

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

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**CLOSING SUBMISSION OF THE APPELLANT**

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*The Appellant and the LPA agree that planning permission should be granted, subject to conditions and the (agreed) s.106 agreements. The evidence at the Inquiry (from both parties) has confirmed that there is no basis for refusal. Whilst the Inspector is seised of the determination, the appeal should be considered on the basis that the application would have already been granted by the LPA had they retained control of the decision. The purpose of this Closing Submission is to demonstrate why such an agreed position is unanswerably correct.*

**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.<sup>1</sup> 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):<sup>2</sup>

*“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*

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

<sup>2</sup> See Written Ministerial Statement

*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,<sup>3</sup> this LPA has a **4.87 year** housing land supply.<sup>4</sup> 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 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.<sup>5</sup> 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)).

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<sup>3</sup> Introduced by the NPPF (Dec 2024) at 78(a)

<sup>4</sup> CC at 12.2 and App 1

<sup>5</sup> CC at 12.4

### **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 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 (Policy SA 310(17)). 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)). The Application has been submitted, processed and determined by the LPA on this basis.
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 proposal must demonstrate that there is *in principle* a northern access which complies with Policy SA 310 (20), (21) and (23). The Application does not include *the detail* of the secondary northern access (width, condition and lighting). This can be required and secured by condition.
10. Section 70(1)(a) T&CPA 1990 provides a broad discretionary statutory power to a Planning Inspector to grant planning permission subject to "*such conditions as they think fit*". Conditions can enable development to proceed where it would otherwise have been necessary to refuse planning permission (NPPG ID 21a-001). 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:<sup>6</sup>
- 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".

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<sup>6</sup> See CC at 5.2

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.
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;<sup>7</sup>
  - 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).

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

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)).
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 lie 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 DL (CD 11.4) and Broomhill DL (CD 11.5)). 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. As Inspector Bristow concluded (CD 11.4);

*29. The main parties rationally agreed, however, that the criteria to policy LPRSA295 can only sensibly be understood as giving effect to development of approximately 113 dwellings. Were I to read it a different way, for example if compliance with LPRSA295 criteria were such that only a scheme significantly below approximately 113 dwellings could be delivered in a policy-compliant manner, that would effectively call into question the robustness of that allocation. The implications of such a skewed approach would be even more far-reaching; alongside other allocations, the appeal site is considered by MBC to be deliverable within the terms of the NPPF. Questioning that would also logically entail questioning whether MBC can, in actuality, demonstrate an adequate forward supply of deliverable sites.*

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 ON MOAT ROAD**

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. I will address just two of them:

**(i) Challenge Period of the LPR**

43. The LPA's refusal 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.
44. 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.

**(ii) "Landscape Blind"**

45. The Application was refused on the basis that the LPR was prepared "*in the absence of any landscape sensitivity testing of the allocated sites for development ... It is therefore effectively "landscape blind" particularly with respect to site capacity figures ...*"
46. The proposition is both wrong and misleading:
- (i) Section 19(2) P&CPA 2004 required the LPA to have regard to national policy and guidance in the preparation of the LPR. NPPF Dec 2023 required the LPA *inter alia*: (a) to protect and enhance valued landscapes (180(a)), (b) recognise the intrinsic character and beauty of the countryside (180(b)); (c) and allocate land with the least environmental or amenity value (181);

- (ii) Section 20(2) and (5) required the LPA to comply with *inter alia* The SEA Regs (CD 10.15). Reg 12 required the LPA (through their SA/SEA) to assess the likely significant effect of the allocations on the environment (especially landscape). That was undertaken (see CC at 5.16 *et seq*);
- (iii) The LPA submitted robust evidence to assess the landscape and visual impact of the proposal (see CC at 5.7 to 5.35);
- (iv) The Appellant submitted *inter alia* an LVA which assessed the landscape and visual impact of housing development on the allocated site (CM at 1.11 and EiC);
- (v) Ward Members were well aware of the site characteristics of each allocation (5.20);
- (vi) The Inspector produced MIQ's on each allocated site (CD 8.26 and 8.27), which were addressed by the LPA and Appellant in Hearing Statements, and considered at the EiP;
- (vii) The Inspector concluded that the site allocation complied with the relevant legal tests and was "sound" (CD 8.1 at DL 391, 293-295);
- (viii) To be "sound", the Plan had to be "based on proportionate evidence" (NPPF 35a) and "consistent with national policy" (NPPF 35d). It follows that the Inspector concluded that the site was of the least environmental value (etc) *supra*. There is no evidence to suggest there is a site in Headcorn of lower landscape value;
- (ix) It is quite clear from the terms of the IR (CD 8.1) that the Inspector expressly considered the landscape impact of ~110 homes on the landscape of the site. IR 292 specifically refers to NPPF 180(b) *supra*. Further, the Inspector concludes:

***293. Land at Moat Road to the west of the village is allocated for approximately 110 dwellings at Policy LPRSA310. In spatial terms, the site is well-located, being within walking and cycling distances to the village services and facilities. Whilst the site occupies gently rising land from the wider valley floor of the River Beult and its tributaries, development would occur against a backdrop of existing housing on higher land. Various requirements in the policy would be effective in***

**seeking necessary landscaping and design responses to the local character.**

47. Indeed, it is a proposition which was considered and expressly rejected at the Marden Appeal (CD 11.4 at DL 30):

***"... it would therefore be untenable to suggest that the landscape implications of development did not inform the approach in the LPR."***

48. It was, therefore, quite wrong for the OR to seek to go behind the allocation of the site for ~110 homes and to contest the principle of development of up to 115 homes on the basis that the allocation had been "*landscape blind*". Such an approach was expressly rejected in the Marden DL (see DL 29).

**Public Open Space (RFR 3)**

49. 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).

50. 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.

51. To demonstrate this is achievable, the Open Space Performance Plan (Rev 15g) has been updated and agreed (see CC Appendix 3).
52. 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).
53. Further, the delivery of such a large amount of POS also demonstrates that the density of the proposal and the impact on the character and appearance of the area will be acceptable. The Marden Inspector concluded (CD 11.4):

*21. There is a particular inter-relationship between the space available to fulfil the criteria to policy LPRSA295 and policy LPRHOU5 concerning residential density ... **Establishing whether or not the proposal could provide for sufficient open space is critically important in determining, bluntly, whether or not the proposal seeks to achieve too much within too limited a site.***

#### **Heritage Assets (RFR 2)**

54. 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.
55. There are 3 relevant designated heritage assets. The Appellants analysis of the relevant statutory tests, NPPF, NPPG, case law and methodology are agreed (see GS at App 1 and App 2).

#### **(i) Monitoring Post**

56. The Royal Observer Corps Monitoring Post will be retained *in situ*. This is acceptable and uncontroversial (SoCG CD 5.8 at 4.19).

**(ii) The Moat**

57. The Moat is a Grade II Listed Building (GS at 4.1). The "Listed Building" includes the curtilage listed buildings, which shall be treated as part of the building (GS at 3.22).

**(a) The Granary:**

58. The Granary is one of 5 agricultural buildings on the site. It is agreed to be curtilage listed. The remainder are not. They are all vacant, derelict and unsightly. The Granary has been the subject of vandalism. It is not safe and has been hoarded off.<sup>8</sup> It is not capable of repair and/or re-use (whether for its original use or at all).

59. 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 building A where possible (in accordance with a drawing and timetable to be agreed). The proposed final use will be agreed and secured (through the conditions and the s.106). 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.

60. 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).

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<sup>8</sup> See Condition Report at CD 1.39 and GS App 4



61. 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.

62. 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*).

**(b) The Moat**

63. It is agreed 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. There will be an inevitable and intrinsic change to the character of the fields, resulting in a reduction in the minor illustrative value which they possess, as a component of the significance of the Moat (GS at 4.29 *et seq*).

64. It is common ground that 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. GS could not identify (in heritage terms) any basis on which the allocation for ~110 homes is acceptable in principle but a development of up to 115 homes is not. Such a proposition is absurd.

65. The reduction to the minor illustrative value of the fields must be weighed against the substantial heritage benefit from the repair of the Granary. On such an internal heritage balance, GS concluded there would be residual LTSH (at the lower end of the bracket). The LPA agreed.

66. The public benefits of the proposal are set out in the SSoCG (ID 1.4). It is agreed that such benefits clearly outweigh such residual harm. There is compliance with NPPF (215) and Policy SP 15(B).

**(iii) Setting of the Conservation Area**

67. It is the Appellant's evidence that there will not be any harm to the setting of the Headcorn Conservation Area (GS App 5). The contribution which the site makes to the setting of the CA is limited to the approach on Moat Road, comprising the hedgerow and the unsightly agricultural buildings. There will be a limited reduction in hedgerow to create the required access (Policy SA 310 (17)). The derelict buildings will be removed. The Granary will be enhanced and hedgerows and trees will be planted on the southern frontage. The Photomontages show a considerable improvement to the approach to the CA.
68. On balance, GS concluded that there was no harm to the CA. If anything, the enhancement to the Granary and the approach to the CA resulted in an improvement to the CA, to be weighed in favour of the proposal. The LPA agreed.
69. The impact to heritage assets is therefore acceptable. RFR 2 has been withdrawn.

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

70. 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 contained visual envelope (EDP 8). This is clear from the cross-sections and photomontages;

- In reality, the proposal will be barely visible from the west. There will be glimpsed views (at distance) from the south. The proposal cannot reasonably be considered to be "prominent";
- The access will be visible on Moat Road but that is an inevitable consequence of the requirement for site access (SA 310 (17)). The impact to Moat Road will not be "prominent";
- The proposal is no more prominent than any proposal for ~110 homes on the allocated site;
- Neither the density nor the built form of of homes on the western portion of the site are for determination (agreed SoCG). Criteria 7 and 8 do not fall to be determined at this stage (EiC of CM and CC). They are (nonetheless) demonstrably met (see CM at 6.37 *et seq*);
- 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, resulting in a high quality interface with the Open Countryside;
- 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. This is not a point with which the LPA's evidence has ever grappled;
- The landscape buffers to the south (27m to 68m) and west (22m to 64m) are very substantial. Extensive planting is proposed in such areas (see landscape strategy at EDP 2). 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)). This is not a point addressed in the LPA's evidence;
- It follows that the proposal is reasonably characterised as an exemplar scheme. It will result in a high quality rural edge to Headcorn.

71. The impact on the character and appearance of the area is acceptable. There is compliance with Policy SP 14(A), given the very substantial landscape buffers. The impact is no greater than is inevitable from the development of the allocation (and the LPA do not argue the contrary). RFR 1 has been withdrawn.

**Highway Impact (RFR 4)**

72. The scope, methodology, assessment and results of the TA are agreed. There is no objection from the LHA (CD 3.27). Significant weight should attach to such a consensus of technical professional evidence. At the time of the refusal, there was no competing technical evidence and no robust evidential basis for refusal.

73. In particular, it is agreed that:

- Policy SA 310 allocates the site for ~110 homes. The impact is acceptable in principle on the highway network. There is no material difference (in highway terms) between a development of ~110 homes and up to 115 homes (EiC of DN);
- All junctions will operate within capacity with development traffic (DN EiC);
- The impact of the forecast development traffic can be accommodated on the local highway network without unacceptable impact (SoCGT at 2.7).

The residual cumulative impact will not be severe. There is compliance with NPPF (115d);

- The site is located within a reasonable walking distance of bus stops, the railway station, primary school and other local shops and facilities (SoCGT at 2.2);
- Headcorn is provided with a regular bus service to Maidstone, with rail links to other retail and employment areas, such as London (SoCGT at 2.3);
- The site is an accessible and sustainable location for housing development, given the terms of the LPR (*supra*) and NPPF 109. There is a "genuine choice of non-car modes (NPPF 110);

74. It follows that the principle of development and the detail of the main access are acceptable. 3 additional issues have nonetheless been raised:

**(i) Pedestrian Improvements on Moat Road:**

75. There is no existing footway on Moat Road. An off-site improvement is therefore proposed (CD 1.4). There have been 2 RSA's which have concluded that it is safe. There has been no further requirement for a cycle improvement. It is acceptable to the LHA (CD 3.27). No issue has been raised by DC Officers or DR. There is compliance with Policy SA 310(18).

76. The PC have indicated there is a difficulty in pedestrians crossing the A274 (observed by DN). A pedestrian crossing is proposed across Kings Road and the A274 (CD 1.35 p.6). It has been the subject of a RSA. It is acceptable to the LHA (CD 3.27). It is secured by condition. If developed, this would be a road safety improvement for existing residents and is a benefit of the proposal in the planning balance.

**(ii) The Northern Access:**

77. **Policy SA 310 (20)** requires pedestrian access via the northern boundary of the site. The Appellant proposes an access along an existing track. This was the basis on which the allocation was promoted, examined and found sound. There is not (and never has been) any alternative proposal. It follows that such a pedestrian access must be considered to be acceptable. Otherwise, the principle of development is unacceptable and the allocation is challenged, which is impermissible (*supra*).
78. The track runs from the northern field to Maidstone Road. It is 100m and straight. It will take a pedestrian/cyclist 70s/25s to travel along it. It is a demonstrably safe pedestrian access in normal conditions and there is (agreed) compliance with SA 310(20).
79. **Policy SA 310 (21) and (23)** require appropriate access for emergency vehicles. As the only vehicular access is in FZ 3, acceptable flood safety measures must be agreed with the EA. The EA state (CD 3.9):
- We acknowledge the inclusion of a secondary access road out onto the A274 which will provide safe access and egress from the site due to the flood risk on the Moat Road access.*
80. It follows that the northern access track must be safe and accessible for emergency vehicles in a major flood event. There is no policy requirement for access by cars in such a major flood event.
81. The nature of the flood event needs to be put in context:
- The EA hold data on historic events in the area between November 2013 and December 2013 (CD 1.20 p.55);
  - The concern relates to the 1:100 year + 35% CC allowance;

- This is a rare major flood event. The Main River channel capacity was exceeded in 1960, 2000 and 2013 according to EA records (CD 1.20 at p.13);
- Whilst Moat Road may puddle/pond/flood regularly (evidence of local residents), these are not the 1:100 year + CC allowance events which will preclude access via Moat Road;
- Indeed, in the Nov 1960 and Dec 2013 events, Moat Road (in front of the site) was not wet/flooded (*ibid*);
- It was to deal with such a rare and extreme flood event that the Inspector made a MM to Policy SA 310 to require an emergency access to the north (CC at 5.35).

82. To be clear, therefore, the northern access will be used by emergency vehicles in the unlikely event of a 1:100 year +35% CC allowance flood event in the unlikely event of an emergency. In such an emergency, such vehicles can reasonably be expected to use sirens and flashing lights to alert pedestrians/cyclists and motorists of their presence.

83. In that context, the LPA have raised the issues of (i) the width of the access; (ii) the condition of the access track; and (iii) lighting resulting in a road safety issue. The Appellant is not seeking determination of such issues at this stage, which the LPA agree can be addressed by the suggested conditions.

84. **The width** of the access is 4.66m (see DN(R) at 2.2.4 and tracking plan at App DNR 1). 4.1m is required for 2 cars to pass (DR at 4.13). An emergency vehicle needs 2.7m to pass. The tracking plan shows that there is adequate width for an emergency vehicle to pass (i) a pedestrian; (ii) a cyclist; (iii) a parked car; and (iv) a moving car (see DNR 1). This is agreed with the LHA (CD 3.27). It is accepted that there will be a need to control vegetation along the track (DR at 4.13). That can be addressed by

condition and the management company secured by the s.106. Accordingly, there is no issue with the width of the access (and none raised by DR at the Inquiry).

85. For the avoidance of doubt, neighbours/local residents do not have any private law right to park and/or to interfere with the right to pass and re-pass along the access track (CC(R) at 6.3). It is private land and there are private law remedies (such as letters or clamping and/or injunctions) which can address unlawful parking. This should not, therefore, be a material consideration. It can, nonetheless, be addressed given the available width.
86. **The condition** of the track reflects its current lack of use. It comprises a crushed stone base. However, it has become overgrown causing localised ponding (there is no flood risk given the elevation). It is agreed that the condition of the access needs to be improved and maintained to facilitate pedestrian and emergency access. This can and will be addressed by condition. The same applies (if required) to lighting.
87. **Private law rights** fall outside the scope of this Inquiry. It is (bluntly) a matter for an applicant/appellant whether they can implement any planning permission which is obtained. The LPA have (nonetheless) raised the issue of rights over the access track. The LPA have never requested to have sight of the legal right of way or asked for a legal advice on the point (EIC of DN). DR asserted (without evidence, analysis or supporting legal advice) that there was no right to improve the condition of the track. By contrast, the Appellant has legal advice from Eversheds Sutherlands that there is a right of way and a right to repair and improve the access (CC(R) at 6.3). There is no evidence/analysis to the contrary. This has addressed the LPA's concerns.



88. It follows that this issue can be addressed by condition. The Appellant does *not* have to demonstrate that the condition can or will be discharged. The PPG states (see CC(R) at 6.7):

***When can conditions be used relating to land not in control of the applicant?***

*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) – ie prohibiting development authorised by the planning permission or other aspects linked to the planning permission (eg 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.***

*Paragraph: 009 Reference ID: 21a-009-20140306*

89. **There is no evidence to demonstrate that there is "no prospect at all" of such a condition being met.** That is sufficient. It is then a matter for the developer and (if the condition is not met) there will be no development and no conceivable land use planning harm. In any event, **the Appellant has demonstrated that there is a more than reasonable prospect of compliance with the condition because of the available legal rights.**
90. Further or alternatively, there is no conceivable road safety issue. This issue has been grossly overstated. There is good forward visibility along the 100m track:
- In a flood, in an emergency, an ambulance would be clearly audible and visible and can pass a pedestrian without danger;

- In a flood, in an emergency, a car would get out of the way. If not, the ambulance can pass without danger;
- In a flood, a car (with lights in the dark) can easily pass a pedestrian or another car without danger.

91. Indeed, there can be no objection to the *principle* of shared surfaces, which are specifically endorsed in Highway guidance, where there are low speeds and lightly trafficked (see DN at 6.3.17). Both apply to the proposed northern access.

92. Finally, if (which is denied) there is any residual issue with pedestrian and vehicular traffic, there are two alternative routes via the adjacent estate (see App DN 3 and DN at 6.3.9 and 6.3.10). There is not (and never has been) any issue raised with such a proposed route. There would be no conflict with any vehicle on the secondary access.

93. There is, therefore, compliance with SA 310(18), (20) and (21). RFR 4 has properly been withdrawn, subject to the conditions. Indeed, there is no other way in which the allocation can be developed and the DC Officers have no different/better solution.

**(iii) Cycling on Moat Road**

94. DR explained that (at its highest) this is an active travel issue. The issue is whether the Appellant has "done enough". That is not the relevant policy test (NPPF 110). The issue is whether there is a "genuine choice" recognising this is a rural settlement. It is common ground (*supra*) that the site is reasonably accessible. On that basis there is compliance with policy. Further or alternatively, it is common ground that the Appellant has done all it can. Finally, the LPA accept that any residual harm (the Appellant does not accept there is any) is outweighed in the planning balance. There is no arguable RFR.

95. There is no requirement for a bespoke cycle lane on Moat Road. There is no policy criteria in Policy SA 310. It is agreed there is no existing safety issue for existing cyclists (SoCGT at 2.8). No safety issue would be created by an additional 12 cyclists per day generated by the proposal (EiC of DN).
96. Moat Road is used currently by cyclists (DN Fig 6). There is no proposal by the LPA/LHA to prevent this on the grounds of safety in the future. There has been active consideration of cycling infrastructure in the local area (the Maidstone Local Cycling and Walking Infrastructure Plan CD 8.36) and there is no proposal to upgrade cycle infrastructure in this area.
97. It follows that segregated cycle provision is not necessary and the LHA agree. Indeed, even if a cycle lane was created, it would not link into any wider cycle provision and would be utterly otiose.
98. Both consultants refer to LTN 1/20. It is agreed that it is not policy. It is not a development control tool. It cannot (reasonably or rationally) be interpreted and applied as requiring a bespoke cycle lane in every rural housing development (see DN(R)). DR does not argue the contrary. Such a cycle lane could only be delivered by reducing Moat Road to a single carriageway along a large part of its route. That will not be acceptable to the LHA and is not deliverable. Indeed, the allocation was examined and found sound in the absence of such a bespoke cycle lane.
99. 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)**

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

### **MATERIAL CONSIDERATIONS**

101. If, which is not accepted, there is (on balance) any conflict with the development, it is outweighed by material considerations.
102. The LPA have (at best) a 4.87 year HLS, which *includes* this site (in Y5). The most important policies are therefore out of date (NPPF Fn 7) and the tilted balance is engaged.
103. Given the LPA's failure to demonstrate the *minimum* policy requirement of a 5YHLS (NPPF 78) against a *minimum* housing requirement (NPPF 62) the need for market housing is a consideration of significant weight (CC at 12.2).
104. Further, there is an acute need for Affordable Housing (AH) (see CC at 12.3 *et seq*). The need for AH has risen from 322 AH/pa (MLP 2017) to 559 AH/pa (LPR 2024). Yet, last year the LPA delivered just 189 AH. There is a crisis in the delivery of AH, which needs to be remedied urgently.
105. Indeed, there are 1,307 households in need of housing on the Council's waiting list (CC at 12.4). These are real people in real need *now*. This reflects an average house price/earnings ratio of 10.49, which means housing in Maidstone has become unaffordable for many.
106. In this context, the delivery of 46 (40%) new AH in accordance with the agreed tenure mix is a material consideration of substantial weight.
107. There will also be economic benefits (see CC at 12.7). The NPPF states that "significant weight" should be given to the economic benefits of development. Other benefits are particularised and agreed in the SSoCG (ID 1.4).

108. Any claimed adverse impacts cannot significantly and demonstrably outweigh the benefits to which (collectively) very substantial weight must attach. The tilted balance is passed. There is compliance with NPPF 11d. The proposal comprises sustainable development in the terms of the NPPF. This is a material consideration which: (i) outweighs any conflict with the LPR (there is none); or (ii) further supports the grant of consent in compliance with the LPR.

### **CONCLUSION**

109. 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.

110. 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**

27th February 2025