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NOTE Regarding Kent Response re: Invicta Park Barracks and Secondary School

Second Draft: 27th April 2023



Introduction

This note is drafted in response to the Kent County Council written statement to the Examination Stage of the Maidstone Borough Council Local Plan Review dated 8th March 2023.

In the first instance it is relevant to consider the relevant education legislation and how it impacts on provision.

Legal Background

The Education Act

1 The primary Act is the Education Act 1996, which is: (a) a consolidating Act and (b) an Act amended from time to time by subsequent legislation. Unless otherwise indicated in this paper, all references are to the Education Act 1996 (as amended) – (“EA96”)

2 EA96 (at section 14(1)) states,

“A local education authority shall secure that sufficient schools for providing – (a) primary education and (b) secondary education are available for their area”.

3 Sections 14(2) to 14(6) go on to explain what is meant by sufficient schools and that it includes implicitly that the requirement is for sufficient school places.

4 Section 14(1) derives directly from s5 Education Act 1870 via s17 Education Act 1921 and s8 Education Act 1944. There have been no material changes over time, merely consolidating legislation, further clarification of the meaning of ‘for their area’, changes to school leaving ages and changes to terminology from time to time. It is thus a very longstanding target duty for the ‘local education authority’ (now Education and Children’s Services Authority) the County Council as successor to the local school boards. In fact, Section 5 of the 1870 Act summarises the position in the most succinct fashion.

“There shall be provided for every school district a sufficient amount of accommodation in public elementary schools (as herein-after defined) available for all the children resident in such district for whose elementary education efficient and suitable provision is not otherwise made, and where



there is an insufficient amount of such accommodation, in this Act referred to as 'public school accommodation,' the deficiency shall be supplied in manner provided by this Act”.

5 It is to be noted that the duty given to the County Council is to ‘secure sufficient schools’. There is no duty to provide schools. The default position for new schools is that they are Academies or Free Schools. These are independent schools directly funded from the Government. That is the Secretary of State via the Education and Skills Funding Agency which is an executive agency funded by the Department for Education DfE).

6 Section 11 EA96 sets out the Secretary of State’s duty in respect of primary, secondary and further education.

(1) The Secretary of State shall exercise his powers in respect of those bodies in respect of public funds which

(a) carry responsibility for securing that the required provision for primary, secondary or further education is made –

(i) in schools, or

(ii) in institutions within the further education sector

7 In summary, where a shortfall in school places is identified by the County Council in its annual School Capacity (SCAP) Return to the DfE, that is not covered by an alternative third-party funding route (e.g. section 106 and/or CIL funding) the Secretary of State provides funding via a mechanism called Basic Need.

8 Completing the Basic Need return to the DfE guidance is quite clear. Any shortfall that is identified includes the child population of new housing when s106 and/or CIL is absent or insufficient to cover the provision.

The pupil forecasts you submit in SCAP should only include expected yields from housing developments that have a high probability of being delivered within the timeframe of the forecasts. In most cases such developments will have full planning permission. If you believe a development that does not have full planning permission will proceed and will yield pupils within the forecast’s timeframe, we expect that development to be present in the relevant planning authority’s latest 5-year land supply. Wherever this is the case we may test the suitability of inclusion of such housing developments in SCAP forecasts by



reviewing evidence on the site's deliverability and assessing delivery against previous 5 year land supply plans in the relevant planning authority.

The Maidstone Secondary School Pupil Forecasts

- 9 Prior to 2018, the County Council SCAP returns aggregated the Maidstone secondary schools into a single return. From 2018, the non-selective schools are reported separately from the grammar schools.
- 10 For 2017, for example, there were 11 schools listed with a capacity 12,919 places. In September 2020 a twelfth school, the School of Science and Technology, opened on New Cut Road. The school has a pupil admission number of 180 and is admitting into Year 7 year on year. Thus, capacity on this basis is 13,819 places plus any sixth form provision at the new school in the future.
- 11 The 2017 SCAP forecast anticipated pupil numbers rising from actual 11,733 in 2016/2017 to 14,414 pupils in 2023/2024. Indicating a shortfall of 595 places.
- 12 The 2018 SCAP forecast when non-selective and grammar schools aggregated as per 2017 anticipated pupil numbers rising from actual 11,813 pupils to 16,019 pupils for 2024/2025. Indicating a shortfall of 2,200 pupil places.
- 13 The latest SCAP return, by the County Council in respect of Maidstone that has been scrutinised and published by the DfE, is derived from the actual pupil numbers in its non-selective secondary schools and separately for its selective (grammar) schools both for 2021/2022. The forecasts cover the period through to the school year 2028/2029.

Year	Non- Selective		Selective		Total
	Year 7	Total	Year 7	Total	
2021/22	1454	7842	783	5359	13,201
2022/23	1632	8435	790	5455	13,890
2023/24	1710	8935	818	5530	14,465
2024/25	1665	9316	809	5584	14,900
2025/26	1707	9647	814	5602	15,249
2026/27	1724	9970	815	5596	15,566
2027/28	1778	10214	841	5636	15,850
2028/29	1780	10402	842	5691	16,093
Change	+326	+2560	+59	+332	



- 14 By way of comparison, the three SCAP forecasts mentioned above (there were no forecasts required during the pandemic) show that the actual figure is below that forecast and thus the forecasts are not certain.

Year	2017 forecast	2018 forecast	2022 forecast
2016/17	11733 actual		
2017/18	12026	11813 actual	
2018/19	12305	12332	
2019/20	12660	12905	
2020/21	13057	13511	
2021/22	13472	14111	13,201 actual
2022/23	13932	14752	13,890
2023/24	14414	15481	14,465
2024/25		16019	14,900
2025/26			15,249
2026/27			15,566
2027/28			15,850
2028/29			16,093

- 15 The County Council identifies, in the DfE published SCAP return, that for the period 2021/2022 any developer contribution via s106/CIL is 'not applicable'. For the period through to 2028/2029 there is zero developer contribution to cover the impact of the rising pupil numbers and consequent shortfall in secondary school pupil places.
- 16 The conclusion to be drawn from this is that the forecast rising pupil numbers are as a result simple demographic change, no request for developer contributions from new housing and/or new housing where viability precludes developer contribution to mitigate its impact.
- 17 Thus, the forecast shortfall in places will be covered by the Basic Need allocations in the relevant period.

Sites for New Schools

- 18 Historically sites for schools were gifted by landowners, in Victorian times, under the School Sites Act 1841 (as amended). Depending upon the status of a proposed new school, different statutory provisions apply. Currently the default position is that all new schools are Academies/Free Schools and the Academies Act 2010 deals with land for academies. (Schedule 1 Academies: Land) The 2010 Act deals



with schemes where the land in question is held by the Local Authority or a School Governing Body, Foundation Body or Trustees.

- 19 Where no such land exists, the matter is dealt with by LocatED. Its website says:
“LocatED is an Arms-Length Body to the Department for Education. It is responsible for buying and developing sites in England to help deliver much needed new school places for thousands of children. Specialist in-house teams provide property expertise to education bodies, local authorities and central government departments to support the provision of education in an efficient school estate.”
- 20 There are circumstances where landowners continue to provide land for schools. In particular new housing developments, where the scale of development is sufficient to warrant a school in its own right as a mitigation of the impact of the development. Sometimes, where developments in consort are sufficient to warrant a new school, equalisation arrangements either by joint action by the developers or co-ordinated by the Local Authority provide for the provider of the land to be compensated proportionately by the others so that equity prevails.
- 21 This is recognised by the County Council in its Developer Guide. 4.1.3.
Where infrastructure is needed to serve more than one development⁹, the land element may be provided by one developer on their site, with other developers making a capital contribution towards it. Developers will need to work together to agree a proportionate approach to their contribution. Each development will be considered on a site-by-site basis.⁹ For example, where several sites have been grouped together under one strategic allocation within the local plan.

KCC Document Matter 6 from paragraph 9.9.6

- 22 At paragraphs 9.9.6 and 9.9.7 the County Council asserts the commissioning need to establish a new secondary school within Maidstone from 2027 to 2030. It ignores that it is the Regional Commissioner not the County Council that commissions new Academies/Free Schools though it is the County Council, amongst others, that can trigger the process.



- 23 At paragraph 9.9.10 the County Council criticises the Inspector’s letter of 11th January 2023 at Paragraph 5.31 where it considers the proposed policy for Invicta Park Barracks (Policy LPRSP5(b)) but this criticism is without foundation.
- 24 The Invicta Park Barracks site has the potential for circa 1,300 new homes which is not sufficient to warrant a secondary school which the County Council anticipates is circa 5,000 new family homes that justifies an 1,100-place school, the average size of a Maidstone secondary school in January 2022.
- 25 Thus the Inspector is correct to conclude at 9.9.8.
- The capacity of the wider site is also affected by the potential to deliver a new through-school including additional secondary school capacity to potentially support this site but mainly for the benefit of other development in the town.*
- 26 Because a secondary school at Invicta Barracks would in the main serve other areas, in accordance with the County Council’s own guidance, the site would have to be acquired. This, either by the County Council on behalf of other developments or by LocatED for an Academy/Free School if to serve demographic growth or a Free School agenda. For this reason alone, the value of the land has to be determined. Part III Land Compensation Act 1961 requires the LPA to certify the alternative use. This is delivered by the Inspector’s second paragraph at 9.9.8.
- 27 The County Council is wrong at its Paragraph 9.9.10. As with all forecasts they are not very good at identifying future need with any degree of certainty. Paragraph 14 (above) makes this plain in respect of forecasting secondary school pupil numbers in Maidstone.
- 28 The County Council asserts at its 9.9.13 that the secondary school for Maidstone may need to open by 2027. That is September 2027, fully fitted out and operational. To achieve this, the school would need to be practically complete by June 2027 which would require a process starting four years earlier.
- 29 Not only is this timeframe difficult, but the Invicta Barracks are also not due to be vacated and available for redevelopment until 2029.
- 30 The County Council’s proposal at 9.9.17 is unachievable and thus cannot be adopted.
- 31 The Borough’s proposed modification at 9.9.14 is a reasonable proposal. Bearing mind that any site needs to be purchased at its market value.