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Andrew Byrne
Swale Borough Council
Planning Support
Maidstone House
King Street
Kent
ME15 6JQ

3 June 2021

Dear Andrew,

KENT SCIENCE PARK, SHIMMIN ROAD, SITTINGBOURNE, ME9 8HL
APPLICATION REF. 20/503707/HYBRID
CLARIFICATION LETTER IN RESPECT OF PLANNING PERMISSION REF. SW/13/0203

Further to recent discussions in respect of Kent Science Park (KSP), it is our understanding that Swale Borough Council (SBC) believe that the outline element of the extant planning permission on land south of KSP has lapsed (ref. SW/09/0118 extended by SW/13/0203). As we have explained to the Council, we reserve the right to seek our own legal opinion on the matter. Notwithstanding, this letter explains why this potential change in circumstances has no bearing on the Officer Recommendation in respect of planning application ref. 20/502707/HYRBID.

The Previous Committee Report

In the 'Report to Planning Committee – 29 April 2021' ('the CR') and with specific regard to the (i) previous consent and (ii) the principle of acceptability, the following points are set out:

"6.7 It has been appreciated throughout that the application site already benefits from an extant planning approval SW/09/0118 (extended by SW/13/0203) for a 4ha expansion that included a detailed element of 2,852m² B1 use for Ecologia within the total 12,000m² permitted. The recent revisions to the current application are intended to bring the current proposals in line with the traffic movements that were considered previously for the extant approval, and the latest transport addendum submitted examines how these changes and the detailed element of the proposals would relate to the trip generation."

"8.04 Subject to compliance with both parts A and B of policy Regen 4 (which is assessed in detail below), I am of the opinion that development beyond the existing KSP boundaries is permissible under this policy and acceptable in principle."

"8.05 It is also important to note that planning permission has previously been granted under SW/09/0118 and SW/13/0203 for an expansion to KSP in much the same location (albeit that the current site area is slightly larger – 4.8 hectares - than the approved scheme - 4 hectares - to accommodate a landscape buffer area on the southern boundary), and comprising buildings of up to

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12,000sqm in floor area. The latter permission remains extant and is a significant material consideration as a fall-back position. Whilst there are key detailed differences between the approved scheme and the current application (which are discussed below), the principle of such development beyond the Science Park boundaries has previously been accepted and remains capable of implementation. The applicant is separately preparing to submit a reserved matters application before this outline permission expires on the 1st May 2021.

"8.30 Taking the above into account, the additional traffic arising from the development is not forecast to lead to any unacceptable highways conditions. The impacts would be at worse no greater than those previously considered acceptable for the extant scheme. However the proposal is more likely to result in less impacts than the extant scheme, due to the shift patterns operated by GW which would avoid the highway network at peak hours. Overall, I consider that the highways impacts are acceptable under this criteria of Regen 4, and under policies DM6 and DM7 of the Local Plan.

"9.1 The proposal would result in a substantial extension to the Kent Science Park, and this brings with it a number of impacts that have been assessed above, particularly given the rural location of the KSP. Nonetheless, Policy Regen 4 of the adopted local plan does allow for an extension to the KSP under certain circumstances, and I consider that the proposal (following substantial amendments) meets the criteria set within the policy to determine the acceptability of this. This is also based on a comparison between the previously approved scheme for a similar extension to the KSP which remains extant and the proposed development, and the provision of a substantial landscaped buffer to the new southern edge of the KSP to deal with the visual impacts of the larger building proposed on plot 2 and to provide a long-term screen to the development and wider KSP.

"9.2 Other impacts have been assessed by a range of consultees and found to be either acceptable or capable of control via planning conditions."

Implications for the Submitted Application Documents

In considering the application scheme, it is clear from the CR that Officers of Swale BC and all consultees have taken the approach that the scheme must be acceptable in its own right, regardless of the previous permission.

Principle of Development

Officers reached the conclusion that the scheme is acceptable in principle when assessed against Policy Regen 4 of the statutory development plan (albeit subject to various criteria – see CR 8.04) before mentioning the 'fall back' position. Officers also set out a comprehensive review of the Regen 4 criteria and unequivocally conclude that the scheme complies with all of those criteria, again without dependence on the previous permission's currency. A revised Planning Statement is submitted to the Council to remove reference to the extant consent within the assessment.

Traffic

The CR notes that revisions were made to the current application to bring the proposals in line with the traffic movements that were considered previously for the extant approval. In fact, it also notes that *"the proposal is more likely to result in less impacts than the extant scheme"*. Whilst it is clear that the Officer has assessed



the traffic implications in their own right (ie they are not being accepted merely because there was an extant permission) it is academic whether or not there is an extant consent to justify the grant of this planning permission.

We say this because, first, the traffic implications of the proposal would not result in a harmful impact such that planning permission should be refused. Second, even if the acceptability was dependent on using the same highway capacity that was 'baked in' to the extant permission (which was a 'commitment' for the purposes of traffic modelling), if the extant permission has recently expired the highway capacity that was tied to that commitment would still be available to the current application (not least given that there have not been any planning committees since the suggested 1 May 2021 expiry of the 'fall back').

We also attach a letter prepared by Charles & Associates (dated 24 May 2021) which assesses the net implications of the detailed element of permission ref. SW/13/0203 that remains extant until 2022. This demonstrates that the net additional traffic impacts would be marginal and therefore the conclusions of the previous assessments remain valid. We understand that both Kent County Council and Highways England have been consulted to confirm this position is agreed.

Landscape

During discussions on the application, a significant amount of time was spent on the landscaping proposals for the current application. The proposals represent a significant improvement when compared with the previous permission. Again, therefore, from a landscape point-of-view the acceptability of the scheme is in no way dependent or justified on the basis of the previous permission and, in fact, represents an improvement. The LIVA assesses the visual impact of the development taking account of the mitigation proposed and so for this reason we do not think it is necessary to provide an updated statement.

We also note that both Kent Down AONB Unit (correspondence dated 15 February 2021) and Huskisson Brown Associates (correspondence dated 14 April 2021) both assessed the landscaping proposals subject to this application and accepted that the mitigation proposed is sufficient to mitigate the visual impact of the proposed development.

Other Matters

In relation to other matters it is clear that the acceptability of the scheme has been considered independently from the extant consent, including in relation to residential amenity; heritage assets; and air quality, contamination, noise and odours. None of these assessments rely on permission SW/13/0203 in order to be found acceptable.

The Planning Balance

We also do not consider that the Council's interpretation of the previous application's status should change the overall planning balance. As noted in the CR the previous permission was an 'other material consideration'. Section 70(2) of the Town and Country Planning Act directs LPAs to have regard to the provisions of the development plan, so far as material to the application, and then to 'any other material considerations'.



It is clear from the CR that the proposed development is consistent with development plan policies in any event. The question is then whether the previous planning permission (or its expiry) would weigh against granting planning or weigh in favour.

A pre-existing planning permission for a site may be a material consideration even if it expired without implementation as noted in *South Oxfordshire DC v Secretary of State for the Environment* [1981] 1 WLR 1092. There is also, of course, the important tenet of consistency in decision-making which sits alongside the *South Oxfordshire* point.

Thus, some weight could still be ascribed to the previous planning permission if the decision-maker thought it appropriate.

Weight is, of course, a matter for the decision-maker but if weight were ascribed, it would be positive weight – the previous planning permission in no way suggests that planning permission should be refused for the current application.

However, even if all references to the previous permission were excised from the CR there are clear and convincing reasons why planning permission should be granted; this is not the case where the recommendation is being made 'on balance' – the scheme is clearly in accordance with the statutory development plan. In effect, even though the previous planning permission continues to be a positive material consideration, if it were completely disregarded the recommendation should not change based on the reasoning in the CR.

Concluding Remarks

We trust that this letter clarifies matters and provides justification for the application to be approved on its own basis, with the lapsed permission only being a material consideration in any event.

If you have any queries in respect of this letter or its enclosures please direct these to Tom Cole or Paul Burley of this office.

Yours sincerely,

A handwritten signature in black ink that reads "Montagu Evans".

Montagu Evans LLP

Enc.