



Department for  
Communities and  
Local Government

Our ref: APP/J0405/W/15/3137920  
Your ref: 15/02532/AOP

Ms Laura Tilston  
Planning Director  
Gladman Developments Limited  
Gladman House  
Alexandria Way  
CONGLETON  
Cheshire  
CW12 1LB

15 November 2017

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY GLADMAN DEVELOPMENT LTD  
LAND SOUTH OF VERNEY ROAD, WINSLOW  
APPLICATION REF: 15/02532/AOP**

1. I am directed by the Secretary of State to say that consideration has been given to the report of K A Ellison BA, MPhil, MRTPI, who held a public local inquiry opening on 5 July 2016 for six days into your appeal against the decision of Aylesbury Vale District Council (“the Council”) to refuse outline planning permission for the development of up to 211 residential units, associated infrastructure and defined access with all other matters reserved, in accordance with application ref: 15/02532/AOP, dated 22 July 2015.
2. On 12 April 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involved proposals for residential development of over 150 units, or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high-quality, sustainable, mixed and inclusive communities.

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

3. The Inspector recommended that the appeal be dismissed and planning permission refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with her recommendation. He has decided to refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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

5. On 22 February 2017, the Secretary of State wrote to the parties to afford them the opportunity to comment on the implications of the Council's 2016 Interim Housing Land Supply Position Statement October 2016 (IHLS) and the Written Ministerial Statement on Neighbourhood Plans dated 12 December 2016 ("the WMS").
6. On 16 May 2017, the Secretary of State wrote to the parties to afford them an opportunity to comment on the implications, if any, for this application of the Supreme Court judgment on the cases of *Cheshire East BC v SSCLG and Suffolk Coastal DC v SSCLG*, which was handed down on Wednesday 10 May 2017.
7. On 20 July 2017, the Secretary of State wrote to the parties to invite comments on the implications of his decision to dismiss the recovered appeal for residential development at Castlemilk, Moreton Road, Buckingham (Ref: APP/J0405/V/16/3151297).
8. A list of the representations received in response to these three letters is at Annex A. Copies of the correspondence referred to above can be obtained upon written request to the address at the bottom of the first page of this letter. The Secretary of State has taken these representations into account in reaching his decision.
9. An application for a full award of costs was made by Winslow Town Council against Gladman Developments Ltd (IR1.7). This application is the subject of a separate decision letter, also being issued today.

## **Policy and statutory considerations**

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of the saved policies in the Aylesbury Vale District Local Plan 2001-2011 (AVDLP) (adopted January 2004) and the Winslow Neighbourhood Plan 2014-2031 (WNP) (made June 2014). The Secretary of State agrees with the Inspector and considers that the development plan policies of most relevance to this case are those set out at IR6.1-6.3.
12. Other material considerations which the Secretary of State has taken into account include: the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'); the WMS referred to in paragraph 5 above; the Community Infrastructure Levy (CIL) Regulations 2010 as amended; the Council's Supplementary Planning Guidance on Sport and Leisure Facilities (August 2004) and Companion Document (August 2006); the Guidance on Planning Obligations for Education Provision, produced by Buckinghamshire County Council; and the October 2016 Buckinghamshire Housing and Economic Needs Assessment update.

## *Emerging plan*

13. The Secretary of State notes that the emerging Vale of Aylesbury Local Plan (VALP) is at an early stage in the process. Consultation began in July 2016 and the Inspector notes that none of the parties in this appeal rely on its specific policies (IR 6.5). The publication of the submission draft has been delayed to allow the Council time to assess the implications of the Housing White Paper for the Plan and, overall the Secretary of State considers that these emerging policies carry little weight.

## **Main issues**

14. The Secretary of State notes the Inspector's finding at IR 4.1 & IR 13 that parties agree that the decision of the Secretary of State dated 20th November 2014 is a material consideration in determining this current appeal. The Secretary of State has therefore given careful consideration to the Inspector's assessment of where there are differences since the previous decision and his conclusions on where matters raised in relation to the 2014 appeal remain relevant to this appeal (IR13.5-13.43).
15. The Secretary of State considers that the main issues in this case are: the degree to which the proposals accord with the development plan; landscape impact; and whether the Council can demonstrate a 5-year supply of land for housing.

### *Consistency with the development plan*

16. Policy GP 35 of the AVDLP is relevant to this case, in that it deals with the Clayton Valley local character area (LCA). For the reasons given at IR13.15, the Secretary of State agrees with the Inspector that the proposal is in conflict with this policy given the potential adverse impact on the Clayton Valley local character area (this is dealt with in more detail in paragraphs 19-20 below). Policy WNP 2 sets out the spatial plan for Winslow and designates a settlement boundary. For the reasons given at IR 13.31–13.34, the Secretary of State agrees with the Inspector that the appeal scheme would conflict with two of the purposes of this policy, namely to direct future development and to contain the spread of the town, thus directing development away from the Clayton Valley and towards areas of relatively less sensitive landscape. The Secretary of State gives substantial weight to these conflicts.
17. Policy WNP 3 identifies sites for housing and contains a general presumption against residential development in the countryside. As the appeal site is located outside the settlement boundary, the Secretary of State agrees with the Inspector at IR13.34 and IR13.38 that the appeal scheme would conflict with WNP 3 - which states that proposals for housing development will not be supported unless they require a countryside location and maintain the intrinsic beauty of the countryside - and would therefore be incompatible with the spatial strategy of the WNP. The Secretary of State gives substantial weight to this conflict.
18. For the reasons stated in paragraphs 16 and 17 above, the Secretary of State concludes that the appeal proposal conflicts with the development plan overall and gives substantial weight to this conflict.

### *Landscape impact*

19. The Secretary of State has considered the Inspector's analysis of the potential impact of the appeal scheme on the landscape character of the Claydon Valley at IR13.5-13.8 and agrees that if the appeal site was developed it would have a significant, long-term adverse effect on the landscape character (IR 13.9). He has also considered carefully the Inspector's analysis of the potential visual impact of the proposed development (IR13.10-13.14). Like the Inspector, he agrees that the visual appraisal does not fully recognise the level of sensitivity, nor does it establish the full extent of the likely visual impact. He agrees with the Inspector's conclusion that the visual impact as a whole should be regarded as significantly adverse, even taking into account the proposed mitigation measures (IR13.14). Overall, the Secretary of State agrees with the Inspector that the proposal would have a moderate-substantial adverse impact on the Claydon Valley LCA, bringing the proposal into conflict with LP policy GP.35, WNP 2 and with the

Framework. Like the Inspector, the Secretary of State gives substantial weight to this adverse impact (IR 13.15).

20. The Secretary of State has considered the Inspector's analysis of the potential impact of the appeal proposal on valued landscapes as identified in para 113 of the Framework (IR13.16-13.22). The Secretary of State agrees with the Inspector that, since the undesignated Claydon Vale would sit towards the lower end of any hierarchy of landscape value as prescribed in the Framework, the appeal site should not be regarded as a landscape of high value.

#### *Five year housing land supply*

21. The Secretary of State has given careful consideration to the Inspector's assessment as to whether the proposal is needed to contribute to addressing the housing requirement of the Council's area (IR13.23–13.26), having regard to the responses received to the exercise referred to in paragraph 7 above. The Secretary of State notes the Inspector's conclusion at IR13.24 and 13.26 that there is a 4.5 year housing land supply and a shortfall of 664 dwellings. However, he has also had regard to the evidence submitted to him in relation to the Castlemilk case (see paragraph 7 above), in which he concluded that the Council could demonstrate a 5 year HLS. He has also taken account of the Council's Interim IHLS, which identifies a 5.8 years' deliverable HLS across the District as at October 2016.
22. He has further had regard to the responses listed at Annex A. While the Council and the objectors to this appeal support the Secretary of State's conclusion of there being evidence of a 5 year HLS across the District, the appellants contend that, using evidence derived from the Buckinghamshire MoU<sup>1</sup>, there is only a 2.8 year HLS in Aylesbury Vale. However, as the VALP is at a very early stage and the figures in the MoU are subject to change following the examination into the Plan, the Secretary of State considers that this appeal decision should not rely on it.
23. The Secretary of State considers that the housing requirement set out in the October 2016 Buckinghamshire Housing and Economic Needs Assessment update represents the most up-to-date assessment of housing need, and therefore represents the most reasonable basis on which to calculate the 5 year HLS for the purpose of determining this appeal. Using this requirement as a starting point (965 dwellings per annum) and taking account of an oversupply for the period from 2013 while allowing for the agreed 20% buffer for under performance for the period prior to 2013, the Secretary of State concurs that this gives a 5 year housing requirement for the period from 2017/18 to 2021/22 of 4,535 dwellings (Table 7: October 2016 IHLS).
24. The Secretary of State has reviewed the recent evidence relating to the supply of housing sites in Aylesbury Vale. The Council's IHLS 2016 identifies a supply of 5,296 dwellings for the period from 2017/18 to 2021/22. The Castlemilk appeal Inspector applied the requirements of footnote 11 of paragraph 47 of the Framework to several disputed sites in the IHLS and concluded that 237 dwellings should be removed from the supply-side calculations as there is no reasonable likelihood of delivery within five years. Accordingly, the Secretary of State concluded in that appeal, that the supply-side

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<sup>1</sup> The MoU is an extension of the Duty to Co-operate to ensure that growth needs of Buckinghamshire are planned for in the most sustainable way and will be used as evidence to inform the preparation of the emerging VALP. The figures in it will be tested at the examination into the VALP, to determine whether they are a sound basis for determining the scale and spatial distribution of housing in the Local Plan.

identified in the IHLS should be reduced from 5,296 to 5,082 dwellings, resulting in there being a 5.6 years HLS.

25. On this basis, the Secretary of State considers it is reasonable to conclude that there is a HLS of between 5,082 and 5,296 dwellings in Aylesbury Vale, amounting to at least a 5.6 year HLS. He therefore disagrees with the Inspector's conclusions at IR13.24 and concludes that there is a deliverable 5 year housing land supply. The Secretary of State concludes that the application of paragraph 14 of the Framework (the 'tilted balance') is not triggered

### *Housing*

26. The Secretary of State has given careful consideration to the Inspector's assessment of the proposed housing provision, including affordable and market housing provision at IR13.46. He notes that, WNP 4 sets out a requirement for 35% affordable housing, a proportion of which should be provided through a community trust. The Secretary of State agrees with the Inspector that these benefits carry substantial weight.
27. The Secretary of State has given careful analysis of the Inspector's assessment of the potential economic benefits of the proposed development at IR13.47. The Secretary of State agrees with the Inspector that these benefits also carry substantial weight.
28. The Secretary of State has carefully considered the Inspector's analysis of potential benefits to the wider community from the associated highway improvements, the education contribution and the open space and play space (IR13.49). The Secretary of State agrees with the Inspector that such measures are primarily directed towards addressing the effects of the proposed development, either to mitigate its environmental impact or to meet the needs of future residents; and that any benefits to the wider community or environment would be incidental. The Secretary of State agrees with the Inspector that these benefits carry limited weight.

### *Loss of Best and Most Versatile (BMV) Agricultural Land*

29. The Secretary of State has considered the potential impact of the proposal on BMV agricultural land. The Inspector acknowledges that the proposal would involve the development of 3.7 ha of BMV agricultural land (IR 13.40) and, having regard to the advice in paragraph 112 of the Framework, the Secretary of State gives moderate weight to the permanent loss of such land against the proposed development.

### **Planning conditions**

30. The Secretary of State has given consideration to the Inspector's analysis at IR 12.1 – 12.5, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

### **Planning obligations**

31. Having had regard to the Inspector's analysis at IR12.6-12.7, the Unilateral Undertaking dated 12 July 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector's conclusion that, for the reasons given in IR 12.8, the

obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

### **Planning balance and overall conclusion**

32. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies GP 35 of the AVLP and Policies WNP 2 and WNP 3, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
33. In this case, there would be significant social benefits arising from the provision of affordable and market housing. The Secretary of State gives these factors substantial weight in favour of the proposal. There would be potential benefits to the wider community from the associated highway improvements, the education contribution and the open space and play space. The Secretary of State gives these factors limited weight in favour of the proposal.
34. The Secretary of State considers that the conflicts with WNP 2 and WNP 3 (including loss of open countryside and spread of the town) carry substantial weight against the proposal. The adverse impacts through the damaging effect on the character and visual aspect of the landscape also carry substantial weight against the proposal. The loss of BMV land carries moderate weight against the proposal.
35. Overall, the Secretary of State does not consider that there are sufficient material considerations which indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that the appeal should be dismissed and planning permission refused.

### **Formal decision**

36. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses outline planning permission for the development of up to 211 residential units, associated infrastructure and defined access with all other matters reserved, in accordance with application ref: 15/02532/AOP.

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

37. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

38. A copy of this letter has been sent to Aylesbury Vale District Council and Winslow Town Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*S Jewell*

Stephen Jewell  
Authorised by Secretary of State to sign in that behalf

Richborough Estates

## SCHEDULE OF REPRESENTATIONS

**Representations received in response to the Secretary of State's letter of 22 February 2017, consulting parties on Aylesbury Vale District Council's Five-Year Housing Land Supply Interim Position Statement (October 2016), Gladman's response to it, dated 21 February 2017; the Written Ministerial Statement (WMS), made on 12 December 2006, on Neighbourhood Plans**

| <b>Party</b>  | <b>Date</b>   |
|---|---------------|
| Kevin Sexton  | 3 March 2017  |
| Sean Carolan<br>Deputy Clerk<br>Winslow Town Council              | 6 March 2017  |
| Victor Otter  | 9 March 2017  |
| Martin Richmond   | 11 March 2017 |
| Philippa Jarvis<br>(On behalf of Aylesbury Vale District Council) | 20 March 2017 |
| Laura Tilston,<br>Planning Director,<br>Gladman Developments Ltd  | 21 April 2017 |

**Representations received in response to the Secretary of State's letter of 16 May 2017 consulting parties on the implications of the Supreme Court judgment on the cases of Cheshire East BC v SSCLG and Suffolk DC v SSCLG, issued on Wednesday 10 May 2017, on the Verney Road recovered appeal.**

| <b>Party</b>  | <b>Date</b> |
|---|-------------|
| Laura Tilston,<br>Planning Director,<br>Gladman Developments Ltd      | 18 May 2017 |
| Susan Kitchen<br>Corporate Planner Aylesbury Vale District<br>Council | 31 May 2017 |
| Martin Richmond   | 5 June 2017 |
| Sean Carolan<br>Deputy Clerk<br>Winslow Town Council                  | 5 June 2017 |
| Victor Otter  | 6 June 2017 |



**Representations received in response to the Secretary of State's letter of 20 July 2017, consulting parties on the potential implications of the Secretary of State's decision on the Castlemilk Recovered Appeal, issued on 20 July 2017**

| <b>Party</b>  | <b>Date</b>          |
|---|----------------------|
| Victor Otter  | 28 July 2017         |
| Martin Richmond   | 31 July 2017         |
| Sean Carolan<br>Deputy Clerk<br>Winslow Town Council                | 1 August 2017        |
| Philippa Jarvis<br>(On behalf of Aylesbury Vale District Council)   | <u>8 August 2017</u> |
| Laura Tilston,<br>Planning Director,<br>Gladman Developments Ltd    | 8 August 2017        |
| Victor Otter  | 16 August 2017       |
| Sean Carolan<br>Deputy Clerk<br>Winslow Town Council                | 23 August 2017       |
| Philippa Jarvis BSc On behalf of Aylesbury Vale<br>District Council | 23 August 2017       |

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

**by KA Ellison BA, MPhil, MRTPI**

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

**Date: 11 October 2016**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**AYLESBURY VALE DISTRICT COUNCIL**

**APPEAL BY**

**GLADMAN DEVELOPMENTS LIMITED**

Inquiry opened on 5 July 2016

Land south of Verney Road, Winslow

File Ref: APP/J0405/W/15/3137920

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Richborough Estates

## Abbreviations

|       |  |
|-------|--|
| AVDLP | Aylesbury Vale District Local Plan                         |
| BMV   | best and most versatile agricultural land                  |
| CD    | Core Document  |
| DL    | Secretary of State's decision letter on the 2014 appeal    |
| Dpa   | dwellings per annum  |
| GLVIA | Guidelines for Landscape and Visual Impact Assessment      |
| HEDNA | Housing and Economic Development Needs Assessment          |
| HELAA | Housing and Economic Land Availability Assessment          |
| IR    | Inspector's Report on the 2014 appeal                      |
| LCA   | Landscape Character Area                                   |
| LEAP  | Local Equipped Area for Play                               |
| LUC   | a report prepared by Land Use Consultants (the LUC Report) |
| LVIA  | Landscape and Visual Impact Appraisal                      |
| NPPF  | National Planning Policy Framework                         |
| PPG   | Planning Practice Guidance                                 |
| SoCG  | Statement of Common Ground                                 |
| VALP  | Vale of Aylesbury Local Plan, Draft for Consultation 2016  |
| VAP   | Vale of Aylesbury Plan, withdrawn 2014                     |
| WNP   | Winslow Neighbourhood Plan                                 |

**File Ref: APP/J0405/W/15/3137920**

**Land south of Verney Road, Winslow**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Ltd against the decision of Aylesbury Vale District Council.
- The application Ref 15/02532/AOP, dated 22 July 2015, was refused by notice dated 22 October 2015.
- The development proposed is up to 211 residential units, associated infrastructure and defined access with all other matters reserved.

**Summary of Recommendation: that the appeal be dismissed.**

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**Procedural Matters**

- 1.1. The appeal was recovered for determination by the Secretary of State by letter dated 12 April 2016 on the basis that it involves a proposal for residential development of over 150 units on a site over 5ha which would significantly impact on the Government's objectives to secure a better balance between housing demand and supply and to create high quality, sustainable, mixed and inclusive communities.
- 1.2. On 11 February 2016 Winslow Town Council was granted Rule 6(6) status.
- 1.3. I issued a pre-inquiry note dated 29 June which dealt with some procedural matters and gave an indication of my assessment of the main consideration in the appeal.
- 1.4. The scheme considered by the Council included a proposal for 30% affordable housing. At the inquiry, the Appellant sought to amend the scheme to provide for 35% affordable housing. This amendment would not cause prejudice to others with an interest in the appeal and no party raised an objection so the inquiry proceeded on that basis. This also addressed that aspect of the Council's first reason for refusal concerning the failure to satisfy the affordable housing requirement of policy 4 of the Winslow Neighbourhood Plan.
- 1.5. Although the inquiry was scheduled to sit for eight days, it actually sat for six days between 5 and 13 July 2016. I carried out an accompanied site visit on 13 July as well as other, unaccompanied visits at various times during the course of the inquiry.
- 1.6. At the inquiry, the Appellant provided two completed planning obligations: the first deals with contributions to education and highways as well as the travel plan; the second concerns affordable housing, open space and sport and leisure contributions. The obligations address the Council's second reason for refusal, which related to the absence of financial contributions to mitigate various impacts of the development.
- 1.7. An application for costs was made by Winslow Town Council against Gladman Developments Ltd. This is the subject of a separate report.

## **2. The Site and Surroundings**

- 2.1. The appeal site is some 9.8 hectares of predominantly pasture land located on the south western edge of Winslow, which is a historic market town set on an elevated ridge overlooking the gentle slopes of a wide valley to the south. The site lies to the south of Verney Road and contains Glebe Farm<sup>1</sup>, a farmhouse and associated agricultural buildings. The farm takes its access from Verney Road. The eastern boundary borders existing residential development in part, as well as open countryside. To the north, on the opposite side of Verney Road, is Furze Down School. To the south and west is open countryside. The site is traversed east to west by a public footpath. The land slopes gradually southwards and the site includes a number of individual fields which are divided by hedgerows and hedgerow trees.

## **3. The Proposal**

- 3.1. The proposal is made in outline with access to be determined at this stage. The appeal plans consist of the Location Plan (Dwg No 2013-014/005A) and the Site Access Drawing (Dwg No 10000/03/29). Permission is sought for up to 211 residential units and, as amended at the start of the inquiry, now includes provision of 35% affordable homes. The Development Framework Plan (CD 1.3) shows an illustrative layout for the site, including 3ha of public open space. There is also an Illustrative Masterplan within the Design and Access Statement (DAS) (CD 2.2) [reproduced at A3 size at CT Appx 3].

## **4. Planning History**

- 4.1. Two previous proposals for residential development on the site were refused by the Council in 2012 and 2013, one of which led to an appeal. On 20 November 2014, the Secretary of State dismissed the appeal, which concerned a proposal for the erection of 211 residential units, associated infrastructure and access ('the 2014 appeal'). Although the site for the current appeal excludes the property 'Spring House', that difference does not affect the main points at issue. The parties are agreed that the 2014 decision is a material consideration in the present appeal.

## **5. Other Agreed Facts**

- 5.1. It is agreed that the site is adjacent to the existing settlement of Winslow, it comprises open countryside and it is not the subject of any other planning designations. Winslow is a sustainable location for development, given its size and the services and facilities it offers.
- 5.2. The AVDC Five Year Housing land supply position statement, January 2016 (CD10.1) shows that the Council cannot demonstrate a five year housing land supply. It shows a 4.5 years supply for the period 2015-20. The delivery of market and affordable housing against an acknowledged shortfall is a material consideration to be attributed significant weight in the planning balance. Relevant policies for the supply of housing should be

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<sup>1</sup> Documents from the Town Council and many local residents often refer to the site as 'the Glebe Farm site'

considered out-of-date and the weight to attach to such policies is a matter for the decision-maker.

- 5.3. The proposals are acceptable from an ecological aspect, subject to conditions to secure further details and provision of ecological enhancements. The development provides an opportunity to enhance the biodiversity value of the hedgerows through a management plan, which could be secured by planning condition. The site contains 2.5ha of Grade 2 agricultural land and 1.2ha of Grade 3a, which equates to a loss of 3.7ha (37% of the total site area) of best and most versatile agricultural land.
- 5.4. The Statement of Common Ground (SoCG) sets out an agreed assessment of the decision (DL) on the previous appeal as well as the Inspector's report (IR). Appendix 3 contains a schedule setting out the parties' positions regarding whether there have been material changes in relation to the principal issues since the 2014 appeal decision.

## **6. Planning Policy**

### The development plan

- 6.1. Policy GP.35 of the Aylesbury Vale District Local Plan, 2004 (AVDLP) is of particular relevance. It sets out those matters which the design of new development should respect, including the physical characteristics of the site, the natural qualities and features of the area and the effect on important public views and skylines.
- 6.2. The following Supplementary Planning Documents are relevant to consideration of the planning obligations: the Supplementary Planning Guidance on Sport and Leisure Facilities (August 2004) and Companion Document (August 2006), and Guidance on Planning Obligations for Education Provision.<sup>2</sup>
- 6.3. In the Winslow Neighbourhood Plan, 2014 (WNP), the presumption in favour of sustainable development is contained in Policy 1 (WNP1). Policy 2 sets out the spatial plan for the town. It designates a settlement boundary in order to direct development, to contain the spread of the town and to encourage the re-use of previously developed sites. It goes on to state that proposals for housing outside the settlement boundary will only be granted in exceptional circumstances. Policy 3 identifies land for housing and states that proposals outside the settlement boundary will not be supported unless they require a countryside location and maintain the intrinsic character and beauty of the countryside. Policy 4 sets out a requirement for 35% affordable housing, a proportion of which should be provided through a community trust.

### The emerging Local Plan

- 6.4. The Draft Plan at the time of the previous appeal was the Vale of Aylesbury Plan (VAP) but this was withdrawn in 2014 due to concerns as to the level of housing and jobs planned for and whether there had been close enough working with neighbouring authorities to fulfil the duty to co-operate.

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<sup>2</sup> CD 7.1, 7.2, 7.5

- 6.5. Consultation on the Draft Vale of Aylesbury Local Plan (VALP) began in July 2016.<sup>3</sup> This plan is still at an early stage and none of the parties rely on specific policies. However, the plan identifies an objectively assessed need of 21,300 dwellings for the District and estimates a likely figure of 12,000 to accommodate unmet needs in neighbouring authorities. It also considers delivery of a new settlement. During the inquiry, a scoping study was published which narrows this down to two candidate locations, Haddenham and Winslow. None of the options for Winslow would involve development of the appeal site.<sup>4</sup>
- 6.6. The VALP identifies Winslow as a strategic settlement which is intended to expand by 50%. This equates to a requirement for 1072 dwellings for Winslow which, taking into account existing commitments, gives a residual requirement of 441.<sup>5</sup>
- 6.7. The VALP also considers the implications of the increased level of housing need for existing Neighbourhood Plans. In order to maintain the supply of sites for housing, it identifies reserve sites to be activated in cases where a revised Neighbourhood Plan does not come forward in sufficient time.<sup>6</sup>

## 7. The Case for Aylesbury Vale District Council

- 7.1. The issue of consistency in decision-making is agreed to be an important material consideration in the determination of this appeal. It is also common ground that public confidence in the operation of the development control system would be undermined if a different conclusion was reached, when nothing material had changed in the interim. In light of the evidence, it is clear that there have been no changes since 2014 that could properly be relied upon as indicating a materially different conclusion ought to be drawn in relation to any of the principal issues, or the overall planning balance.
- 7.2. In response to the Inspector's request, these submissions address the legal position where the Secretary of State has made clear findings on an issue. The legal approach is summarised in the **North Wiltshire** case, which confirms that like cases should be decided in a like manner so that there is consistency in the appellate process, not only because it is important to developers and development control authorities but also to secure public confidence in the operation of the development control system. Decision makers must exercise their own judgment and may disagree with the judgment of another but must give reasons for doing so.<sup>7</sup>
- 7.3. Subsequent decisions in which the courts have approved and applied those principles include **Fox Strategic Land**.<sup>8</sup> No decisions could be identified in which the Courts have had to deal with inconsistent decisions by the Secretary of State in relation to the same proposals on the same site. The advice in the PPG in relation to costs (Reference ID: 16-053-20140306) is

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<sup>3</sup> CD8.2.2.2

<sup>4</sup> Doc 7, pp63-68, 84, and Appx C

<sup>5</sup> CD8.2.2.2, policy S2, para 3.16 and Table 1 p32

<sup>6</sup> Ibid paras 1.27, 3.82-3.90, policy S9

<sup>7</sup> CD12.8, pp7-8. The full quote is set out in the Council's closing, paragraph 5

<sup>8</sup> Doc 10



also relevant. At this inquiry, Ms Tilston accepted that the 2014 appeal decision was plainly recent, the development for which planning permission is sought is the same and the site is essentially the same.

- 7.4. In this case the previous decision is that made by the Secretary of State. The report of the Inspector was a recommendation which, whilst a material consideration, does not have the same status as the decision itself, save to the extent that the Secretary of State expressly incorporated elements of that report within his decision. Where the Secretary of State disagreed, he explained why. He would not need to do so again when determining this appeal. Importantly, the Inspector in 2014 was dealing with an emerging neighbourhood plan and the issue of prematurity. He was not dealing with a made neighbourhood plan and the application of the statutory presumption and policy principles that come into play as a result. Those were clearly of central importance to the Secretary of State's decision.
- 7.5. In this case the legitimate scope for the Secretary of State to depart from his previous conclusions is severely limited by factual considerations, which make it hard to see how different conclusions on the main issues could properly be reached.

#### The development plan

- 7.6. A number of points have been made clear in the decision of the Court of Appeal in the **Suffolk Coastal** case. NPPF does not displace the statutory presumption in favour of the development plan and it is for the decision maker to decide what weight to attach to it. The decision-maker must follow the statutory approach, considering the development plan first before looking at other material considerations including the NPPF. NPPF paragraph 49 does not make out of date policies irrelevant, nor does it prescribe the weight they should be given. That is a matter for the planning judgment of the decision-maker. The weight will vary according to the circumstances. There will be many cases in which restrictive policies are given sufficient weight to justify the refusal of planning permission despite their not being up to date. The policies in NPPF paragraphs 14, 47 and 49 are not intended to punish a local planning authority. Planning decisions are ones to be arrived at in the public interest, balancing all the relevant factors.

#### The Aylesbury Vale District Local Plan

- 7.7. The appeal proposals involve a breach of policy GP.35 of the AVDLP, because of the significant adverse landscape and visual impacts to which they would give rise. It is common ground that this is not a relevant policy for the supply of housing and that it does not refer to or depend upon the site forming part of a valued landscape for its application.

#### The Winslow Neighbourhood Plan

- 7.8. The relationship between the proposed development and the policies of the WNP is no different from 2014. The appeal proposal is agreed to conflict with Policy 2. No exceptional circumstances have been established. It is also agreed to conflict with Policy 3, since neither of the exceptions identified could properly be said to apply here.

- 7.9. As the Secretary of State found, these are plainly "*very important policies in the Neighbourhood Plan which seek to shape future development in Winslow*". Granting planning permission for the proposed development "*would undermine the spatial strategy upon which the [WNP] is based*". Ultimately, Ms Tilston appeared to accept that so far as the current WNP and its spatial strategy were concerned, the same conclusion must apply now. The only issue was as to the weight that should attach to that conclusion. The Secretary of State goes on to state that the "*conflict between the appeal proposal and the Neighbourhood Plan as whole is significant*".
- 7.10. When the High Court considered the implications of these policies in ***Gladman v AVDC***, it was held that, in the absence of exceptional circumstances, development outside the settlement boundary would not comply with the development plan and, in accordance with section 38(6) of the 2004 Act, planning permission would be refused unless material considerations indicated otherwise.<sup>9</sup>
- 7.11. Following ***Crane***, the WNP must be read as a whole.<sup>10</sup> The section on vision and objectives culminates in a statement as to the vision of what the plan should achieve, that the town will retain its special historic and architectural character by carefully managing change within its built up area and by protecting its setting and surrounding open countryside from development. [CD6.7, p15] As Ms Tilston accepted, these words reflect the WNP's primary objective.
- 7.12. The purposes of the settlement boundary are to direct future housing development, contain the spread of the town and encourage the re-use of previously developed sites. Paragraph 4.4 of the explanatory text to Policy 2 explains that it "*establishes the key spatial priority for the WNP, within which context all its other policies are based, and defines a Winslow Settlement Boundary*". It is common ground that it could not have been made clearer that this is central and crucial to the WNP as a whole. Conflict with Policy 2 therefore goes to the very heart of the WNP. Policy 3 identifies the housing allocations, reflecting the decisions made about the location of the settlement boundary and the community's judgments about where development is wanted. Part of the appeal site was considered but rejected because of conflict with these key spatial objectives.<sup>11</sup>
- 7.13. There can be no doubt that the Secretary of State was right in the conclusions he drew as to the extent and significance of the conflict between the appeal proposals and the WNP. There is clear and substantial conflict with the development plan as a whole, and the statutory presumption in section 38(6) of the PCPA 2004 points to the dismissal of the appeal.

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<sup>9</sup> CD 12.9 [47]

<sup>10</sup> C4 12.4 [40]

<sup>11</sup> CD 6.9 p.12 and CD6.7 [4.11]

Weight to attach to the conflict with the WNP

- 7.14. In answer to the Inspector's question as to whether different weight should be attached to any conflict with the Winslow Neighbourhood Plan in the light of judgments handed down since the 2014, the most directly relevant cases are **Suffolk Coastal, Crane** and **Cheshire East**. The simple answer is that the Secretary of State got this right last time and there is nothing in the subsequent decisions of the court to cast any doubt on the legality, correctness or reasonableness of his approach. The court in **Crane** endorsed essentially identical reasoning, and subsequent statements from the Government have maintained the same approach.
- 7.15. The Secretary of State's reasoning in relation to the weight to attach to policies 2 and 3 of the WNP is to be found in paragraphs 25 and 26 of the DL. The appellant's reliance on paragraph 6 of the DL to suggest the Secretary of State fell into error is misconceived. Paragraph 6 deals with whether the weight to attach to the WNP *as a whole* should be reduced because of the legal challenge that had been brought. The conclusion that it should have full weight as part of the statutory development plan was very clearly expressed in that context and was correct as a matter of law. The Secretary of State later goes on to consider what weight to attach to relevant policies for the supply of housing, deemed out of date as a result of NPPF paragraph 49. Thus it is clear from the DL itself that paragraph 6 is a preliminary step in the reasoning and does not purport to be pre-empting that second issue.
- 7.16. The Secretary of State recognised that WNP Policies 2 and 3 were out of date. He nevertheless attributed very substantial negative weight to the conflict with those policies for the reasons he set out. That reasoning is essentially the same as was challenged unsuccessfully in the **Crane** case where it was held that the Secretary of State's approach to weighing conflict with the neighbourhood plan in the paragraph 14 balance was lawful and consistent with the NPPF.
- 7.17. Several key points emerge from this case. The reference in NPPF paragraph 14 includes the policy on neighbourhood plans (paragraphs 183 to 185) as well as the policy on determining applications where there is conflict with an extant neighbourhood plan (paragraph 198). Paragraph 14 does not prevent the decision-maker from giving as much weight as is judged to be right to a proposal's conflict with the plan's strategy (or "vision" in the case of a neighbourhood plan). It does not remove the general presumption in paragraph 198 against planning permission being granted for development which is in conflict with a neighbourhood plan that has come into effect. The Secretary of State was entitled to give significant weight to the presumption in paragraph 198. His approach to the role and significance of paragraphs 183 to 185 (essentially identical to the approach in the 2014 appeal) did not show any misunderstanding or misapplication of policy in the NPPF. The conclusion that "*very substantial negative weight*" should be given to the conflict with the neighbourhood plan was in line with the NPPF and perfectly rational. The Secretary of

State was entitled to give the weight that he did to the conflict with the neighbourhood plan.<sup>12</sup>

- 7.18. That conclusion, on essentially identical reasoning, provides a complete answer to the Inspector's question. None of the cases that followed provide any basis to doubt the continued correctness of that approach.
- 7.19. Ms Tilston was invited to identify precisely what it was in DL25 and 26 that she said **Crane** showed to have been wrong but no clear or coherent explanation was forthcoming. Ultimately, the Appellant's position in the face of this difficulty appears to have two aspects. The first was to seek to advance exactly the same arguments as those advanced unsuccessfully by the Claimant in **Crane** and held by the court to be "untenable".<sup>13</sup> The other was to seek to rely in re-examination on one sentence in paragraph 71 of the judgment without making any fair attempt to read those words in their proper context. Ms Tilston was asked where she saw that single sentence reflected in the 2014 decision letter. She could just as easily have been asked the same question about the decision letter being considered by the Court in **Crane**, where the relevant part of the reasoning was the same.
- 7.20. The Appellant launched this application and appeal on the stated assumption that the **Woodcock** case (CD12.3) meant that the Secretary of State's approach to the weight accorded to conflict with the WNP in the 2014 decision was "incorrect".<sup>14</sup> Ms Tilston confirmed that this reflected her personal belief that **Woodcock** had involved the court requiring a materially different approach to that in the 2014 decision to the weight to be given to a made neighbourhood plan where there was no five year housing land supply. In short, her understanding was that **Woodcock** showed that the Secretary of State had gone wrong in law in 2014. That assumption was demonstrably false. **Woodcock** was concerned with the issue of prematurity and an emerging neighbourhood plan. Insofar as it established anything new, it was that paragraph 49 of the NPPF applied to emerging as well as made policies.<sup>15</sup> That is not of any relevance here. So far as issues of weight are concerned, **Woodcock** simply endorsed and applied what had been said in **Crane**.<sup>16</sup>
- 7.21. The approach set out by the Court of Appeal in the **Suffolk Coastal** case reflects and expressly endorses what was said in **Crane** about the issue of weight.<sup>17</sup> Due to the level at which it was decided, it takes precedence over any inconsistent decisions at first instance. For the purposes of this appeal however, it does not represent any change in the law as set out in **Crane**.
- 7.22. It is perhaps unsurprising therefore to find that since the 2014 decision the Government has further entrenched that approach to the treatment of

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<sup>12</sup> CD12.4 [34,35,64-78]

<sup>13</sup> CD12.4 [55]-[59] [61]

<sup>14</sup> See CD1.17 (Planning Statement) Executive Summary at [ii] and p. 11 [2.2.4]-[2.2.5]; and Appellant's SoC, Appx 2, p17

<sup>15</sup> CD12.3 p.26 [88]

<sup>16</sup> CD12.3 [87, 105, 108 and 110]

<sup>17</sup> CD12.1 [42 to 48]

made neighbourhood plans, rather than retreating from it. The advice in the PPG<sup>18</sup> about how applications should be decided where there is a made neighbourhood plan but no five year supply of housing sites is agreed to be entirely consistent with the approach taken by the Secretary of State in 2014 and endorsed by the High Court in **Crane**. Moreover, by reiterating the role and importance of paragraph 198 where there is no five year housing land supply, the Government has given a clear steer that the absence of such a supply will not in itself be enough to avoid the application of that policy. As Ms Tilston accepted, the advice postdates both **Crane** and **Woodcock** and it is reasonable to assume that it was framed and provided with these cases in mind.

- 7.23. The letter from the Minister to the newly appointed Chief Executive of the Planning Inspectorate in March 2016 not only repeats those points, but also sets out the Government's desire to "*support communities who plan positively for local development needs through neighbourhood plans*". It notes that decisions which are perceived as going against the plan are extremely frustrating and may have wider repercussions, should they impact on other communities' willingness to prepare a neighbourhood plan. This latter point was eloquently highlighted by the submissions from representatives of the Winslow Town Council and individual members of the public. The letter also refers to the importance of neighbourhood plans because evidence suggests they propose more housing than the Local Plan and that permissions that have the support of the community are advancing rapidly, a point also borne out by the evidence of Winslow Town Council.
- 7.24. These matters go to the very heart of the NPPF and what it is seeking to achieve. The Ministerial foreword to the NPPF explains that it seeks to deliver more housing, but in a way that includes people and communities through the introduction of neighbourhood planning. These two aims are not in competition with one another. As the evidence shows, they go hand in hand but only if the confidence in the effectiveness of neighbourhood planning in delivering the objectives identified in paragraphs 183 to 185 of the NPPF is not undermined.
- 7.25. These statements of policy, guidance and intent have been brought to life by the evidence from the residents of Winslow. Their evidence has engaged with issues of planning law and policy at a level of sophistication (and accuracy) that reflects how effective the process of neighbourhood planning has been at achieving the Government's objectives. It is also striking how frequently the local residents mention the WNP in their representations. This is not just a matter of academic interest. The maintenance of that level of engagement cannot be taken for granted. It would not be likely to persist if the Government's support for neighbourhood planning was to waver. That would undermine an important objective of national planning policy.
- 7.26. The context is important. It is common ground that Gladman sought to stop the WNP from being made in its current form [CD12.9 [47]-[51], and

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<sup>18</sup> set out at PJ PoE [4.31]

CD6.12 at pp. 5-6.]. As a consequence, Winslow Town Council and many local people had to defend the WNP. The Independent Examiner and the High Court both found in Town Council's favour, noting the impressive effort made by the residents of Winslow in preparing and promoting the WNP. The Council draws attention to the Examiner's conclusion that "*The Winslow Neighbourhood Plan is the result of a significant and sustained community effort over a number of years. It is a clear and distinctive Neighbourhood Plan, founded upon community consultation which provides for the sustainable growth of Winslow*".<sup>19</sup> It also notes the comments from the High Court that "The commitment shown, and work done, by the residents of Winslow in the promotion of the Neighbourhood Plan are impressive".<sup>20</sup>

- 7.27. Furthermore, Gladman pursued appeals on two sites in Winslow in the run up to the making of the WNP, both of which were contrary to the spatial strategy. The Secretary of State rejected both appeals, and in doing so he stressed the importance he attached to the WNP and the NPPF's policies on neighbourhood planning.<sup>21</sup> Again, the Town Council and many local people defended the emerging WNP. Ms Tilston confirmed that (partly as a result of these travails) the WNP was well-known more widely within the 'neighbourhood plan community'.
- 7.28. Evidence has also been given of the work to overcome scepticism amongst the community as to the likely efficacy of the WNP. Decisions such as those made in 2014 are important in helping to overcome such concerns and to build confidence in neighbourhood planning. Conversely, it is also clear how much harm could be done if that decision were reversed just two years later with no material change in circumstances in the interim.
- 7.29. Ms Tilston's proof of evidence, and her striking of the planning balance, paid no regard to these matters. She accepted that in considering the weight to be attached to conflict with the WNP, it was relevant to consider the implications of allowing the appeal for the spatial strategy in the WNP and the importance that the Government attaches to neighbourhood planning. However, she maintained that any adverse effect in the form of undermining public confidence in neighbourhood planning was not a material consideration. Thus she had entirely disregarded any such effect. That position is untenable. The issue of whether or not something is a material consideration is a matter of law. If it is not already clear that this is a material consideration, the point is put beyond any reasonable doubt having regard to *Crane*<sup>22</sup> that this was correctly treated as a material consideration by the Secretary of State in that case. Also, the Government itself has stressed the importance of communities having "*confidence in positively prepared neighbourhood plans*" and has said that this is something that "*should be taken into account by decision-makers, even when the local planning authority cannot demonstrate a five year supply of housing land*".<sup>23</sup> Moreover, the success of neighbourhood planning and the

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<sup>19</sup> CD 6.12, p. 30

<sup>20</sup> CD 12.9 [20]

<sup>21</sup> CD11.11 DL 23 and 24

<sup>22</sup> CD12.4 [77]

<sup>23</sup> Minister of Planning, Foreword to the DCLG Technical Consultation on Planning, July 2014

importance of neighbourhood plans as part of the plan-led system are clearly central to the Government's objectives in the NPPF. If development control decisions were to undermine the likelihood of communities making the effort to promote and make neighbourhood plans, it would very clearly be an important material consideration for the Secretary of State.

#### Other material considerations - the NPPF

- 7.30. The effect of paragraph 14 is to define what is meant by the term "*presumption in favour of sustainable development*" wherever it is used in the NPPF. In this case it is necessary to apply the balancing exercise in the second bullet point under 'decision-taking' in order to decide whether a proposal is sustainable development. The approach was spelt out in **Cheshire East**. It is only by applying paragraph 14 and thus balancing the tensions between the competing *desiderata* that the decision-maker can determine whether what is proposed is in fact sustainable development. The possibility of an "*extrinsic assessment of sustainable development*" was firmly rejected.<sup>24</sup>
- 7.31. The Appellant has sought to draw a different conclusion by looking at the decision in **Wychavon**, but that case does not assist. Circumstances were materially different, as both parties agreed that paragraph 14 of the NPPF did not apply. The passage on which the Appellant relies was *obiter dicta*, because the Judge had already rejected the relevant ground for other reasons. The case was decided without any input from the Secretary of State as to the meaning and interpretation of his policy (unlike **Cheshire East**). What is said in paragraphs 41 to 43 is - at the very least - in tension with both the **Cheshire East** judgment and with the plain words of paragraph 14 of the NPPF. To the extent that **Wychavon** is inconsistent with **Cheshire East**, the former is simply wrong and should not be followed.
- 7.32. In this case, it is agreed that the issue does not need to be resolved because it is common ground that paragraph 14 applies. However, if the Inspector or Secretary of State were to follow the approach in **Wychavon** and seek to apply a presumption in favour of the proposal without first going through the paragraph 14 balancing exercise, that would amount to an error of law for the reasons given in **Cheshire East**.<sup>25</sup>

#### Housing Land Supply

- 7.33. The Inspector asked whether the position regarding the supply of land is materially different, compared to the position at the time of the 2014 decision. The short answer is 'No'. In this case there is little in dispute in terms of the numerical position. It is agreed that AVDC cannot demonstrate a 5 year supply of housing land and that paragraphs 49 and 14 of the NPPF are thus engaged.
- 7.34. The latest position<sup>26</sup> shows 4.5 years supply for the period 2015-2020. As Mrs Jarvis explained, that is the most appropriate and reliable five year

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<sup>24</sup> CD 12.12 [19 to 27]

<sup>25</sup> CD12.7 [40, 41-43]

<sup>26</sup> CD10.1

period to use, because the use of the period commencing 2016 requires the making of assumptions as to what will be delivered in the final part of the previous year, and is thus inherently less reliable. Her approach in that respect is sensible and reflective of good practice generally. When that is compared to the equivalent figure in 2014 (4.4 years), it can be seen that the position is not materially different. The same would be true if the figure for 2016-2021 of 4.2 years was preferred. In either case the broad relationship between the objectively assessed need (OAN) for the district and available supply over the next five years is essentially the same. In those circumstances it remains the case that the delivery of market and affordable housing is a benefit to which significant weight should attach in the planning balance.

- 7.35. Mrs Jarvis has also addressed some of the detailed considerations that arise in terms of housing land supply as compared to 2014. The current figure is based on objectively assessed need,<sup>27</sup> whereas the figure used in 2014 was based on the latest available household projections. Although the figures are yet to be tested, they represent the best available evidence as to the need for the district. The figure (1065dpa) has not changed significantly since 2014 (1026dpa). This change was one of the factors relied upon by the Appellant<sup>28</sup>, but in cross-examination Ms Tilston accepted that the difference was not significant. The change is not at a level capable of leading to any different overall conclusion as to whether the proposal constitutes sustainable development. The actual shortfall (664 units) is lower than in 2014 (833 units). No issue has been taken over the reliability of the supply figures used.
- 7.36. The appellant's critique of the HEDNA does not take matters materially further. As Mrs Jarvis explained, it is not itself a full objective assessment and it has yet to be tested. The proper arena for the resolution of any differences of that sort is the Local Plan process. In response to the Inspector's questions, Ms Tilston accepted that for the purposes of this Inquiry the Inspector could not rely on this as a basis for rejecting the figures that AVDC had used. She further confirmed that for the purposes of this appeal Gladman relied on AVDC's figures.
- 7.37. There is an as yet undefined need arising from unmet need in neighbouring authorities but the actual scale will depend on further work.<sup>29</sup> It is too early to make any reliable predictions, as reflected in the 2016 Housing Land Supply Position Statement.<sup>30</sup> Ms Tilston accepted that the extent of need from other districts was not yet defined and that there must be considerable uncertainty as to what the eventual figure would be.
- 7.38. The VALP will plan for a significant increase in housing. Whilst it has yet to reach a stage where its policies themselves can attract significant weight, the progress that plainly is being made is relevant to the issue of what action is being taken by AVDC to address the shortfall. As Ms Tilston said in response to the Inspector's question, once the VALP is in place there is

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<sup>27</sup> the OAN is derived from the Buckinghamshire HEDNA, January 2016 (CD 9.8)

<sup>28</sup> SCoG Appx 3

<sup>29</sup> PJ PoE [5.3.13]

<sup>30</sup> CD 10.1 [3.7]



the prospect of the shortfall being addressed. There is also a substantial number of outstanding permissions for new housing in the district. Table 4 of CD10.1 identifies a total of 8,051 units permitted but not yet implemented, compared to 8,408 at the time of the 2014 appeal.<sup>31</sup>

- 7.39. Nine Neighbourhood Plans have been made across the District which allocate approximately 700 dwellings which do not yet have permissions. This includes Buckingham, Winslow and Haddenham as well as a number of larger villages. A further 21 settlements are in the process of making a Neighbourhood Plan. This shows a positive approach to accommodating and shaping growth across the District taken at neighbourhood level and indicates a widespread acceptance of the need for growth and concerted local action to meet that need. The making of those Neighbourhood Plans is itself generating a notable increase in the number of schemes for residential development being prepared and submitted, and is contributing to the district's recent strong performance in terms of the number of units for which planning permission has been granted. There are also unallocated sites in settlements with Neighbourhood Plans where AVDC has resolved to grant planning permission for substantial residential development but the applications have been called in by the Secretary of State for his own determination.<sup>32</sup>
- 7.40. Winslow itself is delivering a substantial increase in housing, consistent with the aims and objectives of the WNP. As the Town Council's evidence explained, it is well on the way to delivering the 35% increase in housing that it has planned for. This is not a settlement where delivery of housing has been slow or ineffective.
- 7.41. Applications and appeals representing many thousands more housing units are currently in the system, and the VALP/HELAA processes are identifying sustainable locations for many thousands more.<sup>33</sup> This is not a situation where the local planning authority is complacent about delivery, or where the availability of suitable sites is so constrained as to require development to be permitted on unsustainable sites such as this.
- 7.42. The Court of Appeal has explained that matters relevant to the weight to attach to policies deemed out of date by NPPF paragraph 49 include the extent of the shortfall; the action being taken by the local planning authority to address it; and the particular purpose of the policies in question. Neither of the first two factors has changed in a way that could properly change the conclusions drawn by the Secretary of State in 2014 as to the weight to attach to the policies in the WNP. If anything, the progress made in the meantime serves to reinforce those conclusions.

#### Landscape Impact

- 7.43. The Inspector asked whether the finding as to landscape impact should be any different, taking into account the changes to this scheme compared to the previous proposal and in the light of the judgment handed down since

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<sup>31</sup> PJ PoE [5.3.15]

<sup>32</sup> PJ PoE Appx 3 p7 under 'Plan making'

<sup>33</sup> PJ PoE [5.3.16]-[5.3.17]

the appeal concerning the interpretation of NPPF 109. The answer to that question is 'No'.

- 7.44. There have been no changes to the development for which planning permission is sought, and no other changes in circumstance that could justify a different finding as to landscape impact. The cross-examination of Mr Taylor established that the proposed development is not materially different; the receiving landscape is not materially different; there has been no change in national policy; and there has been no change in development plan policy.
- 7.45. Layout is a reserved matter, as it was in 2014. The masterplan is illustrative and just shows an indication of what can be accommodated within the parameters set by the application itself (which are unchanged). It has no status beyond that. Although the Appellant suggests the masterplan could be secured by condition, it is not open to a decision-maker to make the layout part of the application when all parties understand it to be a reserved matter, having regard to the principles in Wheatcroft.
- 7.46. Had planning permission been granted in 2014, the appellant could subsequently have sought approval of a layout to reflect the current masterplan, because nothing proposed now falls outside the scope of what was before the Secretary of State for consideration in 2014. Had the Inspector or the Secretary of State considered that their concerns over landscape impact were capable of being addressed through consideration of the detailed layout, that would not have led to the refusal of planning permission because it would have been covered by the condition requiring approval of reserved matters in due course. The changes to the masterplan are not of the order of magnitude that would be capable of leading to any different conclusion. There is a substantial quantum of development proposed and the proposed density is unchanged. Mr Bellars explained that,<sup>34</sup> just as in 2014, the majority of the proposed development continues to be located in the southern two-thirds of the appeal site where the land slopes away. Mr Taylor accepted this.
- 7.47. The LVIA process has been undertaken again. Mr Taylor accepted that the changes to the GLVIA<sup>35</sup> would not be expected to produce any materially different outcome to an assessment carried out by the same person in relation to the same scheme. He also accepted that there have been no changes to the conclusions of the LVIA as a result of this or anything else. Although the SoCG at Appendix 3 records the appellant's position as being that "*the extent and significance of impact has been altered due to alterations to the layout*", he agreed that those alterations to the illustrative layout have not led to any changes in the conclusions drawn by the LVIA as to the extent or significance of impact.

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<sup>34</sup> JB PoE p. 112 [441]

<sup>35</sup> in 2015, revisions were made to the professional advice in Guidelines for Landscape and Visual Impact Assessment (GLVIA)

### Valued landscape

- 7.48. There is now a good deal of common ground in relation to this issue, from which it can be seen that nothing material has changed since 2014. Mr Taylor agreed that none of the factors relied upon by the Inspector and Secretary of State to support the conclusion that this is a valued landscape have changed since 2014. He does not suggest that any of those factors are irrelevant to the judgment that falls to be made as to whether the landscape is valued. Indeed, the factors identified in the LVIA as positive factors in terms of landscape value include: landscape of local importance, used by the local community and having access via public footpaths and cycle routes. Other points agreed were that there is no definition of 'valued landscape' in the NPPF and that it draws a careful distinction between designated landscapes and valued ones. NPPF paragraph 113 is concerned with designated landscapes, whereas paragraph 109 is concerned with valued landscapes.
- 7.49. So far as the **Stroud** judgment is concerned, the legal issue for the court was whether the Inspector had erred because he appeared to have equated valued landscape with designated landscape. Ouseley J made clear that if the Inspector had concluded that designation was the same as valued landscape, he would have fallen into error because in the NPPF the two words are used to mean different things.<sup>36</sup> The consideration of what the Inspector had said was in that particular context. The Judge did not purport to provide a judicial definition of the word "valued", nor did he seek to define or limit what would be relevant in considering whether a particular landscape was valued. The approach taken in the underlying s.78 appeal decision suggests that more than bare 'popularity' would be needed. Mr Taylor fairly conceded that neither of the two s.78 appeal decisions to which he had referred took matters any further.<sup>37</sup>
- 7.50. Although in evidence in chief Mr Taylor appeared to suggest that a landscape needed to be rare or distinct from other landscapes in the area to be classed as 'valued', he did not maintain that line in response to cross-examination. Whilst rarity was said to be a potentially relevant factor in assessing landscape value, Mr Taylor did not ultimately claim that this was needed for a landscape to be valued.
- 7.51. Mr Bellars' evidence as to landscape value does not rely on what the local community says. It represents an expert view formed on the basis of relevant factors including physical attributes.
- 7.52. In 2014 the Inspector was able to form his own view having had the benefit of expert evidence. He also had the benefit of the opinions of many local people (both orally and in writing) as to the value that they placed on this part of the landscape and how it was used by them. Importantly, he was able to visit the site and surroundings himself.
- 7.53. Points which were common ground in 2014 remain so now. Evidence of what local communities value in this landscape will be a highly material

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<sup>36</sup> CD12.6, [13]

<sup>37</sup> CD11.9 and CD 11.10 - see CT PoE [6.26]

factor. The value of a site may be high, even if its condition is affected by the presence of urban fringe elements nearby. The simple fact that a particular field is located close to the edge of an urban settlement does not mean that it is no longer to be regarded as part of the countryside. For those who live in urban areas, the fields closest to them are likely to have a particular value because of their proximity. The evidence gathered for the WNP (CD 6.10, p. 12) suggests access to the countryside and the green spaces around the town are greatly valued by this local community. The summary of objections to the proposed development in the officer's report (CD4) suggests that the appeal site is valued for reasons of amenity, including in particular the amenity afforded by the public footpath, the contribution the site makes to the town's rural setting and settlement character. Much weight should attach to the views of the community as to what is valued by them.

- 7.54. GLVIA3 makes clear that there cannot be a standard approach to assessing landscape value as circumstances change from place to place.<sup>38</sup> That (at least in broad terms) points very clearly to it being inappropriate to seek some sort of definitive set of criteria for deciding if a landscape is 'valued' or not. It also makes it clear that the views of the local community will be relevant and important in assessing landscape value. The views of the local community as to the landscape value of this site are also, of course, reflected in the site selection process carried out for the WNP.<sup>39</sup>
- 7.55. Ms Tilston, sought to rely on the LUC Report as evidence that the appeal site did not lie in a valued landscape. This had been dealt with by Mr Bellars.<sup>40</sup> The LUC Report does not assist the Appellant's case. Ms Tilston confirmed in cross-examination that the report only looked at *existing designated* areas and expressly did not review the boundaries of those designations or look at any other areas of landscape. She also confirmed that the existing designations are historic in origin and a landscape does not need to be designated to be valued.<sup>41</sup>
- 7.56. The Aylesbury Vale Landscape Character Assessment underlines why it would be appropriate to regard this as a valued landscape.<sup>42</sup> Mr Taylor accepted it identifies the key characteristics, which include lack of settlement, a locally strong field pattern and good amenity value. In re-examination, he nevertheless asserted that there was only "limited access" to it, but made no attempt to square this with his earlier clear but inconsistent answer. The characterisation in the Landscape Character Assessment should be preferred.
- 7.57. The area has a distinctive character stemming from the landform and strong hedgerow pattern. It is a landscape in good condition, with few visual detractors, visually unified and with coherent functional integrity. The guidelines include conserving the pattern of smaller fields and conserving agricultural uses on suburban fringes. In addition, Mr Bellars

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<sup>38</sup> JB PoE [330]

<sup>39</sup> CD 6.9, p. 12, JB PoE p. 28 [101]

<sup>40</sup> JB PoE pp. 28-37

<sup>41</sup> CD 9.3.2, p. 4 [1.1]-[1.2], pp.6-7

<sup>42</sup> CT, Appx 10 LCA 5.6 Claydon Valley

gave oral evidence as to the importance of the site's topography and contribution to the setting of the ridge top settlement pattern, and the views it affords over the Claydon Valley, factors which should be noted when assessing the value of the site.<sup>43</sup>

- 7.58. The guideline to 'conserve and reinforce' is a reflection of the value of the existing landscape, and thus is entirely consistent with the approach of NPPF paragraph 109 - namely to 'protect and enhance' valued landscape. The approach is effectively the same, and the reasons behind the approach are the same. Mr Taylor also agreed the approach is entirely consistent with the conclusion reached by the Inspector and Secretary of State in 2014 that this is a valued landscape.
- 7.59. The first time Mr Taylor sought to make explicit reference to his revised methodology (Appx 1 to his proof) was in re-examination. That must necessarily reduce the weight to what he said. Even if one were to apply that methodology (something AVDC would not encourage), it is clear that this landscape would fall within the 'Good' category, as this is a landscape recognised as being locally important, it is widely used by the local community and includes key aspects or features that, if lost, would affect the overall landscape description.
- 7.60. For those reasons, the Inspector and Secretary of State are invited to conclude that the finding in 2014 that this is a valued landscape was correct, based on factors which are agreed to be relevant, and fully justified having regard both to the physical factors identified by Mr Bellars, and to the evidence as to how the site and surrounding landscape are in fact used and valued by the local community.

#### Adverse landscape impact

- 7.61. The key conclusions reached by the previous Inspector in 2014 have been shown to be sound and there is no reason to reach a different view in 2016. The character of the Claydon Valley LCA is fairly summarised at IR 146. The appeal proposals would fail to conserve and reinforce characteristic features of that LCA as houses would be placed in the fields that currently contribute to the landscape character. Even if hedges are retained, the scale of development along with the modification and maintenance of gardens and planting by residents would obscure the characteristic field pattern. The valley side location of the appeal site means that the field pattern is more apparent. A person experiencing the fields on the appeal site following development would consider it a residential environment, rather than a field. The appeal scheme would extend development from the ridge down into the valley in a way which is not comparable to Tinker's End. The layering of hedges and trees would not provide effective screening and the ridge top settlement would be perceived to substantially enter into the valley landscape. (IR 149-152).

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<sup>43</sup> see also JB PoE pp. 36-37 for an assessment of the site against a number of factors generally agreed to influence landscape value

- 7.62. In most respects the conclusions of the previous Inspector reflected an acceptance of Mr Bellars' evidence in preference to that of Mr Taylor.<sup>44</sup> The previous Inspector also drew on previous decisions. Those earlier decisions are important. As in 2014, AVDC invites the Inspector and Secretary of State to prefer Mr Bellars' evidence. He has provided a systematic analysis and concludes with a summary of the impacts. Where his analysis differs from that in the LVIA, his comprises a fairer and more balanced appraisal.
- 7.63. There are also certain important points of fact as to the topography of the site and surroundings that can be seen from Mr Bellars' Appendix 1 and paragraphs 270 to 273 of his PoE. Mr Taylor agreed that, with the exception of Tinkers' End, the existing settlement of Winslow sits on the ridge. Mr Bellars explains that those sections of the appeal site that abut areas of existing settlement lie between approximately 103m AOD and 112m AOD, which is the highest point of the appeal site. Although the Design and Access Statement advises that the settlement of Winslow is located at approximately 115m AOD, the appeal site lies below the 115m AOD contour. The adjoining areas of existing settlement generally lie on or above the 105m AOD contour. The highest point of the appeal site, at 112m AOD, lies 8m below the highpoint of the Winslow ridge, and 22m above the valley floor. Its lowest point, at 95.5m AOD, lies 24.5m below the highpoint of the Winslow ridge and only 5.5m above the valley floor.
- 7.64. Mr Bellars also made good the important point about the absence of a clear defensible boundary to the settlement edge if this development is permitted. The development would breach two currently clear and defensible features which help to define the settlement pattern: Furze Lane and the containment of development to the ridge top. Both were picked up during an appeal in 1992.<sup>45</sup> Mr Taylor agreed that there is no specific topographical delineation on the western, southern and south eastern boundaries of the site, and that the landscape character is similar on the far side of the hedgerow boundaries. He also agreed that the appeal proposals would involve development extending the town to the west beyond Furze Lane for the first time. The effect of this can be gleaned by considering the proposals map for the WNP and the red line plan for the appeal proposal.
- 7.65. In addition, careful account should be taken of the night time effects. Whilst a condition can achieve some control over the extent of illumination from some light sources on the site, many light sources would be uncontrolled and uncontrollable. The characteristic dark valley landscape would be dark no more. This would exacerbate the overall effect, and the topographical features of the valley side site would make the impact on settlement pattern even more apparent.
- 7.66. There are no significant landscape benefits, for the reasons that Mr Bellars gave in his evidence, which Mr Taylor largely appeared to acknowledge in response to cross-examination. Neither the Inspector nor the Secretary of State considered there to be any countervailing landscape benefits of

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<sup>44</sup> See also the Council's Closing Submissions from 2014 (CD 13.5 [85]-[110])

<sup>45</sup> CD 11.15, [8]

significance in 2014 and no good reason has been given to reach a different conclusion now.

- 7.67. The case for accepting Mr Taylor's assessment of impact is now even weaker than it was in 2014. There has been a general failure adequately to recognise, understand and address the implications of the 2014 decision. The LVIA barely mentions the Inspector's conclusions and offers no explanation for reaching precisely the same conclusions again. Mr Taylor's written evidence fails adequately to grapple with those points, as illustrated by the following two examples. Mr Taylor was unable to explain his assumption that the 2014 Inspector had only considered impacts in year 1 and without taking into account mitigation, an utterly unfounded assumption.<sup>46</sup> The other example is the unwillingness to acknowledge that the Inspector's conclusion at IR 181 that the harm to landscape "*attracts considerable weight*" means that he must therefore have regarded the impact as being significant. It is an obvious and inescapable conclusion. The Inspector regarded the harm not just as a factor that was material to the planning balance (which in itself would signify it was of some significance), but one that should be given considerable weight. There is no other rational reason for the Inspector reaching that conclusion, and ultimately Mr Taylor could offer no other explanation.
- 7.68. Mr Taylor's key arguments on landscape impact were addressed by the Inspector in 2014, and rejected. The argument about the effect of retaining and reinforcing hedges was rejected in IR 149. It is nevertheless trotted out again, but without reference to what the Inspector said about it. The reliance on Tinker's End as a counter to the objection about causing harm to the settlement pattern was rejected in IR151. It was expressly said that the appeal scheme "*would not have comparable circumstances*". Far from being deterred, Mr Taylor's evidence not only repeats the argument but seeks to suggest that the Inspector agreed with it. Mr Taylor ultimately accepted that the 2014 IR provides no support for relying on Tinker's End.<sup>47</sup>

#### Adverse visual impact

- 7.69. In 2014 the Inspector concluded that there would be "*significant visual impacts in near and on-site views*" (IR 156). In reaching that view, he preferred Mr Bellars' judgment as to the level of sensitivity that should be attributed to users of the rights of way network and the residents of existing dwellings who would live in close proximity to the development - including from upper floors. As he concluded "*the sensitivity attributed within the LVIA to these views appears to be low*".
- 7.70. In 2014, the Inspector also noted that "*the LVIA underestimates the significance of effects on views from within the site where the change from predominantly edge of settlement and rural views, to within a residential environment, would result in substantial adverse impact*" (IR 155). It is clear, therefore, that the adverse visual impacts were both "*significant*" and "*substantial*". On the face of it, that significant and substantial harm

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<sup>46</sup> CT PoE p. 17, Table 1 and [3.26]

<sup>47</sup> CT PoE, p. 30 [6.14-6.15]

ought therefore to be weighed on the negative side of the planning balance, although the Inspector chose not to do that. The reasons given in IR 156 do not enable a clear answer to be given.

- 7.71. Mr Taylor very fairly accepted that the significance of an assessed visual impact would not be reduced just because it is the type of impact you would expect. The principle is no different because this is housing rather than, say, a power station. If an impact is significant and adverse it should go into the negative side of the balance, and no less so merely because it is expected.
- 7.72. Transience does not apply to the many highly sensitive residential receptors close to the site to which the Inspector referred, and it is a factor of doubtful substance to apply to those who are using the rural footpaths. As the Inspector said concerning land east of Winslow<sup>48</sup>: "*It seems likely that many people walking or cycling these routes would enjoy doing so because of the intrinsic rural qualities of the site*". For the same reasons, it remains doubtful as a significant factor to rely upon in relation to those on the designated Sustrans cycle route 51.
- 7.73. The Inspector in 2014 appears to have conflated harm as a result of adverse visual impact and harm from adverse impact on residential amenity. The two are distinct concepts and, in those circumstances, it is both necessary and appropriate for the Inspector to revisit this issue and how it ought to feature in the planning balance.
- 7.74. There is a significant difference of opinion as to the assessment of impact from the ten identified receptors. Mr Bellars concludes that for seven of the receptors the impact has been underestimated. A fair assessment would show that nine of them would suffer significant adverse impacts. Consideration of the appeal proposals should be based on Mr Bellars' assessment. The significant adverse visual impacts should be given substantial weight in the negative side of the planning balance.

#### Loss of best and most versatile agricultural land

- 7.75. The loss of best and most versatile agricultural land must weigh against the overall sustainability of the proposed development. This was recognised by both the Inspector and Secretary of State in 2014 (DL14; IR 167-169). Appendix 3 to the SoCG records the agreement between the parties that nothing has changed in the interim, and the same conclusions should therefore be reached. Ms Tilston confirmed that the Appellant was not producing any new evidence on this point, and was not therefore expecting any different conclusion. She also confirmed that the Inspector should consider not only the written evidence from the 2014 appeal, but also the oral evidence as recorded in AVDC's Closing Submissions from that inquiry.<sup>49</sup>
- 7.76. The appeal scheme would result in the loss to agricultural production of 3.7ha of BMV, which represents 42% of the agricultural land on the site.

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<sup>48</sup> CD 11.14, DL 10

<sup>49</sup> CD13.5



This is a significant adverse impact of the proposal which must weigh in the balance against the benefits arising. It is apparent from the Appellant's written evidence that it has continued to display a reluctance to recognize that fact. It has advanced a number of arguments to try and get around it, but none have any merit. In particular, Ms Tilston's assertion at paragraph 11.3.14 of her PoE concerning the reason why the relevant policy from the AVDLP had not been saved was shown to be factually incorrect. The policy was not saved because at the time PPS7 provided sufficient guidance.<sup>50</sup> Those same principles are now reflected in the NPPF.

### The emerging VALP

- 7.77. The emerging VALP has not yet reached the stage where its policies can attract significant weight (SoCG p3, section 2.3). Nevertheless, the evidence base provides some context.
- 7.78. Ms Tilston's written evidence seems to suggest that the choice is between allowing the appeal or constraining the future development of Winslow to those sites currently allocated in the WNP.<sup>51</sup> As she confirmed, that is clearly not the position. The emerging VALP envisages a 50% expansion of Winslow, equating to an additional residual requirement for 441 further dwellings, together with the possibility of a new settlement of 6,000 units. The Housing and Economic Land Availability Assessment (HELAA) has identified capacity for 585 additional dwellings on part of site WIN001, significantly more than would be needed to achieve the 50% expansion of the settlement. The Appellant supports the development of that site (in which it has an interest), and is arguing for the capacity to be increased to 1,200. Although Ms Tilston was keen to stress the potential constraints on the site, she did not go so far as to say that Gladman would either be urging AVDC not to allocate the site, or that the allocation should be so substantially reduced in terms of numbers that it would go below 441 units (whether looking at the whole or the south-western part of the site). The capacity is yet to be determined, but the broad order of magnitude is apparent from the evidence. Further, it appears from Ms Tilston's oral evidence that work has commenced to pave the way for an application to be submitted.
- 7.79. Thus it is common ground that substantially more than a 50% expansion of the settlement of Winslow could be achieved without developing upon the appeal site, or indeed any of the other sites assessed as being unsuitable on the more sensitive edges of the settlement. Even if Winslow is chosen as the preferred location for a new settlement, it would not require development of this site.
- 7.80. Winslow can grow - and very substantially - whilst still protecting the more sensitive areas of landscape and preserving its distinctive and important ridge top character. Moreover, this can be achieved in a way that does not undermine the principle of neighbourhood planning. The emerging VALP envisages allowing those communities with neighbourhood plans to use a review of the plan to allocate sites in accordance with the strategic

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<sup>50</sup> Doc 3

<sup>51</sup> LT PoE p44 11.3.10

requirements which emerge from the VALP.<sup>52</sup> Winslow intends to take that opportunity.<sup>53</sup> The community of Winslow has embraced the need to plan positively for growth and its desire to shape where that growth takes place through the WNP has not abated. The WNP was drafted with just such a contingency in mind, and provides for regular review to ensure it is not overtaken by changes to the development plan at district level.

### Benefits

7.81. Significant benefits would accrue as a result of the appeal proposals, principally related to the contribution to the supply of market and affordable housing and the economic benefits associated with such provision. Those benefits were taken into account by the Secretary of State in 2014 (DL 22). They are no more or less significant now than at the time of the previous decision. However, the very substantial adverse effects of granting planning permission would significantly and demonstrably outweigh those benefits when assessed against the policies in the NPPF taken as a whole.

### 'Brexit'

7.82. The Appellant's attempt to rely on the possible implications of the UK's referendum vote on EU membership as a material planning consideration is hopeless for three main reasons. In the first place, the Secretary of State has published policy and guidance on the approach to decision-making, taking into account the importance of sustainable economic growth. There has been no change to that policy or guidance, or any indication that change is being considered. If that were to happen, the parties would no doubt be notified and invited to make representations at the appropriate time. Secondly, the economic and policy implications of the referendum result cannot be known or predicted with any degree of accuracy at this stage and no expert evidence has been provided. Finally, even if it were safe to predict an economic downturn, the implications would need to be considered and addressed across all areas of evidence and policy, and not just those assumed by the Appellant to favour the grant of planning permission. So, for example, the economic growth forecasts underlying the assessment of OAN would also need to be revisited. The Appellant cannot properly invite the Secretary of State to make different and inconsistent assumptions about economic forecasts when dealing with the issues of need and benefits. That would be irrational.

### Conclusion

7.83. The appeal proposal is in conflict with the development plan. Applying paragraph 14 of the NPPF, the adverse effects would significantly and demonstrably outweigh the benefits when assessed against the NPPF as a whole. There are no material considerations which indicate that planning permission ought nevertheless to be granted. Nothing has changed which could properly lead the Secretary of State to a different decision to that reached in 2014. The appeal should therefore be dismissed.

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<sup>52</sup> CD 8.2.2 p. 54 [3.88] and policy S9

<sup>53</sup> see Cllr. Monger's PoE at paragraph 7.3

## 8. The Case for Winslow Town Council

- 8.1. Winslow Town Council supports Aylesbury Vale District Council's case and takes as its focus the Winslow Neighbourhood Plan.

### The Government's approach to neighbourhood planning

- 8.2. There can be no doubt of the importance that the Government attaches to neighbourhood planning:<sup>54</sup>
- (i) Neighbourhood Plans were made to be part of the development plan and so were brought within the very heart of development control (and the concept of sustainable development) and as such are to be used "to determine" decisions on planning applications;
  - (ii) National policy is quite clear that neighbourhood planning is to be a direct power to develop a shared vision for a neighbourhood [NPPF, paragraph 183] and to be able to shape and direct sustainable development in the area. It is to be a powerful set of tools;
  - (iii) It is expressly a national planning policy that where there is conflict with a Neighbourhood Plan, permission should not normally be granted. This is more than a repetition of section 38(6), which applies to the development plan as a whole. Paragraph 198 is specifically directed to the Neighbourhood Plan. It is an expression in policy of the importance the Government attaches to Neighbourhood Plans;
  - (iv) Decision after decision of the Secretary of State has placed significant or more weight on conflicts with Neighbourhood Plans.<sup>55</sup>
  - (v) Ministerial Statements all serve to emphasise the importance of neighbourhood planning (the submission of Gaynor Richmond summarises these statements in one place);
  - (vi) All the above is neatly encapsulated in the Secretary of State's decision on the first appeal. It is significant to note that the words employed largely replicate the words used by the Secretary of State in the decision challenged in the **Crane** judgment. In other words, the operative paragraphs of the previous decision have effectively been endorsed by the High Court.<sup>56</sup>

### The people of Winslow's approach to development

- 8.3. This is a community where there has been substantial engagement with neighbourhood planning, as demonstrated in the sophisticated grasp of planning law displayed by residents. Winslow was an early adopter of neighbourhood planning. Residents have invested a huge amount of time and resources into the WNP and demonstrated a commitment in the face of persistent challenge and resistance from this Appellant. They have done exactly what the Government had hoped communities would do. The

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<sup>54</sup> NPPF paragraphs 183-5 and 198

<sup>55</sup> DS, Appx.A

<sup>56</sup> CD.12.4, in particular [75-77]

Government provided the tools and the opportunity and the community took the Government up on that offer.

- 8.4. The result of the referendum gave overwhelming support for a plan which proposes a 35% increase over the existing housing stock. As Mr Homer confirmed, in his (uniquely) broad experience of neighbourhood planning, the WNP is a plan proposing growth at the highest end of the spectrum. That is why it is so important that the views of the residents as to where development should go – as articulated in the WNP – are so important. Their enthusiasm for planning is threatened by this application.

#### The Council's approach

- 8.5. The draft VALP recognises the importance of Neighbourhood Plans and seeks to ensure that the strategic level plan and Neighbourhood Plan – both existing and proposed – work well alongside each other. It provides the opportunity for Neighbourhood Plans to direct where development should be accommodated. It specifically provides the opportunity for review of made Neighbourhood Plans [CD.8.2.2, p.54, 3.88 and p.55, Policy S9] but on a tight timeframe to ensure that the identified needs are met. This balances the obligation on the Council to meet the identified needs in its area and the desirability of furthering national policy by allowing communities to shape their own surroundings. The Council, therefore, is in the process of adopting a plan that will seek to integrate the strategic and neighbourhood planning levels of the development plan.
- 8.6. This ought not be interfered with lightly, especially where the Town Council has reacted by stating that the WNP will be reviewed to ensure it meets the needs now identified in the VALP in a timeframe where the resultant new WNP would be adopted around the same time as the VALP. A more constructive attitude and intention could not be devised.

#### Gladman in Winslow

- 8.7. Appendix A of Cllr Monger's proof of evidence sets out the Appellant's historic activity in Winslow. As Cllr Monger put it, this history represents the Appellant's persistent challenge over some ten years to the community's vision of how the town should grow. The Appellant has spent a great deal of time, effort and money in seeking to stop the WNP from being made in its current form. Of course, the Town Council and local residents did the same in response. Both the Examiner and the High Court found in the Town Council's favour.
- 8.8. Gladman also pursued appeals for two sites in Winslow which were contrary to the then emerging WNP. The Secretary of State rejected both appeals, in large part because of the importance he attached to the WNP and the NPPF's policies on neighbourhood planning. Again, Winslow Town Council and many local people defended the then emerging WNP from those threats to its spatial vision.
- 8.9. As to Glebe Farm itself, the current appeal represents the third application for 211 homes at this location, all refused, with the first being dismissed on appeal in 2014.

### Public confidence in neighbourhood planning

- 8.10. Against this background, if an essentially identical scheme is now approved on substantively the same site, against the same policy background, the inevitable result will be damage to public confidence in the efficacy of neighbourhood planning and the Secretary of State's commitment to it. That is a material consideration that ought to be given substantial negative weight. The WNP is well-known as a result of its pioneer status and the challenges in the High Court that it has seen off. A decision against this plan will damage not only the confidence of the people of Winslow in neighbourhood planning but its dampening effect will be widespread. This would constitute harm to the plan-led system and the Government's ambition for neighbourhood planning within that system.
- 8.11. Ms Tilston's suggestion that this is not a material consideration is simply wrong. That is a matter of law. In ***Crane***, Mr Justice Lindblom expressly found that the Secretary of State "was not persuaded to make a decision which, in his view, would undermine public confidence in neighbourhood planning" [CD.12.4, paragraph 74].

### The previous appeal decision

- 8.12. Winslow Town Council agrees the legal position set out by the Council with regard to consistency in decision-making.
- 8.13. As identified in the Inspector's pre-inquiry note, the question arises as to whether there have been any material changes that would justify a different outcome. Winslow Town Council submits not.
- 8.14. It is a matter of agreement that there has been no material change in national policy or the development plan, including the WNP. There is still no five year housing land supply and the application of paragraphs 14 and 49 are the same. Ms Tilston further accepted that there is no material difference between housing need now (1,065) and then (1,026). It is the figure for unmet need from adjoining authorities which causes the higher number in the VALP but as Mrs Jarvis states, that figure is by no means final. Where it is agreed that significant weight should be accorded to the provision of housing, then it cannot be suggested that this is a difference that has any material bearing on the balancing exercise. Indeed, the Secretary of State accorded the provision of housing substantial weight in the previous decision which is, if any different from significant, generally understood to be a greater level of weight. The proposed development is not materially different, nor are the benefits. The receiving landscape is not materially different.

### Has anything changed in the law?

- 8.15. Reliance was placed on ***Woodcock*** to justify the bringing of the appeal but Ms Tilston conceded that ***Woodcock*** did not change the law and the paragraph she relied on contains the simple and uncontroversial proposition that paragraph 49 of the NPPF applies as much to policies for the supply of housing in Neighbourhood Plans which have been made as to

other parts of the statutory development plan. The Secretary of State plainly understood that in his previous decision.<sup>57</sup>

- 8.16. Neither does **Crane** assist the Appellant. On the contrary, it endorses the decision of the Secretary of State in 2014 in that the wording in the underlying decision in **Crane** is almost identical. In other words, the court has effectively tested the approach in the previous decision and found it lawful. The only principle of law to be deduced from **Crane** is that neither national policy nor court decisions dictate the weight to be given to conflict with policies for the supply of housing which are out of date.<sup>58</sup> On any proper analysis the Appellant has identified no justification for bringing this appeal on the basis of a change in the law or that the weight applied to the conflict with WNP2 and 3 in the previous decision was wrong. That, however, is very clearly the basis on which the Appellant decided to appeal as Ms Tilston made clear.<sup>59</sup> It was telling when Ms Tilston could not show the inquiry where the Secretary of State went wrong in paragraphs 25 and 26 of the 2014 decision.
- 8.17. There is important evidence in relation to consistency before this inquiry.<sup>60</sup> Ms Tilston agreed that Dr Saunders' work is relevant and must be taken into account and she did not have any substantive issue with the content. She provided no alternative or contrary analysis. His work shows clearly that the Secretary of State has taken a highly consistent approach to conflict with Neighbourhood Plans – placing variously significant/substantial/ very substantial weight on conflict with such plans. The consistent approach would be to do the same here as he did in the previous appeal and the great majority of other relevant cases.
- 8.18. The one exception to this consistent approach is the Roseland decision letter but that is clearly explained: there were no housing allocations or numbers in the plan which led the Secretary of State to conclude that the plan did not reflect the aims of the NPPF as a whole.<sup>61</sup> The Roseland decision letter does not assist the Appellant. In relying on the exception that proves the rule, the Appellant reveals the significant difficulties in its case.

#### The WNP

- 8.19. The appeal proposals conflict with WNP policies 2 and 3 and, as a result, with the development plan as a whole. The WNP must be read as a whole, with a focus on its relevant objectives and the policies which seek to give effect to those objectives.<sup>62</sup> Part of the stated vision of the plan is that "*above all, the town has retained its special historic and architectural character by carefully managing change within its built up area and by protecting its setting and surrounding open countryside from development*".<sup>63</sup>

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<sup>57</sup> CD12.3 [21]; CD11.1, DL, [10]

<sup>58</sup> CD.12.4, [71]

<sup>59</sup> CD.1.17, Planning Statement Summary (ii); Appellant's Statement of Case, Appx.2, p.17, Site History

<sup>60</sup> DS, Appx A

<sup>61</sup> CD.11.4, DL, [11-13 and 24]; IR, [48, 198 and 205]

<sup>62</sup> CD.12.4, [40]

<sup>63</sup> CD.6.7, p.15, [3.1]

- 8.20. Policy 2 is the key policy in the WNP. It establishes “the key spatial priority for the WNP, within which context all its other policies are based”. It is the spatial strategy. It could not be clearer that it is central and crucial to the WNP as a whole. The spatial strategy specifically includes avoiding the extension of the existing pattern of the built up area significantly to the south and west (i.e. including the appeal site).<sup>64</sup>
- 8.21. Ms Tilston was quite wrong to say as she did in her oral evidence that the plan allocated the sites and then drew the boundary around it. It did not. The Winslow settlement boundary is derived as described in paragraph 4.7 of the plan (which does not mention the allocation of housing land). Paragraph 4.15 (which is supporting text to WNP3) states “*this policy allocates land for the development of new homes within the defined Winslow Settlement Boundary.*”
- 8.22. The previous appeal decision found policies WNP 2 and 3 to be very important policies that sought to shape development in Winslow. That remains the case now. Any further growth under the VALP is for the community to shape but the indications are that this will be directed to WIN001<sup>65</sup> and not the appeal site.

#### The balancing exercise

- 8.23. The conflict with policies WNP2 and 3 ought to be accorded very substantial negative weight as in the previous appeal decision. The Appellant has established no material change since then.
- 8.24. The change in the housing land supply position is incapable of affecting the outcome of the balancing exercise in circumstances where the weight accorded to that consideration in the 2014 decision was substantial and where it is agreed that the provision of housing should be accorded significant weight (as well as the fact that, as Ms Tilston made clear in her answers to the Inspector, the Appellant has chosen not to put forward detailed evidence on shortfall in this appeal). In short, on the Appellant’s own case there has been no material change in the housing land supply that finds its way into the planning balance. Whatever changes in detail there have been, it has not affected the Appellant’s judgment that the provision of housing ought to be afforded significant weight in the planning balance.
- 8.25. There are no other changes mooted that survived examination at the inquiry. It follows that the outcome should now be the same as in the previous decision.

#### Conclusions

- 8.26. For all these reasons and those provided by the Council, this appeal should be dismissed.

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<sup>64</sup> CD.6.7, p.18, [4.4], [4.11]

<sup>65</sup> The site in the HELAA to the north of Winslow, (see Council’s case, paragraph 7.78 above)

## 9. The Case for Gladman Developments Ltd

- 9.1. The case is a straightforward one. It concerns a proposal for residential development in a district which needs residential development, at a settlement which everybody agrees should grow substantially and for which the only option is development outside its current, out of date settlement boundary. Moreover, it is a case in which an Inspector has previously considered the impacts, principally on landscape issues, and has found that the proposal is acceptable after having the benefit of hearing detailed and expert landscape evidence.

### Legal Propositions

- 9.2. The legal framework needs to be set out in some detail because this appeal arises in the context of a changed background so far as the case law relates to neighbourhood plans and the impact of NPPF paragraph 49. Further, in evidence one of the witnesses for the Town Council made submissions as to the law, although these did not form part of the Town Council's closing submissions. Lastly, there is a previous appeal decision. The approach to the Inspector's report and the Secretary of State's decision require careful consideration both because of the different background and because the Inspector recommended the grant of planning permission, whereas the Secretary of State dismissed the appeal. In particular, there is a commonality between the issues which result in a different background now, and the reasoning which was different in the decision letter, compared to the Inspector's report. In short, the differences turn very much upon the weight to be given to the Neighbourhood Plan policies.
- 9.3. The agreed starting point is s38(6) of the Planning and Compulsory Purchase Act 2004. Paragraph 14 of NPPF is agreed to apply.
- 9.4. The approach is set out in **Cheshire East**<sup>66</sup>, which notes that in most situations there will be somewhat of a trade-off between competing desiderata. In particular, NPPF operates with a tilted balance and the stronger the planning benefits are assessed to be, the more tenaciously the presumption will operate and the harder it will be to displace it. Moreover, the presumption operates throughout NPPF and in respect of all applications which are sustainable development. That does not require a distinct and separate examination of whether or not the proposal is sustainable development. However, it is important to keep in mind that even where there is a conflict between a proposal and the Development Plan, NPPF policies are important material considerations to be weighed against the statutory priority of the Development Plan. Such is established in **Wychavon**.<sup>67</sup>
- 9.5. In situations where NPPF paragraph 49 is engaged, the object of that provision was explained in **Woodcock**, as being to increase the likelihood of a grant of planning permission for a housing proposal where a five-year supply does not exist, by applying a presumption in favour of sustainable

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<sup>66</sup> CD12.12, [19-22]

<sup>67</sup> CD12.7 [39-44]



development, subject to taking into account all other material considerations.<sup>68</sup>

- 9.6. From **Suffolk Coastal**, the weight to be given to policies which are policies for the supply of housing is a matter for the decision maker and the fact that such policies are out of date does not make them irrelevant.<sup>69</sup>
- 9.7. As regards the approach to previous appeal decisions, the decision maker is obliged to have regard to all material considerations [Section 70(2) Town and Country Planning Act 1990]. A previous decision in respect of the same site is a material consideration for the reasons summarised in *Cotswold District Council v. Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin) [59-60]. An Inspector is free to depart from an earlier decision but, before doing so, ought to have regard to the importance of ensuring consistent decisions and must give reasons for departing from the earlier decision (**North Wiltshire**). Neither the **North Wiltshire** case, nor the **Cotswolds DC** case, nor any other decided case on the question of consistency involves the factual situation which pertains here, namely that the Inspector who conducted the inquiry and wrote the report considered that the appeal should be allowed, whereas the Secretary of State disagreed and considered that the appeal should be dismissed.
- 9.8. Drawing on the above, the relevant legal principles are that the 2014 Inspector's report is a material consideration, as is the 2014 Secretary of State's decision letter. One of the reasons for these being material considerations is the importance of consistency in planning decision making. In this case, the two material considerations arising from the 2014 appeal decision pull in different directions. Upon consideration of both the Inspector's report and the decision letter, both the Inspector in this case and the Secretary of State are free to give such weight as they consider appropriate to the various findings within both the Inspector's report and the decision letter. To the extent that either the Inspector or the Secretary of State differs from either the Inspector or the Secretary of State in respect of the 2014 appeal decision, they should give reasons for doing so.<sup>70</sup>
- 9.9. Although these points are agreed by the other main parties, they fail to address the fact that the 'need' position is different in that it has persisted for a further two years, it will continue and worsen next year and AVDC now accepts that the need is greater now than was contended for in respect of the previous draft Local Plan (VAP). As a consequence, the position is different so far as weight to be given to Policies 2 and 3 is concerned. The understanding of the approach to the neighbourhood plan and the operation of NPPF paragraph 49 has changed, in that the question of how to identify and treat 'valued landscapes' has been further refined. In any event, the Inspector for the 2014 appeal was supportive of this highly sustainable proposal.

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<sup>68</sup> CD12.3, [101-105, 108]

<sup>69</sup> CD12.1 [47-48]

<sup>70</sup> See Note to the Inquiry (Doc 9) as agreed in closing submissions of AVDC and the TC [AVDC §6/7]

### Sustainability

9.10. It is agreed that Winslow benefits from a good range of services and facilities. Such has been recognised for some considerable time. In October 2015 the Council assessed the hierarchy of settlements, when Winslow was elevated to a First Tier settlement. Moreover, in the Officer's report it is accepted that Winslow is a sustainable location for future development.

9.11. During the course of the inquiry the New Settlement Scoping Study was published. Winslow is to be considered for its potential for strategic growth. It is described in this way:<sup>71</sup>

*"Winslow sits centrally within the district, and acts as a large service centre. It accommodates a range of services, including convenience top up retailing as well as primary and secondary education provision."*

9.12. This point is of considerable importance. It represents a fundamental feature of the case. Winslow is acknowledged to be a sustainable settlement, one which is appropriate for significant future growth and is a location which is under active consideration for future strategic growth.

### The Winslow Neighbourhood Plan

9.13. The development plan conflict is primarily to be found in the WNP. The WNP does not include reserve sites as is suggested by the PPG. Rather, it makes provision for a review, which will be necessary because the needs of the district are such that further development will be required at Winslow. All parties are agreed that the settlement boundary would have to be amended, a process which has yet to commence so the community's views are unknown. It is, however, an important feature of this inquiry that the settlement boundary will inevitably change. This point is also important in the context of no party raising any "prematurity" point.

9.14. It is agreed that policies 2 and 3 of the WNP are out of date and, further, that they will require amendment and review. The PPG reflects the position in Woodcock. The policies of the WNP should be treated no differently than other policies in the Development Plan. They do not have any higher status nor do they have any kind of priority.

9.15. The Town Council's evidence does no more than set out the history of preparing the WNP. The WNP is to be understood on its own clear terms. The function of the Secretary of State in this case is to apply s38(6) of the 2004 Act which involves understanding the development plan as written, not some sort of re-run of its examination. Being distracted by a desire to explain the history of making the plan, the Town Council failed to provide any assistance on how the housing and settlement boundary policies should be applied or be affected by the continued failure of the District to put in place a sound Local Plan to meet its housing needs.

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<sup>71</sup> Doc 7, p63, [5.2]

### The Framework and Neighbourhood Plans

- 9.16. The Council appeared to rely upon one sentence from NPPF paragraph 198, that where a planning application conflicts with a neighbourhood plan, planning permission should not normally be granted. NPPF should be read as a whole, so paragraph 198 must be read in context, firstly with the paragraphs which surround it, principally paragraphs 196 and 197 which are all encompassed in the section on "Determining applications". The sentiment in paragraph 198 is to be understood in the clear statement that the planning system requires applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise.
- 9.17. The Council put extracts from **Crane** to Ms Tilston on the basis that they represented the law in respect of paragraph 198. This was a mischaracterisation. The High Court on an application under s288 of the 1990 Act is answering the question of whether the Secretary of State acted within his powers, whether the planning decision was lawful. In **Crane** the issue under Ground 3 was whether or not the Secretary of State was entitled to give the weight which he had given to the neighbourhood plan. Unsurprisingly, given that 'weight' is and always has been a matter for the decision maker and not a matter for the court, the issue was decided in the Secretary of State's favour.
- 9.18. The authorities referred to in support of the Appellant's case provide useful indications as to how matters are to be approached – not establishing legal rules, but clarifying and explaining. In particular, it is very clear that the intention of paragraph 49 is that policies for the supply of housing will attract less weight, often considerably less, when they are out of date. The Council simply fails to engage with these elements of the judgment in **Crane**.
- 9.19. The absence of a five year land supply is a material consideration, as is the operation of paragraph 49. Whilst the decided cases note that the matter of weight is for the decision maker, it is self evident that it is impossible to give effect to the objective of paragraph 49 if settlement boundary policies continue to be given full weight. This is exactly the point which was made in Barwood Land<sup>72</sup>. Such policies are the counterpart of housing policies.

### Weight

- 9.20. Having established the above points, it is then necessary to consider the way in which the Secretary of State treated the WNP in the context of NPPF. It is evident, from DL25, that the Secretary of State did nothing to adjust the weight to be given to the settlement boundary policy by reason of paragraph 49. He did no more than note that the policy was out of date but nonetheless gave it full weight. Such an approach is highly inconsistent with **Woodcock** and the PPG. It is irrational for reasons similar to those given in Barwood Land. It is entirely impossible to meet the development needs of the district if Neighbourhood Plan settlement boundaries attain the status which is accorded in DL25. This Secretary of

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<sup>72</sup> One of the cases under consideration in Suffolk Coastal, CD12.1

State does now have to grapple with this issue. Neighbourhood Plan policies are not exempt from the operation of NPPF paragraph 49. No sensible planning analysis would do anything other than modify the weight to be given to settlement boundary policies, where the Development Plan is failing to deliver necessary development.

- 9.21. The main point taken against the scheme is that it falls outside the Winslow settlement boundary as defined in Policy 2 of the WNP. It is common ground that the proposal is in conflict with this policy. The issue is what weight is to be given to it.
- 9.22. Firstly, as agreed by Councillor Monger, the WNP had to be prepared against a background of no up to date local plan. The District Council did not then know what its housing need was and the examining Inspector for the VAP found the plan to be not sound on the basis that it materially underestimated the housing needs of the District. The starting point, therefore, is that the WNP originates from a time and a strategic understanding of development needs which were subsequently shown to be unsound. This is a matter of fact.
- 9.23. The further context is as to the future. The draft version of the Vale of Aylesbury Local Plan provides for 50% growth in Winslow whereas the WNP provides for 35% growth. The draft Plan allocates some 1063 dwellings to Winslow, as a strategic settlement. Winslow is described as one of the "most sustainable towns and villages in the district and the focus for the majority of development. These settlements act as service centres for other villages around them." The Winslow settlement boundary is to be amended alongside the draft Local Plan. It follows, firstly, that the Winslow settlement boundary was never, from the outset, aligned with the housing needs of the District, and, secondly, it is not now aligned with the District's present understanding of its housing needs.
- 9.24. The Town Council has successfully put together the WNP and navigated the early uncertainties which attached to this new form of development plan making. This is not some sort of battle between the appellant and the Town Council but a simple process of plan making and decision-taking. When the development plan process has defects, as this one has had for years and still does, NPPF steps in to rectify it. The Winslow settlement boundary does not provide immunity from the circumstances which prevail outside of it. National policy used to use the phrase "interest of acknowledged importance". That phrase encapsulated the planning considerations which were sought to be protected, or were of particular focus. Here, the only such consideration which has been identified by any of the witnesses is 'landscape'.
- 9.25. It is worthwhile to consider other types of policy for the supply of housing and the reasons, or relevant considerations, which may continue to attract weight in the absence of a five year housing land supply. Green wedge policies restrict housing but also serve to prevent coalescence. The prevention of coalescence may be regarded as a free-standing and protective purpose of the policy to which weight may be attached, notwithstanding the operation of paragraph 49 of NPPF. The same point might apply in respect of the Green Belt, the openness of which is to be

protected notwithstanding a shortfall in meeting the identified housing need. Policy 2 of the WNP does not address a locationally specific planning consideration. Rather, it is the result of a sifting process which included general landscape considerations alongside a wide range of other factors which are not specifically in play in respect of the appeal site.

- 9.26. This leaves a rather diffuse point which was made by the Town Council and echoed by the District Council. It is encapsulated in the evidence of Mr Guy Hawking who said that "There was a very strong view that we had control of our destiny". The origin of this sentiment is understandable, but it does not deal with the overarching planning issue. Indeed, no representation made by the Town Council or any other oral representation dealt with it. Nobody called by, or associated with, the Town Council grappled with the agreed identified need, the shortfall in housing or its social and economic consequences.
- 9.27. The settlement boundary is not inviolable. That and the Neighbourhood Plan are to attract weight according to good planning reasons and in a proportionate manner. The relevant weight to be given should be assessed in the same way as any other development plan policy. When that is done it is not realistically open to the decision maker to give full weight to the settlement boundary. Similarly, it was not realistically open to the Secretary of State to do so in 2014. This is because the policy protects nothing in particular. It was prepared to align with housing targets which materially underestimated need. It is now acknowledged that the plan will have to be re-made with a new and materially different settlement boundary. The work to decide where to put the new boundary has not been done.
- 9.28. So far as the spatial vision of the plan is concerned, that would be very largely unaffected because the very many other policies of the plan would be unaffected and there is no suggestion that sites allocated in the plan would not come forward if the appeal site were to be developed. Save in respect of 'landscape', the way in which the spatial vision would be adversely affected has simply not been articulated so it is not possible to engage with whatever point is sought to be made. Hence, effect must be given to the development plan but in a manner which adjusts the weight in a way which gives effect to what both NPPF and the development plan seek to achieve, namely to meet the needs of the District in a sustainable way.

#### Landscape and visual effects

- 9.29. In the 2014 appeal decision, the IR deals with effects on the appeal site and outside it. The same approach is taken in this appeal.
- 9.30. The site is the same as for the 2014 appeal, as is the description of development. However, further work has been undertaken in respect of the master plan. The principal difference between the two indicative drawings is at the centre of the site. In 2014 a small village green and a LEAP play area were shown. The indicative master plan for the current proposal shows a larger play facility (NEAP) and a single large area of public open space and play space to the south of the existing Glebe Farm. The existing PROW network would run to the north of the NEAP and

existing hedgerow boundaries retained, with substantial and additional planting both to the north and south of the footpath route.

- 9.31. It is open to the Secretary of State to secure this master plan by condition, though it is acknowledged that no party has asked for that course to be taken. However, the master plan's principal importance is its illustrative value as to what is achievable. Moreover, it is against this that the proposal has been assessed. In that regard, the LVIA is not the same as that which was before the Inspector and Secretary of State in 2014. Nevertheless, the application is in outline and the material is illustrative unless and until it is secured by any condition.

#### Effects on the Appeal Site

- 9.32. The change to the appeal site in landscape terms is assessed as medium. This is a reflection of the ability of the scheme to balance the substantial shift from agricultural land to housing with the retention of features which are identified as key contributors to the landscape. It is also a reflection of the beneficial elements of a substantial increase in land for public access and recreation, as well as the general landscaping and ecological enhancement. This is not a case of simply identifying those elements to be retained as being beneficial. Rather, this is a material change in accessibility to the appeal site and the availability of public open space. Those are material benefits to be taken into account.
- 9.33. The Appellant acknowledges that the change from "countryside" to residential development would be an adverse impact. However, the appeal site is immediately adjacent to the built up area of Winslow and in due course it would assimilate with the character of Winslow. Housing is not, of itself, harmful in either landscape or visual terms so it is important not to overstate the change. This change would not be incongruous in its location and in its setting at the edge of Winslow.
- 9.34. Mr Bellars would not acknowledge that the appeal site is in part characterised by its urban edge location. This is difficult to understand given that a side or edge of the appeal site includes clear views of the upper floors and roofs of the adjacent dwellings, which back onto the appeal site. It is rather obvious that the appeal site has the characteristics of the urban edge and fringe.
- 9.35. Whilst the appeal site would cease to have the characteristic of open fields, it is more informative to consider the degree to which the proposal could retain important characteristics of the site which would be capable of being retained by a residential proposal. In this regard, it is important to note that there is no criticism of any particular loss of tree or hedgerow, nor is there express criticism of the indicative strengthening of landscape features, all of which are entirely capable of being secured by condition. In addition, the footpath would be retained and its accessibility enhanced.
- 9.36. Viewpoints 1 and 2 are close to, but just outside the appeal site, on the Verney Road. There is a dispute as to the magnitude of change from these viewpoints. In the LVIA Mr Taylor stated that the change to the view would be noticeable but not dominant as retained fence and vegetation boundaries would prevent views of all but roof and first floor elevations of

housing close to the northern boundary. This is a reasonable and accurate assessment of the visual effects from the Verney Road. The appeal proposal would indeed be noticeable, but no more than that. Similarly, on approach to Winslow in the vicinity of viewpoint 2, the visual effects of the proposed development would be limited to glimpses of the built form through the existing boundaries (LVIA photographs pp 43 and 44). The site is well contained.

- 9.37. In landscape character terms, the change which would be experienced by the user of the Verney Road would be from the countryside to an awareness of entering the urban area of Winslow. That is very much the same experience which is experienced presently, albeit some little distance further to the east.
- 9.38. The sensitivity of users of the Verney Road would fall within a fairly broad range. It is inappropriate to rely on the worst case. Even highly sensitive users such as cyclists would have used an extensive cycle route prior to arriving at the appeal site. Mr Bellars was wrong to confine himself solely to a sensitivity of "high".

#### Valued Landscape

- 9.39. This issue is relevant to both the assessment of landscape and visual effects. **Stroud** draws a clear distinction between designated landscapes and those which are not, which is common ground here. Landscapes which are not designated are dealt with by reference to their physical attributes<sup>73</sup>. The means by which one identifies a valued landscape is primarily by reference to "demonstrable physical attributes". In evidence, Mr Bellars was asked about this question of landscape value by reference to NPPF or otherwise. When asked if he took into account residents' views, he responded that "valued landscape" is a planning term, which he differentiated from "landscape value".
- 9.40. In Mr Taylor's assessment, the site and its surrounding landscape do not possess any notable or demonstrable physical attributes. They are not lifted above a mere countryside description so that it is not a valued landscape in the context of NPPF paragraph 109.<sup>74</sup> This assessment is undertaken with the benefit of the **Stroud** judgment, which post-dates the 2014 appeal. Similarly, the Tutshill appeal decision post-dates the 2014 appeal decision,<sup>75</sup> as does the appeal decision in respect of Orby Village.<sup>76</sup> This leaves the question of the role and function of the views of local people in assessing whether or not a landscape is valued for the purposes of NPPF paragraph 109. In fact, very little of the oral evidence and representations at the inquiry was on the topic of whether the landscape on the appeal site was valued or not, locally. This is indeed surprising. Nevertheless, the 2014 Inspector found, and the Secretary of State agreed, that "*The intrinsic character and beauty of the countryside on the appeal site would be lost, and there would be a resulting element of harm*".

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<sup>73</sup> CD12.6, [16]

<sup>74</sup> CT, PoE paragraph 6.25

<sup>75</sup> CD 11.9, paragraph 15, though it should be noted that the Council is challenging that decision

<sup>76</sup> CD 11.10, p124 at para 12.6

*to a landscape that is valued by local people. That value is high due to the proximity of this countryside and the associated rights of way, to the community.” [IR153]*

- 9.41. Even in the context of this finding, the Inspector recommended that the appeal be allowed.
- 9.42. Nevertheless, the role of views of local people must be distinctly reduced in the context of the **Stroud** judgment and recent appeal decisions because the correct approach to paragraph 109 is an objective assessment, not a subjective one. To the extent that the Inspector relies upon proximity of the countryside, such remains the case where the appeal proposal is an extension to an existing settlement, and in any event must take account of improved accessibility via the footpath.

#### Night Time Effects

- 9.43. The effect at night time is a makeweight point as the position of Winslow on a ridge means that it is visible at night time from relatively distant viewpoints. The impact of the appeal proposal upon such visibility is of no greater moment in the assessment of landscape and visual effects.

#### Effects Outside the Site and at Distance

- 9.44. The appeal site is undoubtedly well contained. From viewpoints such as VP7 and VP10, it is evident that the appeal site, with the proposed development, would not give rise to changes in landscape character of anything like the extent contended for by Mr Bellars. He has overstated the magnitude of change. On this basis it is unsurprising that the Inspector found [IR 152] that *“Within the scale of the wider LCAs that extend from Winslow ridge into the Claydon Valley, there would be a moderate adverse effect.”* This is slightly higher than assessed by Mr Taylor but should be understood in conjunction with the assessment of visual impact, where the Inspector found the landscape and visual effects to be acceptable. Specifically, at IR 155 he states: *“It would be in a location where the new dwellings would be set against the existing development on the ridge and it would add to it. Intervening vegetation in more distant views would serve to reduce the visual impact of the scheme to being of moderate or slight significance.”*
- 9.45. The Landscape Guidelines seek to conserve agricultural use on suburban fringes and discourage inappropriate uses, whereas the appeal site is used entirely for “horsiculture” rather than agriculture. Hence as a matter of fact the appeal site is not presently in agricultural use, nor is there any evident prospect of that. Moreover, and perhaps most importantly, the third landscape guideline is to encourage the retention and strengthening of the historic hedgerow pattern by infilling gaps and establishing new hedgerow trees. There is no dispute that the existing hedgerow pattern would be retained. Further, it is common ground that the strengthening of such hedgerows may be secured by an appropriate condition. Likewise, an appropriate condition could secure the fourth guideline which is to ensure the management of hedgerows through traditional cutting regimes.



- 9.46. The above is founded in the real appreciation which Mr Taylor showed of the landscape and visual effects. It is highly telling that he was challenged on so little of his substantive assessment. Rather, the Council has avoided engaging in those real, fundamental issues. Having seen the site, the Inspector must reach her own conclusions on the basis of an evaluation of the key viewpoints and effects. The Council is wrong to argue that the conclusions from the 2014 appeal should be adopted: they are material findings, but the evidence from this Inquiry is paramount.
- 9.47. The ninth guideline seeks to maintain and enhance connectivity. Such would be achieved because the footpath would be maintained and the associated accessibility and therefore connectivity would be enhanced.
- 9.48. Further, and lastly, the Guidelines encourage the restoration and management of ponds. It is evident from the master plan that this would be achievable, secured via an appropriate condition.
- 9.49. Taken together, the appeal proposals fully accord with the “conserve and reinforce” guidelines in respect of this key landscape character area. That is how Policy GP35 should be approached.

#### Benefits

- 9.50. These environmental benefits should not be downplayed. They contribute to the environmental dimension of sustainability. The loss of best and most versatile agricultural land is a factor to weigh in the balance here, but it is only faintly relied upon by the Council and correctly so.
- 9.51. With regard to affordable housing Mrs Jarvis agreed a number of points, including that the Housing and Economic Development Needs Assessment records that 412 households in Aylesbury Vale were likely to experience housing need which could not be met from the turnover of the existing stock.<sup>77</sup> This considerably exceeds the number of affordable housing completions, which has averaged 265 per year over the last 3 years, and the annual output of affordable homes has never reached 412. The provision of up to 74 affordable homes should be seen in this context. The parties agree that very substantial weight should be given to the provision of such affordable housing.
- 9.52. Appendix 4 to Ms Tilston’s proof clearly demonstrates that sites such as the appeal site come forward quickly. The timescale from initial grant of permission to commencement on site is typically between one and two years. It shows that the need for affordable housing is capable of being addressed in a rapid manner. This is reflected in the suggested conditions.
- 9.53. Presently, the effect of departure from the European Union upon the economic outlook is unknown. Ms Tilston identified eight particular indicators which might suggest that the economic outlook is in doubt, given the Brexit vote. Shortly before the opening of the Inquiry, there was a rash of news, financial announcements and forecasts as to the potential economic effects of Brexit. As has been made clear, the Appellant does not seek to make any prediction as to the economic future of the UK. It

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<sup>77</sup> CD9.5, paragraph 14.14

does however observe the indicators that there may be significant economic consequences of Brexit. The effects will become clear as time progresses. The Secretary of State will therefore have a clearer understanding of the likely economic conditions.

- 9.54. This matters because NPPF is a set of planning policies which incorporate strong support for the economy and for economic growth. That being so, economic circumstances are highly relevant to the application of those policies. If the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth,<sup>78</sup> and the country is in a position in which economic growth is declining or otherwise in difficulty, then it is plain that the decision must have regard to that circumstance.
- 9.55. This is a point potentially of some importance and it is raised simply to draw attention to recent events and the potential for difficult economic circumstances to have manifested themselves at the time that the decision comes to be made. There may be little or no economic effect, in which case this point falls away. Alternatively, the economic benefits of the scheme should be given greater weight if the need to promote economic growth increases. There is no need for any policy announcement in order for this reasoning to be given effect. It is the proper application of the extant policies in NPPF.
- 9.56. At the time of the inquiry, the effect upon the economy is not known. However, the decision will be made some at a later date, when the information available to the Secretary of State will be different from that which is available to the Inspector. Whether such circumstances arise or not, the economic benefits of the appeal proposal are both highly relevant and substantial, including an estimated construction spend of £19.6m, which would support 174 FTE construction jobs spread over a 7 year build out. There would be an additional 190 FTE indirect jobs in associated industries. Of the future residents, 281 might be expected to be economically active, generating a total gross expenditure of £8.4m per year.

#### Balance

- 9.57. This proposal is straightforward. It is very difficult to see why the Secretary of State would turn away a proposal in which the key elements of the decision are as follows:
- (i) There is an unmet need for housing in the District, which has persisted for some years now;
  - (ii) There is no up to date Local Plan to address the acknowledged need;
  - (iii) Adoption of an up to date and sound Local Plan is some time off;
  - (iv) Winslow is acknowledged by all to be suitable and sustainable for substantial growth;

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<sup>78</sup> NPPF paragraph 19

- (v) Future growth in Winslow will be in the open countryside, inevitably;
- (vi) There will be landscape and visual effects from such acknowledged growth;
- (vii) The proposal does not prejudice any other site from contributing to that growth;
- (viii) There is a strong, indeed tenacious, presumption in favour of the appeal proposal;
- (ix) An Inspector, appointed by the Secretary of State, has assessed the scheme as appropriate for development.

9.58. This is not a case in which the previous decision of the Secretary of State attracts any weight which is greater than the Inspector's recommendation. There is no authority for that proposition and there is not reason for it either. In fact, the competition in terms of weight resolves in the previous Inspector's favour because he is the one who heard the evidence, the submissions and had a full understanding of Winslow and the needs of the District. The Secretary of State was not in that position and, in the Appellant's view, did not give sensible and proportionate consideration to the housing needs of the District when applying WNP policies 2 and 3.

9.59. Further, this is not a case in which the consideration of alternatives is at issue. Hence, the Council's submissions concerning the VALP should be treated with some care. Their relevance is far from clear. This appeal either succeeds on the paragraph 14 Framework basis, or it does not. What is important is that residential development in Winslow is actually delivered. As Ms Tilston explained, the only residential development which is actually being delivered in Winslow is that which related to a site which was ear-marked before the WNP came on the scene. The Secretary of State needs to focus on delivery to meet need.

#### Conclusion

9.60. It is now time for the Secretary of State to give proper, proportionate and sensible effect to the housing policies in NPPF Chapter 6 in the context of an out of date neighbourhood plan. Applying the tenacious presumption which pertains in this case, the balance is plainly and strongly in favour of the proposal. If that is done, then planning permission follows.

### **10. The Case for other persons who addressed the inquiry**

#### Mr Kevin Sexton — Resident

10.1. In 2014 there was a campaign by residents to publicise the Winslow Neighbourhood Plan and the impending referendum. Since then, planning matters have become a not-uncommon subject of conversation on Winslow's street corners and across garden hedges. This is due almost entirely to residents' perception of Gladman Developments' use of planning procedure, over the last two years.

10.2. Mr Sexton reports that his neighbours make comments such as:

- But I thought that the Neighbourhood Plan would put a stop to all that!*

- What a complete waste of taxpayers' money!*
- So, what was the point in having a referendum?*

10.3. In short, residents are growing cynical about the constant attacks on their town's Neighbourhood Plan. They may not have studied the NPPF but they believe that the Neighbourhood Plan is the premier planning document for their town. Residents have been pleased to hear comments such as those by Brandon Lewis in his letter to the Chief Executive of the Planning Inspectorate. Three paragraphs are significant to this Inquiry:

*"The Government is firmly committed to neighbourhood planning, and wants to support communities who plan positively for local development needs through neighbourhood plans. Planning Inspectors taking decisions on behalf of the Secretary of State need to be fully aware of the importance the Government places on neighbourhood plans, as reflected in the National Planning Policy framework and Planning Policy Guidance. For example, the National Planning Policy Framework is clear that planning applications that conflict with a made neighbourhood plan should not normally be granted.*

*"We have also made it very clear that neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right development for their community. I am very mindful of the huge efforts made by communities preparing their plans, and that particular individuals leading the process contribute significant amounts of voluntary time, so decisions which are perceived by those individuals as going against the plan are extremely frustrating to them, particularly late in the process. Appeal decisions that appear to undermine a neighbourhood plan may also have repercussions across the country, should they impact on other communities' willingness to prepare a neighbourhood plan.*

*"We are working extremely hard to encourage and support communities in preparing neighbourhood plans, and our early evidence suggests that these plans are making an important contribution to housing delivery. Early figures show neighbourhood plans propose on average 10% more housing than the Local Plan, and that planning permissions that do have the support of the community in areas with a 'made' neighbourhood plan are advancing rapidly."*

Councillor Patricia Cawte, Chair of Winslow TC Development Committee

- 10.4. This development is not in accordance with Aylesbury Vale District Local Plan General Policy 35 and would cause harm to a highly valued landscape.
- 10.5. The NPPF is built around the presumption in favour of sustainable development and a core planning principle is that planning should contribute to conserving and enhancing the natural environment, allocating land for development based on a preference for land of lesser environmental value. The proposal would not constitute sustainable development. It would fail to recognise the intrinsic character and beauty of the countryside, to conserve and enhance the natural environment and to reuse land that has previously been developed. This development, on a greenfield site in the open countryside, would result in the loss of best and

most versatile agricultural land and would have a significant adverse visual impact on the surrounding landscape and harm the settlement identity of Winslow. Both the previous appeal Inspector and the Secretary of State agreed that the intrinsic character and beauty of the site would be lost and that there would be harm to a landscape.

- 10.6. The report of a Planning Inspector in an earlier appeal (Langley Close), which adjoins the Glebe Farm site stated that to the south and south west the land falls away quite sharply and the change in gradient emphasises the change in character from urban land to open countryside beyond and that the Furze Lane/Verney Road junction clearly delineates where the land to the west takes on an open countryside character. The development in question at this appeal is proposed to be sited on this very land - the open countryside beyond the Furze Lane/Verney Road junction.
- 10.7. This site lies outside the settlement boundary and thus conflicts with the WNP policies 2 and 3. Both policies were considered by the Secretary of State to be very important in seeking to shape future development in Winslow. Granting planning permission would undermine the spatial strategy that the WNP is based on. This proposal represents approximately 50% of the housing growth identified in the WNP. A recent application for up to 250 homes on land east of Furze Lane and within the settlement boundary was approved by AVDC, therefore this proposal for Glebe Farm would have a cumulative effect taking housing numbers above the level that is considered sustainable by the WNP. The WNP has made provision for 10% more houses than the UK population growth projection to 2033; the residents are well aware and accept that Winslow must grow but the siting of that growth has to be on sites allocated in that planning document.

Mrs Gaynor Richmond — Resident

- 10.8. Statements by Government ministers and/or included in government publications make it quite clear that allowing the appeal would be contrary to government policy.
- 10.9. The Rt Hon Greg Clark MP, then Minister of State for Decentralisation said, in the foreword to the Plain English Guide to the Localism Act Nov 2011:
- "We think that the best means of strengthening society is... to help people and their locally elected representatives to achieve their own ambitions....*
- .... The Localism Act sets out a series of measures.... They include reform to ensure that decisions about housing are taken locally."*
- 10.10. So the Localism Act is clearly meant to allow local people to make decisions about their area. In the Foreword to the NPPF, the Rt Hon Greg Clark MP, then Minister for Planning, said:
- "...in recent years, planning has tended to exclude, rather than to include, people and communities ... introducing neighbourhood planning addresses this."*

*In part, people have been put off from getting involved because planning policy itself has become so elaborate and forbidding — the preserve of specialists, rather than people in communities.*

*This National Planning Policy Framework changes that. ....we are allowing people and communities back into planning."*

10.11. The first core planning principle says "Planning should be genuinely planned, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area." Para 184 states: "Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community." So the NPPF is clearly meant to allow local people to make decisions about their area.

10.12. This is reinforced in PPG, which states "A neighbourhood plan attains the same legal status as the Local Plan once it has been agreed at a referendum and is made by the local planning authority. At this point it becomes part of the statutory development plan. Applications for planning permission must be determined in accordance with the development plan." [Paragraph: 006 Reference ID: 41-006-20140306]

10.13. Local people trying to draw up Neighbourhood Plans had a huge amount of work to do and in some cases, such as Winslow, had to do this at the same time as dealing with planning applications contrary to the Neighbourhood Plan and even a last-minute attempt to prevent the very referendum itself from taking place. It has been a great encouragement during these difficult times to have had clear support from Government. Nick Boles, then Planning Minister, in a written statement in July 2014 said:

*"Neighbourhood planning has changed this by giving communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Local communities can, for example, choose to set planning policies through a neighbourhood plan that is then used in determining planning applications. The Government remain strongly committed to encouraging the preparation of neighbourhood plans, allowing local people to get the right type of development for their communities, while still meeting the needs of the wider area. The Secretary of State is keen that all planning appeal decisions should reflect the Government's clear policy intention when introducing neighbourhood planning, which was to provide a powerful set of tools for local people to ensure they get the right types of development for their community, while also planning positively to support strategic development needs. He is therefore keen to give particular scrutiny to planning appeals in, or close to, neighbourhood plan areas to enable him to consider the extent to which the Government's intentions are being achieved on the ground."*

10.14. Brandon Lewis MP, in his Foreword to DCLG's Technical Consultation on Planning (July 2014) wrote "We have put communities in the driving seat with neighbourhood plans" and ".. there is more we can do, for example helping many more neighbourhoods and communities reap the benefits of their own neighbourhood plan". Para 1.3 of that Consultation states:

*"It is important that communities have confidence in positively prepared neighbourhood plans. The government's view is that neighbourhood plans, once made (and so part of the development plan), should be upheld as an effective means to shape and direct development in the neighbourhood planning area in question; for example to ensure that the best located sites are developed. Therefore the government's view is that the adverse impact of allowing development that conflicts with key policies in a neighbourhood plan is likely to be substantial. This should be taken into account by decision-makers, even where the local planning authority cannot demonstrate a five-year supply of housing land."*

- 10.15. In March last year Brandon Lewis MP, Minister for Housing and Planning, said the following, (Hansard 21/03/15)

*"..We absolutely hold neighbourhood plans as being of prime importance and they have weight in law ... I do wish to stress, however, while I have the opportunity to do so, that the national planning policy framework makes it very clear: where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted."*

- 10.16. In February 2016, PPG was updated and a specific reference to the situation of a made Neighbourhood Plan where there was no 5 year Housing Land Supply was added: [Paragraph: 083 Reference ID: 41-083-20160211]

*"In this situation, when assessing the adverse impacts of the proposal against the policies in the Framework as a whole, decision makers should include within their assessment those policies in the Framework that deal with neighbourhood planning."*

- 10.17. This includes NPPF paragraphs 183-185 and 198. The following month, in a letter to the Chief Executive of the Planning Inspectorate, Brandon Lewis MP stressed the Government's commitment to Neighbourhood Plans and the importance the Government places on them. As an example of this he chose the fact that the NPPF is clear that planning applications which conflict with a made neighbourhood plan should not normally be granted.

- 10.18. The Appeal should be dismissed on the grounds that it is contrary to the Winslow Neighbourhood Plan and contrary to the obvious policy and intentions of Government. The letter referred to above states: *"Appeal decisions that appear to undermine a neighbourhood plan may also have repercussions across the country should they impact on other communities' willingness to prepare a neighbourhood plan."* If the Appeal is allowed then it would drive a coach and horses through Government policy and deal Neighbourhood Planning a blow from which it would be difficult to recover.

Mr Martin Richmond — Resident

- 10.19. Mr Richmond notes that Gladman claims that the planning situation is different from the previous appeal, in that little or no weight should be given to policies in neighbourhood plans where those policies are out of date due to a lack of a 5 year housing supply. This is said to follow from

clarification by recent Court judgments. Mr Richmond thinks that the Court judgments referred to do no such thing. Since no other changes have been identified to the planning situation, it follows that the appeal should be dismissed.

10.20. In the Appellant's Planning Statement, paragraph 5.7.8 quotes paragraph 21 of the judgment in Woodcock, that the trigger in paragraph 49 applies just as much to policies in a neighbourhood plan which has been made as to other types of statutory development plan. Paragraph 21 of the letter of 20 November 2014, dismissing the previous appeal stated that the relevant housing policies in the Winslow Neighbourhood Plan were out of date and applied the presumption in favour of sustainable development. So, this point was taken into account.

10.21. Paragraph 5.7.13 of the Planning Statement then refers to the Crane vs SSCLG case, saying that it "*assists in the assessment of weight. Crane states that the weight given to out-of-date policies will normally be less, often considerably less than the weight due to policies which provide fully for the requisite of supply*". In light of this, Gladman contend that WNP Policy 2 should be given no weight." This appears to be a misreading of paragraph 71 of the Crane judgment. The first two sentences of that paragraph read:

*As Ms Lieven and Mr Smyth submit, neither paragraph 49 of the NPPF nor paragraph 14 prescribes the weight to be given to policies in a plan which are out of date. Neither of those paragraphs of the NPPF says that a development plan whose policies for the supply of housing are out of date should be given no weight, or minimal weight, or, indeed, any specific amount of weight.*

10.22. These completely contradict Gladman's assertion. The judge is not stating that the legal position is to give less weight, only what might be inferred. This is not the Government's view, as is clear from Mrs Richmond's statement. Moreover, at the end of paragraph 71 the judge says:

*However, the weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, or could it be, fixed in the case law of the Planning Court.*

10.23. Paragraph 5.7.17 onwards of the Planning Statement refers to Burton and South Derbyshire College vs SSCLG. The case concerned an emerging NP which was inconsistent with an emerging Local Plan and the Secretary of State submitted to judgement, conceding an error in law. In the Mactaggart and Mickel vs SSCLG case [Planning Statement, 5.7.20 onwards], the decision erred in the interpretation of a Ministerial Statement. These cases had nothing to do with the planning weight to be afforded to Neighbourhood Plans.

10.24. The Appellant's Full Statement of Case, in paragraph 2.1.2, contends that the planning situation is different from that at the time of the previous application. There do not appear to be any arguments supporting this in the body of the statement but there are some relevant comments in Appendix 2.



- 10.25. In the neighbourhood plan section, under the column headed 'response', the third bullet point states: *Due to the lack of a five year supply and the recent Sayers Common judgment, the housing policies in Winslow should be considered out-of-date, including the settlement boundary policy.* The fact that the policies should be considered out-of-date is not due to the Sayers Common [Woodcock] judgment. It was referred to when the previous appeal was dismissed.
- 10.26. The Site History section, under the column headed 'response', states: *"A recent court judgment, (Sayers Common) suggests that the level of weight attributed to the Neighbourhood Plan policies was incorrect in the previous application. Consequently, the planning situation has changed since the previous application."* That judgment certainly did not suggest that the level of weight attributed to Neighbourhood Plan policies was incorrect. Indeed, paragraph 107 of that judgment ends: *"Paragraphs 14 and 49 of the NPPF do not prevent any regard being had to policies which are deemed to be out of date because of the lack of a 5 year supply of housing land. Nor does the NPPF specify how much weight should be given to such policies."* Thus, no relevant changes to the planning situation have been identified.
- 10.27. The case relies almost entirely on the Woodcock judgment, that little weight now should be attached to neighbourhood plans where there is no five year housing supply. But of course the Secretary of State has now re-determined that appeal [10 February 2016]. In paragraph 26 of that letter, the Secretary of State gives substantial weight, amongst other things, to the neighbourhood plan, even though there is a lack of a five year housing supply. So the Secretary of State and his lawyers, who I am sure will have given very careful consideration to the Woodcock judgment, do not appear to believe that the planning situation has changed.

10.28. The appeal should therefore be dismissed.

Mr Victor Otter — Chairman of Y4W (Yes for Winslow)

- 10.29. Mr Otter is Chairman of the residents' group Y4W, which supported the Neighbourhood Plan through its Referendum stage. Y4W submitted written comments on 8 December 2015 but, in his oral submission, Mr Otter wished to address the question of what material changes have occurred since the Secretary of State's previous Decision.
- 10.30. There have been no significant changes which materially strengthen the Appellant's case; on the contrary, significant changes to planning policy and law have served only to strengthen the previous reasons for refusal. The material circumstances in this Appeal are remarkably similar to those in the Broughton Astley (Crane) Appeal; both cases relate to the housing policies in a "made" Neighbourhood Plan where the LPA has a shortfall in five year housing land supply, the appeal site is not allocated in the Neighbourhood Plan and the proposed development is in conflict with the Neighbourhood Plan, because it does not comply with the plan's strategy for housing development.
- 10.31. The reasoning used by the Secretary of State in the 2014 decision is very similar in a number of respects to that he used in refusing the Broughton

Astley (Crane) Appeal. In both cases, while he accepted that the proposed developments would increase housing supply, he placed very substantial negative weight on the conflict with the Neighbourhood Plan — even though each Plan was deemed to be out-of-date in terms of housing land supply. He used NPPF paragraph 198 to conclude that *"there are no material circumstances that indicate the proposal should be determined other than in accordance with the development plan"*.

- 10.32. That reasoning was challenged unsuccessfully in the Crane case. Justice Lindblom commented that:

*"The Secretary of State's application of the relevant policies of the neighbourhood plan was legally impeccable, his conclusion inevitable. This is one of those cases in which the court can say that the decision-maker's conclusion applying relevant development plan policy was not only reasonable but also plainly right."*

- 10.33. Gladman's assertion that the Woodcock ruling has somehow changed things is mistaken. In the Court of Appeal's decision, [Suffolk Coastal — [2016] EWCA Civ 168], there was also a shortfall in housing land supply. Paragraph 47 of that judgement includes the following:

*"There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment"*

- 10.34. Additionally, the role of "made" Neighbourhood Plans in determining planning applications has been clarified recently. Both guidance from DCLG and a letter from Brandon Lewis to the new head of PINS are very clear about the power of neighbourhood planning.
- 10.35. In summary, since the Secretary of State's previous decision, both the Courts and DCLG have endorsed and strengthened the reasoning he used. Conversely, there appear to have been no circumstances which have changed materially in support of the Appellant's arguments.

#### Mr Guy Hawking — Resident

- 10.36. A great deal of work went in to the preparation of the Winslow Neighbourhood Plan. The Town Council and other supporters arranged meetings and discussions and presentations to ensure that the local community understood what was being asked of them and what they wanted to see happen to their community for the future. The Consultation process sought representative views on where additional housing should be built, what the Town should look like and what amenities and services should be included to make Winslow a good place to live. There was attention paid to what locals wanted to see as the shape and scale of local expansion. The Neighbourhood Planning process was very well supported

and achieved huge and representative local involvement. As a result, the plan was agreed at a local referendum with 98% of voters in favour of their Plan on a turnout of 59.5% of the electorate. Winslow Neighbourhood Plan was made in September 2014.

- 10.37. The Plan showed that local Residents recognised the need for housing growth and supported growth. They wanted to see a dynamic and expanding community. There was hardly any parochialism and selfish thinking and the residents rose to the challenge of constructing plans to develop a sustainable growing Town. In addition, the Plan was very clear that residents welcomed expansion centred around the Town to support the High Street retail businesses and to strengthen access to the Surgery, Public Hall, Library and the local Schools. They did not want to see retail parks that swamped the scale of local expansion, or undermined the facilities in the Town centre.
- 10.38. For a town of this size, the Plan includes an above average contribution to housing. The current housing stock is now around 2,150, so around 700 new homes would represent an increase of 35%. This is a significant contribution to the housing shortage in this area. The draft Vale of Aylesbury Local Plan proposes an additional 411 homes for Winslow. If that Plan is put into place, the Neighbourhood Plan will have to be revised. Residents will want to have these additional homes built where they feel is the best place for them - that premise came over loud and clear during the consultation process and in the period up to the referendum.
- 10.39. The process of consultation and development of the Neighbourhood Plan was initially met with cynicism. Local residents were invited, encouraged and cajoled to get involved, to make their views known and be part of the Localism Act initiative. The consultation process and the subsequent promotion of the WNP was something which brought the community together. However, young people in particular were initially very sceptical about the process. They felt that there was little point in this exercise as politicians ignore their point of view and anyway large developers have the resources and cash to challenge through the legal system repeatedly until they get their way. Residents made a huge effort to involve young people and get young families to be involved in planning their community, including through social media and discussion.
- 10.40. Residents became enthusiastic about this process when they believed that their views mattered and would be taken into account in a referendum and then in future planning decisions taken by AVDC relating to the town. Residents all worked hard to help plan large growth for their home town and build the community that they hope for. They will feel cheated if that process turns out to be meaningless and their wishes are arbitrarily ignored.

Councillor Dr Gordon Wiseman, Chairman of Winslow TC, Mayor of Winslow

- 10.41. As Mayor of Winslow, Dr Wiseman is acutely aware of the feelings that this planning application, and the subsequent appeal have raised in the Town.
- 10.42. Led by the Town Council, the community was one of the very first to recognise that a Neighbourhood Development Plan was the best way

forward for meeting the community's needs, not only for housing but also job opportunities and new and improved community facilities. The Winslow Neighbourhood Plan sets out a clear vision of what the community believes is required to make the town an even better place to live in the future, meeting the needs identified by residents and improving sustainability. The Neighbourhood Plan was the result of a substantial and robust consultation process, involving 13 discrete opportunities for residents to make their views known.

- 10.43. The Neighbourhood Plan was prepared in a very positive manner, embracing the 'housing growth agenda', allowing for housing growth of over 35%. This increase is greater than that registered in the previous 20 years by both Aylesbury and Buckingham, the two major settlements in Aylesbury Vale adjacent to Winslow. Should yet another application by Gladman Developments Limited to build 1,200 homes to the North of Winslow be approved, that, together with the 700 homes allocated, would double the size of Winslow by 2031.
- 10.44. In the light of the recently published draft Vale of Aylesbury Local Plan, it is almost certain that the Neighbourhood Plan will have to be reviewed. Work on this review is expected to commence before the end of 2016. At a previous Inquiry concerning land East of Little Horwood Road, a previous Mayor advised: *"The community is wholeheartedly in support of its Neighbourhood Plan, as it is clear that developer-led housing developments do not have the best interests of Winslow at the top of their priority list."* This view was irrefutably verified when the Referendum vote took place and the scale of support became categorical. The turnout was 59.5% and the vote in favour of the Plan was 98.2%. Both figures remain amongst the highest recorded for any Neighbourhood Plan referendum so far.
- 10.45. The Appellant's various planning applications for this site are in conflict with the Winslow Neighbourhood Plan. Gladman failed to consult meaningfully with, and consider the needs and wishes of, the community. Consequently, residents banded together to oppose these applications and support their Neighbourhood Plan. The Town Council was not permitted to fund a 'YES' campaign in relation to the Referendum but a group of residents formed a Committee and asked for contributions to fund an effective 'YES' campaign; within 10 days almost £2,500 had been raised and nearly 100 residents volunteered to help such as by posting leaflets, providing information stalls, knocking on doors, putting up posters and placards.
- 10.46. In total, there have been more than 1,100 objections registered by residents to the three almost identical applications for this site, 215 for the first, 325 for the second and 565 for the third and not a single letter in support of the application. This significant public objection is due to the conflict with the made Neighbourhood Plan and the wishes of residents. The appellant is fully aware of the power of Neighbourhood Planning for communities and the status of the Winslow Neighbourhood Plan. Efforts through prolonged and costly proceedings are an attempt to weaken those that oppose them.

- 10.47. The principal reasons for the town's objections relate to conflict with WNP Policies 2 and 3; the clear directive provided by NPPF paragraph 198 that where a planning application is in conflict with a made Neighbourhood Plan, 'planning permission should not normally be granted'; and the Secretary of State's unequivocal dismissal of the previous, essentially identical, proposal at appeal. In that decision, where the Secretary of State did not accept the Inspector's recommendation, he placed "very substantial negative weight on the conflict between the appeal site and the Winslow Neighbourhood Plan."
- 10.48. If this appeal was upheld, it would set an unacceptable precedent for other countryside intrusive developments around Winslow and would very significantly undermine the Neighbourhood Plan, totally destroying the residents' of Winslow's confidence in positive Neighbourhood Planning. Furthermore, it would send out a message nationally indicating that a robust Neighbourhood Development Plan, supposedly carrying very substantial planning weight, can be ignored. This would undoubtedly deter many communities from embarking upon a Neighbourhood Development Plan and cause others, who are part way through the process, to abandon their Plans because of such a precedent. The Winslow community is well informed, supportive and socially responsible. Winslow deserves to see its excellent and sustainable Neighbourhood Plan implemented in its entirety without interference from self-interested third parties.
- 10.49. Therefore, on behalf of the community of Winslow, he requests that this appeal be dismissed, thereby supporting the Government's pledge on Localism and Neighbourhood Development Plans.

## 11. Written Representations

- 11.1. Of the four written representations received at appeal stage, three were pursued orally and are summarised above. The remaining letter, from **Mr John Hill**, states that the appeal should be dismissed, in line with the previous decision.
- 11.2. The Officer Report (CD 4.1) records that 565 objections were received. In addition to the matters already identified in the cases of the main parties, these raised concerns in relation to adverse impacts on the amenity of nearby properties and the highway network.

## 12. Conditions and Planning Obligations

- 12.1. Recommended conditions are set out at Annex A and are based on those suggested by the parties, with revisions in the light of the discussion at the inquiry and in order to accord with the advice in PPG.
- 12.2. Although the parties suggested a reduced timescale for the commencement conditions (1-3) I recommend the use of the standard timescales since the evidence as to supply and need is not such as to warrant the reduced times proposed. Conditions 4 and 5 specify the plans and the maximum number of dwellings are necessary to define the permission. The principles to be established through the design code are necessary in the interests of good design and in view of the scale of the proposal in relation to the size of the settlement. Separate conditions were

suggested for management of household refuse and lighting of public areas. However, I have incorporated them into the design code, in order to ensure such matters are considered in the context of the development as a whole. (condition 6)

- 12.3. The suggested conditions concerning, ground and finished floor levels, landscaping and surface water drainage are all necessary to ensure an acceptable form of development and to protect the character and appearance of the area. (7, 8, 9, 13) Provision of the main access and details of vehicular, cycle and pedestrian accesses and parking arrangements are necessary in the interests of highway safety and in order to protect the living conditions of future residents. (10, 11, 18) Condition 12, requiring a Construction Method Statement, is necessary to protect local living conditions.
- 12.4. Conditions 14 and 15 are necessary in the interests of the natural and historic environment. The condition to facilitate high speed broadband (16) is reasonable so as to enhance the sustainability of the development. The proposal involves improvements to the public footpath which crosses the site so that further details are required in the interests of local amenity (17).
- 12.5. Since there is no indication that the development would be phased, the suggested phasing condition is unnecessary. Although discussed during the inquiry, no condition was put forward relating to the information shown on the master plan. For the reasons set out in my conclusions, I consider that the acceptability of this proposal does not rely on any particular aspect of the master plan. Such a condition would not overcome the planning objection, so none is recommended.

#### *Planning obligations*

- 12.6. The Unilateral Undertaking is concerned with the provision of affordable housing as well as on-site playspace and open space. It also makes provision for payment of an off-site leisure contribution. Within the provision for 35% affordable housing, the arrangements allow for some provision by way of a Community Trust. This is in line with WNP policy 4, which expects 20% of affordable units to be delivered by way of a community trust or equivalent body. The amounts of affordable housing, playspace and open space are proportionate to the development proposed and are necessary in the interests of ensuring a sustainable form of development. Justification for the off-site leisure contribution is provided in the Assessment of Leisure and Cultural Facilities for Aylesbury Vale (Doc 15). The Council advises there are four other obligations relating to Winslow so that this contribution would be within the maximum for pooled contributions set by CIL Regulation 123. (Doc12)
- 12.7. The Planning Agreement is made with Buckinghamshire County Council and provides for highway works as well as contributions towards education, the Travel Plan, and public transport. The highway works would include improvements to Furze Lane as well as the local cycle and footway network. There has been some adjustment to the education contribution since 2014, to reflect current surplus capacity in the primary school. The Agreement specifies that the education contribution would be spent on

expansion of Winslow primary school, a nearby secondary school and a local special school. The financial contributions relate to works to the bridleway, improvements to public transport and provision of the Travel Plan. The County Council confirms that these all have less than five agreements and do not exceed the limit for pooled contributions. (Docs 12, 13 and 14)

- 12.8. All of the provisions would be necessary to make the proposal acceptable in planning terms and would accord with the CIL Regulations 2010 and the tests in NPPF paragraph 204.

Richborough Estates

### 13. Inspector's Conclusions

*[Numbers in square brackets refer to earlier paragraphs in the report.]*

- 13.1. It is common ground that the decision of the Secretary of State dated 20th November 2014 and the accompanying Inspector's Report is a material consideration. In substance, this proposal is largely the same as that considered in 2014, the key difference identified by the Appellant being the arrangement of open space on the indicative plan. As regards the decision-making context, the main differences are said to result from court judgements concerning the interpretation of policies, rather than due to changes in the policies themselves. During the course of the inquiry, I asked the parties to provide a view as to the legal situation where the Secretary of State had previously made a clear finding. The Appellant provided a Note on Material Considerations - 2014 Appeal (Doc 9). Although the Council agreed the underlying authorities within the note, it should be borne in mind that it did not agree with the way these authorities had been applied to the facts of the current appeal. It also provided a further authority (Doc 10f). This point is dealt with more fully in the closing submissions of the main parties. [7.1-5, 8.12-8.14, 9.7]
- 13.2. The main parties were also agreed that, in the absence of a five year supply of deliverable housing sites in Aylesbury Vale, relevant policies for the supply of housing should be considered out of date, including those in the Winslow Neighbourhood Plan. [5.2]
- 13.3. Having regard to the outcome of the 2014 appeal and the presumption in favour of sustainable development therefore, the main consideration in this appeal could be defined as follows:<sup>79</sup>

Whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the proposal, with particular reference to landscape impact, contribution to the supply of land for housing and the effectiveness of the Winslow Neighbourhood Plan, especially in terms of:

- (i) whether the finding as to landscape impact should be any different, taking into account the changes to this scheme compared to the previous proposal and in the light of the judgement handed down since the previous appeal concerning the interpretation of NPPF paragraph 109;
- (ii) whether the position regarding the supply of land for housing for the period 2015-2020 is materially different, compared to the position at the time of the 2014 decision; and
- (iii) whether different weight should be attached to any conflict with relevant policies for the supply of housing, particularly those of the Winslow Neighbourhood Plan, in the light of judgements handed down since the 2014 decision concerning

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<sup>79</sup> This is based on my Pre-Inquiry Note, Doc 1, but takes into account comments from the Council, made at the start of the inquiry.



the interpretation and application of NPPF paragraphs 14, 47 and 49.

- 13.4. In order to assist consistency in decision-making, the assessment of each of these matters begins with a summary of the Inspector's recommendation in the 2014 appeal and the Secretary of State's decision. Any point of difference in my assessment is also made clear.

### ***Landscape Impact***

- 13.5. In his report, the previous Inspector considered the effect of the proposal on the landscape and intrinsic character of the countryside and its visual impact (CD11.1, IR137-152). He concluded that the intrinsic character and beauty of the countryside on the appeal site would be lost, resulting in harm to a landscape valued by local people (IR153). The Inspector also found that there would be significant visual impacts in near and on-site views, but not such as to be harmful to local living conditions. In relation to character, the Secretary of State agreed with the Inspector, including that the value of the landscape was high, (DL11) and accepted the Inspector's assessment of visual impact (DL12).

### ***Landscape Character***

- 13.6. The site lies within the Claydon Valley LCA, which is notable for its lack of settlement and strong agricultural field pattern. The approach promoted by the landscape guidelines is to conserve and reinforce.<sup>80</sup> The Appellant also refers to an earlier assessment of landscape character, where the Claydon Valley landscape area was further subdivided into the Winslow Slopes and the Claydon Brook sub-areas.<sup>81</sup> However, since that was superseded by the 2008 Assessment, this report considers the impact on the Claydon Valley LCA. These areas are illustrated in the LVIA (CD1.5, p17), which notes that the landscape around Winslow is one of settled hilltops and ridges surrounded by lowland farmed valleys and river flood plains. [7.56-58, 7.61, 9.30]
- 13.7. I recognise that, just as in the 2014 appeal, it would be possible to develop the site whilst still retaining key elements such as the field pattern, which contribute to landscape character. It would also be possible to reinforce other elements, such as the pattern of existing trees and hedgerows. Nevertheless, the contribution of these elements would be extensively reduced as a result of being incorporated into an urban setting. [7.68, 9.32]
- 13.8. Moreover, if this site was to be developed as proposed, the built form of this part of Winslow would extend into the valley in just the same way as under the previous scheme. According to the Council, most of Winslow lies between about 120m AOD and 105m AOD whereas the appeal site lies

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<sup>80</sup> Aylesbury Vale Landscape Character Assessment 2008, LCA 5.6 Claydon Valley, see CT, Appx 10

<sup>81</sup> These were identified as LCSA 16A and LCSA 16B in the Aylesbury Vale Environmental Character Assessment 2006- see LVIA CD1.5, Fig 12 and pp16-25.

between 112m AOD and 95.5m AOD<sup>82</sup>. Even though the north eastern part of the site lies next to housing, the site is predominantly open countryside, giving it a much stronger association with the valley than the town. Consequently, it seems to me, it should be considered rural rather than urban edge in character. It is also the case, just as in 2014, that development within this part of the valley would lack historic context, which would differentiate it from Tinkers End, which follows Granborough Road and forms a route into Winslow. Having regard to these factors, I consider that the proposal would detract from the existing pattern of ridge top settlement and open, agricultural valley. [7.63, 9.33-35]

- 13.9. In its current state, the appeal site is clearly representative of the Claydon Valley LCA and makes an important contribution to its character. If the site was to be developed as proposed, its contribution would be greatly reduced, which would represent a significant, long term adverse effect on landscape character.

#### *Visual impact*

- 13.10. The visual appraisal is based on 10 locations. It is the Appellant's evidence that the proposed development would not appear prominent in the landscape, with the likely impact on the site itself being assessed as moderate, reducing to moderate-slight following mitigation and slight, reducing to slight-negligible for the wider area.<sup>83</sup>
- 13.11. The LVIA suggests the site is well-contained but this, to my mind, leads to an understatement of the likely visual impact. For example, View 1 from Verney Road is also said to be representative of views from upper floors of residential properties such as those on Langley Close as well as cyclists and motorists travelling along Verney Road, which is also part of a national cycle route. The LVIA classification of 'low-high' sensitivity does not fully acknowledge the sensitivity of the view, bearing in mind that recreational cyclists as well as residents should be regarded as high sensitivity receptors. Also, at present when travelling along Verney Road past the site, there is a clear sense of passing from the built up area of Winslow into the adjacent countryside. If the site was developed, the access would be redesigned and formalised so that the residential use would be readily apparent, notwithstanding the screening effect of any boundary vegetation. The same effect would be visible in views from properties along Langley Close. Whilst a similar sense of change from town to country would probably still be experienced further along Verney Road, the change at this location - and at the residential locations it is taken to represent - would be high adverse. I consider it would continue to be substantial, whereas the LVIA concludes this would fall to moderate, post mitigation. [7.69-71, 9.36-38, 9.44-45]
- 13.12. A similar understatement is evident when considering the assessment of views from the public footpath which passes through the site. Within the

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<sup>82</sup> I have used the Council's figures since its criticism that Fig 21 of the Design and Access Statement (CD 1.4) identifies the contours as 5m higher than they should be appears to be borne out by the contour heights shown in JB Appx 1.

<sup>83</sup> CD1.5, p41

site, the change to view 3 is assessed as low, since the footpath would run through the proposed area of open space. Whilst it may well be that views of dwellings could be screened to some degree, as suggested in the visualisation,<sup>84</sup> this view has been narrowly framed so that it looks only along the line of the footpath. In reality, any walk involves appreciation of the wider context which, in this case, would become a walk through recreational space within a large area of housing rather than through countryside. This context would be particularly evident from view 6, at the western edge of the site, where the view would include the main access road through the site, something which is not shown in the visualisation. In both these views, the impact would be substantial. Whilst there would be some mitigation and users of the footpath would be likely to become habituated to the change, I agree with the Council that the impact would continue to be substantial, rather than falling to moderate, as set out in the LVIA. [7.72-74]

13.13. Winslow itself can be seen beyond the appeal site in views from locations 4 and 5, further west along the footpath. I accept that boundary vegetation could reasonably be expected to filter views of the proposed housing. However, the town forms a relatively small proportion of the backdrop from this aspect so I do not agree that the overall effect would be sufficient to mitigate development of this scale and the extent of its intrusion into the countryside. At best, the impact might fall from substantial to moderate, whereas the LVIA assesses it as moderate-slight.

13.14. The visual appraisal does not fully recognise the level of sensitivity, nor does it establish the full extent of the likely visual impact. For these reasons therefore, I consider that the visual impact as a whole should be regarded as significantly adverse, even taking into account the mitigation indicated. [7.43-47, 9.29-31]

#### *Overall impact*

13.15. Having regard to the evidence as to landscape and visual impact, I have found no reason to differ from the findings of the previous Inspector or the Secretary of State. The Council's assessment is to be preferred, namely that the proposal would have a moderate-substantial adverse impact on the Claydon Valley LCA, bringing the proposal into conflict with Local Plan policy GP.35. Even taking into account the revisions to the masterplan, I consider that the Appellant has failed to demonstrate that there would be any identifiable lessening of the adverse landscape impacts compared with the 2014 appeal. [7.43-46, 9.31-32, 9.46, 12.5]

#### *Valued landscape*

13.16. In the 2014 appeal, the Inspector noted that this was a landscape of high value on the basis of proximity and access so that the harm should attract considerable weight in the overall balance. These points were agreed by the Secretary of State. [DL11, 13&24, IR153&181]. For this appeal, the question then arises as to whether that conclusion should be any different,

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<sup>84</sup> LVIA Appx 1

in the light of the consideration within the *Stroud* judgement as to the interpretation of NPPF paragraph 109. [9.39-40]

- 13.17. As far as interpretation of this part of NPPF paragraph 109 is concerned, the Council points out that *Stroud* does not provide a judicial definition of 'valued', although it does make clear that the term should not be taken to mean 'designated'. The Appellant draws attention to the discussion that it is not enough to rely on local popularity and that a finding of 'value' should be based on objectively identifiable features. There should be notable or demonstrable physical attributes which lift a site above mere countryside. To my mind, such an approach suggests that some sort of threshold exists, which an area must reach in order to be considered in the context of NPPF paragraph 109. [7.48-49, 9.39]
- 13.18. Whilst the judgement casts some light on how this aspect of national policy should be interpreted, there remains the issue as to if and how it might apply to the appeal proposal.
- 13.19. Adopting the Appellant's approach, any threshold would necessarily be lower than one which would merit formal designation, even at the local level, otherwise 'valued' would in practice become the equivalent of 'designated'. From this, it follows that the lack of formal designation even at the local level does not necessarily mean that this area has failed to attain such a threshold. As such, the Appellant's contention that the site and its surroundings have not been identified as demonstrating any notable physical attributes is not sufficient to conclude that the locality falls outside the scope of NPPF paragraph 109. [7.50, 7.55, 9.40]
- 13.20. The Council's landscape witness put forward the view that the expectation in NPPF that the planning system should protect and enhance 'valued landscapes' encompasses more than the term 'landscape value', as used by landscape professionals. Given the interpretation in *Stroud* that 'valued' is not the same as 'designated', there is some force in this. Nevertheless, the starting point for any objectively-based finding of landscape value must be the relevant assessment of landscape qualities, in this case set out in the Aylesbury Vale Landscape Character Assessment 2008. Moreover, as the Council points out, the area has value to the local community by reason of proximity and access. In addition, the area which includes the appeal site is identified through the Neighbourhood Plan as more sensitive to development, which provides some of the justification for the settlement boundary as defined.<sup>85</sup> Since the Neighbourhood Plan forms part of the development plan, this status must be regarded as more than popularity. For these reasons I consider that, if a threshold-based approach is followed, this site should be taken to be a 'valued landscape' within the scope of NPPF paragraph 109. [7.51, 7.53-54, 9.39, 9.42]
- 13.21. There is, however, the further question as to the implications of such a finding for the weight which this should attract in the overall planning balance. The general approach within NPPF is that the weight accorded to any consideration should be proportionate to its recognised importance. That approach is also set out at NPPF paragraph 113, which expects

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<sup>85</sup> CD6.7, paragraph 4.11

criteria-based policies to be set, which distinguish between the hierarchy of designations so that protection is commensurate with status.

- 13.22. Since the undesignated Claydon Valley would sit towards the lower end of any hierarchy of landscape value, it follows that the landscape harm identified should attract proportionate weight in the overall balance, notwithstanding the extent to which it is appreciated by those who live locally. To do otherwise and attribute high value on the basis of proximity and access could lead to an anomalous situation where a landscape of moderate quality but close to a centre of population might attract a similar or even higher degree of protection on landscape grounds than, say, an AONB, where the landscape was one of objectively better quality but its popularity was less demonstrable, owing to its remoteness. In this respect therefore, I do not agree with the previous Inspector or the Secretary of State that this should be regarded as a landscape of high value.

### ***The position in relation to housing land supply***

- 13.23. At the time of the 2014 appeal, the Council was unable to demonstrate a five year supply of deliverable housing sites. In the context of what was then known of housing need, based on an interim figure, the Inspector considered that the provision of housing should attract substantial weight. The Secretary of State agreed and, on the basis of an estimated supply of about 4.4 years, gave substantial weight to the contribution which would be made to housing supply. [IR134&182; DL10&22]
- 13.24. The Council's current assessment is that the supply of land for housing stands at 4.5 years for the period 2015-2020. This is based on an assessed need of 1065dpa which the Council is putting forward through the Draft Vale of Aylesbury Local Plan. Whilst that figure has yet to be tested, it has moved beyond the provisional figure of 1026dpa based on household projections, which informed the 2014 appeal.<sup>86</sup> On these figures, the shortfall stands at 664 units, compared with 833 units in 2014. [7.34-35]
- 13.25. The Appellant refers to the possibility that the housing requirement might turn out to be some 10,000<sup>87</sup> higher, since the duty to co-operate could result in Aylesbury having to meet housing need from neighbouring Authorities. It has also provided a critique of the Central Buckinghamshire HEDNA, which suggests the need could be as high as 1326dpa.<sup>88</sup> However, no alternative assessment of either need or supply was formally promoted by the Appellant. In addition, the Appellant confirmed at the inquiry that it relied on the Council's housing figures. Consequently, the appeal should be determined on the basis of the Council's assessment. [7.36-38]
- 13.26. The parties agree that the delivery of housing against the shortfall of 664 units should be attributed significant weight. Whilst there appears to have been a slight reduction in the extent of the shortfall since 2014, that shortfall continues to exist, the underlying figures are untested, the local plan is still at an early stage and significant matters remain to be resolved

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<sup>86</sup> CD10.1, Position Statement; CD 9.5, HEDNA

<sup>87</sup> LT, PoE, 10.1.7-9, although the VALP actually refers to 12,000

<sup>88</sup> CD9.7

as part of that process, including the role of Aylesbury Vale in meeting some of the housing need of adjacent authorities. On that basis, I agree with the parties' assessment that the delivery of housing through this proposal should carry significant weight. For the avoidance of doubt, 'significant' in this context would be equivalent to the 'substantial' weight which the matter carried in the 2014 appeal. [5.2, 7.42, 8.14]

*Policies for the Supply of Housing,*

- 13.27. The Winslow Neighbourhood Plan became part of the development plan in September 2014, which was during the period between the submission of the Inspector's report and the determination of the appeal. On the basis of a (then) draft Neighbourhood Plan, where the outcome of the examination was awaited, the Inspector concluded that the policies of the Neighbourhood Plan should attract some weight. [IR171] The Secretary of State agreed that WNP policies 2 and 3 were policies for the supply of housing which should be considered out of date on the basis of NPPF paragraph 49. [IR172, DL10] He went on to place very substantial negative weight on the conflict with the (now made) Winslow Neighbourhood Plan even though its policies relevant to housing land supply were out of date in terms of NPPF paragraph 49. [DL26]
- 13.28. In making their respective cases to this appeal, the parties particularly address the implications of the *Suffolk Coastal, Crane, Woodcock and Cheshire East* judgements as they concern the meaning and effect of NPPF paragraph 49 and the treatment of Neighbourhood Plan policies in reaching the overall planning balance.<sup>89</sup> For the purposes of this appeal, it seems to me that the main points to be taken from these judgements are that the decision maker should first of all consider the purpose of any relevant policies for the supply of housing before establishing the nature of any conflict between the proposal and those policies. When applying paragraph 49, the decision maker should review all relevant matters, so as to determine the weight which such policies should carry in order to inform a decision as to whether there are material considerations which would indicate a decision should be made otherwise than in accordance with the development plan. [7.1, 7.21, 7.30, 8.2, 8.16, 9.4-6, 9.20-21]

*The purpose of WNP policies 2 and 3*

- 13.29. Policy 3 contains the housing allocations, so that its main purpose is to serve as a policy for the supply of housing.
- 13.30. As the Appellant notes, the heart of the conflict with the development plan arises from WNP policy 2 which, it contends, should be understood primarily as a counterpart to the housing allocations. I do not accept this. The policy itself notes that its purposes are threefold: directing future development to enhance resilience and sustainability; to contain the spread of the town; and to encourage re-use of previously developed sites. Moreover, the supporting text explains that the policy establishes the key spatial priority for the parish, which consists of a town serving a wider rural area. The expressed intention of the Plan is that the open

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<sup>89</sup> CD12.1, 12.3, 12.4 and 12.12

countryside should be retained and the historic pattern of development in Winslow reinforced. The text explains that the settlement boundary derives from a number of considerations, including landscape value and the relative sensitivity to development of land beyond the urban area. Read in context therefore, I consider that the role of policy 2 is wider than simply to draw a line around an area within which development is acceptable in principle. It also aims to preserve the relationship between the town and the surrounding countryside. [7.80, 8.20-21, 9.13, 9.16-21]

*The nature of the conflict with WNP policy 2*

- 13.31. The proposal runs counter to two of the purposes of policy 2, namely to direct future development and to contain the spread of the town.
- 13.32. Insofar as the policy provides for development, there has been a modest increase in the level of identified housing need in the District since the Neighbourhood Plan was made (from 1026dpa to 1065dpa). More importantly, the emerging local plan designates Winslow as a strategic settlement to grow by 50%, which is materially greater than that on which the Neighbourhood Plan is based (35%). Current indications are that this level of growth could not be accommodated within the present settlement boundary. Although the Vale of Aylesbury Local Plan is still at an early stage, it is based on a more recent and comprehensive assessment of need so that it is reasonable to assume at this stage that the Winslow settlement boundary will have to be enlarged in order to accommodate longer term development requirements. [8.6, 9.22-23]
- 13.33. On the other hand, the settlement boundary also serves to direct development away from the Claydon Valley, towards areas of relatively less sensitive landscape. Since this is a Neighbourhood Plan, the key consideration is the relative value of the landscape within that Plan area, rather than at any larger scale. The Appellant points out that, except for the landscape question, no other harm has been articulated and the other allocations in the Plan would still be likely to come forward. This suggests that the harm to the spatial strategy of the Neighbourhood Plan might be relatively limited. However, by their very nature Neighbourhood Plans tend to have a highly specific spatial focus. The fact that this site is not only outside the settlement boundary but also within the area of more sensitive landscape means that it conflicts with this key policy on two counts. To my mind, this places the proposal in fundamental opposition to the Plan. Consequently, considerable harm would arise as a result of the conflict with the 'ambition' of the community, as expressed through their very high level of support for the Neighbourhood Plan in the referendum, in addition to the identified effect on the landscape. A reasonable possibility for expansion has been identified in site WIN0001 of the HELAA. Whilst this should not be seen as an alternative to the appeal scheme, it does show that this principle of landscape protection might survive a settlement boundary review. It is far from certain that the settlement boundary in this part of Winslow will change. As a result, I consider that there is no objective basis to reduce the weight to be accorded to the landscape protection element of WNP policy 2. [7.78-80, 8.2-4, 8.20-22, 9.13, 9.24-25, 9.59, 10.36, 10.44]

13.34. On this point therefore, I differ from the previous Inspector. He considered the proposal was not wholly incompatible with the WNP strategy, a point which was accepted by the Secretary of State. [IR178, DL16] In my assessment, this fundamental conflict means that the proposal is indeed incompatible with the spatial strategy. [9.28]

*Relevant matters*

13.35. The Appellant's case that reduced weight should attach to the conflict with WNP policy 2 relies on those factors which point to the need for additional housing in Aylesbury Vale, namely the existence, extent and persistence of the housing shortfall and the fact that Winslow is already recognised to be a sustainable location. This is supported by the reference in NPPF paragraph 49 to the operation of the presumption in favour of sustainable development where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Undoubtedly, this part of NPPF constitutes a clear expression of the importance which the Government attaches to the role of the planning system in assisting the delivery of housing. [9.10-12, 9.15]

13.36. On the other hand, NPPF paragraph 198 states that planning permission should not normally be granted for a proposal which conflicts with a neighbourhood plan. This could be interpreted as a restatement of existing planning law, since the point is also made at NPPF paragraph 196 but, as the Town Council points out, this statement is made in the specific context of a discussion of neighbourhood plans. The associated advice in the PPG makes clear that paragraph 198 should still be taken into account, even where relevant policies are deemed out of date.<sup>90</sup> Residents have drawn attention to various official statements which emphasise the status of neighbourhood planning, as well as the pattern of decisions by the Secretary of State where conflict with a Neighbourhood Plan has been at issue.<sup>91</sup> On that basis, I agree with the Town Council's assessment, that it would be more appropriate to understand this as a clear expression of the weight which should attach to the policies of a neighbourhood plan which plans positively for development. [8.2]

13.37. One other relevant factor is the action being taken to address the shortfall. In this appeal, the shortfall originates with the Local Plan and is to be addressed through that plan. In the circumstances of this appeal, this should also include measures to ensure that the Winslow Neighbourhood Plan, first made in the absence of an up to date Local Plan, will be in general conformity with the new Local Plan for the District, once that plan reaches adoption. The Town Council draws attention to WNP paragraph 3.4, which sets out the intention to review the plan. At the inquiry, it was explained that the Town Council is well aware of the importance of maintaining general conformity between the Neighbourhood Plan and the Local Plan, so that it is presently making preparations for that review to take place in tandem with the progress of the Local Plan. Draft Local Plan policy S9 provides a further incentive for Neighbourhood Plans to respond

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<sup>90</sup> ID:41-083-20160211

<sup>91</sup> See particularly the representations from Mr Sexton and Mrs Richmond as well as the evidence of Dr Saunders



to the draft AVLP's higher housing requirement, by allowing for reserve sites to come forward if a Neighbourhood Plan does not progress to submission within a year of adoption of the Local Plan. It is to be expected that there will be some mismatch in the timetables of plans prepared by different bodies, just as under previous development plan regimes. However, it is clear from the statements of those concerned with the Winslow Neighbourhood Plan that it has good prospects for being reviewed in a timely fashion and in a way that should achieve general conformity with the new Local Plan, especially in relation to housing. [8.5-6]

*The weight which such policies should carry*

- 13.38. Given the provisions of NPPF paragraph 49, the conflict with WNP policy 3 should attract considerably less weight, since it is mainly a policy for the supply of housing. There should be some reduction in the weight which attaches to the conflict with policy 2, insofar as it sets a limit to development which, on the best evidence currently available, is not compatible with the aim of meeting the full, objectively assessed need for housing. On the other hand, there should be no reduction to the weight attached to the conflict with this policy as regards its purpose of maintaining the relationship between the town and its rural surroundings.

**Other considerations**

- 13.39. The following matters were raised in relation to the 2014 appeal and remain relevant to this appeal.
- 13.40. The proposal would involve development of some 3.7ha of best and most versatile agricultural land. The considerations remain the same so that the permanent loss of such land should weigh against the proposed development, as found by the previous Inspector in 2014 and accepted by the Secretary of State [IR169, DL14]. [7.75-76, 9.50]
- 13.41. There are views across the appeal site from residential properties on Langley Close. Although these views would change from one of open countryside to one of residential development, it is clear from the illustrative masterplan [CD2.2, p43] that it would be possible to prepare a layout which achieved a suitable relationship with existing residential properties. As it stands, the proposal would not cause unacceptable harm to living conditions in relation to outlook or privacy. [7.73, 11.2]
- 13.42. Whilst residents express concerns as to implications for the local road network, the technical evidence demonstrates that highway impact would be acceptable. [11.2]
- 13.43. No case was made at this appeal as to whether the proposal represented an effective use of land or whether the standard of construction was relevant to consideration of its sustainability.

**The planning balance**

- 13.44. The proposal fails to respect and complement the site and its surroundings, contrary to saved policy GP.35 of the 2004 Local Plan. Due to its location outside the settlement boundary and the lack of requirement for a countryside location as well as the failure to maintain the intrinsic

character and beauty of the countryside, it is also contrary to policies 2 and 3 of the Winslow Neighbourhood Plan. It is therefore contrary to the development plan as a whole.

- 13.45. Given the provisions of NPPF paragraph 49, the proposal should fall to be considered in the context of the presumption in favour of sustainable development, namely that planning permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole or specific policies indicate development should be restricted. During the inquiry it was suggested that the statement that planning permission should not normally be granted where a development conflicts with a neighbourhood plan could be understood as a specific policy which indicates that development should be restricted.<sup>92</sup> I do not agree. The examples provided at footnote 9 relate to consideration of the potential environmental consequences of development. NPPF paragraph 198, read in context, is concerned with the application of policy, specifically the relationship between national policy and the development plan. Consequently, the proposal should be considered in the context of the presumption in favour of sustainable development, which sits at the heart of NPPF and is to be regarded as tenacious. [9.2, 9.57]
- 13.46. The most significant benefit of this proposal is the provision of housing in a District which lacks a five year supply of housing land. In 2014, the contribution to housing supply was accorded substantial weight by the Inspector and Secretary of State. Given the continuing evidence as to the shortfall in housing land and the under-provision of affordable housing, it should likewise attract substantial weight in this appeal. The proposal would deliver 35% affordable housing (74 units) in an area of high unmet need. This significant, social benefit should also attract substantial weight.
- 13.47. The Appellant provides evidence that the proposal would result in an estimated construction spend of almost £20m. It would support over 170 jobs during the construction period as well as about 190 jobs in associated industries. Future residents might be expected to generate gross expenditure of over £8m a year. These economic benefits should also attract substantial weight.
- 13.48. It was suggested at the inquiry that the economic benefits of the proposal could attract increased weight in the event of an economic downturn, such as appeared possible in the immediate aftermath of the referendum on membership of the EU. Such an approach would imply that the weight to be accorded to economic benefits would rise or fall in response to the health of the economy. In my opinion, this would not be consistent with the principle of sustainable development set out in NPPF, which accords equal standing to the economic, social and environmental dimensions. [7.82, 9.53-56]
- 13.49. It was also suggested that there would be some benefit to the wider community from the associated highway improvements, the education contribution and the open space and play space. In addition, the Appellant

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<sup>92</sup> Dr Saunders, evidence in chief

points to the indicative design, which includes a strong green infrastructure as well as measures to enhance the ecological value, in line with the guidelines in the LCA. One difference from 2014 is that the current proposal makes provision for a LEAP, to be delivered through a planning obligation. These measures are primarily directed towards addressing the effects of the proposed development, either to mitigate its environmental impact or to meet the needs of future residents. Any benefits to the wider community or environment would be incidental. Consequently, I consider that they should attract limited weight. In 2014, they likewise attracted limited weight. [IR182, DL22]

- 13.50. Matters which count against the proposal are its impact on the countryside and the harm to the spatial strategy of the Neighbourhood Plan. There is also the matter of the use of best and most versatile agricultural land. As in 2014, this should carry some weight against the proposal. [IR169, DL14]
- 13.51. The proposal would have a moderate-substantial adverse impact on the Claydon Valley LCA, which should be regarded as 'valued', within the terms of NPPF paragraph 109, on the basis that it is recognised as such through the Neighbourhood Plan. Nonetheless, the proportionate approach would be that this harm should attract only modest weight against the proposal, since the objectively assessed quality of the area lies towards the lower end of the range. This was given considerable weight in 2014. [DL24]
- 13.52. The proposal would be in fundamental conflict with the spatial strategy of the Neighbourhood Plan. Winslow is a first tier settlement, a sustainable location, where the settlement boundary will be reviewed in order to accommodate further housing development. On the other hand, at District level, the extent of the housing shortfall is quite modest and measures to meet housing need are being brought forward, including active consideration of a new settlement. At the local level, the existing Neighbourhood Plan plans positively for development, housing development is taking place and arrangements are in hand to redefine the settlement boundary in a timely fashion. Once the strategic requirements of the Local Plan have been formally established, there are realistic prospects that this community will again respond positively.
- 13.53. NPPF paragraph 185 does not give the neighbourhood plan any higher status than other parts of the development plan. However, as I read it, it does indicate that where a neighbourhood plan accords with the spirit of national policy, especially the aim to boost significantly the supply of housing, a strong case must be made for a proposal which conflicts with that Plan. The greater the conflict, the stronger the case required, since the neighbourhood plan is the expression of the views of the local community. The high turnout in the Winslow Neighbourhood Plan referendum and the very high measure of approval it received means there can be no doubt that the WNP is the expression of the views of the community in Winslow. The WNP displays a positive approach to development and plans for an increased level of growth. The arrangements for its review indicate this approach will continue. Consequently, notwithstanding the fact that the conflict concerns policies for the supply of housing as well as the spatial strategy, it would be

reasonable to accord very substantial negative weight to the conflict with the Neighbourhood Plan as a whole, just as in 2014 and in line with the pattern of other appeal decisions concerned with such conflict. [DL26]

- 13.54. During the inquiry, it was also contended that this appeal should not succeed because it would undermine public confidence in the system of neighbourhood planning, especially given the history of challenges to the WNP. In some circumstances, public confidence may be a consideration in its own right. However, in this appeal it seems to me that the key concern should be to maintain consistency in the appeal process, which in turn might affect public confidence in the neighbourhood plan system, rather than a freestanding consideration of public confidence. The fact that a very similar appeal was dismissed in 2014 is not in itself good reason to follow the same path in 2016. The outcome of this appeal must be based on an objective assessment of the evidence and relevant policy, even if this might lead to a different decision as, for example, in the Roseland case highlighted by the Appellant.<sup>93</sup> Reference was also made to previous development proposals by this Appellant in the locality and the Appellant's challenge to the Winslow Neighbourhood Plan through the courts. Although these appear to have given rise to strong local feelings, they do not affect the planning merits of this particular proposal. It is my view that neither of these matters should carry weight in the overall planning balance. [7.25-29, 8.3, 8.10-11, 9.26]
- 13.55. The proposal would bring substantial economic and social benefits in relation to the provision of housing, a high proportion of which would be affordable. There would also be a small benefit to the wider community. It would have a moderate adverse effect on the character of the landscape and there would be modest harm associated with the use of agricultural land. However, it would be in fundamental conflict with the Neighbourhood Plan. Due to the very substantial negative weight which attaches to that conflict, I consider that the adverse effects of this proposal would significantly and demonstrably outweigh its benefits.

## Conclusion

- 13.56. For the reasons given above, I recommend that the appeal be dismissed. However, in the event that the Secretary of State takes a different view, I recommend that the conditions in the attached Annex should be imposed.

*K.A. Ellison*

Inspector

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<sup>93</sup> CD11.4, St Just in Roseland

## APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Hereward Phillpot QC

Instructed by  
HB Public Law

He called  
Jonathan Bellars, BA, Senior Landscape Architect and Urban  
DipLA(Hons), DipUD, CMLI Designer, AVDC

Philippa Jarvis BSc, DipTP, Principal, PJPC Ltd  
MRTPI

FOR WINSLOW TOWN COUNCIL:

Mark Westmoreland Smith,  
of Counsel

Instructed by  
Winslow Town Council

He called  
Cllr Llew Monger Member of Winslow Town Council  
Ward member for Winslow, AVDC

Dr David Saunders, Local resident  
CMath, FIMA  
Neil Homer BSc(Hons), Director, RCOH Ltd  
DipTP, MRTPI

FOR THE APPELLANT:

Richard Kimblin QC

Instructed by  
Gladman Developments Ltd

He called  
Carl Taylor BA(Hons), Director, TPM Landscape  
DipLa/CMLI  
Laura Tilston BSc(Hons), Planning Manager,  
MA, MRTPI Gladman Developments Limited

**INTERESTED PERSONS:**

|                              |   |
|------------------------------|---|
| Mr Kevin Sexton              | Resident                                  |
| Councillor Patricia Cawte    | Chair of Winslow TC Development Committee |
| Mrs Gaynor Richmond          | Resident                                  |
| Mr Martin Richmond           | Resident                                  |
| Mr Victor Otter              | Chairman of Y4W (Yes for Winslow)         |
| Mr Guy Hawking               | Resident                                  |
| Councillor Dr Gordon Wiseman | Chairman of Winslow TC, Mayor of Winslow  |

**INQUIRY DOCUMENTS**

|     |    |   |
|-----|----|---|
| Doc | 1  | Pre-inquiry note dated 29 June 2016   |
| Doc | 2  | Draft settlement hierarchy assessment, July 2016  |
| Doc | 3  | Note on unsaved policy RA.9 of the Aylesbury Vale District LP 2004  |
| Doc | 4  | Post Inquiry correspondence for the 2014 appeal concerning the making of the Winslow Neighbourhood Plan and the judicial review |
| Doc | 5  | Appellant Inquiry Note on Brexit  |
| Doc | 6  | Extract from Hurstpierpoint and Sayers Common Neighbourhood Plan  |
| Doc | 7  | New Settlement Scoping Study, June 2016   |
| Doc | 8  | Representations from interested parties who addressed the inquiry   |
| Doc | 9  | Note on material considerations/2014 appeal   |
| Doc | 10 | [2012] EWCA Civ 1198, Fox Strategic Land  |
| Doc | 11 | Revised suggested conditions  |
| Doc | 12 | CIL compliance schedule (supplement to PJ1)   |
| Doc | 13 | CIL compliance schedule – Buckinghamshire CC  |
| Doc | 14 | Planning obligation – public transport contribution   |
| Doc | 15 | Assessment of leisure and cultural facilities for Aylesbury Vale, December 2012   |
| Doc | 16 | Unilateral Undertaking  |
| Doc | 17 | Planning Agreement with Buckinghamshire CC  |

**CORE DOCUMENTS*****CD 1 Submitted Application Documents***

- 1.1 Application Covering Letter, Application Form and Certificates
- 1.2 Location Plan (2013-014-A)
- 1.3 Development Framework Plan - 1686 Rev G
- 1.4 Design & Access Statement (July 2015 Rev D)
- 1.5 Landscape & Visual Assessment (July 2015 Rev B)
- 1.6a Transport Assessment (July 2015)
- 1.6b Travel Plan (July 2015)
- 1.7 Ecological Appraisal (July 2015)
- 1.8 Arboricultural Assessment (July 2015)
- 1.9 Phase 1 Site Investigation (June 2013)
- 1.10 Flood Risk Assessment (July 2015)
- 1.11 Air Quality Assessment (May 2015)
- 1.12 Archaeological Desk Based Assessment (July 2015)
- 1.13 Soil Resources and Agricultural Use and Quality Report (May 2015)
- 1.14 Foul Drainage Analysis (July 2015)
- 1.15 Statement of Community Involvement (July 2015)

- 1.16 Socio-economic Sustainability Report (June 2015)
- 1.17 Planning Statement (July 2015)
- 1.18 S106 Heads of Terms

**CD 2 Additional documents submitted after validation**

- 2.1 Utilities Appraisal (August 2015)
- 2.2 Design and Access Statement (August 2015 - Rev E)
- 2.3 FRA/Drainage Strategy Addendum Report 11049-01C-add in App A+B
- 2.4 Addendum to Transport Assessment

**CD 3 Correspondence with Aylesbury Vale District Council (AVDC)**

- 3.1 Correspondence between AVDC up to 26.10.15

**CD 4 Delegated Report and Decision Notice**

- 4.1 Case Officer Report and Recommendation - 22.10.15
- 4.2 Decision Notice 22.10.15

**CD 5 Consultee Responses**

- 5.1 AVDC Community Spaces Team (15.07.30)
- 5.2 BCC Strategic Access (15.08.04)
- 5.3 Strategic Housing Team (15.08.04)
- 5.4 AVDC Biodiversity (15.08.06)
- 5.5 BCC Archaeology (15.08.17)
- 5.6 AVDC Engineering (15.08.19)
- 5.7 BCC Lead Local Flood Authority (15.08.20)
- 5.8 Winslow Town Council (15.08.27)
- 5.9 Thames Valley Police (15.08.28)
- 5.10 Winslow Town Council (15.08.31)
- 5.11 Great Horwood Parish Council (15.10.05)
- 5.12 Winslow Town Council (15.10.16)
- 5.13 BCC Education (15.10.22)

**CD6 The development plan**

- 6.1 Saving Direction from the Secretary of State (September 2007)
- 6.2 AVDLP Chapter 3 Strategy
- 6.3 AVDLP Chapter 4 General Policies
- 6.4 AVDLP Chapter 9 Winslow
- 6.5 AVDLP Chapter 10 Rural Areas
- 6.6 Winslow Proposals Map
- 6.7 Winslow Neighbourhood Plan (September 2014)
- 6.8 WNP Basic Conditions Statement
- 6.9 WNP Site Assessments Report
- 6.10 WNP State of the Town Report and Strategic EA Scoping Report
- 6.11 WNP consultation Statement
- 6.12 WNP Examiners Report

**CD7 Supplementary Planning Documents and Guidance**

- 7.1 AVDC Sports and Leisure Facilities SPG (August 2004)
- 7.2 Sports and Leisure Facilities SPG Ready Reckoner (August 2005)
- 7.3 Affordable Housing SPD (November 2007)
- 7.4 Affordable Housing Policy Interim Position Statement (June 2014)
- 7.5 Guidance on planning obligations for education provision, Bucks CC

**CD8 Vale of Aylesbury Local Plan - VALP**

- 8.1 Issues and Options Consultation Document (October 2015)
- 8.2.1 VALP Report to Local Plan Scrutiny Committee 13.06.16
- 8.2.2 Draft VALP for Consultation, Summer 2016

**CD9 Evidence Base for the Emerging Development Plan**

- 9.1 HELAA - Draft Final Report v2 (October 2015)
- 9.2 Settlement Hierarchy Review (October 2015)
- 9.3.1 Areas of Attractive Landscape and Local Landscape Areas Advice to AVDC - Final Draft Report (October 2015)
- 9.3.2 Areas of Attractive Landscape and Local Landscape Areas Advice to AVDC - Final Report (March 2016)
- 9.3.3 Extract from Aylesbury Vale Landscape Character Assessment: LCA5.5, Claydon Tributary
- 9.3.4 Extract from Aylesbury Vale Landscape Character Assessment: LCA4.12, Winslow Ridge
- 9.4 Aylesbury Vale HEDNA, GL Hearn (October 2014)
- 9.5 Aylesbury Vale HEDNA, GL Hearn (June 2015)
- 9.6 Central Buckinghamshire HEDNA, ORS & Atkins (October 2015)
- 9.7 Regeneris Critique of the Central Buckinghamshire HEDNA (December 2015)
- 9.8 Buckinghamshire HEDNA, ORS & Atkins (January 2016)

**CD10 Five Year Housing Land Supply**

- 10.1 5 Year Housing Land Supply Position Statement (January 2016)

**CD11 Relevant Appeal Decisions**

- 11.1 APP/J0405/A/13/2205858 Land south of Verney Road, Winslow
- 11.2 APP/U1105/W/14/3001269 Land at Lees Farm, Talaton, Exeter
- 11.3 APP/F1610/A/12/2173097 Land at Top Farm, Kemble, Cirencester
- 11.4 APP/D0840/W/15/3003036 St Just in Roseland, Truro
- 11.5 APP/D3830/A/12/2189451 Land at Kingsland Laines, Reeds Lane/London Road
- 11.6 APP/R0660/A/14/2228681 Land west of Goldfinch Close, Congleton
- 11.7 APP/G2435/A/14/2228806 Money Hill, Land north of Wood Street,
- 11.8 APP/H1705/W/15/3005729 Land west of Beech Tree Close, Oakley
- 11.9 APP/P1615/W/15/3003662 Land north of Gloucester Road, Tutshill
- 11.10 APP/D2510/A/11/2161066 Land south west of Orby Village, East Lindsey
- 11.11 APP/J0405/A/14/22213924 Land East of Little Horwood Road, Winslow
- 11.12 APP/J0405/A/11/2155042 Land at Quarrendon Fields
- 11.13 APP/J0405/V/15/3014403 Land north of Aston Road, Haddenham
- 11.14 APP/J0405/A/10/2135746 Land east of Winslow, Buckinghamshire
- 11.15 T/APP/J0405/A/91/188776/P8 – Langley Close, Winslow

**CD12 Relevant Judgments**

- 12.1 Suffolk Coastal District Council v Hopkins Homes Limited and Secretary of State for Communities and Local Government and Richborough Estates Partnership LLP v Cheshire East Borough Council and Secretary of State for Communities and Local Government (17th March 2016) EWCA Civ 168 [2016]
- 12.2 Statement of Facts and Grounds, S288 Challenge, Sandbach Road North Alsager CO/17165/2013
- 12.3 Woodcock Holdings Limited v Secretary of State for Communities and Local Government and Mid-Sussex District Council (1st May 2015) EWHC 1173 (Admin) [2015]



- 12.4 Crane v Secretary of State for Communities and Local Government and Harborough District Council (23rd February 2015) EWHC 425 (Admin) [2015]
- 12.5 Anita Colman v Secretary of State for Communities and Local Government and North Devon District Council and RWE Npower Renewables Limited (9th May 2013) EWHC 1138 (Admin) [2013]
- 12.6 Stroud District Council v Secretary of State for Communities and Local Government and Gladman Developments Limited (6th February 2015) EWHC 488 (Admin) [2015]
- 12.7 Wychavon District Council v Secretary of State for Communities and Local Government and Crown House Developments Limited (16th March 2016) EWHC 592 (Admin) [2016]
- 12.8 North Wiltshire DC v. Secretary of State for the Environment (1993) 65 P&CR 137, the Court of Appeal
- 12.9 Gladman Developments v Aylesbury Vale District Council and Winslow Town Council 18th December 2014 EWHC 4323
- 12.10 Edward Ware Homes Ltd v SSCLG and Bath and North Somerset Council 27th January 2016 EWHC 103
- 12.11 SSCLG v West Berkshire District Council and Reading Borough Council 11th June 2016 EWCA Civ 441
- 12.12 Cheshire East Borough Council v SSCLG & Renew Land Developments Ltd 16th March 2016, EWHC 571

**CD13 Other Documents**

- 13.1 House of Commons Debate, Hansard (24th October 2013)
- 13.2 Verney Road Decision Notice (13/01672/AOP)
- 13.3 Letter of 27 March 2015 from Brandon Lewis MP to the Chief Executive of the Planning Inspectorate concerning landscape and prematurity
- 13.4 WMS, Neighbourhood Planning, 10 July 2014
- 13.5 Closing submissions on behalf of AVDC, 2014 appeal
- 13.6 Extract from Inspector's Report on the AVDLP, February 2003

## **Annex 1: Conditions**

- 1) Details of the appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority no later than three years from the date of this permission.
- 3) The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following plans:
  - i) Location Plan – 2013-014-005A
  - ii) Preliminary Junction Layout – Stirling Maynard 10000/03/29
- 5) No more than 211 dwellings shall be constructed within the site.
- 6) A Design Code shall be submitted to and approved in writing by the local planning authority prior to the first Reserved Matters application for the development. The Design Code shall demonstrate how the objectives of the Design and Access Statement will be met and shall take account of the drawings referred to in condition 4 above. Development shall be carried out in accordance with the principles in the approved Design Code. The Design Code shall include:
  - i) Principles for determining the quality, colour and texture of external materials and facing finishes for roofing and walls of buildings and structures including opportunities for using recycled construction materials;
  - ii) Principles of built-form strategies to include density and massing, street grain and permeability, street enclosure and active frontages, type and form of buildings including relationship to plot and landmarks and vistas;
  - iii) Principles of hard and soft landscaping including the inclusion of important trees and hedgerows;
  - iv) Principles for determining the design of structures (including street lighting, lighting and boundary treatments for commercial premises, street furniture and play equipment);
  - v) Principles for determining the design of the public realm, areas of public open space, areas for play (including details of maximum walking distances from and buffer zones to adjacent properties of LEAPs and NEAPs);
  - vi) Principles of conservation of flora and fauna interests and encouragement of biodiversity;
  - vii) Principles of hierarchy of streets and spaces;

- viii) Principles for the alignment, width, and surface materials (quality, colour and texture) proposed for all footways, cycleways, bridleways, roads and vehicular accesses to and within the site (where relevant) and individual properties;
  - ix) Principles for on-street and off-street residential vehicular parking and/or loading areas;
  - x) Principles of cycle parking and storage;
  - xi) Principles for the provision of refuse and recycling storage facilities;
  - xii) Principles for the lighting of public areas; and
  - xiii) Principles for the provision of public art as an integral part of the development
- 7) No development shall take place until full details of existing and proposed ground levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No development shall take place until details of the internal finished floor levels of the dwellings hereby permitted in relation to the existing and finished ground levels have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) Landscaping details submitted in accordance with condition 1 shall include:
- i) Means of enclosure/ boundary treatments;
  - ii) Hard surfacing materials;
  - iii) Minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting, etc.);
  - iv) Existing landscape features such as trees, hedges and ponds to be retained, and measures for their protection before and during the course of development;
  - v) Existing landscape features such as trees, hedges and ponds to be removed;
  - vi) Planting plans (including written planting specifications and plans with schedules of plans noting species, plant sizes and proposed numbers/densities where appropriate); and
  - vii) An implementation programme/Management and Maintenance Plan.
- 10) No development shall take place until a scheme for the laying out, construction, surfacing, drainage, and where relevant adoption, of the vehicular, cycle and pedestrian accesses to the site and its buildings, vehicle manoeuvring areas and visibility splays, and the phasing of these works, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme and the vehicular, cycle and pedestrian accesses, manoeuvring areas and visibility splays shall be retained thereafter. No dwelling hereby permitted shall be occupied until the estate roads which

provide access to it from the existing highway have been laid out in accordance with the approved details.

- 11) No development shall take place until a scheme for the provision of parking for cars, cycles and powered two-wheelers has been submitted to and approved in writing by the local planning authority. Details shall include the number, type and design of all parking facilities. The parking facilities in relation to any single dwelling shall be implemented as approved prior to first occupation of that dwelling, and shall be retained and remain available for use by the occupiers of the development at all times thereafter.
- 12) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall take into account the phasing of development and provide for:
  - i) The parking of vehicles of site operatives and visitors;
  - ii) The loading and unloading of plant and materials, and the scheduling of HGV deliveries to avoid peak times of highway use associated with Furze Down School;
  - iii) Storage of plant and materials used in constructing the development;
  - iv) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate, and lighting;
  - v) Measures to prevent mud from vehicles being deposited on the highway;
  - vi) Measures to control the emission of dust, dirt and noise during construction;
  - vii) A scheme for recycling/disposing of waste resulting from demolition and construction works; and
  - viii) Hours of construction and demolition works.
- 13) No development shall take place until a scheme for surface water drainage works has been submitted to and approved in writing by the local planning authority. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development. The drainage strategy shall demonstrate the surface water run-off generated up to and including the 100 year critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall include details of: all elements of the proposed drainage systems; overland flow routes and subsequent flood risk in the event of surface water system failure; provide a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. The surface water drainage scheme shall be implemented in accordance with the approved details and any phasing within them.

- 14) No development shall take place until a scheme of ecological enhancement in accordance with the Ecological Appraisal by FPCR Environment and Design Ltd, dated July 2015, has been submitted to and approved in writing by the local planning authority. The scheme shall make provision for: the planting of new hedgerow to compensate for that lost through development; areas to be seeded with wildflower meadow that shall include locally native species of grass and flowers; details of the pond and associated planting; the installation of bat and swift boxes; and an implementation programme. Development shall be carried out in accordance with the approved details.
- 15) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 16) No development shall take place until details of measures to facilitate the provision of high speed broadband for the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 17) No development shall take place until details of the upgrade of public footpath 4, which crosses the site from east to west, to a bridleway have been submitted to and approved in writing by the local planning authority. Public Footpath 4 shall be resurfaced to footway specification to a width of 3.0m. Development shall be carried out as approved.
- 18) No other part of the development shall begin until the visibility splays shown on the plan: Preliminary Junction Layout – Stirling Maynard 10000/03/29 have been provided. The areas within the visibility splays shall be kept free of any obstruction exceeding 0.6m in height above the nearside channel level of the highway.

ENDS



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

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

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

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

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

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

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

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