Appeal Ref: APP/U2235/W/15/3005781
LPA Application No: 14/505284/OUT

Outline application for development of up to 220 houses together with areas of open space, a nature conservation area, landscaping, new access onto Ulcombe Road and improved access to Kings Road plus change of use to school playing field, with access to be considered at this stage and all other matters reserved for further consideration, on land between Mill Bank. Ulcombe Road and Kings Road, Headcorn, Maidstone Kent.

Anthony John Bingham TD Dipl Arch ARIBA MRTPI (Retd) will say:

1. I hold the Territorial Decoration and three bars. I also hold a Diploma in Architecture. I am a chartered architect, being an Associate of the Royal Institute of British Architects and a retired Member of the Royal Town Planning Institute. Before retirement my career, spanning some 51 years, was spent entirely in the planning and development industry. For the first 16 years I worked for a number of local authorities, following which I was employed for 35 years by The Planning Inspectorate as a Planning Inspector.

2. I have lived in close proximity to the appeal site for over 44 years. I am familiar with it and particularly familiar with its surroundings, including the provision of local infrastructure.

3. From all the documentation that has emanated from Maidstone Borough Council (the Council) it will be observed that the Council has treated the application as a single entity. However, while the Council has discretion to accept an application in hybrid format, the Planning Portal indicates that such a case should be treated as two applications. In the case to hand this comprises an outline application for operational development and a full application for a material change of use. Nevertheless, I intend to use the singular terms 'appeal site' and 'proposal' throughout my evidence'. In passing, I point out that the site address is wrongly given both by the Council and the Appellants. The correct postal address is Headcorn, Ashford, Kent.

4. Various witnesses will, or have informed you, of the unacceptable effects of the appeal proposal, which militate against the grant of planning permission. My responsibility today is to apprise you of the manner in which these proposals fail to accord with current and evolving development plan policies, and in some instances the relevant legislation. Having regard to the fact that I have been involved with many hundreds of planning appeals and other appeals made under the Town and Country Planning Acts, and have presided over a number of development plan inquiries, I consider that I have the experience and expertise to assist you to come to a decision on this appeal.

5. It is a long established principle, carried forward from earlier legislation into the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004 (P&C Act 2004), and essentially repeated in the National Planning Policy Framework, that a decision on a planning application is required to conform with any adopted development plan relevant to the application unless there are interest of acknowledged importance that indicate that there would be justification in making an exception to that plan. It is also practice to give weight to the content of an emerging development plan, with such weight commensurate with the stage of the plan in its progression towards formal adoption. My evidence therefore analyses the relevance of current development plan policies and the manner in which the appeal proposal complies with those policies or breaches them. It also addresses the Council's claim that there are matters that warrant overriding the provisions the adopted and emerging development plan policies.

6. I turn firstly to the current local plan which is the adopted Maidstone Borough-Wide Local Plan 2000. Many of the policies of this development plan have been deleted, therefore my evidence focuses on its saved policies. At the time the Council's Planning Committee considered the application, the subject of the appeal, Council Officers and Council Members asserted that the saved policies of this plan were out of date and should be given little, if any weight, in the decision process. That is an unacceptable approach. The policies form parts of a statutory development plan that remains in force and therefore continues to be valid and operative. These policies are relevant considerations in the context of this application. As stated in the Glossary to the emerging draft local plan: *"From 25 September 2007 only some of the policies in the Maidstone Borough-Wide Local plan* ***continue to form part of the development plan*** *such policies are called the saved policies".*

7. In my experience it is unusual for an application of this scale to attract so much public interest, with the Council confirming that it received about 240 representations from local people. All the representations I have read object to the applications, many on policy grounds. All these third party representations have been ignored by the Council with only passing reference in tabular form in the Officer's committee report which fails to express the depth of local concern on numerous topics. I analyse the saved policies I consider to be relevant to the application in the order that they appear in the plan.

8. Policy ENV6. The Council relies on this policy which relates to the requirement for landscaping proposed developments. I make no comment on this policy as it is subsumed within one of the standard reserved matters conditions normally imposed on any outline planning permission that does not retain landscaping as a reserved matter. Despite this, submission of a full application for the appeal proposal would have presented the opportunity to have made an impartial examination of the subject application against the provisions of this policy. I say impartial in recognition that the stance of Officers and Members of the Council which is fully supportive of this application. This support is given despite the fact that the proposal seriously breaches many of the Council's own development plan policies and fails to acknowledge the real concerns of local residents. This situation does not augur well for the Council's consideration of any reserved matters application should the appeal be allowed.

9. Policy ENV28. The Council mentions this policy with the Officer's report confirming that the appeal proposal does not conform to this policy. It does not seek to restrict housing outside settlements as stated in the Officer's committee report, but provides protection for those parts of the countryside not within defined development boundaries, the character and appearance of which would be harmed by development. The policy refers to development and the word 'housing' does not appear in it. The built development proposed would lie in open countryside on rising land at the northern extremity of the appeal site, outside and largely above the built-up confines of Headcorn. In the local plan this land carries the notation of a Special Landscape Area.

10. It is incredulous that the Council considers that the appeal proposal is *"not considered to result in significant planning harm"*. The Council acknowledges that the appeal site is visible from the highways Ulcombe Road and Mill Bank, from neighbouring dwellings and the primary school playing fields. It is also visible from elevated points on the Greensand Ridge to the north of the site. The Council further concedes that the proposed development *"would inevitably result in visual and character change from the current agricultural fields"*. Despite the Council and the Appellants alluding to a planted buffer within the appeal site boundaries to mitigate the visual effect of the appeal proposal, it is my opinion that such planting would need to comprise a deep belt of closely planted mature trees if this two storey, or even 2½ storey development is to be effectively screened. However, this would be physically impossible to achieve, and it is

doubtful if any planting by the developer would mature sufficiently to conceal the proposed development from public view.

11. Although I consider that the provision of planted screen would not be effective, such a measure ignores the overriding fact that this tract of countryside, designated as a Special Landscape Area, would be covered with 220 houses with associated paraphernalia such as roads, lamp standards and garden sheds. This proposal is wholly contrary to the provisions of Policy ENV28, with the proposal falling into no category of exception permitted by that policy. Far from there being no significant planning harm, I consider that such a sizable extension of the village into this Special Landscape Area would be seriously injurious to the visual quality of this tract of open countryside. Contrary to the Council's assertion, I consider that this matter alone provides sufficient reason to dismiss the appeal and refuse to grant planning permission.

12. Policy ENV34 is not relied on by the Council, but this policy provides protection to Special Landscape Areas. It gives priority to the protection and conservation of the scenic quality and distinctive character of these areas with priority given to the landscape over other planning considerations. The appeal proposal clearly fails to comply with this policy.

13. Policy ENV45 is mentioned in the Council Officer's committee report, but insofar as this policy relates to the conversion of rural buildings it lack relevance.

14. Policy H1 (not to be confused with Policy H1 of the emerging draft local plan) is another policy on which the Council does not rely. However, it is relevant because it provides a table of housing allocations. It is of particular significance that the appeal site is not included in this policy.

15. Policy H27 is similarly not relied on by the Council. It identifies those villages where new residential development, restricted to minor development, will be permitted within the boundaries of the village. Headcorn is included in the list of identified villages. However, the proposed development is not a minor proposal, having been registered by the Council as a major application and the site is not within the village boundary. This policy is relevant but the appeal proposal fails to comply with it.

16. Policy T13 relates to the adoption of parking standards by the Council. It is considered relevant by the Council. I assume that this matter will fall to be dealt with as a reserved matter associated with the layout of the proposed development. My concern regarding the manner in which the Council would deal with any reserved matter application is recorded above.

17. Policy T21. The Council also relies on this policy which relates to the accessibility of new developments, and provides that such proposals outside areas allocated for development are well related to the existing transport network. Despite the preamble to this policy, the policy is ambiguous. The term *"existing transport network"* may be intended to relate to the means of public transport provision, but it also relates to the physical infrastructure such as roads, railways, cycle routes etc. Having regard to the latter interpretation the appeal proposal seriously conflicts with this policy.

18. The main accesses to the appeal site are taken from Ulcombe Road with an emergency access (of undefined use and control) provided from Kings Road. The Section 106 Agreement recently submitted is faulty, but it appears to indicate a proposed additional access from Ulcombe Road to serve the extended primary school. This did not form part of the application, no amendment to the application has been made, and in my opinion it cannot be considered in the context of the application. Notwithstanding this recent addition, it is most surprising that

Kent County Council (KCC) as the highway authority raises no objection to the appeal proposal. I say this because, in my opinion Ulcombe Road is wholly unsuited to cater for traffic that would be generated by the appeal proposal, not to mention the additional traffic that would be attracted to the school access from Ulcombe Road if constructed.

19. Ulcombe Road is a single lane highway comprising a carriageway some 4.1m wide that runs between grass verges with no footways. It carries 2-way traffic. The narrowness of this highway is demonstrated by the fact that it has no centreline carriageway marking. It is of insufficient width to allow two cars to pass easily and cannot permit a car to pass a heavy goods vehicle. The road floods periodically at the point where it crosses a stream near its entry to the village and at these times is impassable to cars. This necessitates routing traffic on a circuitous northerly route along this narrow highway. It is clear that the appeal site is not well related to the existing transport network, and for reasons to be given by another witness, neither is it well related to provide access to public transport. Accordingly, the proposed development does not accord with this policy.

20. Policy CF1 is considered relevant to the proposed development by the Council. It provides for the extension or improvement of community facilities where need for them is generated by development. The Statement of Common Ground makes reference to a planning obligation to be made under Section 106 of the Town and Country Planning Act 1990. It provides, inter alia, for a financial contribution towards the build costs of extending Headcorn Primary School. This is in recognition that the school has no spare capacity and necessitates many local children travelling to schools outside the village.

21. However, having recognised the inability of the school to cater for any additional intake of pupils, if planning permission is granted it should be a prerequisite that this extension is completed prior to occupation of any part of the proposed housing. It is highly unlikely that this extension would be completed during the lifetime of any planning permission that might be granted, particularly as it is doubtful that an extension to the school would be phased to accord with the phasing of the proposed housing. In these circumstances it would not be possible to impose a Grampian planning condition on the grant of planning permission which would deny occupation of the proposed housing until completion of the school extension as this would nullify the permission. This amounts to a further reason to refuse planning permission.

22. Policy CF16 falls under the heading Sewage. It provides that *"Any development proposals which would demonstrably overload the existing sewerage system in their vicinity will be permitted only if* ***new off-site sewers are requisitioned****"*. In the light of the severe inadequacies of the sewerage system throughout Headcorn it is most surprising this policy is not relied on by the Council. In fact it is not even mentioned by it. I say surprising because it is universal knowledge that the sewerage system in Headcorn is overloaded to the point where it frequently becomes surcharged and overflows into the public realm. This matter is the subject of substantial third party objection to the appeal proposal. The Appellants propose some works to limited lengths of the sewers in Kings Road and North Street. This would not constitute the requisitioning of new off-site sewers in accordance with this policy.

23. It seems likely that the only advantage of the Appellant's proposed works to the sewers would be to ensure that the effluent pumped from the proposed 220 houses would enter the sewerage system only to exacerbate the surcharging and overflowing of this system. Overflowing of the foul drains has substantially increased following the numerous grants of planning permission throughout the village by the Council in violation of the moratorium on house building in Headcorn operated by KCC when it was the local planning authority prior to April 1974. Not only does the appeal proposal breach Policy CF16 but the likely effect of the

increased effluent flow attributable to it, with raw sewage flowing along Moat Road, into people's gardens and even some houses is severely damaging to residential amenity and a significant risk to public health.

24. The Council recognises the problem but Officers have pressed for approval of the application stating that the problem with the sewers *"can be fixed"*. If so, it needs fixing before any more housing is built in Headcorn. Southern Water is ambivalent to the situation, no doubt in view of the likely cost of remedying the problem in the context of ever-tightening budgets. Alarmingly, Southern Water has raised no objection to the application. In light of the fact that the proposed development amounts to a serious breach of this policy, and having regard to its unacceptable impact on residential amenity and the risk to public health, this is another sound reason to dismiss the appeal and refuse to grant planning permission.

25. I turn to the emerging local plan (Regulation 18 version 2014). Although the Council Officer's committee report cites 9 policies from this plan the report makes direct reference to but one. That is the housing allocation for the appeal site, namely Policy H1(39), which is merely mentioned in the context of deletion of this allocation from the draft local plan (to which I make reference later). The Council's appeal statement makes no mention of any of these policies.

26. Nevertheless, the policies of this emerging plan fall to be considered in the context of this appeal. With the exception of Policy NPPF1, which I consider last, I review the relevant policies in order of appearance in the document, paraphrasing the policies in the interest of brevity. Apart from policy H1(39) all the other policies cited in the Officer's committee report are mentioned only by their alpha-numeric reference in the report with no reference to their content or application to the appeal proposal.

27. Policy SS1 is a policy which sets out the overall aims and objectives of the local plan, but not in site specific terms. I acknowledge the general relevance of this policy to the application, the subject of the appeal, but I highlight that the housing number on which the policy is premised is very controversial with figures as low as 14,000 promoted by CPRE and KCC in contrast to the figure of 19,600 being used by the Council

28. Policy SP3 Rural Service Centres. This policy provides, inter alia, that in the designated Rural Service Centres (of which Headcorn is one), new housing and employment development will be focused within settlement boundaries when: it is an allocated site; minor development such as infilling; or redevelopment of previously developed land. The appeal proposal comprises development on an allocated site but it is not within the settlement boundary, it is not infilling and not redevelopment of previously developed land. The appeal proposal conflicts with all aspects of this policy.

29. Moreover, the Council formally deleted this allocation from the local plan in February of this year for the sound reason that: *"local infrastructure is insufficient, in particular for foul water sewerage, flood risk and highway congestion"*. It is of concern to learn that the allocation was reinstated by the Council in July, apparently at the request of Officers in their fanatical attempt to secure development of the appeal site merely for the purpose of meeting the Council's housing allocation requirement of 19,600 dwellings during the plan period (which figure, as mentioned above, has been challenged by a number of stakeholders).

30. This headlong rush by the Council to see the site developed at all costs, disregards the unacceptable disadvantages that would be faced by local residents. It appears that the Council's sole reason for reinstating this allocation into the draft local plan is purely based on its resolution to grant planning permission for the appeal proposal, but was unable to formally act on the

resolution owing to this appeal. The decision to reinstate the site ignores and suggests no means of overcoming the restraints to development formerly identified by the Council comprising foul water problems, flood risk and highway congestion which warranted deletion of the appeal site from the draft local plan in February.

31. This action by the Council is indicative of the likelihood that its decision to grant planning permission was pre-determined and illustrative of the way in which it has arrogantly dismissed the concerns of local residents. More to the point, it pre-empts your decision on the appeal. In the light of the manner in which the proposed development severely conflicts with very many saved policies of the adopted local plan and policies of the emerging local plan, and for many other reasons, dismissal of the appeal is justified. Such action would settle the unacceptable and nonsensical way in which the Council has dealt both with this local plan housing allocation and the subject application, which has brought the planning process into disrepute.

32. Policy SP5 is pertinent to the countryside outside settlement boundaries. The policy provides for the protection of the countryside but countenances development proposals that would not harm the character or appearance of the area subject to various exceptions, mostly relating to small scale proposals. The appeal proposal is definitely not small scale, with the application having been registered by the Council as a major application. It is not within the settlement boundaries of Headcorn, and for reasons discussed in dealing with saved PolicyENV28 of the adopted local plan, the erection of 220 houses and associated development would cause substantial harm to this area of open countryside. The proposed development is not in accordance with this policy

33. Policy H1 relates to housing allocations. Although at variance with Policy SP5, which provides for protection of the countryside from development, it is somewhat mystifying that the appeal site, located in open countryside, is included as a housing allocation with the reference Ref H1 (39).

34. Policy H2 is concerned with the density of development. Subject to conditions, it states *"All new housing will be developed at a density that is consistent with achieving good design and does not compromise the distinctive character of the area in which it is situated"*. On the matter of design, this is an unknown factor and is illustrative of the fact that the Council should have requested the application to have been submitted as a full application. The condition requiring housing development within or adjacent to a Rural Service Centre to be at a density of 30 dwellings per hectare (dph) conflicts with the policy requirement that the development *"does not compromise the distinctive character of the area"*.

35. In the case to hand, and as mentioned previously, the development of 220 houses on the appeal site, in open countryside and on rising land beyond the built-up confines of the village cannot but otherwise compromise the particular character of the area. Neither would development of such a density and size, situated on the edge of the settlement reflect the appearance of the village when seen in its rural context. Moreover, the Appellant's reference to the density of the proposed development at 32.5 dph exceeds the limitation of this policy and should be seen in relation to the density of development throughout Headcorn as a whole at 15.3 dph.

36. Policy DM2 relates to sustainable design standards and essentially provides for energy conservation measures. I consider this policy of relevance only insofar as it would feature in any conditions that might be imposed on the grant of planning permission should the appeal be allowed.

37. Policy DM4 relates to the principles of good design. This policy is obviously relevant to this application but the proposal cannot be judged against the policy as it is an outline application devoid of detail other than the matter of access. Nevertheless, the policy requires development to respond positively to, and where possible enhance the locality, and the natural or historic character of the area. For reasons previously given it fails in this respect. The policy also requires development to respect the amenity of occupiers of neighbouring properties and ensure that development would not result in …*excessive odour air pollution or visual intrusion*. The effects of increased volumes of raw sewage flowing down the road generated by the appeal proposal cannot be seen to respect the amenity of the occupiers of neighbouring properties; neither would the proposed development ensure that the flow would not result in excessive odour or visual intrusion. The appeal proposal is not in conformity with this policy.

38. Policy DM10 is relevant to the proposed development but is not mentioned in the Officer's committee report. It is concerned with the historic and natural environment and provides protection for these assets. As discussed earlier, by destroying a large tract of open countryside the proposed development would not protect and enhance the natural environment as required by this policy. Part ii of the policy provides that development avoids damage to and inappropriate development within or adjacent to a cultural heritage asset protected by international, national or local designation. This leads me to consider the opinion of Council Officers concerning the impact of the proposed development on the setting of Hazelpits Farmhouse, which is a Grade II building included in the Statutory List of Buildings of Special Architectural or Historic Interest.

39. Having dealt with hundreds of listed building appeals I profoundly disagree with the Council's opinion, which appears to be founded solely on views obtainable from outside the appeal site. Hazelpits Farmhouse lies only some 60m from its common boundary with the appeal site. Except for the immediate curtilage of the farmhouse, the setting of this listed building, the curtilage of which adjoins the appeal site to the north, comprises open land in agricultural use. This setting would be irrevocably changed by the erection of an estate of 220 houses when seen both from within the grounds of the listed building and from the proposed housing estate.

40. In assessing views only from outside the site I consider that the Council's Conservation Officer has not properly discharged the duty incorporated in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA Act 1990) which requires the local planning authority *"to have special regard to the desirability of preserving the (listed) building or its setting"*. Far from the proposed development having *"some slight impact on the setting of the adjacent Grade II listed Hazelpits Farmhouse"* as alleged by the Council's Conservation Officer, I consider that the impact of an estate of 220 adjacent to its boundary would severely damage the setting of the listed building, thereby rendering the appeal proposal unacceptable in the context of Section 66(1) of the PLBCA Act 1990.

41. On the matter of historic assets the Council has not considered the effects of the proposed development on the Headcorn Conservation Area, the boundary of which runs along the centre of Moat Road. It is beyond doubt that the appeal proposal would result in more frequent and greater volumes of raw sewage flowing down Moat Road. This is because there would be more effluent to flow towards the existing constraint at the disposal end of the system to which all connected lengths of sewer flow. This increasingly unpleasant situation would be largely attributable to the proposed development and could not be described as preserving or enhancing the character or appearance of the conservation area when seen in the light of the obligation place on the decision maker by the provisions of Section 72(1) of the PLBCA Act 1990.

42. Policy DM24 is another policy that is of relevance to the subject application but not mentioned in the Officer's committee report. It provides target rates for affordable housing. This is a matter for the evidence of another witness. However, the proportion of affordable housing at 40% for housing development outside the main urban area of Maidstone in which the rate is 15% for previously developed urban land and 30% for other urban/urban peripheral land appears to be disproportionate having regard to sustainability issues. In this respect it is usually acknowledged that most residents of affordable housing are better suited to residing in an urban environment owing to reduced travel costs and improved work prospects.

43. Policy DM30 sets out design principles in the countryside. Subject to a number of criteria it is permissive of proposals which would create high quality design. Criterion 2 relates to land outside the Kent Downs Area of Outstanding Natural Beauty, and countenances development that would not result in harm to landscape of the highest value and respect the landscape of the locality. As previously mentioned, the Council cannot properly apply this policy in the absence of design details. Moreover, at the risk of repeating myself, for reasons already given, the proposed development would seriously harm the landscape value of the site which is currently designated as a Special Landscape Area. The appeal proposal certainly does not respect the landscape character of the locality which is essentially open countryside.

44. Criterion 3 of the policy militates against development that would cause unacceptable traffic levels on nearby roads, unsympathetic change to the character of a rural lane which is of landscape, amenity, nature conservation or historic or architectural importance, or the erosion of roadside verges. Another witness will inform the hearing of the vast increase in traffic movements the appeal proposal would generate on Ulcombe Road. This rural highway, enclosed by ancient hedgerows, is clearly of amenity value if not of landscape value. Its character would be detrimentally changed by the proposed development.

45. This would particularly be the case if the highway requirement in housing allocation H1(39), which is a prerequisite to development, were implemented as this requires *"Significant improvement to Ulcombe Road to adequately accommodate 2-way traffic and cycle and pedestrian movement…"*. Furthermore, without improvement to Ulcombe Road it is beyond doubt that the appeal proposal would unacceptably erode the roadside verges owing to the difficulty or impossibility of the lane permitting traffic moving in opposed directions to pass. The proposed development conflicts with this policy in many respects.

46. Policy ID1 is not mentioned in the Officer's committee report, despite is particular relevance to the appeal proposal. This policy relates to infrastructure delivery and provides that where development creates a requirement for new or improved infrastructure beyond existing provision developers will be expected to provide or contribute to such new or improved infrastructure. The policy also states that detailed specification of required site specific contributions are included in the site allocation policy. The Council accepts that the sewerage system in Headcorn is inadequate for the present level of development in the village. This situation has existed for many decades. This is an opportunity for the Council to secure an improvement to the existing system under this emerging policy. Alternatively, if the policy carries insufficient weight in its draft form to warrant application, then at least it provides an additional reason for dismissing the appeal and refusing the subject application.

47. It is of note that the topic of improvement to the drainage system is absent from the list of assets to be acquired under the proposed Section 106 planning obligation set out in the Statement of Common Ground. The Appellants have expressed the opinion that it is not their place to rectify the deficiency of the whole of Headcorn's sewerage system. That might be a reasonable argument, but conversely it is unreasonable of them to expect the residents of Headcorn to live

with the unacceptable consequences of their proposals - the unsightly and unhealthy increase in the flow of raw sewage in the public realm to name but one of many. I further point out that despite recognition of the inadequacy of the foul drainage system no site specific requirements in this respect are included in the site allocation policy (H1 39) in Appendix A of the plan.

48. Policy NPPF1 alludes to the provisions of the National Planning Policy Framework (NPPF). Both the Council and the Appellants assert that the appeal proposal accords with the policies in the NPPF. While national planning policy is a matter to be dealt with by another witness I point out that the adopted and emerging local plans have been formulated to take account of national planning policy. Insofar as I have demonstrated that the proposed development fails spectacularly to accord with those policies relevant to the application, it follows that the proposed development also conflicts with national planning policy. One part of the Council's Policy NPPF1 states *"Planning applications that accord with the Maidstone Borough Local Plan, and where relevant policies in neighbourhood plans will be approved without delay unless material considerations indicate otherwise"*. I assume the corollary applies and where a planning application fails to accord with the local plan, as the appeal proposal does, it is expected that planning permission would be quickly refused

49. Housing Allocation H1(39) in Appendix A. This confirms that planning permission will be granted for this allocation **if a number of criteria are met**. The criteria are not met by the appeal proposal. The access criterion logically requires the principal access to be taken either from Kings Road or the Class A highway Mill Bank with secondary access from Ulcombe Road. The proposal fails in this respect as, apart from an emergency access, the only access would be taken from Ulcombe Road. Inclusion of this criterion as a prerequisite for development of the appeal site clearly illustrates that the Council does not accept Ulcombe Road to be suitable to serve the proposed development. This must bring into doubt the view expressed by the highway authority when consulted on the application, namely *"No objections subject to a travel plan and construction management plan".*

50. In relation to flooding, the criteria require appropriate surface water and robust flood mitigation measures. It is fanciful to suggest the provision of water butts as part of the surface water retention scheme. Water butts are not permanent features and if not emptied they provide no ongoing water storage capacity. The criterion relating to highways requires, inter alia, *"significant improvement to Ulcombe Road to adequately accommodate 2-way traffic and cycle and pedestrian movements in proximity to the site"*. The required works form no part of the application. However, they amount to a criterion that has to be fulfilled if planning permission is to be granted. Moreover, these highway improvements, deemed necessary by the Council, do not feature in the Section 106 agreement as a required asset. In any case it is apparent that such works would be likely to seriously breach Part 3 of Policy DM30 which provides protection to country lanes from unacceptable traffic movements and visual harm.

51. In conclusion I have demonstrated that the appeal proposal runs counter to many policies in that part of the adopted local plan that remains operative and in the emerging local plan. Failure to comply with these policies would cause serious harm to many interests of acknowledged importance that would severely detract from local amenity, including residential amenity and visual amenity and would cause problems from traffic generation on a highway unsuited to carry additional vehicles. This situation is unacceptable, particularly as the few and meagre benefits to the local community outlined in the Appellant's Statement of Case would not outweigh the damage and problems that would result from implementation of the appeal proposal.

52. As confirmed by the Council Officer's committee report and the Council's Appeal Statement, the only issue pursued by the Council is the desire to retain the appeal site in the light

of the NPPF requirement to make up the shortfall in its five year supply of housing land. The Council considers this desire to be such that it outweighs any other policy considerations, particularly as the Council asserts that the adverse impacts of the development are not considered to significantly outweigh its benefits. In the light of the harm I have demonstrated that the proposed development would cause this is a mistaken and unacceptable approach, and reveals that the Council has not fairly or properly applied its own policies.

53. In this respect I label the Council Officer's committee report as incompetent, biased in the sense that it is unbalanced, and unprofessional. It has not properly informed Council Members of the demerits of the proposed development. It acknowledges that the appeal proposal does not conform to saved local plan Policy ENV28, but it fails to inform Members that it severely conflicts with a raft of other policies contained in both the adopted and emerging local plans. Neither does the report fully and fairly convey the gist of the 240 or so representations made by local residents. This appears to be the end of the Government's localism initiative for this part of Maidstone.

54. Section 3 of the Appellant's Statement of Case rehearses the content of local and national planning policies, but it does not, neither does any other part of the document, rigorously weigh the appeal proposal against the provisions of the policies. The document concludes: *"In overall planning policy terms, it is considered that the proposal comprises sustainable development that accords with the policies of the development plan…"*. I do not accept this statement as my evidence shows that the appeal proposal does not accord with the policies of the development plan. It runs counter to many saved policies of the adopted local plan and many policies of the emerging local plan.

55. It is obvious that the harm the appeal proposal would cause far outweighs the Council's claim that it requires the appeal site to meet its housing needs assessment. The Council rests on the policy in the NPPF which carries a presumption in favour of housing development where a local planning authority has no local plan or where relevant policies for the supply of housing are out of date. That presumption does not operate automatically. If a development proposal predicated on the basis of the presumption would cause planning harm, the presumption should not prevail. This is forcefully illustrated by many planning appeal decisions, and I cite as an example the decision on the appeal Ref: APP/T3725/14/2216200.

56. Rather than supporting the proposed development which would cause substantial harm, it is incumbent on the Council to identify land in the Borough that could be developed without causing harm or causing far less harm than the appeal proposal. With due regard to: i the weight of my evidence; ii my strongly held opinion that the councils sole reason for making its putative decision to grant planning permission does not outweigh the harm that would result from the breaches of planning policy the appeal proposal makes; and iii the statutory obligation in Section 38(6) of the P&C Act 2004, I respectfully ask you to dismiss the appeal and refuse to grant the planning permission for the application, the subject of this appeal.

A J Bingham

10 August 2015

Comments on Planning Conditions and the Draft Section 106 Agreement

Planning Conditions

1. For both the Council and the Appellants there are insurmountable problems in relation to the matter of planning conditions. This stems from the fact that the application for planning permission has been submitted to and accepted by the Council as a single entity. In fact, as mentioned in my evidence on development plan policies, the application is actually a hybrid application which consists of two separate applications. These comprise firstly, and outline application for housing development etc, and secondly a full application for a material change of use. My opinion on this matter is confirmed by the fact that, in an attempt to address this matter to which I drew to attention at application stage, the Appellants have submitted a duplicate application (ie for the same development(s)). This has been registered by the Council as a hybrid application.

2. Planning conditions provide the means to control the implementation of a planning permission and also control the manner in which the ongoing use and activities of the proposed development are managed. In view of this the controls they afford are specific to that development and its site. The problem here is that if the appeal is allowed there would be two approved developments each with its own site requiring the imposition of planning conditions on the permissions specific to each site. This could not prove possible as the extents of the two sites are unknown by virtue of failure of the application plans to delineate the area of each of the two sites, which convention requires should be indicated by a red line on the site boundary.

3. For these reasons it seems to me that there is no prospect of imposing planning conditions on the application(s). A grant of unconditional planning permission in a case such as this where planning conditions are clearly necessary for the control of the development(s) would be unacceptable. This provides yet a further reason to dismiss the appeal and refuse to grant the planning permission(s) sought by the application.

4. In my opinion, these submissions are beyond challenge.

5. Nevertheless, I point out that the Council has drafted its suggested conditions in a format for imposition on a single grant of planning permission and therefore they appear to be all embracing, but most of the conditions are inappropriate to the change of use application. In fact there are no suggested conditions for imposition on the application for the change of use.

6. For the above reasons none of the conditions suggested by the Council could be imposed on the grant(s) of planning permission. Accordingly I do not intend to examine them..

Section 106 Agreement

1. The content of a Section 106 agreement is purely a matter for the signatories to the document. Third parties have no right to add to its content. However, in essence, the resolution of the Council concerning the first Hazelpits application, when it decided it would have granted planning permission for the application had an appeal not been made, was based on acceptance of the Council Officer's committee report, which included reference to the requirement for a Section 106 agreement. The report set out headings covering the assets that would be sought by this planning obligation. The Section 106 agreement drafted for submission to the Inspector at

of the hearing into Hazelpits I does not relate to the Officer's report but it clearly relates to the Section 106 that features in the Officer's report on Hazelpits II. There are differences between the sums of money sought and differences in how they would be expended. Moreover, there is an additional asset in the draft Section 106 which is not mentioned in the relevant committee report, namely *"Community learning contribution of £6,754"*. A technical fault may arise from these matters which might render the Section 106 invalid.

2. From further scrutiny of the Section 106 I notice the definition of Planning Permission given in the section of the document relating to Definitions and Interpretation is: *"Planning Permission means the planning permission for the Development granted on 9 July 2015 pursuant to the Planning Application"*. **The first fault here is that no planning permission has ever been granted.** The power to decide the application for Hazelpits I was taken away from the Council when the Applicants appealed against non-determination. The grant of planning permission for Hazelpits I is now a matter that rests with the Inspector, and it will not be granted if the appeal is dismissed. In the cases of both Hazelpits applications the Council merely resolved to grant planning permission had the power to grant been available to it. The second fault is that the reference to 9 July 2015 does not relate to Hazelpits I but to Hazelpits II. The Council's resolution relating to Hazelpits I was made on 16 April 2015

3. Furthermore, in the definitions and interpretation section of the section 106 there is mention of the *"first phase of expansion of Headcorn Primary School"*. The extension of the school is a matter for KCC, but it is unclear why a small extension to the building to provide 2 form entry requires phasing.

4. In the definitions and interpretation section of the Section 106 agreement 'Additional Education Access Land' is defined, but this coincides with land the application shows to be used for emergency access. Also in the definitions and interpretation section reference is made to 'On Site Open Space' as being shown cross hatched green on the plan annexed to the Section 106 agreement. In this same section this colour of cross hatching is also used to indicate 'Education Access Land'. It appears that one of these areas is wrongly designated.

5. In Schedule 3 of the Section 106, on the matter of the expansion of Headcorn Primary School, the first bullet point of Section 3.3 reads as follows: *"The County Council shall acquire the site for the price of £688,766 plus VAT"*. However, the Officer's committee report on which the Council's resolution was based makes reference to the consultation reply from KCC which states *"....the land is required to be provided at no net cost to KCC"*.

A J Bingham

10 August 2015