that the claim is an environmental matter. *Venn v SSCLG* [2015] 1 WLR 2328. If you disagree this is an Aarhus matter or the making of a PCO please give your reasons.

Address for Reply and Service of Court Documents

43. Richard Buxton Solicitors
Office A, Dale's Brewery
Gwydir Street
Cambridge CB1 2LJ

Attn. Lisa Foster & Hannah Norman

Email: lfoster@richardbuxton.co.uk; hnorman@richardbuxton.co.uk

Proposed reply date

44. We request a response to this letter by 12pm on 26th April 2024. If you are not able to respond within this timeframe, please provide an indication of when you will be in a position to do so.

45. Please also confirm whether the Council will accept service of documents by email.

Yours faithfully



RICHARD BUXTON SOLICITORS

- cc. Government Legal Department (newproceedings@governmentlegal.gov.uk and thetreasurysolicitor@governmentlegal.gov.uk)
- cc. Kent County Council (simon.jones@kent.gov.uk)
- cc. Homes England (Peter.Denton@HomesEngland.gov.uk)