



Department for  
Communities and  
Local Government

Mr Arwel Owen  
David Lock Associates Ltd  
50 North Thirteenth Street  
Milton Keynes  
MK9 3BP

Our Ref: APP/Y0435/A/14/2224004  
Your Ref: FLA002

1 October 2015

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY FROSTS FAMILY LLP  
AT WAIN CLOSE, NEWPORT ROAD, WOBURN SANDS, MILTON KEYNES,  
MK17 8UZ  
APPLICATION: REF 14/00703/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Roisin M Barrett, BSc (Hons) Dip UD Dip Hist Cons MRTPI IHBC, who held a public local inquiry between 9-11 December 2014 into your client's appeal against a decision of Milton Keynes Council (the Council) to refuse planning permission for residential development for up to 53 homes together with open space, strategic landscaping, supporting infrastructure (including gas, electricity, water sewerage, telecommunications), new vehicle and pedestrian/cycle access onto Newport Road, demolition and ground remodelling in accordance with application number 14/00703/OUT, dated 28 March 2014.
2. On 2 December 2014, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because the proposal involves residential development of over ten units in an area where a qualifying body has submitted a neighbourhood plan proposal to the Local Planning Authority (LPA) or where a neighbourhood plan has been made.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that planning permission be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's analysis and her conclusions, except where stated, and agrees with

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her recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

### **Procedural Matters**

4. The appellant's application for an award of costs is the subject of a separate decision letter which is being issued today.

### **Matters arising after the close of the inquiry**

5. On 15 May 2015, the Secretary of State wrote to the Council seeking information in connection with regulation 123(3) of the Community Infrastructure Levy Regulations 2010 as amended. Following that letter, the Secretary of State received a response from the Council dated 2 June 2015 and a response from you dated 10 June 2015. The Secretary of State has taken account of these responses in his consideration of the appeal before him.
6. The Secretary of State also received an email from Richard Sakyi dated 24 July 2015 which enclosed a letter from the Planning Inspectorate dated 16 June 2015. The Secretary of State has carefully considered this representation, but as it did not raise new matters that would affect his decision, he has not considered it necessary to circulate it to parties before his determination of this appeal.
7. Copies of the representations referred to in paragraphs 5 and 6 above are not attached to this letter but will be made available upon written request to either of the addresses shown at the foot of the first page of this letter.

### **Policy considerations**

8. In deciding the application, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case, the development plan comprises the saved policies of the *Milton Keynes Local Plan 2001-2011 (2005) (LP)*, and the *Milton Keynes Council Core Strategy Adopted Version July 2013 (CS)*. The Secretary of State agrees with the Inspector that the most relevant development plan policies are those identified by the Inspector at IR17, IR19 and IR22-25.
10. The Secretary of State has had regard to the emerging development plan documents outlined by the Inspector at IR27-30, which include the Wavendon Neighbourhood Plan, the Site Allocations Plan (SAP) and Plan: MK. Having had regard to the Inspector's comments at IR28-30, the Secretary of State considers that the SAP and *Plan: MK* remain subject to change and this limits the weight that he attributes to them.
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); the Planning Practice Guidance (the Guidance); the Community Infrastructure Levy Regulations 2010 as amended (the CIL Regulations); the Woburn Sands Neighbourhood Plan 2014; and the Milton Keynes planning guidance documents listed by the Inspector at IR31.

## Main issues

12. Like the Inspector (IR145), the Secretary of State considers that the main issues in this case are whether or not the proposed development would conflict with development plan policy seeking to restrict development in the open countryside and, if such conflict exists, whether there are any other material considerations, specifically with regard to the supply of housing land, that would justify the proposed development being allowed now.

### Conflict with Development Plan Policy

13. For the reasons given by the Inspector, the Secretary of State shares her view that the appeal proposal would be in conflict with LP Policy S10 (IR146). The Secretary of State also agrees with the Inspector's reasoning and her conclusion at IR147 that the terms of LP Policy S10, based on outdated settlement boundaries, would have the effect of applying a constraint on development and would not be consistent with paragraph 47 of the Framework to boost significantly the supply of housing. In terms of the objective of LP Policy S10 with respect to protecting the countryside, having had regard to the Inspector's remarks at IR155, the Secretary of State takes the view that this generally accords with one of the Framework's core planning principles at paragraph 17, bullet 5, which sets out the importance of recognising the countryside's intrinsic character and beauty.
14. Having given careful consideration to the Inspector's comments about CS Policies CS2 and CS9 (IR148-149), the Secretary of State agrees with her that, until settlement boundaries have been reviewed through *Plan: MK* and the SAP, new housing outside settlement boundaries would be contrary to the terms of CS Policies CS2 and CS9 (IR149). However, for the reasons given by the Inspector, the Secretary of State shares her view that the appeal proposal would generally accord with the collective intent of the CS policies referred to and would be broadly consistent with them (IR150).

### Other Material Considerations

#### Character and Appearance

15. For the reasons set out by the Inspector at IR151-155, the Secretary of State shares her view that there would be benefits of the appeal proposal to the character and appearance of the locality including the countryside and no material harm to its rural character (IR155). As set out above, he also concurs with the Inspector's view (IR155) that, in this regard, the appeal would generally accord with the identified objective of LP Policy S10, that seeks to protect the countryside, and paragraph 17, bullet point 5 of the Framework. He also agrees with her that, whilst LP Policy S10 does not make a distinction between greenfield and brownfield land outside settlement boundaries, as it seeks to protect the countryside, it also seeks to protect its character and appearance (IR155).

### Wavendon Neighbourhood Plan

16. Like the Inspector, the Secretary of State recognises the intention to produce a Wavendon Neighbourhood Plan although, for the reasons she gives, he attaches very limited weight to it (IR156).

### Woburn Sands Neighbourhood Plan

17. The Secretary of State agrees with the Inspector that the appeal site lies outside the designated area of the Woburn Sands Neighbourhood Plan (WSNP) and that the WSNP does not form part of the development plan for this appeal (IR157). For the reasons given by the Inspector at IR157 – 159, the Secretary of State agrees that the appeal scheme would preserve the countryside setting of Woburn Sands, and that it would also preserve the existing woodland and footpath links and that, in this regard, the scheme would not undermine the purpose of WSNP Policy WS5 (IR159). Having had regard to the Inspector's analysis (IR157-159), the Secretary of State also shares her view that the fact that the proposed development would be outside the development boundary as set out in WSNP Policy WS5 is a material consideration, albeit one that carries very limited weight.

### Housing Land Supply

18. Having taken account of the Inspector's remarks, the Secretary of State sees no reason to disagree with her view that the balance of the available evidence suggests that the housing requirement set out in CS Policy CS2 is the objectively assessed need for Milton Keynes (IR160) and he too attaches considerable weight to that figure. The Secretary of State has taken account of the Inspector's remarks about the buffer and, like her, he takes the view that a 20% buffer is appropriate in this case (IR161). The Secretary of State has also had regard to the Inspector's remarks about the backlog set out at IR163 – 165 of her report.

19. The Secretary of State has given very careful consideration to the Inspector's assessment of the evidence on housing land supply at IR166-173. For the reasons given by the Inspector, the Secretary of State shares her view that the Council has not presented evidence to the inquiry to demonstrate that it has a 5 year housing land supply and that this would be the case whether the Liverpool or the Sedgefield method of dealing with the backlog were employed and regardless of how the buffer were dealt with (IR173). As indicated by the Inspector (IR173), the Secretary of State observes that, in these circumstances, paragraph 49 of the Framework sets out that relevant policies for the supply of housing should not be considered up-to-date.

20. Moving on to the Inspector's remarks at IR174-175, the Secretary of State concurs with her that LP Policy S10 is inextricably linked with the constraining effect of settlement boundaries on the CS housing requirement, as are CS policies CS2 and CS9 which carry those settlement boundaries forward (IR174). He further agrees that in this respect they are relevant policies for the supply of housing within the meaning of paragraph 49 of the Framework and are to be considered out of date and that the presumption in favour of sustainable development outlined in paragraph 14 bullet point 4 of the Framework applies (IR174). Like the Inspector (IR174), the Secretary of State considers that it is unnecessary for him to consider any further whether LP Policy S10 is out-of-date for other reasons. He agrees with the Inspector that the appeal proposal would contribute to the unmet housing need within Milton Keynes and that this should weigh positively in the balance of his overall conclusion (IR175).

## Contribution to the Achievement of Sustainable Development

21. Having given careful consideration to the Inspector's analysis at IR176-179, the Secretary of State agrees with her analysis and conclusion that the appeal development would fall within the definition of sustainable development (IR180). Like the Inspector (IR180), in reaching this conclusion the Secretary of State has taken account of the very limited conflict he has identified with WSNP Policy WS5.

## Conditions

22. The Secretary of State has considered the suggested conditions set out at Annex C to the IR and the Inspector's comments on conditions at IR138 - 143. He is satisfied that the conditions recommended by the Inspector are reasonable and necessary and meet the tests of paragraph 206 of the Framework.

## Obligation

23. The Secretary of State has had regard to the executed Unilateral Undertaking dated 18 December 2014, the Inspector's assessment of this at IR181-196, the representations referred to at **paragraph 5** above, national policy set out at paragraphs 203-205 of the Framework, the relevant planning guidance and the CIL Regulations 2010.

24. The Secretary of State has taken account of the Council's representation of 5 June 2015 which states that more than 5 contributions have been entered into since 2010 in respect of both the strategic waste facility and Milton Keynes University. In such circumstances regulation 123(3) of the CIL Regulations provides that these 2 obligations may not constitute reasons for granting planning permission. Accordingly, in his determination of this case, the Secretary of State has not had regard to those obligations and he has given them no weight.

25. The Secretary of State has had regard to the fact that paragraph 3.3 of the Undertaking states that each of the planning obligations, covenants and restrictions contained in Schedules 1 to 2 shall only have effect if the Secretary of State confirms in his decision letter that those are necessary to make the development acceptable in planning terms and otherwise comply with regulation 122 of the CIL Regulations. For the reasons given by the Inspector, the Secretary of State shares her view that the contributions towards crematoria and burial grounds, a community hall and allotments do not pass the tests set out at regulation 122 (IR183, IR193 and IR196). The Secretary of State observes that the Council did not seek any contribution towards crematoria and burial grounds (IR183) and that the Inspector does not consider that the community hall or the allotments pass the tests of necessity (IR193 and IR196). In these circumstances the Secretary of State does not consider that the absence of contributions for these facilities weighs against the appeal scheme.

26. The Secretary of State has taken account of the fact that your representation of 10 June 2015 makes clear that the appellant continues to dispute some of the planning obligations sought by the Council. However, he has also taken account of the Inspector's analysis and her view that, apart from the 3 contributions referred to in paragraph 25 above, the contributions within the Undertaking which can be taken into account do comply with regulation 122 of the CIL Regulations

(IR182, IR185-192 and IR194-195). Setting aside the contributions towards the strategic waste facility and Milton Keynes University which he has not taken into account, the Secretary of State agrees with the Inspector's reasoning and conclusions in this respect.

### **Other Concerns Raised**

27. The Secretary of State sees no reason to disagree with the Inspector's remarks at IR197-204.

### **Overall Conclusions**

28. The Secretary of State agrees with the Inspector's conclusions at IR205-206. As indicated at paragraph 19 above, the Secretary of State does not consider that the Council has demonstrated a 5 year supply of deliverable housing sites. In such circumstances he considers that relevant policies for the supply of housing should not be considered up-to-date, including LP Policy S10 (paragraph 20 above). He has also found that the appeal scheme would fall within the definition of sustainable development (paragraph 21 above).

29. The Secretary of State observes that paragraph 14 of the Framework states that, where a development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole, or unless specific policies in the Framework indicate development should be restricted. The Secretary of State has concluded (paragraph 13 above) that the appeal scheme would be in conflict with the objective of LP Policy S10 to protect the countryside notwithstanding his conclusion that Policy S10 is out-of-date (paragraph 20 above). The Secretary of State has found that the appeal scheme would be beneficial to the character and appearance of the locality including the countryside and that there would be no material harm to its rural character (paragraph 15 above). Drawing these matters together, the Secretary of State concludes that the scheme does not comply with the development plan overall and he has gone on to consider whether there are material considerations which justify determining the appeal other than in accordance with the development plan.

30. In considering this matter, the Secretary of State has also taken account of the conflict he has identified with WSNP Policy WS5, albeit he has attributed very limited weight to this conflict (paragraph 17 above). As to the scheme's benefits, the Secretary of State agrees with the Inspector's summary of those in the second part of IR206. He agrees that the contribution of the appeal development to meeting the identified housing need in Milton Keynes, in circumstances where a 5 year housing land supply cannot be demonstrated, is a persuasive and important factor (IR206). He also shares the Inspector's view that other benefits include the scheme's use of previously developed land; the site's sustainable location; the expected reduction in heavy lorry movements and the replacement of a semi industrial development in a rural area which has residential properties nearby (IR206). The Secretary of State has considered the policy set out at paragraph 14 of the Framework and he concludes that the adverse impacts which he has identified in this case would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework

taken as a whole. Like the Inspector (IR206), the Secretary of State concludes overall that the presumption in favour of sustainable development applies and that planning permission should be granted. He is satisfied that, in the circumstances of this case, material considerations outweigh the conflict with the development plan.

31. In reaching his decision on this appeal, the Secretary of State has concluded that only some of the planning obligations set out within the unilateral undertaking dated 18 December 2014 comply with the CIL Regulations. With regard to the 2 obligations which do not comply with Regulation 123(3), the Secretary of State observes that the Council has not brought forward a CIL charging schedule and that it remains open to the Council to do so.

### **Formal Decision**

32. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for residential development for up to 53 homes together with open space, strategic landscaping, supporting infrastructure (including gas, electricity, water sewerage, telecommunications), new vehicle and pedestrian/cycle access onto Newport Road, demolition and ground remodelling in accordance with application number 14/00703/OUT, dated 28 March 2014, subject to the conditions at Annex A.
33. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
34. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

### **Right to challenge the decision**

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
36. A copy of this letter has been sent to Milton Keynes Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Christine Symes**

Authorised by Secretary of State to sign in that behalf

**PLANNING CONDITIONS**

1. No development shall commence on any phase or part of the development until details of the layout, scale, appearance of the buildings, access thereto and landscaping for that phase or part (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the LPA.
2. Application for approval of all the reserved matters in respect of all phases or parts of the development shall be made to the LPA before the expiration of three years from the date of this permission.
3. The development within any phase or part of the development hereby permitted shall begin no later than two years from the date of the approval of the last of the reserved matters of that phase or part.
4. The development hereby permitted shall be carried out in accordance with the approved plans FRA001-003A (Site Location Plan) and FRA001-007A (Red Line Plan) and FRA001-014A (Parameter Plan).
5. No development shall commence in each phase or part of the development until a foul water strategy for that phase or part has been submitted to and approved in writing by the LPA in consultation with Anglian Water. No dwellings in that phase or part shall be occupied until the works have been carried out in accordance with the approved foul water strategy for that phase or part unless otherwise approved in writing by the LPA.
6. Prior to any development taking place in each phase or part of the development, the developer shall carry out an assessment of ground conditions to determine the likelihood of any ground, groundwater or gas contamination of that part of the site. The results of this survey detailing the nature and extent of any contamination, together with a strategy for any remedial action deemed necessary to bring the site to a condition suitable for its intended use, shall be submitted to and approved by the LPA before construction works commence. Any remedial works shall be carried out in accordance with the approved strategy and validated by submission of an appropriate verification report prior to first occupation of that phase or part of the development. Should any unforeseen contamination be encountered in that phase or part of the development the LPA shall be informed immediately. Any additional site investigation and remedial work that is required as a result of unforeseen contamination will also be carried out to the written satisfaction of the LPA.
7. The visibility splays provided should be in accordance with Manual for Streets 2006, the visibility splay should not be impeded; height of any hedge/wall or fence within this visibility should be kept below 1.05m above the carriageway height.
8. Existing trees and hedges which are to be retained in each phase or part of the development are to be protected according to the provisions of BS 5837: 2012 'Trees in relation to design, demolition and construction – Recommendations.' All



protective measures shall be put in place prior to any other work commencing in that phase of the development.

9. Prior to the commencement of any phase or part of the development a scale plan accurately marking the position of retained trees, the extent of the root protection areas and the tree protection fencing along with the root protection area margin should be submitted for approval. Proposed and existing spot levels shall be shown in sufficient numbers and at appropriate spacings to enable the impact of level changes on the root zones to be assessed. Layout of hard-works shall be adjusted as necessary to accommodate the root protection areas without root damage.
10. For any phase or part of the development, details of the proposed finished floor levels of all buildings and the finished ground levels in relation to existing surrounding ground levels for that phase or part shall be submitted to and approved by the LPA prior to development commencing within that phase or part. Development for that phase or part shall be undertaken in accordance with the approved levels.
11. Reserved matters applications for any phase or part of the development shall be accompanied by a Sustainability Statement for that phase including as a minimum details required by saved policy D4 of the Milton Keynes Local Plan 2001-2011 and accompanying Supplementary Planning Document Sustainable Construction Guide.
12. Where the Code for Sustainable Homes shall cease to be in force or exist then each phase or part of the development shall not need to comply with nor discharge this condition 12 and the dwellings shall instead be constructed solely in accordance with the relevant baseline Building Regulation standards applicable, whether such Building Regulation standards come in force at the time the first reserved matters in relation to any dwelling is submitted to the Council or after such a time.
13. Prior to the commencement of any phase or part of the development a Code of Construction Practice (CoCP) for that phase shall be submitted to and approved in writing by the LPA. The CoCP that is submitted shall include Noise Action Levels (based on a noise survey) and other measures to include:
  - Site management and complaints procedure;
  - Temporary boundary treatments;
  - Lighting and security;
  - Site facilities;
  - Means of access;
  - Construction traffic routing;
  - Environmental and nuisance mitigation measures;
  - Vehicle wheel cleansing facilities.

All construction work shall be undertaken in accordance with the agreed CoCP for that phase or part and all contractors shall be contractually required to comply with it.

14. Sample panels of the external materials to be used in any phase or part of the development parcel shall be erected on site and approved in writing by the LPA prior to that phase or part commencing. Each phase or part shall be constructed using the approved materials.
15. The details to be submitted for the approval in writing of the LPA in accordance with condition 1 above shall include a scheme for cycles, parking and manoeuvring and the provision of visitor car parking spaces in accordance with the LPA's 'Car Parking Standards' within the adopted 2005 Parking Standards Supplementary Planning Guidance and the 2009 Parking Addendum or to the standards in force at the time of any reserved matters applications. The approved scheme shall be implemented and made available for use before the development hereby permitted is occupied and the approved cycle storage, parking and manoeuvring areas shall not thereafter be used for any other purpose.
16. Prior to the commencement of each phase or part of the development, details of the adoptable estate roads shall be submitted to and approved in writing by the LPA. No dwelling shall be occupied in any phase or part of the development until the estate road which it provides access to, from the existing highway have been laid out and constructed in accordance with the approved details.
17. The hours of working on any phase or part of the development during the construction period shall be restricted to 08:00 hours to 18:00 hours Mondays to Fridays, 08:00 hours to 13:00 hours on Saturdays, and no working shall take place on Sundays and Public Holidays. The term 'working' shall for the purpose of clarification of this condition include; the use of plant or machinery (mechanical or other), the carrying out of any maintenance/cleaning work on any plant or machinery deliveries to the site and the movement of vehicles within the curtilage of the site. No 'working' outside these hours on any phase or part shall take place without the prior written consent of the LPA.
18. Prior to the commencement of each phase or part of the development a scheme showing the proposed boundary treatments for that phase or part shall be submitted to and approved in writing by the LPA. The approved boundary treatments shall be in accordance with the approved details for that phase or part and be completed prior to the first occupation of each dwelling or first use of such phase or part of the development. They shall be retained in that condition thereafter.
19. Any housing reserved matters application shall include details of the location and type of affordable housing pursuant to the development parcel for which approval is sought. Each phase or part of the development shall be carried out in accordance with the approved details.
20. The landscaping scheme required by Condition 1 above shall include provision for the planting of trees and shrubs and shall include native species and those beneficial to wildlife for each development phase or part required by. The scheme shall show the numbers, types and sizes of trees and shrubs to be planted and their location. All planting shall be carried out in accordance with the scheme and shall be carried out within twelve months of commencement of

each phase or part of the development. Any trees or shrubs removed, dying, severely damaged or diseased within two years of planting shall be replaced in the next planting season with trees or shrubs of such size and species as may be agreed by the LPA.

21. Any buildings to be demolished should be inspected by a suitably qualified ecologist internally and externally to confirm the presence or absence of bats prior to any deconstruction of the structures. Prior to work commencing a written report by that suitably qualified ecologist shall be submitted to the LPA, agreed and any recommendations therein shall be carried out prior to work commencing.
22. A landscape and biodiversity plan detailing a net gain in benefits for wildlife shall be submitted to the LPA for approval prior to each phase or part of the development of the site demonstrating how the following measures shall be provided within the development:
  - 4 x hedgehog domes and 2 x Stag Beetle 'loggeries' (as detailed in Appendix 2 and Appendix 5 of the Ecological Appraisal) in suitable locations within the landscape of the development.
  - A minimum of 8 roosting features for a range of bat species shall be incorporated into buildings in appropriate locations. A plan detailing these features shall be submitted to the LPA for approval prior to development of the site.
  - A minimum of 8 nesting features for a range of bird species shall be incorporated into buildings in appropriate locations. A plan detailing these features shall be submitted to the LPA for approval prior to development of the site.
  - Bird and bat features provided as ecological enhancements and access to them shall be maintained in perpetuity unless with prior agreement of the LPA.
23. All external lighting shall be kept to a minimum and directed away from bat features. A lighting plan shall be submitted to the LPA for approval prior to development of the site.
24. Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the LPA. Development shall be carried out in accordance with the agreed details prior to the first occupation of the units in that phase or part of the development and retained in that condition thereafter.

The scheme shall include:

- Details of ground investigation work to ensure any infiltration drainage is in uncontaminated land.
- Detailed calculations for any proposed storage requirements and discharge rates to watercourses where applicable.
- Details of where a reduction in flows is achieved to show betterment from the existing system.
- Details of existing and proposed drainage routes, inclusive of the watercourse

adjacent to Newport Road, demonstrating that no third party property is at risk from flooding.

- Details of porosity tests where applicable.
- Details of any potential on-site or off-site flow routes for extreme rainfall events for any proposed surface water infiltration drainage where it is outside its design parameters.
- Details for the future responsibilities for the management of the surface water drainage scheme.

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# Report to the Secretary of State for Communities and Local Government

by R M Barrett BSc (Hons) MSc Dip UD Dip Hist Cons MRTPI IHBC

Date: 31 March 2015

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TOWN AND COUNTRY PLANNING ACT 1990  
PLANNING APPLICATION MADE BY  
FROSTS FAMILY LLP  
TO  
MILTON KEYNES COUNCIL

Inquiry held on 9-11 December 2014

Wain Close, Newport Road, Woburn Sands, Milton Keynes MK17 8UZ

File Ref: APP/Y0435/A/14/2224004

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**File Ref: APP/Y0435/A/14/2224004**

**Wain Close, Newport Road, Woburn Sands, Milton Keynes MK17 8UZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Frosts Family LLP against the decision of Milton Keynes Council.
- The application Ref 14/00703/OUT, dated 28 March 2014, was refused by notice dated 27 June 2014.
- The development proposed is residential development for up to 53 homes together with open space, strategic landscaping, supporting infrastructure (including gas, electricity, water, sewerage, telecommunications), new vehicle and pedestrian/cycle access onto Newport Road, demolition and ground remodelling.

**Summary of Recommendation: That the appeal be allowed.**

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**PRELIMINARY MATTERS**

1. This appeal was recovered by the Secretary of State (SoS) for his determination by letter dated 2 December 2014 as the proposal involves residential development of over ten units in an area where a qualifying body<sup>1</sup> has submitted a neighbourhood plan proposal<sup>2</sup> to the Local Planning Authority (LPA): or where a neighbourhood plan has been made. This report, which contains my recommendation, is for consideration by the SoS in his determination of the appeal.
2. The Inquiry took place over three days, on 9, 10 and 11 December 2014. I made an unaccompanied visit to the area on 8 December, and carried out an accompanied inspection of the site and its surroundings on 11 December during an adjournment of the Inquiry.
3. At the Inquiry I agreed to allow additional time for the completion of a planning obligation and this was submitted by the agreed deadline. (IQ35) The Inquiry was formally closed in writing on 19 December 2014.
4. Prior to the Inquiry, on 5 December 2014, the Council confirmed that it would not defend reason for refusal 2, which relates to the appeal proposal being unsustainably located. On the basis of the proximity of public transport, both bus and train, and the facilities and services available in both Woburn Sands (WS) and Wavendon, I have no reason to take an alternative view. In light of this, I did not hear evidence from Mr Hampton at the Inquiry. (AP8)
5. Mr Jonathan Roberts, of Milton Keynes Council (MKC), addressed the Inquiry to provide additional information regarding the Council's request for the provisions set out in the draft planning obligation. (IQ35)
6. The appeal application is in outline with all matters reserved for future consideration. However, it includes a parameter plan, FLA001A\_014A. In addition, the Design and Access Statement refers to an illustrative layout at Figure 5 on page 15 of that document. As both parties confirmed, at the Inquiry, that these plans were for illustrative purposes only, I have considered the appeal on that basis.

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1 Woburn Sands (WS) Town Council.

2 WS Neighbourhood Plan July 2014.

7. At the Inquiry an application for costs was made by Frosts Family LLP against MKC. This application is the subject of a separate Report.
8. The main parties' views on the relevance or otherwise of the 2012 Household Projections issued on 27 February 2015 were sought. These have been taken into account in my recommendation.

## **THE SITE AND SURROUNDINGS**

9. The appeal site includes just over 3 hectares of land, which is part of the Frosts Landscape Construction depot fronting onto Newport Road, near to its junction with Wain Close. Notwithstanding the address in the header above, the appeal site is located outside the Wavendon and WS settlement boundaries, although adjacent to the boundary of the latter. However, it is located within the Civil Parish of Wavendon.
10. The appeal site is accessed from Newport Road and includes a working landscape contractor's depot site. It includes areas of hard surface, car and vehicle parking, vehicle maintenance and other buildings, open storage of landscape materials along with areas of grass and planting, including some trees. The boundaries are, in the main, formed of substantial planting, including the Newport Road frontage. The northern boundary is generally open and is near to the access road that runs in front of the site office complex. It has a generally semi-industrial character and appearance. Although the appeal site is well screened on most sides by the substantially planted boundaries, there are views through them and above. It is also visible through the break in the hedge on Newport Road, which accommodates a wide access.
11. To the rear of the appeal site is a footpath that runs from a point to the north of it along its western boundary towards WS, which I walked on my accompanied site visit. To the west of the appeal site is open arable land and the dispersed edge to development on the appeal site provides a gentle transition between the built area of WS and the open countryside beyond. To its immediate north lie an office building and a large warehouse type building in the same use as the appeal site. Beyond is the Wavendon Asquith Day Nursery. On the other side of Newport Road are houses, open space, fields and a Wyevale Garden Centre. To the south lies Bellway, a small cul de sac of houses and WS beyond. Houses on both sides of Newport Road are generally set back from the road, detached and set within generous plots. Further along Newport Road, towards WS, are a number of cul de sacs of mainly detached houses, including Parkway and Hillway, brought to my attention.
12. This part of Newport Road is comprised, in the main, of low density residential development, mostly set back from the road, planted frontages and hedges and open, green fields and spaces. This is mixed in with two large garden centres, one on each side of Newport Road and the appeal site. However, as green spaces and planting are a key feature, it has a generally rural character and appearance. The open land nearby to its north, east and west identified, together, provide some visual break in development between Wavendon from WS.

## THE PROPOSAL

13. The appeal proposal seeks outline planning permission, with all matters reserved, for up to 53 dwellings together with infrastructure and open space. Proposed development would include the removal of all buildings and structures.
14. Although all matters are reserved, the appellant has submitted a parameter plan, which indicates a landscaped buffer along the Newport Road boundary, vehicular access taken from Newport Road towards the southern end of the appeal site and a pedestrian access towards its northern part. A rectangular area of open space is indicated approximately half way along the northern boundary extending south.
15. The illustrative layout plan provides details of a suggested layout, which includes generally two storey detached dwellings with rooms in the roof, ranging from 2 to 5 bedrooms. Car parking would mostly be provided within each plot. It includes a single main access from Newport Road, which would lead onto smaller roads which extend either side of the proposed open space and lead onto streets which would be shared surfaces. The streets would generally be lined with trees and planting and would be overlooked by dwellings.
16. An executed planning obligation (1035) is intended to secure provision for 30% of the proposed houses as affordable units, financial contributions towards education, social infrastructure, leisure, recreation and sport facilities, on site measures to reduce carbon dioxide emissions or contributions to the Carbon Offset Fund and public transport infrastructure provision.

## PLANNING POLICY AND GUIDANCE

### Local Planning Policy and Guidance

*Milton Keynes Local Plan 2001-2011 (2005) (LP)* (CD13)

17. The most relevant policy is LP Policy S10, which restricts development outside settlement boundaries in the open countryside. The objective of that policy is to protect the countryside and to concentrate new development within and adjoining existing settlements. The policy states that open countryside is defined as all land outside the development boundaries defined on the Proposals Map. Paragraph 3.54 further explains that the term 'open countryside' is a policy designation and not simply a descriptive term relating only to land that is open in character. LP Policy S10 limits new development outside settlement boundaries to that which is essential for agriculture, forestry, countryside recreation or other development which is wholly appropriate to a rural area and cannot be located within a settlement. LP Policy S10 is a saved policy. (CD50)
18. In February 2014 the Council undertook an assessment of the conformity of the saved policies of the LP with the National Planning Policy Framework (the Framework). (CD51) It concluded that LP Policy S10, subject to due consideration being given to paragraph 28 of the Framework, generally accords with its central aim, to achieve sustainable development.
19. LP Policy D4 encourages the development of renewable energy production and energy efficient design, whilst LP Policy PO4 encourages a contribution towards public art works. Both policies are saved.



20. Prior to the LP the Borough of Milton Keynes Local Plan (1995) was in place.

*Milton Keynes Council Core Strategy Adopted Version July 2013 (CS)* (CD49)

21. The Spatial Vision: Milton Keynes in 2026, indicates a vision for a 21<sup>st</sup> century city with regional status, which will grow by attracting new residents, with continued success in environmental excellence, local employment opportunity and a wide range of house tenure and type. In paragraph 14 it states that in the rural areas, some limited development, that reflects the distinct character of its surroundings, will have occurred in Newport Pagnell, Olney and WS to support the provision of services and facilities for the Borough's rural community.
22. CS Objectives<sup>3</sup> include the delivery of land for at least 28,000 new homes (1,750 homes per year)<sup>4</sup>. CS Policy CS1 aims to concentrate development, outside the urban area, on key settlements which have the largest range of facilities and best public transport links, one of which is WS<sup>5</sup>.
23. CS Policy CS2 sets out that the Council will allocate land to meet the CS requirement of 28,000 homes. This translates into a target for the urban area of 26,240 and a rural housing target of 1,760. It reaffirms that ahead of a full review of the housing target in Plan:MK<sup>6</sup>, development sites to meet those rural housing requirements will be allocated in accordance with CS Policy CS1 through the Site Allocations Plan (SAP).
24. CS Policy CS9, in setting out the strategy for the rural area, indicates that the Council will prepare a SAP to identify land that can assist the delivery of an average of 110 homes per year, focusing development on key settlements of Newport Pagnell, Olney and WS. Further, it clarifies that any settlement boundary changes will be considered through the SAP and Plan:MK.
25. CS Policy CSAD1 commits the Council to undertaking an early review of the CS in the form of Plan:MK, to 2031, with the aim of having an adopted plan in place in 2015. CS Policy CS21 requires new development to provide for on and off site infrastructure required to support and mitigate the impact of that development.

*WS Neighbourhood Plan 2014 (WSNP)* (CD53)

26. In July 2014 the above plan was made. The appeal site lies outside that plan's designated area. (CD62) Its policy WS5 generally aims to preserve the countryside setting, existing woodland and footpath links into the countryside around WS and seeks to retain the existing WS Development Boundary (DB). It states that no extension to the DB will be permitted, except in exceptional circumstances, including where a specific need is identified in Plan:MK, following full consultation with and the agreement of, the WS Town Council and full assessment with regards to its effect on the character and countryside setting of WS.

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3 CS Table 4.1

4 CS Table 5.2 Housing Land Supply Position 2010-26

5 CS Table 5.1

6 Plan:MK, will set the vision, development strategy, sites and policies for MK administrative area up to 2031

*Wavendon Neighbourhood Plan (WNP)*

27. Work on an emerging WNP is still at an early stage following an open day in August 2014. No documents pertaining to that neighbourhood plan were submitted in evidence to the Inquiry.

*Emerging Site Allocations Plan (SAP) (CD57)*

28. The SAP Issues and Options Consultation was published in September 2014. In relation to rural allocations, it advises<sup>7</sup> that nearly 60% of development that has taken place or is already in the rural area over the CS plan period is in WS. This will amount to the number of homes in WS increasing by 50% since 2006. It suggests that new allocations should be focussed on Newport Pagnell, Olney and Sherington. It goes on to give a profile of potential site allocations, finding all to be generally sustainably located.<sup>8</sup> The consultation finished in November 2014.

*Emerging Plan:MK*

29. The emerging Plan:MK will set the vision, development strategy, sites and policies for the Milton Keynes administrative area up to 2031. It will replace the Core Strategy in accordance with Milton Keynes Council Local Development Scheme 2014-2017. (CD65)
30. The Plan:MK Public Issues Consultation took place during September and early December 2014. Of particular relevance is Plan:MK Topic Paper- Issues Consultation Growth in Housing (CD71). This, in paragraph 25, indicates that the Strategic Housing Market Assessment (2013) suggests objectively assessed need is 1,650 homes per year and that the housing target in the CS of 1,750 homes per year (28,000) remains an approximate housing target as things stand. (CD79)

*Planning Guidance*

31. The Milton Keynes Council (MKC) Section 106 Contribution Calculator (IQ28) sets out an initial estimate of the Section 106 contributions that the Council will seek from a development. Such calculations are based on advice and justification set out in the following, which are relevant to this appeal:
- Supplementary Planning Guidance on Leisure, Recreation and Sports Facilities (IQ21)
  - Supplementary Planning Guidance on Planning Obligations for Education Facilities (IQ21)
  - Milton Keynes Council Supplementary Planning Document Sustainable Constriction Guide (2007) (IQ21)
  - Supplementary Planning Document Social Infrastructure Planning Obligations (2005) (IQ21)
  - Affordable Housing Supplementary Planning Document (2013) (IQ21)

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<sup>7</sup> CD57 in paragraph 8.8 and 8.9

<sup>8</sup> CD57 Annex F, it assesses four in WS; land East of Vandyke Close (R17), North of WS (R18), West of Newport Road and Wyevale Garden Centre (R20)

## National Planning Policy and Guidance

32. The parts of the National Planning Policy Framework (the Framework) and associated Planning Practice Guidance (PPG) of most relevance to this appeal are summarised below.

### *Sustainable Development*

33. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise, and it is highly desirable that local planning authorities should have an up-to-date plan in place.<sup>9</sup>
34. At the heart of the Framework is a presumption in favour of sustainable development. For decision-taking this means 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 planning permission unless specific policies in the Framework indicate that development should be restricted.<sup>10</sup>

### *Core Planning Principles*

35. Relevant national core planning principles are that planning should<sup>11</sup>:
- be genuinely plan-led, empowering local people to shape their surroundings with local and neighbourhood plans setting out a positive vision for the future of the area;
  - proactively drive and support sustainable economic development to deliver the homes and thriving places that the country needs;
  - take account of the different roles and character of different areas, promoting the vitality of our main urban areas, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities;
  - contribute to conserving and enhancing the natural environment, with allocations preferring land of lesser environmental value; and
  - encourage the effective use of land by reusing land that has been previously developed.

### *Housing*

36. To boost significantly the supply of housing local planning authorities should identify annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5% to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing, the buffer should be increased to 20%.<sup>12</sup> Local authorities should have a clear understanding of the housing needs in their area.<sup>13</sup> The PPG advises that local

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9 The Framework paragraphs 11 and 12

10 The Framework paragraph 14 and footnote 9

11 The Framework paragraph 17

12 The Framework paragraph 47

13 The Framework Paragraph 159

planning authorities should aim to deal with any under supply within the first five years of the plan period where possible.<sup>14</sup>

37. Housing applications should be considered in the context of the presumption in favour of sustainable development, and relevant policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a five year supply of deliverable housing sites.<sup>15</sup>
38. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the viability of rural communities and avoid isolated homes in the countryside.<sup>16</sup>

#### *Good Design*

39. Good design is a key aspect of sustainable development, is indivisible from good planning and should contribute to making places better for people.<sup>17</sup>

#### *Sustainable Transport*

40. Safe and suitable access should be provided for all people, and opportunities be taken for sustainable transport modes.<sup>18</sup>

#### *Healthy Communities*

41. Great weight should be given to the need to create, expand or alter schools;<sup>19</sup> access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities;<sup>20</sup> and public rights of way and access should be protected and enhanced, with opportunities sought to add links.<sup>21</sup>

#### *Neighbourhood Plans*

42. Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. The ambition for the neighbourhood should be aligned with the strategic needs and priorities of the wider local area. Neighbourhood plans must be in general conformity with, and positively support, the strategic policies of the local plan, and should not promote less development than set out in the local plan or undermine its strategic policies.<sup>22</sup>

#### *Planning Conditions and Obligations*

43. Planning conditions and obligations are intended to be used to make otherwise unacceptable development acceptable. Obligations should only be used where it is not possible to address unacceptable impacts through a condition.<sup>23</sup>

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14 PPG paragraph 3-035

15 The Framework paragraph 49

16 The Framework paragraph 55

17 The Framework paragraph 56

18 The Framework paragraph 32

19 The Framework paragraph 72

20 The Framework paragraph 73

21 The Framework paragraph 75

22 The Framework paragraphs 183 and 184

23 The Framework Paragraph 203

44. Planning obligations should only be sought where they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.<sup>24</sup> These tests reflect the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regs).
45. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.<sup>25</sup>

## THE PARTIES' CASES

### Agreed Matters

46. The Council and appellant agreed Statements of Common Ground (CD3,CD4,CD5) prior to the Inquiry, although WS Town Council, or other third parties were not party to this agreement. Matters agreed in those documents and others, not in dispute between the two main parties, include:

#### *Housing Land Supply* (CD4)

- That the annual housing requirement in CS Policy CS2 of 1,750 dwellings per annum is the appropriate starting point for considering housing land availability.
- A backlog of 1,823 as of 31 March 2014 is the backlog of delivery over the four years from 2010/11 to 2013/14.
- That the Council's Five Year Housing Land Supply (5YHLS) Report 2014-2019 (June 2014) should be used as the starting point for assessment. (CD66)
- A 20% buffer should be applied to the housing requirement to deal with past under delivery.
- If that backlog were to be delivered within the first five years of the plan period, (using the Sedgfield method) the Council cannot demonstrate a five year housing land supply.
- A list of available sites for the purposes of assessing housing land supply was agreed as set out in appendix 1 of Mr Harris's proof (dated November 2014). (LA1)
- That the suggested delivery of most of those sites is agreed, apart those six sites indicated later in the section on the parties' cases.
- The agreed position, at the Inquiry, is as set out below:

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24 The Framework Paragraph 204

25 The Framework Paragraph 206

Method of calculating 5YHLS	Assumed need	Council assumed delivery	Appellant's assumed delivery
		11,464	10,567 (excludes Parklands Homes 42 units)
Backlog spread over life of plan (the Liverpool approach)	Buffer not applied to backlog 11,260	5.09 years of HLS	4.69 years of HLS
	Buffer applied to backlog (20%) 11,412 <sup>26</sup>	5.02 years of HLS	4.63 years of HLS
Backlog spread over first five years of plan (the Sedgefield approach)	Buffer not applied to backlog 12,323 <sup>27</sup>	4.65 years of HLS	4.29 years of HLS
	Buffer applied to backlog (20%) 12,688 <sup>28</sup>	4.52 years of HLS	4.16 years of HLS

### Planning (CD3)

- That the appeal site falls within the definition of previously developed land (PDL).
- That the appeal site falls outside the WSNP boundaries and therefore is not subject to that plan's aims and policies.
- The appeal site falls within the designated area for the emerging WNP.
- The appeal site is not affected by any local or national statutory designations or protected under any of the designations referred to in footnote 9 of the Framework.
- The site is outside, but adjacent to the settlement boundary of WS, as defined by the LP Proposals Map and in relation to LP Policy S10.
- The description of the appeal site and the surrounding area is agreed and forms the basis of the analysis in the section on site and surroundings.
- The appeal proposal does not constitute development essential for the purposes of agriculture, forestry, countryside recreation or development which is wholly appropriate to a rural area and cannot be located within a settlement as set out in LP Policy S10.

<sup>26</sup> Undisputed figure taken from AP1 Table 8.2

<sup>27</sup> CD 66 page 4 (5YHLS Report)

<sup>28</sup> Undisputed figure taken from AP1 Table 8.2

- That WS is an 'existing settlement' and that the appeal site is 'adjoining an existing settlement'.
- The Report on the examination into Milton Keynes Core Strategy (CD59) in paragraph 35, confirms that the housing target as set out in CS Table 5.2 and referred to in CS Policy CS2 should be regarded as a 'minimum' figure as there is no overriding sustainability reason to treat it as a cap.
- That the settlement boundaries referred to in LP Policy S10 date originally from 1991 and were initially prepared in the 1970's. The boundary was published in the Borough of Milton Keynes Local Plan (1995) and the LP retained these boundaries.
- Where the Development Plan is out-of-date, the Framework provides more up-to-date policies and considerations and is an 'other material consideration' that particularly needs to be taken into account and given significant weight in the determination of this appeal.
- A list of planning conditions that ought to be imposed if planning permission were to be granted. (IQ32)
- That the appeal proposal will include provision for 30% affordable housing, financial contributions towards sustainable transport and carbon offset measures. It is agreed that financial contributions towards education provision, social infrastructure, leisure, and recreation and sports facilities may be required, all to be secured through a Section 106 obligation/undertaking.

### **The Case for the Appellant**

47. The appellant's opening and closing statements set out a summary of its case. (IQ9,IQ33). The material points are summarised below:
48. The appellant is not a housing developer. It is a successful local business which has outgrown the appeal site. It will be moving, albeit within Milton Keynes, (MK) to allow its business to continue to thrive and grow. The appeal site no longer meets its needs. It is brownfield and degraded land at the edge of the WS settlement boundary, and it will be left vacant. This application seeks to find an alternative use for it. A low density housing scheme is proposed to enable family houses with gardens, in keeping with the locality and which also contributes to meeting MK's acute affordable housing needs. The appeal proposals constitute a more neighbourly use than the existing and one that fits rather better with the housing already around it. The appeal proposals also bring a number of real benefits, many of which are agreed by the main parties.

### **CS**

49. CS Policy CS1 (CD49) seeks to concentrate development outside MK in the key settlements, which includes WS. Thus WS is one of the locations for the 1,760 additional homes to be provided in 'sustainable settlements in the rural area between 2010 and 2026,' (CD49 Table 4.1 and p. 52) and in respect of which 600 were still to be found. The CS makes clear that the settlement boundaries for WS and these other key settlements would have to be reviewed through Plan:MK anticipated by 2015. (CS Policy CSAD1) This, along with the emerging SAP is now delayed until 2016 or 2017.

50. No conflict with CS Policies CS2 or CS9 would result. The appeal proposal would take into account the provisions of CS Policies CS1, CS2, CS10, CS11, CS12 and CS13.
51. CS policy CS9 envisages that sites to meet the rural housing need will be allocated through the emerging SAP. The Council is not objecting to the appeal proposal on the basis of prematurity. This is the correct approach.<sup>29</sup> The SAP is at its earliest consultation stage (CD57, para. 2.6) and in the context of the overall 28,000 new home requirement or the 1,760 new homes to be located in sustainable settlements in the rural area this scheme for a mere 53 houses cannot be said to be substantial.

#### *LP Policy S10*

52. LP Policy S10 is an aged policy. It is based on settlement boundaries last systematically reviewed in the early 1990s. These boundaries (and the policy itself) are long, overdue for review. They were not reviewed in the CS. It was a policy that was from its outset unsatisfactory in intellectual and common sense terms as it defines all land outside settlement boundaries as 'open countryside.' (CD55 para. 2.6.10). The population increase and related need for housing in MK has been dramatic since they were defined. In addition, LP Policy S10 makes no distinction between greenfield and brownfield land. It is in conflict with the Framework.
53. The Council relies on an assessment it undertook (CD51) to suggest that LP Policy S10 is compliant with the Framework, considering it only against paragraph 28 in the Framework, which refers to the rural economy, and even on that finds some conflict. (CD51 p.4) It is a policy that should be given little, if any, weight in this appeal.
54. LP Policy S10 does not assess 'character'.<sup>30</sup> It also includes land that is not in any way 'rural' in character. The Council's reason for refusal is unjustified.
55. No precedent would be set by the appeal proposal as most open countryside is not brownfield land.<sup>31</sup> (CD7) There would be no harm to character or appearance of the locality, and it would maintain the separation between WS and Wavendon. Further, the Council has granted numerous permissions for built development on the appeal site despite LP S10 (CD8 at p. 76 and CD58). There is other close by development outside the settlement boundary.
56. The objectives of the LP Policy S10 are met as the appeal site adjoins the settlement boundary. (CD13, p. 25) It is a brownfield and degraded site that will, if the appeal is allowed, be improved in visual terms. There are, in any event, only limited views of the appeal site because of planting and this will be enhanced further. The housing will be a better neighbour to existing housing than the present use or any class B uses. The appeal site will otherwise become disused and the appeal proposals bring a number of other benefits.

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<sup>29</sup> Advice in the PPG on prematurity makes clear that a refusal of planning permission 'on grounds of prematurity will seldom be justified where a draft Plan has yet to be submitted for examination' and the proposal must be "so substantial ... that to grant permission would undermine the plan-making process'.

<sup>30</sup> LP Paragraph 3.54

<sup>31</sup> It would not set a precedent for Site R18 in the SAP, which lies to the rear of the Wyevale Garden Centre.



## *WSNP*

57. Although well related to the settlement of WS and operating as part of that town, and immediately adjoining its settlement boundary, the appeal site is located within the Wavendon Civil Parish. The WSNP designated area (CD62) does not include the appeal site. Further, this matter is not a reason for refusal, and it is confirmed in the Planning SCG (CD3 at para. 5.13) and officer's report (CD8 para A2.4) that the appeal site lies outside the WSNP's boundaries and is therefore not subject to its aims and policies. However, it is acknowledged that the Council cites in its Statement of Case (CD1) that the appeal proposals would be contrary to the WSNP formally 'made' earlier in 2014.<sup>32</sup>
58. The Examiner for the WSNP, in considering whether that WSNP met the 'Basic Conditions'<sup>33</sup> was obliged to consider the extent of geographical influence of the Plan (CD63). The policies and proposals in the WSNP apply only to the WSNP area and not to adjoining parishes.<sup>34</sup> It does not therefore form part of the Development Plan insofar as the appeal site is concerned.<sup>35</sup>

## *The WNP*

59. There has been no discernible progress on this other than an open day in August 2014 and no document has yet been published for consultation. Accordingly, the emerging WNP can be given no weight in relation to this appeal.

## *Five Year Housing Land Supply (5YHLS)*

60. The Council does not have a 5YHLS. This is an important material consideration in support of this appeal. There have been a number of appeal decisions by the SoS recognising that post the Framework the most significant material consideration in a housing case is the absence of a 5YHLS (CD 37,36, 39,37). But even without this there are no disbenefits which justify a refusal of planning permission. It would provide additional housing over and above the 5YHLS. It would accord with paragraph 47 of the Framework.<sup>38</sup>

## *The Basic Requirement*

61. It is accepted that the starting point of the analysis of the 5YHLS is the requirement set in the CS. (CD49) However, this is a 'minimum' figure since there is no overriding sustainability reason to treat it as a cap and an 'interim'

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32 However, Mr Wilson confirmed in cross examination that the Council did not allege that there was a breach of any policy in the WSNP, as those policies did not apply to the appeal site. He confirmed that he did not agree with the view raised by third parties that Policy WS5 was breached.

33 set out in paragraph 8(2) of Schedule 4B to the Town and Country Planning Act 1990 as applied to neighbourhood plans by section 38A of the Planning and Compulsory Purchase Act 2004

34 In reporting, the Examiner said (see paragraph. 7.2.4) "... a neighbourhood plan can only include policies and proposals that relate to the neighbourhood area (in this case WS Parish only)". As a result the Examiner required the aspirations set out in section 2.2 of the draft WS NP to be "clarified" as "otherwise the plan will conflict with the first basic condition. It is necessary to make it clear that whilst there may be support for the policies from neighbouring parishes the policies themselves only relate to the Neighbourhood Area".

35 The Examiner did though note that the WS settlement boundaries might as part of the Plan:MK review need to be altered: see the analysis in AP5 at paragraphs. 5.111 – 5.114.

38 which aims to significantly boost the supply of housing

figure pending an early review and the adoption of a new requirement in the emerging Plan:MK. (CD59)

#### *The Buffer*

62. It is agreed that because of persistent under-delivery MK is a 20% authority and that the 20% buffer must be applied to the whole requirement.

#### *The Application of the Buffer to the Backlog*

63. The purpose of the buffer is to ensure a range and choice of sites to maximise the chances of delivering on the assessed need.<sup>39</sup> (CD6) This assessed need should include the relevant backlog.

#### *Past Under Supply*

64. The cumulative backlog figure is agreed. (AP9 and CD4 at p. 2, para. 5)
65. Past under supply should be delivered within the first five years of the plan period. This is the Sedgefield approach. It is better to meet the shortfall sooner rather than later. It aligns closer to paragraph 47 of the Framework<sup>40</sup>. It is also supported in the Ten Principles advice note<sup>41</sup> and the PPG. (CD82) The Sedgefield approach has strong support in post Framework Inspector and SoS appeal decisions. (CD69, CD68, CD42) There is no SoS decision that supports spreading the shortfall over the plan period; a method known as the Liverpool approach. The Shottery appeal decision (CD68) suggests that for an authority to be able to rely on the Liverpool approach it must be able to demonstrate strong local reasons for so doing.
66. Further, the PPG advice is that the aim should be to follow the Sedgefield approach within a LPA area where possible and where it is not possible the alternative mooted is not the Liverpool approach; rather working with other authorities is advocated to deal with the backlog within the 5 year period.<sup>42</sup>
67. The Council refers to the Barwell appeal decision (CD80) in support of the Liverpool approach. However, that decision was pre-PPG. In addition, the Inspector, in that case, made comments about the economic context to support the Liverpool approach that do not relate to this appeal. (para. 13)
68. By applying the Sedgefield approach the annual target would not be unrealistic. Whilst it would be above delivery rates over the last 15 years, during that time there has been a 24% increase in housing stock. There were higher rates before that. The difficulties the Council has in showing a 5YHLS if the Sedgefield approach is applied is due to its reliance on a small number of large sites and the delays inherent with such sites. The Council's argument is therefore somewhat circular: it cannot deliver more because it has not delivered more. That is not consistent with the imperative of paragraph 47 of the Framework. (CD6)

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39 paragraph 47 of the Framework

40 The need to boost significantly the supply of housing and remedy the unsatisfactory consequences of persistent under delivery

41 published by the Planning Advisory Service and the Local Government (Principle 8, CD 70)

42 'LPAs should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the duty to cooperate'

69. Further, the CS Inspector (CD59) in paragraphs. 30–34 was not looking at the Sedgefield issue in the context of the 5YHLS, but rather at the basic requirement in the context of the whole plan period. The Council owns about 1/5 of the land it is relying on for supply over the whole plan period and approximately 1/10 of the supply in the 5YHLS. It thus has more ability than other authorities to boost delivery.
70. The difference between the use of the two approaches on the 5YHLS requirement is a couple of hundred houses per annum (pa)<sup>43</sup>. The Council say the requirement applying the Liverpool approach and the buffer (but not to the backlog) is 2,252 pa. The appellant says the requirement is 2,538 pa applying the Sedgefield approach, and applying the buffer to the backlog. A target of 2,538 pa (286 more pa) is not unrealistic, although it may be challenging. The Council has only delivered on its own argued for target of 2,252 pa in one year since 2000. The Council using the Sedgefield approach and applying the buffer correctly to the backlog does not have a 5YHLS.

### *Supply*

71. In the updated information (LA1 App 1) on the 5YHLS Report 2014-2019 (CD66), two general points emerge: (i) the Council forecast 14% fewer completions in 2014/15 than previously, with more completions suggested for the last 2 years; and (ii) on 5 of the 10 sites, in dispute, the forecast contributions to the 5YHLS are reduced for the Western Expansion Area 11 (WEA11).
72. The Council has historically demonstrated a systematic bias towards optimism on delivery rates.<sup>44</sup> If the Council's current projections of completions proved to be similar in terms of accuracy to their past predictions, this would result in a reduction in the 5YHLS of about 12%. This is similar to the commonly used 10% slippage factor used by Councils to figures supplied to them or assumptions made about delivery. The Council does not apply a slippage to its figures.
73. The Council is unusually reliant on a relatively small number of large sites to provide it with a 5YHLS. The PPG warns that the size of sites is an important factor in identifying if there is a 5YHLS because of the time it will take to commence development on site and build out rates. (CD81, p. 4 of 9, para. 31). Caution is needed in placing reliance on these sites delivering the forecast levels of housing within the relevant 5 years.
74. Start dates, for a number of the sites in dispute between the parties, are likely to slip and this will result in losses from the 5YHLS. Delivery rates on these sites will not be made up by the developer within the 5 year period. There is no reason for house builders to increase delivery rates to compensate for a later start date. It is not in a house builder's commercial interest to build out at a higher rate than they would normally do as they begin to compete with themselves. The result is the loss of a number of units from the 5YHLS.

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43 AP1 table 4.1

44 Thus while historically its forecast rates for year 1 of the relevant 5YHLS have been reasonably accurate for years 2 and 3 the accuracy drops significantly (e.g. for year 2 the accuracy ranges from 53 – 69%).

### *Specific Site Delivery*

75. *Western Expansion Area – Area 10 (WEA10)*: Whilst completions rates are agreed, none of the developers on this site yet have reserved matters approval. Some slippage will occur of approximately 100 units in 2015/16 which reduce the forecast completions within the relevant 5 year period.
76. *WEA11*: The Council increased the forecast delivery from 533 (in CD66) to 920. There is likely to be a slippage of 175 units during the 5 year period as planning difficulties have resulted in the need for fresh reserved matters applications. Completions at a rate of 250 pa in 2015/16 and 2016/17 are unrealistic. Information from Savills (IQ4) suggests completion rates at 200 pa, which would reduce the forecast completions within the 5 year period. The Council suggests that other sites in Area 11 outside the current developer's (Barratt's) ownership, might come forward within the 5 years. However, these other sites are not currently counted by the Council in the 5 year supply; there are ecological and archaeological issues still being considered. These other sites cannot meet the test set out in footnote 11 of the Framework.<sup>45</sup>
77. *The Strategic Land Allocation (SLA)*: This is a complex site with 8 separate plots, and 5 different owners. No planning permission has yet been granted as negotiations are not resolved regarding the planning obligations. There is a threat of judicial review by one of the owners when permission is granted which will delay matters considerably. The largest landowner is Gallagher<sup>46</sup>. Referring to recent experience on another Gallagher large site, Broughton Gate/Broughton Manor Farm, this suggests a timescale of 3 years from the grant of a planning permission to the first completions and delivery of roughly 300 homes pa. (AP4 para. 5.8) All these matters are likely to result in slippage in the first year and a net loss of 490 homes from the 5YHLS.
78. *Land at Brooklands BDW1B (BDW1B)*: Slippage in the first year will result in a net loss of 41 homes over the 5 year period. Mr Harris pointed to other sites at Brooklands (owned by Barratts) which might deliver, but these are already accounted for. (IQ19)
79. *Block B4.1, Central MK (B4.1)*: This site has no reserved matters approvals. There are design and planning matters which have given rise to viability issues. There is likely to be a slippage in the first year resulting in a loss of 50 homes from the 5YHLS. Further, the developer on this site indicates that development will be delivered over 5-6 years rather than a shorter period. (ID20)
80. *Parklands Care Home in Wolverton*: The 43 units here should not be included as the CS requirement did not include class C2 care homes. This reflects normal LPA practice until recently.

### *Conclusions on supply:*

81. The Council's supply figures need only be reduced by 317 dwellings to result in there being no 5YHLS. That is just 35% of the reductions in supply argued for by the appellants.

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<sup>45</sup> that sites be 'available now' with a 'realistic prospect' of delivery within 5 years.

<sup>46</sup> Gallagher control over 50% of the entire land supply over the plan period.

82. The Council refers to the Ashflats appeal decision. (CD84) It suggests this appeal should not interrogate the question of whether there is a 5YHLS as this would be 'an ad hoc' review. Whether the Council have a 5YHLS is an issue that must be resolved in this appeal on the evidence currently available.

### *The Planning Balance*

83. The Framework outlines that there are three dimensions to sustainable development – economic, social and environmental. Turning to these, the appeal proposal would be sustainably located close to WS which has a range of local services and facilities and it would be close to public transport provision. It is a brownfield site and should be developed in preference to a greenfield site.<sup>47</sup> It will provide additional homes, including affordable homes, to meet the housing needs of MK, including the backlog identified. The proposed development will provide a boost to the local economy by further supporting construction activity in the local areas, providing jobs, a supply of labour and it has the capacity to help support local services. It would generate more than £350,000 in New Homes Bonus for the Council over a six year period plus additional revenue from new residents paying Council Tax.
84. The appearance of the appeal site would be tidied up and improved and additional planting provided. It would replace the existing use with one that is more compatible with the nearby residential development and would be a better neighbour than other activities of a similar character, intensity and form. The appeal proposals have been developed to high standards of environmental design, and intend to achieve Code for Sustainable Homes Level 3 and incorporate measures to reduce carbon emissions, promote renewable energies and increase energy efficiency.
85. Against these benefits the possible negatives identified by the Council are that the appeal proposal conflicts with Development Plan policy, including LP Policy S10. A breach of a policy is not itself harmful.
86. The Council alleges slight concern in terms of impact on the rural character of the locality. Given the extent of existing screening, which is to be enhanced, the brownfield appearance of the appeal site would be improved.
87. There is the suggestion that WS has taken its 'fair share' of housing and that taking more would adversely affect 'social cohesion'. It is also suggested that WS is becoming a 'dormitory town'. However this ignores the present context in which the majority of landscape staff working from the appeal site work off-site all week. The scheme is of a modest size in the context of WS. MK and the surrounding area, has grown exponentially in terms of population since the late 1960s. MK has dealt very well with incoming population. There is no evidence of this affecting 'social cohesion'.
88. That WS has taken its share of development is recognised in the emerging SAP<sup>48</sup> but this can be given only very limited weight given the stage reached.<sup>49</sup> Further, the emerging SAP puts forward four sites in WS for possible housing

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47 Paragraph 17 the Framework

48 CD57

49 CD57: paragraph 2.6. submission will not be until Autumn 2015 with examination in 2016 and adoption later that year

development.<sup>50</sup> Moreover, the CS identifies WS as a key settlement in which housing in the rural areas should be focussed.

89. The Feniton appeal decision (CD83) has been referred to in an effort to question whether WS could absorb the amount of development proposed. Feniton is a small rural village.<sup>51</sup> It is wholly different to the WS context. Moreover, the appeal proposal would increase the number of houses in WS by 3.7%. In the Feniton case it was much larger.<sup>52</sup> The scale of development proposed, relative to the receiving environment, is not comparable.

#### *Planning Obligation*

90. An executed planning obligation to meet the Council's requests is provided. However, whilst the requests for affordable housing, transport and carbon neutrality/sustainable construction have been fully justified, others have not been and do not meet the tests set out in CIL Regs.

#### *Paragraph 14 of the Framework*

91. The appeal proposal benefits from the presumption in favour of sustainable development in paragraph 14 of the Framework, because LP Policy S10 is an aged policy, the boundaries which underlie it having gone unreviewed for decades and the Council cannot demonstrate a 5YHLS. LP Policy S10 is a relevant policy for the supply of housing for the purposes of paragraph 49 of the Framework. None of the circumstances described in footnote 9 of the Framework apply. Further, the adverse impacts of the appeal proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework taken as a whole.
92. Even leaving aside paragraph 14 of the Framework, the planning balance clearly comes down in favour of the grant of planning permission. The disbenefits would not outweigh the benefits. They certainly would not demonstrably and significantly outweigh them.

### **The Case for Milton Keynes Council**

93. The Council's closing statement (IQ33) sets out a summary of its case. The material points are summarised below:

#### *Character and Appearance and WSNP*

94. The effect of the appeal proposal on the character and appearance of the locality is not an issue between the Council and the Appellant. There is no identified conflict with the WSNP, although it is a material consideration for the determination.

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50 See CD57 'WS Summary' and the consideration of a number of sites, three of which are in close proximity to the appeal site and all of which are recognised as being sustainable locations. See also CD64.

51 5.6 km from Honiton, 19km from Exeter. Modern village one-stop shop, takeaway, hairdresser, hall pub and primary school, station; and church and pub in historic village 1.2km away (see paragraph. 65) with a total 674 dwellings + 50 recently won on appeal = 724 (see paragraph. 87)).

52 It would increase the number of homes by between 12.2% and 16.8% .

## 5YHLS

95. The adopted CS makes adequate provision for its new development requirements in sustainable locations. Only if the Council was unable to do so would additional land (including sites in rural areas and/or open countryside locations) be required to satisfy its basic requirements. This matter marks this appeal apart from the appeal decisions referred by the appellant. The CS recently underwent a thorough and independent public examination prior to its adoption in July 2013. (CD59)
96. It was found sound when assessed against the policies of the Framework in particular to boost significantly the supply of housing and ensure that it meets the full, objectively assessed needs (OAN) for market and affordable housing in the housing market area.<sup>53</sup> Policy has not changed since. Moreover, the approach taken by the CS Inspector accords with the PPG.<sup>54</sup>
97. The CS Inspector did not consider that requirement to be just the bare minimum but '...the Plan's target provision of 1,750 dwellings per year would be likely to meet or exceed the need arising from household growth 2011-2021, allowing a cushion of more than 9%.'<sup>55</sup> Bearing in mind that household projections are by their very nature an inexact science, the CS Inspector considered the requirement to be sound having properly factored in the economic aspirations of the LP.<sup>56</sup>
98. Whilst the CS was only adopted in July of last year, work is already underway on the emerging Plan:MK and the SAP. As part of the evidence base the Council has prepared a 5YHLS Report. (CD66) This has not undergone the rigorous examination process associated with the CS. However, it indicates that the LP requirement remains robust '...particularly as the target remains higher than the latest Government Household Projections, which could be seen as an alternative.'<sup>57</sup> Similarly, the key findings in the 2014 SHMA, which looked at all the key drivers within the local housing market (affordability, earnings, house prices and migration) do not suggest the need to increase housing delivery observing 'this is not surprising given the consistently high rate of housing delivery in the area over many decades – MK is already providing housing at a substantially higher rate than most local authorities in the country.'<sup>58</sup> The available evidence does not suggest that the housing requirement is anything other than a full OAN within the meaning of paragraph 47 of the Framework.
99. There is no dispute between the parties over the 20% buffer that has been added to the basic requirement, given the shortfall in completion rates in recent years. In adding a 20% buffer the Council has recognised the observations of the CS Inspector that it was arguable, albeit that she also indicated that recent under-delivery has mainly been caused by lack of market demand.<sup>59</sup>

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53 Paragraph 47 of the Framework

54 CD59 paragraph 24, 32 and 35

55 CD59 paragraph 28-29

56 CD59 paragraph 28-29. '...no substantive evidence that continued growth in the local economy, as proposed in the Plan, will be constrained by the proposed dwellings target or that it will decrease affordability' whilst recognising that it was not unreasonable to expect MK to remain a net importer of labour to some extent owing to its accessibility

57 CD66 p.2

58 CD79 Milton Keynes SHMA Review (prepared by Opinion Research Services) paragraph 6.20 (on p.89). See also the Key Findings at p.157

59 CD59 paragraph 92

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100. Dealing with the backlog of delivery requires planning judgement but the Council's position reflects the aspirational but realistic approach required by the Framework.<sup>60</sup> To adopt the Sedgefield approach and add a 20% buffer to the backlog would result in an annual requirement of some 2,538 dpa.<sup>61</sup> Such a rate of delivery has never been achieved over the past 15 years (LA1 App.5) – a period that encompasses a full economic cycle. As recognised by the CS Inspector, the implications for delivery of housing are important. She noted that the 20-year peak in delivery occurred in 2007/8 well in excess of the demanding rate set by SEP and the CS requirement was itself challenging.<sup>62</sup>
101. To adopt the Sedgefield approach in MK would result in an unrealistic and consequentially unachievable annual requirement. This would result in an ever-increasing requirement that could never be achieved, contrary to the realism required for proper planning. It would undermine the plan-led system. The methodology is explained by the Council in its most recent 5HLS Report.<sup>63</sup> Whilst there is no SoS decision favouring the Liverpool approach, there is no SoS decision which indicates it should not be used in an appropriate case.
102. MKC is not averse to development – it represents a good example of having delivered development even through hard times. By inclusion of a proportion of the shortfall in the five year requirement, the Council has 'where possible' aimed to deal promptly with the past shortfall in delivery.<sup>64</sup> The PPG<sup>65</sup> makes clear that addressing a record of 'persistent under delivery of housing' involves questions of judgement for the decision-maker. That planning judgement has been exercised in the context of the unique circumstances that prevail in MK. In particular, as recognised by the CS Inspector, there is an identified quantity of developable land within the Borough that could be brought forward 'much earlier in the plan period if there is sufficient market demand'.<sup>66</sup> The contention that constraining supply through adoption of the Liverpool approach would result in adverse social consequences is not borne out by the evidence of local market signals as demonstrated in the most recent 5YHLS report.<sup>67</sup>
103. The deliverability of the identified 5YHLS is also a matter of judgement. This should be reviewed on an annual basis, which is of particular significance because of the recent adoption of the CS.<sup>68</sup> The need to identify and update annually the housing land supply is reinforced in the PPG. Land availability over a year has the potential to vary the supply at any given time. To take a snapshot during the year would be contrary to the intentions of the Framework regarding predictability and efficiency and could result in capricious decision making between systematic and methodologically consistent annual assessments.<sup>69</sup> There has been only one annual monitoring exercise since

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60 CD59 paragraph 154

61 CD59 Paragraph 154

62 CD59 paragraph 30-32

63 That it 'is based on the conclusions of the Inspector into the Core Strategy who acknowledged that in the forthcoming years there is little evidence to suggest that delivery of rates significantly in excess of those set out in the Core Strategy are actually achievable. She noted that there is a ready, unconstrained land supply available to respond to increased demand should the market improve.'

64 LA1 paragraph 2.9-2.18.

65 Paragraph 035 (LA1 App.4)

66 CD59 paragraph 92

67 CD66 Appendix 4 Market Signals

68 Paragraph 47

69 CD84 at paragraph 76



adoption of the CS and this provides the context in which the deliverability of the five contested allocations should be viewed.

### *Supply*

104. For each major site there are robust delivery rates, supported by developer/landowner feedback and information from colleagues across the Council. In addition, the Broughton Gate delivery rates<sup>70</sup> are of particular assistance because they cover a full economic cycle. Both parties agree that Broughton Gate demonstrates that a site of approximately 1,500 homes can deliver around 300 homes pa, even during the worst recession since the 1920s.
105. *WEA 10*: Outline planning permission is already in place for 4,320 units, all pre-commencement conditions have been discharged and land deals are in place for around 2,000 homes. Negotiations are underway with another national house builder (in addition to Bovis and Abbey Homes). MKC has further land ownership in the area to be released within the next five years. However, this has not been factored into the supply.
106. *WEA 11*: The Council had recent detailed face-to-face discussions with Barratt (the developer) over the proposed delivery trajectory. Furthermore, the major infrastructure construction is well under way with all pre-commencement conditions having been discharged for the majority of the area. Any slippage could be made up over the five years with the release of further land by Gallagher Estates.
107. *SLA*: The Council accepts a slippage of about 200 units, but that could potentially be made up over the five year period.
108. *BDW1b*: Delivery rates are in line with very recent developer forecasts (Sept 2014).
109. *B4.1*: The difference between the delivery rates advanced by the main parties is 50 over the five year period. However, with flat development there is scope for units to be brought forward more quickly should the market demand.<sup>71</sup>
110. In essence a reasonable and robust approach to land supply has been adopted by the Council. Only those sites with a realistic prospect of being delivered are included in the Council's figures. In addition, unlike many other LPAs, the Council relies on greenfield sites with little if any constraints.
111. The emerging SAP and neighbourhood plans are likely to bring forward additional sites over the existing 11,464, which reflects the ready supply of additional sites recognised by the CS Inspector (LA1 App.1). It also reinforces the need for reviews to be taken on a systematic and methodological basis as opposed to ad hoc snapshots in time. It is also of note that the issues between the main parties, with regard to housing supply, are not large but principally relate to the degree of slippage in the commencement of development on the disputed sites. This might properly be described as arguing over the potential marginality of supply over these sites as at this date – something that would be contrary to the spirit and practice of the plan-led system.<sup>72</sup> This is particularly

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70 LA1, Table 2 (p.12)

71 As demonstrated by the delivery of the 384 units for the Vizion development within 3 years

72 CD84 paragraph 97

so as the CS Inspector expressly recognised that delivery rates would increase towards the latter part of the five year period.<sup>73</sup>

### *LP Policy S10*

112. Whilst LP Policy S10 is a saved policy, it did not impact upon the CS spatial strategy being found sound and consistent with the Framework. Whilst the settlement boundaries within the Borough are being reviewed in the emerging SAP and Plan:MK, the spatial strategy for the Council is clear that the existing settlement boundaries are to be carried forward in the CS.<sup>74</sup>
113. When assessing the consistency of LP Policy S10 with the Framework, whilst it does not contain any development boundary criteria, it would be abundantly clear to any developer seeking planning permission for housing development outside the settlement boundaries that such proposals would engage and potentially conflict with CS Policies CS2 and CS9 in addition to saved LP Policy S10.
114. The starting point is s.70 (2) of the Town and Country Planning Act 1990 along with s.38 (6) Planning and Compensation Act 2004, which contains the legislative, as opposed to policy, presumption in favour of the Statutory Development Plan (SDP) unless material considerations indicate otherwise. It is common ground that the SDP (CD3) comprises the CS and the saved policies of the LP.<sup>75</sup>
115. The Council is able to rely upon a robust, recently examined and adopted CS<sup>76</sup>, which is the most important articulation of planning policy locally.<sup>77</sup> That is a material consideration of critical importance in the decision-making process irrespective of the statutory presumption that is to be applied. When considering the policies of the Framework and whether they justify a departure from the SDP they too must be considered as a whole. In that regard, despite the emphasis on housing delivery, the Framework promotes an explicitly planned system.<sup>78</sup> Whilst the housing requirement is expressed as a 'minimum' and there is a generally permissive stance, it does not diminish the importance or status of the adopted CS (CD49) or its soundness when assessed against the housing policies of the Framework.
116. When considering whether there is justification to depart from the SDP policy restricting development in the open countryside, it is also material to consider the development that has taken place in WS within the last 10 years. As indicated in the emerging SAP, the number of homes in the town has increased by over 50% since 2006.<sup>79</sup> As demonstrated in the Feniton appeal,<sup>80</sup> the ability of a community to absorb new development is a component of sustainability and should be put into the planning balance.

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73 CD59 paragraph 32

74 CD49, p.21 (CS1 and table 5.1 Settlement Hierarchy), p.26 (CS2) and p.66 (CS9)

75 SCG (Planning) paragraph 5.1

76 Unlike those referred to by the appellant such as Honeybourne, Shotton etc.

77 Unlike those referred to by the appellant such as Honeybourne, Shotton etc.

78 The Framework, paragraphs 12 and 17

79 CD57 paragraph 8.8

80 CD83 paragraphs 87-88

### *Planning Obligation*

117. The Council has requested measures to mitigate the adverse effects of development. These are all fully justified and meet the tests set out in the CIL Regs.

### *Conclusion*

118. To conclude, at its core the Framework promotes a genuinely plan-led system, within which the delivery of housing is a component. The Council can demonstrate a 5YHLS and that should remain the situation until the next annual monitoring exercise. Bearing in mind that the CS has so recently been found to be sound, its housing policies are unlikely to be found out-of-date.<sup>81</sup>

### **The Case for Interested Parties**

119. The interested parties' statements set out a summary of their cases (IQ1, IQ15, TP1, TP2). The material points for each are summarised below:

#### *WS Town Council (Mrs Jacky Jeffreys)*

120. Mrs Jeffreys's statement sets out a summary of her case (TP1). The material points are summarised below:

121. WS has a distinctive character and identity that we seek to preserve. It is considerably smaller than the other two key settlements identified in CS Policy CS9. It has a made neighbourhood plan, which involved discussion with the neighbouring parishes including Wavendon. The appeal site is adjacent to the boundaries of the WSNP area. It would be contrary to WSNP Policy WS5 as it would represent an extension to the settlement boundary and would not fall within the exceptional circumstances cited within that policy. Whilst it was not cited as a reason for refusal when the Council considered the appeal application, the WSNP was not made at the time.

122. The appeal proposal would not be sustainable. The high quality bus service 300 is currently funded by Taylor Wimpey and there is no certainty that it will continue in the long term. The train service to Bedford and Bletchley is only hourly and a train change is required to go to MK. The private car will be used virtually all the time by the proposed residents.

123. It would put additional pressure on the Asplands Medical Centre which has recently been expanded to the full extent possible on the existing site. Parking is problematic at present. The two local schools are at capacity and as they are not in MK any monies negotiated for educational provision are unlikely to benefit these schools. Parking at the local shops is difficult and WS is lacking in sport and leisure facilities.

124. The appeal proposal would reduce the opportunities for local employment in WS. Therefore the appeal development does not fall within the definition of sustainable development as set out in the Framework.

125. WS has contributed more than its fair share towards the housing target, a view upheld by the Examiner into the WSNP. WSNP Policy WS5 was accepted by that

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81 CD84

Examiner. WS will have 140 homes added next year with the possibility of 88 in future years. It is creaking at the seams to cope with more than doubling its population in the last ten years.

126. The application is premature. It was not included in the emerging SAP Issues and Options Report. It needs to await a future plan. Additionally, there is uncertainty arising due to the problem of the busy crossing point, the East/West railway project and the electrification of the line. It could result in Newport Road, which links the appeal site to WS, being closed at the crossing point and an alternative route provided.

127. It will open the flood gates to other developers and result in the complete removal of the green fields that separate WS from the urban development of MK.

*Councillor Hopkins (Ward Councillor for Danesborough Ward, which includes WS and Wavendon and Chairman of Wavendon Parish Council).*

128. The appeal site is located wholly within the village of Wavendon which has 370 homes at present. Wavendon has the SLA, which includes Church, Glebe and Eagle Farms. Together they will add some 3,000 homes to Wavendon. The development process is now at outline planning stage for some sites.

129. WS has also accommodated a 50% increase in housing stock over recent years. This development is placing increasing strain on the local highways, medical and education infrastructure. Wavendon is undertaking the preparation of a neighbourhood plan, WS has a fully adopted neighbourhood plan.

130. A number of sites in Wavendon were identified in the emerging SAP Issues and Options Consultation. That, together with emerging Plan:MK, indicate that both Wavendon and WS have both 'done their bit'. Additional housing sites should be avoided to allow a period of consolidation and integration of those sites for which permission or assumption of permission is in place. Sites should now be sought around the other two key settlements<sup>82</sup> which have to date accommodated comparatively little development, together with rural windfall sites.

131. It would put pressure on the local schools in WS and Wavendon, Asplands Medical Centre, and together with the expected electrification of the Bedford to Bletchley railway branch line and seasonal promotional features at the Frosts Garden Centre, the appeal proposal will add to traffic congestion and waiting at the railway crossing at WS.

132. The Council has an adopted CS, which allocates land for 28,000 additional dwellings. It should provide certainty. The Council can demonstrate a 5YHLS. The appeal site is within open countryside and thus not available for development at this time.

133. The appellant has not engaged in the development plan process and this proposal represents an attempt to by-pass those processes. It would provide a precedent for development on a number of other sites.

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<sup>82</sup> Newport Pagnell and Olney, in the northern part of the Borough

*Mrs Barker (Local Resident)*

134. There is not a housing shortage. There is a shortage of social housing. The population has gone up, but so too has housing. The proposed houses would not be sold to local people, rather to private landlords and foreign investors. It would open the flood gates to other developers and reduce the green buffer between WS and MK.
135. Better uses for the site could include much needed sport and leisure facilities, a golf driving range, landscape and gardening training and facilities including employment opportunities for people with learning difficulties, with a café and other facilities, funded through an investment partnership.

*Mr Luke (Local Resident)*

136. WS does not need more houses. Its housing stock has increased by 50% in recent years and is set to increase more with the completion of the Parklands development. It would be contrary to the WSNP, which ruled out any further housing development. If allowed, this appeal could open the flood gates for development on a much wider scale. It would put additional pressure on the Asplands Medical Centre, the two existing schools, and, coupled with the future possible electrification of the railway line and its increased use for passenger and freight, add to traffic congestion generally and parking pressure in the High Street, which could adversely affect the viability of local businesses. It would lead to our town becoming an urban sprawl.

**Written Representations**

137. A number of written representations were received at the time that the appeal application was considered by the Council. These matters have generally been covered by the interested parties' cases above.

**PLANNING CONDITIONS IF THE APPEAL WERE ALLOWED**

138. A revised list of conditions (1032), agreed between the two main parties, was discussed at the Inquiry. In the event of the appeal being allowed, I have recommended most, subject to refinement to improve clarity and ensure consistency with national policy and guidance.<sup>83</sup> The conditions recommended to be imposed, if the appeal were allowed, are set out in Annex C.
139. In addition to the standard conditions relating to timing of development, compliance with approved plans and submission of reserved matters, a condition relating to a foul water strategy is required to prevent environmental problems as a result of flooding. Also, a condition to ensure satisfactory surface water drainage and to reduce the possibility of flooding is necessary.
140. To ensure that the appeal site is fit for purpose and to avoid potential harm to health, an assessment of ground conditions for contamination, including securing any remedial work required is necessary. Conditions to secure measures to protect existing planting and trees are necessary to protect the character and appearance of the appeal site and that of the proposed development. A condition to secure adequate visibility splays is required to

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<sup>83</sup> Paragraphs 203 and 206 of the Framework and PPG paragraphs 21a-001-034

ensure highway safety and convenience to road users, along with the provision of the proposed adoptable estate roads.

141. Conditions to control external lighting, external materials, boundary treatments, landscaping and its future maintenance are required to ensure that the proposed development blends into the locality. A sustainability statement and measures to ensure that the proposed dwellings are sustainably constructed are necessary to ensure that the proposed development makes efficient use of natural resources. A condition to ensure that a Code of Practice for the construction of the proposed development is adhered to along with measures to control the hours of working is required to limit inconvenience to nearby residents during construction works.
142. A condition to secure the location and type of affordable housing will ensure that the proposed development provides high living standards and an appropriate mix of tenures. Details of the proposed cycle and car parking are required to ensure highway safety and promote sustainable forms of transport. Conditions to protect any bats and secure measures to enhance wildlife are required to safeguard protected species and provide a net gain for wildlife.
143. Other conditions were suggested by the main parties which have not been recommended. These include a condition specifying the number of dwellings which is not necessary as this is explicit in the description of development. A condition relating to designing out crime is not required as all matters are reserved.

## **INSPECTOR'S CONCLUSIONS**

144. My main issues, findings and conclusions are set out below. They are based on both written and oral evidence given at the Inquiry along with what I saw during the accompanied and unaccompanied visits that I made to the site and surrounding area. The numbers in small font square brackets refer to earlier paragraphs in this report.
145. I consider the main issues to be:
- whether or not the proposed development would conflict with development plan policy seeking to restrict development in the open countryside, and
  - if such conflict exists, whether there are any other material considerations, specifically with regard to the supply of housing land, that would justify the proposed development being allowed now.

### **Conflict with Development Plan Policy**

*LP Policy S10* [51-55,112]

146. As the appeal development would sit outside the WS Settlement Boundary, and it would not fall within the types of development permitted by that policy, it would be in conflict with the terms of LP Policy S10. I note that the objective of LP Policy S10 is to protect the countryside and concentrate new development within and adjoining existing settlements. Whilst the appeal proposal would adjoin the settlement boundary of WS and would be within walking distance of its services and facilities, still it would, in falling outside the settlement boundary, be in conflict with the principle of LP Policy S10.

147. However, LP Policy S10 is based on settlement boundaries that have not been defined on the basis of the level of growth required by the CS. Even though they were reviewed as part of the 1995 and 2005 LP processes, they are therefore out-of-date. Whilst the objective of that policy is to concentrate development within or adjoining settlement boundaries, which provides some flexibility as to the amount of growth that could be accommodated, the terms of that policy, based on outdated settlement boundaries would have the effect of applying a constraint on development. Due to this, LP Policy S10 would not be consistent with paragraph 47 of the Framework, to boost significantly the supply of housing. That the CS in policies CS2 and CS9 classify WS as a key settlement with the potential to accommodate further growth and recognise that its settlement boundaries need to be updated gives me assurance on this point. That LP Policy S10 does not differentiate between greenfield and brownfield land and its settlement boundaries have not been based on a recent criteria based assessment adds weight to this finding. I will return to the appropriate planning balance in these circumstances later in my report.

*CS Policies CS2 and CS9* [49,111-114]

148. Given that the CS is recently adopted, it must be considered to be up-to-date and in most respects to be consistent with the Framework. However, the CS itself requires certain things to occur to allow its implementation; these include the review of settlement boundaries and the identification of new sites for housing in CS Policies CS2 and CS9.

149. The settlement boundaries identified in LP Policy S10 are carried forward into the CS. It is recognised, in CS Policy CS9, that their review is required and that this will take place through Plan:MK and the SAP. This has not occurred yet and until those planning processes have taken place new housing outside settlement boundaries would be contrary to the terms of CS Policies CS2 and CS9.

150. However, the appeal proposal would be consistent with and would help to deliver the CS objectives, in terms of meeting the Council's housing needs set out in CS Policy CS2, and would accord with the MK Development Strategy set out in Policy CS1 and Policy CS9, to focus development on the key settlements such as WS. It is often the case that detailed policies pull in different directions in a plan. In this case, I take the view that the appeal proposal would generally accord with the collective intent of those policies referred to and would be broadly consistent with them.

## **Other Material Considerations**

### **Character and Appearance** [8-11,85,87,93]

151. The appeal site accommodates an array of hardsurfaced areas, buildings, open storage of landscape materials and parking areas. The activity on the appeal site includes that related to its employees, along with its use as a working landscape contractor's depot site. This includes heavy lorries coming and going and vehicle and landscape machinery movements within the appeal site. Even though development is fairly low level in terms of its height and scale and includes open areas and planting, as it is not generally open green fields, it does not constitute open countryside, in the everyday use of that term. This is the case notwithstanding the definition of that term as set out in LP Policy S10, which defines such land as all land outside settlement boundaries.

152. Further, as the appeal site is already developed, the appeal proposal would not materially reduce the amount of open countryside in the locality. However, it would be likely to result in a reduction in the general activity and heavy vehicle movements associated with the existing use, and replace its semi-industrial appearance. In this regard, it would fit more comfortably into the locality than the existing development or a development similar in type and intensity. This would weigh in its favour.
153. The heavy planting on the boundaries, particularly the Newport Road frontage, limits views into the appeal site. However, the proposed development would be likely to cover more of the appeal site than the existing development and be higher in places, to accommodate two storey houses. Even though matters of layout, scale, appearance, access and landscaping are reserved for later consideration, the general scale and massing of a development of 53 homes would be likely to result in a more intense built up frontage to the open countryside to the west, where the public footpath runs, than the existing development. However, as it is proposed to retain and enhance the existing planted boundaries, and the appeal site is already developed, with careful design, I am satisfied that any material harm could be mitigated.
154. As the locality includes residential development, the appeal development would not appear out of place. Existing development to the north of the appeal site would be retained, including the landscape depot office and warehouse buildings and the Asquith Wavendon Nursery. As it is already built on, it would not result in a material reduction in the open space between Wavendon and WS. As existing development would sit between the appeal development and the small amount of open land that exists between Wavendon and WS, the appeal development would not materially contribute to further coalescence of the settlements. Further, the appeal development would sit roughly in line with existing development on the other side of Newport Road. Whilst the proposed development is likely to cover more of the appeal site, it could accommodate housing at a density that would sit comfortably with Bellway, and the housing opposite.
155. All in all, there would be benefits of the appeal proposal to the character and appearance of the locality including the countryside and I have identified no material harm to its rural character. In this regard, it would generally accord with the identified objective of LP Policy S10, that seeks to protect the countryside, and paragraph 17, bullet point 5 of the Framework.<sup>84</sup> Whilst I acknowledge that LP Policy S10 does not make a distinction between greenfield and brownfield land outside settlement boundaries, as it seeks to protect the countryside, it also seeks to protect its character and appearance.

**WNP** [26,58]

156. I recognise the intention to produce a WNP. It is agreed that the appeal site falls within the designated area for it. However, this is at a very early stage of gestation and there are no draft documents, outline of its aims, objectives or policies before me. Accordingly, I attach very limited weight to it in determining this appeal.

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<sup>84</sup> Which seeks to recognise the intrinsic character and beauty of the countryside



**WSNP** [25,56-57,93]

157. This is a 'made' neighbourhood plan. The appeal site lies outside the designated area of the WSNP and therefore it does not form part of the Development Plan for this appeal, a matter that is agreed between the main parties.
158. However, the aim of WSNP Policy WS5 is to preserve the countryside setting, existing woodland and footpath links into the countryside as a key feature of WS. It seeks to restrict any changes to the WS DB on that basis, but recognises the exceptional circumstances in which the DB could be changed which includes through Plan:MK.
159. The designated area of the WSNP is defined by the parish boundary and the WSNP DB generally accords with the settlement boundary defined in LP Policy S10, for that part of it covered by the WSNP. The appeal site is some distance from the DB, and the appeal proposal would not include an extension to it. Further, the proposed development outside the WS DB, I have found would preserve the character and appearance of the locality and therefore the countryside setting of Woburn Sands. Further, it would preserve the existing woodland and footpath links. In this regard, it would not undermine the purpose of WSNP Policy WS5. However that the proposed development would be outside the DB as set out in WSNP Policy WS5 is a material consideration that I have taken into account in the overall balance and conclusion of my recommendation. However, for the above reasons, I accord this matter very limited weight.

**Housing Land Supply**

*Housing Requirement* [21,61,94-97]

160. The housing requirement set out in the CS Policy CS2 of 28,000 homes (1,750 pa) is agreed between the parties. The CS has been recently examined and adopted. That figure is stated as a 'minimum' and 'interim' figure so if trends were to indicate that this figure should be increased the CS requirement would allow for it. In addition, recent work on Plan:MK and the Strategic Housing Market Assessment (2013) (SHMA) reaffirms this figure as 'an approximate housing target as things stand'. On this basis, and in accordance with advice in the PPG, I attach considerable weight to the housing requirement figure in the adopted CS. No new evidence is before me to persuade me to take an alternative view on this matter. The balance of the available evidence suggests that the CS housing requirement is the OAN for MK.

*Buffer* [62,98]

161. It is agreed between the parties that, due to persistent under delivery, a 20% buffer should be applied. As the CS Inspector considered this matter (CD 59 para 92) and agreed that a 20% buffer would be appropriate in this case, and I have no persuasive evidence to the contrary, I do not take a different view. This is the case, even though I acknowledge that in examining this figure, the CS Inspector indicated that a 20% buffer was arguable, recognising that the balance of evidence indicated that any undersupply was mainly caused due to lack of market demand. (CD59)
162. In this case, the Council applies the buffer to the basic requirement before consideration of any backlog. Before any backlog is factored in this gives a five

year housing requirement of 10,500 by adding 20% to the basic requirement of 8,750.

*Backlog* [64-70,99-101]

163. The backlog of delivery over the four years 2010/11 to 2013/14 against the CS requirement of 1,750 dwellings pa<sup>85</sup> of 1,823 as of March 2014<sup>86</sup> is agreed between the parties. No substantive evidence is before me to the contrary and as this figure is taken from the Council's latest 5YHLS Report, I consider it to be a sound basis for analysis.
164. The PPG (3-035) sets out the aim for a local authority to deal with any undersupply within the first five years of the plan period where possible, which is the Sedgefield approach. I consider that this approach more closely aligns with paragraph 47 of the Framework, to boost significantly the supply of housing, and enables any undersupply to be dealt with sooner rather than later in the plan period. It is also the preferred approach in the PAS Ten Principles document. (CD70)
165. In this regard, I acknowledge that the Council, in its 5YHLS, is dependent on a number of large sites and these have long lead-in times and that the application of the Sedgefield approach would result in delivery rates which would exceed delivery rates over the last 15 years and result in a challenging housing target. Further, I note that completion rates have been approximately 1,500 pa over recent years, and local market signals in terms of affordability and other key factors compare well with comparable areas, which indicates that recent delivery rates have broadly satisfied the realisable market demand for new housing. However, I accept that ultimately whichever approach is used is a matter of planning judgement (PPG 3-035). In this case the Council applies the Liverpool approach, to spread the backlog over the plan period, as opposed to within the first five years. This approach increases the basic requirement plus buffer to 11,260 for the five year housing land requirement. In applying the 20% buffer after the backlog is added and using the Sedgefield approach gives higher figures ranging from 11,412 through to 12,688. [45]

*Supply* [71-82,102-110]

166. Paragraph 47 of the Framework sets out the requirement for local authorities to identify and update annually a supply of deliverable sites sufficient to provide five years worth of housing against their housing requirements. The PPG in paragraph 3-03 goes on to say that local planning authorities should have an identified 5YHLS at all points during the plan period.
167. The housing land supply position set out in Appendix 1 to Mr Harris's proof<sup>87</sup> updates the 5YHLS report (CD66). This gives a 5YHLS of 11,464 homes. Although it little alters the quantum of homes it reprofiles its delivery, generally concentrating delivery further towards the back end of that period. As the sites included are deliverable and are based on recent discussions with developers and Council officers and accord with footnote 11 to paragraph 47 of the Framework, I have no reason to question this further.

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85 CS Policy CS2

86 FYHLS Report June 2014

87 LA1

168. As in the Council's 5YHLS delivery is generally focused more towards the back end of that five year period, this increases any concern that if development were delayed, its delivery could fall outside that period. In addition, the Council's 5YHLS is dependent to a great extent on large sites with long lead-in times, (LA1) a matter that is an important factor in identifying whether a housing site is deliverable within the first five years<sup>88</sup>. The Council relies on start dates that were very close, at the time of the Inquiry, and persuasive evidence is before me of unresolved issues which may delay starts on some sites.<sup>89</sup> In addition, I am mindful of the lead-in times from outline permission to first completions as demonstrated by the agreed comparison at Broughton Gate to the SLA and WEA. These matters raise serious concerns as to whether completions, on those sites in dispute, during the five year period, would be likely to slip back. Where a slippage in start date were to occur, I consider that it is unrealistic to assume that this will necessarily be made up by the developer or house builder within the five year period and also accept that, in any event, it may not be in their commercial interest.
169. Start dates, build out rates and therefore completion rates, for those sites in dispute, would realistically be somewhere between the analyses presented by Mr Harris and that of Mr Nicol. Even if taking the more conservative view of Mr Harris, who in his oral evidence suggested a slippage of approximately 400 units, it casts serious doubt over whether the Council can deliver the 11,260 dwellings to meet its calculations of the five year housing requirement. It casts further doubt as to whether it could achieve any higher figure. That the Council has demonstrated an optimism bias in the past and includes no allowance for slippage adds weight to this finding. I acknowledge the proposed allocations through the emerging SAP and neighbourhood plans but I have no assurance that other sites<sup>90</sup> not included in the 5YHLS would be deliverable, when assessed against the Framework,<sup>91</sup> and that they would come forward in the five year period.
170. In relation to Parklands Care Home, whilst the PPG requires that class C2 development is included in housing supply figures, it could not be confirmed, at the Inquiry, whether that class C2 was included in the housing requirement figure, a particular concern as institutional accommodation is not included in Department for Communities and Local Government household population figures. On the balance of the evidence before me, I consider that it should be excluded from the housing land supply calculations for the purposes of this appeal. This would further reduce the Council's 5YHLS by approximately 40 dwellings, which adds weight to my previous finding.
171. I acknowledge that the CS Inspector concluded to the contrary with regard to the 5YHLS. However, that conclusion is in relation to a different five year period, in different circumstances and on the basis of different evidence. Whilst my conclusions are based on a revision to the Council's annual 5YHLS Report (June 2014), the quantum of housing is little changed between the two. Whilst the assumptions regarding start dates and build out rates are different in the two scenarios, my conclusions are made based on the most up-to-date

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88 PPG paragraph 3-031

89 WEA10, WEA 11, SLA, Brooklands BDW1B and Block B4.1

90 Mr Harris referred, in oral evidence, to other sites in WEA11 that may come forward

91 The Framework, Paragraph 47, footnote 11

information available. Even if the differences are marginal, they are still material in the context of demonstrating a 5YHLS.

172. I have had regard to the Ashflats appeal brought to my attention. (CD84) However, that appeal relates to a very recently adopted LP in which the 5YHLS was examined and no annual monitoring had been carried out since. This differentiates it from this appeal. In any event, PPG<sup>92</sup> indicates that local planning authorities should have an identified 5YHLS at all points during the plan period. This is not the case in this appeal.

#### *Conclusions on 5YHLS*

173. I conclude that the Council has not presented evidence to this Inquiry to demonstrate that it has a 5YHLS. My concerns regarding the delivery, within the five year period, of the selection of sites in dispute between the parties and the inclusion of class C2 development, which may not have been accounted for within the CS requirement, leave me with serious concerns that a five year supply of deliverable housing sites is currently not available. This would be the case whether the Sedgefield or Liverpool method of dealing with the backlog were employed and regardless of how the buffer were dealt with. Paragraph 49 of the Framework sets out that, in these circumstances, relevant policies for the supply of housing should not be considered up-to-date.

#### *The Planning Balance* [83,84]

174. LP Policy S10 is inextricably linked with the constraining effect of settlement boundaries on the CS housing requirement as are CS Policies CS2 and CS9, which carry those settlement boundaries forward. In this respect they are relevant policies for the supply of housing within the meaning of paragraph 49 of the Framework. None of the circumstances set out in footnote 9 to paragraph 14 apply<sup>93</sup> and the presumption in favour of sustainable development outlined in paragraph 14 bullet point 4 of the Framework applies. Whilst a lack of a 5YHLS does not provide an automatic 'green light' to planning permission, a balance must be struck. The deficiency in land supply identified would carry substantial weight in that balancing exercise. On the basis of this finding, it is not necessary for me to consider any further whether LP Policy S10 is out-of-date for other reasons and the consequences that may arise.
175. Based on the evidence and circumstances of this appeal it is reasonable to conclude that the appeal proposal would contribute to the unmet housing need within MK and this should weigh positively in the balance of my overall conclusion. I will go on to assess whether the appeal development would constitute sustainable development.

### **Contribution to the Achievement of Sustainable Development**

176. The Framework, in paragraph 7, sets out the three mutually dependent, dimensions of sustainable development.

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92 Paragraph 3-030

93 For example those policies relating to sites protected under the Birds and Habitats Directives and/or designated 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

*Environmental Role* [84-87]

177. The appeal proposal would be sustainably located close to WS which has a range of local services and facilities and it would be close to public transport provision. It would replace the existing use with one that is more compatible with the nearby residential development. In this regard, it would be a better neighbour than the existing use which includes large vehicle movements and noteworthy activity during the day. In addition, it would be located on PDL and would replace a use that is semi-industrial in character and appearance. Moreover, it is intended that the appeal proposal would have high standards of environmental design, and aims to achieve Code for Sustainable Homes Level 3 and incorporate measures to reduce carbon emissions, promote renewable energies and increase energy efficiency. Further it would not adversely affect the rural character or appearance of the locality.

*Social Role* [84,174]

178. The appeal proposal would provide additional homes, including affordable homes, to meet the housing needs of MK, including the backlog identified. The adverse impacts of development on local services and facilities would be mitigated by the contributions which would be secured through the unilateral undertaking that I have examined [181-196]. No substantive evidence is before me to suggest that the locality would not be able to absorb the proposed development. WS is indicated as the focus of development to meet the housing target set out in CS Policy CS2, and bearing in mind the size of the proposed development relative to the size of the locality, I find this persuasive evidence that the proposed development could be absorbed by the locality without adverse effects on social cohesion.

*Economic Role* [84]

179. The proposed development would provide a boost to the local economy by further supporting construction activity in the local area, providing jobs, and a supply of labour. Further it would have the capacity to help support local services. It would generate income, in the form of the New Homes Bonus, for the Council plus additional revenue from new residents paying Council Tax.

*Overall Conclusion on Sustainability* [91-92]

180. In assessing the three dimensions of sustainable development, together, as well as the other relevant elements of the Framework, I find that the appeal development would fall within the definition of sustainable development. I give this considerable weight in the overall balance of my recommendation on this appeal. In coming to this conclusion, I have taken account of the very limited conflict I have found with WSNP Policy WS5. However, in assessing whether the proposed development would be sustainable development, this very limited adverse impact would not significantly and demonstrably outweigh its benefits as outlined above.

**Other Matters**

*Planning Obligation* [90,117]

181. An executed unilateral undertaking (UU) is before me. Whilst the Council has confirmed that it is satisfied with its contents, for its provisions to be given

weight in the determination of this appeal, it is necessary to assess whether they are necessary to make the proposed development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related in scale and kind.<sup>94</sup>

182. Requested contributions towards affordable housing, transport and carbon neutrality/sustainable construction are agreed between the parties. Justification is provided for these in terms of an adopted policy and a need or local deficiency is demonstrated in the relevant SPD (1021). I have the basis on which the on-site affordable housing provision has been calculated along with the other financial contributions referred to. With regard to the requested financial contributions, a local project, to which the funds would be allocated has been identified or confirmation that the monies would be spent in the local area is given. On this basis, I am satisfied that the requested contributions for transport and carbon neutrality/sustainable construction and the on-site affordable housing provision would meet the tests set out above.

183. I note that contributions towards crematoriums and burial grounds are not sought by the Council although they are provided for in the UU. In any event, limited justification is provided for them and therefore their provision does not pass the three tests above.

184. I assess the other contributions sought below:

#### *Libraries, Museums and Archives*

185. The provisions are in accordance with section 2.2 of the relevant SPD, (1021) which sets out the need and how it is calculated, and I have details of how and where it would be spent. On this basis I am satisfied that its provision would be justified.

#### *Health Facilities*

186. A contribution towards the provision of a new health care facility is included. A need is set out, calculations are clear and are in accordance with section 2.7 of the relevant SPD. (1021) The proposed contributions take into account other sources of funding, which would include National Health Service funding. It is indicated where and on what the money would be spent. It is confirmed that National Health Service England is committed to building a new medical centre at Brooklands, with contributions coming from large development sites and the balance from other developments. Such a contribution would therefore pass the tests set out in Regulation 122 of the CIL Regs.

#### *Emergency Services and Waste*

187. Contributions towards emergency services referred to in section 2.14 of the SPD (1021) to provide a facility for stationing a fire tender in and around MK and stand by points for ambulances, which serve the locality, would accord with the three tests set out above, along with contributions towards waste management and receptacles as outlined in section 2.8 of the SPD. (1021)

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<sup>94</sup> Regulation 122 Community Infrastructure Regulations 2010 (as amended)

### *Voluntary Sector*

188. Details are provided of how this would be calculated along with a justification of need in section 2.15 of the relevant SPD. (1021) The money would be spent on community development work with the proposed residents and a grant pot for supporting local activity. I am satisfied that this would be directly related to the proposed development and on this basis it would pass the three tests above.

### *Public Art*

189. A contribution towards public art is provided which would accord with LP Policy PO4 and section 2.9 of the relevant SPD. (1021) As a local project is identified, I am satisfied that the proposed contribution would be justified.

### *Education Facilities and Inward Investment*

190. I am satisfied that a need would arise as a result of the appeal development for early years, primary and secondary provision, as local provision is at or very near capacity. Whilst it has been brought to my attention that school provision is proposed as part of the development at the SLA, I accept that such provision is likely to serve that development. I have details of how the requested contribution is calculated, which would be in accordance with the relevant SPG. (1021) As the justification makes clear that the proposed contribution would be spent in the local area to provide for the short fall in education provision, I am satisfied that it would accord with CS Policy CS21 and would be justified.

191. Contributions towards MK University and MK College expansion plans would be used to accommodate new residents, grow local talent and support people, including new residents, to upskill to meet the needs of local business. Together with this, other contributions would be used to encourage and attract new jobs to support the proposed residents. As the proposed contribution is calculated in accordance with the relevant SPD (1021) and a direct link is made between the education needs of the new residents and the needs of local businesses, it would accord with CS Policy CS21 and would pass the tests set out above.

### *Playing Fields, Community Hall and Sports Hall*

192. Evidence is provided to justify a contribution towards playing fields, at the SLA, and a sports hall at Parklands or the SLA. The proposed contributions would accord with Appendix G of the relevant SPD and a need is identified. (1021) Those contributions would be justified therefore.

193. However, evidence provided does not identify what community facilities would be enhanced in Wavendon. On this basis, I am not satisfied that the proposed contribution towards a community hall would be necessary and directly related to the proposed development. Its provision therefore does not pass the necessary tests.<sup>95</sup>

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<sup>95</sup> Regulation 122 Community Infrastructure Regulations 2010 (as amended)

### *Local, Neighbourhood and District Play*

194. The UU provides for play equipment either at the appeal site, within the open space indicated in the indicative layout or at the recreation ground, which is close by. This would accord with LP Policy L3, and Table 2 of the relevant SPG (1021), which, together, require new housing to provide recreational facilities. As an area of open space is proposed as part of the appeal development no local park provision has been included in the calculation. The proposed contribution therefore passes the tests set out above.
195. In relation to neighbourhood play areas and district parks, the contributions are calculated in accordance with Table 2 of the SPG (1021), a need is set out and even though specific projects are not identified, it is clear what type of facility would be provided and I am assured that they would be directly related to the appeal development. They, therefore, would pass the tests set out above.

### *Allotments*

196. A contribution towards allotments is included in the UU. It was confirmed that the nearest allotments are in Wavendon managed by the Parish Council. Justification is provided in the relevant SPD (1021) and contributions would be used to enhance existing facilities or provide new ones. As I have no assurance that any new facility would be in the locality, even though I am aware that it would be managed by the Parish Council, I cannot be assured that it would be directly related to the appeal proposal. The request therefore does not pass the three tests above. Its absence weighs neither for nor against the appeal proposal.

### **Other Concerns Raised**

197. It is suggested that WS has taken a considerable level of new development in recent years and that local services and facilities cannot cope with additional development. However, I have found that the adverse effects of development could be mitigated through the provision of contributions towards local infrastructure, facilities and services. This overcomes my concern in this regard. [121, 123, 127, 129, 134]
198. The proposed purchasers and occupiers of the market housing could not be controlled through the planning regime. However, those of the affordable housing would be restricted to meet a local need which would be a benefit of the appeal development. [133]
199. It is also suggested that the appeal development would be likely to result in WS becoming a dormitory town.<sup>96</sup> Whilst it would result in the loss of some employment within WS, the appellant intends to relocate within MK so any jobs would be retained within the area. Further, it is recognised as a suitable focus for additional housing in the rural area in CS Policy CS9, which limits the weight I accord this matter. [88, 122, Mr Sakyi oral evidence]
200. An appeal in Feniton is brought to my attention.<sup>97</sup> However, there are distinct differences between that case and the appeal before me, in terms of the size of

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<sup>96</sup> Oral evidence of Mr Sakyi

<sup>97</sup> CD83



the settlement involved and the numbers of houses proposed. Whilst I have some sympathy with the argument that WS has taken considerably more development than other key settlements,<sup>98</sup> that growth is accommodated for within CS policy.<sup>99</sup> This matter does not weigh against the appeal proposal therefore. [88, 90,115,123,128]

201. It is suggested that the appeal development would be premature as it is not included in the emerging SAP<sup>100</sup> and it would need to await a future plan. However, no such argument is advanced by the Council. On the basis of the size of development and given the early stage of preparation of the emerging SAP, I agree with the Council.<sup>101</sup> [124,131]
202. As my recommendation is made on the basis of the evidence before me and the particular details of this appeal, limited precedent would be set. [125, 132, 134] I have no evidence to suggest that the uses promoted by Mrs Barker are supported by the Council or the site owner and limited evidence is before me to suggest that they would be viable. In any event those suggested uses are not part of the appeal proposal and for the above reasons, I accord them limited weight in coming to my recommendation. [133]
203. I have noted the possible electrification of the East/West railway line and suggested effects on Newport Road, but I have no assurance that this will take place. Whilst some additional traffic movements may be a consequence of the appeal proposal, this needs to be considered in the context of the loss of the traffic movements generated by the existing use. On the basis of the existing levels of traffic on Newport Road and whilst I observed the waiting times at the level crossing, I have no substantive evidence to suggest that congestion would be materially increased. Further, site access is reserved for future consideration. On this basis, I have no reason to take an alternative view to the Council and Highway Authority that the traffic that would be generated would not result in undue congestion or a reduction in highway safety. [129, 134]
204. It is suggested that the proposed additional homes would result in more demand for parking at the shops in the High Street, which could affect their viability. However, limited substantive evidence is before me in this regard. Further, WS is indicated as the focus for some additional housing in CS Policy CS1, CS2 and CS9 and additional homes would be likely to help support local services and facilities. This would accord with paragraph 17, bullet point 5 of the Framework.<sup>102</sup> In the face of limited evidence to the contrary, I find this compelling. [134]

## Conclusion and Balance

205. The Council cannot demonstrate a 5YHLS. In these circumstances, in accordance with paragraph 49 of the Framework the Council's policies for the supply of housing cannot be considered up-to-date, including LP Policy S10. The proposed development has been shown to be sustainable development under the terms of paragraph 7 of the Framework, which sets out the three

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98 As defined by CS Policy CS9

99 CS Policies CS2 and CS9.

100 SAP Issues and Options Consultation

101 Paragraph 61 of my report

102 Which aims to support thriving rural communities

dimensions of sustainable development; environmental, social and economic. Therefore, paragraph 14, bullet point 4 of the Framework is engaged. This sets out that where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework as a whole.

206. Whilst conflict with LP Policy S10 has been identified, that policy has been found to be out-of-date. I have found no material harm to the character or appearance of the locality and only very limited harm in respect of WSNP Policy WS5, which I have found, in any event, not to form part of the Development Plan in respect of this appeal. In the circumstances of this appeal, therefore, the very limited adverse impacts would not significantly and demonstrably outweigh its benefits. In particular, the contribution of the appeal development to the identified housing need in MK, in circumstances where a 5YHLS cannot be identified, is a persuasive and important factor in its consideration. Other benefits include the use of PDL, its sustainable location, development that would reduce the heavy lorry movements associated with the existing use and replace a semi-industrial development in a rural area which has residential properties nearby. In combination with the other positive facets of the appeal development, it is concluded that the presumption in favour of sustainable development applies and it is recommended that planning permission should be granted.
207. For the reasons I set out above I recommend that the appeal be allowed, subject to the conditions listed in Annex C.

*R Barrett*

INSPECTOR

## APPEARANCES AT THE INQUIRY

## Annex A

### FOR THE COUNCIL (MKC)

Mr Paul Cairns of Counsel  
MK Council

Instructed by Miles Crawford (Solicitor)

He Called:

Mr Mark Harris MSc MRTPI

Senior Planning Officer MKC

Mr Robert Wilson BA (Hons)

Development Plans Manager MKC

MSc (Dst) MRTPI

Mr Richard Sakyi BA (Hons)

Senior Planning Officer MKC

### FOR THE APPELLANT

Mr James Maurici QC

Instructed by David Lock Associates

He Called:

Mr Stephen Nicol BA MA

Regeneris Consulting

Mr David Lock CBE MRTPI

David Lock Associates

### OTHER INTERESTED PERSONS WHO SPOKE AT THE INQUIRY

Councillor David Hopkins

MKC

Mrs Jacky Jeffreys

WS Town Council

Mr Nicolas Luke

Local Resident

Mrs Judith Barker

Local Resident

## **DOCUMENTS**

## **ANNEX B**

### **The Council's Documents**

- LA1 Council's statement of case
- LA2 Proof of Evidence of Mr Harris
- LA3 Proof of Evidence of Mr Wilson
- LA4 Proof of Evidence of Mr Sakyi
- LA5 Appendices to Proof of Evidence of Mr Sakyi
- LA6 Summary of Proof of Evidence of Mr Sakyi

### **The Appellant's Documents**

- AP1 Proof of Evidence of Mr Nicol
- AP2 Appendices to Proof of Evidence of Mr Nicol
- AP3 Summary of Proof of Evidence of Mr Nicol
- AP4 Rebuttal Proof of Evidence of Mr Nicol
- AP5 Proof of Evidence of Mr Lock
- AP6 Appendices of Proof of Evidence of Mr Lock
- AP7 Summary of Proof of Evidence of Mr Lock
- AP8 Proof of Evidence of Mr Hampton
- AP9 Statements of Common Ground, Planning, Housing Land Supply and Transport

### **Third Party Documents**

- IQ1 Proof of Evidence of Mrs Barker
- IQ15 Proof of Evidence of Mr Luke
- TP1 Proof of Evidence of Mrs Jeffreys
- TP2 Proof of Evidence of Councillor Hopkins

## Documents Submitted at the Inquiry

- IQ1 Proof of evidence of Mrs Barker
- IQ2 Summary of settlement boundary review milestones
- IQ3 Town and Country Planning (Development Management Procedure) (England) Order 2010/2184, Part 4 Determination
- IQ4 Mail from Tim Watson (Savills) dated 4 December 2014 in relation to WEA11
- IQ5 Draft section 106 agreement (1)
- IQ6 Notification letter dated 18 November 2014
- IQ7 Notification circulation list
- IQ8 Proof of evidence of Mr Luke
- IQ9 Opening statement on behalf of appellant
- IQ10 List of appearances for MK Council
- IQ11 Mail from Mr Nicol dated 8 December 2014 summarising appellant's view on 5YHLS position
- IQ12 Council justification for Section 106 contributions (1)
- IQ13 Updated CD list
- IQ14 Planning Inspectorate's response to appellant in respect of appeal recovery
- IQ15 Mr Luke revised proof of evidence
- IQ16 Appeal application planning decision notice dated 27 June 2014
- IQ17 Extract from Borough of MK LP (1995) Policy DS11 in relation to open countryside (pages 16 and 17)
- IQ18 Written note titled 'MK Council Land Ownership'
- IQ19 Note re Brooklands sites in Barratt's ownership produced by Mr Nicol dated 10 December 2014
- IQ20 MK CS Examination July 2012 Council's Response to Main Matter 3: Overall Housing Provision (relates to B4.4)
- IQ21 Supplementary Planning Guidance on Leisure, Recreation and Sports Facilities  
Supplementary Planning Guidance on Planning Obligations for Education Facilities  
Milton Keynes Council Supplementary Planning Document Sustainable Constriction Guide (2007)  
Supplementary Planning Document Social Infrastructure Planning Obligations (2005)  
Affordable Housing Supplementary Planning Document (2013)

- IQ22 Email trail regarding appellant's costs application and SoCG
- IQ23 Attendance sheets
- IQ24 Draft Section 106 agreement (2)
- IQ25 Judgement of Mr Justice Lindblom (Case No CO/2334/2013 dated 19 March 2014)
- IQ26 Statement of Mr Lock dated 10 December 2014 regarding events with Councillor Hopkins
- IQ27 Letter from David Lock Associates dated 12 June 2014 to Ms Tate (MK Council) regarding appeal application 14/00703/OUT
- IQ28 MKC section 106 contribution calculator
- IQ29 Council's justification for requested Section 106 contributions (2)
- IQ30 Email bundle regarding matters relating to progressing SoCG
- IQ31 Draft UU
- IQ32 Revised list of planning conditions
- IQ33 Closing statement on behalf of Council
- IQ34 Closing statement on behalf of appellant
- IQ35 Executed UU

## SUGGESTED PLANNING CONDITIONS

## ANNEX C

1. No development shall commence on any phase or part of the development until details of the layout, scale, appearance of the buildings, access thereto and landscaping for that phase or part (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the LPA.
2. Application for approval of all the reserved matters in respect of all phases or parts of the development shall be made to the LPA before the expiration of three years from the date of this permission.
3. The development within any phase or part of the development hereby permitted shall begin no later than two years from the date of the approval of the last of the reserved matters of that phase or part.
4. The development hereby permitted shall be carried out in accordance with the approved plans FRA001-003A (Site Location Plan) and FRA001-007A (Red Line Plan) and FRA001-014A (Parameter Plan).
5. No development shall commence in each phase or part of the development until a foul water strategy for that phase or part has been submitted to and approved in writing by the LPA in consultation with Anglian Water. No dwellings in that phase or part shall be occupied until the works have been carried out in accordance with the approved foul water strategy for that phase or part unless otherwise approved in writing by the LPA.
6. Prior to any development taking place in each phase or part of the development, the developer shall carry out an assessment of ground conditions to determine the likelihood of any ground, groundwater or gas contamination of that part of the site. The results of this survey detailing the nature and extent of any contamination, together with a strategy for any remedial action deemed necessary to bring the site to a condition suitable for its intended use, shall be submitted to and approved by the LPA before construction works commence. Any remedial works shall be carried out in accordance with the approved strategy and validated by submission of an appropriate verification report prior to first occupation of that phase or part of the development. Should any unforeseen contamination be encountered in that phase or part of the development the LPA shall be informed immediately. Any additional site investigation and remedial work that is required as a result of unforeseen contamination will also be carried out to the written satisfaction of the LPA.
7. The visibility splays provided should be in accordance with Manual for Streets 2006, the visibility splay should not be impeded; height of any hedge/wall or fence within this visibility should be kept below 1.05m above the carriageway height.
8. Existing trees and hedges which are to be retained in each phase or part of the development are to be protected according to the provisions of BS 5837: 2012 'Trees in relation to design, demolition and construction – Recommendations.'

All protective measures shall be put in place prior to any other work commencing in that phase of the development.

9. Prior to the commencement of any phase or part of the development a scale plan accurately marking the position of retained trees, the extent of the root protection areas and the tree protection fencing along with the root protection area margin should be submitted for approval. Proposed and existing spot levels shall be shown in sufficient numbers and at appropriate spacings to enable the impact of level changes on the root zones to be assessed. Layout of hard-works shall be adjusted as necessary to accommodate the root protection areas without root damage.
10. For any phase or part of the development, details of the proposed finished floor levels of all buildings and the finished ground levels in relation to existing surrounding ground levels for that phase or part shall be submitted to and approved by the LPA prior to development commencing within that phase or part. Development for that phase or part shall be undertaken in accordance with the approved levels.
11. Reserved matters applications for any phase or part of the development shall be accompanied by a Sustainability Statement for that phase including as a minimum details required by saved policy D4 of the Milton Keynes Local Plan 2001-2011 and accompanying Supplementary Planning Document Sustainable Construction Guide.
12. Where the Code for Sustainable Homes shall cease to be in force or exist then each phase or part of the development shall not need to comply with nor discharge this condition 12 and the dwellings shall instead be constructed solely in accordance with the relevant baseline Building Regulation standards applicable, whether such Building Regulation standards come in force at the time the first reserved matters in relation to any dwelling is submitted to the Council or after such a time.
13. Prior to the commencement of any phase or part of the development a Code of Construction Practice (CoCP) for that phase shall be submitted to and approved in writing by the LPA. The CoCP that is submitted shall include Noise Action Levels (based on a noise survey) and other measures to include:
  - Site management and complaints procedure;
  - Temporary boundary treatments;
  - Lighting and security;
  - Site facilities;
  - Means of access;
  - Construction traffic routing;
  - Environmental and nuisance mitigation measures;
  - Vehicle wheel cleansing facilities.

All construction work shall be undertaken in accordance with the agreed CoCP for that phase or part and all contractors shall be contractually required to comply with it.



14. Sample panels of the external materials to be used in any phase or part of the development parcel shall be erected on site and approved in writing by the LPA prior to that phase or part commencing. Each phase or part shall be constructed using the approved materials.
15. The details to be submitted for the approval in writing of the LPA in accordance with condition 1 above shall include a scheme for cycles, parking and manoeuvring and the provision of visitor car parking spaces in accordance with the LPA's 'Car Parking Standards' within the adopted 2005 Parking Standards Supplementary Planning Guidance and the 2009 Parking Addendum or to the standards in force at the time of any reserved matters applications. The approved scheme shall be implemented and made available for use before the development hereby permitted is occupied and the approved cycle storage, parking and manoeuvring areas shall not thereafter be used for any other purpose.
16. Prior to the commencement of each phase or part of the development, details of the adoptable estate roads shall be submitted to and approved in writing by the LPA. No dwelling shall be occupied in any phase or part of the development until the estate road which it provides access to, from the existing highway have been laid out and constructed in accordance with the approved details.
17. The hours of working on any phase or part of the development during the construction period shall be restricted to 08:00 hours to 18:00 hours Mondays to Fridays, 08:00 hours to 13:00 hours on Saturdays, and no working shall take place on Sundays and Public Holidays. The term 'working' shall for the purpose of clarification of this condition include; the use of plant or machinery (mechanical or other), the carrying out of any maintenance/cleaning work on any plant or machinery deliveries to the site and the movement of vehicles within the curtilage of the site. No 'working' outside these hours on any phase or part shall take place without the prior written consent of the LPA.
18. Prior to the commencement of each phase or part of the development a scheme showing the proposed boundary treatments for that phase or part shall be submitted to and approved in writing by the LPA. The approved boundary treatments shall be in accordance with the approved details for that phase or part and be completed prior to the first occupation of each dwelling or first use of such phase or part of the development. They shall be retained in that condition thereafter.
19. Any housing reserved matters application shall include details of the location and type of affordable housing pursuant to the development parcel for which approval is sought. Each phase or part of the development shall be carried out in accordance with the approved details.
20. The landscaping scheme required by Condition 1 above shall include provision for the planting of trees and shrubs and shall include native species and those beneficial to wildlife for each development phase or part required by. The scheme shall show the numbers, types and sizes of trees and shrubs to be planted and their location. All planting shall be carried out in accordance with the scheme and shall be carried out within twelve months of commencement

of each phase or part of the development. Any trees or shrubs removed, dying, severely damaged or diseased within two years of planting shall be replaced in the next planting season with trees or shrubs of such size and species as may be agreed by the LPA.

21. Any buildings to be demolished should be inspected by a suitably qualified ecologist internally and externally to confirm the presence or absence of bats prior to any deconstruction of the structures. Prior to work commencing a written report by that suitably qualified ecologist shall be submitted to the LPA, agreed and any recommendations therein shall be carried out prior to work commencing.

22. A landscape and biodiversity plan detailing a net gain in benefits for wildlife shall be submitted to the LPA for approval prior to each phase or part of the development of the site demonstrating how the following measures shall be provided within the development:

- 4 x hedgehog domes and 2 x Stag Beetle 'loggeries' (as detailed in Appendix 2 and Appendix 5 of the Ecological Appraisal) in suitable locations within the landscape of the development.
- A minimum of 8 roosting features for a range of bat species shall be incorporated into buildings in appropriate locations. A plan detailing these features shall be submitted to the LPA for approval prior to development of the site.
- A minimum of 8 nesting features for a range of bird species shall be incorporated into buildings in appropriate locations. A plan detailing these features shall be submitted to the LPA for approval prior to development of the site.
- Bird and bat features provided as ecological enhancements and access to them shall be maintained in perpetuity unless with prior agreement of the LPA.

23. All external lighting shall be kept to a minimum and directed away from bat features. A lighting plan shall be submitted to the LPA for approval prior to development of the site.

24. Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the LPA. Development shall be carried out in accordance with the agreed details prior to the first occupation of the units in that phase or part of the development and retained in that condition thereafter.

The scheme shall include:

- Details of ground investigation work to ensure any infiltration drainage is in uncontaminated land.
- Detailed calculations for any proposed storage requirements and discharge rates to watercourses where applicable.
- Details of where a reduction in flows is achieved to show betterment from the existing system.
- Details of existing and proposed drainage routes, inclusive of the watercourse adjacent to Newport Road, demonstrating that no third party property is at

- risk from flooding.
- Details of porosity tests where applicable.
  - Details of any potential on-site or off-site flow routes for extreme rainfall events for any proposed surface water infiltration drainage where it is outside its design parameters.
  - Details for the future responsibilities for the management of the surface water drainage scheme.

*End of List of Conditions*



# Department for Communities and Local Government

## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.