

APPEAL REFS: FORMER WYE COLLEGE BUILDINGS (APPEAL A: APP/E2205/W/20/3259450); OCCUPATION ROAD (APPEAL B: APP/E2205/W/20/3259462); FORMER ADAS SITE (APPEAL C: APP/E2205/W/20/3259465)

WYE COLLEGE APPEALS, WYE, ASHFORD

**CLOSING STATEMENT ON BEHALF OF
WYE WITH HINXHILL PARISH COUNCIL (RULE 6 PARTY)**

INTRODUCTION

1. Wye with Hinxhill Parish Council (“the Parish Council”) recognise that the redevelopment of the WYE 3 site is critical to the future of Wye. This is evidenced from the fact that it promoted a neighbourhood plan which contains not one, but two, policies (WNP6 and WNP11) which promote redevelopment of the site.
2. However, the centrality of the WYE3 site to Wye’s future means that it is equally critical that redevelopment be truly sustainable: bringing forward the right type of development, in the right places, at the right time, whilst protecting and enhancing Wye’s outstanding natural, built, and historic environment.
3. It was said in opening that these proposals fail at each juncture. The evidence presented over seven days at this Inquiry has demonstrated as much.
4. The closings on behalf of the Parish Council are structured as follows:
 - i. Context (taken from the opening submissions)
 - ii. Fundamental breach of the vision, objectives and policies of the Wye Neighbourhood Plan (WNP) and threat to the future sustainability of the village - all three appeals
 - iii. Objections to the proposals for the redevelopment of the Former Wye College Buildings (Appeal A)
 - iv. Objections to the proposals for the redevelopment of the Occupation Road Site (Appeal B)

- v. Objections to the proposals for the redevelopment of the Former ADAS Site (Appeal C)

CONTEXT

5. It will not come as a surprise to learn that the Parish Council consider Wye to be a settlement of significant historical and landscape importance. No doubt many Parish Councils would, quite understandably, claim as much in respect of their main settlements. But by any metric this is true of the village of Wye.
6. The beauty and quality of the landscape in, and surrounding, the village is self-evident. It is recognised and protected by the fact that the entirety of the village, and much of the surrounding Parish, falls within the Kent Downs Area of Outstanding Natural Beauty (AONB).
7. In terms of its history, by the time of the Domesday Book in 1086 Wye was already a settlement of some size. However, its historical importance stems in large part from “Kemp’s College”: a chantry college and grammar school founded in the mid-15th Century by Cardinal Archbishop John Kemp pursuant to a licence granted by Henry VI. Consisting of the Cloister Quad (Grade I), the Latin School (Grade I) and the Wheelhouse (Grade II*), Kemp’s College was one of a number of scholarly foundations of the period, including King’s College, Cambridge Eton College. The historical significance of Kemp’s College can hardly be overstated. Its redevelopment demands close and careful consideration.
8. An important part of the historical significance of Wye is the role the College played in village life: its communal value. The function of the chantry college at Wye was not only to conduct masses for the repose of the souls of the founder and his family. It provided free education to the boys of the village; religious services to the community at large; as well as housing and jobs for those working and living on its large estates. Thus from its very foundation, Kemp’s College has been central to the spiritual, educational, economic and social life of the village.
9. Over the centuries the College continued to provide much of the vitality and life-blood of the village.

10. By command of Henry VIII, the grammar school continued following Dissolution, and the Charity Schools were established in the early 18th Century. Both provided for the educational needs of local children; employment for residents; and a place of residence for the schoolmasters and mistresses.
11. In the late 19th Century, the schools moved out and were replaced by the South Eastern Agricultural College (SEAC). There followed a significant period of expansion of the College: to the north, West and North Quads (c.1901); to the north-east, the Wood and Iron Workshops (c.1903); and to the east, the completion of the Middle Quad (c.1906), and the Agricola Quad (by T.E Collcutt) and the entrance to the High Street (circa.1912-1914). The Dining Hall was constructed in 1953 as a modern interpretation of the medieval Great Hall found in the Cloister Quad.
12. Each of these buildings - which Ms Wedd has collectively referred to as Wye College - are of historical importance in their own right, as is recognised by their Grade II Listing. But crucially the functioning of the agricultural college (initially operated by SEAC, and then Wye College, and finally Imperial College) also meant that throughout the 20th Century, and into the 21st Century, the College remained a central, vibrant part of the village. It had a profound impact in the growth of the village and its surroundings - not least by way of the expansion of its own campus, including all three sites which are the subject of these appeals; provided an important source of employment for members of the community; held weddings and services in the Chapel; allowed for a wide range of formal and informal community uses, including enabling village residents the 'freedom' to roam through its gardens and green spaces.
13. The outstanding historical interest of the Former Wye College Buildings, as well as the landscape quality of the area as a whole, means that the proposed (re)development of each of these appeal sites must be carefully scrutinised to ensure that these important qualities are not adversely affected.
14. However, there is also a wider consideration of fundamental importance. As is recognised by the Neighbourhood Plan, given the size, location and importance of the landholdings within the village, the redevelopment of the former Imperial College campus as a whole (i.e. the WYE3 site) *"represents a tremendous opportunity to shape Wye for the future, preserving and enhancing the vitality and sustainability of the historic village*

*and surrounding Parish*¹ There is, therefore, a one-time opportunity in the history of Wye to ensure the “*right type*” of development take place, in the “*right places*”, at the “*right time*”² in order to secure the future sustainability of the village. Therefore, quite apart from the heritage and landscape interests at play, this consideration also demands that any proposals for the redevelopment of the WYE 3 site be carefully scrutinised and in its detail.

FUNDAMENTAL BREACH OF THE VISION, OBJECTIVES AND POLICIES OF THE WYE NEIGHBOURHOOD PLAN

Requirements

15. As Mr Goodwin identified, read together policies WNP6 and WNP11 require that development proposals for the WYE 3 site:
 - i. be delivered in accordance with a Masterplan that has been adopted as a Supplementary Planning Document by the Borough Council (WNP6);
 - ii. deliver a mix of uses, including education, business, community infrastructure and *some* houses overall (WNP6), in accordance with framework set by WNP11;
 - iii. constitute an integrated solution for the WYE3 site, delivered in a phased manner (WNP6 and 11); and
 - iv. assess viability across the Wye 3 site as a whole.
16. The current proposals fail to meet any of these requirements.

Masterplan

17. Mr Fidgett agreed³ that the failure to deliver the proposals “*in accordance with a masterplan that has been adopted as a Supplementary Planning Document by Ashford Borough Council*” constituted a breach of WNP6.
18. The Appellant seeks to down-play that breach by pointing to the fact that (a) Telereal Trillium (“TT”) has produced its own draft masterplan⁴ and (b) the Cabinet of the

¹ CD3, p42 section 6.1

² In order to further the economic objective (see NPPF, para 8(a)),

³ XX(RW)

⁴ CD9

Borough Council resolved, in October 2019, to adopt TT's draft masterplan as "informal guidance", notwithstanding that this resolution was subject to conditions which were never fulfilled.

19. On proper analysis the Appellant's position must be rejected. This is for the following reasons:

- i. As the Borough Council has recognised⁵, the draft masterplan was a document produced by TT, not the local planning authority. Although the Appellant has been at pains to emphasise that the steering group for the draft Masterplan included representatives from the Borough and Parish Councils this can add little, if anything, to the weight to be given to the document. TT never properly involved other parties in the production of the masterplan plan, a failing which led (as Mr Goodwin explained⁶) to the Parish Council repeatedly objecting in writing to ABC about both the process by which the masterplan was being produced, the content of TT's draft masterplan and its relationship to the adopted WNP.
- ii. The reliance on the resolution of ABC's cabinet to adopt the document as informal guidance is fatally undermined by the following:
 - (a) The resolution was subject to conditions which have never been fulfilled;
 - (b) The resolution - and the proposed adoption of TT's draft masterplan as informal guidance - was unlawful. The Parish Council set out in a letter before action⁷ cogent and, it contends, unanswerable submissions as to why ABC's action was unlawful. The Inspector need not adjudicate on the merits of the Parish Council's legal grounds: it is enough to record that they have gone unanswered by either ABC or TT in the 16 months since;
 - (c) TT made no attempt to update their draft masterplan following ABC's resolution, notwithstanding that (quite apart from the Parish Council's submissions) it was the clear understanding of both ABC and TT that this would be necessary for it to be adopted;

⁵ CD12k

⁶ XIC (RW)

⁷ CD12j

(d) Given that the Council have made no attempt to adopt TT's masterplan in the 15 months since the resolution, and following the evidence given by Ms Westphal on this issue, it is clear that there is no real prospect of TT's masterplan being adopted by ABC. Indeed, Mr Fidgett implicitly accepted as much when he noted that TT would have to update the masterplan (in accordance with the Cabinet's resolution) if only there was a prospect of it being adopted.⁸ Accordingly TT's draft masterplan can be given little, if any, weight.

20. Nor can this conflict with WNP6 be dismissed as a mere technical breach. The requirement that, before development comes forward on the Wye 3 site, a masterplan be adopted *by ABC as an SPD* is a crucial element of that policy. It requires not only that the masterplan be the product of the Borough Council (and not merely a masterplan driven by TT), but also that the statutory process for the adoption of an SPD be followed: one which includes formal consultation with the public and a transparent explanation as to how the consultation responses fed into the final document⁹. As Mr Goodwin explained in evidence, had this process been followed it might well have resulted in a very different masterplan to the draft TT masterplan. It certainly cannot be assumed – as the Appellant is implicitly asking the Inspector to assume – that the contents would have remained the same.

21. Finally, the Appellant's contention that the breach was brought about by the 'meddling' of the Parish Council should be rejected for what it is: a jury point¹⁰, and a bad one. The Parish Council was entitled to challenge the legality of the October 2019 resolution and the proposed adoption of the masterplan as informal guidance. The fact that the Parish Council's case stands unanswered by either the Borough Council or TT is not its responsibility. Had ABC and/or TT considered there was no merit in the legal submissions they could have rebutted the Parish Council's submissions and pushed on with adoption of the masterplan as informal guidance. Alternatively, had they considered that the Parish Council submissions were correct (which, from the inaction of both parties, as appears to be the case), they could have returned to the drawing

⁸ XX (RW) Fidgett

⁹ See Regulations 11-14 of the Town and Country Planning (Local Planning) (England) Regulations 2012

¹⁰ i.e. one that appears superficially attractive, but cannot withstand close scrutiny

board and worked together to produce a masterplan to be adopted by the Borough Council as an SPD which did accord with the statutory requirements.

22. They did neither.

23. TT have chosen instead to advance their planning applications in the absence of *any* masterplan adopted by ABC (whether as an SPD or otherwise). They did so, no doubt, in the hope that the decision-maker would overlook the fact that their draft masterplan had not been adopted and, instead, treat TT's draft masterplan as in substance achieving the objective set out in WNP6. For the reasons set out above the attempt to equate TT's draft masterplan with a masterplan adopted by ABC as an SPD would be a false equivalence and the Inspector should reject any such argument.

24. It follows that the failure to deliver the development in accordance with a masterplan which has been adopted as an SPD by the Borough Council is not a mere technicality. It is significant breach of policy and must be given considerable weight.

Balance of uses

25. As the examiner of the WNP recognised, ensuring the delivery of *"an appropriate balance between residential, business and community uses is a key element of the [Wye Neighbourhood] Plan"*.¹¹ As Mr Fidgett accepted¹², the examiner was correct in his analysis. The WNP tells us that the aim of achieving a balanced mix of uses, including on the WYE3 sites, is *"at the heart of planning for Wye's future"*¹³ and it is an aim which permeates the entirety of the plan. It forms one of the visions of the plan¹⁴, is a key objective¹⁵, and is a central requirement of both policies WNP6 and WNP11. As WNP6 explains the mix of uses to be delivered on the WYE3 site is to *"include education, business, community infrastructure and some housing."*

26. The purpose of seeking a balance of uses on the WYE 3 sites is to *"ensure that the village continues to thrive as a sustainable settlement"*.

¹¹ CD4, para 124

¹² XX(RW) Fidgett

¹³ CD3, p20

¹⁴ *"Wye should retain a balanced community providing some local employment and should not become purely residential"* CD3, p28, para 3.1

¹⁵ Objective 6: To achieve the mixed redevelopment of WYE3

27. Contrary to this vision, the development proposals with which these appeals are concerned provide overwhelmingly for (open market) residential development. There is no business use proposed whatsoever. The community use is restricted to Appeal A and was rightly described by Mr Goodwin as being tokenistic. The proposals are fundamentally at odds with the mix of uses sought by policies WNP6 and 11.
28. Nor do the proposals address WNP Objective 5, in particular the provision of local needs housing, and its integration within affordable housing components that policy WNP5 enables.
29. The bringing forward of significant piecemeal residential development on the WYE3 site (exceeding the number of houses WNP11 envisages for the site – see WNP11(g)), whilst at the same time failing to bring forward any business use, and only very limited community use, would not only constitute a breach of the neighbourhood plan. It would cause significant harm to the future sustainability and vitality of Wye.
30. The Appellant seeks to explain the homogeneity of their offering in two ways. First, they point to the fact that non-residential uses already take place on the WYE3 site. Second, they point to the possibility of future non-residential development taking place.
31. Neither response should reduce the weight to be given to the breach of policies WNP6 and WNP11 as a result of the failure to achieve the balance mix of uses sought.
32. The Appellant's first retort is unconvincing.
33. Mr Fidgett's attempt¹⁶ to suggest that WNP11(c) and (d) had been achieved because business and horticultural uses already take place on land to the south of Occupation Road is plainly inaccurate. WNP11 requires that "*development proposals...shall...(c) Retain and enhance the existing commercial land use along the southern side of Occupation Road for employment use (B1)*" (**emphasis added**). The objective of the plan, and requirement of the policy, was not merely to maintain the status quo in relation to land south of Occupation Road – which, as the LVA observes, consists of the commercial use of portacabin-like buildings some of which are in "*poor condition*"¹⁷ – but rather to

¹⁶ Fidgett, Rebuttal, p7, Fig 2

¹⁷ CD22h, p59

“renew and replace”¹⁸ those buildings as part of a development proposal which retains the existing commercial use. TT’s own Masterplan recognises this to be the case – proposing a wholesale rebuilding of the commercial and horticultural units¹⁹ - and thereby gives the lie to the suggestion that the maintenance of the status quo somehow constitutes a fulfilment of WNP11(c) and (d).

34. Although it is true that the Wye Free School has been established and therefore provides educational use on WYE 3 (in accordance with WNP11(a), it was already in place at the date of making of the Neighbourhood Plan²⁰. Therefore, whilst the educational use is welcomed, it was not brought about by a development proposal which has implemented the policies of the neighbourhood plan. Nor was it brought forward by TT.
35. As to the Appellant’s second retort, the inspector can place no material weight on the possibility of non-residential uses coming forwards elsewhere on the WYE3 site in the future. Firstly, because (as discussed below) due to the piecemeal approach taken by the Appellant to the redevelopment of the WYE3 site there is no mechanism for ensuring that the non-residential use comes forward in an appropriate time frame (or at all). Second, because, as Mr Fidgett confirmed in cross-examination²¹, in respect of neither the south of Occupation Road site nor the former Russell Laboratories site have even pre-application discussions begun, let alone planning applications been submitted.
36. Mr Fidgett’s contention²² that the lack of progress in relation to the non-residential developments was due to the fact that the Wye College site has taken so long to progress can provide no comfort. If TT were truly committed to delivering a balanced mix of uses on the WYE3 site, in accordance with the policies and requirements of the WNP, then one would have reasonably expected that proposals for the non-residential uses would have at least reached pre-application stage in the four years since the Wye College application was submitted.

¹⁸ CD3, para 6.3.2

¹⁹ CD9, p85

²⁰ See CD3, p46, para 46

²¹ XX (RW)

²² XX(RW)

37. TT has plainly sought to bring forward residential development on the WYE3 site because it is the use which is likely to provide it with the highest returns (it was noticeable that, in cross-examination, Mr Fidgett treated it as it axiomatic that providing business use in the Wye College scheme would be less viable than residential use). This may be understandable from a commercial perspective. However, it results in an imbalance of uses across the WYE3 site, which is contrary to policies WNP6 and WNP11 and harmful to the sustainability of the village. Nor can there be any confidence that, if permission is granted for these residential schemes, business use will then be brought forward on the former Russell Laboratories site, or that the land south of Occupation Road will be redeveloped and enhanced for commercial and horticultural use, as is required by policy WNP11.
38. These proposals are for an almost exclusive residential redevelopment. They conflict with a, if not *the*, central objective of the WNP – achieving a balanced mix of uses on WYE3 (and with a residential element that included affordable housing). This is a conflict which should be given substantial weight.

Phasing/Comprehensive approach

39. Closely related to the previous issue is the failure of the proposals to ensure that the WYE3 site is “delivered in a phased manner” (WNP6). The proposals represent the piecemeal redevelopment of parts of the Wye 3 site. They do not constitute the ‘integrated solution for what is the major site for development on the village.’²³
40. The fact that the proposals are being brought forward in a piecemeal fashion, rather than as a comprehensive redevelopment proposal, means that their delivery cannot be controlled by a phasing condition.
41. The lack of a comprehensive approach to the redevelopment of the WYE 3 site is illustrated by the effect that the redevelopment of the Occupation Road site (Appeal B) would have on the existing and future access arrangements to the commercial units on the south of Occupation Road. Currently the commercial units have direct vehicular access for parking and servicing. The intention of TT’s draft masterplan is that, once developed, the commercial units would have a new access to the south, with new

²³ DC3, p48, para 6.4

dedicated parking areas to the south²⁴. However, until and unless the south of Occupation Road land is developed, their vehicle access would have to be achieved (as described by Mr Fidgett – none of the application or appeal documents explain how access is to be maintained, as there was mention of bollards to prevent vehicular access from the west) via a circuitous route through the Occupation Road site and doubling back on Occupation Road itself. It would also undermine the TT’s design strategy for Occupation Road itself which is to pedestrianise it, removing vehicles from the North Downs Way.

42. This is a small but vivid illustration of the difficulties caused by adopting a piecemeal approach which does not allow for elements of the proposals for the WYE 3 site to be phased, as WNP6 requires. Plainly the more harmful consequence, however, is the fact that there is no mechanism for ensuring that non-residential elements and employment opportunities on the WYE 3 site come forward ahead of, or at least at the same time as, the residential elements, as would be the case if a comprehensive application for outline permission had been made. Indeed, as noted above, the non-residential elements have not yet even been the subject of pre-application discussions, let alone been worked up into planning applications.

Viability

43. On a proper interpretation of policy WNP11 viability should be assessed across the WYE 3 site as a whole. That this is the proper interpretation of policy is supported by the fact: (i) that the WNP treats the WYE 3 site as one site in planning terms throughout, rather than a collection of individual, but related, sites (note the use of the singular “WYE 3 site” in the policies); (ii) WYE3 historically constituted one landholding, and continues to be owned by one entity – previously it was owned by Imperial College London, and now by TT in its entirety; (iii) the phrase “subject to viability” in WNP11 applies to “*development proposals for this site [ie Wye 3]*” globally, it is not applied to the individual elements of WNP11; and (iv) the examiner of the WNP recognised that the “*viability and deliverability of the package [is to be considered] as a whole*”²⁵.

²⁴ CD9, p85

²⁵ CD4, para 11. See also WNP11

44. The Parish Council appreciates that where a landowner is promoting several different development proposals at the same time it is not ordinarily required to cross-subsidise, and that viability will *normally* be considered on a proposal-by-proposal basis. However, here there is a clear policy – as well as logical – basis for adopting a global approach to assessing viability and for requiring, where appropriate, parts of the WYE 3 site to cross-subsidise other parts of the site.
45. These proposals fail to consider the viability of the proposals globally. This is in breach of the policy requirements properly understood and is harmful in a number of ways:
- (a) There has been no assessment of whether, if the redevelopment of the entire WYE3 site was considered, it would be viable to make section 106 contributions in full, notwithstanding the fact that, when viewed in isolation, viability constraints mean that the Former Wye College cannot make any section 106 contributions;
 - (b) There has been no consideration as to whether, if the entirety of the WYE 3 site was considered, it would be viable to incorporate some business use into the Former Wye College scheme (albeit, as will be discussed below, there is no viability evidence to support Mr Fidgett’s position that incorporating business use would render the proposal any less viable)
 - (c) There has been no consideration as to whether, if the entirety of the WYE 3 site were considered, it would be viable to incorporate a greater degree of community use (including, but not restricted to public access) into the Former Wye College scheme (albeit, as will be discussed below, there is no viability evidence to support the Mr Fidgett’s position that incorporating a greater level of community use would render the proposal any less viable)

Weight and Conclusions

46. These conflicts amount to a fundamental breach of the Neighbourhood Plan. Given the centrality of policies WNP6 and WNP11 to the determination of these appeals, it renders all three proposals in breach of the development plan as a whole. The conflict with the vision, objectives and policies of the WNP is a consideration which must weigh very heavily against the grant of permission. Added to this is the harm to the

future sustainability of Wye which would be caused by permitting an almost exclusively residential development to proceed.

47. The weight that should be given to the breach of WNP6 and WNP11 should not be materially reduced by the Borough Council's lack of a five-year housing land supply.

i. Firstly, as has been very recently reiterated in *Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 104 the fact that a policy is "deemed" to be out-of-date by virtue of a lack of five year does not, as matter of law or policy, necessitate a reduction in weight to the most important (or indeed any) policies. As the court explained:

*"the decision-maker will still need to assess the weight to be given to development plan policies, including whether or not they are in substance out-of-date and if so for what reasons". In these circumstances "the NPPF does not prescribe the weight which should be given to development plan policies". The decision-maker "may also take into account, for example, the nature and extent of any housing shortfall, the reasons therefor, and the prospects of that shortfall being reduced (see e.g. [Crane])" (paragraph 82).*²⁶

ii. Second, the shortfall in the five-year supply is reasonably small.

iii. Thirdly, WNP6 and WNP11 are specific policies tailored to the particular site in question. They are not generalist policies which seek to restrict housing development.

48. Nor should the weight to be given to policies WNP 6 and 11 be reduced because there is a commitment in the WNP to undertake a review once the Ashford Local Plan was adopted and that review has not yet taken place. The mere trigger for a review cannot, of itself, be a rational basis for reducing weight to a plan's policies. The decision-maker must go on to consider whether there is anything in the Ashford Local Plan which renders the WNP policies out-of-date in substance. Mr Fidgett has not sought to do so. He identifies no strategic (or other) policies of the Local Plan which are inconsistent with WNP6 or 11. And he agreed in cross-examination that the Ashford Local Plan

²⁶ Paragraph 27 of the Judgment. The Court of Appeal were summarising Holgate J's judgment at first instance in this passage, and judgment which they upheld.

was able to meet (with a buffer) its housing requirement²⁷ in full without the need for any additional housing allocations in Wye.

49. It follows that full weight should be given to policies WNP6 and WNP11, and very considerable weight should be given to the fundamental conflict with the WNP's vision, objectives and policies.

OBJECTIONS TO THE PROPOSALS FOR THE REDEVELOPMENT OF THE FORMER WYE COLLEGE BUILDINGS (APPEAL A)

Heritage Considerations

The Appellant's flawed approach

50. There is universal agreement that the heritage assets with which this Appeal is concerned are of outstanding importance. Indeed, as Mr Burton was happy to agree²⁸, aside from World Heritage sites Kemp's College (the Cloister Quad, the Latin School, and the Wheelhouse) are amongst the most important heritage assets in this country.
51. The importance of the heritage assets in question not only affects the weight that should be given to their conservation²⁹, it also bears upon the degree of scrutiny which should be paid to proposals for their redevelopment. This approach applies to decision makers (Mr Burton agreed that, given the importance of the assets, it would be appropriate for the Inspector to rigorously scrutinise TT's proposals) but it also applies to developers, and heritage professionals working on their behalf – it is only right to expect them to apply a particular degree of care to the redevelopment.
52. Given that context, TT's approach to the redevelopment of designated heritage assets of such outstanding importance is, frankly, indefensible. There has been a singular failure to engage with the significance of these assets; no attempt to explain how the assets' significance influenced the design proposals (presumably because, as became quite clear, it did not); and no systematic analysis of how the proposals will impact on the assets' significance. And the failings are not limited to one instance or individual.

²⁷ The housing requirement met the objectively assessed needs in full. There was no reduction for environmental or other constraints. See CD2, para 2.25 and Table 1, p14

²⁸ XX(RW)

²⁹ NPPF, para 193

At every stage of the design, application, and appeal process TT's approach has been found to be wanting. The most notable instances of TT's cavalier approach are as follows:

- i. The key design elements were fixed at an early stage in the process before *any* attempt to analyse the significance of the assets had taken place. As Mr Burton accepted in cross-examination³⁰, an understanding of the chronology alone makes it clear that the only heritage assessment on which the Appellant relies – Canterbury Archaeological Trust's 'Heritage Statement'³¹ ("the CAT report") – could not have had an impact on the evolution of the design. This is because the report was only *commissioned* four months after the detailed plans for redevelopment were produced.³² The Appellant's approach puts the cart before the horse: fixing the design for the redevelopment of heritage assets *prior* to any assessment of their significance having taken place. This would constitute bad practice (as well as being contrary to government guidance³³) in relation to any heritage asset. In the context of heritage assets of such outstanding importance this approach was wholly unjustifiable.
- ii. The CAT report is a detailed and impressive narrative of the history of the historic campus and a description of the places and spaces within it. But that is all it is: a historical narrative and a gazetteer. As Mr Burton agreed³⁴, there is no attempt either: (a) to analyse what interests and values contribute to the College's significance (beyond, perhaps, briefly in relation to archaeological interest); or (b) to assess, in light of that analysis, what impact the proposed development would have on that significance (not least because they were not provided with the plans, notwithstanding the fact they were already in existence).
- iii. Both the CAT report and the Planning Statement refer to the prospect of a Heritage Impact Assessment ('HIA') being produced. Yet no HIA is relied upon by the Appellant, nor is there any evidence that an HIA was taken into account

³⁰ XX(RW)

³¹ CD/14l. The document entitled 'Heritage Impact Assessment' (CD/14k) submitted by the Appellant is no such thing. It is simply a Schedule of the Proposed Works.

³² Mr Burton accepted that, apart from the removal of Unit 17, there was no material change to the key design elements (in particular in relation to the balance of uses or the number, disposition and arrangements of the residential units) between the original design and those before the Inquiry.

³³ PPG, Historic Environment, para 009 & 012

³⁴ XX(RW)

by either the Borough Council or Historic England. This constitutes a fundamental omission in the evidence base. The production of an HIA is not merely a technical requirement. It plays an essential role in justifying the redevelopment of a heritage asset. As Mr Burton agreed, HIAs have number of important functions including: (i) ensuring no important heritage interests which contribute to significance are overlooked; (ii) influencing the design process (and in relation to assets of such importance ,it is not unreasonable to expect the HIA to be *the* key influence on the design); (iii) providing transparency, particularly as to how the design is said to have responded to the assets' significance; and (iv) setting out a clear articulation of the impact, whether that impact is beneficial or harmful, and to what degree.

- iv. The Appellant's heritage witness did not even attempt to fulfil the lacuna created by the absence of an HIA, still less justify the proposals. Mr Burton's starting point – as he readily acknowledged in his proof – was that, because listed building consent had been granted, the proposals were necessarily “unobjectionable”.³⁵ Moreover, for reasons set out below, with respect to Mr Burton, his evidence to the inquiry was so superficial and flawed that that little, if any, reliance can be placed on it when considering the heritage harm that would result from the proposal.

Reliance to be placed on the heritage assessments.

Ms Wedd's assessment and evidence

53. Ms Wedd visited the Wye College on three separate occasions, spending at least eight hours at and around the site. She produced a rigorous, detailed and the only comprehensive heritage impact assessment in which she describes the historical narrative of the site and surrounding area in a manner proportionate to the heritage assets' importance (and by reference to a range of historical sources)³⁶; undertakes a systematic assessment of the heritage values and interests which contribute to significance³⁷; and assesses the impact of the proposals on the significance of heritage assets.³⁸

³⁵ Burton Proof, para 3.1

³⁶ Wedd, pp24-28, Appendix 1.3.1-1.3.35

³⁷ Wedd, pp29-35, Appendix A1.4.1 – A

³⁸ Wedd, p8-15, paras 2.61-2.110

54. It is not only a formidable piece of historical research, it explains in clear and transparent terms how and why she has come to her judgements on the degree of harm that the proposal would cause in heritage terms.
55. It constitutes the only detailed HIA before the Inquiry. Indeed, the only other evidence which comes close to a heritage impact assessment is provided by Mr Bain Smith. Certainly the Appellant's have not sought to rely on an HIA.
56. Save for some very limited disagreements set out in his rebuttal³⁹, Ms Wedd's assessment was not criticised by Mr Burton (or by any other expert). Indeed, it is noticeable that although Mr Burton took an opportunity to submit a rebuttal, he made no criticism of the primary bases on which Ms Wedd considered that harm would be caused to Kemp's College and Wye College (see below). Under cross-examination Ms Wedd explained the basis for her assessment with cogency and authority, and did not depart from any of the judgments that she had reached during her assessment.
57. The Parish Council submit that the Inspector should place a high degree of reliance on Ms Wedd's assessment of the heritage impacts of the scheme.

Mr Burton's evidence

58. In contrast to Ms Wedd, Mr Burton's evidence can be given little, if any weight. It was flawed in a large number of respects:
- i. First, as noted above, Mr Burton's *starting point* is that the proposals are unobjectionable. Consequently, his evidence does not seek to justify the proposals: it assumes this has already been done.
 - ii. Second, Mr Burton has been to the Appeal Site only once, last November and at a time when, as he frankly admitted, he was concentrating solely on the narrow heritage issues being raised by the Borough Council with regards to the Latin School (and notwithstanding the fact that Parish Council had set out its far broader concerns in its Statement of Case). Given this context, it is surprising in the extreme that he did not consider it necessary to revisit the Appeal Site having received Ms Wedd's detailed evidence.

³⁹ Burton Rebuttal, paras 3.1-3.8

- iii. Third, notwithstanding the significant lacuna in the Appellant's heritage evidence, Mr Burton did not even attempt to undertake a heritage impact assessment, let alone one which rivals the detail and rigour of Ms Wedd's. This did not stop him blithely asserting that TT have "*very cleverly respected the varying heritage values which exist across the site*"⁴⁰ without: (a) assessing what those heritage values are; (b) analysing how, and to what degree, they contribute to the assets' significance; or (c) explaining how the design has sought to respond to the assets' significance.
- iv. Fourth, as became increasingly apparent during cross-examination, Mr Burton had obviously not engaged with the proposals, nor the evidence submitted in support, in any detailed way. This was illustrated in a number of respects: (a) in his proof Mr Burton's asserted that the CAT report was "*the key guiding element for the work*"⁴¹ without, seemingly, having examined what influence the report had actually had on the design, or investigating the chronology of events (which showed that it could not have been the key guiding element); (b) the failure of Mr Burton (and indeed any of the Appellant's team) to enquire as to why no HIA had been relied upon, notwithstanding the references it to it being under production in both the CAT Report and Planning Statement; (c) elementary mistakes in his proof of evidence, for instance in relation to the date of the Wheelhouse⁴², and the 'original use' of the southern range being as a 'large single dwelling'⁴³; and (d) Mr Burton's lack of understanding concerning the nature of public access were the scheme to go ahead – in cross-examination he could not recall the basis on which public access would be permitted to the historic core, and assumed, wholly erroneously⁴⁴, that access through the Wye College quads would operate "*like a public street*"⁴⁵

⁴⁰ Burton Proof, para 5.1

⁴¹ Burton Proof, para 4.23

⁴² As Mr Burton accepted in cross-examination his contention that the Wheelhouse was built in 1553 (Burton Proof, paras 4.4, 4.11 and 4.22) was based on a misreading of the CAT Report, notwithstanding that both the listing and the CAT report indicated that the Wheelhouse was built in the 15th Century

⁴³ Burton Proof, para 7.6. As Mr Burton accepted in cross-examination, the available evidence indicates that when the Cloister Quad was in use as part of a Chantry College, the southern range was used for service rooms, kitchen buttery and pantry (see CAT Report [CD14], p20 & Wedd, Appendix 2, Figure 12). Certainly, there was no evidence that its "original use" was as a "large single dwelling" as Mr Burton contended.

⁴⁴ See the Access and Movement Strategy set out in the Landscape Statement [CD-14o, p15] which explains that fob entry gates will be used with the intention to "*reduce non-resident permeability*"

⁴⁵ XX(RW)

- v. Fifth, despite freely admitting that he was “*not an expert on communal value*”⁴⁶ Mr Burton asserted – for the first time in cross-examination, and without previously having undertaken any analysis of the issue (c.f. the detailed assessment of Ms Wedd⁴⁷) – that he did not “*see what communal value has to do with these buildings*”⁴⁸ With respect to Mr Burton, this statement – in absence of any prior analysis and given his earlier concession concerning his lack of expertise in this area - only served to underscore his lack of objectivity.

Historic England

59. As the statutory consultee and government advisor on heritage assets a decision-maker will *prima facie* give considerable weight to the views of Historic England in relation to matters of heritage. However, the views of Historic England do not – indeed, as a matter of law, cannot – bind the Inspector, who must come to his own view as to the impacts of the proposal.
60. In this case, the Parish Council consider that there are cogent reasons for departing from the view of Historic England (HE) that the harm of the scheme is outweighed by the heritage benefits proposed.
- i. First, HE’s opinion was based on an (at best) incomplete understanding of the factors which contribute to the assets’ historical significance. Although HE will have used their own professional judgement when arriving at their conclusions on the level of harm which would be caused by the development, as Ms Wedd explained, that judgement would have been informed to a significant degree by the information provided by the Appellant with the proposal. Where, as here, there are serious omissions in the heritage assessment relied upon by the Appellant, this, in turn, calls into question the judgments made by HE based on those assessments. That the inadequacy of the Appellant’s heritage assessment infected HE’s judgment is illustrated by the following:
- (a) The absence of any systematic assessment of the heritage values and interests which contribute to significance of the assets in question is likely to account for, what on the face of it, is the most surprising failure of HE to consider the

⁴⁶ XX(RW)

⁴⁷ Wedd Proof, pp34-35, A1.4.45-A1.4.54

⁴⁸ XX(RW)

communal value of those assets *at all*. As Ms Wedd described in her evidence⁴⁹, the communal value of these assets would not be readily apparent from a site view (in the way that, say, aesthetic interests would be). It is only when an analysis of significance is undertaken – and when it is appreciated that, from its very foundation, and for a period of some 570 years, Wye College had been central to the spiritual, educational, economic and social life of the village – that the centrality of communal value to the significance of these assets would be appreciated.

- (b) HE's reliance on the fact that the ranges of the Cloister Quad "*were for a very long period in residential use*" to justify the provision of three private dwellings in the historic core, ignores the fact that Kemp's College has throughout its 570 year period, been a "unified whole": owned by a single entity, with the residential use being associated with the primary uses of Kemp's (and later Wye) College, whether as a chantry college, grammar school or Agricultural College. Had HE been fully informed of the significance of the asset, they might well have appreciated that the harm to the historic core comes, not from the residential use *per se*, but the sub-division of this unified whole into three private dwellings.
- (c) The failure of HE to appreciate the contribution that the workshops make to the significance of Wye College. It is only when it is appreciated that these workshops were central to the functioning of the College as an agricultural college, that their contribution comes apparent. In cross-examination Mr Burton said that the buildings don't "shout out" that they are workshops. Notwithstanding the fact that their interiors plainly evidence their historic function (which rather suggests that Mr Burton has not been inside them – which would not be surprising given that the one site visit he has undertaken focused on the objections of ABC and the Latin School), it is precisely because assets do not always 'shout out' their significance that an HIA is necessary. It is the HIA which helps HE understand what it is about a heritage asset which makes it significant.

⁴⁹ XIC (RW)

- ii. Second, unlike the Inspector, HE did not have the benefit of the detailed, rigorous assessment undertaken by Ms Wedd which illuminates the significance of the heritage assets in question, and the impact the proposal would have on their significance.
- iii. Third, as Mr Burton accepted, in addition to Ms Wedd's assessment, the Inspector now has a wealth of evidence and analysis (albeit not from the Appellant) which simply was not available to HE.

61. In a recent appeal, the detailed, careful analysis provided by Ms Wedd persuaded an inspector to depart from the conclusions reached by HE.⁵⁰ That was in circumstances where the Appellant relied on an HIA to justify their proposals which was inadequate: here no HIA is relied on by the Appellant whatsoever.

Impact on Significance

62. The impact of the development proposals on the significance of the heritage assets in question is set out in Ms Wedd's detailed proof. The Inspector is invited to pay close regard to this assessment and to place great weight on its analysis and conclusions.
63. The details of that assessment are not repeated in these closing submissions. Instead, the headline findings of Ms Wedd are outlined, and points raised in oral evidence are addressed.

Kemp's College (Cloister Quad, Wheelhouse and the Latin School)

64. Ms Wedd identifies three principal ways in which the development proposals will harm the significance of Kemp's College.
65. **(1) Disintegration/Subdivision**⁵¹ - There would be harm in principle from the disintegration of the buildings which make up Kemp's College - which have been preserved, and operated, as a whole for more than 570 years - into three, separate private dwellings. In practical terms this disintegration would be irreversible.
66. As Ms Wedd explained in her evidence, Kemp's College has operated as a "unified whole" for its entire history. There has (as Mr Burton accepted⁵²) been unity of

⁵⁰ CD27, Lavender Road, paras 27-49

⁵¹ Wedd Proof, paras 2.62-2.64

⁵² XX(RW)

ownership, in the sense that all three buildings have always been in one single ownership which will cease to be the case if the development goes ahead. However, there has also been functional unity: all three buildings have, throughout their history, been interconnected by their use, and have not (as far as the evidence indicates) previously been physically or functionally separate.

67. The proposals would result, for the very first time in their history, result in the disintegration of the three assets which make up Kemp's College. The disintegration would operate on a number of levels: (a) legal – each would be owned by separate persons presumably either as a freehold, commonhold, or long leasehold; (b) functional – while each would be in residential use, the residential use would be private and therefore not necessarily connected with one another; and (c) physical – including the various physical subdivisions necessary to turn the Cloister Quad into two separate, private dwellings.⁵³

68. The proposed disintegration is harmful because it reduces the illustrative value⁵⁴ of the collection of assets. That is, the proposed redevelopment will make it harder to envisage how the buildings operated, or were used, historically.

69. In his proof of evidence, Mr Burton was keen to stress the importance of retaining the unity between the southern range of the Cloister Quad and the Latin School. His view was that the Borough Council's case that the Latin School should be used as a community centre, would require physical separation of the two assets, and that his would *"destroy the Group Value of this collection of outstanding heritage assets"*.⁵⁵ However, Mr Burton's assessment of harm was myopic: he failed to realise (or perhaps failed to acknowledge) that, by applying the very same logic to the historic core⁵⁶ as a whole the Appellant's proposal, through the proposed subdivision, would significantly harm the significance that the Cloister Quad, Wheelhouse and Latin School derive from their historic relationship to each other.

⁵³ This includes physically separating the first floor of the Cloister Quad into two dwellings; the horizontal separation of the ground and first floors of the northern range by the creation of Unit 32; and the separation of the Solar from the Parlour and Inner Parlour

⁵⁴ The illustrative value is part of an asset's historical interest.

⁵⁵ Burton, Proof, para 7.5

⁵⁶ Mr Burton accepted in cross-examination that the Cloister Quad, Wheelhouse and Latin School constituted the historic core, and he had not meant to suggest otherwise in his proof (Burton Proof, para 4.22)

70. (2) **Harm to Communal Value** - The almost entire loss of the community use of Kemp's College - which has been central to its historic use, from its foundation and through the ages, would cause significant harm to the communal value of both Kemp's and Wye College.
71. Ms Wedd has explained the degree to which communal value contributes to the significance of these assets.⁵⁷ This relationship began, of course, with the Chantry College, which offered spiritual, educational and social activities for the village. The close relationship between the village and Kemp's College continued following Dissolution, with the continuation of the grammar school and the establishment of the Charity Schools (one of which still operates today in Wye, as the Lady Joanna Thornhill (Endowed) Primary School). With the establishment of Wye Agricultural College in the late 19th century the ties between the College and village became, if anything, even tighter. Indeed, the degree to which Wye Agricultural College affected the Wye village community (and visa versa) was also underscored by the significant number of members of the public - residents, former students and former employees - who spoke about the intimate interrelationship between the College and the village (as well as the interrelationship between the College and its alumni which operates at and national and international level). As Professor Chris Baines explained - who studied at Wye in the 1960s - there was a "*free flow between town and gown*".
72. The severe restrictions on public access to Wye College - principally to the historic core, but also to the 19th Century quads - would reduce the communal value to an almost negligible level. This would result in significant harm to the significance not just of Kemp's College, but also the broader Wye College and the conservation area.⁵⁸
73. In contrast to the systematic analysis and cogent reasoning offered by Ms Wedd, the Appellant's case on the issue of communal value is fragmented and contradictory.
74. As discussed above, the concept is not mentioned at all in the CAT Report, and for this reason not considered by HE. Mr Burton does not address it in his proof. Nor does he address it in his rebuttal proof, despite it forming a central plank of Ms Wedd's analysis. In cross-examination he asserted, without any reasoning, that he did not "*see*

⁵⁷ Wedd Proof, pp34-35, paras A1.4.45-A1.4.54

⁵⁸ Wedd Proof, paras 2.65-2.66 & 2.85-2.95

what communal value has to do with these buildings"⁵⁹ and yet proclaimed as 'very generous' the amount of public access that the proposal would offer.

75. On a proper understanding of the proposal, the degree of public access to the historic core cannot be described as "very generous". Ms Wedd is right to describe the proposal as effectively creating a gated community with very limited public access. In terms of the historic core, the proposals would permit public access to the Great Hall (not parlour or inner parlour), Jacobean Staircase, and interior of the Cloister Quad but only once per month, for no more than 4 hours and even then only by prior appointment.⁶⁰ In terms of the wider Wye College, it is clear that neither Mr Burton nor Mr Fidgett had understood the nature of the proposals, which would likewise severely restrict public access. As is evident from the 'Access and movement' strategy⁶¹, there would be "limited public access routes" which would be "controlled" (presumably a reference to the need for an appointment, and limits on visiting times); the public would get "glimpsed view" through to the interior; but fob entry gates would be used, with the express intention being *"to reduce non-resident permeability"*.
76. Finally, in cross-examination it was suggested that because the heritage assets are currently vacant and devoid of any community activity, any public access must weigh in favour of the proposal in heritage terms.
77. This is, with respect, a false logic.
78. The current situation is undoubtedly harmful to the communal value of the assets. No one would deny that. However, the current situation - which, as one witness explained, is just a blip in the history of these assets - has not (and cannot have) altered the fact of history community use, nor erased the communal value of the assets which derive from that use.
79. The existing situation is harmful because, whilst the site is mothballed, public and community access is non-existent. Accordingly, the current actual use of the buildings does not reflect the historical communal use. However, that position is temporary. As it stands, before this development proceeds, there is a possibility of the assets' being used in a manner which allows for meaningful public and community access and

⁵⁹ XX(RW)

⁶⁰Appeal A: proposed condition 13. Access to the Lecture Theatre would also be permitted on the same terms

⁶¹ CD14o, p15

which, therefore, fully reflects their communal values. TT's proposal would remove *permanently* any opportunity to provide such meaningful public and community access. It would make the existing position – which is harmful, but temporary – permanently harmful.

80. **(3) Physical Interventions** – Ms Wedd also explains that harm would arise from some of the physical interventions to the listed buildings⁶², albeit it is accepted that the harm to significance from physical interventions is of a lesser degree than that outlined above.

81. Ms Wedd, and the Parish Council, recognise that the appeal proposal will bring with it heritage benefits, not least bringing back into use heritage assets of such importance. However, even taking account of the accepted benefits, Ms Wedd concludes that the net harm to Kemp's College would be at **the very highest level of less than substantial harm**.

Wye College

82. In addition to the harm to its communal value (for the reasons outlined above), Ms Wedd⁶³ identifies three ways in which the proposed redevelopment would cause harm to the significance of **Wye College (apart from Kemp's College)**. The harm would arise from:

- i. **The subdivision of the Dining Hall** - the design intent of which was to mirror the medieval Great Hall, which, as Mr Burton agreed⁶⁴, is achieved in large part by the open volume of its internal space. The CAT Report recognises that the Dining Hall has value beyond merely the architectural merit of its exterior (but tantalising tells us this will be discussed in its forthcoming HIA)⁶⁵. Mr Burton 'completely agrees'⁶⁶ that the proposal to sub-divide the Dining Hall would significantly reduce the open hall. This would undermine the design intent and make its historical function unrecognisable.

⁶² Wedd Proof, para 2.67

⁶³ Wedd, Proof, paras 2.69-2.77

⁶⁴ XX(RW)

⁶⁵ CD14m, p126, para 3.1.2.2

⁶⁶ XX(RW)

- ii. **The demolition of circa. 80% of the workshops (and the use of its yard for private gardens and car parking)** - Mr Burton agreed that the workshops were a 'curtilage listed building'⁶⁷. The workshops were constructed in 1903 and were an essential part of the functioning of the agricultural college from its inception. They provided (in part) the practical elements of the teaching at Wye College, whereas the laboratories and classrooms provided the more theoretical elements. The marrying of the practical and theoretical is neatly encapsulated in the 1950s "gumboots and gowns" photo⁶⁸. The workshops therefore have significant historical interest which contributes to the significance of Wye College.⁶⁹ They also have architectural and artistic interest in their own right.⁷⁰ Demolition of the workshop wings, and the use of the workshop yard for private gardens, car barns and car parking, would harm the significance of Wye College
- iii. **The proposals for rebuilding the northern elevation of the Agricola Quad, which does not reinstate the original fenestration** - As Ms Wedd points out⁷¹, there is no justification for the failure to reinstate the northern elevation to its original form, in particular the inclusion of French windows, given the existence of plans from which its original fenestration can be deduced. It is pertinent to note that Mr Burton has assumed, inaccurately, that the northern range of the Agricola Quad would be "*returned to its original form*"⁷²

83. Even taking account of the accepted benefits, Ms Wedd concludes that the net harm would be at a **high level of less than substantial harm**.

84. In addition, the proposals would cause net harm to the **Wye Village Conservation Area** -as a result of the physical alterations⁷³, but also as a result of the loss of community and public access which would rob the village of its character as a

⁶⁷ That is, they fall within the definition of a 'listed building' in Section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 on the basis that it is a "*structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948*"

⁶⁸ Wedd, Proof, p58, Fig.39

⁶⁹ Wedd Proof, pp32-32, A1.4.32—A1.4.35

⁷⁰ Wedd Proof, pp33-34, A1.4.36—A1.4.43

⁷¹ Wedd, Proof, para 2.75

⁷² Burton Proof, para 5.4

⁷³ Wedd, Proof, paras 2.77-2.80

'miniature university town'.⁷⁴ This harm would be **less than substantial, in the middle of that scale.**

NPPF paragraph 196 balance

85. Paragraph 196 of the NPPF provides that:

"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use"

86. A number of observations must be made about the proper applicability of this test:

- i. It has been described, rightly, as a 'trap for the unwary' because although it is expressed as a straight balance between the heritage harm, on the one hand, and public benefits, on the other, the balance is not 'straight'. That is because the effect of s.66(1) (in relation to listed buildings) and s.72(1) (in relation to conservation areas) of the Planning (Listed Buildings and Conservation Areas) Act 1990 establishes a statutory presumption against a proposal which would fail to conserve the significance of listed buildings and conservation areas. It is well established that the failure to conserve significance must be given "*considerable importance and weight*" in the balancing exercise: *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council & Ors* [2014] EWCA Civ 137
- ii. Moreover, where, the weight to be given to the harm is relative to the importance of the asset: as NPPF, paragraph 193 tells us, whilst great weight should be given to the conservation of all designated heritage assets, "*the more important the asset, the greater the weight should be*". Where, as here, the designated heritage assets are of outstanding importance, this means that very considerable weight must be given to this issue.
- iii. The appellant, on its own case, has not sought to contend that the proposals represent the "optimum viable use" of the assets. That is, they have not sought to demonstrate that of the "*range of alternative economically viable uses*" the proposal is "*the one likely to cause the least harm to the significance of the asset*"⁷⁵.

⁷⁴ Wedd, Proof, para 2.95

⁷⁵ CD29 PPG Historic Environment, para 015

iv. Finally, it must be remembered that Ms Wedd has taken account of the purely *heritage* benefits when coming to her conclusions of net heritage harm. It would be double-counting, and a false logic, therefore to take into account heritage benefits again as part of the public benefits.

87. The public benefits of the proposal (as opposed to the heritage benefits) consist primarily of: (a) the delivery of housing, in circumstances where there is a (relatively small) shortfall in the five-year supply and (b) the delivery of a community use in the form of the relocated Heritage Centre, which is to be welcomed. However, as Mr Goodwin explained, these public benefits do not come close to outweighing the significant heritage harm which would arise, and the very considerable weight that must be given to this issue.

Other (non-heritage) harms

88. **Business uses** - The proposal singularly fails to bring forward any business use within Wye College notwithstanding the express requirement to do so within WNP11(e). The Appellant has not sought to rely on any viability evidence to demonstrate that the incorporation of business use would render the proposal any less viable, nor any engineering or other technical evidence to suggest that it would be unfeasible. Indeed, the workshops, for instance, would appear to be a logical place to locate such a low - level business use. This is a clear and unjustified breach of WNP11(e) which weighs against the proposal.

89. **Residential Amenity** - the residential amenity concerns raised by Mr Goodwin relating to units 12, 14, 15 and 16 relating to the proximity of their habitable rooms - in particular the bedrooms - to the public footpath was neither challenged in cross-examination, nor addressed in the written or oral evidence of the Appellant. These factors, together with the impact on Unit 20 (and the proposed condition that windows that serve habitable rooms would be obscured) are obvious weaknesses in the design proposal, and should weigh against the proposal. The business element of the mix of uses in policy WNP11 anticipates and provides a potential resolution to this amenity issue.

Appeal A: Planning Balance

If the tilted balance is not engaged

90. The Parish Council firmly contends that the NPPF, para 196 balance weighs decisively against the proposals (taking account *inter alia* of the statutory presumption set out in s.66 and s.72 of the Listed Buildings Act). If the Inspector agrees, then the NPPF provides a 'clear reason for refusing the development proposed (para 11(d)(i)) and the 'tilted balance' (para 11(d)(ii)) is not engaged.
91. In these circumstances, the section 38(6) balance must also tell against the proposal. The proposal is in breach of the development plan: both as a result of the fundamental breach of the Neighbourhood Plan set out above, and the breach of the heritage policies of the Local Plan. To be added to this is the national policy position – a material consideration which plainly must be given significant weight – that (notwithstanding the public benefits) there is a clear reason for refusing permission. In these circumstances there are no material considerations which could outweigh the breach (because they have already been accounted for in the NPPF, para 196 balance).

If the tilted balance is engaged

92. If, contrary to the Parish Council's case, the inspector concludes that the public benefits of the proposals outweigh the degree of heritage harm that would be caused, such that NPPF, para 196 does not provide a clear reason for refusing permission, the tilted balance (para 11(d)(ii)) would be engaged.
93. As has very recently been confirmed by the Court of Appeal in *Gladman Developments Limited v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 104, when applying the tilted balance, decision-makers are entitled to take into account whether, and to what extent, the proposal is in breach of relevant policies of the development plan.
94. In these circumstances the fundamental breach of the Neighbourhood Plan's vision, objectives and policies set out above, together with (to a lesser extent) the harm caused by the failure to provide any business use and impact on residential amenity,

significantly and demonstrably outweigh the benefits of the proposal, including any heritage benefits.

95. It follows that, even in circumstances where (contrary to the Parish Council's case) the Inspector finds no net heritage harm (or the heritage harm is outweighed by public benefits), when considered overall the section 38(6) balance must still tell against the proposal.

Appeal A: Conclusion

96. Historic England's "*Conservation Principles: policies and guidance*"⁷⁶ explains that "*the fact that a place is neglected should not, of itself, be grounds for agreeing a scheme that would otherwise be unacceptable.*"⁷⁷ The same holds true of heritage assets which are currently unused. The understandable desire to bring the Wye College back into active use should not be reason to permit a scheme which would be so harmful to the significance of designated heritage assets of the upmost importance. This is a one-off opportunity to ensure that Wye College is redeveloped in a manner appropriate to its significance. The failure of this proposal to do so should not be ignored in the haste to bring back the assets into active use.

97. TT should be required to start again.⁷⁸ To begin the design process with a proper understanding of the significance of the assets, and the heritage interests which contribute to their significance, rather than treating significance as an afterthought. To design a proposal which: complements the historic and continuous unity of Kemp's College; ensures that the residential conversion of Wye College respects those elements which contribute to its significance; and, perhaps most significantly provides a level of public access and a community use which accords with the virtually continuous use by the community of Wye (and wider) of the College for circa. 570 years, and which reflects the fact that this longstanding community use has imbued the assets with communal value that contributes greatly to their significance. And, to

⁷⁶ CD30

⁷⁷ CD30, para 153

⁷⁸ The inspector should not assume that, if planning permission for this proposal were refused, the condition of the Listed Buildings would deteriorate. Firstly, it would be in TT's economic interest to maintain its asset. Secondly, ABC have the power to ensure that the listed buildings are adequately maintained either by issuing a s. 215 notice under the TCPA 1990, or issuing a repairs notice under the P(LBCA) A1990.

develop a proposal which meets the objectives and requirements of the neighbourhood plan.

OBJECTIONS TO THE PROPOSALS FOR THE REDEVELOPMENT OF THE OCCUPATION ROAD SITE (APPEAL B)

Impact on landscape character and visual amenity, including the Kent Downs AONB

98. The proposal would be materially harmful to the landscape character and visual amenity of the local area, and would fail to conserve (let alone enhance) the landscape and scenic beauty of the Kent Downs AONB.
99. The Parish Council does not address this matter in detail in its closing, as it relies on the case being advanced by the Borough Council in this regard. However, it has the following, brief, observations on this matter:
- i. The site, and its immediate surroundings, are of the highest sensitivity. It forms a important pedestrian entrance to the village from the North Downs Way and so a first impression for walkers from the east as to the character of Wye. This alone requires that the design should be of the highest quality.
 - ii. As Mr Cox accepted, users of the North Downs Way (and to a slightly lesser extent, Wibberley Way) are also of the highest sensitivity in relation to potential visual impacts. This is due to their using a footpath for recreational use (and to enjoy the countryside) in an area designated for its outstanding beauty.
 - iii. As the LVA explains, the Occupation Road site *“has a relatively limited visual envelope on a local scale, other than a tract of land immediately to the east of the site”*⁷⁹. It is immediately to the east of the site where the North Downs Way and Wibberley Way are located.
 - iv. As Mr Cox accepted⁸⁰, the existing greenhouses on the Occupation Road site are not uncharacteristic of the countryside. He agreed that is their condition, not their form, which currently detracts from the visual amenity of the site and local area.

⁷⁹ CD22h, para 3.119

⁸⁰ XX(RW)

- v. The proposal would not only see the greenhouses replaced with a suburban form of residential development, it would extend that development into land which is greenfield and which currently reads as part of the countryside (ie the weather station/middle field). Indeed, it is here where the large houses, and their imposing garages, are to be located.
- vi. The conclusion of the LVA – that there would be no adverse impacts on visual amenity from any viewpoint (and limited beneficial impact) is not credible. As the exercise undertaken in cross-examination in respect of viewpoint 3 (from the North Downs Way) demonstrated, this conclusion is not sustainable. In that viewpoint, features which had been identified as being an attractive element of the view (vegetation and views of the North Downs) would be negatively impacted; whereas the existing visual detractors would either not change (e.g. commercial properties on the south side of Occupation Road) or be intensified (e.g. the level of parking in the view). This undermines the objectivity, and therefore utility, of the LVA.

Appeal B: Planning Balance

If tilted balance is not engaged

- 100. If the Inspector accepts the Parish Council's (and Borough Council's) case that the development would cause material harm to the landscape and scenic beauty of the Kent Downs AONB, then this is a consideration which must be given "great weight" (NPPF, para 172).
- 101. The material harm caused to the AONB is capable of providing a "clear reason" for refusing the development proposed (NPPF, para 11(d)(i)) (*Monkhill Ltd v Secretary of State for Housing, Communities and Local Government* [2021] EWCA Civ 74)
- 102. In those circumstances, when applying the s.38(6) test, the titled balance would not be applied and the harm to the AONB, together with the fundamental breach of the vision, objectives and policies of the Neighbourhood Plan, decisively outweighs the benefits of the proposal, which are essentially limited to the delivery of housing (in circumstances where the Borough Council cannot demonstrate a five year supply, but the shortfall is relatively small). This takes account of the very limited contribution to the need for affordable housing which would be made, in the context of need for such

housing both in Wye and Ashford more generally (as both the WNP and Local Plan acknowledge).

If tilted balance is engaged

103. Unlike the Borough Council's case, however, the Parish Council's case does not stand or fall on the finding of material harm to the AONB. If, contrary to the Parish Council's case, the Inspector finds that there would be no material harm to the landscape and scenic beauty of the Kent Downs AONB then the titled balance would be engaged.

104. However, the fundamental breach of the neighbourhood plan's vision, objectives and policies set out above significantly and demonstrably outweighs the benefits of the proposal, particularly the delivery of housing.

105. It follows that, even in circumstances where (contrary to the Parish Council's case) the Inspector finds no material harm to the AONB, when considered overall the section 38(6) balance must still tell against the proposal.

OBJECTIONS TO THE PROPOSALS FOR THE REDEVELOPMENT OF THE FORMER ADAS SITE (APPEAL C)

Context

106. As TT's draft Masterplan for the ADAS site explains, the starting point for both the identification of the "appropriate reuse of the site" and the design evolution, was the 'pre-requisite' of achieving a "*comparable value to Permitted Development Rights*". Matching the value of the (then) existing permitted development as described as a "*minimum viability requirement*".⁸¹

107. Moreover alternative potential uses, other than residential, were discounted at least in part because of their failure to meet the "*minimum viability requirement*".

108. The Council's stated position is that the permitted development rights fallback no longer exists (if it ever did).⁸² This is on the basis that the lawful use of the ADAS site is not as offices (B1(a) use), but is either industrial (B1(c)) or sui generis. Either way, it does not benefit from permitted development rights to convert to residential.

⁸¹ CD/9, p66

⁸² See the Cabinet Report (October 2019) CD11, paras 6-13

Although the Appellant has asserted that it disagrees with the Council's analysis, this is of little, if any, relevance given:

- i. There is no extant prior approval for the redevelopment of the site for residential;
- ii. The Appellant has not sought, in the 16 months since the Council made its position clear, to establish its position through, say, making an application for a certificate of lawful use, supported by relevant evidence.
- iii. The Appellant has not sought to support its case that it benefits from permitted development rights at this appeal (Mr Fidgett refers to the issue as having 'limited relevance').⁸³

109. It follows that there is, before this inquiry, no 'fallback' option advanced of redeveloping the ADAS site in accordance with permitted development rights.

Impact on landscape character and visual amenity, including the Kent Downs AONB

110. The proposal would be materially harmful to the landscape character and visual amenity of the local area, and would fail to conserve (let alone enhance) the landscape and scenic beauty of the Kent Downs AONB.

111. As with the Occupation Road site, the Parish Council does not address this matter in detail in its closing, as it relies on the case being advanced by the Borough Council in this regard.

112. It notes only that the design proposal has plainly not started from the objective of maintaining and enhancing the landscape and scenic beauty of the AONB. Rather the design starting point of the design was achieving a specific viability requirement – the justification for which no longer exists – and its final design was expressly the result of a “compromise” advanced by the site owners (and even then not a compromise on design grounds – but rather because of concerns raised with regards to the locational sustainability of the site).

⁸³ Fidgett, para 3.1.3

Appropriate re-use, having regard to the concept of a walkable village

113. WNP11(h) requires that development proposals for the former ADAS buildings achieve an *“appropriate re-use of the site...having regard to the concept of a walkable village”*. The supporting text to the WNP also explains that the ADAS site *“lies well outside the 5 minute walking distance from the village centre and residential or intensive business use would not, therefore, be appropriate”*⁸⁴
114. The decision maker, therefore, is mandated to have regard to the concept of a walkable village when considering what is, and what is not, an appropriate re-use.
115. The walkable village is a *“cornerstone of the WNP’s approach to the future planning and development of the village”*⁸⁵. A ‘good indicator’ of the walkable village is identified as locating housing within a 5 minute walk, or about, 400m from the centre of the village (which is defined in the WNP as the Bridge St/Church St junction).
116. Despite initially having reservations about the appropriateness of the concept (following objections raised by TT), having heard representations in its favour the Neighbourhood Plan Examiner was won over. He concludes that *“there is a strong justification for the concept of the walkable village, and that there is sound reasoning to relate this to a walking distance of approximately 5 minutes from the centre of the village as defined in the plan”*⁸⁶ Although recognising that, in relation to the ADAS site, there was a ‘tension’ between the concept and *“national policies and guidance relating both to the reuse of brownfield land and the definitions of permitted development”* (the latter of which no longer applies), he nevertheless concludes that the concept was *“sound and coherent”*. As noted, the Examiner’s *“positively worded addition”* to Policy WNP11 expressly mandates that the concept of a walkable village be taken into account when considering what is, and is not, an appropriate re-use of the site.
117. Given that context, the concept of a walkable village must be given significant weight.
118. The current proposals stretches well-beyond breaking point the concept of a walkable village. It proposes twenty residential dwellings at a location almost 900m⁸⁷ from the defined centre of the village on foot (approximately an 11-12 minute walk). This is over

⁸⁴ WNP, p27

⁸⁵ WNP, p30

⁸⁶ CD4, paras 63-65

⁸⁷ XIC Goodwin (RW)

twice the distance of what is the adopted yardstick for assessing here whether a development is consistent with the 'walkable village' concept. At the human scale Ms Field expressed the practical reality of walkability, from the perspective of a parent with small children walking from ADAS to facilities.

119. Having regard to the nature of the use, as well as the number of dwellings proposed⁸⁸, the development proposals plainly do not fulfil the concept of a walkable village and do not, therefore, amount to an "appropriate re-use" of the ADAS site.

Appeal C: Planning Balance

If the tilted balance is not engaged

120. If the Inspector accepts the Parish Council's (and Borough Council's) case that the development would cause material harm to the landscape and scenic beauty of the Kent Downs AONB, then this is a consideration which must be given "great weight" (NPPF, para 172).
121. In those circumstances, the harm to the AONB, together with the fundamental breach of the vision, objectives and policies of the Neighbourhood Plan, and the specific conflict with WNP11(e), decisively outweighs the benefits of the proposal, which are essentially limited to the delivery of housing (in circumstances where the Borough Council cannot demonstrate a five year supply, but the shortfall is relatively small). This takes account of the failure of the proposal to provide any affordable housing in the context of need for such housing both in Wye and Ashford more generally (as both the WNP and Local Plan acknowledge).

If the tilted balance is engaged

122. As with Appeal B, unlike the Borough Council's case, the Parish Council's case does not stand or fall on the finding of material harm to the AONB. If, contrary to the Parish Council's case, the Inspector finds that there would be no material harm to the landscape and scenic beauty of the Kent Downs AONB then the tilted balance would be engaged.

⁸⁸ The number of dwellings proposed is relevant because the concept of a walkable village may not be harmed, at least to the same degree, if the residential use was very low scale, say a few dwellings. Although the Parish Council's position remains that any residential reuse of the ADAS site is far from preferable.

123. However, the fundamental breach of the neighbourhood plan's vision, objectives and policies set out above, together with the specific conflict with WNP11(e), significantly and demonstrably outweighs the benefits of the proposal, particularly the delivery of housing.
124. It follows that, even in circumstances where (contrary to the Parish Council's case) the inspector finds no material harm to the AONB, when considered overall the section 38(6) balance must still tell against the proposal.

Conclusion

125. For all the above reasons, it follows that permission should be refused in all three cases, and the appeals dismissed.

ROBERT WILLIAMS

Cornerstone Barristers

12th February 2021