

The Planning Inspectorate

COMMENTS ON CASE (Online Version)

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

DETAILS OF THE CASE

Appeal Reference

APP/U2235/W/24/3351435

Appeal By

CATESBY STRATEGIC LAND LTD AND THE MASTER FELLOWS AND SCHOLARS OF THE COLLEGE OF SAINT JOHN THE EVAN

Site Address

Land at Moat Road
Headcorn
Maidstone
TN27 9NT
Grid Ref Easting: 582912
Grid Ref Northing: 144473

SENDER DETAILS

Name

MRS CAROLINE CARMICHAEL

Address

Parish Office, Village Hall
Church Lane, Headcorn
Ashford
Kent
TN27 9NR

Company/Group/Organisation Name

Headcorn Parish Council

ABOUT YOUR COMMENTS

In what capacity do you wish to make representations on this case?

- Appellant
- Agent
- Interested Party / Person
- Land Owner
- Rule 6 (6)

What kind of representation are you making?

- Final Comments
- Proof of Evidence

- Statement
- Statement of Common Ground
- Interested Party/Person Correspondence
- Other

COMMENT DOCUMENTS

The documents listed below were uploaded with this form:

Relates to Section: REPRESENTATION

Document Description: Your comments on the appeal.

File name: DRAFT HPC response to Moat Road Appeal - Nov 2024 v1.docx

PLEASE ENSURE THAT A COPY OF THIS SHEET IS ENCLOSED WHEN POSTING THE ABOVE DOCUMENTS TO US

ATTN: Kerr Brown,
The Planning Inspectorate,
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Headcorn Parish Council,
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12 November 2024

Via portal:

<https://acp.planninginspectorate.gov.uk/ViewCase.aspx?Caseid=3351435&CoID=131978>

Dear Sir / Madam,

PINS reference: APP/U2235/W/24/3351435 (the "Application")

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 buildings, 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, provision of shelter to replace curtilage listed building, emergency/pedestrian access to Millbank, and associated infrastructure including surface water drainage (with related off site s278 highway works to Moat Road). Location: Land At Moat Road Headcorn Maidstone (the "Development")

I. Summary

1. Headcorn Parish Council is the elected body that represents the residents in Headcorn Parish within Maidstone Borough, Kent. Headcorn Parish is a designated Neighbourhood Plan Area and the views expressed in this response have been informed by Headcorn Parish Council's Neighbourhood Plan work (<https://headcornpc.org/headcorn-neighbourhood-plan/>). Headcorn's Neighbourhood Plan 2022-2038 is at an advanced stage: its Regulation 16 consultation has been completed, with the local planning authority's publicity period taking place between 24 June 2024 and 12 August 2024 (<https://localplan.maidstone.gov.uk/home/neighbourhood-planning/headcorn-neighbourhood-plan-regulation-16-consultation-june-2024>); and it is currently with the Examiner, with the Examiner's Report expected imminently. Given Headcorn Neighbourhood Plan's advanced stage, it should be given weight in any planning decisions and is also at a stage where it is relevant when considering issues of prematurity (NPPF¹ para 50).

¹ NPPF stands for the National Planning Policy Framework. For the avoidance of doubt, the version of the NPPF used in preparing this submission was issued on 20th December 2023.

2. For the reasons set out below Headcorn Parish Council would like to see this Appeal refused. It considers that there are strong planning reasons for refusing the application, even without a decision to limit the weight placed on the adopted Local Plan Review.
3. If, however, the Appeal is allowed, Headcorn Parish Council considers that the Planning Obligations and conditions attached to the application should reflect the policies within Headcorn's Neighbourhood Plan, particularly in light of its advanced stage. In particular:
 - a. Any planning obligations associated with the shortfall in open space provision should be in the form of a suitable alternative site within the Parish that is procured by the developer. As set out in Headcorn Neighbourhood Plan (Regulation 16) Policy HNP5.II.3, commuted sums as an alternative for open space provision are not supported under Headcorn's Neighbourhood Plan: *"The provision of a commuted sum to contribute to these [open and recreational] facilities elsewhere will not normally be acceptable, unless the developer helps procure a suitable alternative site within the Parish"*.
 - b. Any planning obligations and conditions linked to the provision of affordable housing should reflect the split envisaged within Headcorn's Neighbourhood Plan, namely that at least half of the affordable housing units provided should be for purchase. The evidence supporting Headcorn's Neighbourhood Plan shows that the need within the Parish is for affordable housing to buy, rather than affordable housing to rent. To address this, Headcorn's Neighbourhood Plan makes use of the envisaged flexibility on the split of affordable housing within the Maidstone Local Plan Review policy LPRSP11. Therefore Headcorn Neighbourhood Plan (Regulation 16) Policy HNP5.II.5 sets out that *"the provision of affordable housing should favour affordable housing for purchase, as opposed to affordable housing for rent. At least half of the affordable housing units provided should be for purchase, particularly for first time buyers, through schemes such as: First Homes, starter homes, discounted market sales housing, shared equity, or a similar scheme that aims to promote home ownership. Developers will be expected to work with Headcorn Parish Council to try and ensure these homes are allocated to those with a local connection"*.
 - c. A planning condition should be included to ensure that the development will comply with the Design Policy (HNP1) and accompanying Design Guidance within Headcorn's Neighbourhood Plan. (For why this is important, see Section 10 of Headcorn Parish Council's submission on 9th November 2023 covering the factors it considered when recommending refusal: https://pa.midkent.gov.uk/online-applications/files/C3A0371B98E720488D971DCD7A145A62/pdf/23_504471_OT-Headcorn_Parish_Council-6037732.pdf.)
 - d. Inadequate sewerage provision has been a feature of development in Headcorn and the Headcorn Neighbourhood Plan includes several provisions to ensure sewerage associated with developments will be effective (see in particular Headcorn Neighbourhood Plan Policy HNP4.C) A planning condition should be included to ensure that the development will only be occupied providing water and sewerage provisions meets the standards set out in Headcorn's Neighbourhood Plan.
 - e. While not specifically covered by Headcorn's Neighbourhood Plan, Headcorn Parish Council considers that a planning condition should be included to

ensure that emergency access will be provided that meets the standards set out under building regulations before the site is occupied (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1072700/EDG_Access_for_Fire_Tenders_CHECKED.pdf). Any failure to achieve this would risk the lives of residents, given the potential for flooding to block access to the site from Moat Road. Headcorn Parish Council considers that this requirement should include:

- i. a condition that the necessary access can be achieved without undue harm to established trees and hedgerows (including the need to protect their roots); and
 - ii. a similar condition to ensure that the impact on ditches and ponds is minimised, and that the design of the access will protect against any increase in surface water flooding.
4. Headcorn Parish Council notes that the Appellants would like their application to appeal to be heard through Public Inquiry. Headcorn Parish Council considers that an Inquiry process would create unnecessary costs and place a significant burden on resources. Headcorn Parish Council considers that the issues to be considered do not merit the use of an Inquiry, and would prefer the Appeal to be assessed either through written representations or a Hearing.

II. Reasons for recommending refusal

5. Headcorn Parish Council has set out the main factors it considered when it recommended refusal of the development in its submissions to Maidstone Borough Council, particularly in its submission of 9th November 2023 (https://pa.midkent.gov.uk/online-applications/files/C3A0371B98E720488D971DCD7A145A62/pdf/23_504471_OUT-Headcorn_Parish_Council-6037732.pdf). Whilst both the Maidstone Local Plan Review and Headcorn's Neighbourhood Plan have progressed since then, Headcorn Parish Council considers that the reasoning and information underlying its submissions (including the 9th November 2023 submission) remain sound. To avoid repetition, Headcorn Parish Council does not intend to repeat all the arguments and information within those submissions, and instead requests that they are considered in conjunction with this submission in deliberations by the Planning Inspectorate.
6. Since Headcorn Parish Council's 9th November 2023 submission, several factors that affect the development have progressed: the Maidstone Local Plan Review has been adopted; Maidstone Borough Council has issued its committee report considering the development, as well as the associated decision notice; Headcorn's Neighbourhood Plan has progressed to the examination stage; and the Appellant has launched this appeal. In light of these developments, Headcorn Parish Council would like to make further representations in relation to:
- a. Access arrangements;
 - b. Open space provision;
 - c. Flooding;
 - d. Landscaping;
 - e. Infrastructure and Prematurity; and
 - f. Environmental issues.

II.A. Access arrangements

7. As noted in its submission on November 9th 2023 (particularly Section 5), Headcorn Parish Council is concerned about both the main and emergency access arrangements associated with this development. It considers that those concerns remain valid and notes that this site was only included within the Local Plan Review on condition that appropriate alternative emergency access was secured. Headcorn Parish Council therefore supports Reason 5 given within Maidstone Borough Council's Planning Decision Notice of 29th April 2024. However, it considers that the reasoning set out in the decision notice underplayed the problems with access associated with this development.

Figure 1: Proposed emergency access from the northern edge of the site to Mill Bank



Note: Photos taken on May 9th 2024: **Panel A** shows path facing from Mill Bank towards the proposed entry to the site showing it is narrow (with the track only 2.4m in some sections), muddy, overgrown and that there are low overhanging branches (giving only 1.8m clearance in places); **Panel B** shows the established tree and bushes beside the gate that would be used to access the site; **Panel C** shows a close up of the existing gate to the site; and **Panel D** shows the bottom section of the path towards Mill Bank, as well as the use of the path by residents for parking cars.

8. In particular, Headcorn Parish Council is concerned that the acceptability of the emergency access route and its ability to meet the relevant building regulations has not been properly considered. The building regulations associated with access to residential developments by fire tenders can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1072700/EDG_Access_for_Fire_Tenders_CHECKED.pdf. These regulations set out that “Any street or private drive forming part of such a fire access way must be no less than 3.7m wide between kerbs (though this may reduce to 3.1m for a gateway or similar short narrowing) and should have a minimum centreline bend radius of 6.55m (or 7.75m if enclosed by walls) and headroom of 3.7m”.
9. A site visit on behalf of Headcorn Parish Council to the proposed emergency access was undertaken on May 9th 2024, see Figure 1. This visit showed that:
 - a. overhanging branches mean the headroom is at most 1.8m for sections of the track (rather than the 3.7m required);
 - b. the track itself is considerably narrower than the 3.7m kerb-to-kerb width required, with several sections being at most 2.4m;
 - c. the access available from a field gate referred to in paragraph 2.7 of the Appellants’ Statement of Case is currently inaccessible and has clearly not been accessed for several years. There is also an established oak tree to the left of the gate heading into the site and it is likely that the roots of this tree (as well as other trees along the track) would be negatively impacted by necessary upgrades, and this has not been considered;
 - d. the track is clearly used by local residents for parking, as two cars were parked on the wider section of the path towards Mill Bank when the visit took place. With parked cars, even though the track is wider at that point, the car-to-hedge gap was at most 2.4m (and the car-to-kerb gap would be much narrower), meaning fire trucks would not be able to use the track to access the site if cars are parked there when they arrive. Headcorn Parish Council is unaware of the legal status for parking cars on the track, but it is clearly custom and practice and should be considered when assessing the acceptability of the track for emergency access; and
 - e. the surface of the track was muddy in parts and would be unsuitable for heavy usage, particularly in wet conditions. However, no assessment appears to have been undertaken of the impact of upgrading the track surface, including the impact on surface water flooding, or nearby trees and hedgerows.
10. Headcorn Parish Council considers that more effective access arrangements (including emergency access arrangements) are required, in order to make this development acceptable in planning terms.

II.B. Open space provision

11. As noted in its submission on November 9th 2023 (particularly Sections 7 and 8), Headcorn Parish Council is concerned about the adequacy of proposed open space provision associated with this development. It considers that those concerns remain valid. It therefore supports Reason 4 given within Maidstone Borough Council’s Planning Decision Notice of 29th April 2024.
12. However, the evidence underpinning Headcorn’s Neighbourhood Plan highlights that open space provision should prioritise sports facilities and allotments, because those

are most needed (Headcorn Neighbourhood Plan (Regulation 16) Policy HNP4.E). These types of facility (provision of which is also required under the policies within the Maidstone Local Plan Review) are not included in the proposals and their provision was not addressed within the decision notice.

13. Headcorn Parish Council considers that the provision of sports facilities and allotments should be required in order to make this development acceptable in planning terms. It notes that the current proposed housing numbers associated with the development (of 115 houses) are above the number set out in the Maidstone Local Plan Review Policy LPRSP6(C) and LPRSA310 (of 110 houses). Reducing the number of houses within the development would provide scope for open space facilities to be provided and would still be compatible with the density requirements set out in Headcorn's Neighbourhood Plan (of between 15 to 30 dwellings per hectare Headcorn Neighbourhood Plan (Regulation 16) Policy HNP5.I.2).
14. Headcorn Parish Council notes that payments in lieu of open space provision are not supported under Headcorn's Neighbourhood Plan. Instead, where on-site provision is not possible, the developer should arrange off-site provision on a suitable alternative site within the parish.
15. Headcorn Parish Council considers that unless issue of adequate open space provision (in line with the requirements set out in Headcorn's Neighbourhood Plan and the Maidstone Local Plan Review) is addressed, this application should be refused.

II.C. Flooding

16. Flooding was not given as a specific reason for refusal with the Planning Decision Notice issued by Maidstone Borough Council on 29th April 2024. However, for the reasons set out in its submission on November 9th 2023 (particularly Section 6), Headcorn Parish Council is concerned about the issue of flood risk and considers that flood risk would constitute a reason to refuse this application.
17. Headcorn Parish Council does not consider that there was a proper assessment of the implications of flood risk set out in the delegated report provided by Maidstone Borough Council on April 29th 2024 (https://pa.midkent.gov.uk/online-applications/files/A1FCEFCEDD248445B2C9B9E05208AC8/pdf/23_504471_OUT-Delegated_Report_MBC-6198468.pdf). In particular, Headcorn Parish Council considers that this development fails to pass both elements of the exception test set out in paragraphs 170-171 of the NPPF.
18. Headcorn Parish Council notes that Maidstone's Delegated Report sets out that part (a) of the exception test requiring wider sustainability benefits to the community has been met due to "*additional housing including affordable housing to the area and a surface water drainage strategy can be devised that reduces the risk of flooding to the surrounding area*". Headcorn Parish Council notes that:
 - a. the reduction in flood risk associated with the development is at best unproven, given the failure of similar schemes elsewhere in the Parish (notably the sustainable urban drainage provisions associated with the Hazelpits development [Local Plan allocation H1(36)]).
 - b. classing housing provision within the Parish as a wider sustainability benefits is unfounded. There is no immediate need for this housing within the local community, and the significant increase in affordable housing provision in the Parish in the recent past has led to a sharp increase in social issues (which the Parish Council had predicted given Headcorn's relatively remote location and the barriers created by time, distance and cost for residents needing to access support services).

19. Headcorn's Neighbourhood Plan (Regulation 16) Policy HNP5.III sets out the type of benefit that Headcorn Parish Council considers would fall within the definition of wider sustainability benefits to the community, namely "*infrastructure improvements within the Parish. Such benefits could, for example, include the provision of significant community or recreational spaces, or addressing known infrastructure needs, such as improving sewerage provision or road safety*". Headcorn Parish Council notes that (as set out in Section II.B of this submission), this development fails to provide the community or recreational spaces needed for the development itself, let alone open spaces that would benefit the wider community. In addition, the development would not provide any other infrastructure improvements other than those solely needed for the development itself, as opposed to the wider community. Therefore Headcorn Parish Council considers that the development fails part (a) of the exception test.
20. Headcorn Parish Council also considers that the development fails part (b) of the exception test. Without safe vehicular access to the site in all weathers, including during flood events, the site cannot be considered safe for its lifetime, particularly for vulnerable users. For the reasons set out in Section II.A of this submission, Headcorn Parish Council does not consider that the proposed emergency access to this site is (or can be made to be) adequate. It notes that there has been no clear statement of how residents would be able to use the emergency access in their vehicles, including in times of flooding. Without this clarity Headcorn Parish Council considers that the application should be refused for failing to meet part (b) of the exception test.
21. Headcorn Parish Council notes that paragraph 171 of the NPPF requires both elements of the exception test to be satisfied in order for a development to be permitted.

II.D. Landscaping

22. In its submission on November 9th 2023 (particularly Sections 13, 14 and 10), Headcorn Parish Council raised concerns around the siting, landscaping, heritage and design aspects of this development. Headcorn Parish Council is therefore supportive of the reasons for refusal given within Maidstone Borough Council's Planning Decision Notice of 29th April 2024, particularly the reasons given in paragraphs 1, 2 and 3.
23. Headcorn Parish Council notes that the Sustainability Appraisal associated with the Maidstone Local Plan Review assessed that development of this site was likely to result in a significant negative effect for the landscape (see the assessment of site 310 in Table 6.2 on p90 of "*Maidstone Borough Council 'Sustainability Appraisal: Options for Spatial Strategy, Site Allocations and Garden Settlements', Draft report Prepared by LUC, November 2020*").
24. Headcorn Parish Council therefore considers that ensuring that the landscaping, design and layout of the development will be adequate should be a priority to mitigate this risk and avoid unnecessary harm. Headcorn Parish Council considers that the current proposals do not meet that requirement and that this constitutes grounds for refusal.
25. Headcorn Parish Council notes that Headcorn's Neighbourhood Plan sets out policies covering the design, siting and landscaping of sites (particularly HNP1 (together with the associated Design Guidance) and HNP2). It considers that any development on this site should be required to follow these policies, in order to ensure that the development will reflect Headcorn's sense of place.

II.E. Infrastructure and Prematurity

26. Headcorn Parish Council supports Reason 6 for refusal given within Maidstone Borough Council's Planning Decision Notice of 29th April 2024. It does not consider that the infrastructure provision associated with this application will be adequate and supports the refusal on these grounds. Headcorn Parish Council considers the priorities for infrastructure associated with this development should be in line with the priorities set out in Headcorn's Neighbourhood Plan, and in particular Headcorn Neighbourhood Plan (Regulation 16) Policy HNP4.E.
27. Headcorn Parish Council notes that an emerging Neighbourhood Plan becomes relevant for considering issues of prematurity once it has passed the local authority publicity period on the draft plan. Headcorn's Neighbourhood Plan has passed this stage.
28. Headcorn Parish Council considers that this application gives rise to several issues of prematurity, because the proposed development would not be compatible with the policy provisions within Headcorn's Neighbourhood Plan. For example:
- a. The split of affordable housing between housing to rent and housing to buy would fail to meet the needs of Headcorn residents. Reflecting the evidence gathered during its development, Headcorn's Neighbourhood Plan would require a higher share of affordable housing to buy (of at least 50%) than would be provided under Maidstone Local Plan policies. Headcorn Parish Council considers that given this is an allocated site within the Local Plan Review, development on this site would provide an opportunity to address the need for affordable housing to buy. This would be lost unless the requirements in Headcorn's emerging Neighbourhood Plan were included in the planning obligations and conditions associated with the development, rendering the development potentially premature.
 - b. Payments in lieu of open space provision are not supported under Headcorn's emerging Neighbourhood Plan, reflecting the evidence gathered during its development. Under Headcorn Neighbourhood Plan policy, developers who are unable to provide adequate on site provision are instead required to provide a suitable alternative site in the Parish (rather than a payment in lieu). This reflects the difficulties the Parish Council has encountered in finding suitable alternative sites to buy to accommodate off-site open space provision. The application does not include any provision for allotments or sports facilities, but these are a priority for the Parish, as the existing provision has been assessed as inadequate. The opportunity to ensure the development provides adequate open space provision would be lost unless the requirements in Headcorn's emerging Neighbourhood Plan were included in the planning obligations and conditions associated with the development, rendering the development potentially premature.
 - c. The policies associated with design and landscaping within Headcorn's emerging Neighbourhood Plan need to be included in the planning obligations and conditions associated with the development. Failure to do this risks rendering the development potentially premature, given the fact that the existing design proposals associated with this application (albeit at outline stage) would be directly contrary to Headcorn's sense of place.

II.F. Environmental issues

29. Headcorn Parish Council has concerns about the adequacy of the environmental assessments that have been conducted to support this plan. It notes, for example,

that redwing and fieldfare regularly overwinter within the Parish. Redwing and Fieldfare are listed as protected species under the *Wildlife and Countryside Act 1981 (as amended), SCHEDULE 1, Birds which are Protected by Special Penalties, Part I: At All Times* (<https://www.legislation.gov.uk/ukpga/1981/69/schedule/1>). However, the environmental assessments of the site were conducted in April and August, meaning that any use of this site by these species (and therefore any impact on them) would not have been assessed.

For the reasons set out in this submission, Headcorn Parish Council would like to see this application refused. Were this application to be allowed, Headcorn Parish Council considers that the planning obligations and conditions should ensure that the development will be compatible with the provisions in Headcorn's Neighbourhood Plan.

Yours faithfully,

James Thomas
Chair, Headcorn Parish Council