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## Appeal Decision

Inquiry opened on 27 June 2017

Site visit made on 7 July 2017

**by Karen L Ridge LLB (Hons) MTPL Solicitor**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 09 October 2017**

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### **Appeal Ref: APP/J0405/W/16/3158833**

#### **Land north of Aylesbury Road, Wendover, Buckinghamshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by CEG Land Promotions II Limited against Aylesbury Vale District Council.
  - The application Ref. 16/01017/AOP is dated 16 March 2016.
  - The development proposed is the erection of up to 175 dwellings with vehicular accesses onto Aylesbury Road and World's End Lane, associated landscaping and provision of allotments and public open space.
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#### **Decision**

1. The appeal is dismissed and outline planning permission is refused.

#### **Preliminary Matters**

2. The Inquiry sat for 8 days<sup>1</sup>. I conducted an accompanied site visit on the 7 July 2017 and a number of unaccompanied site visits at various times during the Inquiry, including a visit to Halton Lane during one weekday morning peak hour.
3. On the final day of the Inquiry the Council and Appellants' advocates jointly requested the opportunity to provide closing submissions in writing and a further period of grace in order to submit a joint note in relation to housing need. I acceded to both of these requests. In addition I allowed the Appellant's ecologist the opportunity to respond in writing to some late evidence submitted by a third party. The closing submissions were duly received within the agreed timescale and thereafter the Inquiry was closed in writing. I am informed that the joint note on housing need could not be agreed. The brief ecology response<sup>2</sup> has also been taken into account.
4. The planning application which led to this appeal was made in outline form with all matters, with the exception of access, reserved for future consideration. The original submission contained a proposed illustrative site layout plan and a parameters plan<sup>3</sup>. These plans were indicative only, with the parameters plan setting upper limits to development. Following consultation with the Council

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<sup>1</sup> 27<sup>th</sup> -30<sup>th</sup> June and 4-7<sup>th</sup> July inclusive.

<sup>2</sup> Note to the inquiry on new evidence provided by Mr Mason dated 12 July 2017.

<sup>3</sup> Illustrative site layout 311 Rev P3 and proposed parameters plan 321 rev P3.

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and Natural England, the Appellants suggested amendments to the scheme. These amendments<sup>4</sup> relate to the removal of allotments and the use of the resulting area as public open space; the creation of a 1.5km circular walking route within the site; enlargement of the area of public open space in the southern part of the site and a slightly reconfigured residential layout. They are effectively minor amendments to what was an indicative scheme in any event. As such I was satisfied that there would be no prejudice to any interested party in accepting the amended plans.

5. The Appellants confirmed that the amended plans should be considered in substitution for the earlier plans and evidence was given on this basis. The proposed access<sup>5</sup> for vehicles and pedestrians would be via two separate access points on World's End Lane and Aylesbury Road and I shall consider these arrangements as part of my determination. Apart from the site location plan, two access plans and parameters plan, all other plans are to be treated as illustrative only.
6. Following the close of the Inquiry the Appellants representatives emailed the Planning Inspectorate to indicate that a Memorandum of Understanding between the Council and adjoining district councils had been signed on 13 July 2017<sup>6</sup> (The Memorandum of Understanding). The Memorandum sets out agreements reached between all of the Councils indicated under the Duty to Co-operate. I allowed both parties to make representations about this memorandum. In the course of doing so the Council forwarded a copy of a recent Secretary of State decision<sup>7</sup> which made findings about the supply of housing land in the district. These findings are a material consideration in the context of this appeal and therefore I afforded the parties a further period to make representations upon them. Finally on the 23 August 2017 the Council submitted a new Housing Land Position Statement<sup>8</sup>. Given that it represented the Council's most recent position I decided to invite comments upon it.
7. Both parties have had the opportunity to comment on the three pieces of new information. In particular I have noted the Appellants concerns regarding the acceptance of this new evidence and its contention that, if any weight is to be placed on this new evidence, then the Inquiry should be re-opened and the evidence tested.
8. *The new evidence and my approach to it:* at the outset I must make clear that my decision had already been written at the point when the new information was submitted. In the interests of fairness and transparency I decided to accept the evidence, review it, invite comments and then decide what weight, if any, should be placed upon it. For reasons which will later become apparent, I have made only limited findings in relation to both housing land supply and requirement issues. These findings are limited to: the carrying forward of housing in excess of the annualised target when calculating the five year supply; the appropriate buffer and finally arguments about some of the sites making up the supply.

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<sup>4</sup> Contained within illustrative site layout plan 311 rev P7 and proposed parameters plan 321 Rev P5.

<sup>5</sup> As depicted on plans reference 151917/A/01 revision A and 151917/A/02 revision A.

<sup>6</sup> Buckinghamshire Memorandum of Understanding between Aylesbury Vale District Council, Wycombe District Council, Chiltern District Council, South Bucks District Council, and Buckinghamshire Thames Valley Local Enterprise Partnership (July 2017).

<sup>7</sup> Appeal reference APP/J0405/V/16/3151297: Land West of Castlemilk, Moreton Road, Buckingham MK18 1YA. Secretary of State letter dated 19 July 2017.

<sup>8</sup> Aylesbury Vale District Council- Five year housing land supply position statement August 2017.

9. I therefore reviewed the evidence and comments to see whether or not they should be afforded weight and if so, whether they would have any material effects upon my original conclusions. My conclusions are set out below.
10. *The new evidence on the Memorandum of Understanding:* this relates to the extent to which the Council will have to cater for unmet need in adjoining authorities. This element of the housing requirement provides some context to the overall housing requirement. It is slightly increased from 7,500 which was the figure before the Inquiry to 8,000 in the new Memorandum. It is not a significant change and does not alter my findings. I have revised my reasoning to refer to the newer figure.
11. *The Castlemilk decision:* For the reasons set out below, I have not made findings regarding other contentious issues which were common to both the Castlemilk appeal and this Inquiry. I have taken this decision into consideration in terms of its findings regarding treatment of the allowance for 'oversupply' in previous years. Whilst I have, on the face of it, come to a different conclusion to that of the Secretary of State I am of the view that the issue of carrying forward an oversupply was not in issue in that decision. As such I am content that my original finding that the allowance should not be carried forward should remain unaltered. In terms of examining the available supply I must point out that my findings are specific to a point in time and represent a resolution of the disputes before me. Notwithstanding this I note that the majority of my findings in relation to individual sites which were in dispute in both appeals are in accordance with the findings made in the Castlemilk decision.
12. *The housing land supply position statement:* I note that the Council is now applying a 5% buffer. This matter was examined at the Inquiry because, whilst the Council's Interim statement on housing land supply applied a 20% buffer, the Council's planning witness suggested the application of a 5% buffer. This matter was tested at the Inquiry and I have seen nothing to persuade me to change my finding on this matter.
13. Whilst I note that the overall housing supply is greater in the new position statement, I agree with the Appellants that the list of sites is untested and if I wanted to take them into account the Inquiry would have to be re-opened. I conclude that it would be inappropriate to take the new housing supply figures into consideration in this appeal. This is because my assessment of the housing land supply, in terms of the sites available, represented a snapshot of the position as it stood at the date of the Inquiry. It will always be the case that things move forward and the numbers alter in terms of available sites. This does not justify continually updating evidence, once an Inquiry has closed, to take into account additional sites/supply coming forward. I do not consider it appropriate to take these increased numbers into account and I therefore place no weight upon the new Housing Land Supply statement. I reiterate that my findings upon housing land supply pre-date the position statement of 2017 and are made having regard to the position as it stood at the date of the Inquiry into this appeal.
14. I have reviewed my approach and conclusions in light of all of the above and make further comments in my conclusions section.

***The putative reasons for refusal***

15. The appeal was submitted following the failure of the Council to make a determination within the prescribed period. The Council's delegated committee report sets out three putative reasons for refusal which include: the effect of the development on landscape character and appearance and settlement pattern; the lack of information concerning potential impacts on the Weston Turville Reservoir Site of Special Scientific Interest (SSSI); and the failure to make appropriate contributions in relation to a variety of matters including affordable housing.
16. On the second day of the Inquiry the Council confirmed that it was now satisfied in relation to ecological matters and did not intend to pursue the second putative reason for refusal. The Council's ecologist, Mr Holton, was not therefore called to give evidence. However, local residents maintained their objections and the Berkshire, Buckinghamshire, Oxfordshire Wildlife Trusts (BBOWT) continued to press its concerns in relation to certain aspects of the proposal. Consequently the Appellants' two ecology/recreation witnesses were called to give evidence. I shall address these matters in my determination.
17. A unilateral undertaking (UU) made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted. This UU secures the provision of on-site affordable housing, open space and play space,<sup>9</sup> as well as financial contributions towards sport and leisure, education, public transport and travel plan and ecology contributions.<sup>10</sup> Whilst the Council has expressed reservations about the affordable housing mechanism, it confirms that in all other respects the UU has overcome the third putative reason for refusal.

***Canal and River Trust***

18. The appeal site is adjacent to the aforementioned SSSI which is owned by the Canal and River Trust (CRT), guardians of 2,000 miles of historic waterways across England and Wales and statutory consultees for the purpose of the appeal proposal. In its consultation response CRT confirmed that it was unable to provide a substantive response to the proposal due to insufficient information resulting in an inability to assess the future risk profile of the reservoir with housing in place. In particular CRT was concerned that housing on the site could be at risk of inundation if there was a breach of the south-western dam of the reservoir. Subsequently CRT applied for, and was granted, Rule 6<sup>11</sup> party status in the Inquiry.
19. During the currency of the appeal the Appellants conducted further modelling in the form of a reservoir breach analysis<sup>12</sup> which was submitted to, and agreed with, CRT's Principal Engineer. The modelling considers a worst case scenario in the event of a 1 in 10,000 year maximum flood event. The parties agreed that, having regard to the modelling, the residual risks associated with a breach of the dam could be adequately mitigated by raising ground levels by a maximum of 1.2 metres on the north-eastern part of the appeal site. The parties further agreed that these matters could be secured by condition.

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<sup>9</sup> A LEAP, being a locally equipped area of play.

<sup>10</sup> Two alternative provisions to which I shall return.

<sup>11</sup> Rule 6(6) The Town and Country Planning (Inquiries Procedure)(England) Rules 2000 and The Town and Country Planning Appeals (Determination by Inspectors)(Inquiries Procedure)(England) Rules 2000.

<sup>12</sup> Contained within the Flood Risk Addendum which was submitted as an appendix to the proof of Mr Boileau.

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20. On the basis of the above, CRT withdrew its objection to the proposal and did not tender either of its witnesses to the Inquiry. After making an opening statement, the advocate for CRT took no further part in the Inquiry, save for a short appearance to deal with the question of the suggested condition. Notwithstanding this, some local residents maintained their concerns about flooding and the Appellants' hydrology engineer attended to respond to those concerns. I shall deal with this matter later in my decision.

### ***Statements of Common Ground***

21. A number of Statements of Common Ground (SCG) covering various topics were submitted to the Inquiry. These included a Planning SCG and a separate Housing Land Supply SCG between the Council and Appellants; and a Highways SCG between the Appellants and Buckinghamshire County Council, the local Highways Authority. In addition the Appellants and CRT submitted a Flood Risk SCG following the further modelling works.

### **Main Issues**

22. Having regard to the Council's putative reasons for refusal and the subsequent agreements between the main parties, the first principal issue remaining in dispute between the Council and Appellants is the effect of the proposed development upon the character and appearance of the landscape and on the settlement pattern. There are also objections from others which I shall examine.
23. In addition there are a series of other material considerations to be taken into account. The National Planning Policy Framework (the Framework) is a material consideration of significant weight. It seeks to boost significantly the supply of housing and requires local authorities to identify, and update annually, a supply of specific deliverable sites sufficient to provide five years' worth of housing (the 5YHLS). Paragraph 49 confirms that housing applications should be considered in the context of the presumption in favour of sustainable development. In this appeal there was a substantial dispute between the Council and the Appellants relating to the 5 YHLS both in terms of the correct level of objectively assessed need and the correct level of supply available to meet that need. This was the second principal area of dispute between the Council and Appellants.

### **Reasons**

#### ***The development plan***

24. Section 70(2) of the Town and Country Planning Act 1990 provides that, in dealing with proposals for planning permission, regard must be had to the provisions of the development plan, so far as material to the application, and to any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that, if regard is to be had to the development plan for any determination, then that determination must be made in accordance with the plan, unless material considerations indicate otherwise.
25. For the purposes of this appeal the most relevant development plan policies are those contained within the Aylesbury Vale District Local Plan (AVLP) which was adopted in 2004. In terms of emerging policy the Vale of Aylesbury Draft Local Plan (VALP) was issued for consultation in 2016 and the Council anticipates

that a pre-submission version of the plan will be produced shortly. At the moment it is agreed that policies within the VALP can only attract limited weight.

***Effect upon the character and appearance of the landscape***

26. Development plan policies relevant to a consideration of this matter include AVLP policy GP.35, a general policy requiring the design of new development to respect and complement, amongst other things, the site and its surroundings, its setting and the natural features of the area. This is a general design policy applicable to all development and, as such, the Appellants agree that it is up-to-date and should be accorded full weight. Policy GP.84 confirms that, in determining proposals for developments affecting a public right of way (PROW), regard will be paid to the convenience, amenity and public enjoyment of the route.
27. Finally RA.2 confirms that, other than for specific proposals and land allocations, new development in the countryside should avoid reducing open land which contributes to the form and character of rural settlements, having regard to the need to maintain the individual identities of settlements. Again the judgments required in relation to this policy are applicable to all prospective developments and the Appellants accept that this policy should be accorded full weight. All of these three policies are consistent with the core planning principles in the Framework which, amongst other things, seek to ensure that the intrinsic character and beauty of the open countryside is protected.
28. In addition, land to the immediate south of the appeal site falls within the Chilterns Area of Outstanding Natural Beauty (AONB), so designated due to its dramatic chalk escarpment and main ridge which provide long views across the lower lying vales to the north and west. The Chilterns AONB Management Plan sets out objectives for management of the AONB landscape and includes policy L7 which seeks to conserve its setting. Similar objectives are contained within the Framework which seeks to enhance the natural and local environment and provides that great weight should be given to conserving landscape and scenic beauty in AONBs.
29. The parties engaged in a debate about the nature of the parameters plan and the correct basis for a landscape and visual impact assessment. The proposal is in outline form with layout, scale and appearance reserved for future consideration. The parameters plan would place certain upper limits on the built development; broadly residential development within the central and lower part of the site restricted to 13 metres in height above existing ground level, with the exception of a strip of development fronting onto Halton Lane being restricted to 10.5 metres in height. These are maxima. Any approval at outline stage would be on the basis that up to 175 dwellings could be satisfactorily accommodated on the site within the parameters indicated. The masterplan is only one illustration of how development could be carried out within the relevant parameters.
30. Whilst the parameters plan does not operate as a licence to build up to the maximum height on all of the indicated areas, it offers a guideline as to what would broadly be considered acceptable (subject to reserved matters approval) within the defined areas. The maximum height of 13m in the orange areas would be taken to indicate that some development up to 13 metres is deemed

acceptable in those areas. Having set maximum parameters it seems to me that the starting point for any reserved matters application assessment would be that, in principle, development of up to 13 metres is likely to be considered to be acceptable subject a satisfactory layout, appearance, scale etc.

31. The issue for any assessment at outline stage is to have regard to the maximum indicated heights and the quantum of development proposed whilst making sensible assumptions about what is likely and what would be necessary to accommodate the number of houses proposed. To that end the illustrative masterplan affords but one example of how the development could proceed. The parties have criticised each other for mistaken assumptions underpinning their respective assessments. Whilst they have taken different approaches I do not necessarily consider either approach to be wrong. I shall make my own assessment on the above basis. Whilst there were a number of other disputes between the parties on methodological matters, these issues need not detain me in making my own assessment based on the expert evidence I have heard and read.

*Landscape character*

32. The site comprises a large arable field located adjacent to, but outside, the settlement boundary of Wendover. It is bounded to the south by Aylesbury Road, a main road into Wendover with a roundabout junction just beyond the western corner of the site. A large garden centre, two public houses, two care homes and a handful of dwellings are clustered to the west of this junction around World's End. World's End Lane frames the western side of the appeal site, with the SSSI sitting along the site's long, north-eastern boundary and Halton Lane running along the shorter eastern boundary down to Aylesbury Road. A PROW evenly bisects the site, straddling its middle and connecting World's End Lane and Halton Lane.
33. The appeal site is located within National Character Area 110: the Chilterns character area which covers a large geographical area containing a north-west facing escarpment affording long views over adjacent vales made up of arable, grassland and woodlands and served by extensive rights of way, commons and Woodland. At district level the Aylesbury Vale Landscape Character Assessment places the site within the Southern Vale Landscape Character Area (LCA) described as a flat landscape in the north, rising gently to a rolling land form on its southern edge. The assessment confirms that landscape continuity is interrupted by development and communication corridors and predominantly comprises large open arable fields.
34. The appeal site sits towards the tip of the Southern Vale LCA, with the Wendover Foothills LCA immediately adjacent on part of its eastern boundary and the Chiltern Scarp beyond. As such the site forms part of a transitional area on the edge of the flatter vale, next to the foothills and with the rising escarpment dominating middle and longer distance views to the east and south. The Landscape Character Assessment confirms that landform is an apparent feature in this southern boundary '*relating in strong visual terms to the foothills and scarp edge outside the area*'. The assessment further recognises that generally the landscape within the LCA is in poor condition but that there are localised pockets of higher quality landscape management and that overall, the moderate sense of place and moderate degree of visibility combine to give the landscape a moderate degree of sensitivity.

35. The appeal site is in good condition and exhibits a well-maintained, attractive appearance. It benefits from tall, well-established hedgerow boundaries especially on its southern and western sides which shield it from the two roads. A relatively dense tree belt within the neighbouring SSSI forms an attractive backdrop adjacent to the north-eastern site boundary. The strong hedgerow boundaries largely obscure views of the traffic and development along the adjoining roads. From within the site the murmur of traffic noise does not materially detract from the rural character of the field. In short the mature hedgerows along and surrounding the site boundaries and the size and scale of the field result in a surprisingly rural character for a site so close to the settlement.
36. The shape of the site has remained constant since 1884 which could be indicative of it arising as a result of Parliamentary enclosure, listed as one of six key characteristics of the LCA, but there is no conclusive evidence either way. The site is typical of the Southern Vale LCA type and for the reasons set out I conclude that it is an example of one of the localised pockets of higher quality landscape management referred to.
37. The topography of the land and the site's location bordered by three roads combine to make it, locally, a visible part of the LCA and a focal point, particularly in views along Aylesbury Road. Whilst the site is crossed by only one public right of way, this footpath is across the middle of the site and affords full views over the whole site and an appreciation of the site's relationship with, and contribution to, its wider context. Importantly the footpath connects into a footpath network, including the permissive recreational routes around the reservoir. It also affords, what appears from written and oral representations to be, a much used and popular shortcut from the middle part of Halton Lane to World's End where the garden centre, its coffee shop and butchers and grocers' outlets can be accessed. For all of the above reasons I assess the sensitivity of this part of the landscape character area as somewhere between moderate and high.

*Effects upon landscape character*

38. Development of a green field site into what would essentially be a housing estate of up to 175 dwellings, with associated garages, roads, lighting and other paraphernalia, albeit with some areas of open space and with landscaping in place, would represent a substantial adverse change for the site itself. The introduction of two vehicular access points on each of Aylesbury Road and World's End Lane, together with footways and lighting would result in the loss of relatively short lengths of hedgerow.
39. Whilst the appeal site forms a relatively small parcel within the wider Southern Vale LCA, it is not only typical of the character area but it comprises one of the localised pockets of a higher quality. These factors, combined with the nature, size and scale of development and the visibility of the site in this locality, lead me to conclude that the overall effect upon the LCA would be on the spectrum between moderate and substantially adverse.

*The setting of the AONB*

40. Given the location of the site adjacent to the AONB, the parties are agreed that it forms part of the setting to the AONB. For the reasons touched upon above, loss of the site to housing would result in part of the transitional area, linking



the edge of the vale to the foothills and the escarpment beyond, being lost. This loss would result in a limited erosion of the setting of the AONB. In longer distance, more panoramic views from the AONB back to the vales, development of the site would be seen as an extension to, and continuation of, the existing built form. As such it would cause limited visual harm in this much wider context. I agree with the experts that the effects would represent an adverse change of low magnitude to a landscape receptor of high sensitivity. This is a finding militating against development.

*Settlement patterns and coalescence*

41. The heading to local plan policy RA.2 indicates that it seeks to prevent the coalescence of settlements. The policy wording refers to avoiding the reduction of open land which contributes to the form and character of rural settlements and the need to have regard to avoiding extensions which might lead to coalescence between settlements. The explanatory text refers to the need to preserve the separate identities of '*neighbouring settlements or communities*'. On a straightforward reading it is clear that policy RA.2 applies to both settlements and communities. That is not to rewrite the policy by importing the word community into the text box; rather it is to interpret the words in the text box having regard to the reasoned justification leading up to it.
42. The parties spent time debating the status of World's End. It appears to comprise the large garden centre with additional outlets, around 8 dwellings, a large public house, two care homes and a disused public house. The Draft Settlement Hierarchy Assessment for the emerging local plan sought to define a 'settlement' for its own purposes of directing future growth. It discounted areas containing populations of less than 100 but this was for its own audit purposes and I do not find the definition particularly helpful in this context. Historic maps and place names are of limited relevance given that settlements change over time.
43. To my mind the term 'settlement' denotes something larger than that which currently exists at World's End. At best I conclude that World's End constitutes a small community on the basis that it has a clear identity, it comprises several houses and the residents of the two care homes as well as the other uses. Clustered around the focal point of the junction it is also physically separate and distinct from Wendover.
44. Wendover is a very attractive market town sitting in a gap in the escarpment and framed by the heavily wooded landscape around it. As a consequence it has the appearance of nestling within the landscape. The town's historic core sits at the junction of three roads in the centre of town, with development contained by the landform and by the railway line running on its western edge. More modern housing development has spread out from the centre and sits to the east of the appeal site fronting onto Halton Lane.
45. The first impression of World's End is that of sporadic development at the junction of the two main roads, separate and apart from the town of Wendover which announces itself as one travels past World's End on the eastern approach to the town. Travelling out of Wendover, the incline on the site towards its south-eastern corner means that it sits in the centre foreground in views along Aylesbury Road and provides a clear demarcation between the settlement edge and countryside beyond. Approaching the town from the west, the appeal site forms an important part of an attractive gateway into the town and contributes

to its rural setting. As such I find that the appeal site forms an important gap on the Aylesbury Road frontage between the buildings at World's End and the edge of development on Halton Lane. In essence it is open land which contributes to the form and character of Wendover.

46. A housing development on the appeal site would extend the built envelope of Wendover particularly along Aylesbury Road and on the lower reaches of World's End Lane. Its juxtaposition next to the World's End cluster and at the junction would result in the World's End properties reading as a continuation of the built development along Aylesbury Road and as part of Wendover. The development would of itself extend the built form of Wendover and result in the World's End properties being subsumed within the much larger settlement.
47. As Mr Self points out, World's End is not an unspoilt pocket of historic development given that it is largely characterised by post war development and dominated by the garden centre. The harm brought about by the development and the incorporation of World's End into Wendover would largely be to the settlement pattern and characteristics of Wendover itself as opposed to any harm to World's End. The north-western edge of Wendover is clearly delineated by the properties fronting Halton Lane. Development on the site would result in a more ill-defined settlement edge, given that the garden centre and its sprawling frontage would appear as a continuation of the built edge. I further note that whilst the Council's HELAA<sup>13</sup> did not discount the appeal site on the basis of coalescence, it did refer to development on the site encouraging urban sprawl.
48. The Council also raised concerns about the reduction in the gap between Weston Turville and Wendover. However even with development in place there would remain a clear sense of separation between these two settlements. The open fields lining the western side of World's End Lane and the dense boundary planting on the eastern side of the road, combined with an area of public open space on the northern quadrant of the site, would assist in retaining the impression of a rural gap between the two settlements
49. For these reasons I conclude that there would be a loss of open land contributing to settlement character and a merging of World's End with Wendover. In respect of whether or not this merging is characterised as 'coalescence' within the usual planning meaning, it would be contrary to the policy objectives in RA.2 due to the resultant material harm to that settlement character attributable to the loss of the open land which helps to define the character of Wendover. Due to the prominence of this gateway site and its contribution I would quantify the harm to settlement character as moderate to substantial.

*An assessment of the visual effects of the proposal*

50. One of the most noticeable effects would be apparent on the public right of way crossing the site. To assess this effect it is important to understand what would be lost. Currently the footpath provides the opportunity to traverse a large tract of open land set within a wider landscape containing striking features and to gain a clear appreciation of that wider landscape. The site's mature hedgerows on the southern and western boundaries visually enclose it, and ensure an enjoyable experience of walking across this large field and

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<sup>13</sup> Housing and Employment Land Availability Assessment CD 9.2

marvelling at the unspoilt longer distance views of the Chiltern Scarp and Coombe Hill. Travelling in the opposite direction affords views of the escarpment on the eastern skyline. The houses on Halton Lane are less apparent in the summer months in the middle distance and more apparent during the winter<sup>14</sup>.

51. The openness of the field and its size facilitate pleasing views of the wider scenic landscape. The location of the site on the edge of the settlement and the linkages from the site to a wider network and other recreational routes increase the value of the right of way on the site.
52. The masterplan includes a section of open space to the south of the first section of the PROW when traversing the site east from World's End Lane. This would be a maintained footpath, with houses on the left hand side and manicured areas of grassland crossed with footpaths on the right hand side. Viewing points could be incorporated into any scheme to retain some partial views of the hills from a suburban setting but they would be a poor compensation for what is currently an uninterrupted view along much of the length of the footpath, of a charming pastoral landscape and an attendant appreciation of the brooding majesty of the scarp. The provision of additional footpaths and open areas within the site would offer increased opportunities for public access at the expense of a reduction in the quality of the views and a different experience gained in the context of a suburban setting.
53. The appeal site also makes a contribution to the scenic quality and rural setting of the adjoining Weston Turville Reservoir (SSSI) site. This is most apparent from the permissive footpath around the southern boundary of the SSSI on land which is slightly higher than the appeal site. Whilst this southern boundary contains a tree belt, there are a number of gaps through which the appeal site is partially seen. The path is narrow and meandering and retains a strong sense of rural tranquillity. With housing on the north-western boundary of the appeal site, the experience would change and the walker would be conscious of walking adjacent to a housing estate on one side on the lower land.
54. During the summer months there are no clear or partial views from the footpaths deeper within the SSSI which are away from its boundary with the appeal site. This is because of the tree belt which wraps around the south-western and southern boundaries of the SSSI. A raised embankment within the SSSI runs along the northern section of the reservoir to World's End Lane and rewards walkers with scenic views of the reservoir in the foreground, with the Chiltern Hills rising in the distance. Again in summer the tree belt adjoining the appeal site would preclude views of the development from this embankment. During the winter months from vantage points along the embankment there would be glimpses of the housing on the middle of the site through the trees<sup>15</sup>. Walkers would be conscious of housing at reasonably close quarters to the SSSI which would detract somewhat from the experience along this footpath. I bear in mind that this would only be the case in winter months, it would only occur when walking in one direction towards World's End Road and it would be along the top of the embankment only which is set at a higher level.

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<sup>14</sup> Mr Self's photograph 35.

<sup>15</sup> Mr Self photograph 29.

55. A roundabout junction sits at the confluence of Aylesbury Road and World's End Lane and around this junction development is generally set back with open frontages such that one gains a clear appreciation of the surrounding rural landscape including skyline views in a north-easterly direction of the wooded escarpment over the appeal site hedgerow. At this point the carriageway is wide with hatched central markings and there are tall lamp-posts along the road but overall the scene is broadly rural.
56. On the approach to Wendover along Aylesbury Road the upper parts of the houses would be apparent over the mature boundary hedgerow and would be seen together with the new access opening. The housing development would interrupt some of the key longer distance views of the escarpment from vantage points along Aylesbury Road. On the journey out of Wendover the appeal site helps to signal the beginning of the countryside beyond, sitting in the centre of the view for a section travelling east along Aylesbury Road. Again housing would transform these views such that this part of Aylesbury Road would read as a road within the settlement as opposed to one travelling out of it.
57. The Appellants contend that the scale of the scarp ensures that it is visible from most sites around Wendover. That may be true but many of these views are partial and interrupted and are viewed from within suburban settings. The area within and immediately around the appeal site affords the opportunity to appreciate the scale and length of the scarp as it runs across a long skyline. In particular I have in mind the south-westerly views from Aylesbury Road and the views from much of the internal PROW in an easterly direction.
58. World's End Lane has a footway on its eastern side with the mature hedgerow of the appeal site immediately adjacent. Pedestrians emerging from the SSSI and walking down World's End Lane would be met with a rural aspect and views of the wooded escarpment to the east and south over the hedgerow. Whilst the northern section of the site would remain free of built development, housing would again be apparent over the hedgerows along the lower reaches of World's End Lane.
59. Residential occupiers on both World's End Lane and Halton Lane would experience a material change in their outlooks with the loss of open countryside and its replacement with housing. The change would be more apparent to the Halton Lane occupiers due to the topography of the site and the more sporadic nature of the existing boundary hedgerow and trees within the site. Similarly, walkers along Halton Lane would experience a material change in that the impression of walking along the edge of the countryside would be lost. Drivers along Halton Lane would experience a minor adverse change for the short section of Halton Lane down to the roundabout.
60. The assessment of change for the aforementioned residential occupiers does not, in my opinion, depend on individual assessments as to what can be seen from particular windows and vantage points but instead should take into account the way in which the site is currently seen and experienced from these houses as the occupiers go about their daily lives, coming and going to the houses, walking along Halton Lane and working in their gardens. When one takes into account these matters it becomes evident that there would be a significant change for those occupiers along the bottom length of Halton Lane.

New housing set back in the site behind a landscaped corridor on this Halton Lane frontage would go some way to ameliorating these adverse visual effects.

61. In longer distance views from footpaths within the AONB, on Coombe Hill and Boddington Hill, the site would form a small part of a much larger panoramic composition given the distances involved. Whilst it would extend the built form of Wendover into the vale I conclude that the overall visual effects from these longer viewpoints would be minor.
62. In summary I conclude that the proposal would have a number of adverse visual effects, particularly along the internal PROW and along the roads around the site and the approach into and out of Wendover. It is appropriate to characterise these various adverse visual effects as localised whilst also recording that they would be experienced by a significant number of receptors in the form of pedestrians, recreational users, residents and drivers.

*Valued landscape*

63. Another contentious issue is whether the site forms part of a valued landscape in terms of paragraph 109 of the Framework. Mr Self points out that the site is not covered by any statutory or non-statutory designations and that this is somewhat unusual for undeveloped sites around Wendover where much of the land falls within the AONB or green belt. Neither does the site fall within the locally designated Areas of Attractive Landscape or Local Landscape Areas as defined in both the adopted and emerging local plans. These areas are expressed to be sensitive landscapes which are the 'valued landscapes' for the district as referred to in national policy<sup>16</sup>. Nevertheless it is well-established that the lack of a local or national landscape designation does not preclude the site from being a valued landscape<sup>17</sup>. It was also accepted that the criteria in Box 5.1 of GLVIA 3<sup>18</sup> are accepted as a useful tool for assessing value.
64. Pointing to the Stroud<sup>19</sup> judgment the Appellants further contend that the appeal site itself has to have some demonstrable physical attributes which take it beyond mere countryside in order to qualify as a valued landscape. The Council's interpretation is that the appeal site cannot be considered in isolation from its surroundings and that in the Stroud judgment the Court was looking at matters beyond the site in examining the potential demonstrable physical attributes.
65. In coming to a view as to whether or not a site falls to be classed as a valued landscape within the terms of the Framework, it seems to me that one first has to consider the extent of the land which makes up the landscape under consideration before examining whether or not there are features which make it valued. Developments and appeal sites vary in size. For example it is possible to conceive of a small site sitting within a much larger field/combination of fields which comprise a landscape and which have demonstrable physical characteristics taking that landscape out of the ordinary. The small site itself may not exhibit any of the demonstrable physical features but as long as it forms an integral part of a wider 'valued landscape' I consider that it would deserve protection under the auspices of paragraph 109 of the

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<sup>16</sup> The 'Areas of Sensitive Landscapes Study' of 2008 prepared by Jacobs, referred to at p. 220 Draft Local Plan CD6.3.

<sup>17</sup> CD7/4: Stroud District Council v SSCLG [2015] EWHC 488 (Admin).

<sup>18</sup> Guidelines for Landscape and Visual Impact Assessment.

Framework. To require the small site itself to demonstrate the physical features in order to qualify as a valued landscape seems to me to be a formulaic, literal approach to the interpretation of the question and an approach which could lead to anomalies. It could lead to individual parcels of land being examined for physical characteristics deterministic of value. Adjoining parcels of land could be categorised as valued landscapes and 'not valued landscapes' on this basis.

66. Further I do not accept that the Stroud case is authority for the proposition that one must only look to the site itself in seeking to identify demonstrable physical characteristics. In examining matters Mr Justice Ouseley confirmed that the Inspector was entitled to come to certain judgments about the factors and evidence in relation to matters outside the confines of the site itself. When assessing what constitutes a valued landscape I consider it more important to examine the bigger picture in terms of the value of the site and its surroundings. That is not to borrow the features of the adjoining land but to assess the site in situ as an integral part of the surrounding land rather than divorcing it from its surroundings and then to conduct an examination of its value.
67. As already indicated I find some difficulty in ascribing the term landscape to an appeal site comprising one large agricultural field. To my mind the term 'landscape' denotes an area somewhat wider than the appeal site in this case. In this regard I note the reference of my colleague in the Loughborough appeal<sup>20</sup> to the GLVIA definition of landscape as '*an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors*'. I endorse the view that '*it is about the relationship between people and place, and perceptions turn land into the concept of landscape*'.<sup>21</sup>
68. Here the landscape under consideration is relatively small scale. In this instance the appeal site is clearly understood to be part of land on the edge of the vales. It is not only representative of that landscape character, it is a pocket of high quality land. It also makes a key contribution to the attractive rural setting of Wendover on a gateway approach and forms part of the countryside which provides the setting for the AONB. It has a scenic value well above the ordinary for the reasons given. It is adjoined by and associated with the SSSI which adds value to the local landscape and adds to the sense of rural tranquillity. It is not merely a matter of the site's well-used internal footpath providing views of the escarpment; rather it is the expansive and scenic nature of those views seen in the context of an open foreground uncluttered by development which gives the views their value and high quality. That is not to impute the characteristics and value of the adjoining AONB to the appeal site but to recognise that the scarp forms part of the backdrop in the smaller scale landscape of which the appeal site is an integral part. In combination all of these matters and physical characteristics take this site beyond mere countryside and into something below that which is designated but which is a valued landscape.
69. In finding that the site comprises part of a valued landscape I have endorsed the professional judgments of the Council's landscape witness. I acknowledge

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<sup>20</sup> Land south of Nanpantan Road, Loughborough, Leicestershire reference APP/X2410/W/15/3028159 and 3028161

<sup>21</sup> Ibid §19.

that this goes against the opinion of both the Appellants' professional witness and that of the consultants tasked by the Council of identifying sensitive landscapes which fed into the Council's subsequent designation of Areas of Attractive Landscape and Local Landscape Areas. These later studies were district wide studies. All of the assessments are largely based on qualitative judgments. In coming to my conclusions I have had the benefit of expert opinions focussed on an analysis of the site and its surroundings, as well as several site visits and the evidence of third parties. For all of the reasons given I am satisfied that this site comprises part of a valued landscape and its development would fail to protect and enhance the landscape contrary to the objectives set out in the Framework.

*Valued landscape and the dis-application of the tilted balance*

70. It is necessary to consider whether the provisions of paragraph 109 of the Framework in relation to valued landscapes comprise a specific policy indicating that development should be restricted in accordance with the fourth bullet point of paragraph 14. Footnote 9 provides some examples of such policies but it is not an exhaustive list. Whilst the interpretation of policy is a matter of law, there are no High Court judgments which have been brought to my attention which go directly to the point. However, the Council drew my attention to an Order refusing permission to apply for Judicial Review<sup>22</sup> where one of the grounds was that there had been an error in finding that paragraph 109 was a policy within the meaning of paragraph 14. It would appear that Mr Justice Lewis found this to be unarguable.
71. The Council has provided examples of appeal decisions in which Inspectors have concluded that paragraph 109 in relation to valued landscapes is a footnote 9 policy. Whilst the Appellants have not produced appeal decisions concluding the opposite, I fully accept Mr Ross's evidence that he is aware of such decisions. In considering what constitutes a 'restrictive policy' Mr Justice Coulson<sup>23</sup> confirmed that it is appropriate to give the word 'restricted' a relatively wide meaning to cover any situation where the Framework indicates a policy that cuts across the underlying presumption in favour of development.
72. Mr Strachan submits that paragraph 109 is not a policy indicating that development should be restricted. His contention is that paragraph 109 falls to be read in conjunction with the whole of section 11 entitled 'Conserving and enhancing the natural environment'. When one considers that whole section I agree that paragraph 109 is essentially the introductory paragraph setting out aspirations of the planning system before going to set out specific policies in relation to particular matters (soils and ecological interests) in specific decision making paragraphs (111, 118 for example).
73. In support of this argument he cites the reference to the protection and enhancement of soils in paragraph 109 which finds expression in the preference in paragraph 112 to use areas of poorer quality land. The judge in the Borough of Telford and Wrekin and SSCLG case<sup>24</sup> found that paragraph 112 of the Framework, dealing with the loss of best and most versatile agricultural land, did not constitute a footnote 9 policy. This was on the basis that it did

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<sup>22</sup> (CO/3029/2016) referenced in the appeal decision APP?B1605/W/14/001717 [CD 7.17]

<sup>23</sup> Forest of Dean DC v SSCLG [2016] PTSR 1031

<sup>24</sup> [2016] EWHC 3073 (Admin)

not confer any level of protection and instead contained a preference for the use of lower grade land.

74. I consider that there is some force in both sides of the argument. However I must come to a clear conclusion on this matter. After careful consideration I am more persuaded that the exhortation to *'contribute to and enhance the natural and local environment by...protecting and enhancing valued landscapes'* comprises an aspiration rather than a restriction.
75. I have found that the development would result in the loss of an important part of a valued landscape. In this instance I conclude that the first bullet point of paragraph 109 of the Framework is not a specific policy that indicates that development should be restricted. Given my findings it follows that the tilted balance should still be applied.

#### *Conclusions on Landscape Issues*

76. There would be harm to landscape character by the loss of part of the land of the character type identified. Whilst the visual effects would largely be localised, the development would have significant adverse visual effects in a number of key respects. In addition there would be material harm to the rural setting and settlement pattern of Wendover and further limited harm to the setting of the AONB. There would also be the erosion of part of a valued landscape. These harms are substantial and are contrary to the local plan and national policy objectives already set out. In combination these harms attract significant weight.
77. The route of the PROW on the site would remain the same and it would have a more even surface rendering it more accessible to all users, particularly wheelchair users. It would also link into other footpaths and recreation areas on the site. These benefits in terms of convenience and accessibility would come at the expense of diminution in the amenity and public enjoyment of the route as outlined above. I have included this harm to visual amenity experienced by footpath users in my landscape assessment. Overall there would be some small contravention of AVLP policy GP.84 to which limited weight is attached.

#### ***The SSSI and ecological considerations***

78. The Framework confirms that decision makers should aim to conserve and enhance biodiversity by application of a set of principles. If significant harm cannot be avoided, adequately mitigated or as a last resort, compensated for, then permission should be refused. Proposed development on land outside a SSSI which is *'likely to have an adverse effect upon the SSSI (either individually or cumulatively) should not normally be permitted'*. Where an adverse effect on the site's notified special interest features is likely, the Framework confirms that development should only be allowed where its benefits clearly outweigh both the likely impacts on features and any broader impacts on the national networks of SSSIs.
79. Nature conservation policies in the AVLP have not been saved. There are two relevant policies in the eVALP which carry limited weight at this stage. NE1 concerns protected sites and reflects the Framework objectives. Policy NE2 seeks the protection and enhancement of biodiversity and requires a net gain in biodiversity when considering development proposals.



80. The planning application was supported by a series of documents which sought to address ecological considerations<sup>25</sup>. The Weston Turville Reservoir was designated as a SSSI due to three special features including: aggregations of non-breeding birds, namely wintering shoveler; assemblages of breeding birds and extensive swamp and reed beds.
81. As a statutory consultee Natural England initially raised an objection<sup>26</sup> to the appeal proposal due to a concern that the development was likely to damage or destroy the interest features for which the reservoir was notified. One of the concerns was in relation to a possible adverse effect on the sensitive hydrology of the SSSI. Concerns were also expressed about recreational disturbance by virtue of increased visitor numbers and dog-walkers and an increase in domestic cats resulting in increased predation of birds. Following the submission of further information Natural England formally withdrew its objection to the proposal<sup>27</sup> on the basis that the identified impacts on the SSSI could be appropriately mitigated with measures outlined in the submitted Access and Recreation Mitigation Strategy<sup>28</sup>.
82. The mitigation strategy sets out key findings in relation to recreational use of the SSSI and a series of mitigation measures including the funding of improved fencing and hedging along existing footpaths in the SSSI, as well as monies for an on-site warden for 2 days per week. In addition the masterplan was reconfigured to provide new open space and recreation areas for dog walkers and measures to promote alternative sites for recreation.
83. BBOWT are responsible for the day to day management of the site and they continued to express concerns about certain matters. Mr Jackson gave evidence to the Inquiry about those concerns. He started by confirming that the BBOWT relied upon the evidence of a local resident and keen bird watcher, Mr Mason, in relation to the local bird populations. Mr Jackson further explained the delicate balance which management of the SSSI entails in terms of facilitating and widening access to the SSSI whilst not compromising the wildlife population and the habitats that resulted in designation.
84. The Appellants' ecologist, Mr Baker, confirmed that the written comments of Mr Mason and his records of various bird species, both on the appeal site and on the SSSI, had been taken into account in the assessment. A number of surveys conducted on behalf of the Appellants recorded the current recreational use of the SSSI. These surveys took place over 5 separate days, including two week days and three separate days at the weekend. The surveys were no shorter than 6 hours and surveys on two separate Saturdays took some 8 hours. I am satisfied that these surveys are representative and provide useful information about the current level of recreational use.
85. All three of the key features of the SSSI are potentially at risk of disturbance or harm from increased public access, including dog walkers and an increase in predation from domestic cats on the appeal site. Any impacts caused by the development must be viewed against a baseline of the existing recreational pressures/use of the SSSI and in the context of the BBOWT management

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<sup>25</sup> These include Ecological Assessments dated December 2015 and July 2016 (CD 2/22 and CD 3/2), Biodiversity Offset Metric (CD 3/2), A Recreation Impact Assessment (CD 3/4) and a separate response to BBOWT from Brookbanks (CD 3/1).

<sup>26</sup> Consultation response dated 28 April 2016.

<sup>27</sup> By letter dated 5 May 2017.

<sup>28</sup> CD 4.7.

objectives of encouraging access whilst ensuring that conservation objectives are met. The reservoir is currently used by a private sailing club and by an angling club. The Appellants' survey recorded an average of 11 people per hour using the SSSI with walking and dog-walking the main activities. Some 69% of walkers were accompanied by a dog. The Appellants have applied national data<sup>29</sup> to estimate the number of households on the proposed development likely to have dogs, estimating that 42 dwellings on the site would contain 54 dogs.

86. It is a reasonable assumption that those new households with dogs are likely to take their dogs out for at least one daily walk. The revised masterplan depicted a network of new pathways around the development and an open area for dog exercising. No new access points onto the SSSI would be created. I consider that, for shorter walks, these on-site measures may prove attractive and convenient for busy householders wishing take their dogs out for short periods. Other dog walking locations such as Wendover Woods and the canal towpath could be promoted and may also prove attractive for those looking for longer or different walks. However the proximity of the SSSI, its attractive routes and scenery would no doubt prove a draw for many of the potential dog-walkers on the appeal site and would increase the activity within the SSSI.
87. Potential impacts on shoveler population: At the point of designation annual shoveler numbers exceeded 90 birds, but over the last decade these numbers have fallen to less than 20<sup>30</sup>. The SSSI also provides a breeding environment for 46 bird species and other rare invertebrate fauna and ecologically important habitats. Bittern<sup>31</sup> are known to over winter at the site. There has been a decline in key species over the years.
88. The wetland bird survey data for the reservoir for the years 2010-15 records shoveler on the SSSI in 2 of the 5 years with an annual average peak of 5 birds. The most significant year was 2011/12 when 20 birds were recorded. This is well below the threshold of 180 birds (or 1% of the estimated British shoveler population) needed to categorise the site as a nationally important wetland for the species. The corollary of this is that any impact on the shoveler population on this SSSI would not materially impact on the national population.
89. The cause of the reduction in the shoveler population on the SSSI is unknown but speculation has been focussed on the sailing and angling activities and water degradation as well as the presence of catfish in the water. There appears to be no suggestion that current pedestrian access or dog walking activities are having an adverse effect. Given the likely increase in dog-walking activities and visitor numbers (ie walkers) as a result of the development I am satisfied that they would not have any material adverse effect upon this feature.
90. Reedbeds: at the Weston Turville reservoir the reedbeds form a dense fringe around the southern and eastern limits of the waterbody. At these points the reedbeds are clearly separated from the recreational footpaths. Direct access to the waterside for walkers is only gained along the northern embankment where there are limited reedbeds and generally lower biodiversity. The permissive paths around three sides of the reservoir are firmly established and

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<sup>29</sup> From the Pet Food Manufacturers' Association 2016, Proof of Evidence of Mr McCloy § 4.11.

<sup>30</sup> Natural England condition assessment at appendix 3 to Proof of Evidence of Mr Holton.

<sup>31</sup> Listed in schedule 1 of the Wildlife and Countryside Act 1981.

there is no suggestion that they will change in anyway. Indeed the management plan of BBOWT confirms that access to the SSSI is to be encouraged.

91. The mitigation strategy proposes funding for the provision of new hedge-planting and dog-proof fencing around the reedbeds at the south-eastern end to afford increased protection. Funding for the provision of a warden for 30 years and for new signs and a replacement bird hide are also proposed.
92. There is no suggestion that the current level of recreational access is materially harming the reedbeds. The beds are largely inaccessible and supplementation of the protective planting and dog-proof fencing would further ensure that access to this precious resource is prevented. I am satisfied that there would be no material harm caused to the reedbeds by virtue of the increase in recreational use attributable to the new dwellings. The further protective measures proposed would make sure of this. I shall deal with Mr Jackson's concerns about the mechanics of the section 106 agreement later.
93. Assemblages of breeding birds: No breeding bird data has been collected for the SSSI site. The Ecological Assessment identified 11 species of breeding birds of lowland open water and their margins which they considered might breed on the site. The assessment considered that there could be some direct and indirect adverse impacts on the breeding bird assemblage unless some mitigation and compensatory measures were implemented. These measures include a 15 metre wide buffer along the appeal site's boundary with the SSSI, to include an internal footpath and dense planting and fencing along the streams to deter access to the SSSI. The buffers would be managed to increase biodiversity and provide additional habitat.
94. The internal footpath would provide an alternative route for householders other than the permissive footpath around the southern edge of the reservoir. Any increase in the number of options for walking routes is likely to reduce pressure on the existing routes. The buffer zone and lower density housing, as well as dense planting, would ensure that sufficient separation away from domestic activities was maintained.
95. It is indisputable that cats kill birds. I have been referred to a number of studies from different parts of the world and different environments, including the RSPB website extracts regarding the effects of cats on garden birds. Studies have shown that birds of lesser body mass tend to be more vulnerable to predation but this could also include fledglings or young birds. Some cats will roam up to 400 metres which would place most of the cats in houses on the appeal site within range of the SSSI. However many cats roam over smaller territories. In addition the internal access roads and adjoining gardens, as well as the intervening ditch and stream would be likely to act as something of a deterrent to a number of domestic cats. In any event, I acknowledge that any additional cat predation as a result of the development would not be likely to have a material effect on the local populations of breeding birds.
96. Mr Mason confirmed that in the past there had been over-wintering Bitterns on the SSSI, with roosts in the reedbeds and Bitterns feeding in the waters closest to the embankment. There have been no sightings of Bitterns over the past winter. Mr Baker believed that if Bitterns had been seen on the dam causeway this was a strong indication that they were not unduly disturbed by recreational users of the SSSI. I accept this.

97. Mr Mason and others reported anti-social behaviour associated with teenagers using the hides during the evening hours. This is an existing problem and one which it was contended would be exacerbated by the introduction of more housing. The introduction of a part-time warden and concerted management action would go some way to addressing this existing problem and preventing any increase in anti-social behaviour.
98. Adequacy of the s106 agreement: the agreement provides funding for the mitigation strategy for a period of 30 years. BBOWT raised concerns about whether this would be sufficient and Mr Jackson gave evidence that issues after the expiration of the 30 year period would result in additional costs to the trust. In my view the fencing would provide additional reinforcement to the natural barrier designed to limit access to the SSSI. It would be useful in the early years whilst additional planting is established. I am also satisfied that the presence of a warden two days a week would establish patterns of behaviour in relation to the SSSI which would continue beyond the 30 year period. I further agree with the Appellants that a 32% allowance in terms of overheads and management costs for the warden is proportionate. This is especially so in light of the fact that the monies would be paid in advance as one capital sum. The UU contains alternate provisions in relation to the ecology contributions dependent on my findings. Given my conclusions it follows that the Ecology Contribution (totalling £430,206.95) should be applied.
99. Having regard to the above, and with the mitigation and compensatory measures in place, I am satisfied that the development would not have an adverse effect upon this feature either on its own or in combination with the existing usage.
100. Hydrological impacts: the Flood Risk Assessment (FRA) details how the drainage scheme would effectively limit surface water run-off to the current greenfield rates. As such the volume of water leaving the site and accessing adjoining watercourses would remain unchanged. The FRA explains that current run-off into the Wendover and Blue Sky Brook is from Halton Lane and its residential properties and from the arable appeal site. The sustainable urban drainage scheme proposed would act by retaining and treating any contaminants from surface water run-off from the developed site. Contamination from fertiliser born chemicals and particulates would reduce. Having regard to all of these matters I conclude that the development would not have any materially harmful effects on adjoining watercourses in terms of either the volume or composition of surface water run-off.
101. Biodiversity of the appeal site itself: Mr Mason has logged sightings of birds on the appeal site over a long period of time. He agrees that, as a monoculture, the arable field has very low biodiversity value of itself and further accepts the premise that the proposal would result in some increased biodiversity overall. His concern relates to the loss of scarce farmland species such as skylark which have bred on the site each year for the last 20 years. He has also recorded breeding pairs of great partridge and yellow wagtail.
102. Mr Baker also confirmed the presence of skylark on the appeal site. They are a red-list species and prefer permanent arable pasture so development may result in a loss of this species from the site. However this is likely to be compensated by other red-list species including garden birds such as mistle-thrush or song-thrush.

103. The Appellants' 'Biodiversity Offset Metric' details an arithmetical assessment of the biodiversity units which will be lost as a consequence of the proposed development (20.78 units) and the metric score for mitigation measures, after the application of multipliers to reflect the delivery risks and time taken to mature, (20.87). As such the biodiversity offset measures would represent a very small gain in metric terms of 0.09 biodiversity units. In passing I note that this calculation includes reference to the allotments which would in all likelihood provide greater habitat distinctiveness and biodiversity than the dog-exercising areas which have replaced them in the amended masterplan. The small gain above would therefore be reduced further.

*Overall conclusions on the SSSI and ecological considerations*

104. Subject to delivery of the on-site and off-site mitigation measures outlined, I conclude that the development is not likely to have an adverse impact on the SSSI or the features for which it has been designated. The mitigation and compensation measures proposed on the site of the SSSI are exactly that. They are designed to address/prevent any adverse impacts of the proposal as opposed to increasing biodiversity on the SSSI. I am not persuaded that they would result in any material additional benefits over and above the mitigation which is necessary to offset the effects of the development.

105. On balance having regard to all of the above I conclude that the proposal would conserve and, to a limited extent, enhance biodiversity on the appeal site itself. I attribute limited weight to any biodiversity enhancements.

**Other objections**

106. Some local residents expressed concerns about flooding but, as confirmed above, I am satisfied that the surface water run-off rates would not be any greater than they are now due to the sustainable urban drainage system which would detain water on the site. Highways objections were raised in terms of the additional traffic on Halton Lane which is a main route connecting Wendover to the M25 network, via the A41. The Appellants' Transport Assessment examined future traffic conditions using predictive modelling and established that, with the development in place, traffic would be within acceptable levels. The additional traffic generated by the development would represent a small proportion of the existing traffic along Halton Lane. As requested, I visited Halton Lane and its environs during the AM peak hour. At that time I saw the road network was operating satisfactorily and did not observe any material queuing.

107. A local resident, Mr Farouk, expressed concerns about the impact on local infrastructure in terms of schools and medical facilities. Councillor Bulpitt confirmed that some local residents have been refused places at the local primary school in Wendover and are having to travel further away and that train services are oversubscribed. The unilateral undertaking secures financial contributions towards sport and leisure and education as well as a public transport and travel plan. These contributions are aimed at ensuring that the development meets the additional demands it would place on local infrastructure. They are acceptable to the Council and County Council as the relevant service providers.

**Other material considerations in support of development**

108. Contextual matters: in the emerging VALP Wendover is one of five strategic settlements in the district in the top tier of the settlement hierarchy and as such it is earmarked for 25% growth on the existing housing stock over the plan period<sup>32</sup>. The 25% figure seeks to strike a balance between recognition of the good accessibility of Wendover with its own railway station and the environmental constraints of the surrounding AONB and green belt. The Council's own Housing and Employment Land Availability Assessment<sup>33</sup> did not identify any suitable sites and proposed a green belt release site. The appeal site was one of the sites considered unsuitable.
109. There has been a recent ministerial announcement<sup>34</sup> of the closure of RAF Halton in 2022. This is a large brownfield site within the Green Belt and to the east of Wendover. Third parties have highlighted it as a potential development site and the Council confirm that it could possibly be re-used or redeveloped but that there are no published plans as yet and it cannot be relied upon in the current 5 year housing land supply.
110. The Appellants commend the appeal site as a unique opportunity to develop adjacent to the Wendover settlement boundary on land outside the AONB and Green Belt designations which otherwise wrap around most of the town. They point to RAF Halton or the Green Belt release site put forward in the emerging plan as the only other candidates for development in Wendover. It is a material consideration that Wendover is an accessible location which will have to shoulder a portion of the housing requirement for the district. It is also relevant that it is somewhat constrained by its location adjacent to the AONB and surrounded by Green Belt. However any comparative judgments to be made about alternative sites must be taken in the examination of the local plan when options can be considered and comprehensively compared fairly.
111. Benefits: I have already set out my observations in relation to the limited ecological benefits on the appeal site itself and a conclusion that the mitigation measures are aimed at ameliorating the effects of the development. I accept that the measures on the SSSI may provide some long-term benefits over and above mitigation but consider that these would be limited. For instance the creation of a footpath within the appeal site along the SSSI boundary would not, in my view, be a more attractive alternative to walking around the perimeter within the SSSI. It would be a facility for occupants of the development but I do not believe it would be attractive to other SSSI visitors. Neither do I believe it would enable BBOWT to close the existing SSSI at sensitive times. There has been no indication that this is either desirable or under consideration.
112. The proposal would provide 122 units of market housing and 53 units of affordable housing in the form of 40 homes for social rent and 13 intermediate homes. These would be a benefit. The relative amount of weight afforded to this benefit will be dependent on the position with regard to the 5 YHLS which I shall come on to examine. In addition it is estimated to generate 262 direct construction jobs<sup>35</sup> and there would be the additional household expenditure

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<sup>32</sup> 861 dwellings or 749 dwellings after existing commitments are accounted for. Table 1 Spatial Strategy for Growth (p.32) and policy D4 VALP

<sup>33</sup> CD 9.2

<sup>34</sup> Councillor Newcombe confirmed the statement by Sir Michael Fallon, Ministry of Defence.

<sup>35</sup> Adam Ross proof of evidence 6.32

which would support local businesses. The open space and recreational areas on the appeal site would be typical of many developments and designed to service the needs of its residents. I do not consider it to be a benefit of the scheme.

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

#### *Introduction*

113. The Council's latest calculation is set out in its 5 YHLS Interim Position Statement<sup>36</sup> (IPS) of October 2016. Of necessity it is an interim approach because the figure used as the full objectively assessed housing need (FOAN) have not yet been tested at a local plan examination. To reflect this, the Council declared that it would take a positive approach which reflects the presumption in favour of sustainable development when considering housing development proposals.
114. This appeal has been characterised by wide-ranging disputes between the main parties regarding both the housing requirements for the district and the supply available to meet those requirements. The AVLP was adopted in 2004 and made provision for housing up to 2011. It pre-dated the Framework and as such it did not include an up to date objectively assessed need for the district. On this basis the main parties have agreed that policies for the supply of houses are out of date and therefore, subject to any dis-application, the tilted balance in the second bullet point of the decision-taking section of Framework paragraph 14 applies. The parties are therefore agreed that the existence or lack of a 5 YHLS is not instrumental in determining the decision-making structure to be adopted but rather it is a factor which attracts weight in the overall planning balance.
115. The existence or otherwise of a 5 YHLS remains in dispute. Whilst recognising that it is no part of my remit to conduct a lengthy examination into the housing land requirements of the emerging local plan, it is necessary for me to make some findings to narrow the issues and make a definitive finding on the existence or otherwise of a 5 YHLS. I must grapple with these issues to the extent that my findings enable me to come to a definitive view on the overall planning balance in this case. Any findings which I make within the confines of this appeal are based upon the evidence heard and the arguments ventilated and are particular to this appeal. They are no substitute for an overarching local plan examination when the Examiner will have the benefit of a full picture and representations from many interested parties in examining various options and constraints.
116. It is usual of course to first determine the requirement before embarking upon an exercise to look at the supply available to meet that requirement. Somewhat counter-intuitively I am going to first of all examine the disputes between the parties in relation to the current available housing land supply before looking at the requirement arguments. This is because the issues around supply are simpler and comprise discrete issues. They can be dealt with more quickly and resolution of these issues may prove determinative in relation to the question of whether a 5 YHLS currently exists. Thereafter I shall revisit the extent to which I need to address the requirements arguments.

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<sup>36</sup> CD 9.3.

*The available housing supply*

117. The positions of the parties are set out in the housing land supply SCG. The period of assessment is agreed to be 5 years from the 1 April 2016 (the base date). The Buckinghamshire housing market area is to be used. There are three principal areas of dispute: an argument about the carrying-forward of oversupply from previous years; the appropriate buffer; and components of the supply.
118. Oversupply: this is an issue of principle regarding the calculation method used. In its calculation of 5 YHLS the Council has effectively deducted what it says is an oversupply of housing against an annualised requirement in the 3 years preceding the base date. This is effectively the first 3 years of the plan period when the Council says it was performing better than its annualised requirement figure of 965dpa and delivered 705 more houses in this period. The Council contends that this approach is justified on the basis that any undersupply would also have been carried forward. I further note that the Council has a high level of unimplemented planning permissions.
119. Paragraph 47 of the Framework seeks to boost significantly the supply of housing. In doing this Councils are told to use their evidence base to ensure that FOAN are met, as far as consistent with Framework policies. To that end any undersupply against annualised targets in the early years of a plan must be carried forward if the overall plan target is to be met. In the context of paragraph 47 objectives, it seems to me that any oversupply in the early years of a plan cannot be 'banked' so as to reduce the annualised target in later years. This is because it is not a question of **exactly** meeting the overall plan requirements but ensuring that sufficient (or a minimum level of) housing is provided over the plan period in order to meet identified needs. Any provision over and above that requirement must be viewed in terms of the objective of significantly boosting supply. As such the requirement is a target but it is a minimum target. Undersupply would create a problem in that it would result in people in housing need not having their needs met. Oversupply would not be problematic in that it would increase choice and be a positive step in meeting housing needs. More particularly in this district the HEDNA<sup>37</sup> has expressed the affordable housing requirement as a minimum which further reinforces the notion of a minimum overall target.
120. For the above reasons I conclude that the Council's approach in deducting a notional oversupply figure from its 5 YHLS is flawed. On the Council's analysis<sup>38</sup> I conclude that 705 units should not have been deducted from the overall 5 year requirement. In making this finding I have noted that the Secretary of State in the Castlemilk decision did allow deduction for the oversupply.<sup>39</sup> However the allowance for previous oversupply does not appear to have been challenged by the Appellants in that case and was not therefore a dispute which the Inspector had to make a finding upon. In this case the point is in issue and I have come to the view that it is inappropriate to claim the allowance for an oversupply in circumstances where the target is expressed as a minimum. Pausing to modify the figures in table 7, this would result in a total 5 year requirement of 4,825 before the application of any buffer.

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<sup>37</sup> Housing and Employment Development Needs Assessment Update 2016.

<sup>38</sup> Table 7 of the Interim Position Statement.

<sup>39</sup> SoS letter paragraph 24.



121. The appropriate buffer: As at October 2016 the Council considered itself to be a '20% authority' for the purposes of the Interim Position Statement. As a matter of principle, as the period of assessment moves on, a Council's record could improve such that it is no longer considered to be an authority with a record of persistent under-delivery. In this regard there is one additional year's data before the Inquiry in that Mrs Jarvis confirms that there have been a total of 1323 completions to 31 March 2017. Mrs Jarvis believes that the Council has been overly cautious in identifying itself as a 20% authority and is now in a position where it can properly claim to apply a 5% buffer.
122. The Council suggests that an analysis of delivery rates over the past 5 years would be sufficient to make an assessment. The figures used for the FOAN are derived from the latest in a series of Buckinghamshire Housing and Economic Development Needs Assessments (the HEDNA update 2016). The HEDNA study sets out a total housing requirement for Aylesbury Vale of 19,300 dwellings for the period 2013-33 equating to an annual average of 965 dwellings per annum (dpa).
123. I am conscious that any assessment of delivery rates against the FOAN derived from the HEDNA would be against an untested requirement figure intended to be operative from 2013 onwards. Whilst this does not render the assessment unreliable, I conclude that it is appropriate to attribute less weight to these untested figures. I consider a longer backwards look to be more appropriate. Both parties have examined the 10 year period back to 2006/07 and I have one further year's data. I consider this to be an appropriate basis for my assessment.
124. The existing VALP was adopted in 2004 and covered the period to 2011. Policy ST.1 adopted the structure plan requirements of 15,600 new homes for the district in the 20 year period to 2011. This policy was not saved and was superseded by the South East Plan (adopted in 2009) which set a requirement of 1,345dpa for the district before it was revoked in 2013.
125. The Interim Position Statement applies the VALP requirement figure to 2010/11, the household projections figures for 2011/12 and 2012/13 and from 2013/14 the HEDNA OAN. Against those figures there was an undersupply in five of the 10 years examined. Whilst the South East Plan was not based on local requirements but on setting top-down targets, it was an adopted plan and for the period of adoption the figures contained within it were actual targets for delivery. I consider these to be more appropriate targets than the household projection figures which the Council has used for the two years 2011/12 and 2012/13.
126. On behalf of the Council, Mrs Jarvis confirmed that the annual monitoring reports up to 2012 did use and refer to the SEP targets. These targets were disaggregated between Aylesbury and the rest of the district. Whilst the disaggregated target for Aylesbury was met, the global target was not. Assessed against the global SEP targets to the point of revocation in 2013, the Council had a delivery shortfall in each of the years up to 2013.
127. In the Council's delivery table<sup>40</sup> if the SEP requirements are substituted for the household projections in the two years 2011/12 and 2012/13 there is an

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<sup>40</sup> Table 2 Interim Position Statement.

- under-delivery in 6 of the 7 years to 2012/13 and thereafter a notional oversupply against the untested HEDNA requirement.
128. The HEDNA figures for FOAN are unexamined and, as has been evident at this Inquiry, they are hotly contested. In these circumstances I consider a degree of caution must be exercised in using them as a benchmark against which to assess delivery. Having regard to the above it can be said that up to 2012/13 there was an under-delivery against the targets in adopted plans for a number of consecutive years. The picture in relation to delivery rates from 2012/13 will only become firmly established once the FOAN have been tested.
129. In these circumstances I am satisfied, having regard to the above, that there remains a record of persistent under-delivery at this point in time such as to justify the application of a 20% buffer. Revisiting the Council's Interim Position Statement and applying these findings would result in a total 5 year requirement of 5,790 on the Council's FOAN figures<sup>41</sup>.
130. The components of supply: the urban extension on Land East of Aylesbury Road (Broughton Crossing) will comprise almost 2,500 new homes of which the Council anticipates that 850 will be completed within the 5 year period. The 92 dwellings completed to March 2017 is below the estimated delivery of 150 dwellings for the first year but there are a further 154 dwellings currently under construction. Two outlets are involved and there are significant infrastructure requirements. The assumed rate of delivery of 175dpa for the remaining four years starts to look a little optimistic. Delivery on other large sites, Windsor Park and Berryfields was of this order but that was due to 4 outlets operating on these sites<sup>42</sup>. I therefore conclude that the Appellants' assessment of 650 dwellings over the 5 years is more appropriate. This reduces the Council's supply figures by 200 units.
131. Sites (G) and (H) are allocated within a made Neighbourhood Plan and outline planning permission granted in January 2017. The parties are agreed that a start date of 2019/20 is likely which would contribute two years' worth of completions within the 5 year period under consideration. The Council has revised its estimate of the contribution of site (H) downwards to 35 units in the 5 year period, with site (G) providing a further 175 units. Barratt's and David Wilson Homes are committed to developing site (G). Mrs Jarvis gave evidence that she anticipated some 50 dwellings to be delivered in 2019/20 with a further 125 units in the final year. At this point in time housing completions in the final two years remains feasible in my view. The estimate of 60dpa in the final year accords with Mr Brown's figures elsewhere<sup>43</sup>. I therefore make no adjustment to the Council's estimates.
132. Three sites without planning permission are in dispute due to their availability. Land above Rumbold's Well and next to Field Farm is currently occupied by a variety of industrial users on 6 month rolling leases. Whilst this need not necessarily be an impediment to development as a housing site, it will affect delivery rates in that the businesses will have to vacate their premises, the land assembled and demolition will have to take place. Given that there is no indication of developer interest or a timescale for an application coming forward I am minded to delete this site from the supply.

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<sup>41</sup> Mr Brown's scenario B §5.39 proof of evidence.

<sup>42</sup> Mr Brown evidence in chief.

<sup>43</sup> Mr Brown Appendix 22 page 14, figure 7.

133. Development of land at Winslow Rugby Club is dependent on relocation of the rugby club and a vehicular access to be provided by progression of an adjoining development site which calls into question any completions before 31 March 2021. The Council rely upon the Winslow Centre site to produce 15 of its 30 extra care dwellings before the end of March 2021. Given that the site comprises a complex of buildings including a library, sports facility and buildings currently occupied on a temporary basis by a secondary school there is much to be done before this prospective site could deliver new homes. I do not believe that any new homes are likely before the end of the 5 year period.
134. Given my findings on the delivery rates on the above sites it is necessary to reduce the Council's supply figures by 315 units<sup>44</sup> down to 5,754 dwellings from 6,069 dwellings. The agreed 10% non-implementation deduction would also have to be applied reducing it to 5,178 units before adding on the 212 windfall sites to bring the revised total supply to 5,390.
135. Applying these findings to the Council's figures<sup>45</sup> indicates a supply of (at best) 5,390. I have already made findings and consequential adjustments to the requirement figures which would indicate a minimum total 5 year requirement of 5,790 based on the Council's own FOAN figures as derived from the HEDNA. This is irrespective of the other live disputes around the derivation of the requirement figure. Without going into those disputes I am now in a position to conclude that the Council does not have a five year housing land supply. The lack of a 5 YHLS attracts substantial weight in favour of the proposal.
136. I pause here to examine the point to which my findings have taken me. By my calculation, my findings to this point indicate that the Council has, at best, a housing land supply of 4.65 years. This is based on the minimum adjusted requirement of 5,790 and the maximum available adjusted supply of 5,390 (see preceding paragraph).<sup>46</sup> If the Appellants were to persuade me on all of their points and in particular the disputes on housing requirement figures, the Council would have a supply of around 3.26 years. This is Scenario C2 in Mr Brown's evidence<sup>47</sup> with the supply adjusted to 5,390 and the requirement at 8,266.

*Other matters relevant to housing land supply*

137. There are a number of substantial disputes between the parties relating to the FOAN requirement figure. These relate to the reliability of the DCLG Household Projection Figures for 2014 and the adjustments made in the HEDNA to reflect perceived data quality issues. Those adjustments reduced the population base figure on which all further adjustments were made. Further arguments occurred over migration rates, an adjustment for London inward migration, household formation rates, markets signals and the approach to affordable housing.
138. Certain matters were agreed. The Council is expected to cater for the unmet needs of adjoining districts, as indeed it was in the SEP. It was agreed that this is a material consideration in my determination but that it should not be taken into account in the mathematical calculation of the FOAN. The Council

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<sup>44</sup> Rumbolds Well site (-75), Winslow Rugby Club (-25), Winslow Centre (-15), Broughton Crossing (-200).

<sup>45</sup> As set out in the table at §3.4 of the HLS SCG

<sup>46</sup>  $5,790/5 = 1158pa$ .  $5390/1158 = 4.65$  years.

<sup>47</sup> Page 59.

has, in principle, agreed to accept unmet needs from two adjoining authorities, Chiltern and South Buckinghamshire combined and Wycombe. The most recent Memorandum of Understanding confirms a provisional agreement that the Council will provide for 8,000 additional dwellings comprising unmet need which cannot be accommodated in either Wycombe or Chiltern and South Bucks. This is subject to the figure being revisited if further evidence arises and of course the figures will be subject to testing in a separate examination process. Having regard to this agreement, whilst the final figure for additional unmet need may fluctuate, it seems very likely that the housing requirement figure for this district will increase to a greater or lesser extent than indicated by the Memorandum.

139. The Council's assessment of affordable housing needs is disputed by the Appellants but no alternative figure is put forward. The HEDNA estimates affordable housing need in the district at a minimum of 4130 households over the 20 year plan period, some 207dpa. This need was based on a narrow definition of those eligible for welfare support only being identified as in affordable housing need. The HEDNA recognises that there are likely to be other households likely to be spending a high proportion of their income on housing but not eligible for welfare support. As a result the affordable housing needs figure is treated as a minimum figure. Figure 78 of the HEDNA sets out ranges of assessed needs for each of the districts. In the case of Aylesbury Vale the need is 4,190 at the bottom (209dpa) to 6,080 at the top (304dpa). Whilst no affordable housing has been delivered in Wendover in the last four years, the Council has a good track record of delivering affordable housing across the district. Such housing has come forward at the rate of 308dpa over the last 10 years<sup>48</sup>.

### **Unilateral Undertaking and CIL Compliance**

140. The UU secures the payment of financial sums in relation to secondary school provision, sport and leisure contributions, public transport and travel plan and ecology contributions. It also promises the provision of affordable housing on site as well as open space and play space on site. With the exception of the level of warden contribution the Appellant raises no objection to any of the other contributions sought. The Council has provided a schedule setting out justification for each of the contributions sought in accordance with the policy tests set out in the Framework and the statutory test in regulations 122 of the Community Infrastructure Levy (CIL) Regulations 2010
141. The provision of affordable housing is supported by AVLP policy GP2. The requirement for the provision of on-site open space and amenity land contributions is supported by AVLP policies GP38-40, GP86-88, GP90 and GP94. The public transport contribution and vouchers are to support and encourage sustainable modes of transport. The County Council has identified the recipients of the education contributions towards secondary school provision and these are directly related to the development and necessary to make it acceptable in planning terms. It is reasonably related in scale in kind to the housing proposed.
142. The Council also gave evidence to the Inquiry as to the number of pooled contributions in relation to each of the financial contributions. The number of contributions do not exceed four in any of the instances and I am satisfied that

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<sup>48</sup> Mrs Jarvis rebuttal statement, Revised Affordable Housing table.

none of the financial contributions fall foul of the pooling restrictions in regulation 123 CIL Regulations. As such all of the contributions meet the statutory and policy tests and shall be taken into account.

## **Overall Conclusions**

### *Paragraph 14 of the Framework*

143. The duty in section 38(6) of The Planning and Compulsory Purchase Act 2004 enshrines in statute the primacy of the development plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework<sup>49</sup> which is of course a material consideration to which substantial weight should be attached.
144. The Framework sets out the three dimensions of sustainable development: economic, social and environmental. These have all been considered within my reasoning. Paragraph 14 recites the presumption in favour of sustainable development and sets out what it means for decision-taking. Paragraph 49 advises that housing applications should be considered in the context of the presumption in favour of sustainable development but that relevant policies for the supply of housing should not be considered up-to-date if the Council cannot demonstrate a 5 YHLS.
145. Paragraph 14 contains two alternative limbs in relation to decision-taking. The first limb requires a balance to be undertaken whereby permission should be granted unless the adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The second limb indicates that the presumption should not be applied if specific policies indicate development should be restricted. For the reasons given before the tilted balance in the first limb is to be applied in this case.
146. In this case I have concluded that there would be moderate to substantial harm to landscape character, limited harm to the setting of the AONB, moderate to substantial harm to settlement character and the rural setting of Wendover. There would also be material adverse visual effects and the irrevocable loss of part of a valued landscape. In these important environmental respects the proposal would be contrary to development plan policies which are entirely consistent with the Framework. Due to the overarching nature of the policies and the degree of contravention I conclude that the proposal would be contrary to the development plan as a whole. In combination this accumulation of harms would be significant in terms of their scale and severity and as such they attract very substantial weight.
147. For the purposes of this Inquiry I have concluded that the Council does not have a 5 YHLS which attracts substantial weight. This is in a situation where it is likely that there will be some increase in the overall housing requirement, over and above the Council's FOAN, at some point in the future. There would also be the economic benefits in terms of employment and some limited biodiversity benefit. If I were to assume the Appellants' housing land supply calculations then substantial weight must be accorded to the provision of market and affordable housing in such a scenario. I bear in mind the context in which I have had to make findings about housing land supply. The picture is complicated and subject to change. However, even in a scenario where I

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<sup>49</sup> §§11, 12, 196

assume all of the Appellants remaining housing land supply calculations I am quite satisfied that the adverse impacts of the development which I have identified would significantly and demonstrably outweigh the benefits.

148. In these circumstances I do not consider it prudent to go on to reach conclusions on the other points at issue in terms of the housing requirements. These are contentious matters which affect not only this district but potentially others in the housing market area. It seems to me that they are issues which should properly be debated in the context of the emerging local plan when a full range of stakeholders and participants will have the opportunity of expressing their views.

149. Whilst the Council now asserts that the housing land supply position has improved since the date of the Inquiry, again I do not consider it necessary to re-examine the issue of housing land supply. This is because I am satisfied that the identified harm would significantly and demonstrably outweigh the benefits in the absence of a 5 year housing land supply. If the housing supply position was improved and a five year supply evidenced then the tilted balance would not apply and the appeal would still be dismissed.

150. For all of the above reasons I conclude that the appeal should be dismissed and planning permission refused.

*Karen L Ridge*

INSPECTOR

Richborough Estates

## APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Mark Westmoreland-Smith of Counsel

He called

Mr Scott Lawrence BEng(Hons)	Senior Researcher, Opinion Research Services Principal of PJPC Ltd
Mrs Philippa Jarvis BSc DipTP MRTPI	Technical Director, The Landscape Partnership
Ms Joanna Ede BA(Hons) DipLA MA CMLI	

FOR THE APPELLANT:

Mr James Strachan of Queen's Counsel

He called

Mr Matthew Spry BSc(Hons) Dip.TP(Dist) MRTPI MIED FRSA	Senior Director, Nathaniel Lichfield and Partners
Mr Steven Brown BSc(Hons) DipTP MRTPI	Principal, Woolf Bond Planning LLP
Mr Clive Self DipLA CMLI MA (Urban Des)	Managing Director, CSA environmental
Mr Andrew Baker BSc(Hons) FCIEEM	Director, Baker Consultants Ltd
Mr Andrew McCloy BA(Hons) AIPROW	Access and Recreation Consultant
Mr Paul Boileau BEng(Hons) CEng CEnv MICE	Managing Director, Brookbanks Consulting Ltd
Mr Adam Ross BA(Hons) DipTP MRTPI	Executive Director, Nexus Planning
Mr Haider	Highways Engineer

FOR THE CANAL AND RIVER TRUST

Ms Lisa Busch of Queens Counsel

INTERESTED PERSONS:

Mr Jon Mason	Local resident
Councillor Newcombe	AVDC
Mr M Farouk	Local resident
Mrs Carol McCulloch	Local resident
Ms Sheila Bulpitt	Wendover Parish Council and Neighbourhood Plan Steering Group
Mr David Lee	Local resident
Mr Wilding	Local resident and member of the Wendover Society
Mr Phil Yerby	On behalf of The Hampden Fields Action Group
Mr Tom Spencer	Local resident
Mr Matthew Jackson	Berkshire, Buckinghamshire, Oxfordshire Wildlife Trusts
Mr Benjamin	Local resident
Mrs Ann Hayward	Local resident

DOCUMENTS SUBMITTED DURING THE COURSE OF THE INQUIRY

- 1 Appearances on behalf of Aylesbury District Council.
- 2 Appearances on behalf of the Appellants.
- 3 Letter of notification of the submission of the appeal, submitted by the Council.
- 4 Opening statement on behalf of the Appellants.
- 5 Opening statement on behalf of Aylesbury Vale District Council.
- 6 Opening statement on behalf of the Canal and River Trust.
- 7 Letter of notification of the date of the Public Inquiry, submitted by the Council.
- 8 Wendover Parish Council and Wendover Neighbourhood Plan Steering Group Objections and attached plans.
- 9 Letter from John Mayhead CBE of The Wendover Society.
- 10 Halton Lane Field photographs submitted by Mr Jon Mason.
- 11 Appeal decision APP/R0660/W/15/3135683: Land north of Moorfields, Willaston, Crewe, submitted by the Appellants.
- 12 Note from Lichfields 'Cross checking the MYE with Stock Change', submitted by the Appellants.
- 13 Draft Unilateral Undertaking, submitted by the Appellants.
- 14 Inspector's Report to Eastleigh Borough Council into its Local Plan, dated 11 February 2015, submitted by the Appellants.
- 15 Extract Halton Neighbourhood Plan map, submitted by Councillor Newcombe.
- 16 Statement from Mr Phil Yerby.
- 17 Appeal decision reference APP/J0405/W/17/3169850: Quakers Mead, Weston Turville, Buckinghamshire.
- 18 Extract from the Inspector's Report on the Examination of the Canterbury District Local Plan, submitted by the Appellants.
- 19 Refusal Notice and attached plan for application reference 14/02395/AOP Hideaway Farm, Wendover Road, Stoke Mandeville, Buckinghamshire, submitted by the Council.
- 20 Appeal decision APP/J0405/W/16/3153606: Hideaway Farm, Wendover Road, Stoke Mandeville, submitted by the Council.



- 21 Statement from Mrs Carol McCulloch.
- 22 Written comments and evidence from Mr Jon Mason.
- 23 Extract from GLIVIA submitted by the Council.
- 24 Extract proposals map of emerging plan showing proposed Green Belt sites RSA2 and RSA3, submitted by the Council.
- 25 Email from Ms Hazel Scarlett.
- 26 Further extracts from GLIVIA, submitted by the Appellants.
- 27 Office copy entries from HM Land Registry, submitted by the Appellants.
- 28 Community Infrastructure Levy Information schedule, submitted by the Council.
- 29 BBOWT Note on Costs.
- 30 Further documents from Mr Jon Mason, submitted by Mrs Hayward.
- 31 Executed Unilateral Undertaking dated 7 July 2017, submitted by the Appellants.
- 32 Closing statement submitted by the Council.
- 33 Closing statement of the Appellants.

#### PLANS

- A Indicative sections C-F drawing CSA/3035/11, submitted by the Appellants.
- B Aylesbury Vale Landscape Character Assessment, Plan E: Landscape Character Quadrant 4, submitted by the Council.
- C Appendix JE03 revised: extract from OS County Series: Buckinghamshire 1884, submitted by the Council.
- D Site Location Plan proposed development at College Road South, Aston Clinton, submitted by the Council.

Richborough Estates