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## Appeal Decision

Inquiry held on 13, 14, 15, 16, 20 and 21 February 2018

Site visit made on 21 February 2018

**by R J Jackson BA MPhil DMS MRTPI MCMi**

an Inspector appointed by the Secretary of State

Decision date: 04 May 2018

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**Appeal Ref: APP/Y0435/W/17/3182048**

**Land off Olney Road, Lavendon MK46 4ET**

- 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 Milton Keynes Council.
  - The application Ref 17/00165/OUT, dated 20 January 2017, was refused by notice dated 14 July 2017.
  - The development proposed is outline planning application for the erection of up to 95 dwellings with public open space, landscaping and sustainable drainage systems (SuDS) and vehicular access point from Olney Road MK46 4ET. All matters reserved except for means of access.
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### Decision

1. The appeal is allowed and planning permission is granted for erection of up to 95 dwellings with public open space, landscaping and sustainable drainage systems (SuDS) and vehicular access point from Olney Road MK46 4ET. All matters reserved except for means of access at Land off Olney Road, Lavendon MK46 4ET in accordance with the terms of the application, Ref 17/00165/OUT, dated 20 January 2017, subject to the conditions in the Schedule to this decision.

### Procedural matters

2. As stated in the heading the application was made in outline with all matters reserved except access. I have considered the appeal on that basis. In addition, at the application stage, the then applicant submitted, and then amended, a Development Framework Plan on an illustrative basis to show a possible disposition of the development on site. A number of additional reports and clarifications were also submitted and the Council based its decision on these revised documents. I have used the revised plan, on an illustrative basis, and revised documents in making my decision.
3. In relation to land supply issues the Council has published a number of documents to show its contention that it could demonstrate a five year supply of land for housing. However, the evidence given to the Inquiry in this respect gave a slightly different approach providing the professional opinions of a consultant. His view was that the Council could demonstrate that supply but on a similar, although slightly different, basis. At the opening of the Inquiry I asked under which approach the Council was making its case and

was advised that it was that proposed by the consultant. I have therefore used that approach alone for the purposes of considering the Council's case in making this decision.

4. By the end of the Inquiry a Planning Obligation by way of Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) dated 20 February 2018 was submitted to the Council. The Council indicated that this overcame the second of two reasons for refusal. However, as this Obligation has a "blue pencil" clause in it, I will discuss it further below.
5. Following the closure of the Inquiry an appeal decision<sup>1</sup> relating to Land at Long Street Road, Hanslope (the Hanslope decision), which included a number of similar topic areas, was issued and was brought to my attention by the appellants who also made a comment. The main parties were given the opportunity to make further representations in light of this decision. Neither did so, but I have taken this decision into account in my reasoning below.

### **Main Issues**

6. The main issues are:
  - the relationship of the proposal to the development plan for the area;
  - the effect on the character and appearance of the area;
  - whether the proposal makes appropriate provision for affordable housing, education, leisure, social infrastructure and sustainable construction; and
  - whether there are any other material considerations, including the housing land supply situation and benefits of the proposal, which would indicate that the proposal should be determined otherwise than in accordance with the terms of the development plan.

### **Reasons**

#### *Development Plan*

7. The development plan for the area includes the Milton Keynes Local Plan 2001 – 2011 Adopted December 2005 (the LP) and the Milton Keynes Core Strategy: Adopted July 2013 (the CS).
8. Policy CSA of the CS indicates that in considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework (the Framework). It will work to secure development that improves the economic, social and environmental conditions in the area. The policy indicates that where relevant policies are out-of-date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise – taking into account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate that development should be restricted. In this regard it was agreed that no such specific policies were material to this proposal.

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<sup>1</sup> APP/Y0435/W/17/3177851

9. The appellant argued that this meant that if policies were considered to be out-of-date then the grant of planning permission in these terms would be in accordance with the development plan. However, this presupposes that relevant policies are out-of-date and I will deal with this issue later in this decision.
10. Policy CS1 of the CS sets out the Milton Keynes Development Strategy. This indicates that the provision of new homes and jobs will take account of the Settlement Hierarchy set out in Table 5.1 of the Plan. The majority of new homes and jobs will be focused on, and adjacent to, the existing urban area of Milton Keynes. There is provision for a Strategic Land Allocation to the east of the city; this is known as the Eastern Expansion Area. In addition to this Strategic Land Allocation other non-strategic development sites will be brought forward through a Site Allocations Plan (the SAP) to provide short term flexibility and contingency ahead of a full review of the CS (and in reality the LP) in a new document entitled "Plan:MK".
11. For the remainder of the Borough, Policy CS1 of the CS indicates that development will be concentrated in the key settlements of Newport Pagnell, Olney and Woburn Sands, a limited amount of new housing at Sherington, and small scale redevelopment and infill development will be permitted in 'Other Villages', which includes Lavendon. This lies at the bottom of the hierarchy. It was agreed that the appeal site fell outside the settlement boundary of Lavendon and thus did not accord with this part of the policy. It was agreed, however, that if this appeal were permitted, along with other appeals currently in front of the Secretary of State or his Inspectors, then this would not affect the fact that the majority of development would still be focused on Milton Keynes itself.
12. Policy CS9 of the CS sets out the Strategy for the Rural Area. This indicates that the Council will prepare the SAP to identify land that can assist the delivery of an average of 110 homes per year (or dwellings per annum (dpa)) in the rural area. The Settlement Hierarchy in Policy CS1 of the CS provides the sequence for prioritising site selection. Appropriate infill development will be allowed in villages with development boundaries, with these boundaries being updated in the SAP and Plan:MK. As the proposal does not represent infilling and is outside a development boundary the proposal is contrary to this policy.
13. Policy CSAD1 of the CS indicates that the Council will undertake an early review of the CS in the form of Plan:MK to 2031 or later with the aim of having an adopted plan in place by 2015. The policy indicates this will be led by the Framework approach of an objective assessment of housing, employment and other needs and the requirements of the duty to co-operate with adjoining authorities. Plan:MK has been delayed and has only reached proposed Submission Draft stage. However, the failure to have Plan:MK adopted by 2015 does not mean that the development plan is out-of-date, particularly as it was only an aim to have the plan in place by that date. This therefore does not affect whether the proposal is in compliance or in conflict with this policy and consequently the consideration of the proposal is neutral against the terms of this policy.
14. Turning to the LP, Policy S10 defines all land outside the development boundaries as open countryside. In this location planning permission will only

be given for development that is essential for agriculture, forestry, countryside recreation or other development which is wholly appropriate to a rural area and cannot be located within a settlement. The proposal is contrary to this policy as it does not fall within these categories of development which are acceptable. I will look at whether the policy is consistent with the Framework below.

15. Policy S11 of the CS defines two Areas of Attractive Landscape (AALs) including the Ouse Valley, north and west of Newport Pagnell. The appeal site lies on the northern edge of this designation. Here development should not damage the special character of the area, it should enhance important landscape features where possible, protect and enhance features of nature conservation value and retain and improve public access and opportunities for countryside recreation. Provided any development meets these four criteria there would be compliance with the policy. I will look at these below, particularly in relation to the second main issue. It was agreed that a failure to meet with any one of the criteria would mean that the proposal would be contrary to the policy. Again I will consider whether the policy is consistent with the Framework below.
16. Taking the development plan as a whole, I am of the view that by proposing residential development outside an "Other Village" in an area of open countryside the proposal is contrary to its terms. It is clearly contrary to Policy S10 of the LP and Policy CS9 of the CS. While Policy CS1 of the CS pulls both ways in my view it must be read in the context of Policy CS9. To understand Policy CS1 in any other way would permit unrestricted development away from the main focus in Milton Keynes. This would be contrary to the objectives of the CS. Compliance with Policy CSA depends on whether the policies for the supply of housing land are up-to-date, which I will explore below, and I have already found that in respect the Policy CSAD1 is proposal is neutral.

#### *Character and appearance*

17. The appeal site lies to the south of the village of Lavendon. It consists of three agricultural fields which together have an area of 8.24 ha. It has a public footpath that runs in a north/south direction between the two larger eastern and western fields, and there is also a smaller, northern field. The landform in general terms falls from east to west as there is a natural watercourse running a short distance to the west of the appeal site. However, the fall of the landform is not uniform, as there is a small "step" between the eastern and western fields, which are also divided by an unmaintained hedgerow, and the downward slope undulates. There is a narrow strip of land between the appeal site and the watercourse outside the appeal site but within the appellant's control and there is an existing field entrance to Olney Road at the northern end of this strip.
18. To the west of the watercourse for approximately half of the depth of the appeal site field lies residential development in Jacks Close. The landform rises to the northwest, where there is residential development which steps down towards the watercourse. Immediately to the north of the appeal site is Olney Road with an unmanaged hedgerow as the boundary. On the opposite side of Olney Road is either frontage development or short culs-de-sac of residential development.

19. Further to the north along Olney Road is the village centre with a convenience store and public house. There is also the Grade I listed Church of St Michael which, with its tower, acts as a focal point above the main built development form in the area, and Lavendon School. The Lavendon Conservation Area also lies in this general area and abuts the appeal site at the northeastern corner of the appeal site. There is a low factory building set into a cutting to the north of the appeal on the same side of Olney Road as the appeal site. There is a small block of woodland to the northeast of the appeal site which lies outside the Conservation Area.
20. To the south the landform falls gently to the B565, where the gradient increases slightly and then more steeply to the River Great Ouse.
21. Although the Development Framework Plan is only illustrative the Inquiry proceeded on the basis that this plan set the general principles that development would follow. It was agreed that if the appeal was to be allowed, a condition requiring any reserved matters layout to be in accordance with the general principles outlined on that plan would be necessary as the effects would have been judged against it.
22. The Development Framework Plan shows that the northern field would remain clear from built development although it might contain a community garden or orchard. On this basis it was agreed by the main parties, and I concur, that the proposal would preserve the character and appearance of the Conservation Area and its setting. It was also agreed that the proposal would not affect the settings of any listed buildings and thus the significance of them as designated heritage assets; I again agree with that conclusion.
23. The new access would be in the northwestern corner of the appeal site and would involve the loss of a section of hedgerow. Built development would be located on the eastern and western fields although the central hedgerow would remain (other than to construct two accesses through it) with the route of the public right of way undisturbed. On the western field built development would be approximately to the depth of the built development on Jacks Close, and on the eastern field would be approximately this depth adjacent to the hedgerow, but approximately half this depth on the eastern side. The Development Framework Plan shows that the southern parts of the eastern and western fields, consisting of approximately 4.9 ha, would be open space. This would include a Sustainable Drainage System (SuDS) basin and a Local Equipped Area of Play (LEAP) as well as footpaths around the perimeter of the site and across it in a number of locations. The Plan indicates that the roads through the site would be orientated to views of the Church of St Michael and the spire of the Olney Parish Church of St Peter and St Paul in the distance.
24. Policy S11 of the LP requires development should not damage the special character of the area. It is thus necessary to explore what is the special character. The appellants stated that the character of the area was never defined, noting that when the AAL had been extended to include the appeal site and its environs, it was noted that the area represented a "fairly undistinguished landscape along the sloping ground to the south of Lavendon". It was also noted that the extension to the AAL was designated to ensure a consistent boundary with other previously designated land elsewhere rather than for any other reason.

25. The appellant therefore took the view that the appeal site did not have any "special characteristics". However, whatever the genesis of the policy, any special characteristics should be understood in the light of current landscape assessment methodologies and best practice.
26. As part of the supporting evidence for Plan:MK the Council has produced a Landscape Character Assessment which has described the variation in the character of the landscape. Under this, the landscape is classified and described in terms of Landscape Character Types and Landscape Character Areas (LCAs). The appeal site and the surrounding land in the area, particularly to the south to a short distance beyond the B565, lies in Landscape Character Type 5 Undulating Clay Farmland, and in Landscape Character Area 5a Ouse North Undulating Clay Farmland. The valley close to the river itself is, however, in a different Landscape Character Type and Landscape Character Area<sup>2</sup>.
27. LCA5a is described as comprising of undulating arable landscape with fine panoramic views. There is a mixed field pattern with enclosure fields and larger twentieth century fields, enclosed by hedgerows or limestone walls. Woodland cover is generally limited. The landscape is punctuated with limestone villages, with landmark church spires and towers. Within the Landscape Character Assessment the church spire at Olney is specifically mentioned, as are some others, but not the church tower at Lavendon. In my view this description well describes the area and thus sets out its special character.
28. The condition of the landscape is described as moderate due to the fragmentation of the historic field pattern and the fragmentation of woodland. In addition the presence of pylons and visual prominence of wind farm towers lowers landscape condition. It is stated that uncharacteristic built development on the edge of the villages in the LCA has affected the setting of villages in the landscape, although it does not say in what way this built development is "uncharacteristic", whether through its architecture, materials or in some other way.
29. The application was supported by a Landscape and Visual Impact Assessment (LVIA). This acknowledged that the urbanisation of agricultural fields would have adverse effects both in landscape and visual terms. In addition, the LVIA only looked at the effects in the fifteenth year following the completion of the development and did not assess its effects in the interim, which, inevitably, would be greater. Although the appellants sought to downplay this, in both landscape and visual terms in certain locations the effects of the development were "adverse" which can only be described as harmful. The degree of harm is a different matter.
30. Having passed through the appeal site the footpath continues further to the south. However laid out, the introduction of residential development on the appeal site would lead to a loss of views of the Lavendon church tower from the approach along certain locations on the footpath from the B565. In addition, what is currently a walk through an entirely agricultural field would be changed, heading north from the B565, firstly through a managed open space, and secondly through a housing estate even if the footpath were kept separate. However, the extent of change would be limited to the extent of

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<sup>2</sup> LCA 2a Ouse Rural River Valley

the appeal site and a relatively short distance to the south, and there would be a very limited effect on the wider landscape. The loss of view of the Lavendon church tower would be limited in extent and it must be remembered that the significance of the church as a designated heritage asset or its setting as such would not be affected by the proposal.

31. From the north, views would be restricted by existing built development in Lavendon. However, from the footpaths to the north of the village (views 21 and 22 in the LVIA), the rural backdrop of the village would be lost as a result of any development constructed on the eastern field. The LVIA indicated that the magnitude of change would be "Low", and thus the visual effect would be slight adverse. Again this would be harmful, but the effects should be described as limited due to the nature of the location and views.
32. As noted above, the condition of the area is adversely affected by pylons. The larger national grid lines have the greatest effect and these are not proposed to be altered. However, the appeal site is crossed by electricity lines on wooden poles, including a "crossing" in the eastern field; these harm the character and appearance of the area. The appellant indicated that that these would be removed, and this could be secured by condition. This would, to some small extent, reduce the harmful effects of the development.
33. The Council sought to show that the AAL designation meant that the appeal site should be considered as part of a valued landscape for the purposes of paragraph 109 of the Framework. However, as pointed out by the Courts<sup>3</sup>, designation means designation and valued means valued.
34. Paragraph 113 of the Framework indicates that local planning authorities should set criteria based policies against which proposals on landscape areas should be judged, with distinctions based on the hierarchy of international, national and locally designated sites. The Council's approach was to indicate that in the absence of any international or national designations in the area, the AALs differentiated between locally designated and thus valued landscapes and the remaining non-designated landscape.
35. However, to be a valued landscape it has to have some demonstrable physical attributes<sup>4</sup> to make it in some way out of the ordinary. As the report behind the designation of the site and its environs as an AAL in the first place made clear it is part of a fairly undistinguished landscape. All landscape is in one sense unique; it is in a single location. I do not think that the appeal site and its surroundings could be reasonably described as a valued landscape; it is separate from the close river valley (the difference in Landscape Character Types and Areas is set out above) which is more sensitive, and rather forms a pleasant but unremarkable area of countryside.
36. When looked against what I have identified as the special character of the area and considering the proposal against the first criterion of Policy S11 of the LP the proposal would have no effect on the mixed field pattern, woodland cover would be increased, but views of the church tower would be partially lost. Overall this would be neutral.

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<sup>3</sup> *Stroud District Council v Secretary of State for Communities and Local Government and Gladman Developments Limited* [2015] EWHC 488 (Admin), paragraph 13.

<sup>4</sup> *Ibid*, paragraph 16

37. The second criterion is that the proposal should enhance important landscape features where possible. In this regard the Council did not suggest that the site exhibited any such landscape features beyond that it was a pleasant area of countryside. However, insofar as the proposal would increase the amount of woodland cover, which has been seen as being eroded in the Landscape Character Assessment, the proposal would be beneficial.
38. While not strictly part of the consideration of character and appearance it makes sense to look at the remaining criteria in Policy S11 of the LP at this point.
39. The third criterion is that the proposal should protect and enhance features of nature conservation value. In this regard it was agreed by the main parties, and I concur, that the proposal would have a small net benefit to biodiversity. As such there would be compliance with this criterion.
40. Finally, proposals should retain and improve public access and opportunities for countryside recreation. The existing right of way would be retained, which is different from the nature of its environs, and the southern part of the eastern and western fields along with the northern field would be made available for public recreation. However, this would be a managed open space rather than an area of countryside.
41. Taken together, I am satisfied that the proposal would comply with the requirements of Policy S11 of the LP, but would be contrary to Policy S10 of the LP in that it would represent an urbanisation of open countryside. The harm caused by this would be limited.

*Affordable housing and infrastructure*

42. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) states a planning obligation may only constitute a reason for granting planning permission if the obligation passes three requirements. This is reiterated in paragraph 204 of the Framework. These requirements are that the Obligation is necessary to make the development acceptable in planning terms, that it is directly related to the development and fairly and reasonably related in scale and kind to the development.
43. Regulation 123 of the CIL Regulations also states a planning obligation may not constitute a reason for granting planning permission for the development to the extent that the obligation provides for the funding or provision of relevant infrastructure where five or more separate planning obligations provide for the funding or provision of that project or provide for the funding or provision of that type of infrastructure.
44. Policy CS21 of the CS indicates that new development that generates a demand for infrastructure will only be permitted if the necessary on and off-site infrastructure required to support and mitigate the impact of that development is either already in place or there is a reliable mechanism in place to ensure it will be delivered in the right place at the right time. The policy also indicates that this will be supported by a new Planning Obligations Supplementary Planning Document (SPD) to cover infrastructure and service requirements.



### Affordable Housing

45. Policy CS10 of the CS indicates that an affordable housing target will be set in Plan:MK, but in the interim the amount of affordable housing sought on qualifying sites as set out in the Affordable Housing Supplementary Document 2013 will continue to be determined with the target of 30% set in Policy H4 of the LP on sites of 15 or more units.
46. The Planning Obligation makes provision for 30% of the dwellings to be affordable housing. There remains a continuing need for affordable housing in the Council area. I am therefore satisfied that the obligation is necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. Affordable housing is not defined as infrastructure, so Regulation 123 of the CIL Regulations is not engaged.

### Public Transport

47. Paragraph 32 of the Framework indicates decisions should take account of opportunities for sustainable transport modes to be taken up, depending on the nature and location of the site, to reduce the need for major transport infrastructure. The Planning Obligation makes provision for a voucher entitling the first occupier to apply for an all services bus pass to encourage the use of these modes, with a new bus stop being indicated on the Development Framework Plan on Olney Road outside the appeal site. It also makes provision for bus information in a Travel Information Pack for distribution. I am satisfied that the obligation is necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. Such a bus pass is not defined as infrastructure so Regulation 123 of the CIL Regulations is not engaged.

### Education Facilities

48. The Council published an Education Facilities Supplementary Planning Guidance in 2004. Although this is now of some vintage the quantum of contributions sought has been updated, lastly in 2009.
49. The proposal would increase the need for the use of both primary, including early years, and secondary, including Post 16, education facilities from its occupants. At both primary and secondary levels the evidence shows that there is no spare capacity in the relevant schools. Indeed the Chair of Governors of the primary school in Lavendon gave evidence to this effect. However, he did indicate that the school was currently providing education for those outside the village. He also indicated that the only location for expansion would be on the school playing fields. The evidence from the Council, however, was that this additional capacity could be delivered within the confines of the existing building or extensions to provide additional teaching space, and I am satisfied that it could be delivered.
50. In light of the evidence I am satisfied that the contributions are necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. It was also confirmed by the Council at both primary and secondary levels that the totting-up provisions of Regulation 123 had not been breached.

### Health Facilities

51. The Council has published a Social Infrastructure SPD. NHS England and the local NHS Clinical Commissioning Group have indicated that the nearest medical practice is already operating close to its capacity and are seeking a contribution to expand this facility. Local residents confirmed their understanding of the capacity issue. The proposal will result in additional population seeking to use such facilities. I am therefore satisfied that the contribution is necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. It was also confirmed by the Council that the totting-up provisions of Regulation 123 had not been breached.

### Public Art and Heritage and Voluntary Sector

52. The Council's Arts and Public Art Strategy is designed to connect people with places to enhance identity and cultural well-being. The Voluntary Sector is also important in ensuring the new population introduced by the proposal integrates into the local community. In the context of the appeal proposal a contribution would be used to deliver a project within or within the immediate vicinity of the site to engage the residents of the proposal and those of Lavendon to create identity and connect the proposal with the existing neighbours. This is in line with paragraph 61 of the Framework which indicates that decisions should address the connections between people and places and the integration of new development into the built and historic environment. I am satisfied that the contributions are necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. Such provisions does not represent infrastructure under the CIL Regulations so Regulation 123 is not engaged.

### Burial Facilities

53. The Lavendon Parish Council has a costed scheme for the expansion of the local cemetery. The additional population of the appeal proposal would increase the need for these facilities. I am satisfied that the contribution is necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. I am also advised that the totting-up provisions of Regulation 123 are not breached.

### Waste Management and Waste Receptacles

54. The increase in population would increase the need for waste facilities in the area, and each dwelling would require appropriate facilities for waste and recycling. I am satisfied that the provisions within the Planning Obligation are necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. Such provisions does not represent infrastructure under the CIL Regulations so Regulation 123 is not engaged.

### Emergency Services

55. The additional population created by the development would increase the need for emergency services, particularly in a rural area, and the contribution secured under the Planning Obligation would be used to deliver additional

equipment to meet that need. In the absence of any contrary information I am satisfied that the contribution is necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. Such provision does not represent infrastructure under the CIL Regulations so Regulation 123 is not engaged.

#### Inward Investment and Skills

56. Part of the growth of Milton Keynes has been the increase in jobs in the area. Included with this is the need to ensure that the working population is properly skilled to meet the needs of commercial and other organisations in the area. The Planning Obligation provides for a contribution towards programmes to this effect. I am satisfied that the contribution is necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. Such provisions do not represent infrastructure under the CIL Regulations so Regulation 123 is not engaged.

#### Community Hall

57. There is an existing community hall in the High Street in Lavendon. The proposal would increase the need for such a facility, and the Planning Obligation would provide for improvements to rationalise and improve existing space to bring it into active use and enhance its use. I am satisfied that the contribution is necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. I am also advised that the totting-up provisions of Regulation 123 are not breached.

#### Open Space, SuDS and Allotments

58. Policy L3 of the LP requires that new housing development will be required to provide new or improved recreational facilities in line with standards set out in the LP. The additional population created by the proposal would result in an increased need for open space and other recreational facilities in the area. Some of this would be provided on site in the form of a LEAP, and part of the site would be set over to SuDS. The Planning Obligation makes provision for this, for the long-term maintenance of the facilities on-site, and contributions towards improving the recreation ground, playing fields and allotments off-site.
59. All of these are necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. In respect of the on-site facilities these are all the first contribution towards such provision and I am advised that the totting-up arrangements would not be breached for the off-site provision; as such Regulation 123 would be satisfied.

#### Carbon Neutrality

60. Policy D4 of the LP requires that all development exceeding five dwellings will be required to include, amongst other matters, carbon neutrality or financial contributions towards a carbon offset fund. The Council has, pursuant to this policy, adopted a Sustainable Construction SPD requiring a report to be

submitted post-development to allow for the carbon emissions to be calculated and off-set.

61. In the absence of any information to the contrary, as the determination should be made in accordance with the terms of the development plan unless any other material considerations indicate otherwise, I am satisfied that the contribution is necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. Such provisions does not represent infrastructure under the CIL Regulations so Regulation 123 is not engaged.

#### *Other considerations*

##### Consistency with the Framework

62. Paragraph 215 of the Framework indicates that due weight should be given to policies in plans that pre-dated the publication of the Framework according to their degree of consistency with the Framework; the closer the weight in the plan to the policies in the Framework, the greater the weight that may be given. The CS was adopted after the publication of the Framework and was examined on the basis of the Framework; it should therefore be given full initial weight.
63. The appellant sought to show that Policy S10 of the LP was inconsistent with the Framework in that the objective of the policy, as set out in the supporting text, was "to protect the countryside and to concentrate new development within the adjoining existing settlements". It was thus said that it went beyond recognising the intrinsic character and beauty of the countryside as set out in paragraph 17 of the Framework. However, it is the policies that were saved by the Secretary of State's direction<sup>5</sup>, not the supporting text.
64. Having said that, I would accept that the categories of development permitted under Policy S10 of the LP do not go as far as those permitted in the Framework, particularly as it does not seek to permit housing where it will enhance or maintain the vitality of rural communities (see paragraph 55 of the Framework) but this is more of a function of the spatial strategy of the development plan rather than Policy S10. It was agreed that, on balance, Lavendon was a sustainable settlement with a range of shops, services, public transport and community facilities. It was also agreed by the main parties, although local residents who attended the Inquiry disagreed, that Lavendon would accommodate the scale of development proposed on the appeal site without unacceptable social consequences, subject to securing of planning obligations to provide appropriate community facilities. Given the overall size of Lavendon I consider that the proposal would not have unacceptable social consequences. My conclusion is that Policy S10 is not fully consistent with the Framework and this reduces, slightly, the weight that should be given to this policy.
65. There was also a disagreement as to whether Policy S11 of the LP was consistent with the policies in the Framework. In light of my finding that the proposal would comply with this policy I do not need to resolve this disagreement.

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<sup>5</sup> See paragraph 1(3) of Schedule 8 of the Planning and Compulsory Purchase Act 2004 (as amended)

### Emerging Plans

66. As noted above, the Council has submitted the SAP to the Secretary of State and this has been the subject of an examination. During the course of the Inquiry the Council published its proposed Main Modifications for consultation and it was agreed that the plan had now reached a comparatively advanced stage.
67. Paragraph 216 of the Framework indicates that weight may be given to relevant policies in emerging plans according to the stage of preparation of the emerging plan, the extent that there are unresolved objections, and the degree of consistency with the policies in the Framework. The SAP allocates a number of sites for residential development. It is necessary to look at the SAP against paragraph 216 so as to judge the appropriate weight that should be given to it to determine whether the material sites should be considered to be deliverable.
68. The Examining Inspector (the ExI) for the SAP confirmed that he saw no impediment to the Council proceeding with its consultation on the Main Modifications on the SAP. Although the ExI will only prepare his report in the light of all the evidence including the consultation responses to the Main Modifications, it is reasonable to assume that he would not have been content for the Main Modifications to be published unless they are fundamental to the soundness or legal compliance of a plan.
69. In light of this, I consider that it would be reasonable to assume that while the objections to the SAP have not been completely resolved, the SAP as proposed to be amended by the Main Modifications can be given significant weight. This means that the degree of uncertainty has been sufficiently dealt with so that the allocations can be given significant weight and can be considered to be deliverable.
70. Plan:MK has reached Proposed Submissions Draft stage, and it was agreed, and I concur, that this can only be given limited weight in the determination of this appeal, and it was not necessary to consider the proposal against its policies in detail.

### Housing Land Supply

#### Introduction

71. Paragraph 47 of the Framework indicates that to boost significantly the supply of housing local authorities should identify and annually update a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements.
72. There was a degree of agreement between the main parties as to the housing requirement. It was agreed that the period of assessment should be 2017 – 2022, the base requirement was 1,750 dpa and that there had been 9,109 net completions between the base date of the CS and 1 April 2017 so that there was a backlog of 3,231 dwellings as at that date. It was also agreed that the Council had a record of persistent under delivery of housing so that the buffer, moved forward from later in the plan period to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land, should be 20%.

73. For clarity I will identify each year by a descriptor. The year 2017/18 will be Y1, 2018/19 as Y2, 2019/20 as Y3, 2020/21 as Y4 and 2021/22 as Y5.
74. Under the Council's approach it considered it could demonstrate a 5.11 year supply of housing land with the backlog dealt with over the remaining years of the plan. This was some 285 dwellings in excess of that needed to demonstrate a five year supply.
75. The main areas of disagreement were whether the shortfall should be resolved in the next five years or in the remaining plan period, and whether the Council was able to demonstrate specific deliverable sites to meet the requirement.

#### Dealing with past under-supply

76. There are two methods of dealing with any past under-supply; firstly to deal with it in the immediate five years under consideration (known as the "Sedgefield" method), or secondly to deal with it over the remaining years of the plan period (the "Liverpool" method). The Courts in *Bloor Homes*<sup>6</sup>, prior to the publication of the national Planning Practice Guidance (the PPG), indicated that the choice was one of planning judgement.
77. The PPG has a section<sup>7</sup> entitled "How should local planning authorities deal with past under-supply?". This indicates in its last paragraph that local planning authorities should aim to deal with any undersupply within the first five years of the plan period where possible. The PPG goes on to note that where this cannot be met in the first five years, local planning authorities will need to work with neighbouring authorities under the duty to cooperate.
78. My reading of this paragraph of the PPG is that it is predominantly dealing with the situation at adoption and during the first five years after the base date of the plan. This is because the duty to cooperate is a plan-making duty rather than relating to decision-taking. In any event the PPG uses the word "should" rather than "must", and "where possible", so that there is an element of discretion and judgement. I do not think the publication of the PPG in some way changed the law. Having said that it is clear that the Sedgefield method is the preferred approach as that most quickly would resolve the shortfall and boost the supply of housing.
79. Examples, were given where the Liverpool method had been used. Predominantly these situations were where there were large sites that require the provision of significant infrastructure prior to the completion of the first dwellings. I was referred to examples post the publication of the PPG in Litchfield and Winchester. Again this confirms my conclusion that the decision as to the method for dealing with any shortfall is one of planning judgement.
80. In the Hanslope decision my colleague Inspector concluded that the shortfall should be dealt with under the Sedgefield method, as he was not convinced that the CS had been adopted on the basis of the Liverpool method particularly as, in his view, the housing trajectory in the CS indicated that the shortfall would be resolved in the first five years of the plan period. However, in looking at the evidence in front of me I have come to a different conclusion.

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<sup>6</sup> *Bloor Homes East Midlands Ltd v Secretary of State for Secretary of State for Communities and Local Government & Hinkley and Bosworth Borough Council* [2014] EWHC 754 (Admin)

<sup>7</sup> Reference ID: 3-035-20140306

81. The Council response<sup>8</sup> to the ExI of the CS stated the “Five year [requirement is] calculated by dividing the remainder over the remaining years of the plan and multiplying the resulting annualised requirement by 5.” This can only be the use of the Liverpool method. It was also the case that the ExI’s report indicated that the Council could demonstrate a greater than 5 year housing land supply at adoption. While the housing trajectory indicated that the shortfall would be made up over the first five years this was, in my view, a function of the delivery of the sites in question rather than a conscious allocation in the CS of, what would have then been, additional sites to resolve the shortfall that would have otherwise been created by the use of the Sedgfield method.
82. It seems to me that where the Liverpool method has been used in a particular local planning authority area, there needs to be a particular reason why it would no longer be appropriate to continue to use that method. To do otherwise would lead to the situation where certainty and the plan-led system would be undermined.
83. The witness for the appellant gave three situations when he considered it might be appropriate to change from the Liverpool to Sedgfield method<sup>9</sup> in the context of Milton Keynes.
84. Firstly, was the publication of the PPG emphasising the preference of the Sedgfield method. However, as I have set out above the publication of the PPG did not change the law. The requirement for the five year supply of housing land comes from the Framework which was in place when the High Court made its decision in relation to *Bloor Homes*. It was also asserted that if it was possible to resolve the shortfall through the Sedgfield approach then this should be utilised. While the Council did accept that the market could deliver the number of dwellings that a change to the Sedgfield method would occasion, this may not be the case if the individual sites were not deliverable to the extent as suggested by the appellant. The Council also pointed out that if there was a change to the Sedgfield method at this stage then the dwelling requirement would peak for the next five years and then would reduce significantly in the final four years of the CS plan period. While Plan:MK will relook at the situation for the end of the CS period, in the terms of the adopted development plan this would lead to a short-term boom to be replaced with a significantly reduced requirement thereafter. I do not consider wide fluctuations to be desirable. I therefore consider that this is not sufficient reason to change from the Liverpool method to the Sedgfield method.
85. Secondly, was to look at the context and see if anything had materially changed since the adoption of the plan. However, the main “change” identified was the publication of the PPG which I have already considered. The main sites to be delivered are still large sites with infrastructure requirements (although the infrastructure is now being made available), and I do not consider that in the fundamentals that the situation has changed.
86. Thirdly, would be to look at where the Council was in its programme. In particular, the date set in the CS for the early review through Plan:MK has passed. The witness for the appellant indicated that he considered that

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<sup>8</sup> Taken from the Council’s Core Strategy Examination Document MKC/4 – Response to Inspector’s questions ID/4.

<sup>9</sup> Other than passage of time since in the last five years of the plan period they become one and the same thing.

nothing had materially happened, but it seems to me that with the publication of the Proposed Submissions Draft stage at the end of 2017 that the Council is seeking to resolve this issue in the shorter term.

87. Overall, I therefore conclude that it is appropriate that the under-supply of housing should be dealt with over the remaining plan period.

Deliverable sites

88. Footnote 11 to paragraph 47 of the Framework indicates that to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until the permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans. This is further amplified in the PPG<sup>10</sup>.
89. The Court of Appeal in the case of *St Modwen*<sup>11</sup> has recently clarified that this is not to do with certainty but with whether there is a realistic prospect that the site will be delivered.
90. Having said that, all parties accepted that parts of the largest sites would not be deliverable within the relevant plan period – not because of explicit phasing policies, but rather as a practical approach. Given the size of these sites this is entirely appropriate.
91. For most of the largest strategic sites, the appellant took an averaged approach to what housing could be considered deliverable. This, it was stated, was to even out fluctuations for any reason. The appellant looked at a number of studies as to the delivery of housing on large sites and took as a judgement that a strategic site, when in full delivery, would deliver 171 dpa. This would be a realistic approach if there was a paucity of information for individual sites, but the use of an average fails to take account of a number of factors.
92. For example, in the base data for setting this average, there is a lack of information on the percentage of affordable housing, particularly as sales information tends not to include this. The greater the percentage of affordable housing the greater the overall housing delivery, since affordable housing delivery tends to be in step with the market sales. The base survey data often does not appear to include information on the number of sales outlets on an individual site, or that Milton Keynes is an area with a large proportion of new homes when compared with “second hand” dwellings than the national average due to its former New Town status. Further, Milton Keynes was identified in the Nathaniel Litchfield & Partners’ paper<sup>12</sup> as being “distinct from almost all the other sites considered in the research”. In my view, if there is site specific information available on an individual site then that should be preferred to a more generic average.

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<sup>10</sup> Reference IDs 3-031-20140306 and 3-033-20150327

<sup>11</sup> *St Modwen Developments Ltd v Secretary of State for Communities and Local Government, East Riding of Yorkshire Council and Save Our Ferriby Action Group* [2017] EWHC 1643

<sup>12</sup> Nathaniel Litchfield and Partners – Start to Finish – How Quickly do large-Scale Housing Sites Deliver?



93. The appellant has also criticised the Council's approach on the basis that its projections in previous years have been found, when looked at in retrospect, to be optimistic. This may well be the case, but this criticism appears solely based against the Council without exploring in sufficient detail whether other factors may have been in play. Given that the test in footnote 11 to paragraph 47 is not one of certainty I am satisfied that in general terms the Council's approach is valid.
94. While the Council publishes its monitoring report on an annual basis, it takes data as to the extent of housing delivery on an on-going basis through the year. During the Inquiry, the Council published Housing Figures data, both on completions and starts for the first three quarters of the year; that is to 31 December 2017. This is within the first year under consideration (Y1) and allows a sense check as to the quantum of development being delivered during the whole of the first year. This is evidence which post-dates that provided in the Hanslope appeal which was heard in November and December 2017. It should be noted that 141 dwellings granted planning permission in the Hanslope appeal do not affect the basis of the land supply calculation as it is based on the situation at 1 April 2017.

#### Western Expansion Area

95. This site is a strategic site which is under construction with outline planning permission for some 4,709 dwellings. The site is divided into two (WEA10 and WEA11), but the likelihood of delivery was the same on each area. The main parties agreed that this site was and would continue to deliver dwellings for the whole of the five year period; the issue was the extent of delivery.
96. For the first three quarters of Y1 some 485 dwellings had been completed. The Council's estimate, prior to the Inquiry, was that some 492 dwellings would be completed by the year end. Thereafter completions are to increase to just over 700 in Y2 before falling back over the final three years of the period. Given that there is specific information on the site, completions are already close to the year-end estimate and there is the information from the master developer, I consider that this shows that the Council's estimates for delivery over the whole 5 year period are realistic and can be accepted.

#### Eastern Expansion Area

97. This is also a strategic site which is under construction and the parties agreed that the site would continue for the whole of the five year period. Again the issue was over the extent of delivery.
98. For the first three quarters of Y1 some 179 dwellings had been completed. This was only just over half of the delivery that the Council expected for the whole year, which does give some doubts as to the overall figure estimated by the Council. However, the site has a history of completions at a higher level and starts so far in Y1 are above completions. Under the Council's approach the site will come to an end at around the end of the five year period; the difference would therefore be the "tailing-off" of completions. While there is likely to be under-delivery against the Council's projection in the short-term if taken over the whole of the five year period, I am satisfied that there is a realistic prospect of the quantum of housing posited by the Council being delivered.

#### Tattenhoe Park

99. Outline planning permission was originally granted in 2007 and a first phase completed in 2014 and 2015. The unimplemented element of the outline planning permission was renewed in 2017 for 1,172 dwellings. First reserved matters are required to be submitted by August 2019. The site is not currently delivering. The Council was of the view that completions would commence in Y2 (although at a very low number), while the appellant considered there would not be any completions until Y4, and then at a lower rate than the Council anticipated.
100. Because of the previous completions some of the necessary infrastructure is in place, which would be likely to speed the delivery of housing on the site. The site is in the hands of Homes England<sup>13</sup>, which indicated in 2016 it would have marketed four different parcels by summer 2017. Once in the hands of developers it is likely housing would come forward expeditiously. Being in four parcels it is also likely that completions would be at the rates suggested by the Council rather than the lower average figure suggested by the appellant. I am therefore satisfied that the quantum of housing demonstrated by the Council has a realistic prospect of delivery.

#### Eaton Leys

101. Outline planning permission was granted in 2017 for 600 dwellings. This was granted at a time when the Council considered that it could not demonstrate a five year supply of land for housing. Originally this site was a site which spanned the Council boundary with Aylesbury Vale, but the Aylesbury Vale portion was not pursued. I was advised that the application for the infrastructure reserved matters had been submitted, along with details pursuant to some of the conditions, although others remain outstanding.
102. This site is being promoted by a master developer with a history of ensuring high delivery rates utilising a number of developers and sales outlets. On this basis I consider that the proposed completions set out by the Council show a realistic delivery for the site and consequently can be included.

#### Campbell Park

103. This site is an allocation in the development plan and some infrastructure is available from earlier phases. However, the appellant considered that the site would not deliver dwellings in the five year period. The site is currently available, having been recently marketed by the Milton Keynes Development Partnership, offers a suitable location for development now, and there is a realistic prospect that some housing will be delivered within five years. In light of this I am satisfied that the Council's estimates of completions from Y4 onwards are realistic.

#### Canalside Marina

104. Reserved matters approval was granted in late 2017 for, *inter alia*, 383 dwellings, of which all but 51 are apartments. The apartments are in five blocks. This site should therefore be considered deliverable unless there is clear evidence that it will not be implemented or there are long term

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<sup>13</sup> Formerly the Homes and Communities Agency

phasing plans. The differences between main parties relate to when completions may start and then the rate of delivery.

105. Details pursuant to conditions have been submitted so I consider that it is likely that completions will commence in Y3, but I am not satisfied that the Council's proposed rate of delivery is realistic. Where there are apartments delivery is likely to be by block which may increase delivery, but there is only a single developer, and from what I have heard only a single sales outlet (plus affordable housing). From the evidence in front of me I consider that in Y3 there are only likely to be 60 completions, and thereafter 80 per year. When compared to the Council's projection for the five years this would reduce the realistic prospect of the number of completions by 60 dwellings<sup>14</sup>.

#### Strategic Reserve

106. This site is made up of a number of parcels some of which have been delivering recently and others where starts have commenced. The overall site is complex with equalisation required, but there are a number of developers who have started marketing, which would increase delivery rates as would physical separation over the site. The Council has intervened to deliver infrastructure. Overall, I consider that the rate of delivery, when the site is fully delivering, is likely to be similar to that at the Western Expansion Area and Eastern Expansion Area.
107. For Y1 completions to 31 December 2017 are significantly less than the Council anticipated prior to the Inquiry, but are at low numbers within the overall delivery of the site. While all the sites have planning permission the reality is that there is a long term phasing plan, particularly as reserved matters have up to a ten year submission period. While each parcel is separate, to seek to look at each individually is unnecessarily forensic in approach; a broad brush is a better approach given the complexities of the site and the likely approach to delivery.
108. My overall conclusion is that the site will not deliver at the rate anticipated by the Council but greater than the appellant. My estimate of the realistic delivery is that Y1 will only deliver 10 dwellings, Y2 will deliver 200 dwellings, Y3 305, Y4 465 and Y5 505. This totals 1,485 dwellings which is 359 less than the total anticipated by the Council.

#### Tickford Fields

109. This site is allocated for development in the Newport Pagnell Neighbourhood Plan and the majority of the site is owned by the Council and being marketed by the Milton Keynes Development Partnership. Both main parties consider that the site will provide delivery by Y5, the differences are when that will commence and the rate of delivery.
110. Given the size of the site, it is reasonable to assume that there would be two outlets which would give rise to a reasonable number of completions once the site is delivering. Given the issues with this site I agree with the Council that completions are likely to start in Y4 and that there is a realistic prospect of the numbers anticipated by the Council being delivered.

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<sup>14</sup> Y3: 60 rather than 80 as given by the Council, Y4: 80 rather than 100, Y5: 80 rather than 100.

## SAP Sites

111. As set out above I consider that due to the progress of the SAP significant weight can be given to that plan and all the sites can be considered to be deliverable. The appellant drew to my particular attention its contention that there were issues with consistency with the CS particularly in relation to employment. However, I note that the proposed Main Modifications includes at Appendix 1 a Schedule which includes changes to the Employment Land Supply within the CS. I am therefore satisfied that this issue is likely to be resolved and there is a realistic prospect of the sites being delivered as set out by the Council.

## Allocated sites without planning permission

112. These are a series of eight sites<sup>15</sup> allocated in the LP, although also proposed to be reconfirmed in Plan:MK, which have yet to have planning permission. The appellant considers that all but one is undeliverable, and that one would provide a lesser delivery.
113. The biggest difference in quantum terms relates to the Latham's Buildbase site. Although allocated for housing delivery since 2004 the site is in employment use and would only become available should the current occupiers relocate. The Council indicates that it has recently (December 2017) been in contact with the landowner seeking to facilitate this. However, given the site is not available "now", the potential need for planning permission for the relocation site, the actual move, and then the drawing up of a scheme and its implementation I do not consider that this site is deliverable within the five year period. This removes 75 dwellings from the Council's supply.
114. The other larger site is the Lakes Estate Neighbourhood Plan Site, Land south of Walter Hall School. Given the impetus of the Neighbourhood Plan I consider that the site is deliverable to the extent posited by the Council.
115. All the remaining sites accord with Footnote 11 to paragraph 47 of the Framework and I consider them to be deliverable. The appellant's case was mainly that they had been in the housing trajectory for some years and that they had not been taken forward. However, this does not mean that they are not deliverable, since it has not been demonstrated that they are not available, offer a suitable location for development now, have a realistic prospect that housing will be delivered within five years or that they are not viable. I therefore conclude that there is a realistic prospect that the sites are deliverable.

## Conclusions on Housing Land Supply

116. I have concluded that the Liverpool method of resolving the shortfall in housing delivery should be utilised. However, in looking at the various sites I consider that the Council is not able to demonstrate that all the sites are deliverable to the extent it proposed. There should be reductions of 60 dwellings at Canalside Marina, 359 at the Strategic Reserve and 75 at the Latham's Buildbase site. This totals 494 dwellings which is greater than the extent of the surplus set out by the Council of 285 dwellings.

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<sup>15</sup> There was also a ninth site (Reserve Site (off Nicholson Grove)) which is also in the SAP and I have considered under that heading. It was agreed that consideration here would represent double counting.

117. This means that the Council is unable to demonstrate a five years supply of housing land, and this means that, in line with paragraph 49 of the Framework, the policies for the supply of housing are out-of-date.
118. This being the case it is necessary to look at the scale of the shortfall, which is not large within the context of the numbers of dwellings involved, and the steps the Council is taking to address the shortfall. While the Council is working towards the adoption of the SAP this cannot act against the shortfall as I have included the sites as deliverable; the adoption of the SAP will not increase the amount of deliverable housing. Further, Plan:MK is still some considerable way from adoption, and there are uncertainties, particularly as to the extent of housing that it will need to provide for. The Council has put efforts into delivering housing on individual sites, but I have included that within my assessment as to whether the individual sites are deliverable.

#### Benefits of the development

119. The delivery of both market and affordable housing is a social benefit of the development. These should both be given significant weight, as there is a need for both and the proposal would assist in supporting services and facilities in the village of Lavendon.
120. While the public open space is larger in area than required to be policy compliant this is, at least partially, a function of the need to preserve the character and appearance of the adjacent Conservation Area and to ensure that residential development does not extend further into the countryside than existing development so as to minimise the effects on the wider landscape. The equipped play area would be predominantly for the proposed population, and while the existing population of Lavendon may use it, there is already an existing play area in close proximity at Soames Close. I therefore give the provision of the public open space only limited beneficial weight. It was agreed that there would be enhancements to biodiversity, but these are very limited and thus should only be given very limited weight.
121. There are already bus stops in Lavendon so the additional provision, while necessary to encourage use by the proposed residents, would only be of very limited benefit to those already living in close proximity.
122. There would be economic benefits from the construction and occupation of the dwellings. The former I only give limited weight as these will be temporary; the latter I give significant weight.

#### **Other matters**

123. Local residents who attended the Inquiry expressed, in particular, concerns about traffic. They considered that due to the parking on Olney Road this should be considered as a single track road with passing places. I note that the Highway Authority has not objected to the proposal, and while I saw parking on both sides of Olney Road, I am satisfied that there would be sufficient capacity for the network to accommodate the traffic generated by the proposed development. Certainly it would not result in severe residual cumulative impacts, which is the test set out in paragraph 32 of the Framework, if permission is to be refused on transport grounds. During construction a Construction Management Plan would be necessary to ensure that there were no adverse effects on the highway network.

124. The site was described by a local resident as the "Walking Fields" and I saw, in addition to the public footpath, routes through the grassland where people clearly walked. The provision of the open space and specific routes through the site will re-provide for this, albeit in the context of a residential housing estate, and given that recreation is currently only permitted on the rights of way I consider that the loss of the current informal facility to be replaced by new routes is neutral in the balance.

### **Planning Balance**

125. The proposed development is contrary to the terms of the development plan taken as a whole in that it would represent residential development outside an "Other Village" in an area of countryside. The proposal would comply with the policy relating to the Area of Attractive Landscape, but would be harmful to the character and appearance of this pleasant but otherwise unremarkable area of countryside. However this harm is limited to the extent of the appeal site and a short distance to the south and north and there would be limited effect on the wider landscape.

126. The proposal would also be contrary to the overall strategy of the development plan that seeks to ensure that the majority of new development takes place in and around Milton Keynes. This is the purpose of the restrictive policies which would be breached if planning permission were to be granted. As set out above the majority of development would still take place in and around Milton Keynes. Further, Lavendon is a settlement with a range of shops, services, public transport and community facilities and would accommodate the scale of development proposed on the appeal site without unacceptable social consequences. The harm to the policy context of this particular appeal being allowed would therefore only be limited.

127. The policies which direct housing towards Milton Keynes and restrict housing outside of settlements, however, must be considered to be out-of-date as the Council is unable to demonstrate a five year supply of land for housing. Consequently, in line with Policy CSA of the CS and paragraph 14 of the Framework planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

128. While the shortfall in land supply is not large it has not been demonstrated to me that this shortfall is to be resolved in the short term. There are significant benefits from the proposed development and any harm is only limited. In light of this my overall conclusion is that the adverse impacts of the development do not substantially and demonstrably outweigh the benefits of the proposal. As such material considerations outweigh the presumption that the proposal should be determined in accordance with the terms of the development plan, the proposal therefore represents sustainable development and the appeal should be allowed.

### **Conditions**

129. I have considered the conditions put forward by the Council against the requirements of the PPG and the Framework. The numbers given in brackets (X) refer to the condition being imposed, with the order being prescribed by the time when the condition needs to be complied with. In this respect I have

sought to delay the time when details need to be submitted or the condition complied with as appropriate.

130. In addition to the standard reserved matters and timescale conditions (1, 2, 3), I have imposed a condition specifying the relevant drawings as this provides certainty (4). As set out above, because of the effects of the development have been assessed based on a consideration of the disposition of development set out in the Development Framework Plan the reserved matters should be in accordance with the general principles of that plan to ensure that the effects of the development are not greater than those assessed (5).
131. In order to ensure that construction operations do not have an adverse effect on highway safety, the users of the right of way or those living in nearby properties a Construction Management Plan is necessary (6).
132. In order protect trees and hedgerows to be retained on and around the appeal site appropriate protective measures need to be put in place before works commence and maintained during building operations (7).
133. In order to ensure that the site drains appropriately a surface water drainage scheme is necessary, including details for its long term maintenance (8).
134. Due to the previous use of the site a scheme for the investigation and, if necessary, remediation of the site from contamination is necessary to ensure that there are no unacceptable risks to human health, property or the natural and historical environment (9).
135. As the site lies in an area of potential archaeological interest a scheme for evaluation and recording is necessary in order to ensure that appropriate provision is made so that the significance of the historic environment is recorded (10).
136. In order to protect biodiversity the mitigation measures set out in the Ecological Impact Assessment that accompanied the application need to be delivered. This should also include the biological enhancement measures (11).
137. As set out above, a scheme for the undergrounding of the pole mounted overhead electricity cables needs to be submitted, approved and implemented as part of the overall balance of the consideration of the appeal (12).
138. Finally, in the interests of highway safety a condition specifying the details of radii of the access on to Olney Road and its construction is necessary (13).
139. The Council suggested a condition requiring details of the play area to be submitted and then implemented. However, this is covered by the reserved matters and by the requirement that the reserved matters are in accordance with the Development Framework Plan, so I do not consider that a separate condition is necessary.
140. Where necessary and in the interests of clarity and precision I have altered the conditions to better reflect the relevant guidance.

**Conclusion**

141. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

*RJ Jackson*

INSPECTOR

Richborough Estates



### **SCHEDULE OF 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 takes place 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 not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 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 approved plans:  
Location Plan: CSA Environmental CSA/3040/110 rev B;  
Proposed Access Arrangement: Ashley Helme 1508/01 rev B.
- 5) Any application for reserved matters shall be in accordance with the general principles of the Development Framework Plan: CSA Environmental CSA/3040/102 rev K.
- 6) 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 Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - 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;
  - v) wheel washing facilities;
  - vi) measures to control the emission of dust and dirt during construction;
  - vii) delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 7) No equipment, materials or machinery shall be brought on site in connection with the development hereby permitted, and no works, including site clearance or any other preparatory works, undertaken until tree and hedgerow protection measures have been erected on site in locations in accordance with details submitted to and approved in writing by the local planning authority and agreed in writing as complete by the local planning authority. The protection shall be retained until the local planning authority has confirmed in writing that the development is complete in the vicinity of the specific tree and/or hedgerow. Nothing shall be placed within the fencing, nor shall any ground levels be altered or excavations made without the prior written consent of the local planning authority.
- 8) No development shall commence until a detailed design, and associated management and maintenance plan, for a surface water drainage scheme, based on sustainable drainage principles for the site has been submitted to and approved in writing by the local planning authority. The management and maintenance plan shall include a detailed timetable for the implementation of the surface water drainage scheme. The approved

drainage scheme shall subsequently be implemented in accordance with the approved detailed design and in accordance with the approved time table for implementation and be retained thereafter.

- 9) No development shall take place until a ground contamination assessment to determine the likelihood of any ground, ground water, or gas contamination of the site has been completed.

The results of this survey together with a strategy for any remedial action deemed necessary to bring the site to a condition suitable for its intended use, shall be submitted to and approved in writing by the local planning authority before construction works commence.

Any mitigating works in respect of elevated ground gas levels shall be carried out in accordance with the approved strategy and validated by submission of an appropriate verification report prior to first occupation of the development.

A method statement for the visual and olfactory inspection of excavations and arisings and protocol for notification of unforeseen contamination to the local planning authority shall be submitted to and approved in writing by the local planning authority before construction works commence.

Should any unforeseen contamination be encountered the local planning authority shall be informed immediately. Any additional site investigation and remedial work that is required as a result of this previously unforeseen contamination shall also be carried out to the written satisfaction of the local planning authority.

- 10) No development shall take place until an archaeological field evaluation comprising trial trenching has been completed. The archaeological evaluation shall be detailed in a Written Scheme of Investigation (WSI) submitted to and approved by the local planning authority in writing. On completion of the archaeological field evaluation a further WSI for a programme of archaeological mitigation in respect of any identified areas of significant buried archaeological remains shall be submitted to and approved by the local planning authority in writing.

For land that is included within the second WSI, no development shall take place other than in accordance with the agreed WSI, which shall include:

- i) a statement of significance and research objectives;
- ii) the programme and methodology of site investigation and recording, including those who are to undertake the agreed works; and
- iii) the programme for post-investigation assessment and subsequent analysis, publication and dissemination and deposition of resulting material.

- 11) No development shall take place until such time as details of all mitigation measures as recommended within Section 5 of the Ecological Impact Assessment Report No: CSA/3040/03 dated January 2017 have been submitted to and approved in writing by the local planning authority. The details of mitigation measures shall include timetables for their implementation and details of ongoing maintenance and management.

- 12) No development shall take place until a scheme for the removal of the overhead electricity cables and supporting poles crossing the site shall be submitted to and approved in writing by the local planning authority. This scheme shall be fully implemented before the first occupation of any dwelling.

- 13) Notwithstanding the details of the access onto Olney Road shown on drawing number 1508/01, details of the proposed access showing 7.50 m radii shall be submitted to and approved in writing by the local planning authority prior to the commencement of any works on site. The access shall be laid out and constructed in accordance with the approved details prior to any dwelling being occupied.

END OF SCHEDULE

Richborough Estates

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Miss Emmaline Lambert	of Counsel, instructed by the Head of Legal Services, Milton Keynes Council
She called	
Mr Paul Keen BA (Hons) MA MRTPI	Senior Planning Officer, Milton Keynes Council
Mr Jonathan Goodall MA (Cantab) MSc MRTPI	Associate Director, Troy Planning + Design (Troy Hayes Planning Limited)

Mr Jonathan Robinson, Senior Planning Obligations Officer, and Ms Nazeen Ahmed, Acting Principal Solicitor, both with Milton Keynes Council, also took part in the section of the Inquiry dealing with the Planning Obligation.

### FOR THE APPELLANT:

Mr Peter Goatley	of Counsel, instructed by Gladman Developments Ltd
He called	
Mr Roland G Bolton BSc (Hons) MRTPI	Senior Director, Strategic Planning & Research Unit, DLP Planning Ltd
Ms Silke Grunner BHons DipUD CMLI	Associate Landscape Architect and Urban Designer, CSA Environmental
Mr Laurie Lane BSc (Hons) MRTPI	Planning Director, Gladman Developments Limited

### INTERESTED PERSONS:

Cllr Steve Axtell	Chairman, Lavendon Parish Council
Mr Michael Griffiths	Chair of Governors, Lavendon School
Mr Andrew Thomson	Local Resident

**INQUIRY DOCUMENTS**

ID1	Attendance List on behalf of the Appellant
ID2	Opening Statement on behalf of the Appellant
ID3	Opening Statement on behalf of the Council
ID4	Photographs, with annotations, submitted by Mr Thomson
ID5	Court of Appeal Judgement in the case of <i>Gladman Developments Ltd v Daventry District Council and the Secretary of State for Communities and Local Government</i> [2016] EWCA Civ 1146
ID6	Email from Programme Officer of Milton Keynes Council Site Allocations Plan dated 13 February 2018
ID7	Schedule of Proposed Main Modifications to the Milton Keynes Council Site Allocations Plan dated February 2018
ID8	Extract from Council website relating to Housing Completions Forecast for 2017/18
ID9	Revised Appendix 19 to Mr Goodall's Proof of Evidence relating to completions to 31 December 2017
ID10	Appeal Decision APP/Z3825/W/16/3151508 relating to Chanctonbury Nurseries, Ashington, West Sussex
ID11	Justification Statement by Council for Planning Obligations
ID12	List of Draft Conditions
ID13	Maps showing routes for Site Visit
ID14	High Court Judgement in case of <i>Cawrey Limited v Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council</i> [2016] EWHC 1198 (Admin)
ID15	Closing Submissions on behalf of the Council
ID16	Closing Submissions on behalf of the Appellant
ID17	Completed Planning Obligation dated 20 February 2018

**POST-INQUIRY DOCUMENT**

PID1	Letter from appellant dated 14 March 2018 accompanying appeal decision relating to Land at Long Street Road, Hanslope APP/Y0435/W/17/3177851
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