Ref: ACCC/C/2010/45: KECN Rebuttal Statement 7.6.11 to Defra Statement 11.4.2011

Although the planning system would appear to be replete with opportunities for public participation, KECN would argue that they are a time consuming and expensive way of legitimating decisions which have already have been taken in principle by local authorities and developers on the basis of traditional market economics. Incorporating environmental factors into monetary values has always proved difficult but taking a wider view is essential for there to be genuine long term "sustainable" development. At the forefront of discussion between local authorities and developers is the possibility of short term economic gain: the long term environmental consequences are of no account. In fact the function of the English planning system is to deliver traditional economic growth: public participation is mere window dressing.

Unlike the Regional Assemblies, Local Enterprise Partnerships (LEPs) have no representation from environmental and community bodies. The 'voluntary' LEPs will play a pivotal role in the new planning system proposed by the Government. They will be key policy movers and providers of development monies. The LDF process will be further subverted to accommodate the economic growth aims of LEPs regardless of environmental cost or public concerns. At a LDF inquiry local people have the right to comment but no right to be heard: attendance is by invitation of the Inspector who also decides the agenda. At the Public Examination of the Dover Core Strategy Whitfield Parish Council queried the likelihood of a variety of economic projects coming to pass given the onset of current recession and Dover's poor economic record over many decades. It also questioned the need for an urban extension on high grade agricultural land above the town, when the town centre is in desperate need of redevelopment. The inspector was not interested in the issues, and deemed the Dover Core Strategy to be "sound". It could be argued that the soundness test for DPDs is the planning equivalent of Wednesbury unreasonableness: as long as the DPD is rational it will get approved regardless of whether it is plausible or in the long term environmental interest.

With regard to planning applications, the larger the scheme the longer the gestation time. Developers liaise with local authorities and statutory bodies over many years but there is no public input until the application is ready for public participation, by which time all the important decisions have been taken. Thus the University of Kent has application to build student housing, a conference centre and a hotel on land allocated to it as public open space by the Secretary of State in 1963 because of its splendid view over the historic City of Canterbury. It is clear from the background papers that this scheme has been many years in the making. The Chief Executive of the City Council sits on the all powerful Council of the University and the Leader of the City Council sits on the University Court. This partnership is allowable under the 2000 Local Government Act. How can local people be assured that the City Council will take an impartial view of the application when it is determined?

When there is a meeting of development control committee, local people have only three minutes in which to make their case, after which they have no right to intervene the debate, even if the facts are wrong or arguments misleading. Since the advent of Cabinets within local government, it is noticeable that the portfolio holder for a given topic has disproportionate influence over the committee even if their personal experience of the subject is limited. Thus, in the coach-park case in Canterbury, the Cabinet Member for Tourism, the owner of a caravan site in Herne Bay, became an "expert" on the requirements of the international coaching trade. In the Shepway case the Cabinet Member for finance was solely interested in the business rates due if Sainsbury's developed the site.

It is therefore not surprising that people try to put applications before the Secretary of State through the call-in procedure. The Canterbury coach park was designated for land owned by the City Council, the site was far too small and devoid of essential facilities, and the pollution would affect the World Heritage site, an old people's home and a school. It was not called in but then only 50 out of half a million applications per year are called in, hence the need for a substantive court. Few appeals by developers involve interpretation of the law. If Defra's argument were applied to them, then there would be few s.78 appeals. It is contrary to natural justice not to allow third party rights of appeal. KECN asserts that Article 9.2 allows for both a legal and substantive review court. If the latter were created there would be a mass migration of JR cases to the substantive court.