

Appendix B

For the attention of Head of Legal, Head of Planning, Chair of the Planning Committee

Our ref: RYP/068736.00001

3 May 2024

Dear Medway Council

Land at Chatham Docks Industrial Estate South Side, Three Road, Chatham, Medway

Planning application (MC/24/0154, the Proposals, the Application)

We act for ArcelorMittal Kent Wire Limited (**ArcelorMittal**). We refer to the Officer's Report to Planning Committee published on 30 April 2024 (**the OR**) and the intention to consider the Proposals at the Planning Committee on Wednesday 8 May 2024.

The OR suffers from fundamental errors and omissions. The Council could not lawfully determine the Application relying on it for the reasons below. The Council has also failed to deal with the Application in accordance with relevant statutory requirements, as explained below. As such, it would be unable to properly determine the Application as matters stand.

It is not accepted that there are fundamental errors or omissions in the report. The application MUST be determined on its planning merits, NOT considering other matters outside of planning.

We also note where there are areas of serious conflict with national planning policy, in relation to which the Proposals would have significant long-term impact on economic growth (and other effects, including transportation and carbon) beyond the Council's area. We highlight below the fact that these issues have either not been considered at all or have been dealt with in a way that is improper.

It is NOT accepted that there is serious conflict with National Policy – quite the contrary.

The Proposals

- 1 The Proposals are for *demolition and redevelopment of site to provide new waterside business and enterprise campus including access*. The site is 7.6 hectares. The uses for which permission is sought are B2 (industrial), B8 (logistics) and E(g) (offices). The Proposals are in outline with no defined balance of the uses (either proposed by the Applicant or intended to be secured in the draft conditions in the OR).

This is not unusual with outline applications such as this where the application is trying to build in flexibility to be responsive to future economic needs and indeed that is encouraged in Section 6 of the NPPF- Building a strong competitive economy. Note use Class E(g) does not just relate to offices but includes research and development along with industrial uses that could take place adjacent or within a residential area without generating harm to amenity.

- 2 The Proposals would result in the severance of the access point from the southern part of the Docks to the northern part, meaning that the Proposals would result in a loss of all

existing business operations at Chatham Docks (see **Annex 1** diagram).

That is incorrect. Access to the northern site for existing and future uses will remain – see parameter plan.

- 3 The Proposals are for the above uses in an area which is recognised in the OR to be in a wider environmentally sensitive area¹. Policy ED1 also states that proposals for the loss of existing industrial, business or storage and distribution development to other uses will not be permitted. The Local Plan supporting text also states that:
- (a) the Port area is a focus for "*handling and distribution of materials, together with some ship repairing*"
 - (b) the Council will "*support the continued operation and future expansion of the port operation at Chatham*";
 - (c) the Port is a location for wharf-side operations, including those displaced from elsewhere along the river.

This is incorrect in terms of Policy ED1. The supporting text states at para 4.5.1 – “Accordingly, business uses (Class B1) and where appropriate, general industrial uses (class B2) and storage and distribution uses (class B8) will be permitted on the following sites”.

Paragraph 4.5.1 (ii) On Chatham Port is factual and states that the port deals with the handling and distribution of materials, together with some ship repairing. The continued development of the Port is covered in detail in Policy ED9. The other sections marked (b) and (c) above are not in the supporting text for Policy ED1. They are in the supporting text for Policy ED9 which is a different Policy which merely states that in the Policy in Chatham Port , port related development and an expansion of the commercial port at Chatham will be permitted. It does not state that non port uses will not be permitted and therefore the reference should be back to Policy ED1.

4 The Chatham Port clearly has special locational characteristics that lie behind both its selection as a clustering location for wharf-side operations by existing occupiers as well as its development plan status. The following are highly significant for the application of local and national policies:

- (a) It is the only non-tidal enclosed dock in Kent, which provides existing materials handling and distribution occupiers with strategically important location from which to supply London and other UK regions with materials in a sustainable way.
- (b) ArcelorMittal is able load or unload vessels up to 143 metres long and 18 metres wide, with an 8 metre draft and the shipping company using the docks has a wider role in serving other occupiers by more sustainable sea freight means. **All of the steel needed for ArcelorMittal’s operations in London and the south of England goes through AMKW. The company is responsible for around 30% of the UK’s steel reinforcement supply. The site is therefore strategically significant to the UK’s construction sector and to sustainable and resilient modes of supplying it.**
- (c) The current cluster of manufacturing, waste management and construction activity at Chatham Docks serves London and the South East well, enabling economic activity in other sectors.

This application does not have any impact on the lock gates nor on the larger northern part of the docks and therefore does not preclude the continued use of

the basin for a Port.

The OR

- 5 The analysis in the OR a wholly inadequate basis for the consideration of the Proposals. It fails to assess them against relevant national policies, misapplies Local Plan policy and includes material errors and omissions.

We disagree with this statement.

Policy Assessment

- 6 The OR suggests that the Proposals would be in accordance with Policy ED1 but fail to undertake any proper assessment against the policy having regard to its wording or purpose (or the nature of the Proposals, which as noted above could result in an unspecified loss of industrial space and unspecified level of non-compliant office space).

The proposal would increase the floor area within this part of the dock area, from 18,000m² to 31,000m² which includes provision for B2 and B8 uses. The assessment of this is covered in the OR and conditions 26 and 27 will ensure that the spirit of Policy ED1 and the employment provisions in the Plan are secured and therefore the proposal does not represent a departure from the Policy nor the Adopted Plan.

- 7 The Application is clearly a departure application. We address the procedural consequences below, but it follows that the basis of assessment in the OR is flawed because overwhelming, deliverable, benefits from a sufficient well-defined scheme would be needed in the circumstances to overcome the legal presumption under section 38(6) PCPA 2004 that the Application should be refused.

It is not agreed that the application is either contrary to or a departure from the Development Plan. The response above to point 6 clearly sets out why the application accords with the spirit of the Policy. Indeed, as the application is not contrary to either Local or National Policy it is not a departure application.

- 8 **The OPR does not assess the Proposals against**, for example:

- (a) **NPPF 85 or 87: at all**, but particularly having regard to the undefined, speculative and unregulated nature of the scheme, its displacement of valuable existing active port/ quayside operations). Members will have no proper basis on which to understand how the flexible and speculative Proposals (lacking any identified occupier) align any better development plan priorities than the existing commercial uses of the Docks, which ArcelorMittal has been clear it intends to invest further in should the shadow of the speculative Proposals be lifted;

The application is not contrary to paragraph 85 as we consider that the proposal is creating conditions for investment and addressing potential challenges for the future, while also helping to drive innovation.

Again, the proposal is not contrary to para 87 as the location and proximity to the universities, the creative and high technology businesses in the historic dockyard area and being within the Thames Estuary Production Corridor (which is specific about creative industries) are important for the site's location.

- (b) **NPPF 157 (transition to a low carbon future): at all**, but specifically in relation to re-use of existing buildings/ resources or carbon emissions

associated with the impact of the Proposal on the existing use, which was expressly raised in the Objection.

As stated, the proposal is not contrary to development plan policy.

- 9 **These are areas of serious conflict with national planning policy** where the Proposals would have significant long-term impact on economic growth (and other effects, including transportation and carbon) across a wider area than Medway.

The proposal relates only to part of the Docks, brings in flexibility for employment uses to build resilience for the future linked to adjacent sites, but does not impact the lock gates, the larger northern part of the Docks and hence the operation of the basin as a port.

Relocation

- 10 Volterra address the position in relation to relocation – there is no credible alternative location for the range of existing uses as a cluster or the transshipment and quayside operations. The studies published in 2020, the Volterra Report and the existing Local Plan policy and supporting text noted above all recognise that.

The above points re Local and National Policy and no impact on lock gates etc relate to this point.

- 11 The OR fails to meaningfully engage with this critical issue. Even if, for example, there were suitable and available replacement non-tidal sea freight accessible materials handling and distribution readily available (which all the evidence confirms there are not and ArcelorMittal has been clear that it would need to move to Continental Europe), how would relocation work? What would be the interruption to use? What would be the impact on supply chain resilience, CO₂ and employment?

The above points apply here.

- 12 The OR is hopelessly inadequate in this sense.

Deliverability / Benefits

- 13 **Nor is there any evidence of overwhelming public benefits (outweighing the potential loss of industrial and insertion of non-compliant uses in a location specifically identified as important for port/ quayside industrial uses).** Nor is there any evidence to suggest that such benefits are likely to be delivered, which in this case the Applicant is required to demonstrate.

The above points apply here. The links to the university, historic dockyard businesses (and future docking station), being within the Thames Estuary production corridor and the fact that the proposal brings flexibility for the future economic success of the area while potentially delivering significantly greater floorspace than exists at present, are all pertinent and important considerations.

- 14 ArcelorMittal's previous objections made clear that the material submitted with the Application is subject to serious flaws in relation to:

- (a) the nature of the scheme that would in fact flow from the Proposals (which the draft conditions do nothing to define/ control);

The recommended conditions are appropriate for this type of application.

- (b) its deliverability;

The application is not unusual within employment areas where land owners are seeking to bring in re-development and flexibility which then makes sites available and marketable to prepare for future opportunities.

- (c) the extent to which its benefits can be understood in light of the above and the methodological failings of the submitted economic assessment reports (WSP, 2023);
- (d) the serious understatement or disregard for the adverse effects of the Proposals on the ongoing port/ quayside industrial uses.

The application does not impact the lock gates, the northern area nor the use of the basin for port related uses.

- 15 **We enclose the Volterra Economic Assessment report referred to in the Objection.** This was provided to the Council on the day the OR was published, given the seriousness of the weaknesses in the OR and the WSP assessment on which it relies.

It is not accepted that the OR is flawed.

- 16 **We set out a summary response to the key misdirection's and errors in the OR, based on the Volterra analysis, in the Annex to this letter.** Section 8 of the Volterra Report in particular makes clear that the WSP Report is fundamentally flawed and misstates the position in relation to the significance of the existing uses and the impacts of the Proposals.
- 17 The OR refers to an 'independent report' published in 2022. We are aware of several studies published in 2020 in relation to the role and significance of the Dock operations (and previously brought to the Council's attention). We assume that the references are in fact to WSP's December 2023 Economic Assessment. This was prepared by the Applicant's advisers and as above has serious errors, omissions and limitations.
- 18 We note in relation to the Application materials themselves:

- (a) The Applicant's Planning Statement is prepared on the basis that the port operation is coming to a close, without recognition that the end of the port operation is simply the aim of the Applicant, rather than an inevitable process;

As noted above this application does not result does not result in docks closing as the Lock gates and the larger northern part of the Docks are not impacted by the application and the use of the Basin as a Port therefore remains.

- (b) The Application materials refer to attracting future tenants and reserved matters coming forward, if necessary in stages – acknowledging there is a risk existing jobs will be displaced and future employment development may not come forward at once. Volterra comment in detail on the track record and evidence from the position at Chatham Waters, which the OR does not address;

Not sure of the relevance as Chatham Waters is still being developed in accordance with the permission granted. It is not a finished site.

- (c) The economic benefits assessment does not acknowledge that this is an outline scheme apparently without future tenants lined up, whilst there are existing jobs and existing economic activity which would be lost were the

permission to be implemented, without any guarantee of the amount of employment development which would come forward, nor the amount of which would be occupied;

Refer back to the above points in terms of flexibility, location and need for a site and permission to make a site marketable. This is normal.

- (d) In considering the "net" position, assuming all onsite jobs are lost, there is no consideration of (1) whether the whole of the illustrative plans would be provided (2) the lack of certainty about the types of development which may come forward and how job dense each may be (3) the period between the site being vacated so the planning permission can be implemented, and the whole of the development being completed, if that takes place – it may be multiple years until later phases come forward, if at all.

The proposal does not impact on the northern site. The permission applied for is classes E(g), B2 and B8 and conditions 26 and 27 address future uses on site.

- (e) There is no consideration of a scenario where the existing occupation is terminated and then the development does not proceed.

That would be a matter for the landowner, in terms of whether they decide to move forward with any permission or remain with as existing. Again, this is normal.

- (f) The assumptions made by the WSP Report about employer and job types are not clear, which limits the weight that can be afforded to the report's conclusions, notwithstanding the uncertainty of the development and jobs which will come forward in any event due to the outline nature of the application. At paragraph 9.1.39 refers to the "ambition for high-value sectors" but there is no evidence to demonstrate this is what will be provided. Many of the above points can only be re-iterated. This is only part of the allocated Port site. It is an employment application on an employment site, which includes and builds flexibility to the existing B2/B8 uses. The proposal will build in future flexibility and resilience based on its location. In addition, the larger northern part of the Docks and the lock gates are not impacted by this application.

- (g) There are references to relocation of existing business as a mitigating factor, without any supporting evidence being provided to support any conclusion on this.

The Council are content that there are available sites within Medway for the relocation of existing non port related uses should they wish. Similarly, there are available port related sites within a reasonable proximity, BUT the larger northern part of the Docks is unaffected by this application as are the lock gates.

Environmental Assessment Duties

- 19 A purported Screening Opinion was adopted on 12 December 2023, which is a single paragraph. A separate note is filed on the Council's planning portal (**Screening Note**).
- 20 The Screening Note dismisses cumulative effects (and various other impacts) on the basis that the Proposal uses and the existing uses are materially similar. That is clearly improper because, as noted above, there is no basis on which to define what the balance of uses at the site would actually be. This would require the

screening to be re-considered but we note that there are wider issues which go beyond re-screening.

This point is not accepted. This is an employment application on an employment site and it is considered that the screening decision made in December 2023, and not challenged, is correct.

21 The Note:

- (a) relies on mutually contradictory statements in relation to the likelihood on contamination on site;
- (b) notes that there is potential for contaminants to affect designated sites adjacent to or connected to the Medway River;
- (c) relies on direct effects only (so ignoring indirect effects) and on unspecified mitigation measures when considering effects that have a clear pathway to designated sites.

22 This is not compatible with the requirements of the Conservation of Habitats and Species Regulations 2017 (**Habitats Regulations**). Given the evaluation of potential effects in the Note, and reliance on mitigation measures, the Council is unable to grant permission until an Appropriate Assessment (which both details the mitigation measures and allows the significant effects to be ruled out in accordance with the standards applicable)².

It is not accepted that an appropriate assessment is needed.

23 The Screening Note also states that the relevant policy is ED9 Chatham Port is identified as an existing employment area with a primary focus for use classes B2 (general industry) and B8 (storage and distribution) and port related uses through Policy ED9. This is clearly a material misstatement of the adopted policy.

24 There are wider issues with the Screening Note which suggest that the judgment that there would be no risk of significant effects is flawed:

- (a) Inconsistencies between the assessment assumptions in Biodiversity and Pollution sections in respect of local water quality (including reliance on undefined drainage mitigation measures in relation to the potential changes to local water quality it identifies as otherwise possible);
- (b) No effort has been made to understand the likely effects of displacement of the existing industrial and transshipment uses on CO₂ outcomes or on air quality within the Central Medway AQMA. As above, the lack of any assessment of CO₂ implications of the Proposals is a fundamental error;
- (c) No regard appears to have been given to the impact of severance and loss of industrial operations and water borne freight traffic at the site. In particular, no assessment has been undertaken of the consequent impact on the designated sites arising from the increased use of HGVs identified as a consequence of severance in the Objection.

It is not accepted that the screening decision is in any way flawed. It was properly consulted upon, and an informed decision made as a result of proper consideration of all the matters.

Statutory Duties and Procedural Issues

25 The Council is clearly not in a position to determine the application without breaching statutory duties.

Fundamentally disagree for all the reasons stated above.

26 For the reasons above, the Application is a departure application and the Council has accepted that it has the potential to have effects on designated sites unless (currently unspecified) mitigation measures are relied on. As such:

- The Council is required to comply with article 15(2) DMPO 2015 and (by virtue of article 32);
- The Council is required, based on its own analysis, to carry out an Appropriate Assessment of the proposals and must not determine the Application until it has done so.

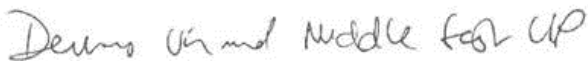
The application accords with national and local policy and is not a departure and therefore no referral is required.

27 The Council cannot determine the application (nor in the circumstances could it properly consider the Application at Committee) until it has done so.

Given the seriousness of these failings we invite you to defer the Application until these issues have been properly addressed and our client has had an opportunity to comment further on the approach taken.

Their comments have been noted and considered as set out above. There is no reason to consult further on the application and it can and should be referred back to Planning Committee for consideration.

Yours faithfully



Dentons UK and Middle East LLP