

Implications of High Court Judgement [2016] EWHC 421 (Admin) for planning applications in Headcorn

In High Court judgement [2016] EWHC 421 (Admin) between Forest of Dean District Council and Secretary of State for Communities and Local Government and Gladman Developments Ltd, The Hon Mr Justice Coulson considers the application of Paragraph 14 of the NPPF to planning applications in cases where relevant policies are absent, silent or out-of-date.¹ As such it covers those circumstances where a Local Planning Authority cannot demonstrate a five-year land supply. In his ruling the judge quashed a planning application in Newent that had been granted on appeal, because the Inspector had failed to apply the test in paragraph 14 of the NPPF correctly, having only considered the first test, not the second. The case rested on whether the presumption in favour of granting planning permission is disapplied in either of the two separate circumstances identified in the last bullet points of paragraph 14 of the NPPF.

The relevant part of Paragraph 14 states:

*"For **decision-taking** this means:²*

- *approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
 - *specific policies in this Framework indicate development should be restricted.[FTNT 9]"*

The footnote associated with this second bullet of this test (footnote 9 of the NPPF) states:

"For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion."

The judge clarified four issues of law:

- Firstly, both these tests need to be applied, not just the first one.
- Secondly, the list given in Footnote 9 of the NPPF is not an exclusive list of policies for which this test applies. Any policy within the NPPF that suggests that development should be restricted applies.
- Thirdly, the test applies to policies in the NPPF that would cause development to be restricted, not just policies that would lead to the refusal of a planning application. Furthermore, the policy wording does not explicitly need to use the term restricted for the policy to apply.
- Finally, the second test is an unweighted test, not a balancing exercise. Therefore, where the development plan is out-of-date or the application is not covered by the policies in it, any NPPF policy that would suggest development should be restricted is sufficient for the presumption in favour of sustainable development to be disapplied and therefore represents a legitimate ground for

¹ <http://www.bailii.org/ew/cases/EWHC/Admin/2016/421.html>

² Unless material considerations indicate otherwise.

a planning application to be refused, although it is up to the decision maker whether they do so.

Implications for Headcorn

Leaving aside policies such as heritage assets and Localism that might apply in some circumstances, and whether development in Headcorn qualifies as sustainable, there are two main policies within the NPPF that would suggest that development in Headcorn should be restricted. These are: paragraph 37 on minimising journey lengths; and paragraphs 54-55 on housing development in rural areas. The implications of these policies is that planning permission in Headcorn can be refused under paragraph 14 of the NPPF, even when Maidstone cannot demonstrate a five-year land supply, because these policies mean that the presumption in favour of sustainable development is disapplied.

A. Paragraph 37 on minimising journey lengths

Paragraph 37 of the NPPF states that:

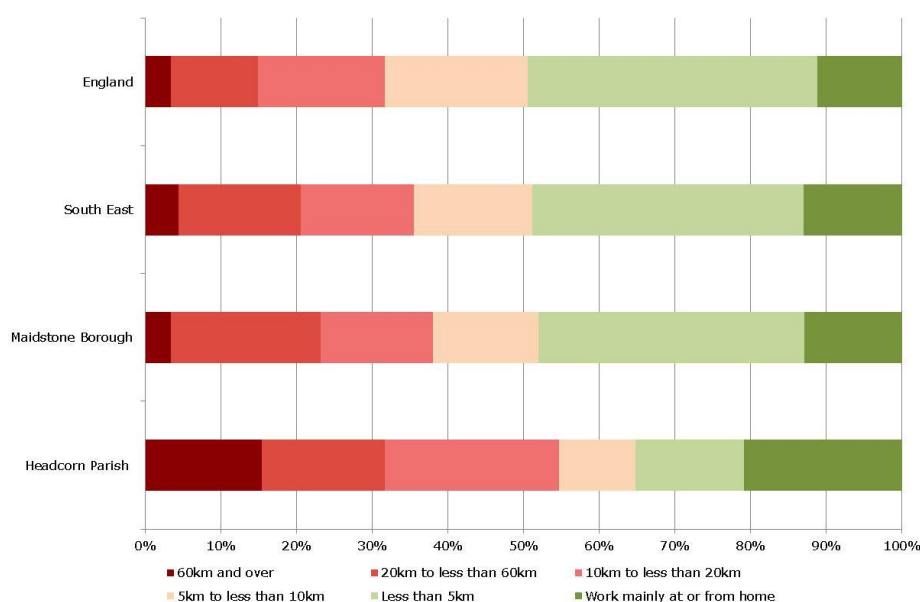
"Planning policies should aim for a balance of land uses within their area so that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education and other activities."

The intention of this policy is to ensure development takes place in areas where the need to travel long distances is minimised. As such, the policy clearly implies that where journey lengths for these types of activities are significant, then development should be restricted.

As set out below, Headcorn's location means that this restriction should apply in the case of Headcorn, because evidence clearly shows distances for many key activities such as employment, attending secondary schools and hospital are significantly above average.

A.i. Employment

Figure 1: Comparing distance travelled to work, 2011



Note: ONS 2011 Census data for Distance travelled to work, all residents in employment the week before the Census (QS702EW).

Source: Analytically Driven Ltd

Headcorn is 15.9km from the closest urban area, namely Maidstone. This has implications for employment patterns, because in the absence of local jobs, workers have to commute considerable distances to obtain work. The average commuting distance in Headcorn is 27.5km, compared to 14.9km for England as a whole, 16.6km for the South East and 17.9km for Maidstone Borough. The impact of distance on commuting patterns can be seen in Figure 1, above, which is taken from Headcorn's Neighbourhood Plan. It shows that compared to the experiences of workers in England as a whole, the South East, or even Maidstone Borough, the majority of workers in Headcorn need to travel much longer distances to work. Although some commuting to London does take place, this is not just a London phenomenon. Even excluding those travelling long distances (more than 60 km), 46.5% of workers living in Headcorn Parish travel between 10km and 60 km to work, compared to 29.3% for England and 32.6% for the South East.

A.ii. Secondary Schools

Headcorn is a significant distance from the nearest secondary school. The nearest state secondary school (Swadelands School in Lenham) is 11.4 km from the centre of Headcorn. This is much further than most pupils are expected to travel. For England as a whole, 90% of pupils travel at most 6.6 km to school and even in rural areas 90% of pupils travel less than 9.4 km.³ Therefore only a tiny proportion of children in the entire country are expected to travel as far to secondary school as those in Headcorn. Indeed, the impact of the long distances to the nearest schools can be demonstrated by the fact that children in Headcorn are not eligible to attend the second closest state school, Cranbrook School, which is 11.9 km away, as it has an 8.5 km catchment area.

A.iii. Hospitals

Headcorn's location makes access to hospitals difficult, with the closest being 19.5 km away. The two closest hospitals are over 30 minutes away by car, and take at least 40 minutes to reach by public transport, with a change required in both cases. The extent to which these distances are longer than normal can be seen from the ambulance response times to Headcorn. The average blue-light emergency response time for ambulances to reach patients in Headcorn is 13 minutes and 23 seconds. This compares to the national standard, which is for an emergency response to arrive at the scene within 8 minutes of category A calls in 75% of cases

A.iv. Leisure activities

In many cases residents from Headcorn will need to travel to an urban centre to take part in leisure activities. For example, there is no cinema or publicly accessible swimming pool in Headcorn. The closest urban centre (Maidstone) is 15.9km away.

A.v. Shopping

Although Headcorn's High Street is valued by residents, many do their "big shop" elsewhere. In addition, the limited range of shops also means residents typically have to travel to an urban area when they want to have a range of options to choose from, for example, in the case of the clothing or shoes. The nearest urban centre is 15.9km away (Maidstone), which is further than almost 70% of adults need to travel for work.

³ Burgess, S, Briggs, A, McConnell, B and Slater, H (2006) "School choice in England: background facts", Centre for Market and Public Organisation, Working Paper No 06/159. These distances also carry a significant risk that there will have a negative impact on their educational achievements. For example, children with four to six GCSEs are 27 percentage points less likely to participate in post-compulsory (over the age of 16) academic education if they live more than 8 km away from their secondary school compared to those who live within 2 km of the school and 15 percentage points less likely to participate in post-compulsory vocational education, see Dickerson, A and McIntosh, S (2013) "The Impact of Distance to Nearest Education Institution on the Post-Compulsory Education Participation Decision", Urban Studies, Vol. 50, 742-758.

B. NPPF policy on housing in rural areas

NPPF Policy on housing in rural areas is given by paragraphs 54 and 55 of the NPPF. These paragraphs state that:

"54. In rural areas, exercising the duty to cooperate with neighbouring authorities, local planning authorities should be responsive to local circumstances and plan housing development to reflect local needs, particularly for affordable housing, including through rural exception sites where appropriate. Local planning authorities should in particular consider whether allowing some market housing would facilitate the provision of significant additional affordable housing to meet local needs.

55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- *the essential need for a rural worker to live permanently at or near their place of work in the countryside; or*
- *where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or*
- *where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or*
- *the exceptional quality or innovative nature of the design of the dwelling. Such a design should:*
 - be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;*
 - reflect the highest standards in architecture;*
 - significantly enhance its immediate setting; and*
 - be sensitive to the defining characteristics of the local area."*

The intention of this policy is to restrict the scale of development in rural areas to development to meet the needs of the local rural community. The only exceptions are where a neighbouring authority needs development in that specific location in order to help them achieve their goals, or where market housing is needed to make affordable housing provision viable. In addition, development should avoid isolated locations, but there is no presumption that it should be concentrated in a single village – as paragraph 55 makes clear, development in one village can help a nearby village and vice versa.

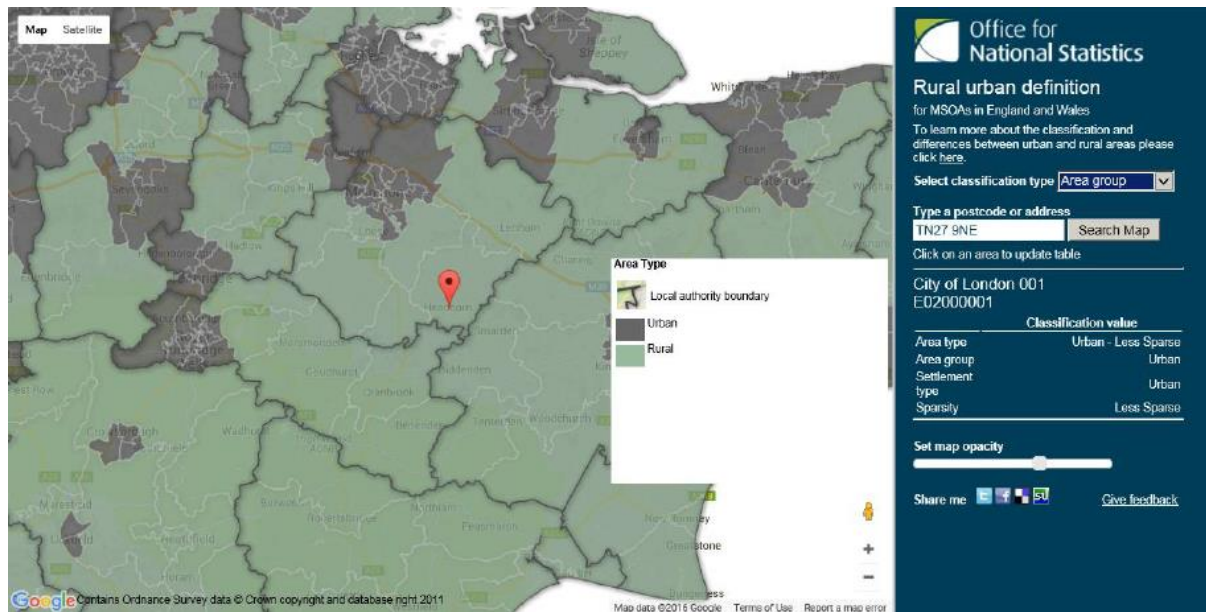
To assess whether the restrictions implied by this policy apply in a given location, it is necessary to establish first whether it is classified as a rural area and secondly what the level of development implied by local needs would be.

The results show that not only is Headcorn a rural area, but the existing planning consents will be more than sufficient to meet Headcorn's assessed need. Indeed, if all the planning applications that Maidstone has consented survive current legal challenges, since 2011 sufficient housing has been consented in Headcorn to meet Headcorn's needs for the next 31.5 years, even before you make any allowance for likely windfalls.

B.i. Is Headcorn a rural area?

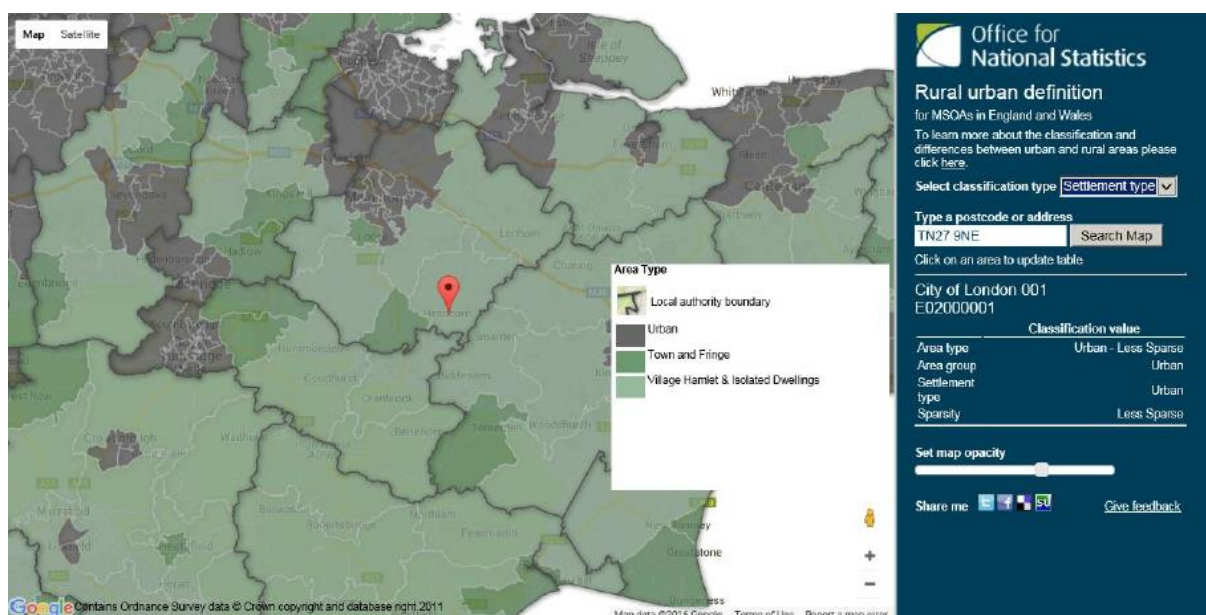
Figures 2 and 3 show the results from the Office for National Statistics' mapping tool for determining the area type and the settlement type for Maidstone Borough and surrounding areas. In the case of Headcorn, it is officially classified by the ONS as a rural area and the settlement type is "village, hamlet and isolated dwelling". Furthermore, the ward of Headcorn (which encompasses a larger area than the Parish of Headcorn) is entirely surrounded by other rural areas. This means Headcorn is not even an edge-of-urban settlement. Therefore, Headcorn clearly counts as a rural area for the purposes of the NPPF.

Figure 2: Urban versus rural areas in Maidstone Borough



Note: the centre of Headcorn village is marked by the red arrow.

Figure 3: Settlement types in Maidstone Borough



Note: the centre of Headcorn village is marked by the red arrow.

B.ii. What is the identified housing need for Headcorn?

Headcorn's Neighbourhood Plan contains an assessment of development needs in Headcorn that can be used to assess whether proposed development will meet or exceed local needs. This assessment was based on Maidstone's own SHMA results for Headcorn and at each step used the largest estimate of housing numbers to minimise the risk of under provision:⁴

- Gross household formation in Headcorn over the plan period of 2011 to 2031 is estimated to be between 376 and 452 new households, with household formation spread throughout the period.⁵
- This needs to be offset against the number of households that are likely to cease to exist, due to death of the home owner(s). Conservative estimates suggest that between 175 and 250 households in Headcorn Parish are likely to cease to exist over the Plan period, due to death of the home owner, with actual outcomes likely to be higher.⁶ Therefore, even using the upper estimate of gross household formation, this would produce an estimate of a net increase of between 202 and 277 new households over the Plan period.

This would mean the estimated need for Headcorn is for a maximum of 69 dwellings every 5 years.

- However, any estimate of housing need not only needs to take account of expected net household formation, but also the existing availability of property that might accommodate this need. Between April 2011 and March 2015 Maidstone Borough Council gave planning permission for 107 new homes in Headcorn. This is enough housing to cater for 7.75 years of the Parish's maximum estimated need. It means that even using the upper limit of household formation in the Parish would produce a maximum net additional need of 170 new homes.

⁴ The fact that Headcorn has a much higher proportion of older residents and a much lower proportion of younger residents than the Maidstone average means that proportionately the contribution of the Parish to net household formation in the Borough will be significantly lower than average.

⁵ See Appendix A3 of Headcorn's Neighbourhood Plan and the discussion in Driver (2014). The figure of 452 is the pro rata share for Headcorn Parish of the estimates of household formation in Rural East from the Strategic Housing Market Assessment for Maidstone Borough (based on Table 42 of GL Hearn (2014)). This estimate is very similar to the upper bound on household formation in Headcorn of between 376 and 448 emerging households, which was derived from the Headcorn Residents' Survey (2013), see Driver (2014). Using 2011 Census data for the number of people living in Headcorn aged under 20 (ie those most likely to be looking to form new households over the twenty years between 2011 and 2031) and adjusting for the fact that in households aged under 65 there are on average 0.61 households per person shows that the potential level of gross household formation amongst those aged below 20 in Headcorn is 443 households, and not all these households will want to stay in Headcorn. Therefore these estimates represent an upper bound for the likely gross housing need generated by household formation in Headcorn, because it assumes that all newly formed households want to stay in the Parish. Indeed since the publication of the estimates of housing need for Maidstone Borough of 19,600 were produced by GL Hearn (2014), the baseline estimate of housing need (based purely on demographic trends) has been revised down to 17,660 (see GL Hearn (2015)). Although no breakdown was provided of for Rural East in GL Hearn (2015), again this suggests that the figure of 452 should be treated as an upper estimate for housing need in Headcorn Parish.

⁶ The estimate of 175 comes from Driver (2014) and is based on the number of people based in the Parish aged over 75 and life expectancy of 65 year olds living in the South East. As Driver (2014) makes clear, this is clearly likely to be an under estimate. Using 2011 Census data on the number of households in Headcorn where all members are aged over 65 (split by single households and households of more than one person all aged 65 and over), then estimating their split between those households aged 65 to 69, those aged 70-74 and those aged 75 and over based on the proportion in these aged groups in the population and making very conservative estimates of survival rates based on the Life Tables for the UK population published in 2015, by assuming all single person households are females (as women have a longer life expectancy than men) gives an estimate of 250.

- Since March 2015 Maidstone Borough Council has given consent to 48 houses north of Lenham Road. This planning consent has not been contested. Therefore, the maximum additional need is for 122 homes in Headcorn for the entire 2011 to 2031 planning period.

The consented dwellings in Headcorn amount to 11 years of Headcorn's assessed need, meaning no further consents are required until the second half of the plan period (ie 2021) to meet Headcorn's needs.

Furthermore, although these planning permissions are being contested, Maidstone has indicated that it plans to give consent to 220 dwellings between Mill Bank and Ulcombe Road and a further 62 dwellings on Mill Bank. Even before any allowance is made for likely windfalls, this implies that Maidstone has granted planning permission for sufficient dwellings in Headcorn for the next 31.5 years.

It is also necessary to assess the need for affordable housing separately, in case the need for affordable housing means more market housing is needed to make provision viable. Again this was done as part of Headcorn's Neighbourhood Plan. The results of this analysis shows that there is a very strong preference for buying a property amongst emerging households, with the majority of emerging households (60.9%) wanting to buy their own home. In contrast, only 15.2% expressed a preference for renting from a housing association (social rented housing). Taking account of identified demand patterns and vacancy rates for affordable housing (as defined in the NPPF) within the Parish, the net need for social rented housing in Headcorn from both emerging households and households falling into need is zero. This is calculated as follows:

- Using the upper estimate of household formation in Headcorn (452) and the pattern of demand observed from Headcorn's Residents' Survey (2013), shows that total demand for affordable housing in the Parish would be for 69 social rented houses and 49 shared equity houses.
- Allowing for households falling into need would suggest that the maximum demand for social rented housing in the Parish will be for 86 units.⁷
- In 2011 there were 119 social rented dwellings in Headcorn Parish. The vacancy rate for social rented housing in the Rural East area (which included Headcorn Parish) is 5.85% per annum. This suggests that on average 7 social rented properties will be available for re-let every year in Headcorn Parish, or around 140 over the whole of the Plan period.⁸ Since then, another 25 units have been added as part of the Hardwicks development, which would raise potential supply to around 8 units per annum or around 160 over the course of the Plan Period.⁹
- Therefore the rate of supply is expected to exceed demand by at least 50 social rented units over the course of the Plan period, which is sufficient to supply also house those with a preference for shared equity housing.¹⁰

⁷ See Driver (2014) for details of these calculations.

⁸ Estimates from GL Hearn (2014) based on data for 2008-13. As this data covers the Financial Crisis (when households will have found it harder to move out of social housing) this is likely to understate vacancy rates for the whole of the Plan period, see the discussion in Driver (2014).

⁹ In discussions with one of the local Borough Councillors, over 70% of households in the development have expressed a desire to leave. If the 25 Hardwicks units had been available throughout the plan Period then total vacancies would be expected to be 168.

¹⁰ See the analysis in Driver (2014), based on the demand for social housing amongst emerging households in Headcorn and the vacancy rates for social housing in Headcorn's current social housing stock calculated using data provided by GL Hearn (2014) as part of Maidstone's Strategic Housing Market Assessment.