
SUMMARY REPORT

Application Ref:	20160215
Site Address:	Tollgate Hotel, Watling Street, Gravesend DA13 9RA
Application Description:	Demolition of all former Tollgate hotel/restaurant and construction of a petrol filling station and forecourts, sales building, ATM, underground fuel tanks, refuse/recycling, AC/refrigeration units, vehicular access, substation, parking and all associated works and services on part of the site.
Applicant:	B P Oil UK Limited
Agent:	Aitchison Raffety (Nigel Ozier)
Ward:	Woodlands
Parish:	Non-Parish Area
Decision due date:	Originally 06 June 2016
Publicity expiry date:	Previously on 01 September 2017
Decision Level:	Planning Regulatory Board - 04 September 2019
Reasons for referral:	Board decision required in respect of an appeal against non-determination. Application previously considered by the Board. That having regard to: - all of the grounds of challenge in the Judicial Review claim brought against the Borough Council that resulted in the quashing on 26 June 2018 of the decision to grant planning permission on 7 February 2018, and - the failure of the applicants to respond directly to the Borough Council to those grounds of challenge or to the Council's Advice Note sent to the applicants on 26 July 2018 with any additional or revised information, documents or plans,
Recommendation:	that, if it had been possible to determine the current planning application, the Board would have REFUSED to grant planning permission.

Summary of Reasons for Recommendation

This planning application (ref 20160215) for the construction of a BP Connect petrol filling station on the site of the former Tollgate Hotel (and with all existing hotel/restaurant buildings to

be demolished) was originally reported to and considered by the Council's Regulatory Board at its meeting on 07 February 2018.

The site is located next to what was the former off slip road to the former line of the A2 trunk road, now a linear greenspace, following the Highways Agency (now Highways England) scheme that relocated the route of the A2 southwards in 2009. The site is within the Green Belt just beyond the urban area of Gravesend and Northfleet to the north but it is a previously developed site.

The Board meeting on 7 February 2018 agreed with the officer recommendation and resolved to grant planning permission subject to planning conditions, reasons and informatives.

An earlier planning application (ref 20131018) for both a BP Connect petrol filling station and a restaurant/drive thru for the McDonalds franchise was the subject of decisions to grant conditional planning permission by the Board at its meetings on 15 January 2014 and subsequently on 22 July 2015. However Judicial Review (JR) claims were brought against both of the Borough Council's decisions, with the Borough Council consenting to the quashing of the first decision to grant planning permission in June 2014 as the Council had failed to properly apply the correct policy tests for the development in the Green Belt in relation to what was then paragraph 89 of the National Planning Policy Framework (NPPF). The subsequent planning permission issued on 29th July 2015 was quashed as a result of a High Court decision on 18 March 2016 on the single ground that the Local Planning Authority failed to quantify in the officer report to the Board the entire footprint of built-on land before and after the development, specifically in relation to hardstandings. That application, having been returned to the Council for determination following the quashing of the permission issued, was subsequently withdrawn.

In regard to the current planning application for a BP Connect filling station only, following the Board's resolution to grant planning permission on 7th February, after which a decision notice was issued the following day, this decision was also the subject of a legal challenge by the same objector, who had brought about the judicial review claims in relation to the 2013 planning application, Simon Privett (owner of the Tollgate Service Station).

The judicial review claim was on four grounds, in summary:

- Baseline/Fallback (i.e. that the Borough Council should have used the comparison between the proposed use of the site and the previous hotel use as though the site was empty);
- Green Belt (i.e. that the Council had failed to consider the impact of the development on the Green Belt in terms of a material change in the intensification of use in the Green Belt);
- Need and the Impact on Tollgate Service Station (i.e. that the Council had failed to properly consider the impact on the Tollgate Service Station and its likely closure which was a material consideration or the need for another petrol filling station and the inconsistency with the approach taken by the Environment Agency); and
- Ground Water (i.e. that it was a material consideration to have regard to the delivery of the Water Framework Directive objectives to support the protection of groundwater)

Following legal advice taken by the Borough Council, it was consented on 21 June 2018 to quash the decision and for the application to be remitted for re-determination, on the single and first ground only that the Council had relied upon a comparison between the impacts of the development and the impacts of a resumed hotel use actually taking place in the event that the development was not granted planning permission and that the Council had accordingly failed to have regard to a material consideration.

The 3 other grounds of challenge in the Judicial Review claim were not conceded by the Borough Council.

An Advice Note was sent by officers on 26 July 2018 to the applicant's agents, Aitchison Raffety, following legal direction, providing advice on the issues to be addressed and additional information required in response to all the grounds in the Judicial Review claim.

A planning appeal was subsequently received by the Planning Inspectorate (PINS) against non-determination on 20 March 2019 as more than 13 weeks had elapsed following the decision to remit the application for re-determination. The planning application will therefore now be determined by a Planning Inspector (not the Borough Council) and the intention is that the appeal will be dealt with by way of an informal hearing.

The start date of the planning appeal against non-determination has been held in abeyance pending the reporting of the appeal to the Board with the expectation that the Borough Council would then be in a position to give a clear view on what, if it had been possible, the Council's decision on the appealed planning application would have been.

The Board is advised that as part of the appeal submission the applicants have submitted a number of revised plans and documents in part to address the July 2018 Advice Note. The applicant's agents have suggested that the amendments to the plans do not materially change the development proposals. The new plans/documents have not previously been presented to the Borough Council for its consideration and therefore have not been the subject of any re-consultation or revised publicity. This was a concern of your officers and your officers sought a response on this issue from PINS.

PINS have advised in a response received on 24 July 2019 that in seeking a view of the Council as to how it would have determined the application it could do so on the basis of all the original documents meaning that the new (post appeal submission) plans/documents are not part of the remit and to comment on any new plans and documents only after the appeal starts.

Therefore the Board is now required to give a view on how they would have determined the current planning application on the basis of the original proposals (thus in relation to the same nature, scale, layout and appearance of the development as presented to the Board at the meeting on 07 February 2018) disregarding any new information and plans that may have been submitted by the applicants for the purpose of the current planning appeal, but clearly having to consider the application in the light of all the grounds that were set out in the Judicial Review claim against the Council's decision to grant planning permission and especially the reason why the Borough Council consented to quash the decision and for the application to be remitted for re-determination.

The planning application proposals have also been considered against any material changes relating to either relevant planning decisions or to revised local or national planning policy that might otherwise suggest that a different recommendation ought to be made in relation to the proposals.

In your officer's opinion there have been no significant approved planning applications that have, or are likely to have a material impact on the Tollgate hotel site in relation to the nature of the proposals or potential cumulative highway impacts that might not otherwise be mitigated.

In respect of the adopted development plan at a local level there has been no change in local planning policy. The application was originally considered against the 2014 Gravesham Local Plan Core Strategy and earlier saved policies. The site remains as being subject to Green Belt policy. Although there are now draft policies in the Draft Development Management Policies Document, it is at an early stage and will carry only very limited weight. There have been some

changes to national planning guidance, and the NPPF, not least a complete re-ordering of paragraphs but only limited changes in respect of Green Belt policy with the change relevant to this application being confirmation that material changes of use of land are not inappropriate within the Green Belt.

However, fundamentally in respect of the four matters which were set out in the Judicial Review Claim that subsequently resulted in the quashing of the decision to grant planning permission, no new information or evidence has been provided directly to the Borough Council by the applicants to respond to all of these matters and furthermore no new information or evidence has been provided by the applicants in response to the detailed Advice Note that had been prepared by the Borough Council to outline the issues that the developer would need to resolve in order to address all the reasons in the Letter before Claim (Judicial Review) and enable the Council to properly determine the application.

Without this additional information and supporting evidence, officers are unable to re-assess the proposals to reach a conclusion as to whether the development is fully compliant with local or national planning policy.

The overall conclusion therefore must be that, having regard to all of the grounds of challenge in the Judicial Review claim brought against the Borough Council that resulted in the quashing on 26 June 2018 of the grant of planning permission on 8 February 2018, and the failure of the applicants to respond directly to the Borough Council to those grounds of challenge or to the Council's Advice Note sent to the applicants on 26 July 2018 with any additional or revised information, documents or plans, that, if it had been possible to determine the current planning application, the Board would have **REFUSED** to grant planning permission.

MAIN REPORT

1. Introduction

Report to the Board 07 February 2018

- 1.1 This planning application (ref 20160215) was originally reported to and considered by the Council's Regulatory Board at its meeting on 07 February 2018.
- 1.2 The recommendation of the Planning Manager (Development Management) to the Board was for the grant of planning permission subject to planning conditions, reasons and informatives.
- 1.3 It was RESOLVED by the Board that the application be permitted. The minute of the Board meeting states:

The Board considered an application reference 20160215 for the demolition of all former Tollgate hotel/restaurant and construction of a petrol filling station and forecourts, sales building, ATM, underground fuel tanks, refuse/recycling, AC/refrigeration units, vehicular access, substation, parking and all associated works and services on part of the site.

Members' attention was drawn to a letter which the Council received on the morning of 6 February 2018 from Clyde and Co, solicitors acting for the chief objector to the application (and who acted for the chief objector in the judicial review claims in 2014 and 2016 in respect of the now withdrawn application 20131018 for the development of the whole site (for a petrol filling station and McDonalds). This letter, together with further representations

received by the Council, and the Council's response had been published as a supplementary to the report.

Attention was also drawn to a response received from the Environment Agency who advised that taking the whole of the guiding principles in "The Environment Agency's Approach to Groundwater Protection" (November 2017) into account, they would not change their previous advice on this particular application, and specifically that they would not object subject to their recommended planning conditions being imposed.

- 1.4 At the meeting the Board was addressed by Nigel Ozier and Simon Ellis (in support of the application) and Simon Privett and Julian Sutton (as objectors to the development).
- 1.5 A full copy of the main officer report to the Board meeting on 07 February 2018 is attached to this report (Appendix 1) along with the supplementary report to the Board (Appendix 2). Planning Permission (now quashed) was issued the following day, on 8th February 2018.

The Previous Application - 20131018

- 1.6 By way of background an earlier planning application (ref 20131018) which was originally submitted in November 2013 by the same applicants for both a BP Connect petrol filling station and a restaurant with drive thru for the McDonalds franchise was the subject of decisions to grant conditional planning permission by the Board at its meetings on 15 January 2014 and subsequently on 22 July 2015. However Judicial Review (JR) claims were brought against both of the Borough Council's decisions, with the Borough Council consenting to the quashing of the first decision to grant planning permission in June 2014 as the Council had failed to properly apply the correct policy tests for the development in the Green Belt in relation to what was then paragraph 89 of the National Planning Policy Framework (NPPF) while the subsequent decision of July 2015 was quashed as a result of a High Court decision on 18 March 2016 on the single ground that the Local Planning Authority failed to quantify in the officer report to the Board the entire footprint of built-on land before and after the development, specifically in relation to hardstandings.
- 1.7 That earlier application (20131018) for the development of the whole site had remained undetermined following the successful Judicial Review claims but on 15 November 2017 the applicant's agents on behalf of BP Oil UK Ltd withdrew the application in its entirety.

Judicial Review - 20160215

- 1.8 Following the issue of the permission on the subsequent planning application (ref 20160215) a further judicial review claim was lodged by the same objector that brought about the JR claims to the previous application, Simon Privett (owner of the Tollgate Service Station), on four grounds, which can be summarised as:

- *Baseline/Fallback*

That the Council, when conducting its assessment of the likely impact of the proposed development, was wrong to use the fallback position of the site with its existing hotel use and planning permission for a Use Class C1 use as a baseline and the Council should have used the comparison as though the site was empty.

- *Green Belt*

That the Council had failed to consider the impact of the development on the Green Belt and in particular had failed to address the test as set out in *R (on the application of Privett v Gravesham Borough Council)* [2016] EWHC 1276 by Mr Justice Jay in terms of a material change in the intensification of use in the Green Belt.

- *Need and the Impact on Tollgate Service Station*

That the Council had failed to properly consider the impact on the Tollgate Service Station and its likely closure which was a material consideration or the need for another petrol filling station given the existence of the Tollgate Service Station; and that the Council's consideration of need was inconsistent with the approach taken by the Environment Agency (EA).

- Ground Water

That it was a material consideration to have regard to the delivery of the Water Framework Directive objectives to support the protection of groundwater and it was material as to whether there was evidence to demonstrate that the EA's policy which allows development in locations such as that proposed only in exceptional circumstances was actually met; and that there has never been any assessment of whether the petrol filling station (PFS) could be provided outside of the Source Protection Zone (SPZ) or whether above ground storage could be used.

- 1.9 Following legal advice (from Counsel) taken by the Borough Council it was consented on 21 June 2018 to quash the decision and this was approved by the High Court on 26 June, and it was also consented for the application to be remitted for re-determination, on the single and first ground only that the Council had relied upon a comparison between the impacts of the development and the impacts of a resumed hotel use actually taking place in the event that the development was not granted planning permission and that the Council had accordingly failed to have regard to a material consideration and that it cannot be said that the decision would have been the same but for the legal error.
- 1.10 The 3 other grounds of challenge were not conceded but it was accepted within the quashing order that in the event of a similar determination relating to those grounds the claimant would not be barred from challenging the Council's decision in relation to any such determination.
- 1.11 A further planning application had been made by the applicants (20180784) at the end of July 2018 for redevelopment of the site for a petrol filling station and forecourts, underground fuel tanks, sales building with ATM, air conditioning and refrigeration units, refuse/recycling area, substation, vehicular access, parking and all associated works and services. and what effectively amounted to a duplicate type application but this was invalid as the applicants had not at the time of submission responded to the advice note sent by officers to the applicant's agents providing advice on the issues to be addressed in response to all the grounds in the Judicial Review claim. It has remained invalid.
- 1.12 On 26 July 2018 the applicant's agents had indicated that they were considering whether it was appropriate to appeal against non-determination in relation to the 2016 planning application and sought an indication of the new determination date and confirmation on what information the Council required from the applicants to address any issues on 20160215 and the fresh application.
- 1.13 On that same day an advice note was sent by officers to the applicant's agents, Aitchison Raffety, following legal direction, providing advice on the issues to be

addressed and additional information required in response to all the grounds in the Judicial Review claim but it was made clear that it did not seek to express any views regarding the merits of the proposal and was provided entirely without prejudice to the right of the Council to determine the remitted planning application in whichever way it may decide.

- 1.14 In late November 2018 the applicant's agent had indicated to the Council that they were still intending to progress the 2016 planning application with a view to seeking to obtain permission through a further determination by the Borough Council and responding to the Council's advice note and also in relation to the invalid application.

Appeal against Non-Determination

- 1.15 However an appeal was received by the Planning Inspectorate (PINS) against non-determination in relation to the 2016 planning application by the applicants BP Oil UK Ltd on 20 March 2019 (Planning Inspectorate reference APP/K2203/W/19/3225105; GBC appeal reference 2019/00024/NONDET), as more than 13 weeks had elapsed following the decision to remit the application for re-determination
- 1.16 At the request of the appellants, PINS have held the start date of the appeal (and which is to be determined currently by way of an informal hearing) in abeyance pending the reporting of the appeal to the Council's Regulatory Board (Planning Committee), originally anticipated to be on Wednesday 24 July 2019, with the expectation that the Borough Council would then be in a position at that meeting to indicate how the Board might have determined the planning application, as revised, were it not for the fact that the applicants, BP Oil UK Ltd, had appealed against non-determination taking away from the Borough Council its ability to determine the application and passing it direct to the Planning Inspectorate.
- 1.17 The Board is advised that in the appellant's submission to PINS a number of new plans and documents have been submitted and the appellants acknowledge that the new plans/documents have not been seen previously by the Local Planning Authority.
- 1.18 Officers wrote to PINS on 13 June 2019 seeking their opinion as to how the Borough Council can now report the application to seek a resolution on how it might have determined the application (were it not for the appeal against non-determination) having regard to:
- The submission of new plans and documents (including a revised red line plan) not been seen by the Local Planning Authority
 - The fact that the above new plans/documents have not been the subject of any re-consultation or revised publicity.
 - The fact that the appellants submission to PINS does not (in the opinion of officers) fully respond to or address all the matters and points in the advice note that was prepared by the Borough Council subsequent to the decision to the quashing of the permission and sent to the current appellants on 26 July 2018 to address all the reasons in the Letter before Claim (Judicial Review)
 - The potential risk of complaint/challenge.
- 1.19 The appellants agent wrote to the Council on 15 July 2019 expressing their concern that officers had not been able to prepare a report for the meeting on 24 July and requested confirmation on whether officers intended to report the appeal to the Regulatory Board, and by when and requested that officers provide as soon as possible a clear view on

what, if it had been possible, the Council's decision on the appealed planning application would have been.

- 1.20 In response to officers concerns about the introduction of new evidence and that this would need to be the subject of possible additional consultation and publicity the appellant's agents (Nigel Ozier) commented on 15 July 2019:

...you are concerned about the need to re-consult on the appeal documents and plans as you consider there are material changes to the proposals. This is not the case as the drawings and reports submitted as part of the appeal only clarify matters already agreed with you prior to the planning application being presented to the Regulatory Board in February 2018. They also respond to appropriate matters set out in a note prepared by your officer.

- 1.21 PINS responded on 24 July to the officer's concerns expressed on 13 June 2019, and following a subsequent chase-up on 15 July, advising:

You can still discuss the application at the Planning Committee meeting, rather than the appeal, meaning that the new plans/documents are not part of the remit. The outcome of the meeting would then inform the agent's revised (Statement of Case) SoC. The LPA can then comment on the new plans/documents & SoC at statement stage after the appeal starts.

- 1.22 In the light of the above the remainder of this report sets out any necessary updates to the previous sections of the reports and provides an analysis of whether or not a different recommendation should now be made having regard to the Judicial Review claim and any changing circumstances.

2. Planning History

The Application Site

- 2.1 The original reports as appended set out the planning history in full in relation to the application site (*the 'appeal site'*) in paragraphs 2.1 - 2.15.
- 2.2 As indicated above what effectively amounts to a duplicate type planning application (20180784) was submitted by the same applicant and agent at the end of July 2018 for the redevelopment of the site for a petrol filling station and forecourts, underground fuel tanks, sales building with ATM, air conditioning and refrigeration units, refuse/recycling area, substation, vehicular access, parking and all associated works and services but it remains an invalid application.
- 2.3 There has been no other subsequent planning application submitted in relation to the application site from the current applicants or another party.

Other Relevant History

- 2.4 In relation to other relevant local sites the following planning applications have been submitted or determined since the date when this planning application (20160215) was originally considered by the Board on 07 February 2018.

Tollgate House/Service Station

20180781: Change of use from office to a one bedroom dwelling. Pending Consideration

Cyclopark

20190656: Continued use of part of the car park for Hertz car hire business. Invalid on Receipt

Land North of Coldharbour Road

20180041: Reserved Matters Application for the approval of details of appearance, landscaping, layout and scale pursuant to outline planning permission reference number 20141214 for residential development for up to 400 new homes, including details pursuant to conditions 4, 6, 7, 8, 10, 11, 14, 27, 28, 31, 32, 33, 35, 39, 44 and 45. Approved 23 July 2018

Land South of Coldharbour Road

20160721: Outline application with all matters reserved for the erection of offices, workshops and light industrial units with associated car parking, servicing and landscaping, with alterations to the vehicular access for Capital Space. Resolved on 16 May 2019 to grant planning permission subject to completion of s106

20181271: Erection of a Foodstore (Use Class A1 Retail - *for Lidl*) and business units (*Kier Trade City format*) providing employment floorspace (to be used flexibly within Use Classes B1(c), B2 and B8 - light industrial, general industrial and storage and distribution including the provision for ancillary retail sales to facilitate specialist, trade counter operations); creation of new infrastructure including a pedestrian footway / cycleway and 'toucan' crossing on Coldharbour Road, access, car parking and servicing; hard and soft landscaping and associated retaining structures and ground works, submitted by Kier Property Developments Limited. Pending Consideration

Ellenor Hospice

20190756: Expansion and refurbishment of the existing Ellenor Hospice to provide 12 en-suite rooms consisting of a single storey extension at the eastern end to provide 5 single en-suite rooms with amenity space and nurses space together with 7 refurbished rooms within the existing hospice layout; construction of two storey addition on south side for offices, meeting rooms for well-being centre and improved outpatient facilities; provision of ambulance access from Marks Square; alterations and extension to existing car parking layout and provision of external storage and sub-station. Pending Consideration

3. Proposals

- 3.1 The nature, scale, layout and appearance of the development all are as in the details presented to the Board at the meeting on 07 February 2019.
- 3.2 The proposals therefore remain as being for the demolition of all former hotel and restaurant buildings and the construction of a petrol filling station and forecourts with underground fuel tanks, sales building and ATM, air conditioning (a/c) and refrigeration units, refuse/recycling area, substation, vehicular access, parking and all associated works and services.

- 3.3 Full details of the proposals are set in paragraphs 3.1 - 3.35 of the original report to the Board on 07 February 2018.

4. Planning Policy, Development Plan and other Material Considerations

- 4.1 Paragraphs 4.1 - 4.58 of the original report to the Board on 07 February 2018 set out the detailed national and local planning policies against which the planning application was originally determined.

Local Plan Policies and Guidance

- 4.2 In respect of the local context there has been no material change to local planning policy (Gravesham Local Plan Core Strategy September 2014 and saved policies within the Gravesham Local Plan First Review November 1994). There has been no change to supplementary planning guidance relevant to this planning application.
- 4.3 The consultation on the Gravesham Local Plan Regulation 18 Stage 1 Part 2: Development Management Policies Document ran between 25 April 2018 and 11 July 2018. It reviews the current strategic policy on the scale and distribution of development in Gravesham and sets out detailed policies to guide decisions on planning applications. Once adopted, it will replace the remaining saved policies in the Gravesham Local Plan First Review. As it is at an early stage it will carry only very limited weight in the determining of planning applications. Policies relevant to this application include:

Proposed Policy DM 6 Extensions, Replacement Buildings and Ancillary Development in the Green Belt

Proposed Policy DM 7 Limited Infilling in Villages and Development of Previously Developed Sites in the Green Belt

Proposed Policy DM 16 Transport Hierarchy

Proposed Policy DM 17 Mitigating Transport Impacts

Proposed Policy DM 18 New Accesses and Junctions

Proposed Policy DM 19 Electric Vehicle Charging Points

Proposed Policy DM 33 Air Quality

Proposed Policy DM 34: Contaminated Land

Proposed Policy DM 35: Light Pollution

Proposed Policy DM 37: Noise and Vibration

National Planning Policies

- 4.4 It is a material consideration that the original application was considered and determined in relation to the National Planning Policy Framework (NPPF), March 2012.
- 4.5 This has now been replaced by the revised version of the NPPF July 2018 and which has itself been amended in both February and June 2019. The 2018 version of the NPPF significantly changed the paragraphs numbers whilst (in relation to the Green Belt) not changing the essence of national Green Belt policy.
- 4.6 As before at the heart of the NPPF is a presumption in favour of sustainable development (NPPF 2019 - paragraph 11) which means approving development proposals that accord with the development plan without delay and where there are no relevant development plan policies or where the policies are out of date planning permission should be granted unless policies of the Framework provide a clear reason for refusing the development such as where land is designated as Green Belt or any

adverse impacts would so significantly and demonstrably outweigh the benefits or specific policies in the NPPF taken as a whole.

4.7 The NPPF now includes (in paragraph 8) three overarching objectives to achieving sustainable development:

- an economic objective;
- a social objective; and
- an environmental objective.

4.8 Numerous sections of the NPPF are directly relevant to the consideration of the development. The following paragraphs are specifically highlighted as being of importance to the consideration of the proposals, but it should not be taken that these are the only parts of the NPPF that need to be considered.

Section 2, Paragraphs 7 - 14: Achieving sustainable development

Section 4, Paragraphs 38 - 58: Decision Making

Section 6, Paragraphs 80 - 84: Building a Strong, Competitive Economy

Section 7, Paragraphs 85 - 90: Ensuring the Vitality of Town Centres

Section 9, Paragraphs 102 - 111: Promoting Sustainable Transport

Section 11, Paragraphs 117 - 123: Making effective use of land

Section 12, Paragraphs 124 - 132: Achieving well-designed places

Section 13, Paragraphs 133 - 147: Protecting Green Belt Land

Section 14, Paragraphs 148 - 169: Meeting the Challenge of Climate Change, Flooding and Coastal Change

Section 15, Paragraphs 170 - 183: Conserving and Enhancing the Natural Environment

Section 16, Paragraphs 184 - 202: Conserving and Enhancing the Historic Environment

National Green Belt Policy under the Revised NPPF

4.9 In respect of the Green Belt Paragraph 133 of the revised NPPF (*paragraph 79 of the NPPF 2012*) indicates that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

4.10 Paragraph 134 of the revised NPPF (*paragraph 80 of the 2012 NPPF*) advises that Green Belt serves five purposes:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

4.11 In addition to the above five nationally defined purposes of the Green Belt, policy CS02 of the adopted Gravesham Local Plan Core Strategy states that the local purposes of the Green Belt will be maintained. Paragraph 4.2.7 of the document sets these purposes as being:

- to maintain the break in development between the eastern edge of Gravesend and the Medway Towns which is one of the few barriers preventing the further eastward sprawl of London and the merging of towns along the southern part of the Thames Estuary;

- to assist in safeguarding the countryside by minimising the expansion of the Borough's rural settlements; and
 - to assist in concentrating development on underused, derelict and previously developed land in the urban area of Gravesend and Northfleet.
- 4.12 Paragraph 143 of the revised NPPF (*paragraph 87 of the 2012 NPPF*) sets out that 'inappropriate development' is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
- 4.13 Paragraph 144 of the revised NPPF (*paragraph 88 of the 2012 NPPF*) advises that, when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
- 4.14 Any development in the Green Belt is inappropriate unless it falls within one of the exceptions set out in the closed lists contained in paragraphs 145 and 146 of the NPPF.
- 4.15 Paragraph 145 of the revised NPPF states that a local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:-
- a) buildings for agriculture and forestry;
 - b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
 - c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
 - d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
 - e) limited infilling in villages;
 - f) limited affordable housing for local community needs under policies set out in the Local Plan (including policies for rural exception sites); and
 - g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
 - not have a greater impact on the openness of the Green Belt than the existing development;
 - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within an area of the local planning authority
- 4.16 Paragraph 146 states that other forms of development are also not inappropriate in Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:
- a) mineral extraction;
 - b) engineering operations;
 - c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;
 - d) the re-use of buildings provided that the buildings are of permanent and substantial construction; and
 - e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and

- f) development brought forward under a Community Right to Build Order or Neighbourhood Development Order.
- 4.17 In respect of the limited changes in respect of Green Belt policy in the revised NPPF (paragraphs 145 and 146) there are two main areas that differ from the original 2012 NPPF (*paragraphs 89 and 90*)
- The provision of limited affordable housing for local community needs (rural exception sites) as an exception to being inappropriate development.
 - The confirmation that material changes of use of land are not inappropriate within the Green Belt.
- 4.18 The former is not relevant to the current planning application whereas the latter would be relevant only in the event of the applicants demonstrating that the openness of the site has been preserved.

5. Consultations Publicity and Representations

Consultations

- 5.1 Paragraphs 5.1 - 5.79 of the original report to the Board on 07 February 2018 set out the various consultation responses received to the planning application.
- 5.2 At the Board meeting the comments of the Environment Agency as set out in an email dated 07 February 2018 in response to late representations received from Clyde and Co on behalf of Simon Privett, Tollgate Service Station were reported verbally and are now set out in writing below:

Environment Agency - Additional Comments 7th February 2018

Although the site is in a sensitive setting, it is seen as being suitably located to replace a previous nearby facility serving the A2. Representation for it meeting relevant local and A2 related need is accepted along with fundamental design to allow for the sensitive setting over a principal aquifer and within an SPZ2 in this instance. We have not given any approval carte blanche and any permitted development would be required to meet specific design/construction measures relevant to a modern PFS (*Petrol Filling Station*) and this specific site setting, which have been discussed with the applicant and suitable covered in draft planning conditions.

Our severest restrictions for modern PFS are mainly related to SPZ1, where we would normally object to new developments, unless storage can be other than below ground. However in other settings we take all local and development considerations into account and work with industry to provide up to date facilities. These facilities would be modern, site specific and appropriately monitored to reduce risks to groundwater to a minimum. Older facilities would not necessarily have the same level of monitoring or standard of build. The existing PFS at Tollgate services is also in an SPZ2. Both service providers would have to abide by relevant industry standards and comply with government guidance on the underground storage of hydrocarbons, requiring relevant best practice Environmental Management plans. We treat all applications consistently with regard to site specific risk assessment and detailed design.

On this basis, taking the whole of the guiding principles in "*The Environment Agency's approach to groundwater protection*" (November 2017) into account, we would not change our previous advice on this particular application.

- 5.3 Post the decision by the Board to grant planning permission comments were received from Dartford and Gravesham Cycle Forum on 22 February 2018 who commented:

The Cycle Forum would like to raise its concerns regarding the recent granting of Tollgate Hotel planning application in that there is no clear plan as to how pedestrians and cyclists are to safely cross the east bound slip road onto the A2. We are not concerned about the approval for a change of use on the site our concerns are only about the safety of cyclists and pedestrians.

Currently there is a designated pedestrian and cycle pathway from the cycle track to the slip road and a pedestrian and cycle pathway which skirts the roundabout and links up with a pathway which runs adjacent to Cold Harbour Road.

The crossing at the east bound slip is the only crossing point across the A2 and HS1 for about a mile each way and is regularly used by both pedestrians and cyclists accessing the designated pathway on the side of the A227, travelling both Northbound and Southbound.

I note from the Regulatory Board agenda dated the 7th of February there was a traffic survey conducted on the roundabout and slip roads but there does not seem to have been any survey of how many pedestrians and cyclists cross the East bound slip road.

The traffic survey does show increased vehicle movements on the East bound slip road. It is also noted that there are to be changes to the roundabout and the slip road is to be widened.

As a cyclist who uses this route on a daily basis I am concerned about the safety of cyclists if they have to cycle on the busy and fast moving roundabout.

The Forum is concerned that the fact that this is the only crossing point of the A2 and HS2 for pedestrians and cyclists and this fact was not given due concern by Gravesham and Kent Highways during the application process.

In light of the above I would like to raise the following questions: -

1 How will pedestrian and cycling access be maintained using the designated pedestrian/cycle way across the eastbound slip road during the construction period.

2. If the pedestrian/cycle route is to be blocked during the construction period, how will pedestrians/ cyclists cross the A2 and HS1 in order to come to and go from Istead Rise (the A227).

3. What will be the method of traffic control on the eastbound slip road when construction is completed in order to allow the safe and timely crossing of pedestrians and cyclists.

There is a real issue of safety for pedestrians and cyclists both during the construction period and when the works to the slip road have been completed.

The Forum asks how the maintenance of the safety of pedestrians and cyclists is to be achieved and requests that they are given responses to the questions above. At that point we, the Forum can consider our response and make further representations as necessary.

- 5.4 Officers responded to the comments of the Dartford and Gravesham Cycle Forum on 02 March 2018 as follows:

The issue of safety for pedestrians and cyclists both during the construction period and after completion of the development was a material consideration for both officers and the Board Members when the application was considered and involved some debate as to how this could be addressed at the Board meeting.

Both my colleague from KCC Highways and I stressed the fact that, notwithstanding the submission of the application, users of the existing cycleway and footway that crosses in front of the Tollgate Hotel site would have come into conflict with the continued use of the site as a hotel if it had re-opened, which potentially it could do so without necessarily requiring planning permission and that the petrol filling station proposals would enable the cycleway and footway to be re-routed and there is a planning condition (condition 26) that requires such details to be submitted. The condition states:

Full details including appropriately scaled drawings of the proposed diverted route of the cycleway and footway through the site connecting the existing activity park and public footpath to the north with the A227 Wrotham Road at the adjacent roundabout junction, and showing pedestrian crossing points and signage, shall be submitted to and approved in writing by the Local Planning Authority before the commencement of the development; the route shall not be less than 3.0m in width; the development shall be carried out in accordance with the approved details and shall be available for use before the development hereby permitted is first occupied.

Reason: To ensure the development maintains satisfactory and safe linkages and routes for cyclists and pedestrians and pursuant to Gravesham Local Plan Core Strategy Policy CS11: Transport.

Condition 24 of the planning permission also recognises the importance of the route during construction and requires submission of a traffic management plan prior to the commencement of the development including, amongst other things, Retention of and protection of cycleway/footway though the site during construction.

On the last point you make relating to traffic controls post construction there are no additional requirements that have been requested by either Highways England or Kent County Council Highways and Transportation or imposed on the grant of planning permission. The crossing point over the eastbound slip would be as at present. Again it is pertinent to note that if the site re-opened as a hotel then the same circumstances would arise.

I do recall that I had consulted with the KCC Cycling Transport Planner during the application process but received no response and I had consulted with KCC Footpaths who had raised no specific objection.

I trust that responds to the matters raised in your email but I would repeat that the issue of the safety for cyclists and pedestrians was given careful consideration during the debate on the application. In view of a number of planning applications that have been approved and which will impact on the various junctions and roads on the highway network there may need to be a more holistic consideration as to how pedestrian and cycle safety can be improved.

Publicity

- 5.5 The original main report to the Board on 07 February 2018 set out a comprehensive summary of all the neighbour representations in paragraphs 5.80 - 5.101.
- 5.6 The original supplementary report to the Board on 07 February 2018 also included a copy of the late representations received from Clyde and Co on behalf of Simon Privett, owner of the Tollgate Service Station and 3 additional late neighbour representations received post the completion of the main report.
- 5.7 There have been no further 'neighbour' representations received by the Borough Council either in support or against the planning application since the original decision to grant planning permission.

6. Planning Analysis and Development Manager Comments

- 6.1 The original main report to the Board on 07 February 2018 examined the applications proposals in detail focusing on what were regarded as the key issues and being:
- The principle of the development
 - The impact of the development with regard to Green Belt policy
 - The visual impact of the development and amenity impacts on any nearby residential properties
 - Layout and Design Issues
 - Highway impacts, access and parking
 - Any other material considerations - flood risk, air quality, ecology and archaeology
- 6.2 It is not intended to re-assess the development in relation to these key issues again as the development proposals have not changed in their form or content and in your officer's opinion there have been no material changes to local and national planning policy, or in relation to any relevant other development proposals relating to the site or in the locality that impact on the development and neither have there been any subsequent additional consultation or publicity responses that have a material bearing on the consideration of the proposals.
- 6.3 What is fundamental however to the further consideration of the development and how the Borough Council should respond to the appeal against non-determination is the various grounds of challenge to the Council's decision in the Letter before Claim (Judicial Review) that was lodged by Clyde and Co on behalf of the Chief Objector (Simon Privett), the fact that the decision was quashed on one of the grounds and that in response to the Judicial Review the Borough Council had prepared an Advice Note that was sent to the applicants to address all the reasons in the Letter before Claim.
- 6.4 A copy of the Advice Note is appended to this report (Appendix 3) and which sets out what the applicants needed to revise in their application and what further revised or supporting documents were considered necessary.
- 6.5 No new information or evidence has been provided directly to the Borough Council by the applicants to respond to all of these matters and furthermore no new information or evidence has been provided by the applicants in response to the detailed Advice Note.
- 6.6 Without this additional information and supporting evidence officers are unable to re-assess the proposals to reach a conclusion as to whether the development is fully compliant with local or national planning policy. The proper re-assessment of the application could not have been undertaken without the provision of the requested information by the applicant.

7. Conclusions and Balancing Exercise

- 7.1 This planning application (ref 20160215) for the construction of a BP Connect petrol filling station on the site of the former Tollgate Hotel site (and with all existing hotel/restaurant buildings to be demolished) was originally reported to and considered by the Council's Regulatory Board at its meeting on 07 February 2018. The Board meeting agreed with the officer recommendation and resolved to grant planning permission subject to planning conditions, reasons and informatives.
- 7.2 The current application was the subject of a legal challenge on four grounds. It was consented on 21 June 2018 to quash the decision and for the application to be remitted for re-determination, on one of the four grounds only, that the Council had relied upon a comparison between the impacts of the development and the impacts of a resumed hotel use actually taking place in the event that the development was not granted planning permission and that the Council had accordingly failed to have regard to a material consideration.
- 7.3 An appeal was received by the Planning Inspectorate (PINS) against non-determination on 20 March 2019 as more than 13 weeks had elapsed following the decision to remit the application for re-determination. The planning application will therefore now be determined by a Planning Inspector (not the Borough Council) and the intention is that the appeal will be dealt with by way of an informal hearing. The purpose of this report is for the Board to give a view on what, if it had been possible, the Council's decision on the appealed planning application would have been.
- 7.4 As part of the appeal submission the applicants have submitted a number of revised plans and documents in part to respond to the advice note of officers on the issues to be addressed in relation to all the grounds in the Judicial Review claim. The applicant's agents consider that the amendments to the plans do not materially change the development proposals.
- 7.5 The new plans/documents have not previously been presented to the Borough Council for its consideration and therefore have not been the subject of any re-consultation or revised publicity. This was a concern of your officers and your officers sought a response on this issue from PINS.
- 7.6 PINS have advised in a response received on 24 July 2019 that in seeking a view of the Council as to how it would have determined the application it could do so on the basis of all the original documents meaning that the new plans/documents are not part of the remit and to comment on any new plans and documents only after the appeal starts.
- 7.7 Therefore the Board is now required to give a view on how they would have determined the current planning application on the basis of the original proposals (thus in relation to the nature, scale, layout and appearance of the development as presented to the Board at the meeting on 07 February 2018) disregarding any new information and plans that may have been submitted by the applicants for the purpose of the current planning appeal but clearly having to consider the application in the light of all the grounds that were set out in the Judicial Review claim against the Council's decision to grant planning permission and especially the reason why the Borough Council consented to quash the decision and for the application to be remitted for re-determination.
- 7.8 The planning application proposals have been considered against any material changes relating to either relevant planning decisions or to revised local or national planning

policy that might otherwise suggest that a different recommendation ought to be made in relation to the proposals.

- 7.9 In your officer's opinion here have been no significant approved planning applications that have or likely to have a material impact on the Tollgate hotel site in relation to the nature of the proposals or potential cumulative highway impacts that might not otherwise be mitigated.
- 7.10 In respect of the adopted development plan at a local level there has been no change in local planning policy. The application was originally considered against the 2014 Gravesham Local Plan Core Strategy and saved policies. The site remains as being subject to Green Belt policy. Although there are now draft policies in the Development Management Policies Document it is at an early stage and will carry only very limited weight. There have been some changes to national planning guidance in the NPPF not least a complete re-ordering of paragraphs but only limited changes in respect of Green Belt policy with the change relevant to this application being confirmation that material changes of use of land are not inappropriate within the Green Belt.
- 7.11 However fundamentally in respect of the four matters which were set out in the Judicial Review Claim that subsequently resulted in the quashing of the decision to grant planning permission, namely,
- Baseline/Fallback (i.e. that the Borough Council should have used the comparison between the proposed use of the site and the previous hotel use as though the site was empty);
 - Green Belt (i.e. that the Council had failed to consider the impact of the development on the Green Belt in terms of a material change in the intensification of use in the Green Belt);
 - Need and the Impact on Tollgate Service Station (i.e. that the Council had failed to properly consider the impact on the Tollgate Service Station and its likely closure which was a material consideration or the need for another petrol filling station and the inconsistency with the approach taken by the Environment Agency); and
 - Ground Water (i.e. that it was a material consideration to have regard to the delivery of the Water Framework Directive objectives to support the protection of groundwater)

no new information or evidence has been provided directly to the Borough Council by the applicants to respond to all of these matters and furthermore no new information or evidence has been provided by the applicants in response to the detailed Advice Note that had been prepared by the Borough Council to outline the issues that the developer would need to resolve in order to address all the reasons in the Letter before Claim (Judicial Review) and enable the Council to determine the application.

- 7.12 Without this additional information and supporting evidence officers are unable to re-assess the proposals to reach a conclusion as to whether the development is fully compliant with local or national planning policy.
- 7.13 The overall conclusion therefore must be that having regard to all of the grounds of challenge in the Judicial Review claim brought against the Borough Council that resulted in the quashing on 26 June 2018 of the decision to grant planning permission on 7 February 2018 and the failure of the applicants to respond directly to the Borough Council to those grounds of challenge or to the Council's Advice Note sent to the applicants on 26 July 2018 with any additional or revised information, documents or

plans, that, if it had been possible to determine the current planning application, the Board would have REFUSED to grant planning permission for the following reasons:

1. The applicants have failed to demonstrate to the Borough Council, for the purpose of assessing and comparing the proposed use against the previous use of the site, that there is a realistic possibility of the former hotel use resuming and that there is demand for and market interest in the site as a hotel. In the absence of such information on the resumption of or reversion to a hotel use of the site the proposals would need to be assessed and compared effectively against the site being empty and therefore in the circumstances the proposed development is inappropriate development in the Green Belt contrary to policy CS02 (Scale and Distribution of Development) of the Gravesham Local Plan Core Strategy, September 2014, and section 13 of the National Planning Policy Framework (NPPF) - Protecting Green Belt land.
2. The applicants have failed to demonstrate to the Borough Council that the development would not result in an intensification of use in the Green Belt and that impact on the openness of the Green Belt from intensification of use is no greater than the existing use as a hotel and therefore the proposed development is inappropriate development in the Green Belt contrary to policy CS02 (Scale and Distribution of Development) of the Gravesham Local Plan Core Strategy, September 2014, and section 13 of the National Planning Policy Framework (NPPF) - Protecting Green Belt land.
3. The applicants have failed to demonstrate to the Borough Council the overriding reasons as to why a petrol filling station has to be located at this site, in regard to the need for the use proposed, and the extent of the likely impact, if the development was permitted, on the existing Tollgate Service Station. The development would therefore be contrary to policy CS02 (Scale and Distribution of Development) and policy CS07 (Economy, Employment and Skills) of the Gravesham Local Plan Core Strategy, September 2014.
4. The applicants have failed to demonstrate to the Borough Council the impact of the development on groundwater in respect of a site that is located within a Source Protection Zone (SPZ) and that the development meets the overriding reason tests in position statement D2 of the Environment Agency (EA) policy document, 'The Environment Agency's approach to groundwater protection' (November 2017) and also meets the EU Water Framework Directive objectives to support the protection of groundwater. Therefore the development would be contrary to policy CS18 (Climate Change) of the Gravesham Local Plan Core Strategy, September 2014, and section 15 of the National Planning Policy Framework (NPPF) - Conserving and enhancing the natural environment.

RECOMMENDATION

That having regard to all of the grounds of challenge in the Judicial Review claim brought against the Borough Council that resulted in the quashing on 26 June 2018 of the decision to grant planning permission on 7 February 2018 and the failure of the applicants to respond directly to the Borough Council to those grounds of challenge or to the Council's Advice Note sent to the applicants on 26 July 2018 with any additional or revised information, documents or plans, that, if it had been possible to determine the current planning application, the Board would have **REFUSED** to grant planning permission on the following grounds:

1. The applicants have failed to demonstrate to the Borough Council, for the purpose of assessing and comparing the proposed use against the previous use of the site, that there is a realistic possibility of the former hotel use resuming and that there is demand for and market interest in the site as a hotel. In the absence of such information on the resumption

of or reversion to a hotel use of the site the proposals would need to be assessed and compared effectively against the site being empty and therefore in the circumstances the proposed development is inappropriate development in the Green Belt contrary to policy CS02 (Scale and Distribution of Development) of the Gravesham Local Plan Core Strategy, September 2014, and section 13 of the National Planning Policy Framework (NPPF) - Protecting Green Belt land.

2. The applicants have failed to demonstrate to the Borough Council that the development would not result in an intensification of use in the Green Belt and that impact on the openness of the Green Belt from intensification of use is no greater than the existing use as a hotel and therefore the proposed development is inappropriate development in the Green Belt contrary to policy CS02 (Scale and Distribution of Development) of the Gravesham Local Plan Core Strategy, September 2014, and section 13 of the National Planning Policy Framework (NPPF) - Protecting Green Belt land.

3. The applicants have failed to demonstrate to the Borough Council the overriding reasons as to why a petrol filling station has to be located at this site, in regard to the need for the use proposed, and the extent of the likely impact, if the development was permitted, on the existing Tollgate Service Station. The development would therefore be contrary to policy CS02 (Scale and Distribution of Development) and policy CS07 (Economy, Employment and Skills) of the Gravesham Local Plan Core Strategy, September 2014.

4. The applicants have failed to demonstrate to the Borough Council the impact of the development on groundwater in respect of a site that is located within a Source Protection Zone (SPZ) and that the development meets the overriding reason tests in position statement D2 of the Environment Agency (EA) policy document, 'The Environment Agency's approach to groundwater protection' (November 2017) and also meets the EU Water Framework Directive objectives to support the protection of groundwater. Therefore the development would be contrary to policy CS18 (Climate Change) of the Gravesham Local Plan Core Strategy, September 2014, and section 15 of the National Planning Policy Framework (NPPF) - Conserving and enhancing the natural environment.