

Issue 5

Will the Local Plan meet the housing requirement over the plan period? Will there be a 5 year supply of deliverable housing sites with an appropriate buffer?

- 5.1 We disagree with the council's assessment of the impact of the St Modwen judgement given our attendance at the recent Gladman inquiries. The council's position appears to be the if they have a figure 'x' years for the 5 year period from the housing trajectory then the council must have a 5 year land supply of materially greater than 'x' years. Whilst we appreciate that the St Modwen judgement does make clear that the test for eligibility of sites in the 5 year land supply is 'realistic prospect' rather than 'expected' in the housing trajectory they have considered this point in isolation and run with it. Paragraph 47 bullet point 2 says 'identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirement' and with reference to the buffer 'to provide a realistic prospect of achieving the planned supply' It is therefore clear to us that whilst realistic prospect applies to sites it also applies to the whole 5 year land supply. The council has made the argument in the Gladman inquiries of 2018 that realistic prospect need not even be most likely but could be something less than most likely. The problem we see with the council's approach is the sum of many sites each with only a realistic prospect cannot be equal to 'a supply of deliverable sites sufficient to provide 5 years worth of housing against their housing need' without overprovision. Whilst in a single coin toss a realistic prospect may exist that it results in 'heads' there is no realistic prospect that 20 such coin tosses will result in 20 'heads'.
- 5.2 It is for the inspectors to consider if sufficient sites are being provided that once allowing for the probabilities of each individually being deliverable at all and the extent to which is deliverable within the 5 year horizon that the inspectors are happy that there is a reasonable prospect that the combination of all sites will be 'sufficient to provide 5 years worth of housing against their housing requirement' The NPPF or PPG do not say that the realistic prospect sites are to be totalled and that will equal a supply. It does make clear that a number of sites sufficient to deliver the 5YLS must be identified. Unless all those sites are certain to be deliverable, which could realistically only apply to sites which have full planning permission and have discharged pre-commencement and Grampian conditions, then a degree of overprovision / taking account of the risk must be implied or the 5YLS would always fall short. When councils were in the past entirely basing their 5YLS on the 'expected' hurdle of the housing trajectory a reasonable prospect may have remained generally, at least sufficiently so that it has not been necessary to draw out this difference before the St Modwen judgement.
- 5.3 To be clear the above view would not result in the overprovision of deliverable sites and is not a repetition of points lower in bullet point 2 of paragraph 47 of the NPPF. It is merely ensuring that once a number of sites drop out, as we can expect to occur then a reasonable prospect exists of a 5YLS of deliverable sites remaining. Lower in bullet point 2 of paragraph 47 the wording then addresses ensuring delivery occurs by providing choice and competition in the market (it does not say this is to allow for sites being found undeliverable). In order to ensure delivery it is then necessary to add a buffer to ensure that there is a greater number of deliverable sites available to housebuilders than is required, to increase the prospects that the requirement is met.

- 5.4 In extremis the councils approach could mean that all sites proposed could be of reasonable prospect (less than most likely) and could not be 'expected' to be delivered. In that case a council could have a 5YLS due to reasonable prospect although it does not have any homes in the housing trajectory. It would also follow that no more than 50% of homes (given all the sites are less than most likely to occur) would occur over the 5 year period. Even the 20% buffer would not be enough to mean that a 'sufficient' number of sites were available. Clearly this would not be consistent with 'to provide a realistic prospect of achieving the planned supply' as no such realistic prospect would exist. It must therefore be the case that a planning judgement must be made in essentially risk weighting the group of deliverable sites within the 5YLS and overproviding deliverable sites to ensure a number 'sufficient to provide 5 years worth' of housing exists, especially if in a post St Modwen judgement world councils now intend to pursue adding sites, or attributing additional units to the same sites, which are less than likely to come forward within 5 years.
- 5.5 I have not been able to identify points where the view taken above would conflict with the NPPF, PPG or judgements. The PPG has been updated to include 'and consideration of associated risks' in Paragraph: 033 Reference ID: 3-033-20150327 . As I read the St Modwen judgement, especially knowing that in this case there were many more deliverable sites identified than was necessary to fulfil the supply, I do not see a conflict with the above view as a reasonable prospect of the supply as a whole being sufficient to provide 5 years worth of housing must have existed. Reading the Wainhomes judgement it would appear to me in paragraph 57 that such an approach is found to be entirely reasonable for an inspector to carry out in exercising their planning judgement.
- 5.6 We have concerns that ABC's investment strategy conflicts with intentions of the NPPF. The Council intends to borrow to invest heavily in acquiring residential and commercial property within the borough, the Leader being adamant that real asset prices will rise. That the LPA'S financial position will depend on rising prices will cause a conflict between the council's finances and the NPPF. The LPA is able to constrain supply and is in effect the marginal supplier of housing in the Kent/East Sussex region (based on Ashford being identified in past regional spatial strategies as the area with most scope for growth). If the NPPF succeeded then we would expect to see house prices and rents rise by less than inflation, leading to a negative real return to the Council. Whilst the Council is free to invest as it chooses we think that it would be appropriate within the plan to be more robust than would otherwise be the case in choosing a mechanism to ensure the council meets the requirement.

i) Are the assumptions and analysis regarding site suitability, availability and achievability and development capacity in the Strategic Housing and Employment Land Availability Assessment (SD12) reasonable and realistic? Is this assessment sufficiently comprehensive and rigorous having regard to the PPG on Housing and economic land availability assessment (ID3)?

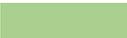
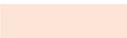
- 5.7 We would not agree that the council applied the requirement to 'test again the appropriateness of other previously defined constraints, rather than simply to accept them' for reasonable alternative sites. PPG ID 3-011-20140306
- 5.8 It is inappropriate to conduct the site assessment on the basis of the whole site area with regard to flood risk and other factors. The PPG on flood risk refers to 'locate development' and we think this must first applied within the boundaries of the site to see what modification would be required to the floodplain to enable development, if any. Then sites can be compared at a site level. To base analysis on the percentage of the site which floods is not robust.

5.9 PPG informs us that site assessments should be updated annually Paragraph: 041 Reference ID: 3-041-20140306 and that these updates include ‘progress that has been made in removing constraints on development and whether a site is now considered to be deliverable or developable;’ and ‘unforeseen constraints that have emerged which now mean a site is no longer deliverable or developable, and how these could be addressed;’ Paragraph: 043 Reference ID: 3-043-20140306 The council does not appear to have done this as new evidence became available.

5.10 For larger sites we consider that it is not appropriate to solely base site assessments on the whole area submitted when reasonable alternatives may exist within that area and have even been suggested by those submitting the site. The council comments that ‘the site appraisal must be undertaken on the whole site as it is submitted’ (SD05 part 3 page 7).

5.11 The council appears to be making the argument (SD05 part 5 page 57, response to 732) that a risk assessment be carried out for reservoirs to demonstrate risk in order for Paragraph: 006 Reference ID: 7-006-20140306 to ‘avoid an intensification of development within areas at risk from reservoir failure’ to be triggered. The PPG make no such suggestion and even if that were the case the councils SFRA does not address flood risk from reservoirs as required by Paragraph: 014 Reference ID: 7-014-20140306 nor has the council provided any evidence regarding the reservoirs. It is therefore not possible that the sequential test has been applied as all flood risk has not been considered, the evidence base is deficient.

5.12 We have doubts about the quality of the bus service at some sites and generally feel it may have been more accessible to present data comparatively for reasonable alternatives on a range of factors. For example with bus routes the addition of frequency would have been informative-

<u>Bus frequency per hour, routes within 500m of site</u>						
	Frequency Weekday	Frequency Saturday	Frequency Sunday	Housing Number		
NW1	18	16.5	6	350	Omission site	
11, Steeds Lane Magpie Hall	13	12	4	400	Strategic Sites	
21, Bridgefield	12	12	4	325	Added homes in MC	
26, Eureka	12	12	6	375	New Sites in MC	
88 Land South Brockmans lane	11	11	4	100		
87 Bombardier Works	9	9	2	100		
89 Chart Road	5.5	5	2.625	25	Frequency less than	
S2 Kennington	3	3	2	700	4 per hour	
103, St Michaels	3	2	1	50		
12, Pound Lane	3	2	0	150		
102, Rectory Close, Mersham	2.75	1	0	15		
25, Conningbrook 2	2	2	2	170		
93 Caldecott Smeeth	2	1	0	50		
97 Challock, Clockhouse	1.25	0.5	0	15		
90 Hothfield Mill	1	1	0.625	75		
91 Holiday Inn Hothfield	1	1	0.625	150		
92 Tutt Hill (Adjacent to MC91)	1	1	0.625	75		
99, Branch road, Chilham	1	1	0	10		
100, Hamstreet	1	1	0	80		
101, Stevenson Bros	1	1	0	50		
105, Woodchurch	1	1	0	30		

98 Charing, Poppyfields	1	1	0.625	180
23, Waterbrook	1	1	0	350
Court Lodge	1	0	0	950
94 Church View	0.875	0	0	10
95 Goldwell Court	0.875	0	0	20
104, Wittersham	0.125	0	0	40
96 Brook	0	0	0	10

ii) Are the sites relied upon for the supply of housing deliverable and developable in accordance with paragraph 47 of the NPPF? Does the evidence provided in Appendices 1 and 2 of the Housing Topic Paper (SD08) give sufficient confidence that sites will be delivered as anticipated? Is there an over-reliance on large site allocations?

5.13 We would disagree that there is an overreliance on large sites. It is necessary that such sites be included due to the planning constraints identified in our paragraph 3.7.

iii) What should be the starting date for the consideration of a 5 year supply?

5.14 Based on the evidence we have 2017-2022 should be the starting date. We would understand if this were shifted to 2018-2023 but evidence of deliverability for the year 2023 would need to be produced by the council. We have our doubts about the prospects of the council being able to demonstrate a 5 year land supply within this period however and imagine that the examination process may be lengthy, for that reason our preferred period for the 5 year land supply would be 2019-2024.

5.15 Also in our view the infrastructure delivery schedule will need to be updated to reflect constraints identified which have not yet been incorporated and especially those with scope to be a constraint in the first 5 years.

iv) How is any shortfall in delivery since the start of the plan period to be dealt with? Should this undersupply be dealt with within the first 5 years or over a longer period? Should the shortfall be calculated against the Strategic Housing Market Assessment (SD13) figure of 825 dwellings per annum or the annual housing target in Table 1 of 848 dwellings per annum? Is the application of a 20% buffer in addition to the annualised housing target and the shortfall since 2011 justified?

5.16 We believe the shortfall should be dealt with in years 2020-2025 when many infrastructure constraints are removed.

5.17 We believe that the application of a 10% allowance for uplift and a 20% buffer are justified in a policy context from a demand point of view. We believe there is scope for additional sustainable housing allocations within this plan. There are some allocations which may prejudice delivering this scale of development on a longer horizon in the next plan period particularly employment sites now being proposed for housing. We acknowledge that there would be an argument for tempering housing growth now to result in a more sustainable development pattern in the next plan.

5.18 We think that the shortfall should be calculated against a revised economic scenario which reflects higher growth rather than the demographic outputs.

v) Is the housing trajectory at Appendix 5 realistic and does it form an appropriate basis for assessing whether sites are deliverable in line with footnote 11 of the NPPF?

5.19 We will raise these issues at site specific hearings.

5.20 There is not a site specific hearing for existing sites and at this point we would highlight that Conningbrook Lakes has still not discharged pre commencement conditions relating to flood risk. Work on site has commenced despite this and ABC does not appear to be taking enforcement action. This highlights the concern we have at sites such as Court Lodge and Waterbrook where flood risk issues are proposed to be deferred to consideration at a later stage, this was the approach at Conningbrook and the solution appears to be to build out the site without addressing those concerns and raising flood risk off site. We also believe that the changes to the surface water storage proposed are so significant that it constitutes a subsequent application under the Town and Country Planning (EIA) Regulations 2017. The old surface water scheme provided habitat/linkages/a treatment train for surface water and a barrier to predation of the LWS. These were all significant mitigations in the EIA assessment of the original scheme, the new surface water scheme does not in our opinion provide these benefits/mitigations.
(12/01245/CONF/AS)

vi) Does the contingency buffer of over 1,000 dwellings provide sufficient flexibility to accommodate unexpected delays whilst maintaining an adequate supply?

5.21 In principle we do not disagree with a contingency buffer of 1,000 dwellings so long as the allocations have been appropriately evaluated and it is plausible that they could be delivered.

vii) Has the Council made reasonable assumptions about average densities in Table 1 of the Strategic Housing and Employment Land Availability Assessment (SD12) bearing in mind PPG advice (ID3-017-20140306)? Has this been translated into the capacity estimates for allocated sites?

5.22 No comment

viii) Is the approach to windfall sites justified having regard to paragraph 48 of the NPPF? Why is it assumed that there will be 150 windfall units in 2021 and 100 from 2022-2030? Having regard to paragraph 48 of the NPPF should windfall sites be included in the 5 year supply? Is the 25% nondelivery rate of extant windfalls reasonable?

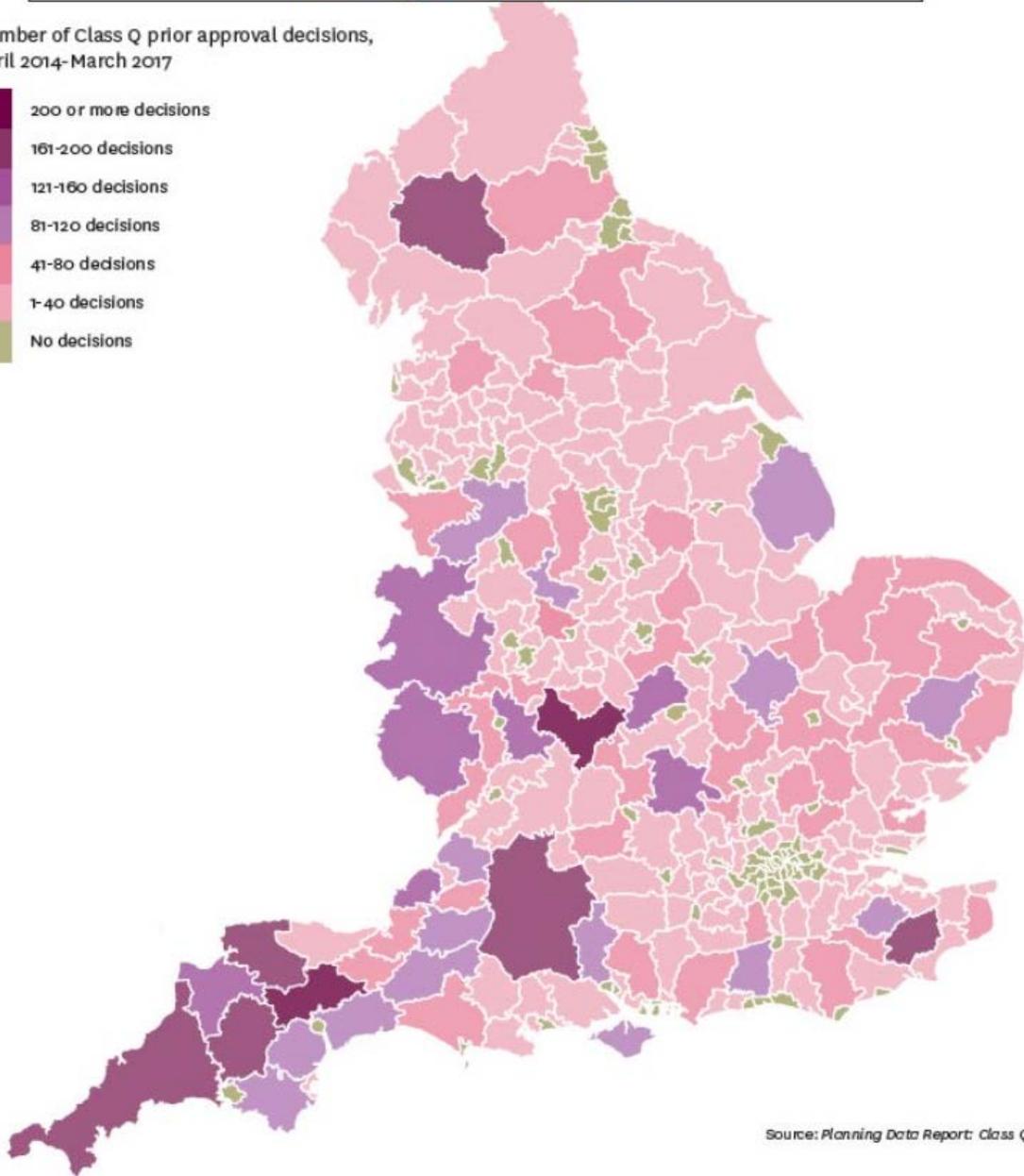
5.23 We would agree that the change from 2021 to 2022 does not appear to be justified based on the councils analysis in SD12 page 20. From that page we would also highlight the town centre deliver in 2015/2016 of 234. We consider this to be an outlier (due to Charter House/Panorama) . If this figure is reduced to a more consistent 34 then the average windfall is 123 per year over the last 5 years.

5.24 Given that the council cites 177 dwellings per year being delivered by windfall over the past 12 years in paragraph 189 on page 31 of the Housing Topic paper and above I reference an adjusted figure of 123 per year then there is an argument that the rate of delivery from windfall sites is declining. In this context we would not view the Councils figure of 100 as being 'very conservative' but would suggest that it is reasonable. Any figure higher than 100 would to us seem unrealistic based on the evidence.

5.25 Ashford has been one of the most prolific boroughs in class Q conversion of agricultural buildings to residential, in this context the drop in windfalls seen is despite the benefit of this category since 2014 and would give us further cause for caution should there be any attempt to raise the annual windfall allowance as the number of Class Q conversions is likely to taper.

COUNCILS THAT HAVE DETERMINED THE MOST CLASS Q CONVERSIONS

Number of Class Q prior approval decisions,
April 2014- March 2017



Source: Planning Data Report: Class Q

(Map sourced from Planning Resource)

ix) Does the Local Plan contain a housing implementation strategy describing how delivery of a five year supply of housing land to meet the housing requirement will be maintained in accordance with paragraph 47 of the NPPF?

5.26 No comment

x) How would the supply of housing sites be monitored and managed?

5.27 No comment

Appendix contents-

- Page 7 Appendix contents
- Page 8 – Extract from the Wainhomes Judgement, page 23. Document referenced in paragraph 5.5. Full document available from the link below

<https://www.wychavon.gov.uk/documents/10586/157693/C7%20-%20Wain%20Homes%20Judgement.pdf>

- Page 9 -10 – Most recent Environment Agency comments regarding discharging of conditions at Conningbrook Lakes site. Application reference 12/01245/CONF/AS

<https://www.ashford.gov.uk/planning-and-building-control/>

obligation on the Court to read the Decision Letter in good faith and as a whole, construing it in a practical manner, the cited passage does not subvert the conclusion that the inspector did not misinterpret Footnote 11. If anything it states too demanding a test, since it suggests that the plan and evidence base can never be enough to support a finding that sites are deliverable in the absence of additional information indicating a reasonable likelihood of them progressing within the five year period. However, the passage should not be taken in isolation and, viewed overall, it appears that the inspector applied the correct test.

57. The second question is how an inspector should deal with the fact that, as Inspector Robins acknowledged, the housing supply from the sites could not be guaranteed. The logical consequence of this lack of certainty at first blush appears to be that the raw numbers should be discounted for the probability or certainty that not all included sites are in fact deliverable. Inspector Robins dealt with this in terms of weight, both at [21]-[24] and when tying his findings together at [51-54]. On a fair reading, at [54] he carried out a balancing exercise which started with the express recognition that “the exact numbers cannot be relied upon.” Prudently, in my judgment, he did not try to apply a precise numerical discount to reflect the uncertainty that he had identified. Instead, having acknowledged the uncertainty and after rehearsing the context in which the raw figures were generated, he reached the conclusion that the Council had demonstrated a 5-year housing supply. On a detailed semantic analysis, his reference to 4.3 years set against an expectation of 5.25 years not representing a serious shortfall may be criticised on two grounds. First, it suggests that, despite his balancing exercise, he is still adhering to the raw and exact figure of 4.3 years. Second, it may fairly be pointed out that the issue was whether there was adequate provision and, on the basis of a finding of 4.3 years supply, there was not. However, while it might have been preferable for the inspector to have inserted a qualification to show that he was not “sticking” at 4.3 years, a fair reading of the relevant paragraphs as a whole shows that he did in fact recognise the weakness of the raw figures and was not committed to them; and the thrust of the sentence was that no overwhelming need for development had been shown, which was a conclusion that was open to him on his findings.
58. In summary, I would accept that the inspector could have included an additional sentence or two which would have made [54] more transparent; but in my judgment, fair reflection upon [54] shows that he has carried out a balancing exercise to reflect the lack of certainty he had identified.
59. In support of Ground 3 of the challenge, the Claimant criticises [23] of the Decision Letter. The first criticism, as advanced in the Claimant’s skeleton argument, is that the inspector failed to engage with the issue whether Malmesbury inspector’s approach was still valid in the light of the NFFP and the fact that it was designed to address economic stagnation and boost the housing land supply. At the hearing, however, although the Claimant again pointed out the broad economic purpose of the NPPF, its focus on the Malmesbury decision was different: it is now alleged that the significance of the Malmesbury decision is that there was site specific evidence justifying the inclusion of the sites. That observation is correct, but does not advance the criticism that had been advanced in the Skeleton Argument. In my judgment, while there is no sign that Inspector Robins identified the distinguishing feature that there had been site specific evidence available to the Malmesbury inspector in relation

Llywelyn Lloyd
Ashford Borough Council
Development Control
Civic Centre Tannery Lane
Ashford
Kent
TN23 1PL

Our ref: KT/2017/122982/06-L01
Your ref: 12/01245/CONF/AS
Date: 06 March 2018

Dear Llywelyn

DISCHARGE OF CONDITIONS: 24 AND 25 OF PLANNING PERMISSION 12/01245/AS (CREATION OF A COUNTRY PARK FOR RECREATIONAL AND WATER-SPORTS PURPOSES WITH A RANGE OF ASSOCIATED FACILITIES INCLUDING AN ACTIVITY CENTRE, A PUBLIC HOUSE/RESTAURANT, CHANGE OF USE OF MANOR TO OFFICES, CAR PARKS AND OTHER ANCILLARY WORKS AND STRUCTURES INCLUDING WORKS TO THE JULIE ROSE STADIUM; CONSTRUCTION OF 300 DWELLING RESIDENTIAL DEVELOPMENT WITH ASSOCIATED INFRASTRUCTURE AND LANDSCAPING; AND PROVISION OF AN AGGREGATES STORAGE AND DISTRIBUTION FACILITY)

CONNINGBROOK, WILLESBOROUGH ROAD, KENNINGTON, KENT.

We have reconsidered the information already submitted to support this application in response to the email request by Mervyn Stevens (Chartwell Group) dated 16 February.

Condition 24

Based on the information submitted, unfortunately, we are still unable to recommend that condition 24 can be discharged. Additionally, given that conditions 24 and 25 are 'pre-commencement', conditions it may be difficult for these conditions, as worded, to be fully discharged in their present form.

Whilst we appreciate that it is intended for compensatory flood storage to be provided, the level of detail and amount of uncertainty over the specific provisions are still of concern.

It appears as though all of the land identified lies outside of the **area under the applicant's** direct control (i.e. outside of the application site's **red-line boundary**). **It is therefore unclear as** to what kind of planning control is able to be implemented on this area, when this work will be undertaken, or who will be **responsible for its delivery**.

Any compensatory flood-storage works should always be undertaken prior to any works that remove capacity from the floodplain. **This is to ensure that development is unable to** exacerbate the risk from flooding to the surrounding area. We understand that the development of this site is well underway, and that some of the **land-raising and infill has** already taken place. It is presently unclear what will happen to the material removed from the floodplain when the compensatory works are **undertaken**. **We would expect to see detail on**



the proposed deposition location for the removed material. It must be ensured that it is taken entirely outside of Flood Zones 2 and 3 and legally disposed of.

We would also have expected to see cross-sectional diagrams of the infill/compensatory areas, demonstrating that at any given stage of a flood event, there will be comparable volumes of storage available. We appear to have only been consulted on plan-views of the infill/compensation areas.

Condition 25

We are also unable to recommend that condition 25 is discharged until it can be demonstrated that any further work that may be required to discharge condition 24 will not impact upon the agreed finished floor levels.

Overcoming our objection

We will be happy to provide additional comment upon receipt of a further submission that fully addresses the terms of conditions 24 and 25 (taking full account of the latest climate-change guidelines and the principles previously agreed with the Environment Agency).

If the applicant would like us to review amended designs or plans prior to a formal submission, outside of a statutory consultation, and/or meet to discuss our position, this will be chargeable in line with our cost recovery service. If they wish to request a meeting, or document review, please contact our team email address at kslplanning@environment-agency.gov.uk.

Further information on our charged planning advice service is available at: <https://www.gov.uk/government/publications/planning-advice-environment-agency-standard-terms-and-conditions>

Decision notice

We require decision notice details for this application, in order to report on our effectiveness in influencing the planning process. Please email decision notice details to kslplanning@environment-agency.gov.uk.

Yours sincerely

Mrs Jo Beck
Planning Specialist

Direct dial 0208 474 6713
Direct email kslplanning@environment-agency.gov.uk