

**RE: LAND AT MOAT ROAD, HEADCORN
(ALLOCATION REF SA 310)**

OPENING SUBMISSION OF THE APPELLANT

INTRODUCTION

1. The context for this appeal is the national imperative to boost significantly the supply of housing (NPPF 61). There has been a longstanding recognition from Government that the planning system has simply failed to deliver sufficient homes for a protracted period of time and this can no longer be tolerated.¹ The housing crisis, exacerbated by inflation, repeated rises in interest rates, increases in build costs and the cost of living (a daily news story), has been succinctly expressed by Rt Hon Angela Rayner MP (SoS HCLG and Deputy PM):²

“We are in the middle of the most acute housing crisis in living memory. Home ownership is out of reach for too many; the shortage of houses drives high rents; and too many are left without access to a safe and secure home.”

2. It is a national crisis which has a local expression. With the requirement for a 5% buffer,³ this LPA has a **4.87 year** housing land supply.⁴ There is an annual need for 559 affordable homes a year, which the LPA is significantly failing to meet. The ratio of average house prices to earnings

¹ See the White Papers *Fixing Our Broken Housing Market* (2017) and *Planning for the Future* (2020)

² See Written Ministerial Statement

³ Introduced by the NPPF (Dec 2024) at 78(a)

⁴ CC at 12.2 and App 1

is 10.49, with an average house price of £350,000. Housing has become unaffordable for a significant proportion of the local population. Regrettably, 1,307 households are on the Council's housing waiting list.⁵ These are families in acute need *now*.

3. In that context, the Appellants seek outline permission on an allocated housing site. The detail of the access on Moat Road is agreed. Such an outline application is therefore entirely uncontroversial. Indeed, the LPA no longer contest the Appeal. They have withdrawn their Reasons for Refusal and consider that planning permission should be granted, subject to conditions and a s106 agreement (see Supplementary General SoCG at 4.02 and 4.03).
4. The proposal will deliver a mix of high quality homes in a manner which makes the optimum use of the site, to meet the identified need for more homes (expressly in accordance with the Plan's spatial distribution of housing). The proposal complies with the development plan and should, therefore, be consented *without delay* (NPPF (11)(c)). Material considerations further support the grant of consent (NPPF (11)(d)).

THE APPEAL PROPOSAL

5. This appeal concerns an outline application for up to 115 new homes (40% or 46 of which will be affordable). The description of development (as amended) reads:

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

⁵ CC at 12.4

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).

6. The proposal does not comprise EIA development. The plans for determination are agreed (SoCG at 2.1).

MATTERS FOR DETERMINATION

7. This is an outline application for up to 115 new homes, with all matters reserved save for access. Access means the main point of access off Moat Road. The LPA have not specified that any reserved matter must be determined at this stage (pursuant to the statutory power at art 5(2) DMPO (2015)).
8. It follows that there are simply two matters for determination at this appeal:
 - (i) The principle of residential development for up to 115 homes; and
 - (ii) The detail of the main access onto Moat Road.
9. The Application does not include the detail of the secondary northern access and/or the detail of any off-site highway works which the LPA can demonstrate are *necessary* (in the terms of the NPPG) such as cycling improvements. Such matters fall outside the scope of the determination and can be addressed by condition.

10. It is unreasonable conduct to refuse planning permission on a planning ground which is capable of being addressed by condition (*NPPG:Appeals* at ID 16-49).

(i) THE PRINCIPLE OF DEVELOPMENT

11. This appeal falls to be determined in accordance with the Development Plan (DP), unless material considerations indicate otherwise (s.38(6) P&CPA 2004). So far as relevant, the development plan comprises:⁶
- The Maidstone Borough Local Plan Review (LPR) 2021-2038 (March 2024) **CD 6.1**; and
 - Saved Policies of the Maidstone Local Plan (MLP) 2017 **CD 6.2**.
12. The LPR was adopted on 20th March 2024, prior to the determination of the application (on 29th April 2024). The LPR plans between 2021 and 2038. The Plan has been recently examined and been found "sound".
13. The Plan's **Spatial Vision** states: *Maidstone - a borough open to embracing growth which provides improved infrastructure, economic opportunity and prosperity, along with services, spaces and homes for our communities, while addressing biodiversity and climate change challenges and protecting our heritage, natural and cultural assets. This will be achieved through the implementation of the Spatial Strategy as set out in chapter 5 of this Local Plan Review.*
14. The Spatial Objectives respond to strategic issues and seek to develop the Spatial Vision.

⁶ See CC at 5.2

15. The **Spatial Strategy** (Chapter 5) seeks to provide for the OAN for housing (including affordable housing) *as a minimum* (5.3). In that context:
- There is a minimum Plan requirement for **19,669 new homes between 2021 and 2038** (derived from a Standard Method in NPPF (2018) of 1,220);
 - That is **1,157 per annum on average** (noting there is a stepped trajectory);
 - That is below the current Standard Method of 1,358 per annum;⁷
 - The Plan is not, therefore, planning to meet the *current* minimum need for housing in Maidstone;
 - Given identified completions (2,691), committed supply at April 2023 (6,450), windfalls (2,711), Invicta Park Barracks (800) and Town Centre Opportunity Sites (883), the Plan was required to identify allocations for a **minimum of 6,134 new homes** (5.13).
16. In the Settlement Hierarchy (5.23), Maidstone is the County Town. Headcorn is one of 6 Rural Service Centres (RSC).
17. On that basis, **Policy SS1** (Spatial Strategy) requires a minimum of 19,669 new homes (2021 to 2038). The Maidstone Urban Area will continue to be a focus for development in the Borough. Headcorn (and the RSC) will be "*the secondary focus for housing development with the emphasis on maintaining and enhancing their role and the provision of services to meet the needs of the local community*" (Policy SS1(10)).

⁷ The housing requirement is *not* more than 5 years old and should form the basis of the 5YHLS calculation (NPPF (78))

18. The reasoned justification provides (5.34) that: *It is important that these villages are allowed to continue to serve their local area by retaining vital services thereby reducing the need to travel. Some development at these locations provides for a choice of deliverable housing locations and supports the role of the rural service centres.*
19. Indeed, the RSC's are considered to be "*highly sustainable settlements in Maidstone's settlement hierarchy*" (6.105) and will "*continue to be focal points in which improved infrastructure and the strategic location of new development will reduce the need to travel and help to maintain and improve on the range of essential local services and facilities*" (6.107).
20. The whole of Headcorn is washed over by the Low Weald Local Landscape Value (LLV) designation. It follows that *any* development in Headcorn would be in the LLV. **Policy SP 6(1)** states that in Headcorn, the Council will focus new housing development within the settlement when it is newly allocated within this LPR. The site is allocated (ref SA 310) and has been included *inside* the settlement boundary. Development of this site is acceptable in principle (applying Policy SP 6(1)).
21. It follows that the Plan has deliberately (and knowingly) sought to locate housing development in the LLV because it is considered to be acceptable in principle. No other conclusion is possible, given the Plan states:

6.111 Headcorn has a diverse range of services and community facilities which are easily accessible on foot or by cycle due to the compact form of the village...

6.112 The village lies within a landscape of local importance where proposals should seek to contribute positively to the conservation and enhancement of the protected landscape in accordance with policy LPR SP14.

22. **Policy SP 6(C) Headcorn** requires that new dwellings *will* be delivered: (i) on the remainder of the allocated site H1(36); and (ii) approximately 110 new dwellings on site LPR SA310. Both sites lies in the LLV. It is important that this allocated site is delivered because Headcorn is surrounded on 3 sides by the functional floodplain of the River Beult and its tributaries (6.112). The settlement is heavily constrained.
23. It follows that the principle of development is further expressly supported by Policy SP 6(C). If the proposal complies with Policy SP 14, the proposal is acceptable in the LLV. As the site lies inside the Settlement Boundary, it does not lie in the Open Countryside and the restrictions in **Policy SP 9** do not apply.
24. **Policy SP 10** sets out a stepped housing trajectory to meet the *minimum* housing requirement of 19,699. Policy SP 10(7) requires that, *as a minimum*, NDP Areas accommodate housing from any site allocation. It follows that the emerging Headcorn NDP must accommodate site allocation SA 310. Further, the Headcorn Neighbourhood Area must deliver a *minimum* of 330 units to 2038, comprising: (i) SA 310 - 110 units; and (ii) H1(36) - 220 units. The Plan is clear that the number allocated through Plan policies are not *maxima* and are not finite (7.4). It follows that if less than 110 homes are developed on the application/allocated site, they must be built elsewhere (unidentified) in Headcorn in the LLV (see Table on p.135).
25. **Policy SP 14(A)** concerns the natural environment. It requires developers to ensure that new development incorporates measures (where appropriate) to:
- Deliver a minimum 20% BNG on new residential development; and

- Protect positive landscape character, including LLV, from inappropriate development and avoid significant adverse impacts as a result of development through the provision of adequate buffers and in accordance with national guidance.
26. It is agreed that the proposal is acceptable regarding ecology. KCC Ecology has raised no objection, subject to conditions (SoCG at 4.21).
27. Further, the proposal is for housing on an allocated site. It cannot (reasonably or rationally) be characterised as "*inappropriate development*". Rather, it is development which is specifically required in the early phase of the Plan to meet the *minimum* requirement for market and affordable housing. Moreover, the proposal delivers a very high quality interface with the adjacent open countryside through significant landscape buffers to the western and southern boundaries, thereby avoiding any significant adverse impacts to the LLV (in the terms of the policy). The proposal therefore expressly complies with policy SP 14A and protects the LLV, so far is consistent with the allocation of the site for approximately 110 new homes.
28. In the light of the Strategic Policies, Chapter 8 LPR sets out the site allocations which are "*necessary*" to meet the minimum development requirement to 2038 (8.1 and 8.5). Land at Moat Road (LPR SA 310) is allocated for housing with an "*Identified Capacity*" of 110 homes (p.211). This is the identified capacity on which reliance is placed by the LPA to demonstrate that the *minimum* requirement of 6,134 new homes (as a component of the *minimum* 19,669 requirement) can be met. If the allocations fail to meet their identified capacity, it is self evident that the minimum housing requirement will not be met and the Plan will fail (see Marden DL at 29).

29. **Policy SA 310 - Moat Road, Headcorn** allocates the site for *the development of approximately 110 dwellings*.
30. It is agreed that this means that the principle of housing development for approximately 110 dwellings on the site (with associated infrastructure) is acceptable and supported in the Plan period. Indeed, the LSoCG expressly agrees that:
- (j) The site is allocated under Policy LPR SA 310 and therefore there is an "in principle" acceptance of development in this location - in landscape and visual terms - irrespective of its location within the Low Weald LLV, which incidentally washes over the entirety of Headcorn and its hinterland.*
31. Further, it is common ground that a figure of up to 115 homes falls within the term "approximately 110 dwellings" (SoCG at 4.10 criterion 1). That is consistent with the recent grant of consent on (refused) allocated sites at Yalding (CD 11.3) and Marden (CD 11.4). It follows that this outline application is expressly consistent with the policy of allocation.
32. There is no evidence to the contrary. Neither the evidence of MG nor PR grapples with whether there is any material difference (in LVIA terms or at all) between a development of approximately 110 homes and a development of up to 115 homes. Both GS and CM undertake such an exercise expressly. They reach the (frankly self-evident) conclusion that there is no material difference between the principle of the allocation scheme and the principle of the outline scheme.
33. On that basis, the principle of development is unanswerably consistent with the recently adopted statutory development plan and the policy of allocation. Planning permission should be consented *without delay*.

34. There are 28 conditions ("criteria" 2 to 29) which are "*considered appropriate to be met before development is permitted*". Importantly, such criteria cannot be interpreted and applied in a manner which renders the allocation incapable of delivery (see the Marden and Broomhill DL's). Such an interpretation/application of the criteria would be irrational and unlawful (see Marden DL at 29). It follows that, whatever the requirement, it must be possible for there to be compliance (in principle) or else the site could not have been allocated.
35. It follows that none of the criteria can (reasonably or rationally) result in the refusal of this outline application. They do not all have to be addressed at this outline application. The Appellant's evidence demonstrates that all of the criteria can be addressed through RMA and conditions.
36. **It follows that the principle of development is unanswerably acceptable and the LPA are correct to support the grant of consent, subject to the RMA, conditions and the s.106.**

(ii) THE DETAIL OF THE ACCESS

37. The detail of the access is agreed. It is not, and never has been, in dispute.
38. Policy SA 310(17) requires that the vehicular access is via Moat Road, with junctions and sight lines designed to appropriate and capacity and safety standards. It follows that the inevitable landscape and visual impacts of such an access must be acceptable in principle (or else the site could not have been allocated).
39. The access plan (CD 1.4) is agreed. The sight lines are acceptable (CD 1.6 and 1.7). Vehicles can access without crossing the centre line (CD 1.5). It

follows that the access is agreed to be acceptable (SoCG(T) at 2.5). This issue is addressed. There is compliance with NPPF (115b).

40. It follows that the principle of the development is acceptable. The detail of the access is acceptable. Outline planning permission, with all matters reserved save access, should be consented without delay, subject to conditions and the s.106. Indeed, there is no reasonable evidential basis on which planning permission should be refused.
41. It is in this context that a number of issues raised in the determination of the Application can be briefly addressed.

DETERMINATION BY THE LPA

42. On 29th April 2024, the application was refused for 6 reasons (CD 4.1). That decision, and the Officer Report (OR) which underpinned it, is fundamentally flawed for multiple reasons. In particular, it failed to recognise that the LPR had been adopted, the site had been allocated and fell within the settlement boundary of Headcorn (rather than the Open Countryside). The OR (CD 4.2) did not attach full statutory weight to the LPR because it was within a 6 week period of possible statutory challenge (p.3). It therefore referred to policies which had been legally superseded. Such an approach was legally flawed. There is a legal presumption of regularity. Decisions of public bodies (such as the adoption of a development plan) are to be presumed to be lawful unless and until they are quashed by a Court (see CC at 4.17). It follows that the application should have been determined on the basis of the LPR and the allocation of the site.
43. The error was recognised in the LPA's SoC (CD 5.2). RFR 1 and 2 were "consolidated", such that 5 RFR were advanced. All have now (quite properly) been withdrawn.

Public Open Space (RFR 3)

44. It is agreed that the Appeal scheme provides for sufficient POS, subject to conditions, s.106 and the RMA (SoCG at 4.11). Indeed, the level of open space is very generous. 44% (3.29ha) of this site is proposed for multi-functional GI (see PM at p.16).
45. In the SoCG (CD5.8 at 4.13), the parties have agreed on the level of open space at the site and sets out a suitable condition to control this at the RMA. It is agreed that there will be:
- No less than 0.8ha amenity green space including children's play space;
 - 0.25ha of community gardens;
 - No less than 1.9ha of natural/semi natural space (not including the emergency access or eastern buffer);
 - Attenuation basins to contain water all year round.
46. To demonstrate this is achievable, the Open Space Performance Plan (Rev 15g) has been updated and agreed (see CC Appendix 3).
47. Accordingly, RFR 3 has been withdrawn. The Appeal Proposal complies with policies SP13 (parts 2 and 8(c)), SA310 (criteria 25 and 26) and INF1 (parts 1 and 2).

Heritage Assets (RFR 2)

48. The Royal Observer Corps Monitoring Post will be retained *in situ*. This is acceptable (SoCG CD 5.8 at 4.19).
49. RFR 2 concerned the demolition of the Granary (Building A), which is agreed to be curtilage listed. RFR 2 did not raise the issue of: (i) the

impact to the setting of the Moat (Grade II Listed Building; and/or (ii) the impact to the setting of the Headcorn Conservation Area.

50. The Granary is one of 5 agricultural buildings on the site. They are all vacant, derelict and unsightly. The Granary has been the subject of vandalism. It is not safe and has been hoarded off. It is not capable of repair and/or re-use (whether for its original use or at all).
51. In essence, it is proposed to carefully dismantle the Granary (in accordance with an agreed method statement), to allow an assessment of whether any original features are salvageable. The building will be reconstructed using material salvaged from buildings A and E where possible (in accordance with a drawing and timetable to be agreed). The proposed final use will be agreed (through the conditions and the RMA). LBC will be required to undertake such works (or else a criminal offence will be committed). There will be a Level 4 recording prior to the proposed works.
52. In the light of the James Clague Report (GS App 4), it is agreed that this is the "*optimal deliverable solution in heritage terms for the building*" (AHSoCG at 5.2 ID 1.2). It can be secured by an agreed set of conditions (section 4 ID 1.2).
53. On that basis, it is agreed that there will be a substantial heritage benefit to the curtilage Listed Building (SSoCG ID 1.4 at 7.02 and 7.03). On that basis, RFR 2 has been withdrawn.
54. Further, the LPA consider that a "substantial harm" has become a "substantial benefit" in the planning balance, such that the planning balance now favours the grant of consent (*ibid*).

55. For the avoidance of doubt, it should be noted that:
- (i) It is the Appellant's evidence that there will be less than substantial harm (at the lower end of the bracket) to the setting of the Moat, as a result of housing development in the fields which form part of its setting. Such an impact is the *inevitable* impact of developing approximately 110 dwellings on the site. It must, therefore, be considered to be acceptable in principle. Such harm is outweighed by the public benefits of developing this allocated site. There is compliance with NPPF (215) and Policy SP 15(B);
 - (ii) It is the Appellant's evidence that there will not be any harm to the setting of the Headcorn Conservation Area (GS App 5).
56. The impact to heritage assets is therefore acceptable. RFR 2 has been withdrawn.

Impact to the Character and Appearance of the Area (RFR 1)

57. For the reasons given above, the site is allocated for ~110 homes. 115 homes is approximately 110 homes. There is no material difference between the LVIA of approximately 110 homes and 115 homes. There is no analysis or evidence to the contrary. The landscape and visual impact cannot, therefore, be unacceptable. The contrary is not properly arguable and RFR 1 has been withdrawn. In particular:
- The site is not prominent and the proposal will not be visually prominent. Rather, it is agreed that the landscape and visual effects will be "localised" (LSoCG at (b)), consistent with a constrained visual envelope (EDP 8). This is clear from the photomontages. The proposal is no more prominent than any proposal for ~110 homes;
 - Neither the density nor the built form of of homes on the western portion of the site are for determination (agreed SoCG). Nonetheless, the illustrative layout demonstrates a range of densities between 33.8 dph (net)

and 21.9 dph (net) on the rural development edge (PM Fig 14 p.34). Overall, the net density is 31 dph. 44% of the site is undeveloped. This shows that lower density development can be delivered on the western and southern edges. The density cannot (reasonably) be lower, given the requirement to make efficient use of the site (NPPF Ch.11) and to deliver a minimum of 30 dph (net) (Policy HOU 5). Otherwise, further greenfield sites in Headcorn and beyond will be required;

- The landscape buffers to the south (27m to 68m) and west (27m to 68m) are very substantial. Extensive planting is proposed in such areas. This will result in a very high quality interface with the adjacent Open Countryside. This is clear from the Cross-Sections (EDP 8) and the Phomotomontages (EDP 5 and 6). There is no policy requirement for housing on the site to be rendered entirely invisible and this is not considered to be contextually appropriate and/or good urban design. It is not required by Policy SA 310;
- Further mitigation planting is not required (east/west). Given the topography, this would have no impact on screening the housing further (see Cross-Section in CC(R));
- It follows that the proposal will result in a high quality rural edge to Headcorn.

58. The impact on the character and appearance of the area is acceptable. There is compliance with Policy SP 14(A). The impact is no greater than is inevitable from the development of the allocation. RFR 1 has been withdrawn.

Highway Impact (RFR 4)

59. Policy SA 310 requires pedestrian access to the north. It follows that an access must be capable of delivery. The Appellant proposes an access along an existing track, over which it has private rights. The LPA has no

alternative proposal. It follows that RFR 4 contests the principle of the allocation, which is impermissible.

60. Further or alternatively, the width of the route (min 4.66m) is adequate to allow an emergency vehicle to pass a car (if required). The hedge will need to be maintained but this can be secured by condition. The track is hard surfaced but its condition has deteriorated due to a lack of use. The condition of the track (and any requirement for lighting) can be addressed by condition (and the Appellant has the right to do so). The Appellant is not, however, seeking consent for the northern access at this stage.
61. The track is plainly adequate for pedestrian use at all times. In the rare event of the 1:100 year + 40% CC allowance flood, the northern access will also be used by other vehicles. There is no arguable road safety issue. There is no objection from the LHA.
62. Further or alternatively, there is an alternative pedestrian route which could be used in the flood event, through the adjacent development. Either route would be acceptable.
63. Finally, there is no requirement for a bespoke cycle lane. It is agreed there is no existing safety issue and none would be created by this development. Moat Road is used now by cyclists. There is no proposal to prevent this on the grounds of safety and/or to upgrade cycle infrastructure. Such provision is not necessary and the LHA agree. Further, even if a cycle lane was created, it would not link into any wider cycle provision and would be utterly otiose.
64. If, however, such provision is necessary (and it emphatically is not) it can be secured by condition. The difficulty (not addressed by the LPA) is that this would require the reduction of Moat Road to a single lane. The LPA

have not demonstrated that this is acceptable to the LHA. The Appellant does not consider that it would be acceptable and the LHA have never requested it (throughout the long process of the promotion of the site between 2019 and 2024). The result would be to frustrate the development of an allocated site.

65. Properly understood, RFR 4 has always been an impermissible challenge to the allocation of the site and the principle of development. There is no basis for it. RFR 4 has now been withdrawn.

Contributions (RFR 5)

66. RFR 5 is addressed by the agreed s.106 agreement.

CONCLUSION

67. It follows that the proposal complies with the development plan and should be granted consent *without delay* (NPPF 11c). Material considerations further support the grant of consent (NPPF 11d). Indeed, the LPA have withdrawn their RFR and now agree that permission should be granted.
68. It is, therefore, the Appellant's case that planning permission should be granted subject to conditions and a s.106 obligation.

GILES CANNOCK KC

Kings Chambers

26th February 2025