**IN THE MATTER OF**

**THE TOWN AND COUNTRY PLANNING ACT 1990**

**AND IN THE MATTER OF:**

**‘APPEAL A’: FORMER WYE COLLEGE, WYE, ASHFORD**

**‘APPEAL B’: LAND OFF OCCUPATION ROAD, WYE, ASHFORD**

**‘APPEAL C’: FORMER ADAS SITE, WYE, ASHFORD**

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**CLOSING SUBMISSIONS**

**ON BEHALF OF**

**THE APPELLANTS**

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1. These Closing Submissions are made on behalf of the Appellants. They are made in respect of the three con-joined appeals:

Appeal A: Former Wye College, Wye, Ashford

Appeal B: Land off Occupation Road, Wye, Ashford

Appeal C: Former ADAS site, Wye, Ashford

1. Former Wye College comprises previous developed land within the settlement of Wye, including significant and nationally important Grade I, Grade II\* and Grade II buildings, as well as unlisted buildings of various ages and merit. It is proposed to be restored and re-used as a mixed-use residential and community development. It has the support of English Heritage, SPAB and – now – the local planning authority, Ashford Borough Council [‘the Council’].
2. The works the subject of Appeal A already have the benefit of Listed Building Consent, as the Council was always supportive of the scheme from a heritage perspective. The two matters which had prevented the Council from granting the associated planning permission (a ‘clawback’ clause and the use of the ‘Latin School’) have now been resolved. The Council is satisfied that the clawback mechanism agreed is suitable, and it now accepts that the proposals accord with policy on community provision (there is a net improvement qualitatively and quantitatively on the current provision). As such, it does not resist the grant of planning permission for Appeal A.
3. Land off Occupation Road comprises part previously developed land, embraced by the ‘informal’ settlement boundary for Wye, and whose development parcel lies wholly within the ‘village envelope’ as drawn in the draft Wye Masterplan which the Council resolved to adopt in October 2019. It is proposed for 40 dwellings and significant open space and planting. The site is, thus, identified for residential development and the principle of its proposed re-development is not in dispute. The site lies within the Kent Downs AONB, as does the whole of Wye, and is seen in the context of the existing settlement and as already developed; no objection is raised by the AONB Unit.
4. The Former ADAS site is also previously developed land. It is identified in the draft Wye Masterplan in 2018 for 20 dwellings, but in 2019 the Council resolved to reduce the figure to 15 dwellings. Once more, the AONB Unit raise no objection to the scheme of 20 dwellings proposed. Once more, the Council does not oppose the principle of redevelopment for residential use, and has resolved to support 15 dwellings on the site.
5. In contrast, the Parish Council maintains an historic environment objection to Appeal A (as does the interested party, WyeCRAG, which would prefer to see a hotel and conference centre in the oldest part of the former college buildings). Further, the Parish Council considers (contrary to the view of the Local Planning Authority and Kent CC as Highways Authority) that the ADAS site is too remote to be accessible by sustainable transport means. It also joins the Borough Council in raising landscape objection to both Appeals B and C.
6. Finally, Natural England has raised a ‘concern’ about the effect of nutrient enrichment from Appeals B and C in respect of Stodmarsh SPA, SAC and Ramsar.
7. As a result, the Inspector identified the following ‘Main Issues’:

Appeal A:

1. Whether the site is a suitable location for housing and community uses and whether the community uses proposed are adequate having regard to the development plan;
2. The effect of the proposal on the historic environment;
3. Whether sufficient infrastructure provision is secured in the event of an improvement in viability;
4. The effect of the proposals on Stodmarsh SPA, SAC and Ramsar.

Appeals B & C:

1. Whether the sites are suitable locations for housing having regard to the development plan;
2. The effect of the proposals on the Kent Downs AONB and the character and appearance of the area generally;
3. Whether adequate provision is made for infrastructure;
4. The effect of the proposals on Stodmarsh SPA, SAC and Ramsar.

1. Of these Main Issues, the provision of s. 106 obligations in a satisfactory form have meant that the Council and Appellant agree that Issue (3) in respect of all three appeals is met.
2. These submissions, therefore, are structured as follows:
3. Effect of Appeals A, B and C on Stodmarsh SPA, SAC and Ramsar;
4. The Development Plan;
5. The Wye Masterplan;
6. Housing Land Supply and its consequences;
7. Suitability of Appeal A site for housing and community use;
8. Adequacy of Appeal A community use;
9. Effect of Appeal A on the historic environment;
10. Suitability of Appeal sites B and C for residential use;
11. Effect of Appeal sites B and C on the AONB and character and appearance of the area;
12. Planning Balance for Appeals A, B and C, and Conclusions.
13. *Effect of Appeals A, B and C on Stodmarsh SPA, SAC and Ramsar:*
14. The background to this issue is set out in Miss Cameron’s evidence. In short, there is evidence that a European protected site under the Habitats Directive/Regulations, Stodmarsh SPA, SAC and Ramsar, is experiencing eutrophication as a result of Nitrogen and Phosphorous levels and, pending strategic level assessment and mitigation, all new developments within the water catchment of the SPA are required to demonstrate ‘nutrient neutrality’ in order for Natural England to be able to advise that significant (in-combination) effects can be excluded with the sufficient degree of scientific certainty. Without this, the ‘appropriate assessment’ required of the decision-maker as ‘competent authority’ for the purposes of the Habitats Directive/Regulations could not be favourable and planning permission would have to be refused.
15. No objection is taken by Natural England to Appeal A. This is because having regard to the historic use of that site and the proposed use, NE recognises that there will be no additional nutrient loading into the European protected site. It therefore passes the test of nutrient neutrality and the appropriate assessment can conclude favourably.
16. As regards Appeals B and C, it is proposed to make use of on-site nutrient stripping of Phosphorous and Nitrogen from the foul water flow, through the operation of Package Treatment Works [‘PTPs’]. With these in place, together with the ‘net’ comparison of the existing land use and the proposed land use, in accordance with NE’s calculation guidance, the results show either a net negative or a small net positive of nutrient loading. Where there is a small net positive, the embedded ‘non-quantitative’ measures operate to bring the calculated nutrient budget to less than zero (ie to achieve net nutrient neutrality). Absent the controversy of the account taken of PTPs in the calculation, none of the above is disputed by NE.
17. The issue arises as a result of the recently added paragraph 5.18 of the 2020 NE Stodmarsh Advice to LPAs[[1]](#footnote-1). This advises that the effect of on-site PTPs might be counter-acted by utility companies operating the relevant WWTW simply changing (ie reducing) the chemical dosing they do, so as to take advantage of new post-PTP flows with reduced nutrient concentrations, meaning that the exiting waste water from the WWTW is at higher concentrations than the entering waste water. Thus, it is reasoned, utility companies might comply with their Environmental Permit limits per litre, but put through a greater out-put flow at those limits, regardless of the fact that the in-put from a given development has had its nutrients stripped out by a PTP before its water is sent to the WWTW. As NE has no control over such a practice, it is said, and it would negate the effect of the PTP, the use of an on-site PTP does not provide the necessary ‘certainty’ of mitigation and should therefore be ignored in the calculations of nutrient neutrality.
18. As set out in Miss Cameron’s evidence, this whole approach of NE, as expressed in para. 5.18 of the guidance is a matter of live controversy. It appeared in the guidance without consultation and without legal advice. It implicitly accepts that the current discharge limits in the EPs for the WWTW are at excessively high levels – but does not acknowledge that the proper course is to fulfil its continuing duty to review and regulate the EPs, rather than placing a moratorium on new development that cannot demonstrate net nutrient neutrality. As pertinently, it fails to recognise that – regardless of the EP limits – the utility companies are themselves bound by Art 6(2) of the Directive not to conduct their operation in a manner that may endanger the favourable status of the European protected sites. It would be unlawful, therefore, of the utility company to alter its chemical dosing procedures if that has the effect of increasing nutrient loading in Stodmarsh SPA, SAC and Ramsar.
19. Thus, were NE to assert an objection (or ‘advise’ a lack of sufficient certainty) on the basis of para. 5.18, the Appellant submits that it would be unlawfully founded, and the competent authority is entitled (indeed, required) to disregard it as misplaced.
20. Fortunately, in this case the Inspector does not have to rule on the matter. That is because of two things: (1) the Wye WWTW does not undertake the chemical dosing exercise about which para. 5.18 is concerned, so the advice in para. 5.18 simply does not arise; and (2) were there a genuine likelihood of the influent to the Wye WWTW from the appeal sites being tampered with in the WWTW to increase the nutrient loading of the equivalent volume of effluent from the WWTW (even noting, as above, that that would be unlawful), there is a simple solution of not sending the PTP-treated flow to the Wye WWTW at all, and discharging either by a private discharge consent, or by involving a de-regulated water company.
21. By either of these approaches, the concern expressed as regards the use of PTPs in the net calculations expressed in para. 5.18 of the NE guidance can be set aside for Appeals B and C, even if (which is by no means conceded) it is a valid point for development elsewhere.
22. In short, the Inspector, as competent authority, can conclude a favourable appropriate assessment on all three appeals, the Habitats Directive/Regulations do not act to prevent the grant of planning permission, and the negative effects of para. 177 of the NPPF are not engaged.
23. *The Development Plan:*
24. The adopted development plan is the Ashford Local Plan (2019) [‘the ALP’] and the Wye Neighbourhood Plan (2016) [‘the WNP’].
25. The ALP contains no site-specific policies for Wye. The Council has raised the policies of HOU3a in respect of windfall development within settlement boundaries and HOU5 in respect of windfall development outside settlement boundaries. However, for this part of Wye there is no adopted settlement boundary to indicate their operation. HOU1 (affordable housing is relevant) but needs to be read in the light of national policy on vacant building credit. Policy COM1 (community use) is also relevant, but, as noted above, the Council is now satisfied that the terms of COM1 are met by the proposals.
26. It is the WNP which provides for site level development plan policy. WNP1a provides that the ‘village envelope’ in the vicinity of the appeal sites will be established through the Masterplan process required under policy WNP6. WNP6 requires the adoption of a Masterplan for mixed use development across the area formerly covered by old policy WYE3 of the now superseded Tenterden and Rural Sites DPD [‘the WYE3 site’]. Policy WNP11 then sets out a series of subparagraphs to guide the development of specific areas within that Masterplan: (e) is relevant to the Appeal A site; (g) applies to the Appeal B site; (g) and (h) apply to Appeal C site (paragraphs (i), (j) and (k) are dm matters of general application).
27. *The Wye Masterplan:*
28. WNP6 requires the production of a Masterplan for the WYE3 site. WNP11 guides its content. WNP1a relies upon it to establish the settlement boundaries for this part of Wye. The Masterplan is then to guide the delivery of the WYE3 mixed development thereafter.
29. A Masterplan has been produced[[2]](#footnote-2). It has been undertaken with full consultation of the Local Planning Authority and the Parish Council, other stakeholders and the public. The Borough Council expresses itself as entirely satisfied with the process undertaken. Officers took the draft Masterplan twice to Cabinet for approval[[3]](#footnote-3). On each occasion, Cabinet resolved to approve it[[4]](#footnote-4).
30. It was at the first Cabinet meeting (September 2018)[[5]](#footnote-5) that the Council decided to adopt the Masterplan as ‘informal guidance’ rather than as SPD as envisaged in WNP6. Other than a limited number of alterations, however, the content of the Masterplan was approved, including the proposed development of all three appeal sites as subsequently delivered by the appeal proposals, and the ‘village envelope’ discussed above.
31. The second Cabinet meeting (October 2019)[[6]](#footnote-6) was convened to reflect the altered circumstances on the ADAS site, as the Council had revised its view on the lawfulness of a ‘fallback’ position represented by permitted development right for 52 flats. It had come to the view that there was no such fallback. In the light of that, Cabinet were asked to re-endorse the decision to allocate the ADAS site for residential but at an ‘up to 15 dwellings’ rather than an ‘up to 20 dwellings’. No changes were proposed to the Masterplan in respect of the Wye College complex, nor the land north of Occupation Road. Cabinet duly resolved to adopt the Masterplan as proposed to be amended, and to do so as informal planning guidance, in line with its earlier resolution of September 2018.
32. Thus, aside from the question of the statutory status of the document, the Council has fulfilled its part under WNP6/11and 1a. It has endorsed the document which turns the policy aspirations of the Neighbourhood Plan into a comprehensive suite of site-specific proposals which together deliver WYE3 through a series of planning applications to follow thereafter.
33. As the Rebuttal of Mr Fidgett shows, they have now been delivered in part, with the Wye Free School east of Olantigh Road, the Italian University campus at Withersdane, and the commercial uses south of Occupation Road. The three appeal schemes deliver the next phase (restoration and re-use of the listed Wye College, and residential development of the pdl on the ADAS site and north of Occupation Road), with the care home and commercial uses on the west of Olantigh Road to follow as phase 3. Practical steps are, therefore, in train to deliver the WNP on the ground, through the mechanism of adhering to the policy guidance contained in the Masterplan as approved by the Borough Council. Even though these three current applications have had to go to appeal, it is down to disputes on the details, not on the principle of the development they are showing[[7]](#footnote-7).
34. It is ironic, therefore, that it has been the actions of the Parish Council that has led there to be no adopted Masterplan for Wye. The relevant stakeholders were convened and the Borough Council, as Local Planning Authority, has twice endorsed the contents of the Masterplan as the way forward for WYE3. Objecting, as the threatened High Court challenge sought to do, to the adoption as ‘informal’ guidance and demanding that it become DPD or SPD, would only have elevated the status of the Masterplan.
35. The Parish appears to have overlooked the fact that, while it is an important stakeholder, it is not the local planning authority for Wye; it is for the Borough Council, not the Parish Council, to decide the contents of the Masterplan under WNP6. The ‘merits’ objections on behalf of the Parish Council and WyeCRAG had been already considered and taken into account by the Local Planning Authority (twice). There are no changes of circumstances which would indicate that the Borough Council would take a different view simply because the statutory process of a DPD/SPD were to be followed.
36. In truth, there is more than a sense of opportunism apparent in the stance of the Parish Council/WyeCRAG in achieving this policy *impasse*. It suits them not to have WNP6 fulfilled. It allows them to claim that *any* proposals must be in breach of the WNP, as there is not yet an *adopted* Masterplan. But it is they who have brought about the block in the process – and it is only one of process: the *substance* of the Masterplan is agreed by the Borough Council[[8]](#footnote-8).
37. It is this substance which the three appeal schemes now seek to deliver. They accord with the Masterplan; they sit along side already delivered parts of that Masterplan; they do not prejudice the delivery of the remaining parts of the Masterplan. They can be seen, therefore, to be playing their part in delivering the aspirations of WNP11, as expressed through the mechanism of WNP6, which has now, in substance, been complied with.
38. *Housing Land Supply and its consequences:*
39. It is agreed that the Council cannot demonstrate a 5 year Housing Land Supply. There is a dispute as to the extent of the shortfall but it is agreed that the Inspector does not need to determine which contended for shortfall is the most accurate as both parties are agreed that the shortfall is significant and the operation of para. 11(d) of the NPPF is engaged. As such, ‘the most important [policies] for the determining’ of the application are deemed ‘out of date’. As such, they and any breach of them (if any) are to be accorded reduced weight. This would, therefore, include WNP6, WNP11, HOU3a and (if applicable) HOU5.
40. In addition, although the Appellant argues strongly, on the evidence, that the proposals on all three appeals *accord* with the development plan and hence para. 11(c) of the NPPF is engaged, were there a breach of the development plan (taken as a whole[[9]](#footnote-9)) to be found, paragraph 11(d) and the tilted balance is brought into play.
41. In this regard, it should be noted that – on the evidence – Stodmarsh SPA, SAC and Ramsar and para. 177 of the NPPF does not exclude the tilted balance on any of the sites. No heritage objection properly triggers para. 196 of the NPPF for the designated heritage assets on Appeal A; Appeal A brings an important heritage *benefit*. No AONB objection is taken in respect of Appeal A, and none is properly sustained in relation of Appeals B and C. Consequently, these are not appeals where Footnote 6 triggers para. 11(d)(i). If there is a material breach of the development plan taken as a whole (which is not accepted), the ‘tilted balance’ in para. 11(d)(ii) is engaged.
42. *Suitability of Appeal site A for housing and community use:*
43. No party to the inquiry disputes the suitability of Appeal site A for housing and community. It is a complex of existing buildings which is proposed for re-development (part conversion and part demolition and new build) within the settlement of Wye, a sustainable settlement for additional residential development and possessed of the services and facilities to serve the new residents.
44. Similarly, there is existing community use on the site in the form of Wye Heritage currently located in the Latin School. This use will be re-located a short distance along the same road in a larger and less constrained building more suitable for its occupation.
45. In addition to its locational suitability, Appeal site A is expressly identified as suitable for re-development, with residential and community uses as acceptable land uses in policy WNP11(e), and detailed as such in the Masterplan.
46. Appeal site A is, in short, eminently suitable for housing and community use and no party suggests otherwise.
47. *Adequacy of Appeal A community use:*
48. The Borough Council had originally issued a putative reason for refusal that the Appeal A scheme was in conflict with policy COM1 in not retaining the Latin School in community use. This was a point that had appealed to Members rather than officers, who had actually concluded the reverse – namely that COM1 was satisfied by the relocation of Wye Heritage to its new home in the complex.
49. After the exchange of evidence, the Council reflected on its case on COM1 and acknowledged that the re-provision of better community accommodation did indeed accord with COM1, and its objection could not be sustained.
50. It is fair to say that the Parish Council and WyeCRAG would like to see more community use on the Appeal A site (if a hotel and conference centre can be so described) but their aligned cases on that point argues that this is needed to avoid heritage harm to the Grade I and Grade II\* listed building by reference to their ‘communal significance’, rather than an argument based on COM1.
51. Consequently, development plan policy on the provision of community use on the Appeal site A is met and this issue does not weigh against the grant of permission. Indeed, as there is a net improvement quantitatively and qualitatively in the space made available to Wye Heritage, this issue weighs as *benefit* in the planning balance.
52. *Effect of Appeal A on the historic environment:*
53. The local planning authority has always been supportive of Appeal A from the point of view of the historic environment. This accords with the view of the statutory consultees, Historic England and the SPAB. Indeed, the ‘timeline’ produced by Mr Fidget, and indeed the documents before the inquiry demonstrate the positive and collaborative engagement of all the relevant experts throughout the formulation and determination of the scheme which is Appeal A.
54. This should come as no surprise. The Appeal A site, south of the footpath, contains a complex of Grade I, Grade II\* and Grade II listed buildings which have been described as of ‘outstanding national importance’ and, according to the ‘CAT Report’[[10]](#footnote-10), whose significance ‘cannot be overstated’.
55. In that context, it is untenable to suggest that the Appellants, their advisers, EH, SPAB or the Borough Council underplayed or failed to appreciate the significance of these buildings. Appeal A is not a scheme in which the developers seek to ‘excuse’ damage to heritage assets by pleading ‘public benefits’ and relying on the operation of para. 196 of the NPPF. Rather, this is a scheme which has sought to – and does – deliver a net heritage benefit: it restores and brings these wonderful buildings back into good heart, with a positive new use and a secure future.
56. Much time was taken in the inquiry by considering the WyeCRAG proposals. The close relationship between WyeCRAG and the Parish Council is apparent from the shared personnel as witnesses and PC members. It is apparent (and understandable) that many still harbour what may not unrealistically be termed a sense of grief at Imperial College’s decision to close the Wye College in 2008. But no party has asserted that there is any prospect of a residential education institution returning to the site.
57. What is irresponsible, in the context of this significant complex of buildings of the highest historical importance, is to allow that regret (or even anger) at a decision of the University thirteen years ago to transform itself into a determination to stop the beneficial re-use of these buildings, with full restoration and a secure future, in the hope that ‘the community’ might be able to do something different with them.
58. The WyeCRAG ‘proposal’ which its Closings carefully say are *not* a promoted scheme, and whose merits are *not* placed before the Inspector, is a dangerous mirage. It involves ‘the community’ being given the Medieaval and Jacobean ranges of the former college for free and a £3.6m fundraising project to boot, in order to separate itself off from the rest of the college, and institute a range of non-residential uses, including hotel bedrooms, which would involve at least as much, and arguably more, intervention into the historic fabric as the Appeal scheme.
59. The Parish Council, while separately represented, appears to favour the WyeCRAG proposals, and mounts a case of ‘heritage harm’ on the basis that the appeal scheme would give ‘restricted’ public access to the historic core.
60. First, it must be remembered that in considering impact on the significance of the heritage asset, we need to assess what is proposed, not what someone else would like to propose if they were blessed with the ownership and resources necessary to carry out their own ideas.
61. Secondly, in looking at what is proposed, it will be seen that there are only three locations of physical intervention in the historic fabric: Unit 32 to Unit 18; Unit 32 to the Hall and Unit 18 to the Hall. In two of those, all that is proposed is that additional fire and noise insulation be added to the surface of the fabric; in one (the old Solar) the insulation will lie behind *restored* panelling – ie the building is being cared for and improved. Alongside this, the entirety of the listed building (Grade I, II\* and II) is being restored and cared for, with particular highlights being the restoration of the ‘Ancient Britons’ 17thC staircase and the opening of the 15thC solar roof structure. This is not heritage harm, this is massive heritage benefit, all the more weighty because of the importance of the buildings in question.
62. Thirdly, the allegation of heritage ‘harm’ to the creation of two dwellings in the ‘Kemp College’ complex overlooks (or glosses over) the fact that there has always been a balance between ‘public’ and ‘private’ spaces. From its foundation in 1447, this has been a residential institution, with its members living on site and participating in shared activities in the ‘public’ rooms – principally the Great Hall and its adjacent Parlour. That is the pattern of use of late medieaval layouts, both secular and lay[[11]](#footnote-11). It was perpetuated by the Agricultural College and will be perpetuated by the Appeal A proposals. All residents of the Appeal A complex (Grade I, II\*, II and unlisted to the north) will have a shared *communal* centre in the suite of public rooms preserved in the heart of the former College.
63. It is a false analogy, therefore, to say that the Appeal proposals, by creating Units 18 and 32 in Cloister Quad ‘dis-integrate’ the College. The College complex remains one, integrated residential community, with their private quarters, their shared grounds and their communal spaces.
64. By contrast, the WyeCRAG ambitions for a hotel and conference centre are likely to involve greater intervention in the historic fabric, and will effect a definite separation from the residential conversion of the Victorian and Edwardian ranges and the commercial uses in the ‘Kemp College’ buildings.
65. Lastly, we come to the question of ‘public access’. Public access is not to be confused with ‘communal value’ – which appears to have been the foundation of WyeCRAG’s mistaken approach. There is no doubt that the listed College has a ‘communal value’. That is, the buildings hold a special place in the identity of the community. That may well have been fostered by the past experience of accessibility of the complex to members of the public. It will also have derived from the occupation of the College buildings by the College as an institution. But that public access and that occupation ceased in 2008 when the College closed. It is the built complex, not the institution of the College, which is the ‘designated heritage asset’.
66. Two things may then be observed. The first is the principle that no owner/occupier of a heritage asset can be obliged to grant any public access. To not do so, therefore, is not to cause harm to significance of the heritage asset (which is what we are here discussing). The asset remains unchanged; the asset’s significance is unaffected. The second flows from this: the College complex may have accrued ‘communal value’ by virtue of its past associations and use, but that ‘communal value’ is not dependant on continued public access (or any particular degree of access). This is a point, indeed, made by the Parish Council, who assert – rightly – that closure to the public in 2008 has not negated the communal value of the heritage assets; it has not erased history or past user.
67. Consequently, as accepted in cross-examination by Miss Wedd[[12]](#footnote-12) not having any public access does not amount to harm (because none can be assumed or guaranteed). As the Inspector observed, the removal of public access is not a consequence of the Appeal scheme; it is a consequence of a particular occupier shutting up shop. The flip side is that *any* public access secured by condition is a (heritage) benefit of the proposals. ‘Benefit’ does not rest on the negative side of the balance.
68. If, as seems to be beyond doubt, there is a strong element of communal value attaching to the heritage significance of these buildings, one would accord particular weight to this positive, namely that the Appeal scheme provides secured public access. In the context that none is - or can be – obliged, that is indeed a ‘generous’ provision, as Mr Burton rightly observed.
69. Thus, the three elements[[13]](#footnote-13) objected to by Miss Wedd can be resolved as follows: the physical interventions are limited and unobjectionable and already have listed building consent; the scheme actually holds the College complex together in a cohesive and historically appropriate manner (ironically, more so than under WyeCRAG’s alternative proposals); and the level of public access to be provided registers as a ‘benefit’ not a harm.
70. It is, perhaps, no surprise, therefore, that with the heritage objection having no substance, the heritage case as presented for the Parish Council focuses on procedure not merits, namely the alleged inadequacy of the information presented to HE and ABC. That case should not disguise the only matter for determination under this main issue: do the proposals cause net heritage harm? The answer is a resounding ‘no’: the proposals, to restore and revive a nationally important complex of Grade I, II\* and II buildings provide a clear heritage *benefit*, which should be accorded great weight.
71. Para. 196 of the NPPF is not, therefore engaged. Para. 192 plainly supports permission being granted for this scheme.
72. *Suitability of Appeal sites B & C for residential use:*
73. No party disputes the suitability of Appeal site B for residential use. The area proposed for development is previously developed land, adjacent to the secondary school and close to the centre of the village. Most of it is within the ‘informal’ settlement boundary of Wye and all of it within the ‘village envelope’ approved by the Council under the Masterplan. That part of the wider site, to the East, outside the village envelope [‘the Strawberry Field’] is proposed to be retained as a grazing field, with additional landscaping and a carpark for walkers of the North Downs Way.
74. As pdl in the AONB, sustainably located as regards the settlement of Wye, it is ideally suited for residential use, as an opportunity to provide much needed housing in an accessible location and at the same time improve the special qualities of the AONB. In addition, it is embraced by policy WNP11(g) to contribute to the (approximately) 50 dwellings anticipated and identified in the Masterplan for residential development very much as now proposed to be delivered by the Appeal proposals.
75. The Borough Council does not dispute the suitability of Appeal site C for residential use. Following its re-consideration of the ‘fallback’ position on the ADAS site, it adjusted the quantum of proposed development in the Masterplan from ‘up to 20’ to ‘up to 15’ dwellings.
76. The Parish Council maintains an objection based on its concept of a ‘walkable village’ which uses 400m as an outer threshold. Even then, WNP11 does not rule out residential use on the ADAS site. The site is some 870m from the identified ‘centre point’[[14]](#footnote-14), along existing or newly created pavements, well-lit and overlooked, down Olantigh Road and through the village. The secondary school is even closer. No accessibility objection could seriously be sustained for a residential scheme in such a location. The local planning authority was right to accept the point, both in the Masterplan process and in the planning application.
77. *Effect of Appeal sites B and C on the AONB and character and appearance of the area:*
78. As just observed, both Appeal Sites B and C are previously developed land[[15]](#footnote-15) identified as suitable for residential development. Both lie in the AONB, as does the whole of Wye. Neither is alleged to be a ‘Major development’ within the meaning of para. 172 of the NPPF, but in any event, the principle of their re-development is not in dispute.
79. For both of them, the LVIA recorded a landscape character impact on the ‘landscape receptor’ AONB of ‘*beneficial*’[[16]](#footnote-16). This is correct. These two proposals amount to opportunities to remedy two derelict developed sites in the AONB and re-develop them positively, in their village context, for village-scale housing, open space and green infrastructure. In character terms, that will *improve* the landscape resource of the AONB. It is no great surprise, therefore, that the guardians of this landscape, the Kent Downs AONB Unit, raise no objection to either scheme.
80. What cloaks itself as a landscape objection on behalf of the Borough Council, therefore, is in truth a series of design criticisms. The principal change in character is to move from obsolete structures to village housing. It matters not, in assessing that change in character, whether the verges are this wide or that wide, the houses face this way or that way, whether the density at the Appeal B site is 10-14 dph or 20dph, or the absolute numbers on the Appeal C site is 15 or 20 dwellings. The *change* is to village-scale housing and, in its context and against its existing baseline, that landscape change is a good thing.
81. This improvement in the landscape of the AONB will be particularly apparent along the North Downs Way passing Appeal B site. It is undoubtedly an important walking route, down from the Wye Crown, into the village of Wye. Currently it is anything but attractive as it passes the horticultural buildings and over-grown conifer hedge. That deleterious context will be replaced by an attractive village-scale arrangement of houses set in their own gardens, public open space and linear green infrastructure. It will be a much more fitting entrance to the village.
82. To complain that it would be better to replicate ‘ribbon development’ along certain other road entries into the village (even if that were a good idea – which may be doubted) does not displace the fact that the scheme improves on what is there at the moment.
83. Similarly, for a new officer, Miss Westphal, to take individual objections on layouts and detailing of both Appeals B and C (available to her simply because the scheme is at ‘detailed stage’) overlooks the fact that these schemes are themselves the result of iterations with design officers at the Borough working on the principles established through the Masterplan process. That is why they are presented as detailed schemes – to move rapidly towards delivery of what was thought to be a shared vision with officers. Just because Miss Westphal would prefer to design the schemes differently now does not mean that the carefully considered designs before the Inspector are ‘harmful’.
84. It is with this in mind that the Closing Submissions of ABC must be read. Design is not a ‘binary’ thing. One talks of ‘good’ design and ‘bad’ design as if there is a neat dividing line. But, in truth, there can be an array of ‘good’ designs, all quite different but all still responding appropriately to the opportunities and constraints of a given site. That one designer (or one critic) would identify a different configuration as preferable does not mean another designer has failed to achieve ‘good design’.
85. This is particularly apparent here. Not one of Miss Westphal’s criticisms, whether it be configuration or arguing for lower densities, mean that either the schemes fail to reach the design standard the planning system aims to foster, nor that there is, thereby, any landscape harm arising to the AONB.
86. These schemes heal two (small) injuries to the landscape of the AONB. They do so in a way appropriate for their village context and they should be welcomed as a positive intervention.
87. *Planning Balance for Appeals A, B and C and Conclusions:*
88. Appeal A brings about the restoration and positive re-use of a nationally important complex of Grade I, Grade II\* and Grade II listed buildings, which should be accorded ‘great weight’ in the public interest. Appeals B and C bring about the restoration and re-development of previously developed land in the AONB, to the landscape advantage of that nationally important landscape designation.
89. All three appeals bring forward much-needed housing in the context of a failure by the Borough Council to be able to demonstrate a 5 year housing land supply and in accordance with the identification of these sites for residential development as a matter of principle.
90. They do so in a sustainable location for access to services and facilities by non-car mode, being within or adjacent to the existing village of Wye.
91. They do so in a manner which delivers their part of the comprehensive plan-led response to the aspirations in the WNP for the old WYE3 site and consistently with the Wye Masterplan resolved twice to be approved by the Local Planning Authority.
92. Accordingly, s. 38(6) of the P&CP Act 2004 favours the grant of permission, and the duties in s.66(1) and s. 72(1) of the T&CP(LB&CA) Act 1990 are promoted thereby. The proposals accord with the development plan and benefit from the presumption in para. 11(c) of the NPPF; alternatively, they benefit from the tilted balance in para. 11(d)(ii). Neither heritage assets nor AONB takes the schemes out of that balance – properly viewed there is a positive contribution by the schemes to both. Stodmarsh SPA, SAC and Ramsar is appropriately protected and the ‘appropriate assessment’ can conclude favourably.
93. The three appeals each represent sustainable development within the meaning of the NPPF. Opposition to them from the Parish Council/WyeGRAG has been misplaced. Wye as a village and a community needs these developments and the former Wye College in particular needs a secure future. That is what these schemes deliver.
94. For all of these reasons, the Inspector is respectfully requested to grant each of the permissions here sought.

CHRISTOPHER BOYLE QC

15th February 2021

Landmark Chambers,

180 Fleet Street,

London,

EC4A 2HG.

1. See Cameron proof 6.3 [↑](#footnote-ref-1)
2. CD/9 [↑](#footnote-ref-2)
3. CD/10 and CD/11 [↑](#footnote-ref-3)
4. CD/10a and CD/11a [↑](#footnote-ref-4)
5. CD/10a [↑](#footnote-ref-5)
6. CD/11a [↑](#footnote-ref-6)
7. And as noted above, the Council no longer seek to oppose the grant of Appeal A. [↑](#footnote-ref-7)
8. Save the >15 rather than >20 dwellings on the ADAS site [↑](#footnote-ref-8)
9. *R v Rochdale (ex p Milne)*; per Sulivan J. [↑](#footnote-ref-9)
10. CD14l [↑](#footnote-ref-10)
11. The origins of Mr Burton’s ‘large residence’ – ie the Master’s House – so objected to in the PC’s Closing [↑](#footnote-ref-11)
12. Albeit RX sought to lead her astray again: she observed the public had ‘a right to expect access’; which is simply not correct on any basis of law or policy [↑](#footnote-ref-12)
13. Re ‘Kemp’s College’; the objections to the proposals for the old dining hall and the workshops are make-weight objections not supported by even WyeCRAG; there is no harm to the setting of the Church, and by restoring the College, the Conservation Area will be preserved and enhanced. [↑](#footnote-ref-13)
14. The ‘centre point’ is as identified by the PC, however in reality, the church and school and a large number of the shops and pubs/restaurants, are much closer than 870m. [↑](#footnote-ref-14)
15. If one excludes the ‘Strawberry Field’ at Occupation Road, intended for grazing and tree planting [↑](#footnote-ref-15)
16. Albeit of a ‘negligible’ magnitude [↑](#footnote-ref-16)