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## Appeal Decisions

Hearing Held on 21 May 2019

Site visit made on 21 May 2019

**by Grahame Gould BA MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25<sup>th</sup> June 2019

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### **Appeal A Ref: APP/P0240/W/18/3206495** **Land west of New Road, Clifton SG17 5JH**

- 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 Limited against the decision of Central Bedfordshire Council.
  - The application Ref CB/17/05967/OUT, dated 21 December 2017, was refused by notice dated 27 March 2018.
  - The development proposed is described as 'the erection of up to 130 residential dwellings (including 35% affordable housing), introduction of structural planting and landscaping, public open space, surface water flood mitigation and attenuation, vehicular access points from New Road and associated ancillary works. All matters to be reserved with the exception of means of access'.
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### **Appeal B Ref: APP/P0240/W/19/3220640** **Land west of New Road, Clifton SG17 5JH**

- 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 Limited against the decision of Central Bedfordshire Council.
  - The application Ref CB/18/02820/OUT, dated 19 July 2018, was refused by notice dated 17 October 2018.
  - The development proposed is described as 'the erection of up to 130 residential dwellings (including 35% affordable housing), introduction of structural planting and landscaping, public open space, surface water flood mitigation and attenuation, vehicular access points from New Road and associated ancillary works. All matters to be reserved with the exception of means of access'.
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### **Decisions**

1. Appeal A is dismissed.
2. Appeal B is dismissed.

### **Procedural Matters**

3. The developments subject to Appeals A and B would be very similar in that they would each involve the provision of 130 dwellings. However, in respect of the northernmost of the two proposed New Road access points there would be a slight difference in location for the schemes subject to each of the appeals. The appeals concern outline applications, with access being for determination and matters relating to appearance, landscaping, layout and scale being

reserved for future consideration. The appealed applications were accompanied by drawings entitled 'Development Framework', respectively drawing numbers 8071-L-02 Revision E and 8071-L-02 Revision K, showing alternative distributions of housing, open space and landscaped areas within the developments. Given that all matters other than access have been reserved for future consideration the details shown on the development framework drawings are purely illustrative and I have therefore considered those drawings on that basis.

4. At the hearing the appellant advised that it wished both appeals to be determined. Notwithstanding that, given the fact that the appeal developments would be so similar, for the purposes of conducting the hearing those present accepted that the evidence relating to Appeal B would be used as the primary source, as it was the most up to date, with the Council's case having been submitted on 10 May 2019 and thus taking on board the latest revisions to the National Planning Policy Framework (the Framework) and sections 2A and 3 of the Planning Practice Guidance (PPG)<sup>1</sup>, variously published by the Government in 2018 and February 2019<sup>2</sup>. In advance of the hearing the appellant submitted a speaking note, with appendices, concerning the matter of housing land supply (HLS) to the Council and the Planning Inspectorate. That note updated the appellant's housing land supply case, most particularly in response to the recent revisions made to the national policy and guidance and the Council's evidence concerning this matter<sup>3</sup>. At the hearing I asked the appellant to summarise the content of its speaking note for the benefit of everyone in attendance and I am therefore content that my consideration of the appellant's HLS speaking note would not be prejudicial.
5. Given the similarity between the developments subject to the appeals my reasoning below should be treated as being equally applicable to Appeal A as Appeal B, unless I have found it necessary to draw a distinction between either of the appeal schemes.
6. The third reason for refusal relating to the application subject to Appeal B raises a concern about the archaeological implications of the development, in the absence of a field evaluation having been undertaken. However, the Council confirmed: in its appeal statement for Appeal B; in the statement of common ground (SoCG) signed by the appellant and the Council on 17 May 2019; and at the hearing, that subject to the imposition of an appropriately worded condition, in the event of Appeal B being allowed, that it no longer wished for this issue to be considered as being contested. I have therefore proceeded on that basis, with the wording of an archaeological investigation condition having been considered during the without prejudice discussion of conditions at the hearing.
7. At the opening of the hearing the appellant submitted complete, but unexecuted Unilateral Undertakings (UU), containing various planning obligations that would be binding upon the landowners and their successors in title. As those UUs had not been executed I indicated that for the purposes of the hearing they would be treated as 'final drafts', with their content to be reviewed by the Council prior to the submission of certified copies of the

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<sup>1</sup> Providing guidance on 'Housing and economic needs assessment' and 'Housing and economic land availability assessment'

<sup>2</sup> All further to the issuing of the fully revised National Planning Policy Framework in July 2018

<sup>3</sup> In the evidence presented by Mr Lee of Opinion Research Services

executed UUs to the Planning Inspectorate no later than 31 May. Certified copies of the UUs, executed on 30 May, have been submitted and I have regard to the obligations contained within them. Those obligations would require 35% of the dwellings within the development to be affordable homes and the making of infrastructure payments for: education and healthcare, the sums to be determined on a formulaic basis using multipliers to be applied to the number of dwellings within the developments; £42,226.00 for sports facilities at Whiston Crescent; £115,125.00 for the Saxon Pool and Leisure Centre; a village hall contribution of £213,642.25 for Clifton Community Centre and/or All Saints Church Hall, Clifton; £18,000.00 for car parking at Baulk Wood, Henlow; and a waste container contribution of £55.00 per dwelling. The UU would additionally secure the provision of on-site open space and the long-term management of that space. I shall return to the UU's planning obligations in my reasoning below.

8. With respect to site visit, with the agreement of the parties present at the hearing I undertook an unaccompanied inspection of the site and the surrounding area, with the appellant giving its consent for me to enter the privately owned land comprising the site. I also viewed the site from 30 and 68 New Road (Nos 30 and 68), with the visits to those properties being undertaken using the Access Required Site Visit (ARSV) procedure. Under the ARSV procedure the owners of Nos 30 and 68 granted me access to their properties on the understanding that they could not present evidence to me while I was at their properties. I can confirm that my visits to Nos 30 and 68 were conducted in accordance with the well-established practice for conducting ARSVs.
9. The Council is in the process of preparing a new Local Plan for its area and the examination hearings for that emerging Local Plan (eLP) commenced on the day of the hearing for the appeals. The appellant and the Council are agreed that limited weight should be attached to the policies of the eLP for the purposes of the determination of Appeals A and B. Given that the eLP is still at a comparatively early stage in its preparation I am similarly of the view that limited weight should be attached to it for the purposes of the determination of these appeals when regard is paid to paragraph 48 of the Framework.

### **Main Issues**

10. The main issues for appeals A and B are:
  - the effect of the development on the character and appearance of the area;
  - the effect of the development on the supply of best and most versatile agricultural land;
  - whether the development would make adequate provision for affordable housing; and
  - the effect of the development on local infrastructure
11. In respect of appeal B there is an additional main issue concerning the development's effect on the archaeology of the site.

## Reasons

### *Planning Policy*

12. The Council's reasons for refusal variously cite conflict with: Policies CS2 (developer contributions); CS7 (affordable housing); CS14 (high quality development); CS15 (heritage); CS16 (landscape and woodland); CS17 (green infrastructure); DM3 (high quality development); DM13 (heritage in development); DM14 (landscape and woodland); and DM16 (green infrastructure) of the Central Bedfordshire Core Strategy and Development Management Policies of 2009 (the Core Strategy). At the hearing the Council submitted that Policy of DM4 (development within and beyond settlement envelopes) of the Core Strategy was omitted in error from the first reason for refusal for both of the appeal schemes, with appellant prior to the hearing being of the view that Policy DM4 should be considered as being a 'most important'<sup>4</sup> policy for the purposes of the determination of the appeals.
13. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise, with national policy, most particularly the Framework, being one such material consideration. The Core Strategy covers the period up to 2026 and although its adoption predates the publication of the original Framework in 2012, paragraph 213 of the extant Framework states that existing development plan policies should not be considered as being out-of-date simply because they were adopted prior to the publication of the Framework. Weight is to be attached to development plan policies according to their degree of consistency with the Framework.
14. Policy CS2 requires developers to make infrastructure contributions to ensure that new developments address their effects upon the infrastructure provision (education, medical and leisure facilities etc) within the Council's area. Policy CS7 addresses the provision of affordable housing and in this instance would require 35% of the dwellings within the developments to be affordable homes. Having regard to the provisions of national policy relating to the provision of infrastructure and affordable housing, as set out in the Framework, I consider that for the purposes of the determination of these appeals that Policies CS2 and CS7 should be considered as being consistent with national policy and should therefore be afforded full weight.
15. Policies CS14 and DM3 both require new development to be of a high quality and variously set out multiple criteria for achieving that. Having regard to the wording of the first of the reasons for refusal I consider the first criterion of Policy CS14 and the first and second criteria of Policy DM3 are the most relevant, with those criteria requiring new development: to be respectful of its context and an area's local distinctiveness; to make a positive contribution to a sense of place; and to be appropriate in terms of its scale and setting. Policies CS14 and DM3 are consistent with the Framework's promotion of high quality development and I therefore consider that their most relevant criteria should be afforded full weight.
16. Policy CS15 requires the archaeology of the area to be protected. I consider that Policy CS15 is consistent with the Framework's policies for the

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<sup>4</sup> Having regard to the language used in paragraph 11d) of the Framework

conservation and enhancement of the historic environment. The third reason for refusal for Appeal B cites conflict with Policy DM13. However, as the wording for Policy DM13 refers to listed buildings, registered parks and gardens and conservation areas, as opposed to buried archaeology, I do not consider it to be relevant to issue raised by the third reason for refusal and I shall therefore make no further reference to this policy.

17. Policies CS16 and DM14 address the consideration of landscape and woodland areas and each of those policies contain multiple criteria. Having regard to the provisions of the first of the reasons for refusal I consider that Policy CS16's second and fourth criteria are of most relevance because they address the conservation and enhancement of the varied countryside character and local distinctiveness, including landscapes of lesser quality, having regard to the Council's Landscape Character Assessment (LCA). I consider that Policy CS16's second and fourth criteria are generally consistent with national policy insofar as paragraph 170 of the Framework states 'Planning policies and decisions should contribute to and enhance the natural and local environment by: ... b) recognising the intrinsic character and beauty of the countryside ...'. I therefore consider that substantial weight should be attached to Policy CS16 for the purposes of the determination of these appeals.
18. In relation to Policy DM14 I consider that its second, fourth and fifth criterion are of particular relevance because they indicate that: development that would have an unacceptable landscape impact will not be permissible; within the Ivel Valley development will be required to provide landscape enhancement; and trees and hedgerows should be protected through their retention. I consider the aforementioned criteria of Policy DM14 are generally consistent with the provisions of paragraph 170 of the Framework and that substantial weight should be attached to Policy DM14, on a similar basis to the way that I have approached Policy CS16. In this regard I am not persuaded that Policy DM14's second criterion should be looked upon as being unduly onerous when compared with paragraph 170 of the Framework. That is because while the second criterion states that development with an 'unacceptable impact on the landscape quality of the area will be refused', I consider this part of Policy DM14 allows for any proposed mitigation or enhancement measures to be considered and, if after such consideration, there would be unacceptable residual harm then that could amount to a reason for planning permission being refused.
19. Policies CS17 and DM16 address the safeguarding and provision of green infrastructure. For the purposes of this policy green infrastructure includes the provision of a networks of green spaces, access routes, wildlife habitats and landscapes. As the provision of green infrastructure contributes to achieving good design within new development, I consider that Policies CS17 and DM16 are consistent with the Framework.
20. Policy DM4, through the identification of settlement envelopes (boundaries), differentiates the built up areas of settlements from the open countryside beyond. Policy DM4 identifies forms of development that will generally be acceptable within settlements and essentially discourages development within the countryside. In the case of the latter only 'limited extensions to gardens will be permitted provided they do not harm the character of the area'.



21. It appears that the settlement boundaries have been defined without regard to the Core Strategy's overall housing and non-housing development requirements and the wording of Policy DM4 sets out no criteria for assessing any need that there might be for building in the countryside or for the assessment of the impact of any such development. Policy DM4 therefore, in part protects the countryside for its own sake and in that regard departs from the approach advocated in paragraph 170 of the Framework, by not recognising different levels of protection for landscapes and the countryside's intrinsic character and beauty. It is also evident from the supporting text for Policy DM4 and Annex G of the Core Strategy that settlement envelopes have been drawn not only to protect countryside for its own sake, but also to prevent the coalescence of settlements and to assist with the operation of the development strategy stated in Policy CS1 of the Core Strategy. That strategy being to direct most new housing to larger more accessible settlements, an approach which is consistent with national policy.
22. Notwithstanding the fact that Policy DM4 seeks to protect the countryside from development, following the Core Strategy's adoption sites have been allocated for development outside settlement envelopes, through the adoption of the Council's Allocations Development Plan Document. Various permissions have also been granted either by the Council or on appeal for developments in the countryside, such as the westward extension of the Clifton Park park homes site (Clifton Park) and the residential development of up to 97 dwellings concerning the land on the opposite side of New Road<sup>5</sup> (the eastern site).
23. I therefore consider that Policy DM4 has not been operating as an absolute bar upon the provision of housing beyond settlement boundaries or solely as a policy for the supply of housing. I therefore consider that while Policy DM4 is not wholly consistent with national policy that for the purposes of the determination of these appeals moderate weight should be attached to it. In that regard I note that a number of other Inspectors have approached Policy DM4's application in a similar vein, such as in the instances of the determination of the appeals for land off: Taylor's Road, Stotfold<sup>6</sup>; and Sutton Road, Potton.
24. In addition to the above-mentioned development plan policies the appellant contends that Policies CS1 (development strategy) and CS5 (providing homes) should be considered as being most important policies for the purposes of the determination of these appeals.
25. Policy CS1 identifies a hierarchical development strategy for the whole of the Council's area and is a policy of a more strategic level that the Council has not sought to rely upon as grounds for refusing planning permission for either of the appeal developments. Given the absence of a reference to Policy CS1 in the reasons for refusal, I am not persuaded that I should treat Policy CS1 as being a policy that is most important for determining either of the appeals before me.
26. Policy CS5 addresses the provision of homes within the Council's area and states that provision will be made for 17,950 new homes between 2001

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<sup>5</sup> Is the site referred to as 'Land off Hitchin Lane, Clifton' and subject to the permission granted on appeal under reference APP/P0240/W/16/3154829

<sup>6</sup> APP/P0240/W/16/3166033 and APP/P0240/W/17/3190687

and 2026. Of those new homes 5,000 are to be provided via newly allocated sites, as opposed to the existing commitments at the point of the Core Strategy's adoption, with a site allocations development plan document identifying the actual locations for those 5,000 new homes. While Policy CS5 is a policy for the supply of housing, it is a policy that the Council did not find any conflict with when it refused planning permission for either of the appeal developments. I am therefore not persuaded that Policy CS5 should be treated as being a policy that is most important for the purposes of determining either Appeals A or B.

27. I am mindful of the fact that the Inspectors who determined the Cranfield and Cranfield3 appeals<sup>7</sup> concluded that Policy CS5 should be treated as being out of date. That was because the quantum of new housing Policy CS5 envisages is based upon the provisions of the now revoked East of England Plan and does not represent a full objectively assessed housing need for the whole of the relevant housing market area. Concluding Policy CS5 was out of date resulted in those Inspectors applying 'the tilted balance' in favour of sustainable development. However, those decisions were made at a time when the wording of paragraph 14 of the Framework of March 2012 was extant and it has been replaced by the wording now found in paragraph 11d) of the Framework of February 2019, most particularly the consideration of whether a policy is or is not 'most important' for the determination of an application. Given the wording of paragraph 11d) and the Council citing no conflict with Policy CS5 in its reasons for refusing planning permission, for the purposes of the determination of the appeals before me, the Cranfield appeal decisions do not persuade me that Policy CS5 should be treated as being a most important policy.

#### *Character and Appearance – Appeals A and B*

28. The site comprises a substantial arable bounded to: the north by dwellings in New Road and the recent Herberts Meadow development; a mixture of arable farmland, vacant smallholdings and sporadic dwellings on the eastern side of New Road; Clifton Park to the south; and farmland to the west. Much of the site's eastern boundary is marked by a mature hedgerow of around 2.0 metres in height and varying thickness, albeit that there is a significant break in that hedgerow at and to the north of the proposed northern access point for the development. The site rises slightly from east to west and its character and appearance is typical of National Landscape Character Area 88 'Bedfordshire and Cambridge Claylands' and Local Landscape Area 4C 'Upper Ivel Clay Valley' (LLA4C)<sup>8</sup>. That is because the site is a large arable field bounded by hedgerows, with it forming part of the open lowland farmland landscape.
29. Within LLA4C the landscape strategy stated in the Council's Landscape Character Assessment (LCA) is to enhance the elements of the landscape that have become degraded or lost, such as hedgerows, and to create new features to enhance and strengthen the river valley character, such as tree planting to screen harsh urban boundaries and roads. The guidelines for new development in LLA4C state, amongst other things, that: proposals involving the loss or fragmentation of hedgerows will be resisted, with enhancement through hedgerow planting being promoted; the rural character and qualities

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<sup>7</sup> APP/P0240/W/17/3181269 and APP/P0240/W/17/3190779

<sup>8</sup> As identified and referred to in the Central Bedfordshire Landscape Character Assessment of 2015

of the area will be safeguarded; and the conservation of secondary roads, by limiting urbanising influences such as widening and the provision of traffic management measures that are sympathetic with the rural character of the area.

30. Within the context of the local landscape the site reads as a single and extensive arable field and I found its appearance to be making a positive contribution to the local farmland landscape. In that respect I consider that the appeal site's appearance differs from the eastern site, with the latter being in parcels and comprising 'semi-improved grassland, areas of scrub and a number of derelict structures', with its historic use being associated with smallholding activity<sup>9</sup>. I observed that the eastern site has a somewhat unkempt appearance that is more akin to that of land that characterises urban fringe locations. The appeal site, by contrast, is being actively cultivated and its appearance is typical of the extensive tracts of farmland lying to the south of Clifton and the wider surrounding area.
31. As I found the appeal site's appearance not to be detracting from its surroundings, I consider it is in no particular need of landscape enhancement, ie the introduction of new planting. That is by contrast with what might be possible through the implementation of the planning permission concerning the eastern site. I therefore consider that in character and appearance terms a clear distinction can be drawn between the appeal site and the eastern site.
32. The indicative Framework Plan is quite sketchy and suggests that the housing would be set behind fairly wide strips of open space, with structural landscaping adjoining the eastern and southern fringes of the site. In that regard the split between the developed and non-developed parts of the site would be of the order 60% and 40% respectively. I recognise that the new structural landscaping would provide some screening for the development from New Road, albeit that landscaping would take time to become established. Notwithstanding that I consider it likely that the roofs of the homes within the development would be apparent, if the situation with the newly built housing in Herberts Meadow is anything to go by. While it is likely that a significant part of the site would be free from built development, the areas of open space and structural planting that there would be would in effect be compartments within a housing estate layout. Those compartments would collectively be of a character that would be very different to the existing arable field, with the latter, as I have indicated above, being redolent of the adjoining extensive tracts of open farmland.
33. Much, if not all, of the mature hedgerow marking the majority of the site's boundary with New Road would need to be removed to facilitate the formation of the access points for the development and/or the widening of the public footway to two metres in order to meet the requirements of the highway authority. That hedge forms part of the linear hedgerow that is present along both sides of New Road for much of its length. I consider the hedgerows along New Road make a significant contribution to the appreciation of the area's rural character, particularly when entering or exiting Clifton's built up area.
34. While quite mature replacement hedging could be planted to accommodate the provision of a widened footway, I nonetheless consider that would leave this stretch of New Road with a significantly more urban appearance than is

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<sup>9</sup> As described in paragraph 13 of the appeal decision APP/P0240/W/16/3154829



currently the case. In that regard I consider that a replacement hedge would be likely to take on a manicured appearance to ensure that a widened footway was free from obstruction for pedestrians and/or to secure the availability of the necessary vision splays for drivers emerging onto New Road.

35. The need for further traffic calming identified by the highway authority<sup>10</sup>, and included in suggested planning condition 11, and the potential for the installation of street lighting at the access points would in my opinion result in New Road having an overtly urbanised appearance at this point. It was put to me that the existing footway could be realigned so that it would become integral to the site behind the existing hedge. However, such a realignment might create natural surveillance issues for the footway's users and could thus be unacceptable to the highway authority. I am therefore not persuaded that relocating the footway would be an appropriate alternative to the widening of the existing footway favoured by the highway authority.
36. I appreciate that when the permission concerning the eastern site is implemented that will cause some urbanising in this part of New Road. However, that effect will be limited in comparison with developments subject to either Appeals A or B, given that the latter will extend significantly further south along New Road and would have the potential to have a greater effect on the roadside hedgerow.
37. Clifton Park, including its extension, causes some visual intrusion on the approach to the village's built up area. However, that effect is tempered by the fact that Clifton Park occupies a slither of land, extending westward from New Road, which accommodates single storey structures. I found Clifton Park's physical detachment from Clifton's built up area, together with its scale, to mean that the open farmland character to the south of Clifton has been retained. However, I consider the appeal site's development would mean that Clifton Park's physical detachment from the village's built up area would be extinguished, with the urbanisation of New Road, in effect, then extending as far south as the park homes site's southern boundary.
38. While the development's visual impact would be of a localised nature, ie affecting the area immediately to the south of Clifton's main built up area, and thus being of most significance for pedestrians and drivers using New Road and the occupiers of the properties immediately adjoining the site, I nevertheless consider that the development would not accord with the guidelines for new development in LLA4C outlined in the LCA. That is because there would be a significant urbanisation in the area's rural character, with the replacement and/or additional planting providing inadequate mitigation and significant alterations being made to the roadside hedgerow. I therefore consider that the landscape impact would be locally significant and harmful.
39. I do not doubt that dwellings could be designed so as to be of an acceptable architectural quality, and that the internal layout could be planned so that it would be of an acceptable appearance. However, the potential to provide an acceptable design in those respects would not address my concerns about the development's character and appearance effects.
40. On this issue I therefore conclude that appeal developments A and B would unacceptably affect the character and appearance of the area. I therefore

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<sup>10</sup> As referred to in the Principal Highway Officer's memorandum to the planning officer of 15 October 2018

consider that the developments would be contrary to Policies CS14, CS16, CS17, DM3, DM14 and DM16 of the Core Strategy. That is because the development would not conserve and enhance the character and distinctiveness of the local landscape, with the likely level of open space provision and new planting failing to adequately mitigate for the quantum of new built development in an area that is characterised by open farmland. I also consider that the development would not accord with paragraph 170b) of the Framework because it would fail to recognise the intrinsic character and beauty of the countryside at this point. In that regard caselaw<sup>11</sup> has established that development proposals affecting parts of the countryside that are not subject to a statutory landscape designation, such as the land to the west of New Road, nevertheless come within the scope of the provisions of what is now paragraph 170b) of the Framework.

*Best and most versatile agricultural land - Appeals A and B*

41. The development would involve the loss of 6.93 hectares of productive grade 3a agricultural land, which is classified as being best and most versatile farmland (BMVL). With around 60% of the Council's area being classed as being BMVL there is some inevitability that much of the new housing to be provided in the future will involve the loss of some BMVL. The appellant estimates that this development would reduce the amount of BMVL in the Council's area by around 0.02%<sup>12</sup>, a figure not disputed by the Council. That loss of itself would not be significant, albeit I appreciate that multiple losses of similar proportions would be more significant.
42. On the evidence available to me I conclude that the loss of best and most versatile agricultural land would not be unacceptable, with the affected land being at the lower end of the quality range for BMVL. In that regard I note that the loss of BMVL would not of itself be contrary to any extant development plan policies and I consider that the scale of loss would be insufficient to adversely affect the development and diversification of agricultural and other land based rural businesses. Accordingly, in this regard I consider that there would be no significant conflict with the Framework's policies for supporting a prosperous rural economy, most particularly paragraphs 83b) and 170b). I therefore consider very modest weight should be attached to the loss of BMVL in this instance.
43. I would, however, stress that while I have found the loss of BMVL to be unobjectionable in terms of the functioning of the rural economy that should not be taken as diminishing my concerns about the development's adverse effects upon the character and appearance of the area.

*Affordable Housing – Appeals A and B*

44. The UUs respectively relating to appeals A and B would obligate the developer to provide affordable housing within the development at the level of 35%. That level of provision would accord with the requirement stated in Policy CS7 of the Core Strategy. There is agreement between the appellant and the Council that there is a need to provide affordable housing at the level of 35% and I see no reason to take a contrary to view to that.

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<sup>11</sup> Cawrey Limited and the Secretary of State for Communities and Local Government [2016] EWHC 1198 (Admin)

<sup>12</sup> The percentages of 0.02 and 60 previously referred to being taken from section 8 of the appellant's hearing statement for appeal B

45. On this issue I therefore conclude that development would make adequate provision for affordable housing and would accord with Policy CS7. That said I attach moderate weight to the provision of affordable housing because while this would assist in meeting a continuing need within the Council's area, it is likely that any development of a comparable scale in the Council's area would be expected to provide affordable housing in compliance with Policy CS7.

*Infrastructure – Appeals A and B*

46. The UUs in respect of each of the appeals would obligate the developer to make various financial contributions towards the provision of off-site educational, medical and leisure facilities (as outlined more fully in paragraph 7 above) and to secure the provision of on-site open space. The Council is content that the financial contributions that would be secured via the UUs would mitigate the development's demands on local infrastructure, when regard is paid to Policy CS2 of the Core Strategy. On the evidence available to me I am content that planning obligations contained within the UUs would be necessary to mitigate the development's effect on local infrastructure.
47. I am mindful that residents are concerned about the effectiveness of the measures to mitigate the development's effects on local infrastructure. However, as I have indicated above the planning obligations contained with the UUs would accord with the provisions of Policy CS2. On this issue I therefore conclude that the development would provide adequate mitigation for its effects upon local infrastructure. As the development would address its infrastructure demands on a needs basis, I consider this is a neutral factor for the purposes of assessing any benefits or disbenefits of the development.

*Archaeology – Appeal B*

48. The third reason for refusal relating to the proposal subject to appeal B raised a concern about the development's implications for buried archaeology on a precautionary basis. That being because on-site investigations (ie trial trenching) had not been undertaken in advance of the appealed application's determination. However, in connection with appeal B's submission on-site investigations have been undertaken, in accordance with a programme of evaluation agreed with the Council. Iron Age artefacts have subsequently been detected within the south western corner of the site.
49. On the basis of the archaeological information now available the appellant's and Council's archaeological advisors agree that this is an issue that could be covered through the formulation of a detailed archaeological mitigation strategy. Such a strategy is a matter that could be addressed through the imposition of a planning condition.
50. On this issue I conclude that the with the imposition of a planning condition the development's effect on archaeology would be acceptable. I therefore consider that the development would accord with Policy CS15 of the Core Strategy and section 16 (Conserving and enhancing the historic environment) of the Framework because it would be possible to protect the site's archaeology. As the development would address its implications for buried archaeology, I consider this is a neutral factor for the purposes of assessing any benefits or disbenefits of the development.

## Other Matters

### *Housing Land Supply*

51. There is significant disagreement as to whether the Council can currently demonstrate a five year supply of housing (5yrHLS). That disagreement being focused on what the current housing requirement should be within the Council's area.
52. In connection with the preparation of the eLP the Council has jointly undertaken a Strategic Housing Market Assessment (SHMA) with Luton Borough Council to identify a full objectively assessed housing need (FOAHN) for their areas. The most recent version of the SHMA having been published in December 2017 and it identifies a FOAHN for Central Bedfordshire of 32,000 dwellings between 2015 and 2035, ie 1,600 dwellings per year. However, as the eLP's examination is in its early stages the appropriateness or otherwise of the FOAHN identified by the Council remains to be established through the eLP's examination.
53. In the context of maintaining the supply and delivery of housing paragraph 73 of the Framework states:

'... Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old<sup>37</sup>'.

[Footnote 37 states 'Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance'.]
54. As the Council's adopted strategic policies, ie its Core Strategy, are more than five years old this is an instance under the provisions of paragraph 73 when national policy and guidance indicates that the calculation of local housing need (LHN) should follow the 'standard method' (SM). It is agreed that if the SM is applied strictly in accordance with the extant national guidance then the LHN figure is 2,428 dwellings per annum<sup>13</sup> (or 12,140 over the next five years). That LHN level suggests that between 2019 and 2029 the housing requirement would be equivalent to one new dwelling for every five present in 2019. However, the Council contends that using the SM, yields an inaccurate housing requirement for its area. That is because the SM is reliant upon the use of the Government's 2014 household projections, which in turn utilise census mid-year estimates (MYE) provided by the Office for National Statistics (ONS).
55. The Council contends that the MYEs for its area historically have been inaccurate because their migration component has inflated the population estimates within its area by around 7,200 people. In that regard it has been submitted that the MYEs suggest that between 2011 and 2015 Central Bedfordshire's population grew by 18,400 people compared with estimates for the period between 2001 and 2011 which indicated the population increased

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<sup>13</sup> Before applying a 5% buffer

by 21,600. Applying the MYEs in the Council's area, the population increase between 2011 and 2015 was equivalent to 85% of the total growth for the preceding ten years<sup>14</sup>. To sense check the accuracy of the MYEs the Council has reviewed other administrative data sources, ie the patient register, school census and pension records, and found those data sources do not support the level of population growth identified by the MYEs. The Council further contends that the house building rates between 2011 and 2015 do not support the rate of population growth indicated by the MYEs for this period<sup>15</sup>.

56. At the hearing Mr Lee, on the Council's behalf, commented that out of the several hundred local authorities in England there are a very small number for which the MYEs appear to be significantly over estimating migration growth. In that regard Mr Lee referred to two councils, Central Bedfordshire and Aylesbury Vale, of the fifty or so that his consultancy has acted for that are exhibiting MYEs that are significantly affected by inaccurate migration data inputs. Mr Lee referred to this being a "quite exceptional" occurrence, with the situation in Central Bedfordshire being an "extreme outlier" in terms of the accuracy of the MYEs.
57. Prior to the most recent revisions to the Framework and the PPG being published, the Government undertook a technical consultation and the Council made representations to the Government. However given the very specific concerns that the Council has about the use of the MYEs in its area and the consequences of their use when the SM is applied, I consider it unsurprising that the Government did not introduce caveats into the Framework and the PPG to address statistical errors affecting a very small number of Councils. I consider therefore the absence of any caveats in the national policy and guidance to address the Council's very particular concerns about the reliability of the MYEs and the household projections founded on them, does not diminish the concern that the Council has put to me. In this regard the SM's application in the Council's area generates a LHN figure that instinctively does not feel right. That is because to achieve the LHN derived through the SM's application the housing stock in Central Bedfordshire would need to grow by the order of 20% between 2019 and 2029<sup>16</sup>.
58. Given that the use of the SM yields a LHN figure that seems doubtful, I consider this is an instance when reliance on the SM favoured in the national policy and guidance would be misplaced. So while the Framework and the PPG are important material considerations, I consider the inaccuracy of the MYEs, and associated implications for the 2014 household projections for Central Bedfordshire, is also an important material consideration. Accordingly, for the purposes of the determination of these appeals, I consider that the weight attributable to the SM to derive a LHN should be greatly reduced.
59. The appellant has put to me that should I reach a finding that the 'text book' three step SM set out in the PPG<sup>17</sup> should not be applied for the purposes of establishing the LHN in this instance, then a mix and match (hybrid) approach could be adopted. The hybrid application of the SM could entail at step 1 the use of the 2016 household projections in substitution for the 2014 household projections or applying the SHMA figure of 1,600 to SM's second and third

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<sup>14</sup> Paragraph 8(vi) of the Summary of Opinion Research Services' Written Statement of 10 May 2019

<sup>15</sup> Paragraph 8(x) of the Summary of Opinion Research Services' Written Statement of 10 May 2019

<sup>16</sup> Paragraph 3.46 of Opinion Research Services' Written Statement of 10 May 2019

<sup>17</sup> Paragraph 004 ID: 2a-004-20190220



steps. However, calculating the LHN on a hybrid basis would not follow a tried and test methodology and would introduce the kind of uncertainty in calculating the 5yrHLS that the Government has sought to avoid through the SM's introduction. I am therefore disinclined to accept that a hybrid approach to SM's application would be appropriate.

60. My attention has been drawn to a recent appeal decision concerning a site in Tendring District Council's (TDC) area<sup>18</sup>, with TDC being concerned about the accuracy of the MYEs and the implications that has for the application of the SM. However, in relation to the Tendring case the appellant did not challenge TDC's contention that there was statistical error affecting the SM's use. The case put to the Tendring Inspector with respect to establishing the LHN appears to be different to the one made to me. I therefore consider that the Tendring decision has little bearing on my consideration of the appeals before me.
61. That leaves the LHN figure of 1,600 dwellings per annum that the Council has identified through the preparation of its SHMA. While that housing requirement figure has been calculated using a methodology no longer favoured by the Government, it is based on the application of a previously tried and tested methodology. Given the evidence put to me, I therefore consider that a requirement of 1,600 dwellings per year represents a reasonable level of LHN to be used in connection with the determination of the appeals before me. My finding in this regard, as was put to me on the Council's behalf at the hearing, is consistent with the approach taken by a number of Inspectors who have determined other recent appeals in the Council's area<sup>19</sup>. I feel I should stress that my use of a LHN figure of 1,600 dwellings per year should not be taken as having any bearing on the consideration of the housing requirement for Central Bedfordshire that is being undertaken as part of the eLP's examination.
62. Although there is a dispute between the parties about the appropriate LHN, for the purposes of these appeals the appellant has not sought to challenge the Council's identification of a housing supply of 9,187 dwellings. There is therefore agreement that the Council can demonstrate a 5yrHLS if that is calculated against the SHMA LHN figure of 1,600 dwellings per annum<sup>20</sup>. Given that I consider for the purposes of the determination of these appeals that it is appropriate to treat 1,600 dwellings per annum as representing the appropriate LHN figure, it follows that I consider it has been demonstrated that there is a 5yrHLS. The current 5yrHLS position therefore does not warrant the tilted balance being applied for the purposes of paragraph 11 of the Framework.
63. I am mindful of the fact that through the making and adoption of the eLP it is likely that there will be a requirement for a proportion of the unmet housing need arising in Luton Borough Council's area to be provided in Central Bedfordshire. However, the precise proportion of Luton's housing requirement to be met within Central Bedfordshire remains to be determined through the eLP's examination. That said I do not consider that the evidence before me suggests that the development of the appeal site would be essential to

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<sup>18</sup> APP/P1560/W/18/3196412 – Land west of Edenside, Frinton-on-Sea

<sup>19</sup> For example APP/P0240/W/17/3190687 – Land off Sutton Road, Potton

<sup>20</sup> Paragraphs 6.1.4 and 6.1.7 of the Statement of Common Ground

meeting the unmet need for Luton. I therefore attach very limited weight to this aspect of the appellant's case.

#### *Other appeal decisions*

64. A considerable number of appeal decisions concerning the Council's area and further afield have been drawn to my attention. While I have read and had regard to those other appeal decisions, I have found it necessary only to make limited reference to some of them above. That is because: firstly it is rare for two appeal developments to be directly comparable, in terms of site specific circumstances and/or the development plan policies most important for their determination; and secondly very few of the appeal decisions postdate the publication of the July 2018 and February 2019 versions of the Framework.

#### **Planning balance and overall Conclusion**

65. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 11d) of the Framework would be an important material consideration if there were no relevant development plan policies or the policies which are most important for determining the appeals were out-of-date. In such circumstances the tilted balance would be applied.
66. I have found the development to be contrary to Policies CS14, CS16, CS17, DM3, DM14 and DM16 of the Core Strategy because of the unacceptable harm that there would be to the character and appearance of the area. Policies CS14, CS16, CS17, DM3, DM14 and DM16 are most important for the purposes of the determination of these appeals and are policies that I have found not to be out-of-date. While there is some conflict with Policy DM4 of the Core Strategy because of the development's location in the countryside, this is a policy that is not wholly consistent with the Framework, nevertheless I have found it to be a policy that is not out-of-date and which attracts some weight. Additionally, for the purposes of determining these appeals I have found that the Council can demonstrate a 5yrHLS. Taking all of the foregoing factors into account I consider this is an instance when the 'tilted balance' in favour of sustainable development is not engaged and that the development should be judged against the provisions of the development plan as a whole.
67. For the reasons given above I consider that great weight should be attached to the harm to the character and appearance to the area and the resulting conflict with the development plan as a whole. I accept that there would be significant economic and social benefits arising from the construction and occupation of up to 130 dwellings, including the provision of affordable homes at the rate of 35%. However, I consider that those social and economic benefits are tempered by the fact that the housing need in the Council's area is being addressed through the delivery of housing on other sites at a rate that is maintaining a five year supply. I therefore consider that the benefits of the development do not outweigh the harm to the character and appearance of the area that I have identified. I further consider that the harm that I have identified could not be overcome through the imposition of reasonable planning conditions.

68. I therefore consider that that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan. Having found that there would be substantial conflict with the development plan, taken as a whole, I consider that the proposals subject to appeals A and B cannot be viewed as being sustainable forms of development. I therefore conclude that the appeals A and B should be dismissed.

*Grahame Gould*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

	Of Counsel
Liam Ryder	Code Development Planners
Gary Holliday	FPCR Environment and Design Limited
Rachel Evans	Gladman (appellant)
Samuel Pugh	Gladman (appellant)

### FOR CENTRAL BEDFORDSHIRE COUNCIL:

Alexander Booth QC	
Phillip Hughes	PHD Chartered Town Planners
Mrs Alison Myers	The Council's Landscape Planner
Jonathan Lee	Opinion Research Services

### INTERESTED PERSONS:

Jacqueline Veater	Govresources Limited on behalf of Clifton Parish Council
Ray Dart	Clifton Parish Council
Mike Talbot	Clifton Parish Council
Diana Talbot	Local Resident
Daniel Scott	Local Resident

Kenneth Smith	Local Resident
Barry Livesey	Local Resident
Nora Gifford	Local Resident
Ian Dalgarno	Ward Councillor for Central Bedfordshire Council

#### HEARING AND POST HEARING DOCUMENTS

- 1) Final draft Unilateral Undertaking for Appeal A
- 2) Final draft Unilateral Undertaking for Appeal B
- 3) Planning Obligation Summary Note
- 4) Copy of appeal decision APP/P1560/W/18/3196412 dated 20 May 2019 issued under S56(2) of the Act which superseded the version of this decision issued on 3 April 2019.
- 5) The Council's Five Year Land Supply Statement (period commencing 1 April 2019)
- 6) Speaking Note of Jacqueline Veater relating to Best and Most Versatile Agricultural Land on behalf of Clifton Parish Council
- 7) Speaking Note of Ray Dart relating to infrastructure
- 8) Speaking Note of Daniel Scott relating to effects on the character of the area
- 9) Speaking Note of Kenneth Smith relating to effects on the character of the area
- 10) Speaking Note of Barry Livesey relating to effects on the character of the area and the availability of agricultural land
- 11) Speaking Note of Diana Talbot relating to effects on visual appearance and wildlife
- 12) Certified copy of the Unilateral Undertaking relating to Appeal A executed on 30 May 2019
- 13) Certified copy of the Unilateral Undertaking relating to Appeal B executed on 30 May 2019