



Neutral Citation Number: [2024] EWHC 2373 (Admin)

Case No: AC-2024-LON-001439

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT
SITTING IN LONDON

Tuesday 17th September 2024

Before:
FORDHAM J

Between:
BREDHURST PARISH COUNCIL
- and -

Claimant

(1) MAIDSTONE BOROUGH COUNCIL
(2) SECRETARY OF STATE FOR HOUSING,
COMMUNITIES AND LOCAL GOVERNMENT
(3) F.D. ATTWOOD AND PARTNERS

Defendants

Alex Shattock (instructed by Leigh Day & Co) for the **Claimant**
Megan Thomas KC (instructed by Maidstone BC) for the **First Defendant**
Heather Sargent (instructed by GLD) for the **Second Defendant**
Rebecca Sage (instructed by Birketts LLP) for the **Third Defendant**

Hearing date: 17.9.24

Judgment as delivered in open court at the hearing

Approved Judgment

FORDHAM J

Note: This judgment was produced and approved by the Judge.

FORDHAM J:

1. This is an application by the Parish Council for permission for statutory review, pursuant to s.113 of the Planning and Compulsory Purchase Act 2004. At issue are the lawfulness, reasonableness and legal adequacy of reasoning of the planning inspector's reasoned decision on statutory soundness (2004 Act s.20(5)(b)), in relation to a specific aspect of the local planning authority (LPA)'s development plan document. The LPA is Maidstone. The development plan document is the Maidstone Local Plan, adopted by Maidstone on 20 March 2024. The relevant Policy within that Local Plan is LPRSP4(B), which is a site allocation for the proposed Lidsing Garden Village. The specific aspect is the phase-1 East West Link Road for the Lidsing Garden Village. The "preferred" route for the Link Road would be from North Dane Way, through an acquired strip of land currently owned by Medway Council, then across to Junction 4 of the M2. The "fallback" route for the Link Road would instead use Ham Lane, which runs parallel to North Dane Way at the point at which there is Medway's strip of land. The inspector's report is dated 8 March 2024. It is published online with reference PINS/U2235/429/10. The relevant policy LPRSP4(B) is addressed by the inspector at §§149-193. The fact that potential highways implications arising from the Lidsing proposal are a "significant issue" is recorded at §160. The inspector records at §167 that those opposed to Lidsing regarded as "key to the soundness of the proposal" the fact that Medway Council "have determined previously not to dispose of the [strip of] land in order to protect the area". The inspector then gives "two reasons" in §167 for disagreeing with that. The Parish Council were one of those opposed to Lidsing, who were making this point, and with whom the inspector was disagreeing.
2. Mr Shattock submits, in essence, as follows. It is arguable, with a realistic prospect of success, that the inspector's two reasons for disagreeing were unlawful in public law terms. They misappreciated that applicable policy (the National Planning Policy Framework or NPPF at §35c) required a positive conclusion on deliverability, underpinned by a level of certainty; with effective joint working on this "cross-boundary strategic matter", so that it had been "dealt with" and not "deferred". The specific associated policy (Planning Practice Guidance or PPG at §§59-60) required an assessment of "how likely" the Link Road was; and "how likely" were the routes considered for delivering it. The inspector's reasons were inadequate and unclear, as to why the deliverability concerns were rejected; and whether it was being said that the Medway strip of land was assessed as being "likely" to be forthcoming, and if so "how likely" that was; and also "how likely" was the deliverability of the Ham Lane fallback. There was also unreasonableness, in the sense of flawed-reasons or a gap in the logic, because Ham Lane was rightly described by the inspector as "sub-optimal", and yet elsewhere in the inspector's analysis (I was taken to §§162 and 170-171), benefits were being relied on by the inspector, which would be lost if Ham Lane were to become the Link Road solution. That was a flaw in the logic and reasoning (see R (Law Society) v Lord Chancellor [2018] EWHC 2094 (Admin) [2019] 1 WLR 1649 at §§98-99). All of which means that the inspector failed to grapple with these matters in a manner compatible with his public law obligations. For today, it is sufficient that the threshold of arguability is met. Those are the arguments.
3. Like Sir Peter Lane, who refused permission for statutory review on the papers, I have not been persuaded that there is an arguable claim. The inspector was plainly addressing soundness, in the context of the points that had been raised, and was giving reasons to an

informed audience including those who had raised concerns about the Link Road. He was disagreeing with those who submitted to him that it was “key to the soundness of the proposal” that Medway Council had “determined previously not to dispose of the [strip of] land in order to protect the area”. The inspector’s first reason was about why he did not think the determination “previously” was a settled, final position. He said there was “other major development” which had “already been approved in the vicinity of North Dane Way” and the “combination” of Lidsing being “added” to that Gibraltar Farm scheme, gave rise to “potential benefits” which “should not be disregarded”. This was plainly a reference to Medway’s past position not being the final word, giving reasons about the prospect of a change of position.

4. The inspector’s second reason was about “other options” for the Link Road, “via an upgraded Ham Lane and the Gibraltar Farm scheme”. Although he used the word “may” (ie. in the phrase “other options for an east-west link may exist”), he then referenced three footnoted sources, all of whose contents involved descriptions of Ham Lane as being a deliverable alternative, if it were needed because Medway continued to refuse to give up on the strip of land needed for the preferred option. The inspector referenced the Transport Assessment, where there was sensitivity testing. Ham Lane was not the most appropriate access, with some benefits foregone and a sub-optimal design, but it was a “fallback” relevant to deliverability. That was explained in a Stantec Deliverability and Viability Assessment (August 2020).
5. These two reasons were plainly linked. First, because the fallback would come in as the alternative for deliverability, if Medway held out regarding the strip of land. But secondly, because the very existence of the fallback option – sub-optimal in terms of benefits – could affect Medway’s position as to whether to hold out regarding the strip of land. Medway refusing to surrender the strip of land would not prevent the Lidsing development, it would just mean the delivery of that development with a sub-optimal road transport solution. Stantec’s Assessment had made the point that the very existence of the fallback option undermined the idea that Medway held a “showstopping” ransom strip which it had been told was worth “several million pounds”.
6. The inspector was aware of the NPPF, but also the PPG which explains that strategic policy-making authorities are expected to demonstrate a “reasonable prospect” in the context of new settlements and strategic infrastructure (§§59, 60). I agree with Mr Shattock that it doesn’t much matter – at least for the purposes of this permission-stage – whether this demonstration is being expected to be done by the decision-maker (in this case the inspector) or whether it is something that needs to be demonstrated to the inspector by the LPA. It stands as a refinement to the NPPF with a clear focus. As to that, see Mead Realisations Ltd v Secretary of State for Levelling Up, Housing and Communities [2024] EWHC 279 (Admin) [2024] PTSR 1093 at §§67 and 71. It was specific guidance about strategic infrastructure. The inspector had already identified it in the report (at §§46, 129-130), which must be read fairly and as a whole. There was statutory soundness, in this PPG sense of “reasonable prospect”, given the implications for Medway’s position of the combination of Lidsing and Gibraltar Farm and given the Ham Lane fallback. The PPG “reasonable prospect” qualifies the NPPF §35c idea about a matter being “dealt with”. Put another way, if there was the PPG-compliant “reasonable prospect” from identifiable options, then even if this constituted a “cross-boundary strategic matter” (which has been debated and for the purposes of today I will assume in the Parish Council’s favour), it could be regarded as having been “dealt with”.

7. As it seems to me, Mr Shattock’s central policy-interpretation argument is this. He says that, because the PPG says there should be a “realistic assessment about the prospect” of sites being developed (§60), the inspector – correctly understanding the PPG – needed to “say how likely” was the Link Road as strategic infrastructure and/or “how likely” were the preferred route and the fallback option. In my judgment this, as an objective interpretation, does not cross the threshold of arguability. In the context of finding the required “realistic prospect”, an assessment (by whoever or for whomever) “about” the “prospect” can be “realistic”, without needing to involve a more precise linguistic description or percentage prospect of likelihood; still less in the case of strategic infrastructure; and still less in the context of one of several options for strategic highways infrastructure.
8. Nothing turns on the inspector’s use of “may” in the context of Ham Lane. This was about “other options”, where Ham Lane had been identified; where the footnoted references were clear; and where the PPG focus is on “reasonable prospect”. As to the reduced benefits if the fallback of Ham Lane were used, the inspector was well aware of these. They were identified in the sensitivity testing Transport Assessment document being specifically referenced by the inspector (§167 at fn.40). They would, in due course, be the subject of appropriate optimisation. But they are the very reason for the inspector using the word “sub-optimal” at §167, in describing Ham Lane. I can see no arguable unreasonableness in the sense contended, of a flaw or unexplained gap in logic or reasoning. At §162 the inspector was discussing the virtues of securing the Link Road by connecting to Junction 4 of the M2 (which the Ham Lane option would also do); rather than building a whole new junction to the M2. At §§170-171 the inspector was describing modelling and explaining why specific interventions were premature at this stage, in light of what had been said and recognised about the options (§167). There is no room for real, as opposed to forensic, doubt about what the inspector was saying and why he disagreed with the Link Road points being made by those opposing Lidsing. All of this was in the context of a planning judgment for the inspector (see Oxted Residential Ltd v Tandridge DC [2016] EWCA Civ 414 at §27) and, as the Parish Council’s skeleton argument rightly recognises – provided there was no misdirection or unreasonableness and provided that legally adequate reasons were given – “it was open to him to find that Lidsing was deliverable notwithstanding the issues identified by objectors”.
9. For all these reasons, the renewed application for permission is dismissed.

17.9.24