

By: Kevin Lynes : Cabinet Member for Regeneration, and David Cockburn Executive Director, Strategy, Economic Development & ICT

To : Cabinet 30th March 2009

Subject : Kent International Gateway Planning Inquiry

Classification : Unrestricted

Summary

The planning application for the Kent International Gateway at Junction 8 of M20 has far reaching implications for transport and planning in Kent. This report seeks Cabinet agreement to KCC's appearance at a planning Inquiry to oppose the proposal, the appointment of legal counsel and the retention of technical consultants.

1 The proposed development

1 Kent County Council (KCC) is the strategic planning authority in Kent and has a statutory role to respond to consultations by the Kent local planning authorities (the District Councils) on major planning applications. KCC is also the local highway authority and likewise has a statutory role to respond to consultations on major planning applications.

2 An outline planning application was made for the Kent International Gateway (KIG) on 24th October 2007. The proposal is for the construction of a "strategic rail freight interchange" (SRFI) with an intermodal terminal, 362,000 sq. m (over 3.6 million sq feet) of warehousing and 11,400 sq. m of separate office space. The site covers 112 ha (270 acres) and extends for about 2.5 km from north of Bearsted to Junction 8 of M20. It is proposed that the development would be completed over 7 years.

3 Eight major warehouse units are proposed of which two would have a direct rail connection to the Ashford-Maidstone-Swanley main line that bisects the site. These would provide 170,500 square metres of floorspace. The applicant proposes that the site would receive about 12 trains each day, mainly carrying containers for the intermodal terminal, which has a capacity of 200,000 units per annum.

4 The site is bounded to the North by M20, which also marks the boundary of the Kent Downs Area of Outstanding Natural Beauty (AONB), and the site is within the North Downs Special Landscape Area. Almost all of the development would be on green-field land, largely in agricultural use.

2 KCC Objections as a Statutory Consultee

5 The application raises a number of important strategic questions, notably :

- whether there is a commercial and transport case for a strategic rail freight interchange at this location, and whether it conforms to national and strategic policy - crucially, whether the proposal would achieve a transfer of freight from road to rail
- the large scale of the development proposed in the foreground of the North Downs AONB, and the views of the sites and surrounding countryside from the North Downs.

- the impact on the local and trunk highway network from the operation of the warehousing and intermodal terminal, and the daily travel of the workforce.
- the labour market implications of the 3,500 jobs that are proposed, and whether this is the right location for a major concentration of employment in the distribution sector.

6 In addition, the scale and nature of the proposal is of great concern to the local community and would change the character of Bearsted and the surrounding area.

7 A proposal of this scale, largely in open country and in the foreground of an Area of Outstanding Natural Beauty, but abutting a residential area, must demonstrate very exceptional justification. The applicant's case relies on the claim that the development will shift cross Channel road freight to rail.

8 KCC has assessed the proposal against the policies of the Kent & Medway Structure Plan and the South East Plan. As a result of this assessment KCC submitted strong strategic planning objections to the application in November 2007.

9 Maidstone Borough Council and KCC requested further information from the applicant, particularly on the case for rail freight at this location, landscape impact, and employment consequences. The local authorities and the Highways Agency also sought further information from the applicant in order to properly assess the transport impact of the proposal. The additional information required Maidstone Borough Council conduct a second consultation in January and February 2009. KCC has assessed the new information and confirmed its objections to the proposal.

10 The main strategic planning objections can be summarised as follows :

- The applicant has not demonstrated that the proposal will achieve significant modal shift to rail and it therefore fails to meet the criteria of Structure Plan policy and the South East Plan.
- The location of the proposal at Junction 8 of M20 does not meet the criteria of the former Strategic Rail Authority and the Government's proposed changes to the South East Plan, that suitable sites for strategic rail freight interchanges are likely to be located at the intersection of M25 with radial routes.
- Structure Plan and South East Plan policy is to concentrate economic development principally in the Growth Areas and areas of regeneration, and to develop the Maidstone economy with higher quality jobs. KIG would concentrate primarily road-based warehousing at Maidstone, contrary to strategic policy
- The proposal would have a major impact on the landscape. It would be clearly visible from the AONB and from primary road and rail routes, and would have a detrimental effect upon the setting of the AONB.
- The proposal is contrary to policies for the protection, conservation and enhancement of the countryside. The applicant has not demonstrated a justification for the development that outweighs these considerations. The scale and form of development is such that no adequate mitigation or compensation can be envisaged.
- There are likely to be serious adverse impacts on the existing communities.

11 A transport assessment of the housing and other development at Maidstone required to meet the policies of the South East Plan was underway by Kent Highways Services prior

to the planning application. The cumulative impact of the KIG proposal with this development is now being further assessed in consultation with the Highways Agency. Concern has been expressed about the capacity of A20 junctions and the possible consequences for Junction 8 of the M20. The County Council's final views on the highway network, demand management, public transport, and vehicle parking are still being assessed, and will be provided to Maidstone Borough Council by Kent Highways Services.

The current position with the planning process is as follows :

3 The planning process

12 An outline planning application was made to Maidstone Borough Council in October 2007 and KCC made objections as a statutory consultee. Additional information was requested from the applicant and this required a second consultation in January 2009. KCC confirmed its objections to the proposal.

13 KCC has followed appropriate procedure when making representations on the KIG planning application. Our responses to the two consultations have been in the form of officer's letters agreed by the Cabinet portfolio holder. KCC's views have been justified with reference to the policies of the Adopted Kent and Medway Structure Plan and to the Government's proposed changes to the South East Plan.

14 In parallel with the consultation, the Highways Agency is seeking further traffic information from the applicant. It has issued an Article 14 Direction, which while in force prevents the Borough Council or a planning Inspector from granting planning permission, but does not prevent a refusal.

15 Before the second consultation period was due to close on 6th February, the applicants instructed solicitors to lodge an appeal with the Planning Inspectorate because the application had not been determined by Maidstone BC within the period allowed. The main steps leading to a Planning Inquiry and a decision will be as follows :

- Maidstone Borough Council, KCC and other parties must submit a statement of their positions or their comments to the Planning Inspectorate by 29th May.
- Maidstone's position will be determined at a meeting of their Planning Committee.
- a date for the Inquiry will be agreed by Maidstone and the applicant and this is likely to be in September
- a Pre Inquiry Meeting will be arranged by the appointed Planning Inspector to confirm who will give evidence and the date by which it must be submitted
- it is likely given the complexity of this matter that the Inquiry will sit for at least 6 weeks during the summer
- after the Inquiry the Inspector will submit his/her recommendations in a comprehensive report to the Secretary of State for Communities and Local Government. She will make the planning decision.

4 The purpose of this report

16 This proposal has a number of implications for Kent and Maidstone, beyond the immediate impact on the local community and countryside, and raises considerable uncertainty as to its eventual operation and impact.

17 As indicated above, the applicant must demonstrate very exceptional justification for the development, and this rests on the transfer of road freight to rail. A shift of freight to rail would be in line with national, regional and KCC policy, and this aspect of the proposal must therefore be closely examined.

18 The purpose of this report to Cabinet is twofold :

- I. to bring this matter to the attention of the Cabinet, and for the reasons set out above to seek Cabinet endorsement of KCC's objections to the planning application, and its appearance at a planning Inquiry to oppose the Kent International Gateway. This will require the appointment of legal counsel and the retention of technical consultants, and should be agreed with Maidstone Borough Council as the local planning authority.
- II. to propose that the costs of representation at an Inquiry be met from the Environment and Regeneration budget in the normal way, but that in view of the scope and likely duration of the Inquiry and delay in the planning process, provision be made to meet fluctuations in expenditure arising from the planning appeal process.

(i) The County Council's appearance at a planning Inquiry

19 KCC from time to time objects to or supports strategic planning applications on the basis of established planning and transport policy, and may take its view to a Planning Inquiry either to support a District Council, or following a request to the Planning Inspector as a principal party. It may commission expert advice to support its evidence, request legal advice, and engage a barrister. This is part of KCC's statutory planning and transport function, and is exercised by officers under delegated authority, subject to the agreement of the Cabinet portfolio holder where KCC is a consultee, as in this case.

20 However, in view of the wider implications of this proposal, this report requests Cabinet to endorse KCC's objections to the planning application, and its appearance at a planning Inquiry to oppose the Kent International Gateway.

21 Maidstone Borough Council is the local planning authority and they have yet to take a position on the planning application. When their view is known officers will assess the most effective way to represent the County Council's case at the Inquiry, in consultation with Maidstone.

22 Officers will consider the need for expert advice to support the County Council's evidence, and for legal advice and representation. This report requests Cabinet to confirm the authority of the Executive Director Strategy, Economic Development and ICT to appoint consultants and counsel as necessary, in consultation with myself as the relevant Cabinet portfolio holder.

(ii) the costs of representation at an Inquiry

Planning Evidence

23 The costs of KCC evidence and representation at planning Inquiries are met from the Environment and Regeneration budget (Integrated Transport and Planning). The cost of some of the strategic planning studies of the KIG proposal commissioned by Maidstone Borough Council are to be shared with KCC. KCC has also retained Mott MacDonald to assist in with its planning proof. Costs to date to be met by current budgets in the normal way are :

2007-08	£17,800	planning studies
2008-09*	£99,000	planning studies

* estimate of work to be completed to 31st March 2009.

* excludes transport studies for the Maidstone Local Development Framework part funded by CLG

24 Due to the slow progress of the planning process, costs that were expected to be borne in 2008-09 will carry over to 2009-10 as follows :

2009-10	£55,000	consultants fees for planning studies and evidence
	£50,000	legal and expert representation at the planning Inquiry

25 The estimate for 2009-10 assumes that limited additional planning studies are required to support KCC's evidence, and that the cost of legal representation at an Inquiry is shared with Maidstone BC. However, this will be a major Inquiry and is likely to last more than 6 weeks. Important areas of uncertainty remain in the applicant's evidence that will require testing and rebuttal. If there were any aspect of the evidence on which Maidstone and KCC were not in full agreement, it would not be possible for single barrister to present a joint case. A contingency provision is therefore needed.

26 The annual budget process makes it hard to manage the uneven fall of expenditure. In discussion with the Director of Finance it has been agreed to establish a small reserve to manage these fluctuations. This will be created as the accounts are closed this financial year. This will be formally agreed through a future monitoring report.

Transportation and traffic studies

27 The transport assessment of the housing and other development at Maidstone required to meet the policies of the South East Plan is funded by KCC (Kent Highways Services) and Maidstone Borough Council with a grant from the Government. Additional analysis has been necessary to assess the cumulative impact with the Kent International Gateway.

Pre-election Period

28 The County Council elections will take place on 4th June 2009. The Code of Recommended Practice on Local Authority Publicity (sometimes known as the "purdah" rules) comes into effect on Tuesday 28 April and last until Friday 5th June.

29 The Code does not effect the execution of officers duties in responding to consultations and preparing for a planning Inquiry, or the exercise of the portfolio holder's duties and authority.

Recommendations

It is **recommended** that Cabinet:

1. endorse KCC's objections to the Kent International Gateway planning application, and its appearance at a planning Inquiry to oppose the proposal.
 2. authorise the Executive Director, Strategy, Economic Development & ICT to appoint consultants and counsel as necessary, in consultation the Cabinet portfolio holder for Regeneration.
 3. note the creation of a small reserve to manage expenditure fluctuations arising from the appeal process.
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Background Documents

Outline Planning application for KIG – see Maidstone BC web site

KCC Objection letters of November 2007 and February 2009

Kent and Medway Structure Plan

Government's Proposed changes to the South East Plan July 2008

Contact officer:

Tim Martin Strategy Manager
01622 221618
tim.martin@kent.gov.