
Rebuttal On Planning Matters

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Discipline: Planning

Prepared for: The Master Fellows and Scholars of the College of Saint John the Evangelist in the University of Cambridge & Catesby Strategic Land Ltd

Site: Land at Moat Road, Headcorn

LPA: Maidstone Borough Council

Planning Application Reference: 23/504471/OUT

Appeal Reference: APP/U2235/W/24/3351435

Appeal Proposal: Outline application (with all matters reserved except access) for the development of up to 115 no. dwellings (Use Class C3) with 40% affordable housing including demolition of existing non-listed farmstead buildings and dismantling/re-construction in situ of curtilage listed former Granary to form an ancillary building, new means of access into the site from Moat Road (not internal roads), short diversion to the public right of way (KH590), associated highway works, provision of public open space, emergency /pedestrian access to Millbank, and associated infrastructure including surface water drainage (with related off site s278 highway works to Moat Road).

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Appendix 1: Suggested Woodland Belt Locations (EDP)

1. Introduction

- 1.1. I have prepared this Rebuttal in relation to the planning appeal ref: APP/U2235/W/24/3351435. The Appeal is made on behalf of The Master Fellows and Scholars of the College of Saint John the Evangelist in the University of Cambridge & Catesby Strategic Land Ltd (“the **Appellants**”) against Maidstone Borough Council (“**MBC**”). This Rebuttal follows the exchange of Proofs of Evidence (“**PoE**”) on 29th January 2025 between the Appellants and MBC, and in advance of the opening of the Inquiry on 26th February 2025.
- 1.2. On 29th January 2023 Savills received the following PoE from MBC:-
- Ms Geary for Maidstone Borough Council on Planning (**ID REF 2.9**);
 - Mr Radmall for Maidstone Borough Council on Landscape (**ID REF 2.10**);
 - Ms Gooch for Maidstone Borough Council on Heritage (**ID REF 2.11**); and
 - Mr Roberts for Maidstone Borough Council on Highways (**ID REF 2.13**).
- 1.3. This Rebuttal only addresses points of evidence on which rebuttal evidence is required. Thus I only address certain topics raised by some (not all) of the PoE. My Rebuttal is in respect of selected matters relevant to Planning matters only and for the avoidance of doubt, my original PoE stands. I have outlined my qualifications and professional disclaimer in my PoE. One response in respect of a landscape technical point is included in the Appendix to this Rebuttal.

2. Clarification

- 2.1. In this section of my Rebuttal I wish to clarify relevant administrative points and technical matters regarding the Appeal Proposal.

Erratum

- 2.2. I need to make a correction to Appendix 3 of my PoE which includes the wrong revision of the Open Space Performance Plan. Appendix 3 illustrates Rev 15e of the Plan. However the correct plan is Rev 15g (**CD 2.4a**), which is referred to within mine and Ms Geary's PoE.

Application Description

- 2.3. A further Statement of Common Ground on Heritage Matters has been progressed, as agreed on 12th February. This has resulted in the withdrawal of the RFR, subject to the imposition of agreed conditions.
- 2.4. The Appellant and LPA wish to propose the following slight amendments to the application description (set out in the latest Heritage SoCG). The amendment clarifies that the curtilage listed Granary is to be dismantled and reconstructed *in situ* (rather than demolished).
- 2.5. This amendment is non-material in my opinion. The Appeal Proposal has always proposed the demolition of existing buildings and the detail of the replacement building for "the Granary" was always subject to separate detailed consideration. Thus, I do not consider that any additional period of public consultation is required. The key changes to the description of development are highlighted below:
- 2.6. *Outline application (with all matters reserved except access) for the development of up to 115 no. dwellings (Use Class C3) with 40% affordable housing including demolition of **existing non-listed farmstead buildings** and **dismantling/re-construction in situ of curtilage listed former Granary to form an ancillary building**, new means of access into the site from Moat Road (not internal roads), short diversion to the public right of way (KH590), associated highway works, provision of public open space, emergency /pedestrian access to Millbank, and associated infrastructure including surface water drainage (with related off site s278 highway works to Moat Road).*

Trees

- 2.7. Since the submission of evidence, I have been made aware that a tree (Tree no. 60) located near the southern boundary of the Appeal Site had to be felled in early January by the landowners managing agent due to the fact the tree had died from Ash Dieback. I was not aware that the tree had been felled before submission of evidence. The tree was not part of any TPO, but is included within the Tree Survey and the Tree Management Plan which are **CD 1.36**. The tree was identified within the tree survey as a tree to be retained and thus it was included in the plans and photomontages. I am advised a replacement tree

can be planted in the same/similar location, as secured via Reserved Matters approval for landscaping / appropriate condition. Consequently, there is no need to amend the photomontage now.

- 2.8. This matter is raised for transparency, so that the Inquiry is aware of the latest position.

Sustainable Drainage System

- 2.9. In Paragraphs 6.75 – to 6.79 of Ms Geary's PoE it is argued that the sustainable drainage systems (SuDS) will reduce scope for buffer screening and open up more of the Appeal Site to be viewed from the south. It has been confirmed by the Appellants' drainage consultant (LDE) that the SuDS shown on the Illustrative Layout (**CD 1.2**) are indicative of the scale and size envisaged in line with the proposed number of residential units. This issue is also addressed in the appendices to Mr Mychreest's evidence.
- 2.10. There is sufficient reason to believe that the eventual SuDs will be of a similar size to that contained in the Plan. There is no evidence to suggest that they might be materially larger through the Reserved Matters. This is, however, a matter to be addressed through the Reserved Matters. Indeed, there is no objection from the LLFA (**CD 3.22**) (on the basis of Section 7 of the Flood Risk Assessment) and the detailed design is controlled by Reserved Matters. This would enable a satisfactory landscape and drainage design – at which point the illustrative planting shown can be agreed, including satisfactory specimens within/adjacent to drainage ponds (noting also the need for biodiversity net gain).
- 2.11. By way of a further example, I am advised that if the quantum of development were to reduce by circa 10%, then it is reasonable to state that the required attenuation requirements would also reduce, according to the reduced impermeable area drainage into the SuDS features, but that any reduction in size would not be that significant. Furthermore, the size of the basins can be altered by introducing other drainage solutions including crates and swales.
- 2.12. I also note that the off-site drainage connection (see Section 2.1.3.2 and Figure 2.2 in the submitted Flood Risk Assessment (**CD 1.20**) clearly sets out the offsite connectivity between the site outfall point and the Hoggs Stream, which then flows into the River Beult.
- 2.13. Therefore, I disagree with Ms Geary's assessment of the SuDS and the impact of the SuDS on the surrounding landscape, based on the evidence of Mr Mylchreest and the FRA. I also note that the specific issue of drainage design did not form a Reason for Refusal. Further, Open Space considerations have now been resolved.

3. Headcorn Neighbourhood Plan

- 3.1. As outlined in the Statement of Common Ground (**CD 5.8**) and **paragraphs 5.110 and 5.111 of my PoE**, the Appellants have agreed limited weight to the Headcorn Neighbourhood Plan (HNP) at the time of writing. The Examiner's Report was due to be published on 27 January 2025, however, the Report is still yet to be published. Though, I understand from very recent correspondence with Ms Geary, that the MBC Spatial Planning team received it on 15 January 2025, and are now going through an internal process before it is made public. It is not, therefore, available to me or the public.
- 3.2. Despite this, Ms Geary refers to a conflict with draft policies 1 and 2 at **paragraph 6.12 (v)** and then draft policies 1, 2 and 3 at **paragraph 10.01** of her PoE (**ID 2.9**). Ms Geary also refers to draft policies 4 and 5 of the draft HNP at **paragraph 5.06**. However, no further commentary or justification on the relevance of these policies to the Appeal Proposal is referred to in Ms Geary's PoE.
- 3.3. At **paragraph 5.06 of Ms Geary's PoE** it is implied that MBC had received the Examiner's Report (which is now confirmed to be the case) but as I understand from Ms Geary she has not received it. As is common ground, Ms Geary has increased the weight of the HNP from no weight when the original decision on the planning application was made by MBC on the Appeal Proposal to limited weight now. As neither Ms Geary or myself have seen the Examiner's Report, neither of us can conclude our opinion on the level of weight to be provided to it now, nor assess the implications of any changes from the Examiner. I will have to reserve my position.
- 3.4. At this stage, I disagree with Ms Geary's assessment of the HNP for the following reasons:
 1. Policies 1, 2 and 3 of the HNP (Design, Landscape and Connectivity and Access) primarily (if not entirely) relate to considerations that will be addressed at the Reserved Matters stage.
 2. Ms Geary refers to a conflict with policies 1 and 2 at paragraph 6.12 (v) and then 1, 2 and 3 at paragraph 10.01 of her PoE. This is not consistent.
 3. The draft HNP policies did not inform any of the original Reasons for Refusal set out in the Decision Notice (**CD 4.1**) nor the amended Reasons for Refusal set out in MBC's Statement of Case (**CD 5.2**). There is no explanation for such a change in position.
 4. At paragraph 3.12 of the Statement of Common Ground – General / Planning Matters (**CD 5.8**) the following was agreed:

“The draft HNP has been the subject of a series of questions from the Examiner in September 2024. Headcorn PC responded in October 2024. The Examiner's Report is due to be published on 27 January 2025. The HNP's weight has therefore increased to limited weight, and its weight may have further increased at the time of the Inquiry”.

- 3.5. Overall my weighting to the draft HNP has not changed to that set out in my PoE and I do not consider it necessary to refer to the draft HNP policies in relation to the Appeal Proposal.

4. Heritage

- 4.1. Additional information relating to the Curtilage Listed Building (“the Granary”) was appended to Ms Stoten’s evidence including a Methodology by James Clague Architects. For clarity, this information supersedes the Teenage Hub / Shelter Floor Plans and Elevation (**CD 2.2**).
- 4.2. Following the exchange of evidence, the Appellants and MBC recently met to discuss the proposals to “the Granary”. The parties have agreed further common ground in respect of the proposal for the Granary to ensure a conservation-led approach is taken, which will result in the "optimal" heritage solution for the vacant, derelict and unsightly Granary, which is currently fenced off for safety and to prevent further vandalism.
- 4.3. The separate SoCG (**ID 5.8**) sets out three conditions to ensure that the dismantling and reconstruction of the Granary is undertaken in a sensitive manner. These conditions, alongside the Reserved Matters and Listed Building application for the proposed development will provide MBC with full control over the final replacement structure. When followed, such a proposal will result in an *enhancement* to the heritage significance of the Granary.
- 4.4. In light of the above, MBC also requested the removal of the reference to ‘demolition’ (in respect of the Curtilage Listed Building only) from the description of development, the update to which I addressed in **Section 2** of this Rebuttal.
- 4.5. I do consider that the situation means that the Heritage Reason for Refusal has been addressed. Indeed, this Reason for Refusal was always capable of being addressed by a condition requesting the details of the replacement structure to be agreed. That is (now) the LPA’s agreed position.
- 4.6. Further, the LPA agree with my assessment (required by paragraph 215 of the NPPF) that public benefits clearly outweigh any less than substantial harm to the setting of the Listed Building (which I undertake in my PoE). This is set out in the SoCG.

5. Design

- 5.1. **Paragraphs 6.86 – 6.95 of Ms Geary’s PoE** consider the Design Quality of the Appeal Proposal. In **paragraph 6.89 and 6.90**, Ms Geary raises detailed analysis of the indicative layout in respect of Policy SA310 criterion 7. I note that within the agreed General Matters SoCG, **MBC has agreed that Criterion 7 is not relevant to an outline application** and that the detail of lower densities and built form on the western portion of the site will be detailed at Reserved Matters stage. It is not clear why Ms Geary has analysed this point in such detail within her PoE.

Landscape Considerations

- 5.2. **Ms Geary outlines at paragraph 6.82** a desire for 15m tree buffers, on the basis of Policy SA310 criterion 8 requirements. This is evidently a Reserved Matter. To demonstrate such could be possible, Mr Mylchreest has produced the analysis included in **Appendix 1** of this Rebuttal.

Density

- 5.3. I also note that Ms Geary has undertaken analysis of density in Figure 1MG whereby she has considered the “net” density not including roads. This is “net net” in my opinion. I refer to Mr Morgan’s Design Note appended to my PoE, whereby Mr Morgan’s has outlined the net density of the illustrative masterplans at Figure 14. This indicates that the south-western areas will achieve a net density of 21.9 dph including roads, based on the area Mr Morgan interprets as the rural edge of the Appeal Proposal. Ms Geary has, in her calculation, included areas which are both rural edge and toward the centre of the Appeal Proposal. I also note that Mr Morgan’s density is also calculated using accurate computer modelling programs. This is a demonstrably acceptable density. Indeed, if anything the concern is that it fails to comply with the local and national policy imperative to make efficient use of land (policies to which Ms Geary makes no mention in her evidence).

- 5.4. I note that the National Design Guide (**CD 10.2**) states: -

“65. Well-designed new development makes efficient use of land with an amount and mix of development and open space that optimises density. It also relates well to and enhances the existing character and context”.

“66. Built form is determined by good urban design principles that combine layout, form and scale in a way that responds positively to the context. The appropriate density will result from the context, accessibility, the proposed building types, form and character of the development”

- 5.5. It is also relevant to note the Kent Design Guide (**CD 7.2**), Step 2 states: -

Higher density is of growing importance in order to meet ever increasing pressure for development without compromising the green belt and open countryside and to meet sustainability objectives. Higher density

is defined in Planning Policy Guidance 3 as being over 30 dwellings per hectare and recommends new development in the range 30-50 dwellings per hectare. Most Kent traditional towns and villages greatly exceed this and densities of 50-70 dwellings per hectare can be achieved successfully providing quality design and good local facilities are in place, for example, Lacuna in West Malling.

6. Access

- 6.1. Mr Neale addresses technical Highways matters within his Rebuttal to Mr Roberts' PoE (**ID 2.13**). I wish to address one issue, as Mr Roberts raises legal matters regarding the Appellants rights on the existing northern track. Particularly at **Paragraph 4.7** Mr Roberts states:

4.7 The Transport Assessment (CD 1.33), at paragraph 4.2.13, confirms that the site has a right of access along the existing track. Importantly, a right of access does not convey any rights to change the width or surface condition of the route, or add lighting; only the right to use it to access land. On this basis, the existing width, surfacing and unlit condition of the right of way should be assessed for its suitability to serve the site.

- 6.2. And at Paragraph 4.13 (I have underlined a key point for emphasis):

*4.13 When two vehicles meet along the track, at its widest point, there is barely sufficient width for a car to pass another car. The Transport Assessment (paragraph 4.2.15) correctly states that the minimum width to allow two cars to pass is 4.1m. **This passing would involve incursion into the growing hedgerows at certain times of the year, and would rely on a very high maintenance regime for the hedgerows, which is in turn is hampered by bird nesting season from March to August, inclusive.***

- 6.3. Whilst the private legal rights related to Land is not a Planning matter, I consider it prudent to clarify this position to assist in the determination of the Appeal. The Appellants have received specialist Advice on this matter from Eversheds Sutherland solicitors, which confirms *inter alia*: - :

- The Appeal Site benefits from a right of way over the track, leading to the A274;
- The rights extend to use at all times, for all purposes and with or without vehicles;
- There is a right to repair and improve including maintenance of vegetation and alteration to the surface so long as they do not interfere with the use of the right of way;
- There are no private law rights to park on the track, as this would unlawfully interfere with the legal right to pass and re-pass across all parts of it.

- 6.4. Accordingly, whilst the issue of private law rights is outside the scope of this Inquiry, the Appellants (on the basis of specialist legal advice) consider that they are therefore legally able to pass, repass, maintain and improve the access track. There is no evidence/analysis to the contrary.

- 6.5. Further or alternatively, the issue of the condition of the access track can be addressed by condition (as explained without contradiction in the evidence of Mr Neale). If the Inspector considers improvements /

upgrades to the track and/or a maintenance scheme for the access track are required (in the terms of the NPPG on conditions) I consider that this can be secured via a suitable negatively worded Grampian condition for a scheme for the condition and maintenance of the access track to be submitted and agreed with the LPA, prior to the commencement of development. At the time of writing, there is a draft condition in respect of securing the access to the A274, which I understand the Appellants will negotiate with MBC.

- 6.6. It is then up to the Appellants to be able to comply with such a condition. The Appellants (based on the specialist and independent legal Advice from Eversheds Sutherland) considers that it can comply with such a condition.
- 6.7. This position is in accordance with the Planning Practice Guidance (Paragraph: 009 Reference ID: 21a-009-20140306) which states:

*Conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. It may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition) – i.e. prohibiting development authorised by the planning permission or other aspects linked to the planning permission (e.g. occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure). Such conditions should not be used where there are **no prospects at all of the action in question being performed within the time-limit imposed by the permission.** [Emphasis added]*

- 6.8. In short, there is a good prospect that works to maintain/ improve the track can be pursued by the Appellants because they have a private law right to do so. This can be secured by an appropriate condition. There is no legal or evidential basis on which it can be concluded that there is "no prospect at all" of there being compliance with the condition.
- 6.9. I would note also that the existing track is comprised of hardstanding in any event.

7. Benefits

7.1. Ms Geary considers the benefits of the Appeal Proposal in paragraph 9.01 of her PoE as:

- *Up to 115 new homes;*
- *40% affordable housing provision;*
- *The provision of economic benefits in terms of construction jobs and local spend;*
- *The provision of a social benefit of public on-site open space and play areas.*

7.2. It is welcome that Ms Geary now acknowledges some benefits from the Appeal Proposal. Ms Geary continues to consider the benefits in turn from paragraph 9.04 of her PoE. In this she introduces and recognises additional benefits weighing in favour of the Appeal Proposal:

- *Protection of landscaping features including TPO, mature trees and hedgerows – limited*
- *Ecological enhancements including 90.18% habitat gains and 20% hedgerow gains in BNG – moderate*
- *Recording of the Royal Observer Corps Station – moderate*
- *Archaeological recording of the Moat Farm complex – no benefit (note - this differs from the weight Ms Geary agreed as expressed in the General Matters SoCG)*
- *Replacement building of the Granary – no benefit (note - this differs from the weight Ms Geary agreed as expressed in the General Matters SoCG)*
- *Contributions towards education via S106 – limited*
- *PRoW improvements – limited*

7.3. I amended the weight I attached to some of the benefits listed within the General Matters SoCG. I therefore provide an updated version of the weighting awarded by both parties on the different benefit in **Table 7.1** overleaf, in order to assist the Inquiry.

Table 7.1: Weight awarded to the benefits of the Appeal Scheme

Benefit	Mr Collins Weight	Ms Geary Weight
Provision of housing as part of the Council's Local Development Plan for meeting their identified housing need	Substantial	Moderate
Provision of affordable housing	Substantial	Significant
Replacement building incorporating existing fabric of the Granary to be used as a shelter within open space	Significant #	None
Socio economic benefits, CIL monies, and additional spend	Significant	moderate
Provision of public open space including children's play area, community garden and contribution towards sports	Moderate	Limited
Protection of important landscaping features include TPO, mature trees and hedgerows;	Moderate	Limited
Ecological enhancements including the delivery 90.18% net gain in area habitats and 20% net gain in hedgerows with regards to BNG	Moderate	Moderate
Contribution towards improvements to the Public Right of Way network in terms of stile replacement, clearance, new signage.	Moderate	Limited
Recording and preservation of Royal Observer Corps Station	Moderate	Moderate
Archaeological recording of The Moat Farm complex	Moderate	None
Contributions to education, children's services , adult social care and libraries	Limited	Limited

- 7.4. I have set out my position on the benefits within my PoE. However, I would like to respond on Ms Geary's alteration to the weighting awarded to the Archaeological recording of The Moat Farm complex and replacement of The Granary. Taking the Granary first (and noting the update to the LPA's position above), I do not agree with Ms Geary's assessment that the dismantling and reconstruction of The Granary is simply mitigation required by the Appeal Proposal. The Conditions Survey (**CD 1.39**) sets out that the Granary is in a poor state of repair. The Appellants are taking a conservation-led approach to The Granary which would not have been taken in another situation. This is agreed in the SoCG.
- 7.5. Furthermore, the Appeal Proposal secures the historic recording of the building. This again would not be possible without the Appeal Proposal being delivered. As such, I maintain that this is a benefit which should be afforded **significant weight**.
- 7.6. In respect of the archaeological recording of The Moat complex, I do not agree this is simply mitigation to the Appeal Proposal. In fact, KCC Archaeological Officer comments on the application (**CD 3.16**) refer to the suitable investigation and archaeological recording of The Moat farm complex as 'enhancement' measures rather than mitigation measures thus were not required by KCC Archaeological to allow the development to come forward. Thus, I remain in the opinion that the archaeological recording of The Moat Complex should be afforded **moderate** weight.

END

Indicative views from Beult Valley to the south



15m Tree Belt Indicative Locations

Supporting Notes

A: Next to Moat Road, woodland would have limited impact in reducing visibility compared to proposed landscaping. Current landscaping strip is wider and staggered trees would provide good landscape integration when combined with dense existing hedgerow along Moat Road. Would also potentially block light and create an unattractive, fully screened frontage, which is not considered a good or sensitive design response.

B: Woodland would not provide significant additional filtering compared to proposed landscaping, which in this area is circa 45m wide. Trees and existing hedgerow would provide effective filtering. A woodland strip has the potential to block light given orientation, and is not considered a positive or sensitive design response.

C: Tree belt in this location would replace streets with trees, and would not - due to the plateau - provide additional break up of development massing in views from the south due to foreshortening of views. A woodland strip has the potential to block light given orientation, and is not considered a positive or sensitive design response.

D: Existing double hedgerow along informal path and mature trees provides excellent filtering of views between the proposed development and the existing development to the north. 15m woodland strip would provide limited additional filtering, and potentially block light.

Sections Annotated with LPA Indicative Suggested Woodland Belt Locations

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