
Statement of Case

Site: Land at Moat Road, Headcorn

Planning Application Reference: 23/504471/OUT

LPA: Maidstone Borough Council

Prepared by: Savills (UK) Limited

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

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- D. Land North of Moat Road: Bat Emergence Surveys: Building B4, prepared by Aspect Ecology (*7th August 2024*)
- E. Appeal decision APP/U2235/W/3316703, Land South of Ashford Road, Harrietsham (*29th May 2024*)
- F. Building Condition Survey, prepared by Shore Associates Ltd. (*7th August 2024*)
- G. Open Space Performance Plan (drawing 15d) (*updated 2nd September 2024*)

1. Introduction

1.1. This Statement of Case (**SoC**) has been prepared by Savills (UK) Limited, instructed by The Master Fellows and Scholars of the College of Saint John the Evangelist in the University of Cambridge & Catesby Strategic Land Ltd (herein referred to as “**The Appellants**”). This SoC accompanies an appeal against the refusal of planning permission for planning application reference 23/504471/OUT (“**The Application**”) by Maidstone Borough Council (**MBC**) for the development of Land at Moat Road, Headcorn (“**The Site**”).

1.2. The development as described on the decision notice (herein referred to as the “**Appeal Proposal**”) is as follows:

“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).”

Statement Structure

1.3. This statement has been set out under the following headings:

- Section 2: Summarises the Appeal Site and History
- Section 3: Summarises the Appeal Proposal including relevant details of its formation and engagement.
- Section 4: Sets out the Development Plan and other relevant material considerations.
- Section 5: Assesses the reasons for refusal.
- Section 6: Examines any additional technical matters relevant to the appeal.
- Section 7: Relates to CIL, Planning Obligations and Conditions
- Section 8: Provides the planning balance for the Appeal Proposal
- Section 9: Contains the Appellants’ request for the appeal to be dealt with through the Inquiry route and the reasons for this.

1.4. A draft Statement of Common Ground (**SoCG**) has been prepared and will be progressed between the Appellants and MBC in the lead up to the inquiry.

1.5. A Core Documents List will be agreed with MBC during the appeal process.

1.6. A list of any additional supporting documents that will be referred to in this appeal is attached to the appeal form and will be updated as necessary during the appeal process.

1.7. A list of the plans and reports, forming part of the planning application, is provided with the appeal form and the Appellants will seek to agree a list of those for approval as part of the SoCG.

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- 1.8. A full assessment of the Appeal Proposal is contained within the Planning Statement, Design and Access Statement (**DAS**) and the DAS Addendum that formed part of the Outline Planning Application. These documents also provide a detailed account of the Site, its surroundings and the planning history. To avoid repetition, this is not repeated in full in this SoC however it remains relevant to this appeal and should therefore be read alongside the detail provided herein. Where possible, relevant details will also be agreed in the SoCG.

The Appellants

- 1.9. The planning application for the Appeal Proposal was made by joint Applicants - The Master Fellows and Scholars of the College of Saint John the Evangelist in the University of Cambridge and Catesby Strategic Land Ltd.
- 1.10. The Master Fellows and Scholars of the College of Saint John the Evangelist in the University of Cambridge are the landowners. Catesby Strategic Land Ltd are a leading promoter of residential development across the UK and are part of Urban & Civic. They have over 20 years knowledge and experience of strategic land promotion and infrastructure delivery.

The Appeal

- 1.11. This SoC examines relevant planning issues and considerations in light of the reasons for refusal set out in the decision notice issued by MBC on 29 April 2024. This includes a consideration of relevant planning policies, both at a local and national level and technical matters, in addition to other relevant material considerations. Collectively this will demonstrate why planning permission should be granted and will be expanded upon by the evidence provided in the lead up to, and at, the inquiry.

Request for an Inquiry

- 1.12. Full details of the Appellants' request for an inquiry and reasons for this are set out in Section 10 below. This includes an estimate of the duration of the Inquiry.

Application for an Award of Costs

- 1.13. The Appellants reserve their position regarding a potential application for an award of costs against Maidstone Borough Council (MBC).

2. The Appeal Site and History

The Site

- 2.1. A detailed assessment of the appeal site and its surroundings is provided in the Planning Statement which formed part of the planning application. It is also set out in the draft SoCG and will be agreed with MBC ahead of the inquiry. The below therefore provides a high level contextual summary only to be read alongside those other documents.
- 2.2. Measuring 7.42ha, the site comprises land at Moat Road, Headcorn. It is allocated for “approximately 110 dwellings” in the Local Plan Review (LPR) adopted on 20 March 2024 under policy LPRSA310 “Moat Road, Headcorn” (see **Appendix A** for the allocation policy and proposals map extract). An extract of the LPR proposals map (Map 44) is provided below in Figure 2.1, showing the appeal site in pink.

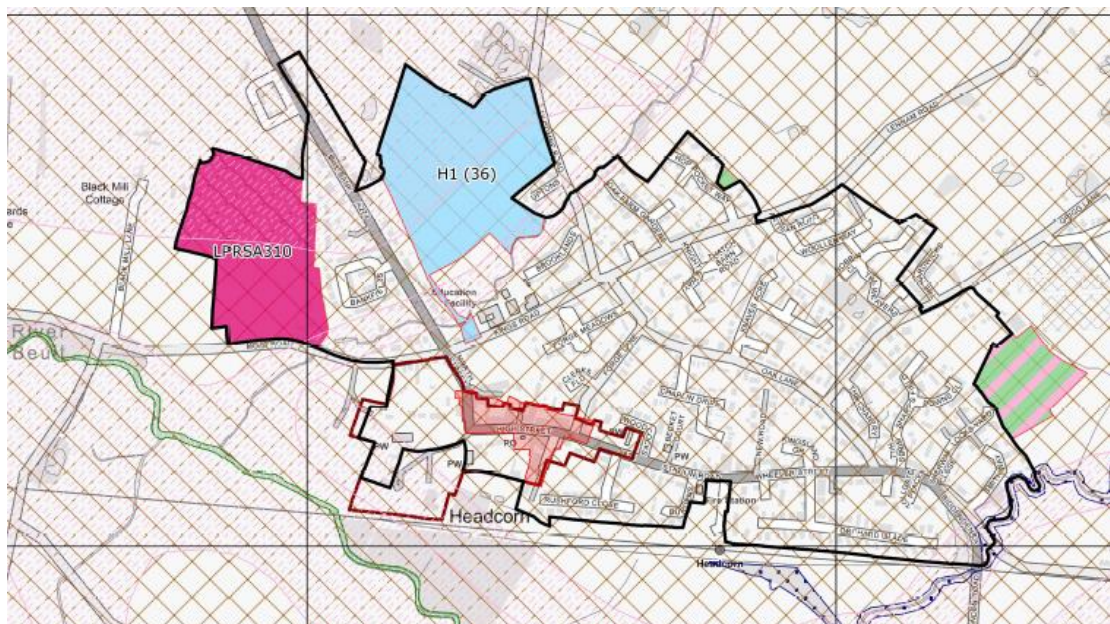


Figure 2.1: Extract of Adopted Policy Map 44

- 2.3. At the time of submission of the outline planning application, the site was subject to a draft allocation, and was outside of the defined settlement boundary. However, upon adoption of the LPR, the settlement boundary was amended to include the appeal site (black line on Figure 2.1 above).
- 2.4. Most of the site lies in flood zone 1, albeit a small section of the south eastern corner is in flood zones 2 and 3 owing to the proximity to the River Beult (to the south) which is also a SSSI. The northern most part of the site lies within the Low Weald National Character Area but is not within a designated National Landscape or National Park. There is an existing pond on the site and two ponds adjacent to the site.

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- 2.5. The closest listed building is The Moat, a Grade II Listed former farmhouse (reference ID: 1060848), which is located to the south east. In relative proximity to the farmhouse but within the south east corner of the site, are a range of dilapidated former agricultural buildings one of which was within the curtilage of the Moat at the time of its listing. As such, the building has been assessed by MBC as being curtilage listed. Within the northern section of the site are potential remains of a Royal Observatory Corps (ROC) Underground Monitoring Post which was built to monitor the effects of nuclear explosions during the cold war. The MOD confirmed the demolition, infilling and reinstatement process of the ROC when the site was decommissioned.
- 2.6. Trees and hedgerows are sited principally on the site boundaries, although there is also a central line of trees. This central tree belt is partly covered by a wider Tree Preservation Order (TPO) No.5 1986. As detailed in the Arboriculture Technical Note which formed part of the application (and is attached to the appeal form) two ash trees which were originally part of the TPO in 1986 (those set within the central hedgerow) are no longer present.
- 2.7. Existing access to the site is via an area of hardstanding off Moat Road. Secondary access is available from a field gate to the north east connecting to Mill Bank.
- 2.8. A Public Right of Way (PRoW) (KH590) crosses the southern half of the site, starting at Moat Road and crossing to the north west, central boundary.
- 2.9. The site has sloping topography with the northern portion sitting at a higher plateau and gently sloping down from the central tree / hedge belt towards the River Beult. The land south of Moat Road (outside of the appeal site) remains relatively flat within the river corridor. Existing settlement edge is visible within this context, with the rear of dwellings at Bankfields and Mill Bank forming the eastern boundary of the site.

Relevant Site History

- 2.10. The factual planning history is contained in the draft SoCG and is anticipated to be agreed with MBC. It is also further detailed in the Planning Statement which formed part of the planning application. The below should be read alongside those documents and provides a high level summary that is specifically relevant to this appeal.

The Site Promotion

- 2.11. Prior to submission of any planning application at the site, the Appellant promoted the site to MBC seeking an allocation for development in the (then emerging) LPR. As part of the promotion process, considerable technical evidence and documentation was prepared and submitted to MBC, including the following:

Submissions with Regulation 18a Consultation (September 2019)

- Vision Framework (May 2019) detailing that 150 dwellings were achievable on the site including technical consideration such as landscape, heritage, highways and flooding.

Submissions with Regulation 18b Consultation (January 2021)

- Design & Technical Response to Regulation 18 & SLAA Papers (December 2020) providing further information about the site and the ability to achieve 150 dwellings on site.

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Submissions made to Regulation 19 Consultation (December 2021)

- Amended Proposals Submission (March 2021)
- Preliminary Flood Risk Assessment (March 2021)
- Heritage Note (December 2021)
- Arboricultural Technical Note (December 2021).

Submissions made to the Inspector at Examination (March 2023)

- Landscape and Visual Assessment

- 2.12. Copies of these documents are provided in the appendices to this SoC where stated above.
- 2.13. This information was submitted to the MBC or the Examining Inspector to demonstrate the suitability of the site for allocation. MBC used this information alongside its own evidence base and concluded that the site was suitable for delivering homes in this location, and to help meet the borough wide housing needs.
- 2.14. The site was first allocated within the Regulation 18b (R18b) consultation document for approximately 127 dwellings. This was then reduced to approximately 110 dwellings within the Regulation 19 (R19) consultation document. The Strategic Housing and Land Availability Assessment (SHLAA) explained that the reduction to site capacity was on the due to the presence of TPO trees (5% reduction in developable area), and potential archaeology (20% deduction). The modelled capacity of the SHLAA concluded that 116 dwellings could come forward on the site. It is important to note that landscape was a consideration in the SHLAA as detailed within the SHLAA methodology. Furthermore, it is noted that the modelled capacity on other assessed sites was reduced due to landscape concerns. In this case there were no adjustments made to the achievable site quantum in respect of landscape considerations, only in relation to trees and archaeology. In respect of landscape and the Appeal site, the SHLAA states:

“The design of any future development should be reflective of, and minimise impact on, the designated landscape.”

- 2.15. As such, Policy LPRSA310 which allocates the site, sets out specific criteria for its development, including in relation to the landscape context. This is confirmed as effective by Inspector David Spencer in paragraph 293 of the Examiner’s final report:

“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...”

- 2.16. The Examining Inspector requested two main modifications to the site allocation policy, to ensure it was effective. These are set out in paragraphs 294 and 295 of the Inspector’s Final Report as follows:

- *Parts of the adjacent Moat Road are within Flood Zone 3 such that in peak events it may be difficult or dangerous for vehicles and pedestrians to use Moat Road to access into Headcorn. Alternative means of access exist to the north of the site onto the A274 Mill Bank. This would assuage, in part, my concerns regarding flooding on Moat Road and the site being, potentially, temporarily isolated via its principal means of access. However, given the flood risk issue and access, the submitted policy is not sound. I therefore recommend the insertion of an additional requirement within the policy that*

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appropriate alternative access for emergency vehicles must be secured. MM73 would do this, and I recommend it for effectiveness.

- *Moat Road has no continuous footway from the site into Headcorn. The potential exists to secure a footway link to Mill Bank but the more direct, level and attractive route for future occupiers of the allocated site would be along Moat Road. Moat Road is generally narrow between the allocated site and where the footway begins to the east. There is a particular pinch point on the bridge over the tributary stream. For the purposes of plan-making I am satisfied that there remains a reasonable prospect of securing a safe pedestrian route along Moat Road. This may require some compromises to the flow of vehicular traffic on what is generally a rural lane (currently 30mph within Headcorn), including priority measures for pedestrians. For plan soundness, I consider some additional specificity is required to the policy including references to safe off-site pedestrian and cycle connectivity and that it should be provided along Moat Road. MM73 would do this, and I recommend it for effectiveness.*

December 2022 Application (Ref: 22/505616/OUT)

- 2.17. Following pre-application engagement with MBC, an outline planning application (Ref: 22/505616/OUT) was submitted in December 2022 to align with the examination of the LPR. The proposal sought outline planning permission for a development described as follows:

“Outline application (with all matters reserved except access) for the development of up to 120no. dwellings (Use Class C3) including demolition of existing buildings, means of access into the site from Moat Road (not internal roads), associated highway works, provision of public open space, emergency / pedestrian access to Millbank, realignment of the existing public right of way and associated infrastructure including surface water drainage.”

- 2.18. This application was withdrawn following discussions with the Appointed Case Officer regarding the ability to overcome Kent County Council (KCC) Highways comments within the determination period. In this regard, MBC Officers advised that they would not agree to an extension of time for determination of the application since there was no Planning Performance Agreement (PPA) in place, albeit at no time prior to this was the requirement for a PPA raised.
- 2.19. The Case Officer also expressed concerns regarding the prematurity of the application and the principle of development in relation to the quantum exceeding the emerging site allocation requirements. It should be noted that throughout the determination of this application, no comments on conservation or landscape were provided. For ease, any reference to this scheme within this SoC, will be to “the withdrawn application”. For the avoidance of doubt, it is confirmed that the comments raised were addressed within the Appeal Proposal, prior to its submission.

Submission of the Listed Building Consent

- 2.20. An application for Listed Building Consent was submitted for the demolition of the alleged curtilage listed structure. The Listed Building Consent Application was validated on 14 December 2023. It was later refused on 8 February 2024, with no warning to the agent, on the following basis:

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“The application contains no information to justify the total loss of the existing curtilage listed building. The substantial harm arising from this proposal is not outweighed by any public benefits. The proposal is therefore contrary to the NPPF paragraphs 195 and 200- 207 (incl) , policies SP18 and DM4 of the Maidstone Borough Local Plan 2017, draft policies LPRSP14(B) and LPRENV1 of the Regulation 22 Local Plan Review and the statutory duty under Section 16 (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990.”

4. The Appeal Proposal

Pre-application / Planning Performance Agreement

- 4.1. Following the withdrawn application, the Appellants engaged with MBC prior to the submission of a new application. As part of this, a PPA was entered into which set out a 25 week determination period for the application, with presentation to committee for determination on 18 January 2024 and the issuing of a decision notice on 18 March 2024.
- 4.2. The PPA outlined that the timetable would be reviewed in line with the progress of the LPR. Informally, MBC noted that they would not seek to positively determine the application until after the adoption of the LPR. An extension of time was requested by MBC to 30 April 2024. This was agreed by the Appellants.
- 4.3. As part of the process and prior to submission, a meeting was held with MBC on 13 July 2023 to discuss the proposal and obtain pre-application advice. A Members' briefing, led by Officers, was also undertaken on 14 September 2023. The pre-application feedback and how the proposed development responded to the feedback is detailed within the Planning Statement.

Description of Proposal

- 4.4. Details of the proposal are contained in the application documents, appended to the appeal form.
- 4.5. In summary, the proposal originally sought outline planning permission for up to 120 dwellings, with all matters except for access, reserved for later consideration. A copy of the original illustrative Sketch Layout Plan is included in Figure 4.1 below. The key development features are:
- Of the 7.42 ha site, residential land uses occupy 3.90ha and 0.16ha is in highways use; the remainder is open space (3.36ha).
 - Primary Access is from Moat Road to the south; emergency access to Millbank is to the north.
 - A new footway along Moat Road which is supported by a priority arrangement at the Moat Road bridge (all Section 278 works). Access to the new footway is proposed at the southeastern edge of the site through the public open space.
 - Landscape buffers including public open space provided on the southern and western boundaries as per the Framework Plan as submitted with the Appeal.
 - A 10m landscape buffer is proposed along the eastern boundary to ensure the privacy of the existing residents is maintained as per the Framework Plan as submitted with the Appeal.
 - Four character areas are included setting out the principal design features to guide the detailed design to be submitted at reserved matters stage. These character areas and the principles are set out within the Design and Access Statement submitted with the Appeal.
 - 40% of the dwellings will come forward as affordable. The final unit mix will be determined within a detailed reserved matters application(s).
 - SUDS form an important element of the open space. All proposed SUDS ponds are within flood zone 1, however the southern pond is adjacent to the higher risk areas. The SUDS are subject to detailed design.

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Figure 4.1 – Illustrative Site Layout

Submission of the Appeal Proposal

- 4.6. The Application was submitted via the planning portal on 2 October 2023 and was validated by MBC on 17 October 2023.
- 4.7. The MBC Validation Team requested several items of additional information before validating the application, namely:
- a. Provision of the applicants' full address rather than c/o agent.
 - b. Provision of elevations of buildings to be demolished.
 - c. A copy of the excel BNG matrix.
 - d. The separation of drawing from the Transport Assessment.
 - e. Submission of the topographical survey.
 - f. Confirmation of the development description.
- 4.8. The information above was provided other than elevations of the buildings to be demolished. Instead, a full photo package detailing each elevation was provided. The description at this stage was agreed as follows:

“Outline application (with all matters reserved except access) for the development of up to 120no. dwellings (Use Class C3) including demolition of existing buildings, new means of access into the site from Moat Road (not internal roads), associated highway works, provision of public open space, emergency/pedestrian access to Millbank, and associated infrastructure including surface water drainage (with related off site s278 highway works to Moat Road).”

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Determination of the Application

- 4.9. Throughout the determination period, the Applicants sought to positively engage with the Appointed Case Officer and various statutory consultees. Table 4.1 below, provides a summary of the engagement that was undertaken:

Table 4.1: Summary of Engagement with Case Officer and Consultees

Date	Purpose of meeting	Summary
21/12/2023	Meeting with KCC Archaeology Officer to discuss their comments on the application and how to resolve their concerns.	KCC Archaeology requested that greater consideration was required in relation to the ROC post. It was agreed that any remains of the ROC should be retained in situ with no dwellings above. The Appellant agreed to revise the illustrative layout to ensure no dwellings were directly above the location of ROC post.
01/02/2024	Meeting with KCC Ecology Officer to discuss their comments on the application and how to resolve their concerns with regard to bats.	KCC outlined their position in relation to the potential bat roost in the building 4 and the need for further surveys. It was agreed that a set of mitigation measures would be submitted. Discussions also took place in relation to the potential for the retention of the building or additional survey work.
05/02/2024	Meeting with KCC PRoW Officer to discuss their comments on the application and how to resolve their concerns.	KCC confirmed that they would support a diversion of the PROW through the open space. The Case Officer explained that at this stage there was no planning reasons for the diversion of the PROW other than across the access road. KCC confirmed that in this instance they would seek for the PROW to be maintained within a protected corridor. The Appellant confirmed that they would seek to revise the illustrative layout to ensure the protection of a PROW corridor.
08/02/2024	Discussion with MBC planning Officer following a meeting with KCC Ecology regarding their comments on the application and to gain an understanding of MBC thoughts.	This meeting informed the Case Officer of the comments of the meeting on 1 February with KCC Ecology.
22/02/2024	Meeting with MBC to obtain an update on the status of the application and the actions required to reach determination of the application.	Several items were discussed at the meeting including landscape, open space, archaeology, conservation, trees, highways, Parish Council, local plan updates and design comments. It was explained that the conservation Officer had not visited site prior to determining the LB application and we agreed to have a meeting on site. Minutes of this meeting are attached at Appendix B

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22/03/2024	MBC application update meeting following vote by Maidstone Borough Councillors to adopt the Maidstone Borough Local Plan Review (LPR) during the Full Council session on Wednesday, March 20, 2024. This meeting was prompted by an email from the case Officer expressing the urgency to reach a decision before the determination date of April 8th.	<p>Several remaining matters were discussed as follows:</p> <ul style="list-style-type: none"> ▪ Curtilage listed building and the potential to provide a replica building. ▪ The need to reduce the number of dwellings due to landscape impact. The Case Officer stated that the site was not scrutinised in landscape terms at the plan making stage thus the final quantum achievable on site is not secured via the allocation. ▪ Agreement to submit additional information prior to determination. ▪ Open space requirements and the provision of an offsite contribution. ▪ The Appellant raised concerns that the S106 heads of terms has not been commenced and that they would seek to do this prior to determination. <p>Following this meeting a revised package of information was submitted as identified in Table 3.2 below.</p>
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4.10. In addition to these meetings, it is relevant that MBC’s Conservation Officer met with the Appellants on site on 15 March to discuss the potentially curtilage listed building and the refusal of the Listed Building Consent seeking the demolition of the building. Due to the poor condition of the subject building and limited remaining integrity it was agreed that a formal record of the building would be required by planning condition and the best solution would be the erection of a sympathetic replacement barn style shelter in its place.

Amendments through the application

4.11. In response to comments from the Appointed Case Officer and statutory consultees, a number of submissions were made during the determination period. These are summarised in Table 4.2 below.

Table 4.2: Summary of documents submitted through Determination

Date	Document	Reason for Submission	Details of Submission
21/12/2023	Highways Technical Note	Responds to the comments received from Kent County Council (KCC) Highways on 8th November 2023	The technical note demonstrates that the access to the north of the site will deliver a suitable vehicular route in case of emergencies and outlines improvements to the Kings Road / Moat Road signal junction.
21/12/2023	Flood Risk Assessment (December 2023) and Covering Letter	Responds to comments from the Lead local Flood Authority.	The updated Flood Risk Assessment amended the following details: <ul style="list-style-type: none"> - Basin design specification for the third and lowest lying basin; - Recalculation of basin using FEH 2022 data; - Clarifications in relation to infiltration.
21/12/2023	Letter to The Upper Medway Internal Drainage Board	Responds to comments from The Upper Medway Internal Drainage Board	The letter provides details of the contribution fee sought upon the discharge rate and the total impermeable area draining to the watercourse.
21/12/2023	Ecology Letter	Responds to comments from KCC Ecology	The letter provides the following details: <ul style="list-style-type: none"> - District Level Licensing for Great Crested Newts - Bat emergence surveys

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21/12/2023	Email from Agent	Update to case Officer and providing comments on open space and PROW.	Email requests clarity on the Open Space Officer objections and details how the applicants' calculations have been detailed. The email also explains that it was not the initial intention to divert the PROW and that a contribution could be paid.
18/01/2024	Heritage Note	Response to JFA Environmental Review of LVIA	Sets out analysis of the Conservation Area and the intervisibility between the site and the Conservation Area. It concludes that " <i>the site is not considered to contribute to the heritage significance of the Conservation Area through setting, and no harm would be caused to it through the proposed development</i> "
18/01/2024	Landscape Note	Rebuttal to JFA Environmental Review of LVIA	The Landscape Note responds to comments from JFA Environmental in relation to the 3 points below: <ol style="list-style-type: none"> 1. Design to site topography 2. Deficiency of the LVIA 3. Provision of sufficient open space.
22/02/2024	LVIA (February 2024)	The LVIA was updated in February 2024 to correct an error identified within the Public Right of Way Officer's response to the application, and to include winter Photo viewpoints.	These winter viewpoints have not changed the assessment made within the LVIA.
22/02/2024	Response to LLFA	Responding to additional comments from the LLFA	This letter provides details in respect of open space and clarifications on rainfall events.
28/03/2024	Covering letter from Agent	Providing details of scheme amendments following meeting with Officer on 22/03/2024.	This letter provides details of the proposed amendments that follow consultee responses and feedback from the Officer. Key changes: <ul style="list-style-type: none"> - Change of description - Retention of ROC post - Inclusion of a timber frame shelter in place of the curtilage listed building - Retention of PROW corridor - Retention of church views - Provision of additional landscaping.
28/03/2024	Design and Access Addendum (March 2024)	Providing details of scheme amendments following meeting with Officer	As above
28/03/2024	Framework Plan (FWP-01 MP-1 Rev A5)	Amended to reflect scheme amendments	As above
28/03/2024	Sketch Layout Masterplan (SKMP-01 Rev A5)	Amended to reflect scheme amendments	As above
28/03/2024	Shelter Floor Plan and Elevations (THS.01 Rev A)	Required to reflect scheme amendments	Provides details of the timber frame structure.

Amendments to the Description of Development

4.12. The Appellants suggested a change to the description of development as part of the submission of the amended scheme on 28 March 2024. Following this, the Appellants and the Case Officer agreed the following description on 4 April 2024 (***bold and underlined** indicate changes from original description):

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*“Outline application (with all matters reserved except access) for the development of up to **115 no.** dwellings (Use Class C3) including demolition of existing buildings, new means of access into the site from Moat Road (not internal roads), associated highway works, provision of public open space, **provision of shelter to replace curtilage listed building, partial diversion of footpath KH590**, emergency/pedestrian access to Millbank, and associated infrastructure including surface water drainage (with related off site s278 highway works to Moat Road).”*

- 4.13. On 25 April 2024 the appointed Case Officer emailed the Agent explaining the intent to describe the development as follows (***bold and underlined** indicate changes from description above):

*“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).”*

5. The Development Plan and Other Material Considerations

- 5.1. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise. The adopted Development Plan for MBC comprises:
- The Maidstone Borough Local Plan Review 2021-2038
 - Saved policies of the Maidstone Local Plan (2017)
 - Kent Minerals Sites Plan
 - Any made Neighbourhood Plans
- 5.2. No aspect of the **Kent Minerals and Waste Local Plan 2013-30**, or the **Kent Minerals Sites Plan** was referred to in the reasons for refusal. Therefore, unless raised during the appeal by MBC or any interested third party, the Appellants do not intend to comment on these documents.
- 5.3. There are no made **Neighbourhood Plans** covering the Appeal Site. However, the Headcorn Neighbourhood Plan has reached Regulation 16 stage with MBC. The draft Neighbourhood Plan does not allocate any sites and the draft policies were not considered within the determination of the application. The Regulation 14 Plan was awarded low weight by MBC in the decision making process.
- 5.4. With regards to the reasons for refusal, Article 35(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 is relevant. This states that: “*when the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters... (b) where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision*”.
- 5.5. Both the Officer’s report and the decision notice refer to a number of policies of the **Maidstone Borough Local Plan Review 2021-2038 (“LPR”)** which was adopted on 20 March 2024. These policies are set out below.
- 5.6. The Council also referred to various policies of the **Maidstone Local Plan (2017) (“Local Plan”)**, none of which have been saved following the adoption of the LPR. This is confirmed on pages 9 and 10 of the LPR which lists the saved policies.
- 5.7. In this regard, the Officer’s report (page 3) states that the LPR “*cannot attract full weight until the termination of the judicial review period*” (page 3). This comment directly conflicts with the published LPR adoption statement (**Appendix C**). The adoption statement expressly confirms the adoption of the LPR on 20 March 2024, and that it “*replaces the policies of the Maidstone Plan..*” except where policies are expressly saved.
- 5.8. Whilst the Appellants accept that the degree of weight to be afforded to the adopted policies is for the decision maker, the Appellants are also surprised that MBC has chosen to take this stance with its newly adopted LPR, directly contradicting its own adoption statement. This is particularly so, given the extensive work that went into the preparation of the LPR, its promotion by MBC, and the very recent adoption.

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- 5.9. The Appellants consider that to reduce the weight of the LPR at this stage would require a strong justification. The mere fact that there may be a legal challenge to the LPR (or even if there were a confirmed legal challenge which was not the case) is not sufficient, especially where the LPA will be defending any such legal challenge and would be seeking to uphold adoption of its plan. There is nothing published to suggest that MBC will fail to defend its own LPR.
- 5.10. The Appellants consider that for any argument of “reduced weight” to apply, there would need to be a very close connection between the policies relevant to the Appeal Proposal, and the policies which are subject to any legal challenge. There is no indication either in the Officer’s report, MBC’s website or any published information, that such a connection exists. In fact, the only reason provided for reduced weight in the Officer’s report is the mere fact that the period for a legal challenge has not yet passed. There is nothing to confirm that a legal challenge had even been made, or that MBC had been notified of an intention to challenge the LPR. Thus there is simply nothing to warrant the Officer’s stance; the mere possibility of a legal challenge is irrelevant.
- 5.11. To the Appellants’ knowledge there is no case law that advises that reduced weight should apply to an adopted local plan during the period of potential legal challenge. Thus, MBC’s position is weak and wholly unfounded.
- 5.12. Taking this into account, and in accordance with Section 38(6) above, the LPR, forming part of the Adopted Development Plan, should be used to determine planning applications unless material considerations indicate otherwise. Unsaved policies of the former Local Plan 2017 are no longer adopted, and are not material considerations. On that basis, the Appellants do not intend to comment on any unsaved policies, unless MBC continues to rely on them in support of its case, and can justify its position for doing so. In this eventuality this matter would be addressed further in the planning evidence.
- 5.13. With regards to the LPR, the site is allocated for “approximately 110 dwellings” in policy LPRSA310 “Moat Road, Headcorn”. A copy of this is provided at **Appendix A**. The policy contains 29 criteria that, as worded in the policy, “*are considered appropriate to be met before development is permitted*”. Table 5.1 sets out how the Appeal proposal complies with policy LPRSA310.

Table 5.1: Compliance with Policy LPRSA310

Criterion	Policy Requirement	Proposal
2	The development proposals shall be informed by a landscape and visual impact assessment undertaken in accordance with the principles of guidance in place at the time of the submission of an application.	A Landscape and Visual Impact Assessment (LVIA) was prepared and submitted with the application. The Appeal Proposal and mitigation were described, and an impact assessment undertaken of the likely landscape and visual effects, in line with a robust methodology, which aligns with the principles embedded in the Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA3).
3	Built development shall be set back from Moat Road and the western boundary.	The illustrative layout includes public open space which encloses the development on the north eastern portion of the Appeal Site ensuring that the built form is set back from Moat Road and the western boundary.

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4	Residential density and typologies shall reflect the site's semi-rural setting.	The average density on the illustrative layout is 30dph which is reflective of surrounding development including Catkins Gardens to the north. The density of the character areas varies to reflect the vision for the Appeal Proposal. This includes a lower density close to the western boundary. Typologies will be included at the RMA stage.
5	The layout of new dwellings and roads shall respect the amenities and setting of adjacent residential properties.	In the design and formation of the Appeal Proposal, full regard was given to the amenity of nearby residential occupiers. This is evident from the illustrative layout, and details contained in the DAS and Planning Statement. This includes areas of landscaping and buffer landscaping adjacent to the existing residential properties to ensure separation and so protection of amenity. Full details of how this policy consideration will be addressed will be provided at the RMA stage.
6	The residential elements shall be defined by distinct character areas, incorporating a variety of typologies, materials, landscaping and street scenes.	As set out in the DAS character areas are included within the Appeal Proposal. Full details of these character areas will be provided at the RMA stage.
7	Lower densities and built form on the western portion of the site shall reflect its adjacent to open countryside.	A 'rural development edge' character area is incorporated into the illustrative layout, with a reduced density which provides a soft edge to the development.
8	The layout and form of buildings shall be designed to mitigate the rising topography with east west landscaping introduced to break up the overall visual massing.	A central green space is proposed on the boundary between the two development parcels from the east - west, where the topography changes most. This focus on the mature trees and hedgerow forming part of the old hedgerow boundary between the parcels which breaks up the built form. The illustrative layout demonstrates how the internal road structure could come forward taking into account the topography. Details of the layout will be finalised as part of the RMA.
9	The layout shall be designed to ensure that the substation adjacent to the south west corner of the site does not adversely affect the amenities of future residents.	The illustrative layout has been designed to ensure the existing substation, located just outside of the site's western boundary, does not impact the amenity of future residents. Physical and visual buffers can be provided to ensure the screening of the substation and mitigate any associated noise. Full details will be provided as part of the RMA.
10	Site design and layout shall be informed by a local historic impact assessment.	A heritage assessment was prepared and submitted with the application. Furthermore, as part of this appeal, additional evidence has been provided in respect of heritage considerations, notably in relation to the third reason for refusal.

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11	A phase 1 habitat survey will be required, which may as a result require on and/or-off site mitigation for the existing habitat of local fauna/ flora.	As part of the Ecological Appraisal submitted with the application, a Phase 1 Survey was carried out (April 2021) and updated (August 2022). These were submitted with the application. No objections were received in respect of ecology subject to conditions. The appeal is also accompanied by an updated bat survey (see Appendix D). As discussed below in section 7, this confirms that the subject barn is used by bats purely as a temporary feeding perch.
12	Existing tree/hedgerow margins should be retained/enhanced to provide the opportunity for biodiversity habitat creation/enhancement. Public access to such areas would normally be limited.	All vegetation on the margins of the site have been retained on the illustrative layout other than a small section of the hedge on Moat Road to allow for access and another very short length at the access to Mill Bank. A new area of woodland and scrub is proposed in the illustrative layout on the western edge of both the northern and southern site parcels. Full details will be provided with the RMA.
13	Development will be subject to a site-wide strategy to incorporate an appropriate level of biodiversity net gain in accordance with national and local policy.	A Biodiversity Net Gain Assessment supported the application. The calculation indicates that the development will result in 90.18% net gain in area habitats (+15.20 habitat units) and 20.00% net gain in hedgerows (+1.82 hedgerow units).
14	The proposed landscaping scheme shall respect and protect TPO trees within the site or adjacent to boundaries.	An Arboricultural Impact Assessment formed part of the application and confirmed that no veteran, individually moderate quality, or high quality trees are proposed to be removed.
15	The existing hedgerow fronting Moat Road shall be retained and enhanced, and the impacts of any access junction minimised and mitigated.	A very short length of hedgerow needs to be removed to facilitate the site access onto Moat Road. However, the rest of the hedgerow fronting Moat Road will be retained and enhanced where possible. Full details will be provided at the RMA stage and can also be secured by condition if considered necessary.
16	Vehicular access routes within the development shall feature tree planting.	The illustrative layout includes a tree lined main route through the scheme. Tree lined streets are also a feature of the Main Street & Central Green character area.
17	Vehicular access shall be via Moat Road, with junctions and sight lines designed to appropriate capacity and safety standards.	The submitted transport statement and highways drawings (20472-03-3) demonstrated that safe access can be achieved for the development with the appropriate visibility splays. Hence there are no highway objections to the Appeal Proposal.
18	Development will be subject to the provision of acceptable and safe off-site pedestrian and cycle connectivity along Moat Road to the A274. Any new footways shall be designed to ensure that there are no adverse or ecological	The existing track to the north east of the site will be formalised into a cycle and foot connection to Mill Bank. Drawing 20472-03c demonstrates the proposed improvements to Moat Road, including a

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	impacts and maintain the rural character of Moat Road.	proposed widening to the footway and a new crossing with dropped kerb.
19	Development shall respect and enhance the setting of any Public Rights of Way within or adjacent to the site.	Aside from where it crosses the new access road off Moat Road, the route of the PRow is to be retained and runs through proposed open space. Details of the treatment will be provided at the RMA stage.
20	Appropriate safe pedestrian access onto Maidstone Road will be required via the northern boundary of the site.	The existing track to the north east of the site will provide a cycle and foot connection to Mill Bank (connecting to Maidstone Road, A274).
21	Development must ensure appropriate access for emergency vehicles.	An emergency access, suitable for emergency vehicles, is also proposed along the existing track to the north east of the site connecting to Mill Bank.
22	The site should be designed to ensure that it has a positive impact on the River Beult catchment and does not worsen local flood risks on Moat Road.	The indicative surface water drainage strategy has been designed to ensure that off-site surface water discharges will be reduced post-development. The Illustrative Layout includes substantial open space along with attenuation ponds, including at the far south of the site, which will further reduce any potential risk of surface water runoff..
23	The only vehicular access to the site is through Flood Zone 3. Any development will be dependent upon acceptable flood safety measures being agreed with the EA.	There is no objection to the Appeal Proposal from the Environment Agency. An alternative emergency access is included in the Appeal Proposal to the north, accessed off Mill Bank, outside of a high risk flood area.
24	Provision of new open space on site shall be provided in accordance with policies LPRSP13 and LPRINF1.	
25	Provision shall include no less than 1.9 hectares of semi/natural open space the principal focus of which shall be to contribute to biodiversity net gain. The location and layout of such areas shall be designed to avoid conflict with accessible residential amenity spaces.	The proposals include 3.36ha of open space overall which fully complies with these requirements. Full details of the open space will be provided at the RMA stage.
26	No less than 0.8 hectares of open green amenity space shall be provided, incorporating appropriate children's play space to meet the needs of the development.	
27	Where it is not feasible, due to site characteristics, to provide an appropriate open space typology in accordance with policy LPRSP13 and LPRINF1, the scheme shall make appropriate financial contributions towards off-site	3.36ha of open space will be provided on site as part of the Appeal proposal however, there is a slight shortfall in the area to be provided for outdoor sports facilities. This is due to the sloping nature and peripheral location of the Appeal Site

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	provision/public realm improvements within the village.	<p>which makes it unsuitable for formal outdoor sports facilities to be delivered on site.</p> <p>No allotments have been included within the Appeal proposal however there is capacity for community gardens to be accommodated on site. Policy LPRINF1 groups allotments and community gardens under the same open space typology and therefore it is considered that the requirements of this open space typology and criterion 27 have been met.</p> <p>In either case, The Appellant is able to make financial contribution.</p>
28	The applicant is to demonstrate that adequate connections to the nearest points of the network are achievable, and that adequate capacity exists/can be created for all utilities.	Details relevant to utility connections and capacity will be provided and assessed at the RMA Stage.
29	Where there may be limited capacity in the utility network, the occupation of the development will be phased to align with the delivery of infrastructure.	

5.14. In addition to the allocation policy LPRSA310, the following LPR policies were referred to in the decision notice:

- LPRSS1: Maidstone Borough Spatial Strategy
- LPRSP9: Development in the Countryside
- PRSP12: Sustainable Transport
- LPRSP13: Infrastructure Delivery
- LPRSP14(B): The Historic Environment
- LPRSP15: Principles of Good Design
- LPRQD2: External Lighting
- LPRENV1: Development Affecting Heritage Assets
- LPRINF1: Publicly accessible open space and recreation

5.15. The Appellants will present the case that the site is allocated under policy LPRSA310, and that the quantum of development proposed is within an acceptable range given the policy wording. In addition, the appellants will demonstrate that this quantum of development has been assessed as acceptable by MBC and the LPR Examining Inspector through the local plan process. As a result, there can be no doubt that the principle of development is acceptable.

5.16. Policy LPRSS1 sets out the overall spatial strategy for MBC. This confirms that provision is made for a minimum of 19,669 dwellings through planning permissions “*and the allocation of sites*”. The Appeal site is allocated, and therefore its delivery for housing is accepted. The Appellants consider there to be no conflict with the spatial policy. The Appellants will seek to agree this position with MBC in common ground.

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- 5.17. The Appeal site is within the settlement boundary. Therefore, the Appellants will also seek to agree in common ground that policy LPRSP9 is not relevant. The policy is clear that the countryside is only land outside of defined settlement boundaries, which does not apply to the Appeal Site. This was the case at the time of the Officer's report was written, and the decision notice was issued. Both documents incorrectly refer to the site as being within the countryside. The Appellants consider that MBC fundamentally assessed the Appeal Proposal wrongly, and as a result, unreasonably refused the application on the grounds of this policy. The Appellants subsequently question the accuracy of the Officer's assessment of the Appeal Proposal and its impacts as a whole.
- 5.18. The following policies of the LPR have not been referred to by MBC, but are relevant to this appeal and will be referred to as part of the Appellants' case and through evidence:
- LPRSP6(c): Headcorn

Other Material Considerations

National Planning Policy Framework (NPPF)

- 5.19. The NPPF was updated in December 2023 and is a material consideration. Within the reasons for refusal, MBC has referred specifically to paragraphs 135, 180 and 230 of the NPPF, as well as broadly "the NPPF" (in reason 3) and "*walking, wheeling and cycling infrastructure as set out in the [NPPF]*" (reason 5). The lack of clarity from MBC in respect of these aspects of the NPPF raises doubts about the relevance of national policy to MBC's case, but equally gives the Appellants limited opportunity at this time to address specific issues and concerns from a policy perspective. Thus, the Appellants will comment further in evidence following receipt of MBC's Statement of Case.
- 5.20. Paragraph 230 relates to transitional arrangements for emerging local plans. It has been given no context in the Officer's report or the reasons for refusal. Unless MBC demonstrates otherwise, it is assumed that reference to this paragraph is in error, and this position will be agreed in the SoCG.
- 5.21. The Appellants consider the following chapters, also encompassing the specific paragraphs referred to by MBC, to be relevant to this appeal:
- Chapter 4: Decision making.
 - Chapter 5: Delivering a sufficient supply of homes.
 - Chapter 9: Promoting sustainable transport.
 - Chapter 12: Achieving well designed and beautiful places.
 - Chapter 15: Conserving and enhancing the natural environment.
 - Chapter 16: Conserving and enhancing the historic environment.
- 5.22. The Appellants will explore these in evidence and at the inquiry.

The Planning Practice Guidance

- 5.23. The Planning Practice Guidance (PPG) is a material planning consideration, which, following the recent case *R (Mead and Redrow) v SoS LUHC* [2024] EWHC 279 (Admin), has been held to have the same legal status as the NPPF.

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- 5.24. It is noted that MBC did not refer to any elements of the PPG in the reasons for refusal, and only in passing in respect of active travel and flood risk in the Officer's report. It is therefore assumed that MBC has concluded that the Appeal Proposal does not conflict with the PPG.
- 5.25. On that basis, the following chapters are considered relevant to the Appellants' case and will be examined in evidence and at the inquiry where applicable:
- Before submitting an application (updated 15 March 2019)
 - Design: Process and tools (updated 1 October 2019)
 - Determining a planning application (updated 6 December 2023)
 - Historic Environment (updated 23 July 2019)
 - Housing supply and delivery (updated 5 February 2024)
 - Light pollution (updated 1 November 2019)
 - Natural environment (updated 14 February 2024)
 - Open space, sports and recreation facilities, public rights of way and local green space (published 6 March 2014)
 - Plan making (updated 4 October 2021)
 - Use of planning conditions (updated 23 July 2019)
- 5.26. Please note that this list is not exhaustive and additional sections may be referred to following receipt of MBC's case and any third party representations.

Supplementary Planning Documents and Guidance

- 5.27. MBC has adopted a number of Supplementary Planning Documents (SPDs) and Guidance Documents, but none are referred to in the reasons for refusal. The Appellants therefore conclude that there are no conflicts with these documents.

Relevant Appeals

- 5.28. The Appellants are aware that each planning application is to be determined on its own planning merits. However, the following appeals are notable, and the reasons for each are set out below.

Appeal reference APP/U2235/W/3316703 (application reference 21/506821/FULL)

Site: Land south of Ashford Road, Harrietsham, Maidstone

Appeal dismissed: 29 May 2024

- 5.29. This is a very recent decision in the Borough that is relevant in the context of the LPR, its interpretation and its application to allocated sites. This appeal is produced at **Appendix E**.
- 5.30. Whilst the application itself was submitted and determined prior to the LPR adoption; the appeal decision has been published since. The Inspector's consideration of the LPR is relevant, particularly as the site is also allocated in the LPR. The schemes are not however comparable, and notably, the proposals at Harrietsham included full detail. Whereas the Appeal Proposal is in outline only, thus there are different considerations in respect of design and impacts.

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- 5.31. In terms of the LPR, the following paragraphs of the Inspector's decision are relevant, and owing to their applicability, they are not paraphrased (own emphasis added):

"7. LPR Policy LPRSA101 allocates the appeal site for residential development, comprising 'approximately 53 dwellings'. It includes various criteria but these are relevant to other matters such as design and landscaping. The proposed development is for 58 dwellings. I consider that this number of dwellings is within the range allowed by the term 'approximately'. As such, in principle, Policy LPRSA101 is supportive of the quantum of residential development proposed on the appeal site.

8. Policy LPRSS1 sets out the spatial strategy for development in the Borough over the period 2021-2038. It refers to the role of allocations in providing for a minimum of 19,669 new dwellings over the plan period. Given that I have found that the principle of development accords with Policy LPRSA101, there would not be any conflict with the spatial strategy set out under Policy LPRSS1.

9. LPR Policy LPRSP9 relates to development in the countryside. However, the LPR Policies Map (Map 22) shows that the appeal site is wholly within the defined settlement boundary of Harrietsham. LPRSP9 outlines that the 'countryside' is defined as all those parts of the plan area outside the settlement boundaries. As such, Policy LPRSP9 is not applicable to the proposed development.

10. In summary, the location of the proposed development is acceptable in principle and it would not conflict with the Council's strategy for the location of residential development."

- 5.32. With regards to impact on the rural character of the area (as alleged by MBC), it is relevant that the Inspector in the above appeal concluded the following at paragraph 23:

"The Council has raised concerns that additional lighting would be detrimental to 'rural character and appearance'. However, there is no substantive evidence to support this assertion and there is no reason why an appropriate lighting scheme could not be produced (and controlled by planning condition). As such, there would not be a conflict with LPR Policy LPRQD2, which relates to external lighting."

- 5.33. The Appellants consider the same applies to this current Appeal Proposal. The fact that MBC does not refer to lighting as an issue in the Officer's report but raises it in the reasons for refusal, further reinforces this.

Appeal references: Appeal A: APP/U2235/W/22/3302571 and Appeal B Ref: APP/U2235/W/23/3323246
Land west of Northdown Business Park, Ashford Road, Lenham
Joint appeal decision: 16 October 2023

- 5.34. This appeal has been referred to, in part, in the Officer's report in respect of design and layout considerations. The Appellants considers that the appeal is irrelevant. It relates to a commercial development, on a draft allocated site which predated the adoption of the LPR by over 14 months, and regarding appeal A, predated the start of the examination. As such the LPR did not carry the same weight as it does now (and notably the allocated quantum is different to that which was included in the draft allocation at the time). This was confirmed by the Inspector at paragraphs 19 and 20, whereby the Lenham Neighbourhood Plan, and associated settlement boundary changes were applied.

- 5.35. It is relevant that the site was in the AONB – now the Kent Downs National Landscape - and therefore landscape considerations in line with the NPPF are substantially greater, with a higher test to be applied

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when assessing any form of major development. In addition, there was an objection from the AONB unit (a statutory consultee) based on the development's impact. These considerations clearly influenced the Inspector's decision in that appeal. However, despite referencing the Inspector's conclusions to support objections to the Appeal Proposal, neither fact was acknowledged by the Appointed Case Officer in the Officer's Report.

- 5.36. Furthermore, the Inspector recognised that the schemes were in outline form and not in the countryside, and therefore design policy DM30 (design principles in the countryside) of the local Plan 2017 (applicable Development Plan at the time) were not relevant. It is therefore surprising that MBC also referred to this policy in the reasons for refusal of the Appeal Proposal despite being unsaved, and bearing in mind both the site's location in a settlement, and the outline nature of the application.
- 5.37. Overall, when read fully and correctly, the Council's reliance on this appeal decision (in whole or in part) lacks any substance.

Consultation on the Draft NPPF

- 5.38. On 30 July 2024, a consultation was published on amendments to the NPPF. At the same time, a Written Ministerial Statement (WMS) was published. Whilst the policies and details in the NPPF consultation (running until 24 September 2024) are draft and carry limited weight, it is anticipated that this will become adopted national policy around the time of the inquiry. As part of the consultation updated standard method figures were also provided for all local authorities, reflecting the Government's intention to increase housing supply to 370,000 dwellings per year. For Maidstone, the standard method would increase from 1,220 dpa to 1,344 dpa.
- 5.39. Any draft NPPF paragraphs and guidance of relevance will be addressed in evidence, and if required, a supplementary statement can be submitted at a later date in the appeal process, should the NPPF become national policy.
- 5.40. The WMS is a material planning consideration and therefore relevant aspects will also be addressed in evidence, insofar as they relate to the appeal proposal, delivery of housing and housing needs.

6. Assessment of the Reasons for Refusal

6.1. The decision notice contained six reasons for refusal. These reasons for refusal interrelate with each other and are considered to relate to the following planning issues:

- i. The effect on the character and appearance of the area
- ii. Visual prominence of development
- iii. Effect of the Appeal Proposal on nearby heritage assets
- iv. Open space provision
- v. Sustainable transport opportunities
- vi. The absence of a S106 agreement

6.2. The above issues are examined below and will be explored fully in evidence and at the inquiry.

The effect on the character and appearance of the area

6.3. The first reason for refusal alleges harm to the character and appearance of the “rural” area. The fundamental issue is a failure by MBC to accept the allocation of the appeal site and the associated implications arising from the adoption of the LPR. Had officer’s appropriately acknowledged the adoption of the LPR and the weight that should be afforded to it, notably the policies of relevance to the appeal proposal, it would have been unequivocal that the principle of development is acceptable. The general principle of development is supported by policies LPRSA310 and LPRSS1; notably LPRSS1 sets the spatial strategy for the LPR and references the allocations as a means to ensure that the development needs of the Borough are met.

6.4. In terms of the specific issues identified above, and with particular regard to MBC’s comments that the LPR is “landscape blind”, the Appellants do not accept this proposition. The LPR Examining Inspector’s report confirms at paragraph 59 that:

“there is little doubt that the scale of growth will have some negative environmental impacts, as demonstrated in the SA report. These include harms to landscape quality, a further demand on stressed water resources, the loss of areas of best and most versatile agricultural land and potential impacts on protected habitats. These harms are not unique to the proposed spatial strategy. They are the consequence of a significant level of growth in a predominantly rural Borough.”

6.5. Evidently, landscape impacts have been assessed and accepted as part of the LPR process. To this end, the Examining Inspector goes on at paragraph 60 to state:

“There is, however, no evidence through the SA or HRA processes or the various SoCGs with bodies such as Natural England or the Environment Agency, that potential adverse effects arising from the proposed levels of growth are such that environmental capacity would be unacceptably breached. Various mitigations are proposed in the Plan such that when balancing residual environmental harms, they would not significantly and demonstrably outweigh the benefits of providing much needed homes and supporting a strong, competitive economy in the Borough. As such housing numbers would not need to be lowered in the terms envisaged at NPPF paragraph 11b).”

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- 6.6. Furthermore, the SLAA (December 2020) also assesses landscape, including Landscape of Local Value (LLV). This resulted in some allocations being reduced, or taken out of the LPR entirely.
- 6.7. Given the above and the Sustainability Appraisal (SA), there are several key issues that are relevant to this appeal but that were not considered in the Officer's assessment of the Appeal Proposal.
- 6.8. Firstly, at a strategic level, there has been a recognition both by MBC and the Examining Inspector that a particular quantum of housing must be delivered over the plan period to response to local housing needs (LHN). The effects of this were tested as part of the LPR preparation and examination process. Whilst a lower level of housing delivery was considered, it was also rejected, notwithstanding the effects that would arise as a result of meeting the higher LHN. These effects included impacts on the Borough's landscape, in addition to residual impacts that would not be fully mitigated. Thus, the scale of planned growth is acknowledged to result in negative environmental impacts (including residual impacts). This is also evident from the wording of the Examining Inspector's report set out above.
- 6.9. LHN is to be addressed through planned delivery. Planned delivery is secured through LPR housing allocations as confirmed in strategic policy LPRSS1, in addition to various other parts of the LPR, including paragraph 8.1 that the stated allocations are "*necessary to meet [our] development targets for the period 2021 to 2028*". Paragraph 8.3 further confirms that the LPR provides for new development allocations, and paragraph 8.5 qualifies that these allocations "*will help to meet the objectively identified needs across the plan period...*" The Appeal Site, allocated under policy LPRSA310 is included within table 8.1 which correlates with these stated paragraphs. Subsequently, there is no doubt that MBC and the LPR Examining Inspector consider the quantum to be required. To this end, each allocation, including that of the appeal site, refers to approximate site capacity. These capacities are expectations for each site, required to meet the LHN, and which underpin the LPR spatial strategy as a whole. As set out above, they are also not thresholds.
- 6.10. Throughout the LPR it is clear what is expected in respect of housing delivery. Notably, policy LPRINF1 paragraph 4 refers to "*housing delivery expectations on allocated sites*" and the potential effect the accepted quantum could have on its policy objectives. This is just one example.
- 6.11. The formation of the LPR allocations included an assessment of impacts. This included consideration of landscape impacts, evident by the fact that the SA included objective 16 "*To conserve and enhance the character and distinctiveness of the borough's settlements and landscape.*" The SA is also clear of the effect on the landscape of the Borough, as a key sustainability issue, and without the LPR would be as follows:
- "The Borough's local and national character areas would be left without protection in the absence of the Local Plan Review and could be harmed by inappropriate development. The Local Plan Review offers a further opportunity to ensure that the variation in landscape character is taken into account in the design and siting of development and opportunities for the protection and enhancement of the landscape are maximised. Parts of the borough are also within the Kent Downs AONB and its setting, and therefore the Local Plan can help to ensure that development does not compromise this protected landscape. Policy SP17 of the adopted Local Plan ensures that development in the countryside does not harm the character and appearance of an area, as well as provides particular protection for the Landscapes of Local Value."*
- 6.12. Furthermore, table 4.1 summarises the effects of the proposed housing provision in the LPR on the various SA objectives and in respect of landscape, it is regarded as "--?" meaning both "*significant negative effects*

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likely" and the "*likely effects are uncertain*". Specific consideration was given to landscape impacts in the SLAA also.

- 6.13. It follows that in allocating the appeal site there is acceptance of the landscape impacts that would arise, including those which could not be mitigated, or otherwise potentially reduced, whilst the specified and required level of housing (approximately 110 dwellings) is maintained. Thus, the requirements of policy LPRSA310 parts 2 to 29 must be seen in this light; namely that their purpose is to ensure that, where possible, any residual impacts are mitigated whilst the expected housing delivery is maintained.
- 6.14. The fact that specific "*site capacity figures and siting/layout criteria*" have not been tested (as stated in the Officer's report) does not mean that the LPR is landscape blind. Such layout and capacities are to be tested at the application stage, following the parameters of the allocation. The parameters are clear that housing figures are not a maximum. It is therefore concerning that the Officer's report suggests that when the LPR is read as a whole "*complying with design and landscape policies may make the estimated yield unachievable.*" Based on the wording of the LPR, including that set out in this SoC, the Appellants are clear that the allocated quantum is expected, and in some instances other policy requirements may consequently be compromised, but such compromises have been assessed in the LPR process and have been accepted by the Examining Inspector.
- 6.15. Furthermore, it is highlighted that illustrative layouts and site capacities were included in the Appellants' representations to the various LPR consultation stages, providing MBC with information which helped to inform the plan making process and ultimately which led to the site's allocation.
- 6.16. In terms of character and appearance, MBC has wrongly assessed the site as a rural location. The first paragraphs of the Officer's report wrongly state that the site "*is in the open countryside*" and from there on, continue to refer to it as "semi rural". Not once does the Officer acknowledge that the Appeal Site is within the settlement boundary as defined by the LPR. This is a fundamental error which unreasonably influenced the Officer's assessment of the Appeal Proposal.
- 6.17. The Officer's report subsequently fails to acknowledge the relationship of the Appeal Site to the surrounding built environment, despite this being a fundamental part of this location. These are significant flaws which leads the Appellants to question the accuracy of the Officer's assessment of the site and Appeal Proposal as a whole. These flaws have led Officers to conclude wrongly that the Appeal Proposal will result in impacts that simply will not occur.
- 6.18. Accordingly, the Appellants conclude that there can be no in principle objections with regard to the relationship of the development to the settlement itself. Whether the Appeal Proposal is in keeping with the built environment is a matter of detailed design that is for the RMA stage.
- 6.19. Following this, the Appellants will refer to the site and locational features including topography. Landscape and visual evidence will be explored, and it will be shown that whilst there is a soft landscape buffer along Moat Road, the Appeal Proposal will be seen in context of Headcorn settlement. Appropriate landscaping will be secured at the Reserved Matters (RMA) stage or by condition. This is not a matter of principle for the outline stage, albeit it is acknowledged that information was provided in relation to this matter, strictly at the request of Officers during the application process.

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- 6.20. In this regard, and with specific reference to landscape, Officers' requirement to deliver greater landscape buffers cannot be justified in the context of the allocation. It is clear that no regard has been given to the allocation in this respect.
- 6.21. It follows that many of the concerns raised by MBC are matters relating to detailed design, relevant to the RMA, not to matters of principle. This equally applies to the second reason for refusal, discussed below. The Appellants will therefore seek to agree appropriate conditions with MBC prior to the inquiry taking place in order to address these matters.
- 6.22. Notwithstanding the position with regard to conditions, it is evident that MBC has failed to distinguish between the impacts of development which are inevitable as a result of the site's allocation, and the residual impacts. It is only those which are excessive that should have been considered when determining the application. It is the Appellants' case that had this assessment been carried out correctly, MBC would have concluded that there are no unacceptable landscape impacts arising. The technical evidence submitted with the application clearly supported this conclusion.
- 6.23. The Appellants acknowledge that the Appeal Site is in a Landscape of Local Value (LLV). Evidence will demonstrate with reference to relevant policies, the NPPF and PPG, that this is not a national designation (such as National Landscape – formerly AONB) and does not carry the same weight and protection. In any event, the LLV covers a vast area of the Borough, washing over villages and built up areas. Its character is varied. Whilst the Appeal Proposal, and indeed other allocated developments, will result in a degree of change, this is an inevitable consequence of the LPR. MBC's criticism of the impact of the Appeal Proposal on the LLV is not objective, and does not consider this position. The fact that Moat Road and surrounding land remain in the countryside (as mentioned in the Officer's report) does not alter this, nor does it undermine the allocation of the appeal site.
- 6.24. Give the above, and with reference to specific policy criteria, the Appellants will conclude that the appeal proposal does not result in any undue harm to the character and appearance of the area.

Visual prominence of development

- 6.25. The second reason for refusal broadly appears to relate to a number of aspects, namely:
- *the visual prominence of development arising from the design, layout and form.*
 - *The creation of a suburban form that extends into the rural landscape and significantly harms its character.*
 - *Lack of landscaping within the site.*
- 6.26. Dealing first with lack of landscaping, this is a matter that would be dealt with at the RMA stage. It is not for the outline application where all matters (except access) have been reserved for later consideration. Where necessary, conditions can be applied that would ensure specific landscaping details are provided as part of the RMA, or prior to commencement.
- 6.27. It follows that many of MBC objections in the second reason for refusal relate to matters of design, all of which are reserved for the RMA stage.

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- 6.28. In relation to visual prominence, the Appellants' have set out above clearly why a degree of impact has already been accepted by MBC and the LPR Examining Inspector as a result of the site's allocation. Again, MBC has failed to distinguish between impacts that are inevitable as a result of the allocation and impacts that are excessive as a result of the appeal proposal. It is the Appellants' case that no excessive or undue impacts arise. Evidence submitted with the application, and that will be referred to in this appeal, clearly demonstrates this.
- 6.29. Whilst additional information was submitted with the application, and provided during the application process, this was all at the request of Officers, who continually required more information on the detail of the scheme. Yet, the reason for refusal surprisingly suggests that the visual prominence of development has not been adequately considered. The Appellants will demonstrate that the level of information submitted goes well beyond that typically required for an outline application to address Officers concerns and illustrates that the scheme would be acceptable in visual terms.
- 6.30. With regards to the creation of a suburban form, this point goes back to the general principle of development – a principle that has been accepted through the site allocation. The quantum within the site allocation is not a threshold. MBC is however treating it as such as is evident from the wording of the Officer's report. There is no justification for this, and insufficient evidence is provided by MBC to support its stance. If required, the Appellants will refer to and produce numerous appeal decisions where it has been clearly confirmed that "approximately" is not a threshold for an allocation. For example, this was demonstrated in the recent appeal decision (Land south of Ashford Road, Harrietsham (Appeal Ref: APP/U2235/W/23/3316703). Dismissed on 29th May 2024 (see **Appendix E**).
- 6.31. Notwithstanding this, the failure to accept the principle of development corresponds with a direct and unequivocal failure to also accept that there will be a change to the area as a result of the allocation. To this end, the Appellants will refer to the Examiner's report for the LPR, and specific references to the requirements for the site. In addition, it will be demonstrated that the allocation policy in its wording, as amended by MBC to correspond with the Examiners findings, acknowledges such a change. This includes through requirements added to the LPR prior to adoption, for foot and cycle improvements along Moat Road. Such policy requirements can only be achieved through visual change and some degree of urbanisation. Urbanisation will evidently arise from a housing allocation on the edge of a settlement. Again the Appellants' refer to the Examining Inspector's report set out in section 2 and 5 of this SoC.
- 6.32. As such, the Appellants disputes that the proposed works to Moat Road, required by the allocation and as a direct result of the Examiner's findings, will result in significant harm to the area's character, beyond that which is otherwise deemed acceptable by the allocation.
- 6.33. The s.278 works provide a pedestrian pavement on the side of Moat Road, and associated traffic calming / priority direction measures, which will reinforce to drivers that they are approaching a settlement whilst providing safe walking space. These works are all to be completed outside of the appeal site red line boundary in conjunction with the local highway authority within the envelope of their adopted highway, and as such the visual prominence of these works is not a material consideration for these appeal proceedings. Indeed, such works can be undertaken at any time by the local highway authority as they see fit by virtue of Class A of Part 9 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). However, it should be noted that at the request of Policy Officers, the Appellant repositioned as much of the footway as possible inside the red line to avoid the loss of hedgerow. Details were submitted as part of representations to the LPR, and were discussed at length at the Examination in Public.

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- 6.34. The Appellants will contest the visual prominence of the Appeal Proposal, in light of these considerations and having regard to relevant local and national policy. It will be concluded that all relevant policies are complied with by the Appeal Proposal.

Effect of the Appeal Proposal on nearby Heritage Assets

- 6.35. There are two aspects to this planning issue:
- The effect of development on the conservation area
 - The loss of the curtilage listed structure.
- 6.36. Both issues will be explored in evidence of the Appellants' heritage consultant, who will examine all relevant policies, including those cited by MBC in the reasons for refusal, and additional policies and guidance where it relates specifically to the Appeal Proposal. For the avoidance of doubt, this does not include any unsaved policies of the Local Plan 2017 unless MBC continues to rely on them and can justify such a stance.

The Conservation Area

- 6.37. The first reason for refusal alleges harm to the Conservation Area, resulting from the *“urbanising form of major development in an edge of settlement location”* which MBC suggest would be *“visually harmful to the setting of Headcorn and its Conservation Area in its rural context on approach from the west....”*
- 6.38. The Appellants consider that there is no harm to the heritage significance of the Conservation Area as a Heritage Asset. MBC has not cited the relevant NPPF extract (paragraph 208) which deals with less than substantial harm to designated heritage assets within the Officer's report or decision notice. This is a material consideration. Furthermore, it is relevant that the Officer's Report only discusses the Conservation Area in Landscape and Visual terms not in Heritage terms.
- 6.39. The Appellants will demonstrate that the Conservation Area was considered in the Heritage Statement in accordance with the Historic England Guidance GPA 3, as part of the Step 1 Assessment of setting. Within this, it was concluded that it was not potentially sensitive to the proposed development. As a result, it was excluded. At no point during the determination of the application was any objection or concern raised by MBC in this regard. Furthermore, there is no formal heritage consultation response in the public domain for the application. The Appellants therefore will conclude based on the evidence available, and the assessment in the Officer's report, that there is no harm to the Conservation Area as a heritage asset.
- 6.40. Failing to refer to the relevant paragraphs of the NPPF, or PPG also indicates that there are no conflicts with national policy in this regard.

The Curtilage Listed Building

- 6.41. The third reason for refusal relates to the loss of the barn structure in the south-eastern part of the Appeal Site. With regards to the demolition of the structure, the Appellants will set out the justification for this, making reference to a condition survey for the structure (**Appendix F**). Further information will be provided on the proposed replacement structure, and how this will incorporate retained fabric of the barn structure and conserve any historic illustrative value. The retention and reuse of historic materials will be guided by the

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information contained within the conditions survey. The Appellant will also commit to the formal historic recording of the structure.

- 6.42. With regards to any harm arising, the Appellants understand that the relevant issue arising from the Appeal Proposal with regard to the Curtilage Listed Building is how this would affect the overall heritage significance of the listing that it is part of, the Grade II Listed Moat (farmhouse).
- 6.43. Heritage Significance is defined in the NPPF in the Glossary as the value of the asset because of its heritage interest. It may be archaeological, architectural, artistic or historic. The Appellants note that MBC does not refer to harm to the significance of The Moat itself, but specifically to the barn structure as a designated heritage asset.
- 6.44. In evidence, the Appellants' heritage consultant will consider the heritage significance of the Grade II Listed building The Moat, which the barn structure is considered to be part of through curtilage listing. This will include the intrinsic heritage significance of the structure, and the degree to which it contributes to the overall heritage significance of the asset. The impact of the Appeal Proposal including the replacement building, upon the overall heritage significance of The Moat will be assessed.
- 6.45. As part of this, the Appellants' heritage consultant will provide detailed evidence that there is less than substantial harm arising from the Appeal Proposal, referring to paragraph 208 of the NPPF. The Appellant will demonstrate that the overall harm to the heritage significance of The Moat, taking into account changes to setting and the curtilage listed structure, will be less than substantial and at the low end of the spectrum.
- 6.46. Heritage evidence will demonstrate that the building possesses minimal heritage significance overall, albeit MBC considers it to be curtilage listed albeit the reasons for this decision are not clear.
- 6.47. Whilst the Appellant will explore relevant paragraphs of the NPPF including 208 referred to above, it is relevant to highlight that MBC has again not cited any specific paragraph that the Appeal Proposal conflicts with. This approach to the reasons for refusal is ambiguous, vague and lacks clarity both in respect of the objections to the Appeal Proposal and the policy basis to support them. There is also no apparent discussion on this in the Officer's report. In fact, the concerns raised in the decision notice do not match the discussions in the Officer's report.
- 6.48. With regards to policy LPRSP14(b) this policy relates specifically to heritage assets. There is no reference to curtilage listed structures within the policy or the preamble. However, part 2 states "*Through the development management process, securing the sensitive management and design of development which impacts on heritage assets and their settings and positively incorporates heritage assets into wider development proposals. This includes the potential public benefits from development impacting a heritage asset*".
- 6.49. Notably the Appeal Proposal will maintain and leave undisturbed any below ground remains of the former ROC monitoring post, with appropriate interpretation provided. It will also reflect the presence of farm buildings in the south-eastern area of the site through bespoke new built form in accordance with the comments from KCC Archaeology. Furthermore, the development line within the site will be well set back from the southern boundary of the site in accordance with the policy requirements and this can be appropriately controlled via approval of the parameter plan as part of the appeal decision.

Open Space Provision

- 6.50. When considering open space, policies LPRSA310, LPRSP13 and LPRINF1 are relevant, all of which are referred to in the reason for refusal (reason 4). The key issue of dispute is not whether the required quantum of open space is being provided, but the type of open space that is proposed, and whether this meets specific identified needs. It is however noted, as set out earlier in this SoC, that policy LPRINF1 part 4 appears to accept that housing delivery expectations will potentially affect the achievement of policy objectives:
- “If open space cannot be provided in full on development sites, due to site constraints, housing delivery expectations on allocated sites, or location, then provision should be provided off-site where it is within the distance from the development site identified in the accessibility standard.”*
- 6.51. In relation to Policy LPRSA310, parts 24 to 27 are relevant:
- “24. Provision of new open space on site shall be provided in accordance with policies LPRSP13 and LPRINF1.*
- 25. Provision shall include no less than 1.9 hectares of semi/natural open space the principal focus of which shall be to contribute to biodiversity net gain. The location and layout of such areas shall be designed to avoid conflict with accessible residential amenity spaces.*
- 26. No less than 0.8 hectares of open green amenity space shall be provided, incorporating appropriate children’s play space to meet the needs of the development.*
- 27. Where it is not feasible, due to site characteristics, to provide an appropriate open space typology in accordance with policy LPRSP13 and LPRINF1, the scheme shall make appropriate financial contributions towards off-site provision/public realm improvements within the village.”*
- 6.52. The Appellants note that these, along with the remainder of the 29 policy criteria, are “*considered appropriate to be met*” rather than specifically stated to be required or essential. Yet, part 27 is relevant, allowing for an “*appropriate financial contribution*” if provision is not made on site.
- 6.53. MBC’s fourth reason for refusal specifically relates to on site community gardens and natural / semi natural open space. There are a number of aspects of this to address. Firstly, the required distance of allotments and community gardens is 1,000m (1km) as per part 4 of policy LPRINF1. From the site entrance at Moat Road (bearing in mind the specific layout of the site is not yet defined given the outline nature of the Appeal Proposal) the Headcorn allotments are around 900-950m away. This is therefore within the acceptable distance.
- 6.54. Notwithstanding this, the Appellants advised MBC that there was sufficient space on the Appeal Site for a community garden, should this be necessary. A condition could be applied to this effect.
- 6.55. Furthermore, there is an explicit and unambiguous policy acceptance that there will be instances where allocated housing sites are unable to deliver the full extent of open space provision sought. It should not therefore be a reason in itself to refuse planning permission. Instead, any shortfall should be addressed through a financial contribution; this is also acknowledged in part 27 of LPRSA310.
- 6.56. In this regard, the Appellants advised MBC that a financial contribution would be made for any shortfall in required or requested provision. This was stated at paragraph 6.27 of the planning statement.

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- 6.57. To this end, the Officer’s report clearly states that MBC’s Parks and Open Space Officer considered there to be a “deficit of on-site open space” and there was a “request for off-site contributions”. The complete consultation response dated 1 November 2023 (albeit relating to the proposal at a quantum of 120 dwellings) will be provided as a core document. It is unclear why the Officer has taken a different view, particularly as the Appeal Proposal was reduced to “up to 115 dwellings”.
- 6.58. With regards to provision of natural and semi natural open space, policy LPRINF1 provides a list of example spaces and uses, set out in Table 6.1 below, forming part of the various open space typologies. The Appellants consider that these are examples only; they are not exclusive and should not be seen as such given the wording of the policy. Thus, the Officer has incorrectly assessed the Appeal Proposal as failing to provide “wet ponds”. There is no such rigid requirement, and equally, no part of the policy specifically refers to wet ponds being necessary as a typology for the appeal site or any other site.

Quantity standards		
Open space type	Standard (ha/1000 population)	Minimum size of facility (ha)
Amenity green space (e.g., informal recreation spaces, recreation grounds, village greens, urban parks, formal gardens and playing fields)	0.7	0.1
Provision for children and young people (e.g., equipped play areas, ball courts, outdoor basketball hoop areas, skateboard parks, teenage shelters and "hangouts")	0.25	0.25 excluding a buffer zone (*)
Publicly accessible outdoor sports (e.g., outdoor sports pitches, tennis, bowls, athletics and other sports)	1.6	To meet the technical standards produced by Sport England or the relevant governing bodies of sport.
Allotments and community gardens (e.g., land used for the growing of own produce, including urban farms. Does not include private gardens)	0.2	0.66
Natural/semi-natural areas of open space (e.g., woodlands, urban forestry, scrub, grasslands, wetlands, open and running water, banks to rivers, land and ponds, wastelands, closed cemeteries and graveyards)	Make a contribution towards maintaining the borough-wide target of 6.5 Ha of natural/ semi-natural open space per 1,000 head of population.	

- 6.59. Evidently a combination of dry and wet spaces can contribute, and the details of the SUDs are to be determined at detailed design stage and could be either wet or dry. It is unreasonable for MBC to specifically require a provision type that is not listed, and is not supported by evidence.
- 6.60. In any event, the quality standard is clear that all new open spaces should meet specific standards, with part 2(i) stating the following (own emphasis):
- “Be designed as part of the green infrastructure network in a locality, contributing to local landscape character, connecting with local routes and green corridors for people and wildlife as well as providing multi-functional benefits such as addressing surface water management priorities”*
- 6.61. At no point in the policy or preamble does it state that multi-functional benefits are limited to specific purposes. The Appeal Proposal therefore complies with this policy and the requirements therein.

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- 6.62. The Appellants will present the case that this represents a further policy that has been misapplied by MBC in the determination of the Appeal Proposal, without any justification.
- 6.63. The breakdown of open space is further demonstrated in the Open Space Performance Plan (drawing 15d) (Appendix G) which was originally included in the Design and Access Statement and has been updated to support this Appeal following the amendments to the layout that were made on 28 March 2024.
- 6.64. The Appellants will conclude that open space provision is in line with the relevant adopted policies, and that provision relating to sports and allotments can be adequately addressed through a financial contribution towards a more suitable off site location, secured via the Section 106 legal agreement (**S106**) in accordance with Policy LPRSP13 and Policy LPRSA310.

Sustainable Transport Opportunities

- 6.65. The fifth reason for refusal relates to pedestrian and cycle access to the site. The Appellants' transport consultant will provide evidence in relation to this matter.
- 6.66. In respect of the NPPF, MBC has again included a vague and ambiguous reference to the aims of sustainable development contained therein, with no paragraph references to specifically identify the areas of conflict. Consequently, the reason for refusal is vague and lacks clarity on policy grounds. Whilst the Appellants' planning and transport consultants will refer to relevant paragraphs of the NPPF, further comments can only be provided once MBC has provided its SoC for this appeal.
- 6.67. In terms of the LPR, all policies referred to by MBC in this reason for refusal are considered to support the Appeal Proposal and the sustainable transport options that form part of it. In this regard, the Inspector is referred to the following elements of those policies:

Policy LPRSP12 – Sustainable Transport. Point 3 parts b, e and k state:

- b. Deliver modal shift through managing demand on the transport network through enhanced public transport and walking and cycling improvements;*
- e. Improve transport choice across the borough and seek to influence travel behaviour;*
- k. Promote inclusive access for all users on the transport network provides;*

Policy LPRSS1 - Maidstone Borough Spatial Strategy. Parts 10 and 5 state:

- 10. Coxheath, Harrietsham, Headcorn, Lenham, Marden and Staplehurst rural service centres 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. Suitably scaled employment opportunities will also be permitted.*
- 15. Infrastructure schemes that provide for the needs arising from development will be supported. New residential and commercial development will be supported if sufficient infrastructure capacity is either available or can be provided in time to serve it.*

Policy LPRSA310 – Moat Road, Headcorn. Parts 18 and 20 state:

- 18. Development will be subject to the provision of acceptable and safe off-site pedestrian and cycle connectivity along Moat Road to the A274. Any new footways shall be designed to ensure that there are no adverse or ecological impacts and maintain the rural character of Moat Road.*

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20. Appropriate safe pedestrian access onto Maidstone Road will be required via the northern boundary of the site.

- 6.68. With regards to the fifth reason for refusal, the Appellants understand the MBC is concerned with a) the provision of safe pedestrian and cycle access in respect of the secondary (emergency) access, and b) cycle access via Moat Road.
- 6.69. Dealing with each matter in turn, the planning application included evidence to demonstrate the secondary access route provides an emergency vehicle access in the event of a major flood event – preventing the main site access from being used. In no other circumstances will vehicles use this access for the Appeal Proposal. KCC’s consultation response dated 9 January 2024 confirms that there are no concerns with regards to this access, hence no objections were raised, subject to conditions.
- 6.70. This secondary access provides local connections to the highway footway network, as well as the main A road carriageway and nearby bus stops. It measures 100m from the site boundary to the nearside of the A274 footway. The Appellants will provide further evidence to demonstrate that this would, therefore, take on average 70 seconds to walk or 25 seconds to cycle (at an assumed walking speed of 1.4m/s (3.2mph or 5.0kph - taken from the Guidance for Providing for Journeys on Foot (IHT, 2000). and cycling speed of 4m/s (9mph or 14.4kph), taken from Local Transport Note 1/86).
- 6.71. Owing to the nature of this secondary access, it will rarely be used by vehicles, giving pedestrians and cyclist a safe route. During rare instances when this may also require vehicle use, the submission confirms (and will be reiterated in evidence) that a pedestrian or cyclist can pass a vehicle. In any event, the Appellants will argue that pedestrians and cyclist would take priority given the nature and short length of the route, and the low speed of vehicles. KCC highways acknowledges the good visibility along the access route which is relevant for all movements, including vehicles, cyclists and pedestrians. The Officer’s report does not acknowledge the position of KCC highways.
- 6.72. Regarding the second element (cycle access via Moat Road) the proposed footway scheme will change the environment for motorists in Moat Road, by the inclusion of the bridge narrowing and street lighting to the benefit of pedestrians and cyclists. Such works were acknowledged by the Examining Inspector for the LPR, and no issues were raised. However, it is important to acknowledge that there is currently no cycle way along the A274, or indeed in the area. There are however no existing road safety issues, and the safety audit has not raised any concerns regarding the lack of a dedicated off carriageway cycle route.
- 6.73. The policy requirement is for safe cycle connection. It does not necessitate providing a separate cycle way. The proposed works along Moat Road provide the safe connection sought by the LPR and by the Examining Inspector. It is compliant with the Development Plan in this regard.
- 6.74. Paragraph 6.111 of the LPR distinctly acknowledges that the local facilities of Headcorn are already “*easily accessible on foot or by cycle due to the compact form of the village*”. The proposed works to Moat Road ensure that the same applies for future residents of the site.
- 6.75. Active Travel England advice will be referenced in evidence, notably the fact that it states that all new or improved junctions should be designed in line with the movement hierarchy, namely people walking/wheeling, followed by cyclists, public transport users, then freight and private motor vehicles. The Appeal Proposal complies with this requirement and reflects the guidance in the Manual for Streets.

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- 6.76. The Appellants will conclude that the Appeal Proposal complies with the relevant local and national policies in respect of sustainable transport options.

The absence of a S106 agreement

- 6.77. The Appellants have confirmed to MBC that a S106 would be completed to secure the relevant planning obligations where they meet the relevant tests. In this respect, a S106 will be provided to the Inspector at or before the inquiry takes place and Draft Heads of Terms are set out later in this SoC.
- 6.78. The Appellants do question the need for the Appeal Proposal to provide a contribution in respect of some of the schools mentioned by MBC and KCC, owing to their distance from the site and fact that Headcorn has a primary school. Furthermore, LPR policy LPRSP6(c) which was neither referred in the reasons for refusal, nor in any of the assessment in the Officer's report, clearly indicates that a key infrastructure requirement for Headcorn is a 1FE extension to the primary school. Therefore, it is assumed that this is to accommodate the development identified in that policy (including this site's allocation), over the plan period. Should a contribution for this be required, over and above any CIL payment, the Appellants will secure this through a legal agreement.
- 6.79. This is in addition to any further contributions, where they meet the relevant tests, in lieu of any on site deficits of particular types of open space provision and so direct mitigation for the Appeal Proposal.
- 6.80. The Appellants will therefore explore this fully with MBC and ensure that any required S106 agreement is in place ahead of the inquiry.

7. Technical Matters

- 7.1. With regards to other technical matters, the Appellants wish to highlight that there are no objections from any statutory consultees on any technical matters. The Appellants intend to seek confirmation of this in the SoCG with MBC, with reference to consultee responses.
- 7.2. At no point have the Appellants been provided with formal comments from the heritage Officer, being advised that they are not publicised owing to being internal. The Appellants note that this has not however been the case for other sites and applications that have been determined by MBC at the same time at the Appeal Proposal.
- 7.3. Notwithstanding this, the Appellants expects MBC to provide these as part of the appeal, notably given the reasons for refusal, which it is assumed are supported by comments from those internal consultees. The Appellants therefore reserve their position and intend to comment accordingly on these matters in evidence.
- 7.4. With regards to ecology, the appellants advise that a further bat survey has been conducted at the site, notwithstanding the recommended conditions suggested by the Ecology Officer. The survey, produced at **Appendix D** to this SoC, confirms in respect of building B4, that there is a bat roost (temporary feeding perch), and the demolition of the building will result in its loss. However, the report also confirms that the loss is considered to be a low impact, and *“is not anticipated to have any significant effect on local bat populations”*. As such, the report concludes that it is anticipated that *“removal of the building can be undertaken under the supervision of an ecologist who holds a low impact class licence for bats”*. The report also acknowledges that post development opportunities for roosting bats will be enhanced as a result of mitigation and landscaping proposals. Accordingly, the appellants will seek to agree an appropriate condition to this effect, in the SoCG with MBC.

8. CIL, Planning Obligations and Conditions

Community Infrastructure Levy

- 8.1. MBC is a CIL charging authority as of 1 October 2018. This suggests that all residential development within the urban boundary has a charge of £93 per sqm of floorspace (index linked). The exact CIL payment required for the Appeal Proposal would be determined at the RMA stage.

Planning Obligations

- 8.2. With regards to other obligations, the appellants anticipate these will relate to education, and public open space provision, insofar as these meet the relevant tests and are not already covered by CIL. The Appellants will seek to agree Heads of Terms for a Section 106 Legal Agreement as part of the engagement on the draft Statement of Common Ground (SoCG). To date there have been no detailed discussions on this matter since the determination of the application.

Conditions

- 8.3. The Appellants seek to agree a list of conditions as part of the SoCG. This includes a list of documents for approval, should the Inspector be minded to allow the appeal.

9. Planning Balance and Conclusion

- 9.1. In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 the decision-maker must determine the Appeal Proposal in accordance with the Development Plan unless material considerations indicate otherwise. This SoC has set out why the Appeal Proposal accords with the adopted Development Plan and demonstrates that there are no material considerations indicating that planning permission should be refused.
- 9.2. The NPPF sets out the presumption in favour of sustainable development (paragraph 11) which comprises economic, social and environmental dimensions. It identifies that where a proposal is demonstrated to be sustainable development and in accordance with an up-to-date Development Plan, planning permission should be granted without delay.
- 9.3. If a scheme is contrary to a policy of the Development Plan, this does not automatically mean that it should be refused on that basis, as compliance with the Development Plan means compliance as a whole. As such, it is necessary for all the benefits and harms to be weighed in a balancing exercise.
- 9.4. It is unusual for a development proposal not to have an impact of some form, and that includes sites that are allocated. However, a clear degree of change and associated impact has been accepted upon allocation of the site and adoption of the Local Plan Review. In this case, the LPR has just been adopted. As such, any harm and change arising because of the development of the site has been recently considered and accepted. The wording and assessment of the Examining Inspector is relevant in this regard.
- 9.5. This is equally the case when assessing the impact of a development on the significance of a heritage asset. The Appellants consider in this case however, that even if such impacts were not considered, and have been left entirely for the Development Management Process, any such harms (here regarded to be less than substantial) must be weighed in the planning balance. Public benefits of the Appeal Proposal must therefore also be considered.

Public benefits

- 9.6. The public benefits of the Appeal Proposal are summarised below. These are material considerations weighing heavily in favour of the grant of planning permission.
- Delivery of much needed housing to meet needs in the plan
 - Delivery of policy compliant on site affordable housing
 - Flood improvements for the road
 - Better cycle and footway safety including for people already using the site for walking.
 - Road improvements with associates traffic calming along Moat Road
 - On site provision of open space
 - Replacement of unsafe and unsightly barn structure (albeit assed by MBC to be curtilage listed)
 - High quality landscaping provided.
 - Opportunity for soft edge to the village / enhancements to be detailed at the Reserve Matters stage.
 - S106 and CIL funding – supporting local education requirements.
 - Jobs during the construction phase

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- Support for local economy, shops etc. bus services, with the additional local spend brought by having additional housing in the settlement.
 - On site interpretation (to be detailed at the reserved Matters Stage) of the former ROC monitoring station on site, to enable future generations to appreciate the role this station's played during the Cold War.
- 9.7. The Appellants consider that any actual or perceived adverse effects of the Appeal Proposal are limited and would not in any event significantly and demonstrably outweigh the benefits arising from the Appeal Proposal from a social, economic or environmental perspective. This includes public benefits arising from the Appeal Proposal, and when assessed against the development plan and the NPPF as a whole. This will be fully examined in the planning evidence.
- 9.8. The Appellants will present the case and conclude that the Appeal Proposal should be granted planning permission in accordance with the Development Plan, subject to appropriate conditions.

10. Request for an Inquiry

10.1. The Appellants request that the appeal is dealt with through the Planning Inquiry route. The “*Guidance Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals*”, published on 21 April 2022¹, confirms the following in respect of the inquiry appeal route (excluding those relating to an enforcement appeal):

“An inquiry would be appropriate if:

- *there is a clearly explained need for the evidence to be tested through formal questioning by an advocate (this does not preclude an appellant representing themselves as an advocate)*
- *the issues are complex (for example where large amounts of highly technical data are likely to be provided in evidence)*
- *the appeal has generated substantial local interest to warrant an inquiry as opposed to dealing with the case by a hearing (where the proposal has generated significant local interest a hearing or inquiry may need to be considered. In such circumstances the local planning authority should indicate which procedure it considers would be most appropriate taking account of the number of people likely to attend and participate at the event. We will take that advice into account in reaching the decision as to the appropriate procedure)”*

10.2. The guidance goes on to advise that “the prospect of legal submissions being made is not, on its own, a reason why a case would need to be conducted by inquiry. Where a party considers that legal submissions will be required (and are considered to be complex such as to warrant being made orally), the Inspectorate requires that the matters on which submissions will be made are fully explained – including why they may require an inquiry - at the outset of the appeal or otherwise at the earliest opportunity.”

10.3. In this regard, the Appellants consider an Inquiry to be the most appropriate appeal procedure for the following reasons:

- There is a clear need for evidence to be questioned and tested by an advocate in this case. This is based on a number of matters.
- The site is subject to an allocation in the recently adopted LPR. However, this local plan was given limited weight post adoption by the LPA in determining the application for reasons that simply are not justified. In advance of the LPR adoption, extensive promotion was undertaken by the Appellants to demonstrate the suitability of the site for development and to provide MBC with details as to what could be achieved based on technical assessments, reports and drawings, all of which were provided to MBC as part of the plan making process. These documents demonstrated that the development proposals were technically sound and that the site was suitable for an allocation. This position was accepted by MBC in supporting a draft allocation of the site at the Regulation 18a stage (2019), Regulation 18b stage in 2020 and Regulation 19 stage in 2021. The site remained an allocation upon submission and was therefore also fully assessed by the Examining Inspector. Additional technical work was also issued to MBC in March 2021 to address concerns in relation to the masterplan,

¹ Available at: <https://www.gov.uk/government/publications/criteria-for-determining-the-procedure-for-planning-enforcement-advertisement-and-discontinuance-notice-appeals/criteria-for-determining-the-procedure-for-planning-enforcement-advertisement-and-discontinuance-notice-appeals>



connectivity, surface water flooding and open space provision. Despite the conclusions of MBC and the Examining Inspector, Officers have failed to accept the allocation of the site or take into account the implications of the allocation which have already been assessed and deemed acceptable. As such, it is essential for cross examination to take place to establish the reasons for this and to fully assess the council's position.

- The application is in outline form, yet considerable evidence was required by the LPA all of which was provided. Despite this, there are still six reasons for refusal. It is necessary to fully test the evidence of the LPA in this respect.
- With regards to the six reasons for refusal, many relate to technical matters, where evidence must be scrutinised through questioning and formal cross examination by an advocate to ensure the complexities of those matters are fully examined and addressed. The technical matters that will need to be examined at the Inquiry include planning, heritage, landscape and transport that will be addressed by individual expert witnesses.
- Furthermore, significant information was provided at the request of the LPA during the application and following the requested withdrawal of a previous outline planning application (see planning history in the SoCG). The Appellants consider that the requests go beyond what is required for an outline planning application, yet the Appellants accommodated the requests of Officers in order to work proactively and collaboratively. Despite everything that was provided, there were still a significant number of issues raised in the Officer's report and decision notice. It is necessary for these complex and intertwined matters to be fully investigated through examination and cross examination of witnesses by an advocate for a balanced and independent assessment to be made of the Appeal Proposal.
- The application generated a considerable amount of public interest (79 representations referred to in the Officer's Report), including objections from the Parish Council. The public representations submitted covered a broad range of matters including but not limited to technical aspects and the principle of development. Given that the appeal scheme proposes up to 115 residential units, there is potential for this appeal to generate further considerable public interest given the number of residents living adjacent to the appeal site.

10.4. In accordance with the national guidance, notification was provided to the Planning Inspectorate and the LPA at least 10 days prior to the appeal being lodged online (notice served on 3rd May 2024), informing of the intention to appeal and to request a public inquiry.

Duration of the Inquiry

10.5. The Appellants currently consider that six days will be required for the Inquiry. No allowance is made in this for the involvement of any Rule 6 parties.

10.6. This may change as the extent of both parties' evidence becomes clearer. Within this a half day is allowed for a site visit.

10.7. The Appellant will wish to call a professional Planning witness, Transport witness, Heritage witness and Landscape witness as part of the Inquiry.

