



Ministry of Housing,
Communities &
Local Government

Timothy Waller
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Our ref: APP/Y0435/W/17/3169314

25 June 2020

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY WAVENDON PROPERTIES LTD
LAND TO THE EAST OF NEWPORT ROAD AND TO THE EAST AND WEST OF
CRANFIELD ROAD, WOBURN SANDS, BUCKINGHAMSHIRE MK17 8UH
APPLICATION REF: 16/00672/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC, who held a public local inquiry from 14 - 23 January 2020 into your client's appeal against the decision of Milton Keynes Council to refuse your client's outline application, with all matters except the means of access reserved for subsequent approval, for residential development of up to 203 dwellings, a doctor's surgery, open space and landscaping, together with pedestrian, cycle and vehicular access from Newport Road and Cranfield Road and supporting infrastructure, in accordance with application ref: 16/00672/OUT, dated 20 July 2016.
2. On 31 October 2017, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.
3. The Secretary of State initially issued his decision in respect of the above appeal in his letter dated 5 December 2018. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 14 June 2019. The appeal has therefore been redetermined by the Secretary of State, following a new inquiry into this matter. Details of the original inquiry are set out in the 5 December 2018 decision letter.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be dismissed.
5. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his recommendation. He has decided to dismiss the appeal.

Ministry of Housing, Communities & Local Government
Jean Nowak, Decision Officer
Planning Casework Unit
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A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising since the close of the inquiry

6. On 18 May 2020, the Secretary of State wrote to the main parties to afford them an opportunity to comment on a letter from Milton Keynes Council dated 12 May 2020 which included a recent appeal decision relating to Rectory Farm, Woburn Sands Road, Bow Brickhill, Milton Keynes, MK17 9JY. A list of the representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 27 May 2020 and 3 June 2020. The Secretary of State is satisfied that all representations received have been given full and due consideration, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies may be obtained on written request to the address at the foot of the first page of this letter.
7. In his letter of 16 August 2019, confirming the reopening of the inquiry, the Secretary of State explained that one change in circumstance he considered material to the redetermination was the announcement by Highways England, in September 2018, that corridor B (central option) had been selected as the preferred corridor for the Oxford-Cambridge Expressway (IR1.16). The Secretary of State has noted that, in March 2020 Highways England announced that work had paused on the Oxford-Cambridge Expressway while they undertook further work on other potential road projects that could support the government ambition on the Oxford-Cambridge Arc (<https://highwaysengland.co.uk/project-update-12-march-2020/>). The Secretary of State has also noted that none of the parties have made representations to him on this announcement. The Secretary of State does not consider the pausing of the work raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal.

Policy and statutory considerations

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case the development plan consists of Plan:MK 2016-2031 (Plan:MK), Woburn Sands Neighbourhood Plan 2014 (WSNP) and Site Allocations Plan 2018 (SAP). The Secretary of State considers that relevant development plan policies include those set out at IR3.3-3.9.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
11. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals or their settings, or any features of special architectural or historic interest which they may possess.

Main issues

Housing Land Supply

12. The Secretary of State has considered the Inspector's analysis at IR12.4-12.64. For the reasons given at IR12.8-12.12 the Secretary of State agrees with the Inspector that it is acceptable that the evidence can post-date the base date provided that it is used to support sites identified as deliverable as of 1 April 2019 (IR12.11). Like the Inspector, the Secretary of State does not consider it necessary to apply a 1 October 2019 base date (IR12.12). For the reasons given at IR12.13-12.15, the Secretary of State agrees with the Inspector that a proforma can, in principle, provide clear evidence of a site's deliverability (IR12.14). The Secretary of State also agrees with the Inspector that it would not be appropriate to automatically disregard all the sites owned by Homes England and Milton Keynes Development Partnership (IR12.15). For the reasons given at IR12.16-12.25 the Secretary of State agrees with the Inspector that there is no reason to apply a greater discount than the Council's rate (IR12.19). The Secretary of State agrees with the approach the Inspector has taken to prior approval sites in this case (IR12.22).
13. The Secretary of State has noted that the Globe and Castlethorpe Road appeal decisions came to different conclusions on whether the Council could demonstrate a 5-year housing land supply (HLS) (IR12.23), but he agrees that, as the Inspector's conclusions in this case are based on the evidence before him, this should be regarded as being sufficient to explain any difference from the findings of the Castlethorpe Road or Globe Inspectors (IR12.25).
14. The Secretary of State has considered the Inspector's assessment of disputed sites at IR12.26-12.60. For the reasons given, the Secretary of State agrees with the Inspector that the Council can demonstrate a HLS of 5.5 years for the base date of 1 April 2019 (IR12.61). The Secretary of State has also noted that the Inspector finds that, for a base date of 1 October 2019, there would be a 5-year HLS of 5.99 years (IR12.62). However, as already indicated in paragraph 12 above, the Secretary of State agrees with the Inspector that it is not necessary to apply a 1 October base date. The Secretary of State also agrees with the Inspector that the Council's Scenarios 2 and 3 do not affect his findings on HLS (IR12.63-64).
15. Overall, the Secretary of State agrees with the Inspector's conclusion at IR12.65 that the Council can demonstrate a 5-year supply of deliverable housing sites whichever approach is taken in terms of the base date, and even with the application of the Council's lapse rate.
16. The Secretary of State has noted that, in their correspondence of 26 May 2020 and 12 June 2020, the appellant has referred to the potential impact of the current Covid-19 pandemic on house building. He has also noted that the appellant submitted a document with their correspondence of 26 May 2020 issued by the Council entitled 'Rectory Farm decision and the Implications for Five-Year Housing Land Supply', published on 29 April 2020. The Secretary of State considers that, as the quantification in that document is based on the appellant's modelling using a past event and they have not put forward specific evidence about the deliverability of individual sites, it does not affect his judgement in this case.

The location of the development

17. For the reasons given at IR12.66-12.71 and IR12.74, the Secretary of State agrees with the Inspector that the location and type of the appeal development does not comply with Policies DS1, DS2 and DS5 of Plan:MK and WSNP policies WS5 and WS6. He further agrees that there is no inconsistency with the Framework in terms of how WSNP Policies WS5 and WS6 seek to safeguard the countryside and direct developments to specific locations, and that these policies can be given significant weight (IR12.71). The Secretary of State agrees with the Inspector that the housing would not be in an appropriate location having regard to the development plan and national policies (IR12.74). He further agrees that the conflict with the development plan in terms of the location of the proposal carries substantial weight (IR12.101).
18. For the reasons given at IR12.72 the Secretary of State agrees with the Inspector that the proposal does not conflict with the development plan insofar as the proposed Oxford to Cambridge Expressway is concerned. He also agrees with the Inspector that there is no conflict with the development plan or other reason to refuse the proposal in relation to the East-West rail project (IR12.73).

Housing Density

19. For the reasons given at IR12.75-12.82, the Secretary of State agrees with the Inspector that the final density figure cannot be established at this point (IR12.78). Like the Inspector the Secretary of State considers that, while the final layout and density of the development has yet to be fixed, a scheme based on the illustrative layout with a density of 16-20dph would be relatively low but would be acceptable in this instance for this location. It would balance an efficient use of land with respecting the surrounding character and setting and so would accord with Plan:MK Policy HN1 and NPPF paragraph 122 (IR12.81).

Other matters

Best and most versatile agricultural land

20. For the reasons given at IR12.83 the Secretary of State agrees with the Inspector that the loss of Grade 3a agricultural land within the site would conflict with Plan:MK Policy NE7. However, the Secretary of State also agrees with the Inspector that this would not, in itself, be a reason for refusal and carries only moderate weight (IR12.99).

Ecology and drainage

21. For the reasons given at IR12.84-12.87 the Secretary of State agrees with the Inspector that the development would not have an unacceptable effect on ecology or protected species (IR12.86). The Secretary of State further agrees that the development offers the means to alleviate current drainage problems through additional attenuation and the use of a suitable maintenance regime (IR12.87). The Secretary of State considers that the environmental enhancement of ecology and the provision of drainage measures to try to address existing problems are benefits which should be afforded moderate weight (IR12.97).

Highways and parking

22. The Secretary of State notes that the appellant's updated Transport Assessment concludes that there would be very modest impacts on all junctions as a result of the

development (IR12.88 and IR12.96). For the reasons given the Secretary of State agrees with the Inspector that only limited weight can be afforded to any highway benefits (IR12.96).

Facilities and services in Woburn Sands

23. For the reasons given at IR12.89, the Secretary of State agrees with the Inspector that there is little evidence to indicate that the development would have an unacceptable impact on services and facilities in Woburn Sands.

Heritage assets

24. For the reasons given at IR12.90-12.91 the Secretary of State agrees with the Inspector that the development would result in less than substantial harm to the significance of the Grade II listed Deethe Farmhouse. He also agrees with the Inspector that the level of harm would be low due to the existing setting and the proposed mitigation measures. Nevertheless, paragraphs 193 and 194 of the Framework state that great weight should be given to the conservation of listed buildings and any harm weighed against the public benefits (IR12.91).

25. The Secretary of State also agrees with the Inspector that, given the existing screening and distances involved, there would be no harm caused to either the Grade II listed park and garden at Wavendon House or the Grade II* Wavendon House itself (IR12.92).

Character and appearance of the landscape

26. For the reasons at IR12.93 the Secretary of State agrees with the Inspector that the development would have a very limited effect on the character and appearance of the landscape. Therefore, the Secretary of State affords little weight to any harm.

Other benefits

27. For the reasons given in IR12.94 the Secretary of State agrees with the Inspector that the provision of affordable housing beyond the minimum policy requirement should carry significant weight. The Secretary of State also agrees with the Inspector that the provision of market housing should be afforded significant weight given the potential number of dwellings that could be delivered and the eagerness of the appellant as a small to medium sized developer to deliver housing as swiftly as possible.

28. The Secretary of State agrees with Inspector that there are a range of economic benefits (IR12.95) and affords these moderate weight. For the reasons given in IR12.97 the Secretary of State agrees with the Inspector that little weight can be afforded to the appellant's claim of a high-quality living environment given the limited information at outline stage and the policy requirement that all development should be high quality.

Planning conditions

29. The Secretary of State has given consideration to the Inspector's analysis at IR11.1-11.2, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

30. Having had regard to the Inspector's analysis at IR11.3-11.5, the planning obligation dated 27 February 2020, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR11.6 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

31. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Plan:MK Policies DS1, DS2, DS5 and NE7 and WSNP policies WS5 and WS6, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
32. Weighing in favour of the proposal, the Secretary of State affords the provision of affordable housing significant weight and also affords the provision of market housing significant weight. The economic benefits are given moderate weight, and the Secretary of State also gives moderate weight to ecology and drainage benefits. The Secretary of State affords limited weight to any highway benefits; and little weight to the appellant's claim of a high quality living environment..
33. Weighing against the proposal, the Secretary of State considers the housing would not be in an appropriate location having regard to the development plan and national policies. He further considers that the conflict with the development plan in terms of the location of the housing carries substantial weight as it would not accord with the spatial strategy in Plan:MK. The Secretary of State affords moderate weight to the loss of BMV agricultural land. The Secretary of State gives little weight to any harm to the landscape or character of the area.
34. The Secretary of State has considered whether the identified 'less than substantial' harm to the significance of the Grade II listed Deethe Farmhouse is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm. The public benefits have been summarised in paragraph 32 of this letter.
35. Overall the Secretary of State agrees with the Inspector at IR12.98 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm to the significance of the Grade II listed Deethe Farmhouse. He considers that the balancing exercise under paragraph 196 of the Framework is therefore favourable to the proposal
36. The Secretary of State considers that other matters covered in this decision letter are neutral in the planning balance.
37. Overall the Secretary of State considers that the material considerations in this case indicate a decision in line with the development plan – i.e. a refusal of permission.
38. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

Formal decision

39. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses outline planning permission, with all matters except the means of access reserved for subsequent approval, for residential development of up to 203 dwellings, a doctor's surgery, open space and landscaping, together with pedestrian, cycle and vehicular access from Newport Road and Cranfield Road and supporting infrastructure, in accordance with application ref: 16/00672/OUT, dated 20 July 2016

Right to challenge the decision

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

41. A copy of this letter has been sent to Milton Keynes Council and Woburn Sands Town Council.

Yours faithfully

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

Annex A Schedule of representations

Party	Date
Milton Keynes Council	12 May 2020

Representations received in response to circulation of the Milton Keynes Council correspondence dated 12 May 2020

Party	
Waller Planning Ltd on behalf of Wavendon Properties Ltd	26 May 2020
Woburn Sands Town Council	26 May 2020
Milton Keynes Council	2 June 2020
Waller Planning Ltd	12 June 2020



Report to the Secretary of State for Housing, Communities and Local Government

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC
an Inspector appointed by the Secretary of State

Date 27 March 2020

Town and Country Planning Act 1990

Milton Keynes Council

Appeal by Wavendon Properties Limited

Inquiry Held on 14-17 and 21-23 January 2020
An accompanied site visit was undertaken on 20 January 2020

Land to the east of Newport Road and to the east and west of Cranfield Road, Woburn Sands,
Buckinghamshire MK17 8UH

File Ref: APP/Y0435/W/17/3169314

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GLOSSARY

APPxx	Appellant's proofs of evidence for redetermined inquiry
APS	Annual Position Statement
BMV	Best and most versatile agricultural land
CD	Core Document
CIL	Community Infrastructure Levy
DL	Secretary of State's first decision letter
dpa	Dwellings per annum
dph	Dwellings per hectare
EIA	Environmental Impact Assessment
GPDO	The Town and Country Planning (General Permitted Development) (England) Order 2015
ha	Hectare
HLS	Housing land supply
ID	Inquiry Document
IR	The first Inspector's report
LPApp	Council's proofs of evidence for redetermined inquiry
LVA	Landscape and Visual Assessment
MKDP	Milton Keynes Development Partnership
MOU	Memoranda of Understanding
NLP	Nathanial Lichfield & Partners
NPPF	National Planning Policy Framework
OB	Optimism bias
PINS	The Planning Inspectorate
Plan:MK	Plan:MK 2016-2031, adopted March 2019 as a development plan document for Milton Keynes
PPG	Planning Practice Guidance
RID	Redetermined Inquiry Document
S106	A legal agreement made under Section 106 of the Town and Country Planning Act 1990
SAP	Site Allocations Plan 2018
SEMK	South East Milton Keynes site
SME	Small and medium-sized enterprises
SOCG	Statement of Common Ground
SoS	Secretary of State
SPD	Supplementary Planning Document
SPG	Supplementary Planning Guidance
TA	Transport Assessment
TCPA 1990	The Town and Country Planning Act 1990
TPO	Tree Preservation Order
WSNP	Woburn Sands Neighbourhood Plan

File Ref: APP/Y0435/W/17/3169314
Land to the east of Newport Road and to the east and west of Cranfield Road, Woburn Sands, Buckinghamshire MK17 8UH

- 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 Wavendon Properties Ltd against the decision of Milton Keynes Council.
- The application Ref 16/00672/OUT, dated 20 July 2016, was refused by notice dated 5 December 2016.
- The development proposed is an outline planning application with all matters except the means of access reserved for subsequent approval described as 'residential development of up to 203 dwellings, a doctor's surgery, open space and landscaping, together with pedestrian, cycle and vehicular access from Newport Road and Cranfield Road and supporting infrastructure'.
- This report supersedes that issued on 2 February 2018. The original decision on the appeal was quashed by order of the High Court.

Summary of Recommendation: That the appeal be dismissed.

1. Procedural Matters

- 1.1. This section is based on the first Inspector's report and has been updated as necessary.

Summary of appeal chronology

- 1.2. The original inquiry into this appeal opened on 11 July 2017 and closed on 19 July 2017. Although requests that the appeal be determined by the Secretary of State (SoS) were refused in August 2017¹, the SoS subsequently directed that he should determine this appeal himself in letters dated 31 October 2017². The original Inspector's report was submitted on 2 February 2018 with a recommendation to allow the appeal and grant planning permission subject to conditions. The SoS disagreed and dismissed the appeal³. The appellant challenged the decision in the High Court. The decision was quashed by order of the High Court on 14 June 2019⁴ and sent back to the SoS for redetermination. The SoS decided to re-open the inquiry, which opened on 14 January 2020 and ran for 7 days. The inquiry was closed in writing on 28 February 2020 once outstanding documents were received, including a completed and executed Section 106 (S106) agreement.

The proposal in outline

- 1.3. The appeal site extends across almost 15.2ha. It consists of about half a dozen fields, often enclosed behind mature hedges and trees, that wrap around the assorted residential streets and cul-de-sacs that project behind Newport Road and either side of Cranfield Road at the northern end of Woburn Sands. The main part of the town lies to the south beyond the Bletchley to Bedford railway line and a level crossing. The proposal is made in outline with all matters except the means of access reserved for subsequent approval. An illustrative

¹ ID26

² ID27

³ CD10.33

⁴ CD10.34

layout plan and a parameters plan⁵ show how up to 203 dwellings and a doctor's surgery could be laid out across the site along with associated landscaping and open space.

The application and the Council's decision

1.4. The original planning application was reported to the Council's development control committee on 1 December 2016⁶. In the absence of sufficient housing land being identified as available to meet requirements over the next 5 years, the scheme was recommended for approval, subject to conditions and the execution of a S106 Agreement securing contributions towards the provision of health and education facilities, parks, play and community facilities, together with the maintenance of open space. The reasons for the recommendation were as follows:

"With the lack of a five year housing land supply, the strategic policies of the Development Plan are out of date, as outlined by the National Planning Policy Framework. Having weighed all other matters, the proposed development is considered to represent a sustainable form of development in terms of its social, environmental and economic functions and the proposed development is therefore acceptable in principle. Access to the site is considered appropriate and would not put undue pressure on the local road network and there are no other fundamental issues that would warrant a refusal of the application. All other detailed matters would be considered under reserved matters applications at a later date. In the light of these comments and the report above, approval is recommended."

1.5. However, the committee decided to refuse the application contrary to the recommendation. The reasons for refusal were⁷:

1. The Committee resolved to refuse planning permission on the basis that any such development of this site would result in the loss of future development and infrastructure options, causing significant and demonstrable harm and is therefore not sustainable development in accordance with Resolution 24/187 of the United Nations General Assembly definition of sustainable development and the National Planning Policy Framework (NPPF) in respect of future generations. The development would also therefore be contrary to paragraphs 14 and 19 of the National Planning Policy Framework, Saved Policy D1 of the adopted Milton Keynes Local Plan 2001-2011 (adopted 2005) and policy WS5 of the Woburn Sands Neighbourhood Plan 2014-2026 (adopted 2014). This does not constitute sustainable development in terms of paragraph 14 of the National Planning Policy Framework.
2. Furthermore the low density of this proposed development would not be considered sustainable given the current objectives of central government and this Council to both optimise use of land and to build both quickly and strategically.

1.6. In the Council's Statement of Case for the first inquiry, the first reason for refusal was effectively amended to read:

1. The development would be contrary to policy WS5 of the Woburn Sands Neighbourhood Plan 2014-2016 ([sic] adopted 2014). This does not constitute

⁵ CDs1.4, 1.5 and 1.7

⁶ CD3.2

⁷ CD3.4

sustainable development in terms of paragraph 14 of the National Planning Policy Framework.

The reasons for recovery

1.7. An initial request to recover this appeal for determination by the SoS was made on the basis that the development exceeded the threshold of 150 dwellings and on whether the *Liverpool* or *Sedgefield* method of calculating the available provision for housing was the 'correct' approach to adopt in this case; that request was refused on 30 August 2017⁸. However, the SoS subsequently directed that he should determine this appeal himself in letters dated 31 October 2017⁹. The reason for recovery was that:

... the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

The need for Environmental Impact Assessment (EIA)

1.8. Although this 'urban development project' falls within the descriptions set out at paragraph 10b of Schedule 2 and exceeds the thresholds in column 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2015, the Screening Opinion issued by the Council on 7 December 2016 indicated that the effects were likely to be mainly local and, given that the site was not in a specially sensitive location, that an Environmental Statement was not necessary, bearing in mind the advice in Schedule 3 to the Regulations. Accordingly, the scheme is not EIA development and an Environmental Statement is not required. Nevertheless, the application was accompanied by the following documents¹⁰:

- Planning Statement
- Design and Access Statement
- Transport Assessment (TA)
- Flood Risk Assessment
- Archaeology Report
- Tree Survey
- Landscape and Visual Assessment (LVA)
- Ecology Assessment
- Protected Species Report
- Noise Survey and supplementary report
- Statement of Community Involvement
- Sustainability Statement
- Geo-environmental Audit

1.9. The appellant's evidence to the second Inquiry included updates to the Ecological Assessment, the TA, and the Sustainability Statement, as well as updates to the Heritage Assessment and Economic Benefits Statement that had been presented to the first Inquiry¹¹.

⁸ ID26

⁹ ID27

¹⁰ CD1.10-CD1.29

¹¹ APP9

*Public consultation*¹²

- 1.10. Pre-application discussion with Council officers together with statutory and non-statutory consultees preceded the application; meetings were held in December 2015 and February 2016. As a result, the intention to pursue a low density scheme, creating a 'soft edge' to the settlement, was endorsed. In addition, the link road through the site between Newport Road and Cranfield Road was considered to help relieve congestion at the junction beside the level crossing. Technical evidence was requested, relating to noise emissions from the Deethe Farm Industrial Estate, surface water drainage, ecological assessments and the setting of the Grade II listed Deethe Farmhouse.
- 1.11. A public consultation event (publicised in advance) was held in the Summerlin Centre, Woburn Sands on Friday 22 January 2016. This attracted 218 people. Concerns were raised about the existing junction between Cranfield Road and Newport Road, considered unsafe and subject to congestion, particularly when the level crossing was closed, and the need for traffic calming on Newport Road and Cranfield Road. There was support for the low density and the large gardens proposed and for the possibility of an additional doctor's surgery to ease perceived capacity problems at the existing facility.
- 1.12. Discussions with officers continued after the submission of the scheme and a revised illustrative site layout responded to specific points made at a meeting in June 2016. In addition, an LVA was undertaken, surveys of protected species carried out and the TA updated.

*The first Inspector's report*¹³

- 1.13. The first Inspector's report (IR) dated 2 February 2018 recommended that the appeal be allowed and planning permission granted subject to conditions. The Inspector concluded that a 5 year housing land supply (HLS) could not be demonstrated and the development plan policies pulled in both ways at a location he considered to be sustainable (IR9.48). He concluded on matters relating to the character of the landscape and surrounding area, the setting of the listed farmhouse, the traffic, car parking and facilities in Woburn Sands, housing density, ecology, and drainage (IR9.49), and considered that these matters were not sufficient to prevent a sustainable housing development from proceeding especially in the absence of a 5 year HLS (IR9.50). Weighing up the harms against the benefits, he concluded that the planning balance was firmly in favour of the proposed development (IR9.51-IR9.55).

*The SoS's decision*¹⁴

- 1.14. The SoS's decision letter (DL) dated 5 December 2018 agreed with the Inspector on matters such as the effect of the development on the character of the area (DL27), heritage assets (DL28), traffic, parking and facilities in Woburn Sands, ecology, and drainage (DL30). He disagreed regarding the 5 year HLS and concluded that the supply was approximately 5.9-6.2 years (DL15-18). He also disagreed regarding housing density and concluded that there was conflict with the relevant development plan policy (DL24-26).

¹² Document 11 and CD1.28

¹³ CD10.33

¹⁴ CD10.33

Weighing up the benefits of the scheme against the adverse impacts including the conflicts with the development plan (DL34-37), he disagreed with the Inspector's recommendation and concluded that the appeal should be dismissed.

High Court challenge

1.15. The appellant appealed to the High Court on 6 grounds. It succeeded in the case of 2 which related to the SoS's findings in relation to the estimated deliverable supply of housing. The Court found that the SoS had failed to provide adequate reasons in relation to the HLS figure adopted in his decision. As a consequence, the decision was quashed in a judgment¹⁵ dated 14 June 2019 and the appeal returned to the SoS for redetermination.

Re-opening of the Inquiry

1.16. The SoS wrote to parties on 16 August 2019¹⁶ confirming that the inquiry would be re-opened. He considered that there had been significant changes in circumstances since the first Inquiry which were material to the redetermination of the appeal. These included:

- The adoption of a new local plan (Plan:MK) with the associated identification of housing expansion areas;
- The announcement by Highways England, in September 2018, that corridor B (central option) had been selected as the preferred corridor for the Oxford-Cambridge Expressway; and
- Changes to national policy and guidance.

1.17. A Pre-Inquiry meeting was held on 1 November 2019 which was followed by a note¹⁷ setting out the likely main issues and how they would be addressed. At the meeting, the Council provided a note¹⁸ updating the reasons for refusal to reflect changes in national and local policy. The updated reasons are as follows:

(1) The development by virtue of its location would be contrary to spatial policies DS1 (Settlement Hierarchy), DS2 (Housing Strategy) and DS5 (Open Countryside) of Plan:MK 2016 – 2031 (adopted March 2019) and to policy WS5 of the Woburn Sands Neighbourhood Plan 2014-2026 (adopted 2014). This does not constitute sustainable development in terms of paragraph 11 of the National Planning Policy Framework (2019).

(2) Furthermore, the low density of this proposed development would not be considered sustainable given the current objectives of central government and this Council to both optimise use of land and to build both quickly and strategically, contrary to policy HN1 (Housing Mix and Density) of Plan:MK 2016 – 2031 and paragraph 122 of the National Planning Policy Framework (2019)

1.18. The second Inquiry was held on 14-17 and 21-23 January 2020. I carried out an accompanied site visit on 20 January 2020. On the same day, I also carried out unaccompanied visits to locations in the surrounding area including within

¹⁵ CD10.34

¹⁶ CD10.42

¹⁷ CD10.44

¹⁸ CD12.3

Woburn Sands as highlighted on the site visit itinerary¹⁹. The Inquiry closed in writing on 28 February 2020 once all outstanding documents, including the completed and executed Section 106 agreement, had been received.

2. The Site and Surroundings

- 2.1. The following summary of the site and its surroundings is based on Section 2 of the first Inspector's report and the Statement of Common Ground (SOCG)²⁰ submitted to the second Inquiry which provides a number of updates.
- 2.2. The appeal site is almost 15.2ha. It consists of about half a dozen arable and pasture fields to the east of Newport Road and to the east and west of Cranfield Road. Part of the site is designated as Grade 3a agricultural land²¹ in the Agricultural Land Classification. To the north is the former Wavendon Golf Academy which closed in 2018 and is laid out as a golf course with a formal parkland character. Further to the north of the former academy is the Grade II* listed Wavendon House and a Grade II registered park and garden of the same name which was designated on 1 November 2019. To the east is agricultural land and to the south and west are residential properties at Parkway, Hillway, Tavistock Close and Ridgeway as well as the car park of the Wyevale Garden Centre. The site wraps around the Deethe Farm Industrial Estate. Deethe Farmhouse is listed Grade II and sits in the southern corner of the estate with commercial shed-type buildings to the north.
- 2.3. Internal boundary features include hedgerow and scrub. Mature trees and hedgerows bound the Newport Road and Cranfield Road frontages and the northern boundary with the former golf academy. A hedgerow also marks the boundary with a public footpath which runs through the site between the former golf course and the industrial estate. A Group Tree Preservation Order (TPO) protects trees at the proposed access point with Newport Road. A wider Area TPO²² was designated on 8 January 2020 on land which includes the appeal site.
- 2.4. The site lies on the northern edge of Woburn Sands and beyond the development boundary for that settlement. The site is split between the parishes of Woburn Sands and Wavendon. There are neighbourhood plan areas covering both parishes although only Woburn Sands has a made neighbourhood plan. Woburn Sands is a small town with a range of shops and services including schools and a medical centre. There are bus links to Milton Keynes and a railway station on the line between Bedford and Bletchley. There are plans to upgrade the railway line as part of the east-west rail link between Cambridge and Oxford, while the area surrounding Woburn Sands is within the preferred corridor for the Oxford to Cambridge Expressway road proposal.

3. Planning Policy

- 3.1. The relevant development plan documents for this appeal now comprise Plan:MK 2016-2031 (which has replaced the Milton Keynes Local Plan 2001-2011 and the Milton Keynes Core Strategy 2013) and the Woburn Sands

¹⁹ RID14

²⁰ RID06

²¹ RID24 and LPA4

²² TPO1

Neighbourhood Plan 2014 (WSNP). There is also the Site Allocations Plan 2018 (SAP) which is of relevance for some of the disputed HLS sites (see subsequent sections of this report).

- 3.2. The National Planning Policy Framework (NPPF) was updated in February 2019 and a new section on housing supply and delivery in the Planning Practice Guidance (PPG) was published in July 2019.

*Plan:MK*²³

- 3.3. The appeal site lies adjacent to one of only 3 key settlements (Woburn Sands, Newport Pagnell and Olney) in the rural area of Milton Keynes as identified by Plan:MK. They comprise the second tier of the settlement hierarchy in Policy DS1 and are considered to be the most sustainable rural settlements taking into account their population, constraints, transport links and the capacity of services within each town. Policy DS1 states that most new development within the rural area will be concentrated within these 3 settlements.
- 3.4. Policy DS2 sets out Plan:MK's housing strategy and seeks to deliver a minimum of 26,500 dwellings across the Borough of Milton Keynes over the plan period. The policy states that new housing development will be focused on, and adjacent to, the existing urban area of Milton Keynes as well as the 3 key settlements. There are 13 criteria within the policy setting out how this development will be delivered.
- 3.5. Policy DS5 defines open countryside as all land outside the development boundaries defined on the Policies Map. Planning permission in the open countryside will only be granted for development which is essential for agriculture, forestry, countryside recreation, highway infrastructure or other development, which is wholly appropriate to a rural area and cannot be located within a settlement, or where other policies within this plan indicate development would be appropriate.
- 3.6. Policy HN1 covers housing mix and density. Part C states that net densities of proposals for 11 or more new dwellings should balance making efficient use of land with respecting the surrounding character and context, and that higher density development will be encouraged in locations with good accessibility to facilities, that are well served by public transport, and where it can be accommodated by existing or improved infrastructure.
- 3.7. Although not mentioned in the updated reasons for refusal, Policy NE7 is referenced in the Council's planning proof of evidence which seeks to protect the best and most versatile agricultural land (land in grades 1, 2 and 3a meet this definition in the NPPF). In assessing proposals for greenfield sites, the policy states that the Council will take into account the economic and other benefits of such land. Development involving the loss of agricultural land should seek to use areas of poorer quality land (grades 3b, 4 and 5) in preference to that of a higher quality unless other sustainability considerations suggest otherwise.

*Woburn Sands Neighbourhood Plan*²⁴

²³ CD5.31

²⁴ CD5.3

- 3.8. A small part of the site between Hillway and Ridgway falls within the boundary of the WSNP area²⁵. Policy WS5 states that the preservation of the countryside setting, existing woodland and footpath links into the countryside is key to the future of Woburn Sands. The policy goes on to state that accordingly no extension to the current Woburn Sands Development Boundary will be permitted other than in the following exceptional circumstances:
- Plan:MK identifies a specific need for an amendment to the Development Boundary, and
 - Any proposed amendment is brought forward following full consultation with, and agreement by, Woburn Sands Town Council, and
 - The implications of any revised Development Boundary has been assessed in terms of the need to protect and maintain the character and countryside setting of Woburn Sands.
- 3.9. Although not mentioned in the original, amended or updated reasons for refusal, Policy WS6 was referenced at the second Inquiry. It states that existing housing developments in Parklands and on the Greens' site are expected to meet the needs for large scale housing development in Woburn Sands during the plan period. It goes on to state that additional housing in the plan area will be limited to small scale infilling between existing properties or redevelopment of existing properties other than in the following circumstances:
- The review of the MK Core Strategy [Plan:MK] identifies a specific housing need in Woburn Sands, and
 - Land proposed for development is brought forward after consultation, and agreement, with Woburn Sands Town Council, and
 - Development is of a scale and in a location that complies with the Vision and policies of the Neighbourhood Plan, and
 - Any such development is phased to take place in the latter part of the plan period in order to allow the assimilation of the increased population created by the already approved substantial developments.

National policies and guidance

- 3.10. NPPF paragraph 11 sets out a presumption in favour of sustainable development. For decision-taking this means either approving development that accords with an up to date plan without delay or where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, granting permission unless one of two exceptions apply. The first is whether the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development. The second is whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

²⁵ CD12.4

- 3.11. Footnote 7 to paragraph 11 clarifies that out of date includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer set out in paragraph 73).
- 3.12. NPPF paragraph 73 states that 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 that are less than five years old. The supply of such sites should in addition include a buffer of 5%, 10% or 20% depending on the circumstances.
- 3.13. The NPPF glossary defines deliverable as sites for housing that 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. The definition goes on to state that, in particular:
- (a) sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).
 - (b) where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.
- 3.14. NPPF paragraphs 122 and 123 seek to achieve appropriate densities for development within the context of making effective and efficient use of land. Paragraph 122 sets out 5 criteria that need to be taken into account including (d) the desirability of maintaining an area's prevailing character and setting (including residential gardens), or of promoting regeneration and change.
- 3.15. Paragraph 123 states that where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities and ensure that developments make optimal use of the potential of each site. It then sets out three considerations of which the first two are relevant to plan-making. The third sets out the following:
- (c) local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework. In this context, when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards).
- 3.16. Paragraph 170(b) recognises the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services including the economic and other benefits of the best and most versatile

agricultural land. Paragraphs 193-196 deal with the impact of development on designated heritage assets.

3.17. The Housing Supply and Delivery section of the PPG sets out a number of paragraphs relating to demonstrating a 5 year HLS. This includes a paragraph²⁶ on what constitutes a 'deliverable' housing site in the context of plan-making and decision-taking. It states that robust and up to date evidence needs to be available. Sites in category (a) of the NPPF definition are considered deliverable in principle. Sites in category (b) require further evidence to be considered deliverable. The paragraph states that such evidence may include:

- current planning status – for example, on larger scale sites with outline or hybrid permission how much progress has been made towards approving reserved matters, or whether these link to a planning performance agreement that sets out the timescale for approval of reserved matters applications and discharge of conditions;
- firm progress being made towards the submission of an application – for example, a written agreement between the local planning authority and the site developer(s) which confirms the developers' delivery intentions and anticipated start and build-out rates;
- firm progress with site assessment work; or
- clear relevant information about site viability, ownership constraints or infrastructure provision, such as successful participation in bids for large-scale infrastructure funding or other similar projects.

4. Planning History

4.1. Two outline planning applications were previously submitted on land forming part of the appeal site. The first (11/00936/OUT) was for the erection of 102 dwellings and associated garages/parking, creation of two new accesses and provision of open space and associated works, which was refused in July 2011. The second (12/01502/OUT) was a resubmission of the first application and was refused in October 2012. Neither refusal was appealed. Two planning applications similar to the one at appeal were submitted in January and February 2017, but were withdrawn prior to determination.

5. The Proposal²⁷

5.1. The proposal is made in outline with all matters except the means of access reserved for subsequent approval. The access arrangements are shown on drawing nos.WO1188-101 rev.PO5 and WO1188-1021 rev.PO3 indicating junction geometries with, respectively, vehicle tracking and visibility splays. Each access is shown as a simple T-junction with 2.4m x 70m visibility splays. There are 4. Two are designed to serve a new 'spine road' running through the proposed development from Newport Road (at a position north of Frosts landscape business and the Wyevale Garden Centre) to Cranfield Road (at a point beyond the Deethe Farm Industrial Estate and Spinney Lodge); those

²⁶ PPG reference ID: 68-007-20190722

²⁷ Based on section 3 of the first Inspector's report and section 3 of RID06

access points are shown with 9m radii and are intended to serve a road some 6.2m wide suitable to accommodate buses. The access onto Newport Road entails the removal of 2 category A trees and 2 category B trees protected by the Group TPO. It also necessitates the relocation of a badger sett. Other trees protected by the Area TPO may be affected depending on details at the reserved matters stage.

- 5.2. The 2 other access points are shown on Cranfield Road, one on the outside of the bend beyond Ridgeway and the other opposite the Deethe Farm Industrial Estate; they are also shown with 9m radii, but with carriageways only 5.5m wide, as they are mainly intended to serve discrete parts of the scheme.
- 5.3. All other matters are reserved for subsequent approval, although an illustrative layout plan and a parameters plan show how the new road between Newport Road and Cranfield Road could serve a series of residential streets created partly around cul-de-sacs taken from that new road and partly around the 2 additional junctions on to Cranfield Road. Open space would be provided along with additional boundary screening, landscape buffers, play areas and surface water attenuation ponds.
- 5.4. The Design and Access Statement indicates that the dwellings would range in type and size and include both houses and some flats. 33% of the housing would be affordable dwellings equating to 67 units out of the proposed maximum of 203 units (25% would be affordable rented and 8% shared ownership).
- 5.5. The illustrative plans show the potential site for a doctor's surgery which would be provided if NHS England or the local Clinical Commissioning Group indicate that they would be willing to take advantage of such provision. It would either be a standalone facility or a satellite building for the existing surgery in Woburn Sands which has limited room to expand. Should the provision not be taken up, then 3 homes would be provided instead up to the maximum 203. This matter is addressed in the S106 agreement²⁸ and includes a financial contribution either towards the provision of the on-site surgery or expanding capacity at the nearest surgery serving the development. The S106 agreement also makes a range of financial contributions towards matters including education, open space, transport, community assets and social infrastructure. It also secures the provision of affordable housing on site.
- 5.6. Suggested conditions²⁹ are intended to ensure that the scheme would be implemented as intended and that the reserved matters and other details (including hard and soft landscaping and boundary treatments) would be submitted to the local planning authority for approval. In addition, foul and surface water drainage systems would be installed and controlled: a Construction Management Plan (including hours of operation) would be devised and implemented: a Landscape and Ecological Management Plan, including measures to safeguard protected species, would be prepared: a Travel Plan would be instigated: further archaeological investigations would be undertaken: the provision of 'green infrastructure', the retention of trees and the creation of new pedestrian and cycle facilities would be secured.

²⁸ RID37

²⁹ Section A2 of RID06

6. Other Agreed Facts

6.1. The main SOCG³⁰ sets out a number of agreed matters including:

- The proposal would not have an adverse effect of facilities and services within Woburn Sands;
- The proposed highway junctions onto Newport Road and Cranfield Road would have sufficient capacity to serve the development and additional through traffic and there are no objections to the junctions in highway terms;
- The junctions will remain well within capacity and will not create any queuing or congestion issues on the existing highway network;
- The effect on the listed Deethe Farmhouse would result in a low level of less than substantial harm;
- There are no national landscape designations that require consideration, effects on the locally designated area of attractive landscape will be negligible and the site and adjacent areas are not 'valued landscapes' in the context of NPPF paragraph 170;
- The landscape impacts would be limited to the site and immediately adjacent fields and would carry limited weight against the proposal. It is agreed that the same approach should apply at the current Inquiry;
- The proposal should not be refused because of the Oxford-Cambridge Expressway or on the grounds of prematurity;
- The proposal is acceptable with regard to surface water drainage and matters of detailed design can be addressed via planning conditions;
- Matters relating to noise from the adjacent industrial estate can be addressed via planning condition; and
- Matters relating to biodiversity and protected species are not an issue for this appeal and can be addressed via planning conditions and reserved matters applications.

6.2. An addendum to the SOCG³¹ was received after the inquiry addressing the recently designated Area TPO. It confirms that:

- The TPO covers a wide area including the appeal site. It is directed to a wide area rather than in relation to individual trees or groups of trees.
- It is subject to a 28 day legal challenge period up to 5 February 2020 and will remain in effect for 6 months up to 8 July 2020 and thereafter if it is confirmed or replaced in the meantime.
- It is agreed that this new TPO does not materially alter the planning evidence or planning balance as presented by each party

³⁰ RID06

³¹ RID35

- Should outline permission be granted, this would allow for the removal of trees within the area covered by the TPO once details have been fully agreed at the reserved matters stage.
 - The TPO protects trees on site until the implementation of the planning permission.
- 6.3. There is also a SOCG relating to housing land supply³², which sets out the following agreed matters:
- Plan:MK provides the basis for the calculation of the five-year housing land requirement. This states that there is a minimum requirement of 1,767 dwellings a year in the period April 2016 to March 2031;
 - There have been 4,529 net completions in the Plan:MK plan period to 31 March 2019;
 - There is a backlog of 772 dwellings as at 1 April 2019;
 - All of this backlog should be met in the next 5 years (the Sedgefield method); and
 - A 5% buffer should be applied to both the annual requirement and the backlog based on the published 2018 Housing Delivery Test results (February 2019).
- 6.4. The areas of disagreement relating to housing land supply are as follows:
- Whether or not a 5 year supply of deliverable housing sites can be demonstrated
 - The timescale of the assessment (1 April or 1 October 2019)
 - The timing of meeting the definition of deliverable
 - The definition of deliverable
 - Forecast completions
 - The "optimism bias" (discounting dwellings from the supply)

³² SOCG1

7. The Case for the Appellant³³

The previous decision letter and the first Inspector's report

- 7.1. The Council asserted that the previous SoS decision letter (DL) remained a material consideration relying on *Davison v Elmbridge BC* [2019] EWHC 1409³⁴. That judgment is on appeal to the Court of Appeal and relates to a planning committee's decision not an appeal decision which is an important distinction. The most recent judgment in relation to a challenge against an appeal decision held that the quashed decision is of no legal effect and should not be sub-divided in respect of those matters on which it was quashed: *R (West Lancashire BC) v Secretary of State for Communities and Local Government* [2017] EWHC 3451 (Admin), [27]-[38].
- 7.2. The Council in opening accepted that the SoS DL was not material in terms of HLS and conflict with expired Policies S10 and H8 (location and density respectively) due to the court order and change in circumstances including the adoption of Plan:MK. The Council identified the DL's finding of failure to accord with WSNP Policy WS5 was relevant but made clear that the weight to be accorded to that policy would need to be considered afresh. The appellant accepts there is policy conflict but there remains dispute about datedness.
- 7.3. The Council confirmed that the DL findings on landscape and character, heritage, traffic, ecology and drainage remained relevant where the DL simply endorses the conclusions of the first Inspector's report.
- 7.4. The only basis upon which the Council maintains the SoS is bound by consistency as to both policy conflict and weight is DL paragraph 26 (and the finding that the proposals were contrary to NPPF paragraph 122 and 123)³⁵. That is contentious and fundamentally incorrect. The approach does not correctly reflect the position that a quashed DL is of no legal effect. It ignores important changes in circumstances in the evidence before the Inquiry including:
 - (a) the Appellant's updated evidence at this inquiry as to the actual net density of the scheme and the changes in housing mix;
 - (b) the changes to the development plan following adoption of Plan:MK; and
 - (c) the Council's concession through the evidence of its planning witness³⁶ that density is a matter to be addressed at the reserved matters stage in the context of layout and does not provide a basis for refusal.

The Development Plan

Plan:MK

- 7.5. The Appellant acknowledges that the development is in conflict with Policies DS1, DS2 and DS5 of Plan:MK³⁷. However, it is important to examine the extent of the conflict and how precisely it arises. The development is contrary

³³ Largely taken from the appellant's closing submissions RID33

³⁴ RID03

³⁵ RID02, paragraph 8(d)(iii)

³⁶ Cross-examination and re-examination of Niko Grigoropoulos on Day 5

³⁷ APP8 page 7 para 3.1

to the terminology of the policies, given their reference to Policy DS5. DS5 is a counterpart policy. Where a proposal conflicts with DS5, it will be contrary to DS1 and DS2. However, it accords with the strategy underlying DS1 and DS2 insofar as directing development to the three key settlements in the rural area as locations that the Council has "chosen for development"³⁸.

- 7.6. Woburn Sands is the only key settlement to have its own train station. Plan:MK does not identify any constraint on housing delivery or place any cap on the number of dwellings to be located at Woburn Sands. The first Inspector found Woburn Sands to be a sustainable location for growth (see IR9.48). The WSNP was adopted more than 5 years ago and 3 years prior to Plan:MK. It does not make any allocations and has not been reviewed.
- 7.7. The settlement boundary is tightly constrained. The application of and weight accorded to Policies DS1, DS2 and DS5 must yield to the assessment of HLS. The Council accepted³⁹ that it was to Woburn Sands as a key settlement that development should go in the absence of a 5 year HLS.
- 7.8. The Council has identified conflict with Policies HN1 and NE7 of Plan:MK but confirmed that all other policies weighed in support (including Policy HN2 in respect of affordable housing and Policy EH5 in respect of health facilities) or could be addressed through reserved matters.

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- 7.9. It is accepted that the development conflicts with Policy WS5 as none of the named exceptional circumstances are presently met. The weight to be accorded to the policy must however reflect the extent to which the policy remains in accordance with the NPPF and up-to-date, for the purposes of NPPF paragraph 213.
- 7.10. The WSNP was adopted comparatively early in July 2014 and was assessed for general conformity against a now expired Local Plan backdrop and the 2012 version of the NPPF. Policy WS5 was identified at appeal as creating an unacceptable constraint on growth in circumstances where there was no 5 year HLS. It was accorded very little weight in the Frost appeal⁴⁰ and the first Inspector for this appeal stated it was contrary to the advice in the NPPF (see IR9.20).
- 7.11. The policy is not consistent with the NPPF including the second test which requires the agreement of the Town Council. This was added after the examination without the recommendation of the examiner or any further assessment⁴¹. The policy also seeks to protect the countryside for its own sake which is at odds with the more balanced approach in NPPF paragraph 170(b).
- 7.12. The WSNP makes no provision for an up to date housing requirement in line with NPPF paragraph 65 and 66 and contains no allocations or policies to provide for housing. The lack of WSNP review means that the obvious defects of Policy WS5 have not been scrutinised. The Council is incorrect to say that

³⁸ CD5.31 Glossary on page 286

³⁹ Cross-examination of Niko Grigoropoulos on Day 5

⁴⁰ CD6.6

⁴¹ CD5.17 paragraph 7.6.12 and recommendation 2B

the policy has been given a new lease of life by Plan:MK as the Plan Inspector could not and did not make any finding on the soundness of this policy.

- 7.13. The Council's planning witness accepted no conflict with Policy WS6 in cross-examination but the Council's advocate seemed to withdraw that concession in cross-examination of the appellant's planning witness. The policy is parasitic on WS5 and equally inconsistent with the NPPF, requiring the agreement of the Town Council and seeking to delay development to the end of the plan period. This reduces the weight to be accorded to it.
- 7.14. Irrespective of the 5 year HLS position, Policies WS5 and WS6 are out of date for at least two reasons: (1) their wording is highly restrictive and fails to accord with the NPPF and (2) the WSNP was not prepared using an up to date housing requirement and makes no housing allocations.

Housing Land Supply

Overview

- 7.15. The SOCG on HLS sets out a number of agreed matters in terms of housing requirement, net completions, the backlog, the use of Sedgfield, the buffer and the resulting requirement.
- 7.16. Plan:MK was assessed under the tests contained in the old 2012 NPPF and the Plan Inspector made no findings as to deliverability under paragraph 73 and glossary definition of the 2019 NPPF. The Council's HLS witness accepted that the Plan Inspector's Report does not help in determining whether the Council can demonstrate a 5 year HLS now.
- 7.17. The appellant has identified that the deliverable HLS at the base date of 1 April 2019 would be 3.55 years (7,161 dwellings) and at the base date of 1 October 2019 would be 3.76 years (7,579 dwellings).
- 7.18. In comparison, the Council's respective figures are understood to be 6.41 years (12,931 dwellings) for the 1 April 2019 base date and 6.91 years (13,949 dwellings) for the 1 October 2019 base date
- 7.19. Deductions of 2,844 dwellings against the 1 April base date and 3,858 dwellings against the 1 October base date would result in the Council having less than a 5 year HLS.
- 7.20. The appellant submits that a deduction of that scale is justified on three site-specific bases. Firstly, that sites with detailed permission (category (a) in the NPPF definition) require deductions to reflect unrealistic build-out rates. Secondly that sites with outline permissions or allocations (category (b) in the definition) require deductions or removal to reflect the absence of clear evidence to demonstrate deliverability at the base date. Thirdly, other sites which do not fall within either category (principally prior notification sites under Class O) require removal to reflect the absence of clear evidence to demonstrate deliverability at the base date.

Deliverability

- 7.21. The Council refer to the judgments in *St Modwen*⁴² as to the distinction between certainty and a realistic prospect. That latter judgment was considered further and qualified in *Babergh*⁴³. The revised NPPF in 2018 and 2019 altered the definition of deliverable in two key respects. Firstly, the requirement to demonstrate clear evidence and secondly the use of closed categories in the definition with the burden of proof distributed accordingly. These changes have been described as ensuring a stricter approach by Inspectors⁴⁴. *Babergh* is more recent than *St Modwen*.
- 7.22. A site specific approach must be applied to an assessment of deliverability to comply with the NPPF. The SoS DL on this case was quashed based on the failure to provide site specific analysis on any reasons for the final HLS figure. It is permissible to consider the broader context of HLS in terms of the size and type of sites included, historic rates of delivery and the accuracy of past forecasts, but this cannot replace site specific analysis. In this respect, the Council states that their historic use of a generic "optimism bias" no longer meets the requirements of the NPPF nor the PPG⁴⁵. That said, the Council continue to use it and adopt that position in the context of this appeal.

The base date

- 7.23. The appellant's HLS witness explained why it is essential that the evidential position ('clear evidence') is assessed by looking to what existed at the base date. A 'backfilled' approach whereby a site was simply deemed to be deliverable and evidence then adduced and accumulated over the course of the year was not methodically sound and not compliant with the NPPF or PPG. There is Inspectorial authority on this point from the Woolpit decision⁴⁶. It is possible to take into account information that has arisen after the base date, but only where the site passed the test of deliverability at the base date⁴⁷. This was the approach of the last decision within the Milton Keynes area at Castlethorpe Road⁴⁸. The earlier Globe decision cited Woolpit but appeared not to apply it, notably omitting to set out the state of the evidence at the base date for respective sites.
- 7.24. The Council has further cited the Colchester Road decision⁴⁹, but the example cited by the Inspector of a separate full permission being excluded, is not replicated in the instant case. Moreover, that Inspector in disagreeing with Woolpit in respect of new permissions again did not address the specific problem of completions.
- 7.25. In assessing the intention of the NPPF, it is instructive to consider the position of Annual Position Statements requiring research to be complete prior to the necessary consultation with stakeholders which must take place between notification on 1 April and submission on 31 July of the given year. It is

⁴² CD7.1 [2016] EWHC 968 (Admin) and CD7.6 [2017] EWCA Civ 1643

⁴³ RID09 [2019] EWCA Civ 2200 paragraphs 45-50

⁴⁴ CD6.18 for example

⁴⁵ LPA1 page 22 para 4.54

⁴⁶ CD6.16 paragraphs 67 and 70-79

⁴⁷ CD6.13, CD6.14 and CD6.15

⁴⁸ CD6.18 paragraphs 58-61 and 65

⁴⁹ CD6.22, paragraph 63

therefore entirely practical and consistent with the intention of national policy to ensure that the evidence base is assembled prior to a 1 April base date, including the draft written agreements. The appellant referred to two examples from Mid Suffolk⁵⁰ and Babergh⁵¹ District Councils which respectively itemise the extent of prior consultation and evidence collection, resulting in the production of Memoranda of Understanding (MOU).

- 7.26. The fundamental principle at stake is that of robustness in the evidence base to give effect to the policy imperative of boosting the supply of housing. This can only be ensured by looking to the full 5 year period (not a shortened 4 ¼ period) and by ensuring full transparency on the part of the Council when drawing up its Annual Monitoring Report. The Council's HLS witness accepted that none of the evidence provided in its June 2019 HLS Statement contained documentary evidence at the base date of 1 April 2019. They either substantially pre-dated 1 April 2019 (based on Plan:MK information) or substantially post-dated it (such as the proformas). No amount of chasing of proformas or sense checking could repair the fundamental deficit of evidence at the base date. The appellant disputes the Council's claim that the appellant promotes an artificial two stage approach as one stage should suffice.
- 7.27. It is for this reason that the appellant advances an updated base date to 1 October 2019 to allow the most up to date evidence to be adduced, but only in a manner that reflects the level of completions that have occurred since 1 April 2019.

Proformas

- 7.28. The Council's proformas are not written agreements in line with the PPG ID68-007. They present the trajectory with a simple box to check without identifying the extent of the evidence of progress or testing the build out rate. Supporting information by way of covering emails was often sparse. As such, the Council has had to rely on variety of updates from its witness' proof to oral additions in the roundtable session. This is wholly inconsistent with national policy and does not reflect clear evidence to reflect the position as at the base date.

Build-out rates

- 7.29. The evidence of the appellant's HLS witness sets out the national perspective⁵² which identified the highest build-out rates of 268dpa averaged over 5 years at the Eastern Expansion Area in Milton Keynes (Broughton Gate and Brooklands). Based on the local experience of the appellant's HLS witness, any rates significantly in excess of this figure should be treated with scepticism.

Public ownership of land

- 7.30. Another key obstacle for the Council has been the extent to which it relies on sites in public ownership including the Milton Keynes Development Partnership (MKDP), the Milton Keynes Community Foundation and Homes England. The reason for delays in releasing sites are myriad. The proformas submitted by the Council were subject to assessment by a body that included officers of the

⁵⁰ RID10

⁵¹ RID08

⁵² CD11.1 and APP3 appendix 1 paragraphs A1.18-A1.22

Council and MKDP. Contrary to the Council's advocate's suggestion that this impugned their professional judgment, there was an inevitable circularity in the proforma assessments submitted by these bodies, unjustifiably reinforcing misplaced optimism as to delivery rates.

Past forecasts

- 7.31. The Council has had historic difficulties in the accuracy of its forecasting. When tabulating actual completions against forecasts⁵³, there is an under-delivery against forecasts of 28-30%. Current and past trajectories have failed to be met. Historic rates are instructive in identifying persistent trends and providing a sense check with long-range date.
- 7.32. Inspectors have commented on the way the Council's supply assumes very sharp increases in delivery beyond those experienced either locally or nationally⁵⁴. In response to this, the Council have sought to rely on recent short-term uplifts in completion rates to suggest that there has been a change of direction. Such data is too short-term and too limited in any supporting analysis to justify any conclusion that there has been improvement in their forecasting exercise. There is no evidence that Plan:MK is responsible for recent uplift in delivery. Peaks in development activity have historically been attributable to apartment blocks. This provides limited assistance in respect of how sharp and continuing increases can occur on strategic sites.

Consistency with previous decisions in Milton Keynes

- 7.33. The Castlethorpe Road decision, being the most recent and having taken into account the earlier Globe decision remains the most helpful reference point for the Inspector and SoS. The legal challenge to the Castlethorpe Road decision was unsuccessful. The decision sets out robust approach to individual sites at paragraphs 58-60 identifying longstanding delays to delivery and an overall absence of strong evidence. The Inspector in paragraph 63 made clear that he stopped halfway through looking at sites as it was already evident that the Council did not have a 5 year HLS.

Individual site analysis⁵⁵

- 7.34. The appellant's analysis is based on the evidence of its HLS witness in his proof (Appendix 3) and rebuttal (Appendices 3 and 3a)⁵⁶. The errata document⁵⁷ updates the evidence in several respects following the roundtable session.

Site 1: Brooklands (deduct 232 units for 1 April or 267 units for 1 October)

- 7.35. Sites with detailed permission but Council's rate of delivery is excessive, assuming a sharp uplift in delivery from 182 dwellings in 2019/20 to 347 dwellings in the following year with only 2 developers on site across 7 parcels. This would be substantially higher than the highest figures hitherto achieved (268dpa across 12 parcels). Reduce delivery from 222dpa to 175dpa (April) or 168dpa (October).

⁵³ APP3 appendix 2, table 2 and table 3

⁵⁴ CD5.32 paragraph 145 and CD10.33 paragraph 9.9

⁵⁵ The appellant's closing submissions sets out its case for each site in more detail

⁵⁶ APP3, 4 and 6

⁵⁷ RID20

- 7.36. For Phases 1B and 5B-6B, the Council's evidence comprised in proforma responses compiled as late as June 2019. These both assume rates of 60dpa, which are at odds with an average annual rate of 45dpa across Brooklands.
- 7.37. For Land south west of Fen Street, the Council have confirmed that no proforma was submitted for this site and accordingly, the Council have essentially relied on data from other developers on other sites. The appellant's figures reflect the commencement of completions on the site, but deduct the completions on this strategic site as the forecast rates are unrealistic.

Site 2: Tattenhoe Park (deduct 447 units for 1 April or 530 for 1 October)

- 7.38. Sites with outline permission with the Council relying on proformas from Homes England submitted in June 2019. Tender documents for Phases 2 and 3 dated July 2018 do not declare extent of progress at 1 April 2019 base date. Council sought to add extra 83 dwellings as a result of potential delivery agreement. No developer commitment for Phases 4 and 5.
- 7.39. Detailed permissions for Phases 2 and 3 granted on 15 November 2019 and 24 October 2019 respectively after the 1 April. Sites have had outline permission for over 10 years and failed to deliver any units. Proformas insufficient for either 1 April or 1 October base date. Castlethorpe Road Inspector agreed that sites were not deliverable.

Site 3: Western Expansion Area (deduct 1,503 units for 1 April or 1,084 for 1 Oct)

- 7.40. Outline permissions only for Area 10 and Area 11 Remainders at 1 April. Council rely on proformas. Detailed permission for 152 dwellings granted 24 September 2019. Following advice from developer, the Council has removed 306 units from Area 10 and 229 units from Area 11.
- 7.41. No evidence of deliverability at 1 April for either area and no evidence for why delivery rate of 300dpa for Area 10 would be realistic. Very large strategic sites and Council's expectations need reducing. Castlethorpe Road Inspector agreed the site was not deliverable.

Site 4: Strategic Land Allocation (deduct 864 units for 1 April or 743 for 1 Oct)

- 7.42. The disputed sites within this allocation all had outline permission at 1 April. No lead developer. Proformas not supplied for all sites. Belated evidence at roundtable session. Council's average delivery rate of 399dpa should be adjusted to 274dpa based on local and national evidence.
- 7.43. No proforma for Ripper Land site, only an email about access issues, so remove all units from supply for either base date. No proforma for Land West of Eagle Farm South although reserved matters application awaiting legal agreement at 1 April, so reduce supply by 64 units for either base date. No proforma for Eagle Farm site and the information from October 2019 on developer's intentions is not clear evidence and so remove all units from supply for either base date.
- 7.44. For Glebe Farm site, the Council rely on updated proformas and 2 detailed permissions granted in September and October 2019. Appellant taken into account September permission if 1 October base date used. Supply reduced by either 310 units (April) or 142 (October). For the Golf Course Land, the Council

rely on detailed permission for 180 units granted on 1 November 2019 which the appellant accepts could be included in 1 October base date but not April. For the Church Farm site, the Council rely on a proforma where only one condition has been discharged from outline permission so remove all units from supply for either base date.

Site 5: Newton Leys (deduct 80 units for 1 April and 0 for 1 October)

7.45. Outline permission at 1 April with reliance on proforma means removal of all units from supply at this base date. Reference to pre-application discussions at roundtable session not sufficient evidence of progress to reserved matters. Detailed permission granted in September so can include 80 units at October base date.

Site 6: Campbell Park Remainder (deduct 300 units for either 1 April or 1 October)

7.46. Proforma from MKDP limited and does not even confirm agreement to Council's forecast. Council referred to development brief and ambitions for a mixed use development at roundtable and an email from December 2019 refers to a joint strategy between MKDP and two named developers, but forecasts no planning application until latter half of 2020 and no start on site until 2021. The Castlethorpe Road Inspector agreed that the site was not deliverable.

Site 7: SEMK Strategic Growth Area (deduct 50 units for either 1 April or 1 Oct)

7.47. Allocated site in Plan:MK with no outline permission. No evidence of pre-application activity and SOCG from June 2018 is relatively high level and does not provide up to date evidence.

Site 8: Berwick Drive (deduct 16 units for 1 April or 11 units for 1 October)

7.48. Allocated site in Plan:MK and Council owned. Council rely on proforma from June 2019 and November update that refers to pre-application discussions and reduces number of units from 16 to 11. Delete site from supply.

Site 9: Wyevale Garden Centre (deduct 328 units for 1 April or 142 for 1 October)

7.49. Proforma from June 2019 limited. Permission not granted until July 2019. Delete site from April base date. Can include with October base date but with a deduction to reflect likely delivery rates over 5 years as the Council's rates of 150 and 130 in years 4 and 5 are unrealistic. 62dpa is more realistic.

Site 10: Food Centre (deduct 298 units for 1 April or 200 for 1 October)

7.50. Allocated site with no planning application as of 1 April and no proforma until November 2019. No detail of pre-application discussions. Hybrid planning application not submitted until 23 October. Delete site from supply.

Site 11: Redbridge (deduct 19 units for 1 April or 48 units for 1 October)

Site 12: Rowle Close (deduct 18 units for either 1 April or 1 October)

7.51. These sites are adjacent and have been considered as one. They are covered by an allocation but no planning application or permission. Reliance on a proforma only. Delete both sites from supply.

Site 13: Agora Redevelopment (deduct 104 units for either 1 April or 1 October)

7.52. Allocated site with no extant permission and no application pending. Council rely on amended trajectory in June 2019 proforma. Castlethorpe Road Inspector considered site was not deliverable as at 1 April.

Site 14: Galleon Wharf (deduct 14 units for either 1 April or 1 October)

7.53. The main parties agree this site can be deleted from the supply.

Site 15: Railcare Maintenance Depot (deduct 175 units for either 1 Apr or 1 Oct)

7.54. Outline application for mixed use development with activity focussed on non-residential uses at both base dates. June 2019 proforma limited and no new information to indicate progress towards implementing the residential elements. Delete site from the supply.

Site 16: Eaton Leys (deduct 308 units for 1 April or 182 units for 1 October)

7.55. Outline permission only at 1 April with no proforma until December 2019. Submission of reserved matters application means appellant accepts site is deliverable but with a consequent reduction in completions to reflect local and national data: 52dpa from 2021/22 to reflect that the site competes with other Barrett David Wilson sites locally.

Site 17: Lakes Estate Neighbourhood Plan Sites (deduct 130 units for 1 April or 279 units for 1 October)

Site 18: Phelps Road (deduct 11 units for either 1 April or 1 October)

Site 27: Southern Windermere Drive (deduct 11 units for either 1 April or 1 October)

7.56. These sites form part of a phased Council regeneration proposal. June 2019 proforma from Housing and Regeneration Manager reveals complexity of works commencing with demolition and re-housing of Council tenants. Hybrid application mentioned in proforma not submitted in late 2019. Considerable discussion at roundtable on the correct way of assessing impact of demolition and replacement dwellings. Appellant's approach is that the completion of dwellings to replace those that are due to be demolished does not meet housing need and therefore should not be permitted to address the housing requirement. The maximum number of units that can be taken into account is therefore 110, although there is no clear evidence for even this number.

Site 19: Land off Hampstead Gate (deduct 16 units for 1 April or 34 units for 1 Oct)

7.57. MKDP site with proforma submitted 13 November after both base dates. The accompanying email sets out project dates but nothing else provided. Delete site from supply.

Site 20: Land off Harrowden (deduct 25 units for either 1 April or 1 October)

7.58. Council owned site with June 2019 proforma. Uncertainty of delivery and Council accept trajectory should be pushed back to 2022/23. Delete site from supply.

Site 21: Broughton Atterbury Self Build Plots (deduct 6 units for either 1 April or 1 October)

7.59. MKDP site with June 2019 proforma and no further evidence. While Council referred to wider planning permission for wider site, no clear evidence of deliverability for the specific site. Assertion of demand for custom-built plots. Delete site from supply.

Site 22: Hendrix Drive (deduct 10 units for either 1 April or 1 October)

7.60. MKDP site with June 2019 proforma limited. No clear evidence of deliverability.

Site 23: Kellan Drive 1 (deduct 10 units for 1 April or 12 units for 1 October)

7.61. Council owned site with June 2019 proforma limited. Application submitted by 1 October but not determined and no identified developer. No clear evidence of deliverability.

Site 24: Singleton Drive (deduct 22 units for either 1 April or 1 October)

7.62. MKDP site with June 2019 proforma limited. Reference to pre-application advice and development brief not documented by Council. No clear evidence of deliverability.

Site 25: Former MK Rugby Club (deduct 100 units for either 1 April or 1 October)

7.63. Council owned site and Plan:MK allocation with land on long leasehold to the Parks Trust. No application submitted. May 2019 proforma from Bellway Homes but not yet the site owner and text of accompanying email states they are not under contract. Council rely on December 2019 email from Property team recording a putative land disposal agreement in an advanced state but no clear evidence of deliverability. Castlethorpe Road Inspector found site was not deliverable.

Site 26: Timbold Drive (deduct 130 units for 1 April or 118 units for 1 October)

7.64. MKDP site and SAP allocation. June 2019 proforma limited. New outline permission being sought but no reported progress on any reserved matters applications. No clear evidence of deliverability.

Site 27 (see above)

Site 28: Land north of Vernier Crescent (deduct 14 units for either 1 Apr or 1 Oct)

7.65. MKDP site and SAP allocation. June 2019 proforma limited. Pre-application work not documented and disposal plan pushed back. No clear evidence of deliverability.

Site 29: Manifold Lane (deduct 18 units for 1 April or 33 units for 1 October)

7.66. MKDP site and SAP allocation. June 2019 proforma limited and simply refers to application for permission. Council latterly referred to email correspondence but site still in MKDP ownership and sale dependent on permission. In roundtable Council only able to say application anticipated in January 2020. No clear evidence of deliverability.

Site 30: Daubeney Gate (deduct 90 units for 1 April or 73 units for 1 October)

7.67. MKDP site and SAP allocation. June 2019 proforma limited and simply refers to site being marketed. Council latterly referred to email correspondence with Taylor Wimpey but site still in MKDP ownership and purchase dependent on board approval and site investigation. Site capacity already reduced to 73 units. In roundtable, Council only able to say application forecast for March 2020. No clear evidence of deliverability.

Site 31: Springfield Boulevard (deduct 12 units for 1 April or 13 units for 1 October)

7.68. Council owned site and neighbourhood plan allocation. June 2019 proforma limited. Application submitted and then withdrawn. Application submitted in November but not registered until 2 December. No clear evidence of deliverability.

Site 32: Hindhead Knoll (deduct 30 units for either 1 April or 1 October)

7.69. MKDP site and neighbourhood plan application. June 2019 proforma limited. Application submitted October 2019 but not yet determined. No clear evidence of deliverability.

Site 33: Land at Walton Manor (deduct 115 units for either 1 April or 1 October)

7.70. MKDP site and SAP allocation. June 2019 proforma limited. Council rely on outline application submitted January 2019 and approved in November. Site remains in MKDP control and further sale to development dependent on progress with site disposal. No clear evidence of deliverability.

Site 34: Land at Towergate (deduct 150 units for either 1 April or 1 October)

7.71. Homes England site with outline permission and SAP allocation. June 2019 proforma merely looks ahead to future marketing activity. Landowner sought to discharge part 1 and 2 of condition 6 in September 2019. Later application to discharge ecological mitigation was withdrawn in August 2019. Indicates marketing activity has been inhibited. No clear evidence of deliverability.

Site 35: Reserve Site 3 (deduct 22 units for either 1 April or 1 October)

7.72. MKDP site and SAP allocation. June 2019 proforma limited. No further progress with an allocation. No clear evidence of deliverability.

Site 36: High Park Drive (deduct 74 units for either 1 April or 1 October)

7.73. Site with outline planning permission. No proforma. Work to discharge condition post-dates both base dates. No clear evidence of deliverability.

Site 37: Maybrook House (deduct 25 units for either 1 April or 1 October)

7.74. Prior notification site. Appellant explained that such a site does not fall within category (a) or (b) in the NPPF definition of deliverable. The PPG reference to "conversions" in 68-029 only refers to completions, it does not designate such units as part of a supply. If sites are to be included, there is still a requirement to assess the extent to which the sites are available in light of ongoing activity in existing use and whether there is clear evidence they will deliver completions at the rate forecast. No proforma for this site and no further evidence from Council. Site is still not fully vacated and so should not be

considered for residential use. Clear evidence that the site could not be delivered at either base date.

Site 38: Mercury House (deduct 113 units for either 1 April or 1 October)

7.75. Prior notification site. No proforma and no further evidence from Council. Grant of approval for demolition as at 9 January 2020 but no evidence of any timescale for further works. Clear evidence that the site could not be delivered at either base date.

Site 39: Bowback House (deduct 107 units for either 1 April or 1 October)

7.76. Prior notification site. No proforma and no further evidence from Council. Site is still not fully vacated and still be marketed for office use. Should not be considered available for residential use. Clear evidence that the site could not be delivered at either base date.

Site 40: Land east of Tillbrook Farm (deduct 36 units for either 1 April or 1 October)

7.77. Site with outline planning permission. June 2019 proforma and follow-up email from November 2019 refer to delays of further 3 months for submission of reserved matters. No clear evidence of deliverability.

Site 41: Tickford Fields (deduct 220 units for either 1 April or 1 October)

7.78. Council owned site with no outline permission. June 2019 proforma records start date as unknown. December 2019 email refers to future application but no further progress towards securing developer partner. No clear evidence of deliverability.

Site 42: Land west of Yardley Road (deduct 210 units for either 1 April or 1 October)

7.79. Site with outline permission and allocated in Olney Neighbourhood Plan. Council rely on June 2019 proforma. Reserved matters application submitted November 2019. No clear evidence of deliverability.

Site 43: Omega Mansions (deduct 10 units for 1 October)

7.80. Prior notification site for purposes of 1 October base date. No progress of further works. No clear evidence that the site was deliverable at base date.

Site 44: Cable House – duplication with Site 38 (Mercury House)

Site 45: Chancery House {deduct 40 units for 1 October}

7.81. Prior notification site for purposes of 1 October base date. No progress of further works. No clear evidence that the site was deliverable at base date.

Site 46: Land south of Cresswell Lane – Central MK C3.2 (deduct 294 units for either 1 April or 1 October)

7.82. The Council did not consider that this site was deliverable as at the 1 April 2019 base date. Full planning permission was only granted on 31 July 2019. There was therefore no clear evidence that the site was deliverable as at April base date. This application did not result in an amendment to the MK Housing Statistics and as such it was considered that the site remains undeliverable.

Site 47: Castlethorpe Road (deduct 50 units for 1 October)

7.83. Outline permission granted at appeal after 1 April. No clear evidence from Council as to why it should be included in the supply.

Site 48: Station Road Elder Gate

7.84. [Not covered in closing submission or in detail elsewhere by appellant]

Sites 49-52: Council's "Year 6" sites

7.85. The Council sought to add 4 sites predicted to deliver in first half of 2024/25 year (if the base date is 1 October). The appellant's overall position is that the timescales for delivery are extremely uncertain given that completions are only anticipated at the end of the period. None have outline permission and no recorded developers.

Site 49: Rear of Saxon Court (deduct 20 units for 1 October)

7.86. Council referred to development brief consultation in summer 2019. MKDP acting for Council and does not provide sufficient evidence of progress. Council's most recent assessment in December 2019 was that there was no clear evidence of delivery in 5 years.

Site 50: Rear of Westminster Court (deduct 15 units from 1 October)

7.87. MKDP acting for Council and does not provide sufficient evidence of progress. Council's most recent assessment in December 2019 was that there was no clear evidence of delivery in 5 years.

Site 51: C4.2 (deduct 22 units from 1 October)

7.88. MKDP acting for Council and does not provide sufficient evidence of progress. Council's most recent assessment in December 2019 was that there was no clear evidence of delivery in 5 years.

Site 52: Cavendish House (deduct 9 units from 1 October)

7.89. Part of Fullers Slade regeneration proposals now approved at referendum with a development option selected. Proforma from MKDP states 'strong possibility' site will come forward, but still not clear evidence of delivery.

Summary on housing land supply

7.90. The Council does not have a robust, deliverable five-year supply of housing land. This has been the case for some considerable time. The appeal site if released would be delivered within 5 years as a small site under the control of a SME developer which the Council's Housing Delivery Action Plan seeks to promote. Further, there has been a significant shortfall in the provision of affordable housing over the years which this site would help to address. The shortfall in housing for a new town is beyond problematic and the imbalance between jobs and housing increases in-commuting and frustrates sustainable growth.

Location of the development

7.91. The first Inspector found site to be in a sustainable location due to accessibility of public transport and local facilities and the absence of any unacceptable environmental effects.

Development plan and national policy

7.92. The adoption of Plan:MK has not altered this but recognised and reinforced it. Policies DS1 and DS2 identify Woburn Sands as a sustainable location with no cap on development. There is very limited space within the settlement boundary for development. Changes to the boundary in Plan:MK have reflected existing commitments, the Frosts appeal, the Nampak permission and the Frosts retail permission.

7.93. The revised NPPF in 2018 and 2019 has not altered sustainability. It continues to boost HLS (para 59), direct housing to sustainable locations (para 103) and ensure development is located within locations including rural locations where it can contribute to the vitality of the community (para 78). Majority of recent development at the Nampak site and of a density and general form that takes little account of town's existing character.

7.94. Housing would support public transport, shops and services. The existing doctor's surgery has capacity for new patients and financial contributions can be made for school places. Woburn Sands and the appeal site are appropriate locations for future growth. The fact that the Plan:MK Inspector did not require further allocations and the Town Council are declining to review WSNP does not alter this.

Oxford-Cambridge Expressway

7.95. The Council did not cite this as any basis for refusal of scheme and this remains their position in the SOCG and at the inquiry. The appellant has set out that plans are at the very earliest stages of consultation with the Secretary of State for Transport indicating that he will review whether there is a continuing justification for the proposal having described its benefits as finely balanced and the need to demonstrate a strong case that it will boost jobs, prosperity and has local support⁵⁸.

7.96. Examining the site and locality there is no realistic prospect of substantial road construction at the appeal site or vicinity. The appellant has explained the extent of constraints preventing road construction, most notably the registered park and garden and residential development including the Strategic Land Allocation. Further, the suggestion made by Highways England that development on the site would be contrary to the adopted development plan and potentially result in conflict with the expressway is wrong. Plan:MK only deals with the expressway in the context of the SEMK Strategic Growth Area. Therefore, the expressway does not constitute a reason to withhold consent.

⁵⁸ APP8 paragraph 4.6

Housing density

- 7.97. At this Inquiry, the appellant has made clear that the density figure should be assessed at 20.3 dwellings per hectare (dph) applying a net density approach that subtracts the area's listed in the planning witness' proof⁵⁹. That approach reflects the absence of any statutory definition or any extant policy or guidance. Changes to the housing mix would increase density in respect of habitable rooms per hectare⁶⁰.
- 7.98. The Council's case at the first Inquiry sought to prolong the initial objection on the basis of Policy H8 of the Local Plan 2005 which looked for a density of 35dph for locations like Woburn Sands. The first Inspector found no substance in this point in his paragraphs IR9.43 and IR9.45. The SoS DL paragraphs 24-26 referred consistently to conflict with Policy H8. The SoS referred only in DL paragraph 24 to NPPF paragraphs 122-123 in assessing the accordance of the policy with NPPF, notably identifying its use of a range of average net densities.
- 7.99. The development plan position and national policy position have both moved on markedly since the original Inquiry with the expiry of Policy H8. The policy framework for density is now Policy HN1(c) with contextual support from Policy SD1 and D1. Policy HN1 conforms with NPPF paragraph 122 and was found sound by the Plan:MK Inspector albeit in the contest of NPPF 2012.
- 7.100. The correct approach to assessing acceptability of density is to assess those areas immediately adjacent to the development, not an arbitrary wider area comprising the whole settlement. The appellant's evidence carries out a systematic calculation⁶¹ of density of area surrounding the site with regard to Policy HN1(c) and NPPF paragraph 122(d) in particular. The Council's planning witness accepted in cross-examination that he had undertaken no calculation of density of his own, had relied on the Nampak Inspector's finding of density, and had not identified any minimum density. His 27dph represented one variant of an acceptable scheme and he considered the acceptable number of dwellings on the site may be higher or lower than 203. He also accepted that NPPF paragraph 123(a) is a plan-making provision and 123(c) is to be read in the broader context of paragraph 122.
- 7.101. The Council's planning witness conceded that the layout of the development was a reserved matter and one the Council could control in due course. Article 2 of the Town and Country Planning (Development Management Procedure) Order 2015 defines "layout": "*means the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development*".
- 7.102. The Council's suggestion that a Council cannot control density at the reserved matters stage relies on the solitary basis of a single paragraph of the Planning Encyclopedia's section 3B-2200.5 citing *R v Newbury DC Ex p Chieveley Parish Council* [1998] PLCR 51⁶². The Council has not explained

⁵⁹ APP8 paragraph 5.5

⁶⁰ APP8 paragraph 5.6-5.8

⁶¹ APP10 appendices 2-6, especially appendix 2 which focuses on the built up area of Woburn Sands only

⁶² RID23

which part of the judgment is relied upon. However, on its face the judgment is not authority for the Council's proposition and it focuses on the issue of floor area, not density. The same section of the Encyclopedia reveals another authority which confirms that density is indeed capable of forming a reserved matter: *Inverclyde DC v Inverkip Building Co. Ltd* 1983 SLT 81, 90.⁶³

- 7.103. On a correct understanding of the development plan, national planning policy and the legal powers available to the Council at the reserved matters stage, there is simply no basis to refuse permission on grounds of density. The Council's attempts to retract their witness' clear concessions in evidence should be rejected.

Landscape and impact on character of settlement

- 7.104. The issue was considered in detail at the first Inquiry. The first Inspector found the effects would be limited and give rise to no unacceptable harm (IR9.26 and 9.27). The SoS concurred in the DL at paragraph 27. The Council agrees with this position as set out in the SOCG and that any adverse effects would carry limited weight against the proposals. The appellant has explained that such harm would be significantly and demonstrably outweighed by the benefits.

Heritage

- 7.105. The appellant's heritage consultant⁶⁴ has considered the effect on the listed farmhouse and Wavendon House and the registered park and garden. The first Inspector found less than substantial harm to the listed farmhouse (IR9.41) and the SoS agreed in his DL at paragraph 28. The appellant's heritage consultant has found the scheme would cause no harm to the significance of Wavendon House and the registered park and garden. The Council in the SOCG agrees that the proposal would result in a low level of less than substantial harm to the listed farmhouse and that there is no basis to refuse the scheme on heritage grounds subject to a satisfactory detailed scheme/design at reserved matters stage. The Council's planning witness confirmed that the public benefits would outweigh the low level of harm for the purposes of NPPF paragraph 196.
- 7.106. In summary, whilst considerable weight and importance should be attached to the desirability of protecting and enhancing the character and appearance of designated heritage assets for the purposes of s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, there is no basis for refusal on this ground in relation to the Appeal Scheme. For the purposes of NPPF 11d(i) there is no basis for refusal on heritage grounds.

Highways

- 7.107. Third parties raised traffic and transport concerns at the first inquiry and these have been raised to a more limited extent at the present inquiry. The first Inspector addressed these issues at IR9.35-9.38 and the SoS endorsed

⁶³ RID26

⁶⁴ APP9 appendix 4

these findings that the proposal would not give rise to unacceptable effects in his DL at paragraph 30. The TA has been updated⁶⁵.

- 7.108. The Council has confirmed in the SOCG that the proposal is acceptable in all respects, that the access is appropriate and would not put undue pressure on local road network. All other detailed matters can be considered under reserved matters applications. The TA remains robust and justifies the conclusions of the appellant and the Council's highway officers.

Best and Most Versatile Agricultural Land

- 7.109. The Council's planning witness raised this issue for the first time in his proof of evidence⁶⁶. While identifying a conflict with Policy NE7, he made clear in cross-examination that this did not amount to a freestanding basis for refusing the proposal. It is accepted that there would be a loss of Grade 3a agricultural land and that this gives rise to a conflict with NE7. However, both Policy NE7 and NPPF paragraph 170(b) make clear that this is an economic factor to be weighed against the economic benefits that would arise from the development, listed in the Economic Benefits Statement⁶⁷ and set out further below. The Council has allocated land on sites around the Borough which are of equal or greater agricultural value as the site⁶⁸.

Planning Balance

Affordable housing

- 7.110. The appellant's witnesses have identified a substantial need for affordable housing within Milton Keynes borough in their respective proofs⁶⁹. The Council has already seen a shortfall of 640 dwellings in the first 3 years of the plan period⁷⁰ with a chronic failure to deliver a sufficient amount from 2007 to 2018⁷¹. As set out above, there is a clear recognition in Plan:MK that additional weight should be accorded to the provision of affordable housing in excess of the policy minimum. The Council's planning witness confirmed in cross-examination that this was a benefit to which significant weight (the highest weight) should be attached.

Market housing

- 7.111. Significant weight should be attached to the benefits of providing market housing irrespective of the precise HLS position. The Government is committed to boosting significantly the supply of housing to meet the chronic and continuing shortfall both nationally and where it arises locally, but also to diversify the base of house builders to meet that need. One of the difficulties identified by the Government in its White Paper was the excessive concentration and dominance of the major national house builders which is seen to have a distorting and negative effect upon the continuous supply of housing up and down the country.

⁶⁵ APP9 appendix 7

⁶⁶ LPA4 paragraph 10.31-10.32

⁶⁷ APP9 appendix 6

⁶⁸ RID24

⁶⁹ APP2 chapter 7 and APP8 paragraphs 6.34-6.36

⁷⁰ APP2 table 13

⁷¹ APP2 table 17

7.112. The house builder in this case, Storey Homes, is a small to medium sized developer whom the Government wishes to encourage to provide housing, not only as a matter of choice but in order to meet a diversity of suppliers. The appellant's note⁷² has provided evidence both upon that, the track record of the company and the anticipation that it will be able to deliver all of the proposed housing within 5 years of the date of its permission. The proposal would deliver at least 150 dwellings within the current 5 year period up to March 2024, allowing for a year to clear reserved matters and conditions. The Council's suggestion that there should be any diminution in the weight to be accorded the proposal by reason that not all of the 203 dwellings might be delivered within the 5 year period (principally due to the suggested significant delay on the part of the SoS in issuing his decision letter on this appeal) is not credible.

7.113. The proposal will provide much-needed housing in an important growth location both regionally and nationally and where the provision of each type of housing has materially lagged over a prolonged period of time.

Economic benefits

7.114. There are substantial economic benefits as set out in the Economic Benefits Statement and accepted by the Council's planning witness at cross-examination. These comprise temporary construction employment of 180 workers per annum, or 630 workers over the course of a 3.5 year construction period, both on and off-site; demographic and labour market benefits, including a high proportion of working-age residents (75% in employment), and a cross-section of working people due to the range of accommodation offered; secondary employment generated by increased spending in the local area by new residents (£5 million total per annum), directly supporting around 40 gross full-time equivalent jobs; and New Homes Bonus paid to the Council of c.£1.4 million over 4 years.

Social benefits

7.115. The development will provide social benefits through housing (including much needed affordable housing) to meet future need and is accessible to the local services provided within the wider area including education facilities. The site would also provide a social benefit in the form of the doctor's surgery to be provided on site and the site would be within reasonable walking distance of existing local services and facilities.

Environmental benefits

7.116. There will be the opportunity to provide a net environmental benefit by the site having the potential to enhance the habitats within it, given that the appeal site has little value for wildlife at present. These are set out in an update report from CSA Environmental⁷³.

7.117. Clearly the site is outside the present settlement boundary of Woburn Sands but so would any site which is presently not allocated. Much of the Council's HLS is and will be located on green field sites. In that context, there

⁷² APP9 appendix 13

⁷³ APP appendix 5 paragraph 5.20

would have to be something distinct and material about this site in order to suggest that its green field location would render it unsustainable. That was certainly not the view of officers in their report recommending approval and it is freely recognised by the Council that there is no landscape or similar argument to support objection to the appeal site here.

Highways/Traffic benefits

7.118. There are highways and transportation benefits, by providing additional flexibility in the local network and an alternative to the existing Newport Rd / Cranfield Rd junction. These can be classified as both environmental and social benefits. The proposal would also help to contribute towards sustainable patterns of development and help to counteract the increasing levels of commuting which can be created by an imbalance of homes and jobs.

Summary on benefits

7.119. The proposed development is one which, by reason of its location and accessibility to a range of services, facilities and transport links, and having regard to the three dimensions set out in the NPPF, is sustainable development which properly benefits from the presumption in its favour. Even in circumstances (though not here) where an Inspector were to conclude that the Council was able to demonstrate a 5 year HLS, the sustainability and other advantages constituting material considerations in this case would be sufficient to justify the grant of consent.

Conclusions

7.120. The appeal proposal represents sustainable development adjacent to a settlement which is identified in Plan:MK as being a key settlement and which contains not only a wide range of service and facilities but also a railway station. The Council does not have a 5 year HLS and that the shortfall in both market and affordable housing is longstanding, acute and continuing.

7.121. The proposed development gives rise to substantial benefits which are not outweighed by any of the alleged detrimental impacts and is consistent with the presumption in favour of sustainable development. It is therefore respectfully submitted that the appeal should be upheld and planning permission ought to be granted.

8. The Case for Milton Keynes Council⁷⁴

Introduction

8.1. The Council submits that this appeal should be dismissed. In its evidence to this inquiry and questions in cross-examination, the appellant has demonstrated an obsession with process, an interpretative approach which is contrary to the plain words of local and national policy, and a selective approach to the evidence which ignores that which does not support its case. By contrast, the Council's approach has been straightforward, consistent with national policy, and should be preferred

Previous Decision Letter (DL)

8.2. The DL is a material consideration in the redetermination of this appeal, notwithstanding the fact that it was quashed by the High Court: see *R. (Davison) v Elmbridge Borough Council* [2019] EWHC 1409 (Admin)⁷⁵. This is to give effect to the well-established principle of consistency in decision making. In *Davison*, the judge gave specific guidance on the application of consistency to a quashed decision as follows:

- (a) The principle of consistency is not limited to the formal decision but extends to the reasoning underlying the decision.
- (b) Of itself, a decision quashed by the Courts is incapable of having any legal effect on the rights and duties of the parties. In the planning context, the subsequent decision maker is not bound by the quashed decision and starts afresh taking into account the development plan and other material considerations.
- (c) However, the previously quashed decision is capable in law of being a material consideration. Whether, and to what extent, the decision maker is required to take the previously quashed decision into account is a matter of judgment of the decision maker reviewable on public law grounds. A failure to take into account a previously quashed decision will be unlawful if no reasonable decision maker could have failed to take it into account.
- (d) The decision maker may need to analyse the basis on which the previous decision was quashed and take into account the parts of the decision unaffected by the quashing.
- (e) The greater the apparent inconsistency between decisions the more the need for an explanation of the position

8.3. Applying these principles, the Council submits:

- (a) The DL is a material consideration in the present case. No reasonable decision maker could fail to take the DL into account given the obvious relevance to the issues in dispute. However, the DL does not bind the decision maker who must start afresh, taking into account the

⁷⁴ Largely taken from the Council's closing submissions RID34

⁷⁵ Insofar as the Appellant may seek to rely on *West Lancashire v SSCLG* [2017] EWHC 3451 as establishing a different approach, *Davison* is to be preferred given that it expressly considered *West Lancashire*.

development plan and other material considerations, of which the DL is one.

- (b) The DL was quashed because the Secretary of State failed to give adequate reasons for concluding that the Council could demonstrate a 5 year HLS. Accordingly, the Secretary of State's conclusions (and reasoning) on all matters unrelated to 5 year HLS were not impugned by the High Court.
- (c) Notwithstanding the fact that the SoS's conclusions on these matters was not impugned, it is necessary to consider whether those conclusions remain relevant, and if so, whether they hold good, taking into account any changes in circumstances that may have arisen since the SoS's decision

8.4. In respect of the Secretary of State's principal conclusions, the Council's position is that:

- (a) 5 year HLS: The conclusion at DL paragraph 18 that the Council could demonstrate a 5 year HLS formed the basis on which the DL was quashed. Accordingly, no weight can be given to this conclusion and the issue must be considered afresh by reference to the new evidence now presented at this Inquiry.
- (b) Location of site: The conclusion at DL paragraph 19 that the development fails to accord with Policy WS5 of the WSNP is relevant and unaffected by the quashing of the DL. However, given the changes to the development plan since the DL was issued, the conclusion that the development was contrary to saved local plan policy S10 is no longer relevant. Further, given the changes to the development plan, it is necessary to consider afresh the weight to be afforded to the conflict with Policy WS5.
- (c) Housing density: The conclusion at DL paragraph 26 that the development fails to accord with NPPF 2018 paragraphs 122–123 is relevant and holds good given the similarity with the relevant paragraphs in the NPPF 2019. However, given the changes to the development plan since the DL was issued, the conclusion that the development was contrary to Policy H8 is no longer relevant.
- (d) Character of the area: The conclusion at DL paragraph 27 that "the significant visual and landscape effects of the scheme would be very local, while beyond those immediate surroundings, the effects would be very limited" is relevant and holds good as there has been no material change of circumstances.
- (e) Heritage: The conclusion at DL paragraph 28 that there would be less than substantial harm to Deethe Farmhouse is relevant and holds good as there has been no material change of circumstances.
- (f) Benefits of the scheme: The conclusion at DL paragraph 29 that the benefits of the scheme comprise affordable housing, temporary construction employment and secondary employment is relevant and holds good. However, it is necessary to consider afresh the weight to be

afforded to these benefits given the changed housing and economic environments.

- (g) Other matters: The conclusion at DL paragraph 30 that matters relating to traffic and parking, the impact of the development on the facilities of the town, and ecology and drainage, do not weigh against the proposal is relevant and holds good as there has been no material change of circumstances.

- 8.5. It is necessary to consider afresh the conclusions in respect of planning conditions and obligations and the planning balance given changes to the development plan and amendments to both conditions and obligations.

Housing Land Supply

The general approach to the assessment of HLS at this appeal

- 8.6. There is a need to adopt a proportionate and realistic approach to the assessment of evidence at an appeal compared to local plan examination as acknowledged by the Inspector at the Castlethorpe Road appeal⁷⁶. The policy imperative of demonstrating a 5 year HLS in NPPF paragraph 73 and the consequences of not being able to in terms of NPPF paragraph 11 is to ensure that there is an adequate supply of housing land. This is clear from NPPF paragraph 59. Contrary to the approach of the appellant, the assessment of 5 year HLS is concerned with the endpoint and a sufficient supply of deliverable land, not with the assessment process. There is a need for good planning judgment.
- 8.7. The appellant's approach to the assessment of deliverability invites the decision-maker to ignore evidence which is obviously material to the assessment of realistic prospects. It is well established that policy cannot lawfully make immaterial that which is material⁷⁷. The Appellant ignores this, and this is one of many reasons why its approach is wrong in law.
- 8.8. The Council's 5 year HLS must be viewed in the context of the recently adopted Plan:MK, which has brought about a robust supply and resulted in dramatic improvements in housing delivery. Since adoption in March 2019, the Council has achieved its annual delivery requirement in 2018/19 for the first time since 2007/08 consistent with the continual year on year improvement over the first 3 years of Plan:MK. In quarters 1-3 of 2019/20, the Council has delivered 92% of its annual requirement such that it is near certain that it will meet its annual delivery requirement again for the second consecutive year⁷⁸. The number of units under construction at the end of quarter 2 of 2019/20 was the highest number since June 2008 and quarter 3 only marginally lower. The first 3 quarters of 2019/20 is the first time since at least 2007/08 that the Council has recorded over 2000 units under construction for 3 consecutive quarters.

⁷⁶ CD6.18 paragraph 51 [the Council's closing submission refer to this appeal as 'Hanslope', but for consistency this report has used the same address used by the appellant]

⁷⁷ See *Gransden & Co. Ltd. and Another v Secretary of State for the Environment* (1987) 54 P. & C.R. 86 per Woolf J (as he then was) at 94.

⁷⁸ LPA1 table 5.1 and RID07

8.9. The Plan:MK Inspector confirmed the Council has a clear and robust roadmap to delivering housing and was satisfied with its housing trajectory, with special circumstances for significantly higher delivery over next few years, significant number of small and medium sites and the risk of non-delivery minimal⁷⁹. The Council submits that the change in the NPPF definition of deliverable does not affect these conclusions as they go to the underlying approach of the Council and the underlying circumstances of the local area.

Other recent appeal decisions dealing with 5 year HLS

- 8.10. Both the Castlethorpe Road and the Globe appeal decisions⁸⁰ are material considerations, but neither is binding on the decision maker. Given the conflicting conclusions on HLS, the decision maker will need to disagree with at least one and give reasons. Neither decision is more lawful than the other and their planning judgments have not been challenged. The differences between the appeals relate to the different evidence presented to each appeal and the different manner in which the evidence was presented. The fact that more time was spent on site by site analysis at the hearing for the Castlethorpe Road appeal does not make it a more considered decision. The evidence was presented in advance for the Globe hearing and there was only one appellant. The HLS evidence at the Globe hearing was more up to date and was presented earlier on. While this might mean the Globe decision should be preferred on this basis, there is still a need to reach a fresh judgment for this appeal based on the evidence before this Inquiry.
- 8.11. Both appeal decisions considered the most up to date evidence like this appeal. Both decisions noted the improving housing completions. The Castlethorpe decision dismissed criticism of the Council's proformas. This Inquiry has the benefit of the Council's note⁸¹ explaining the proforma process and that respondents did amend build out rates where necessary. A statement from a developer would provide no greater certainty of delivery. The evidence presented by the appellant from Mid Suffolk District Council⁸² accepts an email confirmation to support build out rates.
- 8.12. The Castlethorpe Road decision applies an optimism bias (OB) using a midpoint between the Council and appellants (paragraph 62). It is important to note that the Council and appellants were referring to two different things when using the term OB: the Council was referring to a lapse rate while the appellants were referring to an adjustment for alleged inaccuracies in the 5 year HLS assessment. The alleged inaccuracy was the discrepancy between the Council's previous assessments of HLS and the number of homes delivered. The midpoint applied by the Inspector was not 17.5% but a broader approach and the Council would have been able to demonstrate a 5 year HLS otherwise.
- 8.13. The Castlethorpe Road conclusion that it was not particularly apparent that the Council had reduced its calculations of housing land supply to reflect the revised definition of deliverable in the NPPF no longer holds good as the Council has given clear evidence⁸³ to this Inquiry of the approach and

⁷⁹ CD5.32 paragraphs 136, 145 and 152

⁸⁰ CD6.18 and CD6.17 respectively

⁸¹ RID13

⁸² RID15

⁸³ LPA2 appendix 2, section 2

methodology followed. Moreover, the Council has discounted sites from the Plan:MK 5 year HLS due to the new definition of deliverable⁸⁴.

Timescale of the evidence

- 8.14. There is dispute between the parties as to the use of evidence which post-dates the base date of 1 April 2019 to assess deliverability. This is a matter of principle which falls to be determined by interpreting national policy and is not an issue specific to the facts of the case. The Council's position is that the calculation of 5 year HLS should not introduce new sites granted permission after 1 April 2019 which were not identified as part of the supply at 1 April in Council's June 2019 HLS assessment. Moreover, regard should be had to all of the evidence presented to this inquiry even it was created after 1 April or relates to events which postdate 1 April. The assessment needs to ask a simple question in respect of each site – does the evidence presented to this inquiry demonstrate that the site is deliverable in the five-year period 1 April 2019 – 31 March 2024.
- 8.15. The appellant advocated an artificial two stage approach. Firstly, to consider, by reference only to evidence which predates 1 April (either because it was created before that date or because it was created after that date but referable back to matters known before that date), whether the site was deliverable as at 1 April. Secondly, to consider whether the conclusion reached at the first stage holds good today by reference to other matters since 1 April. The Council submits this is wrong and should be rejected for the following reasons.
- 8.16. Firstly, it is an approach that has no basis in the NPPF or PPG. Reference in paragraph 73 to a minimum of 5 years' worth of housing is simply an expression of the need for the supply to cover at least a 5 year period. Reliance on the PPG paragraph 68-001-20190722 is misplaced as 'next five years' operates as a contrast to 'last 3 years' to illustrate difference between retrospective Housing Delivery Test and prospective calculation of 5 year HLS. It does not impose an evidential cut-off date. The appellant accepts that the base date for assessment may be a date which has passed such that 'next' is not imbued with any special meaning. There is no basis for only considering evidence prior to the base date and no basis for a two stage approach.
- 8.17. Secondly, the PPG approach accords with the Council when considering the provisions relating to preparation of an Annual Position Statement (APS)⁸⁵ where the base date is 1 April and a local planning authority has until 31 July to prepare and consult on its APS before submission to PINS and PINS issues its recommendation by October. This allows for stakeholders to agree or disagree with evidence to allow robust challenge and reasoned conclusion on deliverability which is then assessed by PINS.
- 8.18. Thirdly, neither Woolpit nor Darnall School Lane decisions⁸⁶ support the appellant's approach. The former discounts sites not identified at the base date from the assessment which the Council follows in its approach. The latter considered information after the base date where it was relevant to identified sites with no artificial cut-off date for evidence.

⁸⁴ RID19

⁸⁵ PPG ID: 68-012-20190722, ID: 68-013-20190722, ID: 68-015-20190722

⁸⁶ CD6.16 and CD6.14/6.15 respectively

- 8.19. Fourthly, the appellant's approach is impractical and seeks to create an artificial process. An HLS assessment requires understanding of actual completions which cannot be known until after the base date. The Mid Suffolk and Babergh HLS assessments illustrate this reality⁸⁷. Both refer to MOUs/SOCGs agreed after base date; these may support evidence but can only mean there was sufficient clear evidence without them. The MOUs contained matters post-dating the base date that were taken into account in calculating 5 year HLS such as build out rates⁸⁸. The assessment of deliverability requires consideration of how many homes are deliverable and not simply that the site is deliverable⁸⁹. There is no basis in policy or logic to impose artificial time restrictions on the assessment of deliverability but not the other elements of the 5 year HLS assessment.
- 8.20. Fifthly, where an APS is not used, the PPG is clear that HLS should be demonstrated using the latest available evidence and up to date evidence⁹⁰. The Council's approach is consistent with this. The appellant seeks to disaggregate evidence so that there is a threshold test at first stage which omits the most recent evidence as it is limited only to evidence which predates the base date. The consequence is to invite the decision maker to disregard obviously material evidence in the assessment of whether there is a realistic prospect that a particular site is deliverable.
- 8.21. Sixthly, the Council's approach is consistent with the Colchester Road decision⁹¹ regarding evidence after the base date, the Globe decision⁹² regarding the use of proformas after 1 April base date, and the Castlethorpe Road decision regarding the use of proformas⁹³.
- 8.22. The appellant's approach seeks to create an obstacle course for local planning authorities to negotiate every time there is an appeal. It bears no resemblance to national policy and departs from clear purpose of HLS mechanism to ensure that there is a pool of sites of sufficient capability to create a realistic prospect that local housing need will be met in a timely fashion in the relevant 5 year period. The appellant places process above good, sound and sensible planning.

Deliverability, not delivery

- 8.23. There is a clear distinction in NPPF paragraph 73 between delivery and deliverable. The appellant conflates the two and the error manifests itself in two principal ways: it forms the basis for the application of an inflated OB to the Council's deliverable sites; and it forms the basis for the appellant's erroneous discounting of deliverable sites.
- 8.24. The *St Modwen* judgment⁹⁴ in paragraphs 35-39 highlights the essential distinction between the two concepts. Deliverability is a less demanding test than delivery. The fact that a particular site is capable of being delivered within five years and thus deliverable, does not mean that it necessarily will be

⁸⁷ RID15 paragraphs 10, 11, 23 and 29

⁸⁸ RID15 paragraphs 24 and 25

⁸⁹ See Colchester Road decision at CD6.22 paragraph 65

⁹⁰ PPG ID: 68-004-20190722 and 68-007-20190722

⁹¹ CD6.22 paragraph 62

⁹² CD6.17 paragraphs 23 and 24

⁹³ CD6.18 paragraph 55

⁹⁴ CD7.6

delivered. The judgment also highlights that the likelihood of housing being delivered within 5 year period is no greater than a realistic prospect, not certain or probable. The revisions to the NPPF does not affect this judgment including the definition of deliverable which is materially unchanged in the first part of that definition in the 2012 and 2019 versions.

- 8.25. *St Modwen* does not create new law but explains the correct interpretation of national policy. This is confirmed in the more recent *East Bergholt* judgment⁹⁵ at paragraphs 47-51, which highlights that 'realistic prospect' is a matter of planning judgment

Adjusting the assessment of deliverable sites

- 8.26. This issue relates to whether the assessment of deliverable sites should be adjusting by applying an OB and if so, what method of discount for OB should be applied. The Council uses OB to refer to lapse rates while the appellant uses it to refer to a discount to apply to the Council's HLS to address alleged inaccuracies in the assessment. The Council applies a lapse rate to all sites with forecast delivery in the 5th year of supply by discounting delivery of the site in each year by 10%. The appellant advocates a blanket discount of 28-30% to the supply but applies no such discount in its own assessment.
- 8.27. The Council's position is that it no longer considers it appropriate to apply a lapse rate due to the site by site assessment it undertakes. However, to be consistent with the approach for Plan:MK, a lapse rate was included in the HLS assessment in June 2019 and in the evidence to this appeal. This is to ensure robustness. The appellant's HLS witness has also carried out a site by site assessment and so there appears to be little difference that a lapse rate or OB is not required. It is open to the decision-maker to conclude that it is not required as the detailed assessment of sites reduces uncertainty.
- 8.28. The appellant's OB should not be applied as its HLS witness has compared the assessment of deliverable supply with actual delivery. This is erroneous and an unrelated comparison contrary to *St Modwen*. Just because a deliverable site was not delivered does not undermine the assessment of deliverability. It would also be inconsistent with national policy. For the purposes of NPPF paragraph 73, it is agreed that only a 5% buffer is necessary rather than 20% which is intended to make up for the significant under delivery of housing over previous three years. This achieves the same purpose as the appellant's OB. To impose the OB would be inconsistent with the NPPF which has decided it is not appropriate to apply a 20% buffer. Lapse rates were not applied in Mid Suffolk or Babergh's HLS assessments and the appellant has confirmed that it does not support a lapse rate⁹⁶.
- 8.29. If a discount is to be applied to this appeal, then it should be the lapse rate in accordance with the Council's methodology and not the appellant's OB.

Permitted development prior approval notifications

- 8.30. This relates to the grant of prior approval pursuant to Class O of Schedule 2 to the Town and Country Planning (General Permitted Development) (England)

⁹⁵ RID09

⁹⁶ RID17 paragraph 1.16

Order 2015 (GPDO) and the calculation of 5 year HLS. The Council's position is that it results in detailed planning permission which falls within category (a) of the NPPF definition of deliverable. This is a matter of law not planning judgment.

- 8.31. The NPPF should be interpreted consistently with the planning acts as judgments have found⁹⁷. Section 336(1) of the Town and Country Planning Act 1990 (TCPA 1990) defines "planning permission" as a permission under Part III TCPA 1990. The GPDO is made pursuant to Section 58 TCPA 1990, which falls within Part III TCPA 1990. Accordingly, where article 3 of the GPDO grants planning permission for development in Schedule 2 to the GPDO (including Class O), that planning permission is a permission under Part III TCPA 1990 and thus within the definition of "planning permission" in s. 336(1) TCPA 1990. On this basis, the reference to "detailed planning permission" must include planning permission granted pursuant to Class O.
- 8.32. The appellant's argument that the government was aware of Class O permitted development rights when drafting the NPPF definition of deliverable and the express omission of Class O is deliberate fails because the definition of deliverable includes such permissions under Class O.
- 8.33. A development with prior approval is indistinguishable from other types of permission in category (a). No further consent is required other than discharge of conditions like a site with full planning permission. This contrasts with the sites in category (b) where further consent is required. This approach is consistent with the SoS in the Hanging Lane decision⁹⁸ at paragraph 21 where he agreed with the Inspector's analysis regarding the inclusion of prior approval sites.
- 8.34. If the appellant is correct, then homes created under Class O would fall outside the 5 year HLS entirely. The PPG⁹⁹ states for the purposes of calculating 5 year supply housing completions can include conversions and changes of use. Furthermore, it is inconsistent with the rationale for Class O which is to boost housing delivery. The appellant has not referred to any appeal decisions or case law to support its approach and offered no cogent reason why homes created under Class O should be excluded from the definition of deliverable. Under category (a), the burden of proof is on the appellant to show clear evidence that a site will not be delivered.

Site by site assessment – general points¹⁰⁰

- 8.35. At the roundtable session, the appellant's approach was based on a number of common and erroneous themes. Firstly, the criticism of the proformas which has been dealt with above. Secondly, the discounting of proformas from MKDP for no reason other than assertion that they would be inaccurate for the purposes of the Council preparing its assessment. MKDP is an arms-length organisation with the remit of bringing land forward for housing, it has detailed local knowledge and no reason to doubt its responses. A similar approach was taken to responses from Homes England, who are a non-departmental public

⁹⁷ CD7.4 paragraphs 19 and 20

⁹⁸ CD6.20

⁹⁹ PPG ID: 068-029-20190722

¹⁰⁰ Appendix 1 to the Council's closing submissions sets out a summary on strategic sites

body and statutory corporation to improve the supply and quality of housing and the regeneration or development of land or infrastructure in England.

- 8.36. The proformas make clear that the information is being sought on the basis of a year running from 1 April to 31 March, with forecasts being sought from the year 2019/20 onwards, i.e. from 1 April 2019 onwards. Accordingly, the suggested completions of the Council (and any confirmation or amendment by the respondent) can only be on the basis of starting from the base date. As such, it is evidence which can be taken into account even on the appellant's artificial basis because it refers to matters as they were at the base date.
- 8.37. The appellant's distinction between sites in the control of land promoters or landowners and developers is without consequence as there is clear evidence that the former are no more likely than the latter to landbank sites as set out in the NLP report¹⁰¹.
- 8.38. The appellant's suggestion that the evidence gathered for the Plan:MK preparation was of no assistance as it had been prepared with the NPPF 2012 definition of deliverable erroneously conflates the collection of evidence with the judgment made on the basis of that evidence. There is no reason why Plan:MK evidence could not be taken into account and reappraised under the revised definition of deliverable.
- 8.39. The Council's approach to build out rates is robust, as the Plan:MK Inspector found, because it has adopted an individualised approach to each site, sense checked against build out rates derived from local context and subject to further checking by the Joint Housing Delivery Team.

Brooklands (Site 1)

- 8.40. Appellant's criticism of build out rates is misplaced as the Council's projected completions are consistent with local evidence and increasing pattern of completions. Over the last 4 years, the average delivery has been 247dpa which is above the 222dpa average rate for the next 5 years which the appellant criticises. Recent monitoring data illustrates that the site has already delivered well over Council projections of 182 completions for 2019/20, with 267 homes completed by the end of quarter 3. The evidence supports that the Council's figures are realistic and robust since delivery is already in advance of the Council's projections. This is also confirmed by the proformas provided by the Council from the housebuilders involved and who are already building out some parts of the strategic site.

Tattenhoe Park (Site 2)

- 8.41. Criticism of Homes England's involvement is misplaced for the reasons above. Homes England provided further information as part of Plan:MK process supported by continuing dialogue. Two parcels are in the hands of developers and Homes England is engaged in a clearly documented marketing exercise to secure developer involvement on remaining parcels via tender process. This documentation contains a clear timeline for this to happen (including the build out rates and lead in times which the developers must adhere to) and supports the proforma responses from Homes England (including the most recent

¹⁰¹ CD11.1 page 12, second column, first paragraph

updated proformas). All of this progress is consistent with the two recent grants of detailed planning permission, both of which were for more homes than expected.

Western Expansion Area (Site 3)

8.42. There have been completions on Area 10 for 4 years (5 including current year). Up to 1 April 2019 there have been 712 completions since the site started delivering and 300 delivered in this year alone. This area has delivered 1000 homes and is only 32 short of meeting this year's projected figure. For Area 11, there has been 834 completions over last 4 years and over the last 2 years the completions have been 267 and 268 homes. There have been 133 completions for this year, more than projected. Combined, the two areas are delivering in the same manner (high 200dpa almost 300dpa each). The Council's assessment is consistent with the proformas and supported by a documented disposal strategy. There has been a sense check of developer information with a more conservative approach adopted by the Council.

Strategic Land Allocation (Site 4)

8.43. The Council's careful parcel by parcel analysis is to be preferred as it is clearly grounded in the evidence of ongoing completions. For example, taking the area as a whole, 181 completions were projected across the whole site for 2019/20 and as the Q3 monitoring data demonstrates, 187 have been completed.

The Council's final 5 year HLS position

8.44. Scenario 1: removal of conceded site – Land at Galleon Wharf (Site 14) for 14 units.

1 April 2019	No. of Units
Annual requirement	1,767
Requirement to 1 April 2019	5,301
Completions to 1 April	4,529
Shortfall	772
5 year requirement	9,607
5 year requirement including 5% buffer	10,087
Supply as at 1 April 2019	13,610
MKC Lapse Rate	678
Supply as at 1 April 2019	12,932
5 year	6.41
Surplus	2,845

8.45. Scenario 2: removal of conceded site – Land at Galleon Wharf for 14 units and inclusion of all adjustments in paragraph 4.62 of Council's HLS proof of evidence with the exception of paragraph 4.6.11 (Site C3.2 Central Milton Keynes) as this was deemed undeliverable as of 1 April 2019.

1 April 2019	No. of Units
Annual requirement	1,767
Requirement to 1 April 2019	5,301

Completions to 1 April	4,529
Shortfall	772
5 year requirement	9,607
5 year requirement including 5% buffer	10,087
Supply as at 1 April 2019	13,252
MKC Lapse Rate	650
Supply as at 1 April 2019	12,602
5 year	6.25
Surplus	2,515

8.46. Scenario 3: as per Scenario 2 but with Council lapse rate not applied.

1 April 2019	No. of Units
Annual requirement	1,767
Requirement to 1 April 2019	5,301
Completions to 1 April	4,529
Shortfall	772
5 year requirement	9,607
5 year requirement including 5% buffer	10,087
Supply as at 1 April 2019	13,252
MKC Lapse Rate	0
Supply as at 1 April 2019	13,252
5 year	6.57
Surplus	3,165

Conclusions on 5 year HLS

8.47. For the reasons above the Council submits that its approach should be preferred and that it has demonstrated a 5 year HLS. The Council's approach is robust, sensible and consistent with national policy. By contrast the appellant's approach is artificial, focussed on process not good planning and inconsistent with national policy.

The Development Plan

Plan:MK

8.48. The appellant's planning witness accepted at cross-examination that the development is contrary to Policies DS1 and DS2 of Plan:MK. He suggested that it was nevertheless in general conformity with the approach that underlines the spatial strategy, but the spatial strategy is DS1 and DS2 and so this must be rejected. Policy DS1 draws a distinction between the urban area of Milton Keynes where development should be within and adjacent to that area, and the rural area where new development should be within the key settlements, villages and other rural settlements. The appellant's planning witness accepted that Policy DS2 is to be read in combination with Policy DS1. Thus, it only contemplates housing within the defined boundary of the key settlements. He also accepted that the appeal site does not fall within any of the 13 criteria in Policy DS2.

- 8.49. The Plan:MK Inspector as recently as February 2019 found Policies DS1 and DS2 were consistent with NPPF 2012 subject to modifications¹⁰². The Inspector considered the overall strategy for Woburn Sands and found no need to modify the settlement boundary to make a specific allowance for additional development¹⁰³. The appellant's witness accepted that the spatial strategy of Plan:MK is that there is no requirement for Woburn Sands to meet. Thus, there is no inconsistency between Policies DS1 and DS2 and NPPF paragraph 65 (which requires plans to set out housing requirements for neighbourhood areas) given the findings of the Plan:MK Inspector. The policies therefore carry full weight for this appeal.
- 8.50. The objective of Policy DS5 is, amongst other things, to recognise and safeguard the character of the areas within the Borough beyond the settlement boundary. The appellant's witness accepted conflict with this policy and that it is consistent with the NPPF 2019 and up to date. As such, it carries full weight. The Plan:MK Inspector found the policy was sound. The NPPF allows plans to include policies that conserve and enhance the natural environment, not just protect valued landscapes.

The Neighbourhood Plan

- 8.51. The policies in the WSNP remain the same as the first Inquiry but circumstances have moved on not least with the adoption of Plan:MK. Paragraph 19 of the SoS's decision only gave moderate weight to Policy WS5 since it defined boundaries by reference to a Local Plan only intended to guide development to 2011. However, the role of the WSNP and its boundaries have been considered afresh within Plan:MK and particularly Policy DS2. As above, the Plan:MK Inspector concluded that no modification was required in terms of the settlement boundary. Further, he concluded that Plan:MK was the first opportunity to systematically review settlement boundaries in the Borough and he found them to be robust. Therefore, the WSNP boundary is robust and up to date.
- 8.52. Policy WS5 is not purely a countryside protection policy, it is a settlement boundary policy indicating the approach to development within the boundary. This is not contrary to the NPPF, which also allows neighbourhood plans to include policies to conserve and enhance the natural environment. The appellant cannot assert that Policy WS5 is inconsistent and out of date but agree that Policy DS5 is consistent and up to date. The two policies reflect the same policy approach. The arguments concerning the bullet points in WS5 go nowhere since they are all contingent on Plan:MK identifying a need for a boundary change which it did not. As such they do not apply. Accordingly, Policy WS5 is to be given full weight for this appeal
- 8.53. The same is true in respect of Policy WS6. The appellant only raised points regarding the consistency of bullet points in that policy, none of which are engaged as Plan:MK did not identify any need for boundary changes. Thus, Policy WS6 is consistent with the NPPF and up to date and should be given full weight.

¹⁰² CD3.32 paragraphs 31-45

¹⁰³ CD3.32 paragraph 34

Density

- 8.54. As a matter of law, the grant of outline planning permission will establish that the density of the development, however it is distributed across the appeal site and, however many units will come forward, will be acceptable in principle. Accordingly, if outline permission were granted as sought and a developer were to apply at the reserved matters stage for 203 units distributed across the appeal site, the Council would not lawfully be able to refuse planning permission on the basis that the density of what is proposed is too low and makes an inefficient use of land contrary to Policy HN1 and/or paragraphs 122/123 of the NPPF. The Planning Encyclopedia states that density is not a reserved matter referred to the court judgment in *Chieveley*¹⁰⁴. The appellant has not suggested the use of a condition to reserve density for later approval and this has not been addressed at the Inquiry. Thus, there is no evidence for the SoS to consider such a condition.
- 8.55. The Council's planning witness was confused in cross-examination on the matter of whether reserved matters approval could be refused on the grounds of density. That suggestion cannot be found in the written evidence of either party since it is wrong as a matter of law. The decision-maker has to determine now whether a proposal which would allow up to 203 units across the whole of the redline area would be acceptable in density terms. This is a planning judgment as to whether the development would make efficient use of land.
- 8.56. NPPF paragraph 122 sets out a number of factors to consider as to whether a development makes efficient use of land. This approach is echoed in Plan:MK via Policy HN1(c) which is consistent with NPPF paragraphs 122 and 123 and so is up to date and given full weight. The policy adopts a flexible approach to ensure appropriate densities on a case by case basis. Any judgment needs to be sensitive to the extent to which land is being released to meet a housing need. The appellant's planning witness accepted the greater the need and/or shortfall in HLS the greater this will pull towards a higher density level.
- 8.57. Local market conditions and viability in this case do not pull towards a higher or lower density. There is no constraint in the availability and capacity of infrastructure and services which would prevent additional housing above 203 units. This site is in a sustainable location and no evidence that any increase in units would give rise to severe consequences for the local highway network.
- 8.58. In terms of maintaining the area's prevailing character and setting, the SoS's decision considered this matter in relation to the then extant Policy H8 which sought a density of 35dph. The SoS must have considered that such a density was acceptable in terms of character and appearance. He noted that the scheme was a significant departure from policy in paragraph 26 of his DL.
- 8.59. Since the SoS decision, the only material change in terms of the character of the area is that Policy H8 has been replaced with Policy HN1. While the latter does not contain a requirement for 35dph, the objection of bringing forward the highest density that can be delivered while ensuring that the development would still relate well to character and appearance has not.

¹⁰⁴ RID23

- 8.60. It is evident from paragraph 26 of the DL that the SoS must have concluded conflict with NPPF paragraph 122 since in paragraph 24 he had found that Policy H8 was consistent with this paragraph. The SoS had previously found only limited effects of the scheme on visual and landscape considerations implying that the site has strong visual containment. As such, there is scope for the density to increase while maintaining an appropriate buffer and landscape boundary without unduly affecting character and appearance. There is no reason to reach a different conclusion now as the scope for additional development to be accommodated. Thus, the only reasonable conclusion is that the development does not make efficient use of land contrary to NPPF paragraph 122 and Policy HN1.
- 8.61. The appellant argues the site should be released due to a lack of 5 year HLS. NPPF paragraph 123 is highly relevant here. Where there is shortage of housing land, it is especially important to avoid low densities and to optimise the use of each site. Paragraph 123(a) relates to plan making, but the policy response of a significant uplift in the average density applies in a decision-taking context. Paragraph 123(c) is clear that proposals which fail to make efficient use of land they should be refused planning permission, even in the context that includes circumstances where there is a shortage of housing land. If sites are to be released to meet housing needs, they must be utilised efficiently to reduce the overall amount of land that has to be released.
- 8.62. Where a development comes forward that does not make efficient use of land it must be refused even in the context of additional housing need. Any conflict with NPPF paragraphs 122/123 must be given significant weight against the grant of permission. Any less weight would not achieve the policy objective of optimising densities in situations of housing need.
- 8.63. The appellant cannot argue for a site to be released due to a shortfall of sites but propose a scheme which reflects the low density of adjacent development that is below the average density for Woburn Sands (26-27dph). There is no evidence that even with 203 units the amount of development is optimal. The appellant has not produced evidence that shows a higher density would be unacceptable in planning terms¹⁰⁵. The appellant has reduced the planning judgment to a series of comparisons of density calculations.
- 8.64. The appellant's recalculation of density was flawed in that it omitted access roads and other elements. This excluded roads initially described as estate roads which should have been included in the net developable area as without them access to houses could not be achieved. The Council's Urban Capacity Study which supported Plan:MK makes it clear this approach was inconsistent¹⁰⁶. The appellant revised density figure is thus flawed and overstates the density. The reliance placed by the appellant on the 50% net developable area approach adopted in the Strategic Housing Land Availability Assessment¹⁰⁷ is also misplaced since that documents predates the revisions to the NPPF on density.

¹⁰⁵ In response before its closing submissions, the appellant noted that at the first Inquiry, an illustrative proposal by the appellant for 303 dwellings (Document 11.13) did not find favour with the Inspector at paragraph IR9.46

¹⁰⁶ CD5.12 paragraphs 1.1.3 and 1.2.2

¹⁰⁷ CD5.15 paragraph 7.7 and table 7.2

8.65. The comparative exercises in the appellant's planning witness' rebuttal¹⁰⁸ is flawed as it does not compare like with like. The areas examined include larger areas of open countryside rather than focusing on the built-up area and so does not help with whether the development makes efficient use of land. None of the above gives rise to any reason to reach a different view from that concluded previously by the SoS. It is submitted that the simple fact here is that the proposed development would not make efficient use of land and is unacceptable in policy terms as a result. Regardless of the HLS position, the conflict with the NPPF is so significant it justifies refusal in its own right.

Best and most versatile land (BMV)

8.66. The appellant accepted that the development will result in the loss of some BMV and that this gives rise to a conflict with Policy NE7. He accepted that Policy NE7 is consistent with the NPPF and up to date and is to be given full weight in the determination of this appeal.

Benefits of the proposed development

- 8.67. Regardless of the HLS position, it is accepted that the provision of affordable housing should be given significant weight. If there is a 5 year HLS, the benefits of extra market housing are moderate at best. The weight to ascribe should take into account that the actual amount of housing that may come forward is uncertain (up to 203). If there is no 5 year HLS then the benefits of extra market housing could be significant, depending on the number and how many units are likely to be delivered in the 5 year period.
- 8.68. It will take time for decision on this appeal. It took 18 months last time. If it is assumed that a decision to allow is reached in 6 months (July 2020) there would be a period of time to secure reserved matter approvals and discharge pre-commencement conditions before works start on site. Based on the evidence of the appellant's HLS witness, the average time from grant of outline permission to commencement on site is 5 years. If that were applied here, the development would make no contribution to the 5 year HLS. If commencement began at a rate 5 times faster i.e. July 2021 there would be delivery in the 5 year period. At 50dpa, this would be 150 units at most, so the weight to be given to the contribution to 5 year HLS must be reduced.
- 8.69. There have been no material changes in circumstances in terms of economic benefits, which should be ascribed moderate weight.
- 8.70. The appellant cites the provision of an alternative route to the existing Cranfield Road / Newport Road junction as a highway benefit, but the updated TA presents modelling that shows increases in queue lengths and traffic flows at both the Newport Road and Cranfield Road junctions. While a very modest impact, this does not suggest improvement. There is no appraisal of the benefit to safety and so anything suggested is just assertion. Thus, while the development is acceptable in highway terms, there are no material benefits to be weighed in favour.
- 8.71. It is unclear the extent to which the offer relating to medical facilities is justified as necessary to make the development acceptable in planning terms

¹⁰⁸ APP10

or the extent to which that offer goes beyond the mitigation of what is proposed. To the extent that it mitigates the effect of the development it is not a benefit but rather what is required to render the scheme policy compliant. To the extent that it goes beyond that position then it cannot be given weight as a benefit since to do so would be contrary to regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010.

- 8.72. No details have been provided to show that the development would provide potential to mitigate the risk of surface water flooding. Since this alleged benefit would involve drainage proposals which seek to address a pre-existing issue it cannot be required by condition or by a planning obligation since it goes beyond that which is related to the development proposed. To give this factor weight would thus be contrary to the requirements of NPPF paragraphs 55 and 56 and to regulation 122 of the CIL Regulations 2010
- 8.73. A high quality living environment is unknown at this stage given the outline nature of the proposal. Further, such a requirement is required to be delivered by all development in Milton Keynes as a result of Policies D1 and SD1 of Plan:MK. This is not a benefit but a policy requirement and so carries no weight.

The proper approach to the determination of this appeal

- 8.74. Policies DS1, DS2, DS5, HN1 and NE7 of Plan:MK and Policies WS5 and WS6 of the NP are all relevant development plan policies. They are also the policies which are the most important to determining the application¹⁰⁹. Further, as has been established above, they are all consistent with the NPPF and are up to date. The Council has a 5 year HLS. Thus, NPPF paragraph 11(d) is not engaged and rather it is NPPF paragraph 11(c) that should be used.
- 8.75. Plan:MK is up to date. The development does not accord with it overall since it conflicts with the spatial strategy, its policy approach to making efficient use of land and to avoiding the loss of BMV. Section 38(6) of the 2004 Act requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. The development conflicts with the above policies and so is not in accordance with the development plan.
- 8.76. The development's benefits are not of such a nature or scale to justify departure from the constraint policies of a recently adopted plan. All of the benefits could be claimed by any housing development on greenfield land on the edge of any settlement in Milton Keynes. The weight to these benefits cannot be such as to outweigh the conflict with the development plan. Thus, the development conflicts with NPPF paragraph 11(c) and is not sustainable development. It does not accord with the development plan with insufficient material considerations to outweigh the conflict.
- 8.77. If, contrary to the Council's case, NPPF paragraph 11(d) is engaged, it is accepted that the application of policies in the NPPF that protect areas or assets of particular importance do not provide a clear reason for refusing the proposed development. As such, NPPF paragraph 11(d)(i) does not provide a

¹⁰⁹ Based on the cross-examination of appellant's planning witness and the evidence in chief of the Council's planning witness

reason for refusing planning permission. Accordingly, the tilted balance in paragraph 11(d)(ii) would be engaged.

- 8.78. There would be adverse impacts in a development of inappropriate density and the loss of BMV. These impacts would conflict with NPPF paragraphs 122, 123(c) and 170(b). In circumstances where greenfield land is to be released to meet housing needs due to inadequacies in the 5 year HLS it is all the more important that efficient use is made of that greenfield resource to meet as much of the unmet need as is possible (NPPF paragraph 123). The development does not optimise the use of the site but promotes a sub-optimal density and continues the inefficient low density development of the past. This clear breach of NPPF paragraph 123 should result in refusal given the importance of the issue and the clear words of paragraph 123(c). This is an adverse impact contemplated by the NPPF as justifying refusal.
- 8.79. Even if NPPF paragraph 11(d) is applied, the Council submits that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Accordingly, the proposed development does not represent sustainable development even on this basis. This means that the NPPF weighs heavily in favour of refusal of planning permission. Applying section 38(6), even in circumstances where there is no 5 year HLS, the breach of the development plan together with the breaches of the NPPF weigh heavily in favour of refusal. It is submitted that the other material considerations which weigh in favour of the grant of planning permission are not sufficient to outweigh these factors. Thus, even if there is no 5 year HLS, planning permission should be refused for the proposed development.

Conclusion

- 8.80. The planning system should not be an obstacle course for local planning authorities. It should be about delivering homes that are needed at the right time and in the right place. That is best achieved via the plan-led system and not ad hoc at appeal, making judgments on the capability of housing supply with regard to all material evidence.
- 8.81. Plan:MK is not even 12 months old since adoption and yet is faced with submissions that there is no 5 year HLS. All relevant evidence should be considered for the 5 year HLS position. All that a decision maker has to guard against is skewing the 5 year period by not including schemes in the assessment that were not there at the outset. The obstacle course promoted by the appellant has no place in policy or guidance and is wholly impracticable.
- 8.82. The proposed development is contrary to a development plan which is less than a year old and up to date. It is contrary to the NPPF. The application of section 38(6) points firmly in favour of refusal.

9. The Case for Interested Parties

- 9.1. A number of interested parties made representations to the first Inquiry. Paragraphs IR7.1 to IR7.49 of the first Inspector's report¹¹⁰ provide an overview of their comments. In summary, the representations focused on traffic and parking impacts, ecology, flooding, development plan compliance, and the effect on existing services and facilities. The following parties made representations to the second Inquiry:

*Councillor Jacky Jeffries – Woburn Sands Town Council*¹¹¹

- 9.2. Woburn Sands was still a small town at the start of the 21st century with a population of about 2,500 in 950 dwellings. New housing since 2006 have added 622 homes, a 65% increase and an even bigger population increase. Yet, the infrastructure remains virtually unchanged and restricted by available land. Milton Keynes has always sought to preserve the character of existing settlements and the WSNP seeks to preserve green space around town to create small separation from Milton Keynes. Hence, the site is designated open countryside.
- 9.3. Education and medical services in Woburn Sands are at capacity and the proffered doctor's site will not be taken up as it will not be viable. The town has lost shops and the bus service to central Milton Keynes is once an hour. The library remains open thanks to volunteers. The future of East-West rail is uncertain and the line separates the development from the town. There is also the threat of the Oxford to Cambridge Expressway with the preferred corridor almost certain to go through part of this development.

*Councillor David Hopkins – Milton Keynes Council and Wavendon Parish Council*¹¹²

- 9.4. Plan:MK is recently adopted and should be afforded full weight for applications and appeals. The Plan:MK Inspector did not support the representations of the appellant made at the examination. Plan:MK sets out where development should and should not take place. The site is open countryside. The appellant can make representations to the Plan:MK Review should they wish.
- 9.5. The Council can demonstrate a 5 year HLS with enough land in excess of the Plan:MK housing requirement including the shortfall and a 5% buffer. There is clear evidence of deliverability for each site in the 5 year supply.
- 9.6. The WSNP makes it clear that the site is not included directly or as a reserve site for development. Wavendon does not have a neighbourhood plan but does have 4000 dwellings underway within the parish boundary as part of the Strategic Land Allocation first identified in the Local Plan 2001-2011.
- 9.7. The land is close to the East-West rail link and the preferred option for the Oxford to Cambridge Expressway. The Plan:MK Inspector while allowing the South East Milton Keynes allocation restricted development before 2023 to allow for full consultation and approval of the Expressway. If the Expressway does not come forward or the route goes elsewhere, then this site could be considered against other sites.

¹¹⁰ CD10.33

¹¹¹ RID04

¹¹² RID05

- 9.8. There are issues regarding density. There are issues regarding the capacity of the local highway network now and in the future with East-West rail seeing additional trains and the level crossing closed more often. The neighbouring land at Wavendon House is now a registered park and garden. There needs to be a masterplan when this site does come forward to take account of the park and garden, the need for highways infrastructure and other improvements and the provision of local services.

*Judith Barker – local resident*¹¹³

- 9.9. Plan:MK has been adopted and does not designate the land for development. Policy WS5 of the WSNP protects the field behind Tavistock Close from development. Woburn Sands' character and identity needs protecting. New flats at the Greens development remain unsold. The town's infrastructure cannot cope and the railway is due to be upgraded. When there is a problem on the M1, traffic re-routes through Woburn Sands.
- 9.10. The appellant has control over land to the east of the site and permission would set precedent for more rural development. Land along the A421 is already being developed for 4000-6000 dwellings with extra cars on local roads. New housing is not being bought by local people. Milton Keynes has a 20 year land supply in pipeline. Highways England has recommended no permission on land within the preferred route corridor until further consultation on route options in 2020.
- 9.11. If applications get turned down and the developer appeals and wins the Council has to recompensate the development with council tax money. The appellant has prejudiced the appeal outcome by giving a story to The Times complaining that smaller building companies are not getting permissions for political reasons when the reality is based on planning grounds. The importance of open countryside for nature and wildlife cannot be ignored in light of climate change issues and sustainability. There is a shortage of Council housing rather than housing in general. Firms are getting approvals and then not building to raise the land value for speculation purposes. Finally, Milton Keynes has 4 times more urban land than UK average and over 10 times less natural areas, all the more important to protect open countryside.

*Jenny Brook – local resident*¹¹⁴

- 9.12.** We will need farmland even more in the context of Brexit. Curveballs are being thrown at the local planning authority. Milton Keynes was intended as a city for 250,000 people and is now planning for 500,000 people. There are national infrastructure issues with East-West Rail and the Expressway. Network Rail has said the level crossing is not their issue. Plans need to be put in place to deal with the through traffic issue.

¹¹³ RID16

¹¹⁴ Oral comments only

10. Written Representations

- 10.1. In terms of the original application and appeal, paragraphs IR8.1 to IR8.6 of the first Inspector's report set out the comments that were made. They covered many of the points raised by interested parties above.
- 10.2. In terms of the redetermined appeal, there have been 11 letters of objection¹¹⁵ from local people and statutory bodies, and a further written objection received at the Inquiry highlighting concerns with surface water flooding from the site to adjoining properties¹¹⁶. The concerns raised in all of the other letters highlighted similar issues to those raised above. They included the loss of open countryside, ecological and flooding impacts, the capacity for Woburn Sands to take more development, increased strain on local services including the doctors and the police, traffic effects including delays at the level crossing, and the route of the potential Expressway.
- 10.3. One of the letters was from Highways England dated 13 December 2019 noting that the site lies within the preferred corridor of the Expressway. The letter registered concerns that development of the site could affect or be affected by a potential route option either directly or indirectly. The letter noted that environmental and planning constraints in the Woburn Sands area effectively limit the potential availability of route options in this area. As such, there are risks of conflict with the Expressway particularly in relation to proposals for major development which lie outside defined settlement boundaries. Highways England supports Plan:MK which seeks to accommodate necessary growth in the form of sustainable development whilst facilitating the Expressway as a key national infrastructure project with the potential to increase connectivity in Milton Keynes. The letter concludes that the development would be contrary to the adopted development plan and as such would potentially result in conflict with the Expressway.

¹¹⁵ See bundle of representations in REP1

¹¹⁶ RID11

11. Conditions and Obligations

- 11.1. Suggested conditions are included in Section A2 of the agreed SOCG between the parties¹¹⁷. They are based on the conditions recommended by the first Inspector with an additional condition relating to housing mix. The list of recommended conditions (28) in the attached annex are broadly the same of those in the SOCG with some small drafting changes to reflect discussions at the Inquiry. The main change is to Condition 3 which only requires compliance with those parts of the plans not reserved for later approval; the previous wording required the development to be along the lines of the illustrative layout and parameters plans which would prejudice the reserved matter applications.
- 11.2. Should the Secretary of State decide to allow the appeal, I consider all of the conditions to be necessary and meet the tests in NPPF paragraph 55. The reasons for each condition, including why some need to be pre-commencement, are set out in the annex.
- 11.3. The main thrust of the S106 agreement is set out above in Section 3 of this report. The justification for each obligation was set out by the Council before the Inquiry opened with further clarification provided during the Inquiry¹¹⁸. The affordable housing obligation meets the requirements of Policy HN2 of Plan:MK. The carbon neutrality obligation meets the requirements of Policy SC1 to help offset the carbon impact of the development. The obligations relating to education facilities are in accordance with Policy INF1 of Plan:MK and the Planning Obligations for Education Facilities SPG¹¹⁹ to address the impact of the development on school places. The leisure, recreation and sports obligations¹²⁰ are in accordance with Plan:MK Policies INF1 and L4 and the Planning Obligations for Leisure Recreation and Sports Facilities SPG¹²¹ to address the on-site and off-site impact of the development on such facilities. This includes an obligation to agree the specification of public open space within the development.
- 11.4. The social infrastructure obligations¹²² are in accordance with Policies INF1 and CC1 of Plan:MK and the Social Infrastructure Planning Obligations SPD¹²³ and address various social requirements arising from the development. They include a financial contribution either towards the provision of the on-site surgery or expanding capacity at the nearest surgery serving the development. There is also an obligation relating to reserving a site within the development for a potential health facility should this be required to address capacity issues in the local area that have been identified by the Council and relevant parties.
- 11.5. There is an obligation relating to the provision of bus vouchers and the distribution of travel information packs to promote more sustainable mode of transport in accordance with Policy CT5 of Plan:MK on public transport. There

¹¹⁷ Section A2 of RID06

¹¹⁸ RID12

¹¹⁹ RID32

¹²⁰ Relating to playing fields, local play, neighbourhood play, community hall, local park, district park, allotments, and sports hall

¹²¹ CD5.9

¹²² Relating to public art, libraries, burial grounds, heritage, health facilities, waste management, social care-day care, emergency services, voluntary sector, skills and training, and inward investment

¹²³ CD5.10

is also an obligation to secure the highway works necessary to form the highway accesses and connecting footpaths to the site.

- 11.6. All of the above obligations are necessary to make the development acceptable in planning terms. They are also directly related to the development, and fairly and reasonably related in scale and kind to the development. Therefore, they meet the 3 tests set out in NPPF paragraph 56 and regulation 122 of the CIL Regulations 2010.

12. Conclusions

12.1. The numbers in square brackets refer back to earlier paragraphs which are relevant to my conclusions.

Main Considerations

12.2. The main considerations for the reopened Inquiry were informed by the previous decision letter, notwithstanding submissions by both main parties on the extent to which specific sections of that letter remain a material consideration. Nevertheless, it was broadly accepted that those sections which did not form part of the High Court judgment to quash the first decision, or have not been overtaken by circumstances such as the adoption of Plan:MK, remain relevant to this redetermination. **[7.1-7.4 and 8.2-8.4]**

12.3. The main considerations were narrowed down at the pre-Inquiry meeting¹²⁴. At the start of the Inquiry the main parties confirmed that the effect on the character and appearance of the landscape was no longer a main consideration. It was agreed that the main considerations now are as follows¹²⁵:

- (a) whether or not the Council can demonstrate a 5 year supply of deliverable housing sites;
- (b) whether the proposed housing would be in an appropriate location having regard to the development plan and national policies, as well as routes of potential new transport infrastructure;
- (c) the acceptability of the proposed housing density; and
- (d) the overall planning balance in relation to the economic, social and environmental dimensions of sustainable development.

Housing Land Supply

12.4. A number of overarching themes were debated at the Inquiry which are discussed below before turning to an assessment of specific sites and whether the Council can demonstrate a 5 year HLS.

The definition of deliverability

12.5. The 2019 revision to the NPPF definition of deliverable retains reference to “a realistic prospect that housing will be delivered on the site within five years” as it did in the original 2012 version of the NPPF. The Court of Appeal judgment in *St Modwen* found that realistic prospect did not mean a site’s deliverability must necessarily be certain or probable. It also noted the distinction between deliverability and delivery in that a deliverable site does not necessarily have to be delivered. **[8.23-8.24]**

12.6. The more recent Court of Appeal judgment in *East Bergholt* noted that a decision maker could adopt a more cautious view when assessing a “realistic prospect”. It went on to say that the assessment of realistic prospect falls

¹²⁴ CD10.44

¹²⁵ It was agreed by the main parties at the start of the inquiry that the effect of the development on the character and appearance of the landscape and surrounding area was no longer a main consideration

within the realms of policy and planning judgment rather than a legal concept. The judgment did not seek to take a different view on the distinction between deliverability and delivery. Therefore, I consider that the *St Modwen* and *East Bergholt* approaches are broadly compatible and there is no need to favour one over the other when assessing deliverability. **[7.21, 8.25]**

- 12.7. Nevertheless, the 2019 revision to the NPPF resulted in a more precise approach to the assessment of deliverability, with two specific categories (a) and (b) and the need to provide clear evidence in both. This necessitates a site specific assessment to determine whether a site is deliverable.

The base date and timescale of the evidence

- 12.8. The Council uses a base date of 1 April 2019 for the purposes of calculating its 5 year HLS position. It published its assessment in June 2019 with the housing trajectory in Appendix 1 containing notes on deliverability. Proformas were sent out by email on 20 May 2019 asking for a reply by 7 June 2019. Where no response was received, this was followed up. It was accepted by the Council that the amount of evidence predating 1 April 2019 that informed the assessment was limited. **[7.26]**
- 12.9. However, there is nothing in the NPPF or PPG that stipulates that all of the documentary evidence for a 5 year HLS has to be available at the base date itself. Instead, the PPG advocates the use of the latest available evidence. A local planning authority can prepare and consult on an APS after the 1 April base date before submission to the Planning Inspectorate by 31 July. While not directly applicable here, this indicates that evidence can be produced and tested after the base date. The HLS position statements in Babergh and Mid Suffolk for the 2019-2024 period were published in September 2019 and included data to justify supply that was only known about after 1 April. **[7.25, 8.16, 8.17, 8.19, 8.20]**
- 12.10. The Council has avoided adding new sites after the base date to prevent the skewing of supply in line with the Woolpit decision. While the Woolpit Inspector criticised the retrospective justification of sites after the publication of the Annual Monitoring Report, the Inspector at Darnall School Lane permitted additional evidence to support sites identified as deliverable at the base date which was a position accepted by the SoS in that case. The Longdene and Colchester Road Inspectors took a similar approach. In terms of Milton Keynes appeals, the Castlethorpe Road and the Globe Inspectors took into account the proformas used by the Council to inform its June assessment of 5 year HLS. **[7.23, 7.24, 8.18, 8.21]**
- 12.11. Therefore, I consider it acceptable that the evidence can post-date the base date provided that it is used to support sites identified as deliverable as of 1 April 2019.
- 12.12. The appellant argues for a 1 October 2019 base date in order to take into account the Council's June assessment and quarterly monitoring data. This would result in a necessary adjustment of the 5 year supply period to 30 September 2024. There is little in national policy or guidance that advocates such an approach and it would appear to go against efforts to create greater certainty in the planning process. I concur with the Council that such an approach would mean having to argue HLS at every appeal, rather than having

a fixed base date. Moreover, the quarterly monitoring data is not intended to be an updated assessment of supply¹²⁶. Thus, I do not consider it necessary to apply a 1 October base date. Nevertheless, if the SoS disagrees on this point, my assessment of specific sites below includes an assessment of the 5 year HLS supply position using a 1 October base date. **[7.27, 8.22]**

The proformas

- 12.13. The appellant's criticisms of the Council's use of proformas focused on whether they provided sufficient written evidence in line with the guidance in the PPG 68-007 and, in some cases, whether the reliance on information provided by bodies such as Homes England and the MKDP on sites in public ownership was appropriate. **[7.28, 7.30]**
- 12.14. Dealing with the former, the Council clarified at the Inquiry that the proformas included a covering letter explaining their purposes for assessing 5 year HLS. Representatives of each site were asked to confirm or amend the Council's trajectory for each site. Although relevant boxes were not always ticked, the proformas were signed and returned with a covering email in many cases. While a SOCG or MOU could provide more information, they offer no more of a commitment to the deliverability of homes than a proforma. Therefore, I consider that a proforma can, in principle, provide clear evidence of a site's deliverability. Additional evidence to support a proforma can also be taken into account subject to its specific content and timing. **[8.11, 8.21, 8.36]**
- 12.15. Turning to the latter, it is apparent that some publicly owned sites have not come forward as quickly as anticipated such as Tattenhoe Park. However, the evidence linking slow delivery to unreliable forecasting from the bodies responsible for managing the disposal of these sites is not conclusive. Although representatives of Homes England and MKDP form part of the group that assesses the proformas, there is little to suggest that their responses to their own proformas is misleading or inaccurate in principle. Therefore, it would not be appropriate to automatically disregard all of their sites. **[8.35]**

Past forecasts and the application of discount rates

- 12.16. The first Inspector for this appeal noted the uncertainty, slippage and failure in the Council's forecasts of housing delivery and that reasonable adjustments would clearly reduce the HLS to less than 5 years. Evidence presented to this Inquiry has noted the historic under-delivery of housing against forecasts of around 28-30%. While delivery is not the same as deliverability, it is apparent that past forecasting has not been particularly accurate. However, recent evidence in terms of housing delivery has shown that the Council met its annual delivery requirement from Plan:MK for 2018/19 and is set to do so again for 2019/20. The number of units under construction is at a high rate. **[7.31, 7.32, 8.8].**
- 12.17. The Plan:MK Inspector found the plan sound in terms of housing delivery rates and considered the higher delivery to be realistic with minimal risk of non-delivery. I accept that the Inspector examined the plan under the

¹²⁶ LPA3 paragraph 2.9

2012 NPPF definition of deliverable and it should not be assumed that because the plan was found sound that a 5 year HLS can be demonstrated now. There is a need to review sites on the basis of the 2019 NPPF definition. Indeed, the Council has removed sites in the Plan:MK supply for completion by 31 March 2024 where it no longer considers they meet the new definition. **[7.16, 8.9, 8.13]**

12.18. Nevertheless, the appellant has not applied a discount of 28-30% to their assessment of the Council's 5 year HLS as they have carried out a site by site assessment. Moreover, the appellant accepted that for the purposes of establishing whether a 5 year HLS exists, it is only necessary to apply a 5% rather than a 20% buffer in Milton Keynes due to rates of delivery. **[8.26, 8.28]**

12.19. The Council has historically applied a lapse rate to its forecasting of HLS for sites with delivery in Year 5, where a 10% discount is applied across the 5 years for those sites. Given that the Council has moved to a site by site assessment, it considers that such a discount is no longer necessary. However, for robustness and consistency with the Plan:MK trajectory, the discount has been applied to this appeal by the Council. Therefore, I have taken into account the Council's lapse rate as part of my HLS assessment. Based on recent delivery rates and Plan:MK, I see no reason to apply a greater discount than the Council's rate **[8.27, 8.29]**

Build-out rates

12.20. National reports¹²⁷ are helpful in identifying previous maximum average built-out rates over 5 years for large strategic sites like Brooklands (268 dwellings per annum). However, they can only be a guide and consideration should be given to evidence relating to specific sites as set out below. **[7.29, 8.37, 8.39]**

Prior approval sites

12.21. Prior approval sites are not mentioned in categories (a) or (b) of the NPPF definition of deliverable. However, I am persuaded by the Council's argument that where Article 3 of the GPDO grants planning permission for development in Schedule 2, that is within the definition of planning permission in the TCPA 1990. Such approvals are designed to provide a boost to new housing and are required to be implemented within 3 years. The PPG at 68-029 only refers what can count as a completion for the purposes of calculating HLS. It refers to new build, conversions and changes of use, but only in the context of where housing has been completed. Nevertheless, the PPG and NPPF do not explicitly exclude prior approval sites from housing supply. The Inspector and SoS at the Hanging Lane decision found that such sites can be taken into account as part of a 5 year HLS assessment. **[7.74, 8.30-8.34]**

12.22. Thus, I consider that prior approval sites can be regarded as having detailed planning permission and can form part of the supply of deliverable sites within category (a). The onus is on the appellant to demonstrate clear

¹²⁷ Such as CD11.1

evidence that such sites do not have a realistic prospect of being delivered within 5 years.

Consistency with previous appeal decisions in Milton Keynes

- 12.23. The Globe and the Castlethorpe Road appeal decisions dated 5 and 26 September respectively came to different conclusions on whether the Council could demonstrate a 5 year HLS. The former said it could and dismissed the appeal whereas the latter said it could not and allowed both appeals. Both had regard to the most up to date evidence including the proformas and both noted the recent improvement in housing delivery. The Castlethorpe Road decision found that reliance on past rates of delivery to be inappropriate, but nevertheless applied an optimism bias to the supply at a point midway between the appellants and the Council. The decision also considered that clear evidence for at least 2,717 houses had not been shown.
- 12.24. The Castlethorpe Road decision was challenged by the Council, but permission to apply for statutory review was refused by the High Court. Nevertheless, it would be wrong to afford Castlethorpe Road more weight than the Globe on the premise that it was more legally robust as the Globe has not been tested in the same way. Likewise, while the Castlethorpe Road Inspector explains in paragraph 65 why he has come to a different view on HLS to the Globe Inspector, this is largely on the basis of the nature and manner in which evidence was presented to him rather than any criticism of the Globe decision. **[7.33, 8.10-8.13]**
- 12.25. Therefore, it is not possible to say that one decision should be preferred over the other. There is a need for consistency in appeal decisions along with clear explanations of any divergence in views from another Inspector. This report is based on the evidence before me, and where necessary, it will explain any difference in findings to the Castlethorpe Road or Globe Inspectors.

Assessment of disputed sites

- 12.26. The following assessment is based on the disputed sites set out in the appellant's proof of evidence for HLS (APP2/3), specifically in Table 23 and Appendix 3, along with the HLS SOCG (SOCG1), specifically Table 3. The appellant's rebuttal proof updated Appendix 3 and included at Appendix 3a summarising the main parties' positions on each site (APP4/5/6). Following the roundtable session, the appellant produced an errata document (RID20/RID36) that updates Table 23 in the proof of evidence and Table 3 in the SOCG. The errata document also contains updates to Tables 21 and 22 in the appellant's proof setting out the contended land supply positions at 1 April and 1 October 2019. Appendix 6 of the Council's proof of evidence on HLS (LPA2) contains the primary source of evidence for each site.

Strategic sites - Brooklands (Site 1) [7.35-7.37, 8.40]

- 12.27. Brooklands has detailed planning permission for all of its remaining parcels. While the projected completions are high, the rate of delivery over the past 4 years has been high at an average of 247dpa. There have been 267 completions in 2019/20 up to 1 January 2020 against a projection of 182. While one parcel did not submit a proforma response, the Council's projections are based on delivery across the wider site and the phasing methodology. The

appellant's criticisms in terms of the limited number of developers, local experience, past rates of delivery and national reports do not match the current build out rates since 2015/16. Therefore, there is a realistic prospect that the projected housing will be delivered in the 5 year period with no clear evidence to the contrary. This applies to the April and October base dates.

Strategic sites – Tattenhoe Park (Site 2) [7.38-7.39, 8.41]

12.28. The projected completions on Phases 2-5 at Tattenhoe Park were considered deliverable by the Council in the June HLS assessment, based on proformas returned that month. The completions were taken into account by the Globe Inspector and rejected by the Castlethorpe Road Inspector, both based on the above proformas. The 2018 tender documents for Phases 2 and 3, which were provided to the Council in November 2019, are an indication that Homes England is actively seeking to facilitate delivery of housing (including lead-in times and build out rates). Both phases now have detailed permission via reserved matter applications granted in October and November 2019. While the Castlethorpe Road Inspector found the evidence to be lacking, the additional information provides clear evidence that there is a realistic prospect of housing delivery in the 5 year period for Phases 2 and 3. This applies to both the April and October base dates. Conversely, no additional information has been put forward for Phases 4 and 5 and so there is an absence of clear evidence of their delivery. Thus, these phases are removed from both the April and October base dates (delete 195 units from Site 2)

Strategic sites – Western Expansion Area (Site 3) [7.40-7.41, 8.42]

12.29. The Western Expansion Area in terms of disputed elements consists of Area 10 Remainder and Area 11 Remainder. Both areas are covered by outline planning permission apart from one parcel that now has reserved matters approval for 152 units. The Council highlights the rate of completions for Area 10 since delivery began in 2015/16 which are now up to 300dpa. For Area 11, completions are up to 288dpa and have exceeded projections already for 2019/20. Site wide infrastructure is in place for the plots expected to deliver in the 5 year period. The Globe decision took the Council's projections into account whereas the Castlethorpe Road decisions did not. However, it is not evident that the latter had the benefit of the proformas dated 10 July 2019 given this was the same date as the hearing. A disposal strategy from the landowners dated December 2019 has been added to the evidence for both areas which sets out further evidence of projected completions. Based on the lack of land disposals since March 2019, this has led to the Council revising down its 5 year trajectory by 306 units for Area 10 and 229 units for Area 11 as a worst case scenario. Nevertheless, apart from these reductions, I consider that there is clear evidence of a realistic prospect of housing delivery for the remaining units in the 5 year period for either April or October (delete 535 units from Site 3).

Strategic sites – Strategic Land Allocation (Site 4) [7.42-7.44, 8.43]

12.30. The Strategic Land Allocation is divided into a number of large outline sites with several developers. There are 5 parcels that only had outline permission as of 1 April 2019. No proforma was submitted for the Ripper Land parcel and the only evidence is an email from the landowner who highlights

access issues. In line with the Castlethorpe Road Inspector, there is a lack of clear evidence regarding the deliverability of this site (delete 85 units).

- 12.31. No proforma has been submitted for the Land West of Eagle Farm South parcel but this has reserved matter approval. The appellant has queried the build-out rate alongside the other two Eagle Farm parcels with reserved matter approvals, but all 3 parcels have started delivering in line with or ahead of projections. As such, there is no clear evidence to indicate that Land West of Eagle Farm South will not deliver the projected housing in the 5 year period.
- 12.32. The remaining Eagle Farm parcel for 125 units has outline permission only with no proforma returned. An email from October indicates a reserved matter application in the summer of 2020, but it provides little else in the way of clear evidence that the projected number of units will be delivered within the 5 years (delete 125 units).
- 12.33. The proforma for the remaining outline permission at Glebe Farm was submitted after the June HLS assessment but indicates a strong rate of delivery of units. Two parts of the remaining outline permission now have reserved matters approvals from September and October 2019 for a total of 366 units. This surpasses the 310 projection in the 5 year supply and with two developers operating the build-out rates appear realistic. A proforma from one of the developers in November supports these rates. Although this evidence post-dates 1 April 2019, it clearly demonstrates there is a realistic prospect of delivering the projected amount of housing within the 5 year period.
- 12.34. The Council's projection of 180 units for the Golf Course Land was based on the proforma dated May 2019. Since then, reserved matters approval was granted on 1 November 2019. This additional information provides clear evidence of deliverability within the 5 year period.
- 12.35. The proforma for Church Farm indicates a reserved matters application by late 2019. The Globe decision found this to be sufficient information whereas the Castlethorpe Road decision considered it fell short. Further information indicates that the application submission has now slipped to Easter 2020 with issues regarding road to be agreed. This continues to fall short of the clear evidence to demonstrate a realistic prospect of delivery (delete 90 units).

Outline or pending permissions as at 1 April 2019

- 12.36. The June 2019 proforma for Newton Leys (Site 5) indicates the delivery of 80 units, which has been reinforced by reserved matters approval in September 2019. The Globe decision considered the site was deliverable and I consider there is clear evidence and a realistic prospect of delivery at either base date.
- 12.37. The June 2019 proforma for Campbell Park Remainder (Site 6) indicates the delivery of 300 units in the 5 year period. The Globe and Castlethorpe Road decisions came to opposite conclusions on the deliverability of this site. There is now further information in the form of email correspondence from December 2019 that outlines progress towards starting on site in 2021. This represents clear evidence of deliverability and as such there is a realistic prospect of the projected numbers coming forward for either base date.

- 12.38. The June 2019 proforma for Wyevale Garden Centre (Site 9) noted a resolution to grant planning permission. This was granted in July 2019. This supports clear evidence of the site being deliverable, while the build-out rates of 150 and 130 units in 2021/22 and 2022/23 appear achievable given that the development relates to apartments that can be delivered in larger numbers at one time. Therefore, there is a realistic prospect of the projected numbers coming forward for either base date.
- 12.39. Planning permission for the Agora redevelopment (Site 13) has lapsed and the June 2019 proforma noted viability issues and a pending decision on whether to list the existing building. The Castlethorpe Road decision found clear evidence to be lacking. Further information from November 2019 notes that the listing request was turned down and there has been progress towards planning permission and building demolition in 2020. While viability issues remain over S106 contributions, this does not appear to be a significant constraint. Based on the above, clear evidence of deliverability has been demonstrated and as such there is a realistic prospect of the projected numbers coming forward for either base date.
- 12.40. At the inquiry, the Council accepted that Galleon Wharf (Site 14) is not deliverable. I have no reason to disagree (delete 14 units).
- 12.41. The Railcare Maintenance Depot (Site 15) has outline permission, but the June 2019 proforma provides no information on progression towards approving reserved matters. The appellant also notes that part of the site has now been developed for a supermarket. Based on the lack of clear evidence, it has not been demonstrated that a realistic prospect of delivery exists for either base date (delete 175 units).
- 12.42. Eaton Leys (Site 16) has outline permission but no proforma was submitted in June 2019. However, a reserved matter application was pending and due to be determined by January 2020. A proforma was provided by the developer in December 2019 updating projections which appear achievable for the size of development and a major housebuilder. Thus, there is clear evidence of deliverability and as such a realistic prospect of the projected numbers coming forward for either base date.
- 12.43. The June 2019 proforma for Timbold Drive (Site 26) provides limited information on the delivery of the site notwithstanding an existing outline permission. The Council notes in its proof that a new outline permission is being sought. There is a lack of clear evidence of progress towards a reserved matters approval and a realistic prospect of delivery within 5 years has not been demonstrated (delete 130 units).
- 12.44. The June 2019 proforma for Land at Walton Manor (Site 33) provides little information on delivery. The site had an application for outline permission as at 1 April 2019 which was granted in November 2019. However, there is little information on start times and build out rates. Thus, clear evidence is lacking and a realistic prospect of delivery in 5 years has not been demonstrated (delete 115 units).
- 12.45. The June 2019 proforma for Land at Towergate (Site 34) notes marketing in the summer of 2019 and a start date of January 2021. Progress has been made in terms of discharging conditions, but there is limited

information on progress towards approving reserved matters. Thus, clear evidence is lacking and a realistic prospect of delivery in 5 years has not been demonstrated (delete 150 units).

- 12.46. For High Park Drive (Site 36), no proforma was submitted in June 2019. However, a reserved matters application was submitted in November 2019 along with applications to discharge conditions. A proforma from November 2019 indicates a start date of autumn 2020. Thus, there is clear evidence of deliverability and as such a realistic prospect of the projected numbers coming forward for either base date.
- 12.47. For Land East of Tillbrook Farm (Site 40), the anticipated reserved matters application in the summer of 2019 did not materialise but a January/February 2020 application was indicated in further information. Thus, there is clear evidence of deliverability and as such a realistic prospect of the projected numbers coming forward for either base date.
- 12.48. The June 2019 proforma for Land West of Yardley Road (Site 42) indicated the submission of a reserved matters application in July. The Globe decision found the site was deliverable. The application was delayed until November 2019, but this still demonstrates progress towards securing detailed permission. Thus, there is clear evidence of deliverability and a realistic prospect of the projected numbers coming forward for either base date.

Sites with prior notification approval as at 1 April 2019

- 12.49. Based on the above reasoning, Maybrook House (Site 37), Mercury House (Site 38) and Bowback House (Site 39) can be considered as having detailed planning permission based on their prior notification approval to convert from officers to residential. No proformas have been submitted for these sites, but the assumption should be that there is a realistic prospect of delivery unless clear evidence indicates otherwise. All 3 sites had prior notification granted in 2018 and so as of 1 April 2019 there was still ample time to implement. While the sites may not be fully vacated now and being marketed for office use, there was a realistic prospect of delivery as of 1 April 2019 with no clear evidence to the contrary. Therefore, all 3 sites can be included within the 5 year supply.

Allocated sites as at 1 April 2019

- 12.50. No evidence for the South East Milton Keynes Strategic Growth Area (Site 7) was presented to the Castlethorpe Road Inspector and so it was discounted. However, the Council note that the projection is based on the Plan:MK trajectory and the SOCG to the plan examination. There is the uncertainty of whether the route of the Oxford to Cambridge Expressway will go through the site, delaying progress with delivering housing. However, the Plan:MK Inspector referred to a modest output by 2023/24. Although there have been delays to announcements on the preferred route of the Expressway, progress is being made towards a planning application for a smaller part of the site and a wider Development Framework is being prepared. Therefore, clear evidence of a realistic prospect of delivering 50 units on the site has been demonstrated.

- 12.51. Berwick Drive (Site 8), Food Centre (Site 10), Redbridge and Rowle Close (Sites 11 and 12), Land off Hampstead Gate (Site 19), Land off Harrowden (Site 20), Hendrix Drive (Site 22), Kellan Drive (Site 23), Singleton Drive (Site 24), the former Milton Keynes Rugby Club (Site 25), Land north of Vernier Crescent (Site 28), Manifold Lane (Site 29), Daubney Gate (Site 30), Springfield Boulevard (Site 31), Reserve Site Hindhead Knoll (Site 32), Reserve Site 3 (Site 35) and Tickford Fields (Site 41) are all allocated sites where the June 2019 proformas gave little information on the delivery of these sites and the Castlethorpe Road decision found clear evidence to be lacking.
- 12.52. For Site 8, Site 23 and Site 31 there is further information from the Council's property team dated November 2019 setting out a specific timetable for delivery by 2021, albeit with a revised number of dwellings. For Site 10, there is now a planning performance agreement for the site, and hybrid planning applications have been submitted following positive public consultation events for a significantly larger number of units overall. The Council's June assessment projected 298 units delivered in the 5 years, although this has been revised down to 200 units based on the further information. For Site 19, Site 29, Site 30, Site 32 and Site 41 there is further information in the form of emails setting out the timetable for an application and construction. For Site 25, land disposal has been agreed and plans prepared. Based on the above, clear evidence of deliverability has been demonstrated and as such there is a realistic prospect of the projected numbers coming forward for either base date.
- 12.53. For Sites 11 and 12, an updated proforma and letter from November 2019 confirms that the sites have passed through a neighbourhood plan examination with increased unit numbers. However, there is no clear evidence of a timetable for submitting planning applications and starting on site (delete 19 + 18 units). For Sites 20, 22, 24, 28 and 35 there is no further information provided meaning that there is still a lack of clear evidence to demonstrate a realistic prospect of delivery for either base date (delete 25 + 10 + 22 + 14 + 22 units).
- 12.54. The Lakes Estate Neighbourhood Plan site allocations (Site 17 as well as Site 18 Phelps Road and Site 27 Southern Windermere Drive) gave limited information on firm progress towards the submission of an application and the Castlethorpe Road decision found clear evidence to be lacking. Further information and timings have been submitted in November 2019 providing greater detail on progress towards submitting the application and starting on site. The development would deliver a net total of 398 dwellings allowing for the demolition of existing Council homes. Phase A will involve the construction of 110 new homes, with further new homes in Phase B only once demolition has taken place in early 2022. Therefore, there is a realistic prospect of delivering the 130 units projected by the Council over the 5 year period, with clear evidence to support this for either base date.
- 12.55. The self-build plots at Broughton Atterbury (Site 21) form part of an allocated site with the wider site subject to detailed planning permission. However, the June 2019 proforma provides little information on the delivery of this site and no further information has been provided on this matter or evidence of demand for such plots. Thus, there is a lack of clear evidence to

demonstrate a realistic prospect of delivery for either base date (delete 6 units).

New sites between 1 April and 1 October 2019

- 12.56. In the event that a 1 October 2019 base date is preferred, there are a few sites that could be included in the 5 year supply, although the appellant disputes their inclusion. Omega Mansions (Site 43) and Chancery House (Site 45) are prior notification approvals for office to residential granted in July and August 2019 respectively. There is no clear evidence to indicate these sites with detailed permission will not deliver within the 3 years of their approval. Therefore, they can be included for an October base date. Cable House (Site 44) is a duplication with Mercury House and so has not been included. The appellant has also referred to a prior notification site at Station Road Elder Gate (Site 48) although I have little information on this site including any projected numbers. As such, it makes no difference to the supply either way.
- 12.57. Land south of Cresswell Lane (Site 46) was an allocated site as of 1 April 2019 but gained detailed permission for 294 flats in July 2019. A proforma from November 2019 indicates delivery within the 5 years which is achievable for two blocks of flats. There is no clear evidence to suggest there is not a realistic prospect of delivery and so the site can be included for an October base date.
- 12.58. The Castlethorpe Road decisions (Site 47a/b) granted outline permission for 50 units on one site (a) and detailed permission for 51 units on the other site (b). For the latter, there is no clear evidence to indicate non-delivery in the next 5 years. For the former, there is no clear evidence to demonstrate progress towards reserved matters approval. Therefore, I can include Site 47(b) for an October base date but exclude Site 47(a) (delete 50 units).

Sites potentially delivering between 1 April and 30 September 2024

- 12.59. If the base date is shifted to 1 October 2019, this would necessitate moving the end date to 30 September 2024 in terms of the 5 year period. Based on the June 2019 assessment, there are 13 sites currently in Year 6 (2024/25) that are shown as starting to deliver in that year. At the Inquiry, the Council only sought to argue that 4 of them have a realistic prospect of delivery. The amount for each site would be half of that shown in Appendix 1 of the June assessment for 2024/25 given that 1 April to 30 September is 6 months.
- 12.60. The sites at the rear of Saxon Court (Site 49), the rear of Westminster House (Site 50), Site C4.2 (Site 51) and the Cavendish site (Site 52) within the Fullers Slade regeneration project are all allocations in Plan:MK. There is little evidence of progress towards applications for any of these sites. Site 49 has had a development brief prepared but there is no other information. The regeneration project has been through a referendum and a development programme agreed. While an application could be submitted in late 2020 and delivery commence in the 5 year period for Site 52, there is little evidence to support this position. Therefore, it has not been shown that there is a realistic prospect of delivery for these 4 sites and they should not form part of the 5 year supply for a 1 October 2019 base date (delete 20 + 15 + 22 + 9 units).

Conclusion on housing land supply

- 12.61. For the 1 April 2019 base date, the Council considers it has a surplus of 2,845 units with a lapse rate applied to the supply (removing 678 units) in Scenario 1 above **[8.44]**. The appellant's closing statement reports the Council's contended surplus to be 2,844 which is one unit lower **[7.19]**. The discrepancy is not clear, but I have used the lower surplus figure just in case. The above assessment deletes a number of units from specific sites coming to a total of 1,750 units deleted for a 1 April base date. This would reduce the surplus to 1,094 units and result in a supply of 11,181 units (12,931 – 1,750). Set against an agreed 5 year requirement of 10,087 units this would result in a HLS of 5.5 years. Bearing in mind that the lapse rate has only been applied to ensure robustness, I am satisfied that the Council can realistically demonstrate a 5 year HLS for this base date.
- 12.62. For a 1 October 2019 base date position, the Council's surplus based on its monitoring data and its approach to assessing deliverability is 3,859. The reduction in units set out above, including those sites purported to be in a 5 year supply between 1 October 2019 and 30 September 2024, comes to a total of 1,866 units deleted. The effect on the surplus would reduce it to 1,993 units and result in a supply of 12,083 units (13,949 – 1,866). Set against a 5 year requirement of 10,091 units, this would result in a 5 year HLS of 5.99 years for this base date.
- 12.63. I have had regard to the Council's Scenario 2 **[8.45]** which includes all of the adjustments in paragraph 4.62 of the Council's proof (LPA1) except paragraph 4.62.11 along with the removal of Site 14 at Galleon Wharf. This scenario sees an overall reduction in supply by 330 units from Scenario 1 but still provides a 5 year HLS of 6.25 years. My assessment above has already applied the adjustments to the sites in paragraphs 4.62.1 and 4.62.2 and deleted all or part of the sites in paragraphs 4.62.6, 4.62.12 and 4.6.13. It has not applied the adjustments in the remaining paragraphs, but even if it did, this would result in a minor overall addition of 95 units to the supply for the April base date. Thus, Scenario 2 does not affect my findings on HLS.
- 12.64. Scenario 3 is the same as Scenario 2 **[8.46]** but without the Council's lapse rate applied. I have decided that it would be prudent to apply the lapse rate and so this scenario also does not affect my findings on HLS.
- 12.65. In conclusion and based on the evidence before me, I find that the Council can demonstrate a 5 year supply of deliverable housing sites whichever approach is taken in terms of the base date, and even with the application of the Council's lapse rate. In the event that the SoS finds that a 5 year supply cannot be demonstrated, I deal with this scenario and its implications below.

The Location of the Development

The Development Plan – Plan:MK

- 12.66. The appellant accepts that the proposal conflicts with Policies DS1, DS2 and DS5 of Plan:MK due its location in the open countryside outside of the development boundary for Woburn Sands. While adjacent to this key settlement, the proposal does not meet any of the 13 criteria set out in Policy

DS2 and neither does it meet any of the exceptions in Policy DS5. **[7.5, 8.48, 8.50]**

- 12.67. The appellant argues that the proposal is in accordance with the approach that underpins the Plan:MK spatial strategy given that it adjoins a key settlement that Plan:MK defines as 'chosen for development'. There is general agreement between the main parties that the site is in a sustainable location with regards to its proximity to a range of services and facilities in Woburn Sands. The NPPF supports housing in such locations and where it can enhance or maintain the vitality of rural communities. However, I consider that the location and type of development does not comply with Policies DS1, DS2 and DS5 which sets out the spatial strategy for residential schemes. The presence of a 5 year HLS means the weight to any conflict with these policies is not diminished. **[7.5, 7.93, 7.94, 8.49]**
- 12.68. While Plan:MK does not set out housing requirements for the Woburn Sands neighbourhood area as advocated in NPPF paragraph 65, the Plan:MK Inspector considered that no specific allowance for additional development was necessary for this settlement. The development boundary is tightly drawn around the settlement but it has been reviewed as part of the Plan:MK examination with amendments made to accommodate recent planning approvals. This is not to say that there is a cap on development in Woburn Sands, but there is no policy requirement to deliver additional housing in this settlement. Moreover, it has not been demonstrated that Policies DS1, DS2 and DS5 are inconsistent with the NPPF in terms of their approach to the spatial strategy and the location of housing and the objective to safeguard the countryside from inappropriate development. **[7.6, 7.7, 7.92, 8.49, 8.50]**

The Development Plan - Woburn Sands Neighbourhood Plan

- 12.69. The appellant accepts that the proposal conflicts with WSNP Policy WS5 as none of the exceptional circumstances currently apply to allow for an extension of the current development boundary. The appellant stressed that WSNP Policy WS6 is parasitic on Policy WS5 and only allows for a limited amount of additional housing in the plan area and none of the listed circumstances apply. **[7.9, 7.13]**
- 12.70. The WSNP has not been reviewed within 5 years of it being made and it makes no allocations for housing. The previous Inspector's report and SoS decision only gave moderate weight to Policy WS5 as it was based on tightly drawn boundaries and the old Milton Keynes Local Plan 2001-2011. The requirement in the policy for any boundary amendment through Plan:MK to be agreed by the Town Council was not recommended by the examiner. Such a requirement is at odds with the NPPF which clarifies the hierarchy of local plans over neighbourhood plans. **[7.10-7.12]**
- 12.71. However, as noted above, the development boundary has been reviewed and updated as part of the Plan:MK process and no specific allowance for additional development was necessary. There is no inconsistency with the NPPF in terms of how Policies WS5 and WS6 seek to safeguard the countryside and direct development to specific locations. Therefore, significant weight can be afforded to both policies and any conflict with them, particularly in light of a demonstrable 5 year HLS. Neither policy should be regarded as being out of date. **[7.14, 8.51-8.53]**

Proposed new transport infrastructure

- 12.72. It is conceivable that the route of the Oxford to Cambridge Expressway could travel through or near to the appeal site based on the preferred option of Highways England and the various constraints within the Woburn Sands area. However, there has yet to be a formal announcement on the next stage of this road project or further public consultation on specific options or routes. Plan:MK addresses the Expressway in relation to the South East Milton Keynes extension in terms of the timing of any planning permission but does not preclude development in specific locations as the details and future of the project are still yet unclear. The main parties agree that the proposal does not conflict with the development plan insofar as the Expressway is concerned and so does not warrant refusal of the proposal on this matter. **[6.1, 7.95, 7.96, 9.3, 9.7, 9.10, 10.3]**
- 12.73. The East-West rail project would see greater use of the line through Woburn Sands and interested parties have expressed concerns regarding the potential increased frequency of the level crossing being closed. However, there is little evidence that the appeal proposal would hamper the delivery of the rail project or result in unacceptable traffic conditions insofar as the level crossing is concerned. Again, there is no conflict with the development plan or reason to refuse the proposal on this matter. **[9.3, 9.7, 9.8, 9.12]**

Conclusion on the location of the development

- 12.74. While there are no reasons to withhold permission having regard to routes of potential new transport infrastructure, the proposed housing would not be in an appropriate location having regard to the development plan and national policies. As noted above, it would conflict with Plan:MK Policies DS1, DS2 and DS5 and WSNP Policies WS5 and WS6.

Housing Density

- 12.75. At the time of the first SoS decision, Policy H8 of the Local Plan 2001-2011 sought a density of 35dph. The SoS found that the density of the proposed development, which was generally considered to be 16dph at the time, was a very significant departure from this policy with significant weight given to the conflict. Policy H8 has since been replaced with Policy HN1 of Plan:MK which sets no density limit but seeks a balance between making efficient use of land with respecting the surrounding character and context. **[7.99, 8.58]**
- 12.76. Paragraphs 122 and 123 of the NPPF have not changed between the 2018 version considered by the SoS and the current 2019 version. Paragraph 122 seeks efficient use of land taking into account various factors including the desirability of maintaining an area's prevailing character and setting. Paragraph 123 seeks to avoid low densities, but only in the context of an existing or anticipated shortage of land. Given my findings above, this paragraph is not applicable. Policy H8 was considered by the SoS to be consistent with the NPPF, but it is clear that he found conflict with the policy only. This is because he said that the various factors in paragraph 122 did not justify the departure from policy (DL26). **[7.98, 8.60]**

- 12.77. At the first Inquiry, the appellant demonstrated¹²⁸ how 16dph was broadly comparable to the densities of immediately adjoining residential streets. The first Inspector found the proposed density to be acceptable. At the second Inquiry, the appellant contended that the net density based on the illustrative layout would actually be 20.3dph. The parties disagreed on the extent of land within the site that would be developed for housing and directly associated uses including the access roads. Around 50% of the site would be developed for housing, but there is no agreement on the overall density. **[7.97, 8.64]**
- 12.78. The fact that there is disagreement over an illustrative layout for a proposal where all matters are reserved apart from access indicates that the final density figure cannot be established at this point. As part of any reserved matter application relating to layout, the provision and situation of buildings, routes and open spaces across the site area is to be assessed and determined. Thus, while density is not a specific reserved matter, the eventual layout could affect the density figure. If the layout was unacceptable to the Council in terms of how it related to the development and buildings and spaces beyond, it could refuse the reserved matters application. Thus, I am persuaded more by the judgment in *Inverclyde* which found density could be considered as part of a reserved matter than the judgment in *Chieveley* which focused on gross floor space. **[7.101, 7.102, 8.54, 8.55]**
- 12.79. No condition has been put forward to fix a specific density or developable area. The development is for up to 203 dwellings. Thus, it is not possible to be certain of the final density figure. There is no detailed analysis from the Council on a specific density figure or range of figures. Its planning witness stated that the development should reflect the overall average density of Woburn Sands which is 27dph. However, this is based on an unverified figure in the appeal decision for the Nampak site. The appellant's analysis indicates that the built-up area of Woburn Sands has a density of 23.7dph. Its density figures for the individual parishes are lower but less helpful as they include large area of countryside. **[7.100, 8.63, 8.65]**
- 12.80. Notwithstanding the disagreement over density figures and the scope of reserved matters, even if the original figure of 16dph is preferred, this would be in keeping with the surrounding character and context of the adjoining streets. The illustrative layout would reflect the spaciousness of these existing streets with the use of open space buffers to safeguard the living conditions of neighbouring properties and the setting of the listed farmhouse. Little evidence has been presented to suggest that a density beyond 16 or 20dph would be acceptable in terms of character and appearance. The first Inspector found that an indicative layout for 303 dwellings would not be desirable in terms of landscaping, amenity and context. Although the site's location has good access to facilities including public transport, it has not been demonstrated that higher density development would be acceptable. In the event that a 5 year HLS could not be demonstrated, there would need to be adequate justification that a higher density could work in this location. **[7.100, 8.63]**

¹²⁸ CD2.6 appendix 13

- 12.81. While the final layout and density of the development has yet to be fixed, I consider that a scheme based on the illustrative layout with a density of 16-20dph would be relatively low but would be acceptable in this instance for this location. It would balance an efficient use of land with respecting the surrounding character and setting, and so would accord with Plan:MK Policy HN1 and NPPF paragraph 122. While I have reached a different conclusion to the SoS in his first decision, this is based on the changed development plan context, the ability to finalise density at reserved matters, and having regard to the context and character of nearby residential streets. **[7.4, 7.103, 8.65]**
- 12.82. If the SoS concludes differently and finds that the proposed density would not represent an efficient use of land, then there would be conflict with Plan:MK Policy HN1 and NPPF paragraph 122. This would increase the amount of weight against the proposal.

Other Matters

Best and most versatile agricultural land

- 12.83. The loss of Grade 3a agricultural land within the site would conflict with Plan:MK Policy NE7. However, site allocations such as the South East Milton Keynes Strategic Growth Area encompass larger areas of best and most versatile agricultural land. The Council has not sought to argue that this matter on its own would justify refusing the development and so the policy conflict only carries moderate weight. A balance needs to be struck between the economic and other benefits of such land versus the benefits of the development. **[7.109, 8.66, 9.12]**

Ecology and drainage

- 12.84. The first Inspector noted that the ecological value of the site was limited due to its agricultural use with most of the existing habitats contained within the trees, hedgerows and ponds on the field margins. These habitats would be mostly retained and enhanced by the development with measures secured by condition. An updated desktop study and site assessment was undertaken in September 2019 with no major changes since the original 2016 ecology reports. **[6.1, 7.116, 9.11]**
- 12.85. The existing badger sett would be removed to allow for the new access from Newport Road. This would require a derogation licence to avoid an offence under the Conservation of Species and Habitats Regulations 2010. There is no requirement for a derogation licence to be provided prior to grant of planning permission, but the decision-maker must be assured that there would be a reasonable prospect of the licence being granted by Natural England.
- 12.86. The provision of housing is in the public interest, while there is no alternative but to move the badger sett given its location. The creation of an artificial sett as close as possible to the original location would provide temporary refuge and would have to be in use before the licence application. Other mitigation measures during construction would also seek to limit risks to badgers. These measures should maintain the species at a favourable conservation status. Based on these considerations, there is reasonable prospect of Natural England granting a licence. As a consequence, the

development would not have an unacceptable effect on ecology or protected species.

- 12.87. As noted by the first Inspector, the development offers the means to alleviate current drainage problems through additional attenuation and the use of a suitable maintenance regime. There should be sufficient space to allow for the drains set out in the hydrology assessment. The site is within Flood Zone 1 which has the lowest risk of flooding and the development would provide sufficient ponds, swales and ditches to address surface water run-off. The measures and maintenance plan can be secured by conditions and so the development would not have an unacceptable effect on drainage. **[6.1, 10.2]**

Highways and parking

- 12.88. The development would provide a new route between Newport Road and Cranfield Road to alleviate some of the problems associated with the junction next to the level crossing. The first Inspector noted that all of the junctions would achieve suitable visibility splays and that there would be no unacceptable highway safety impacts. The updated TA for the second Inquiry provides new trip generation and distribution estimates taking into account more recent data and reviews existing and proposed junction modelling. It concludes that there would be a very modest impact on all junctions and routes with no adverse effect on highway capacity or the need for any more complex highway designs such as ghost island right turn lanes. While I note the concerns raised by interested parties about traffic impacts, the evidence before me does not indicate that the development should be restricted on highways grounds. The first Inspector noted little evidence of parking stress within Woburn Sands and the intention for a Travel Plan to encourage sustainable modes of transport. I have no reason to come to a different view on parking. **[6.1, 7.107, 7.108]**

Facilities and services in Woburn Sands

- 12.89. Woburn Sands retains a number of services and facilities including schools, shops and a medical centre, with a bus service and train station. While it may have lost or reduced the amount of services and facilities in recent years, the town remains designated as a key settlement in Plan:MK. Concerns regarding capacity limits at the schools and medical centre can be addressed via financial contributions in the S106 agreement, which also provides the opportunity for additional medical provision within the site. There is little evidence before me to indicate that the development would have an unacceptable impact on services and facilities in Woburn Sands. **[6.1, 7.115, 9.2, 9.3, 9.9]**

Heritage assets

- 12.90. The Grade II listed Deethe Farmhouse has architectural and historic interest as an 18th century property with later alterations. Its significance is also informed by its setting, which today includes the industrial estate as well as the agricultural fields of the appeal site. The former, due to their modern utilitarian appearance and use contribute little to the significance of the farmhouse, whereas the latter make a positive contribution as remnants of the building's agricultural past. The building is not highly visible from either the road or the site due to planting and so the positive contribution of the appeal site is only moderate.

- 12.91. The development would change the rural setting of the farmhouse but the illustrative layout plans shows that a landscaping buffer can be provided within the site to wrap around the shared boundary. Layout and landscaping details could be addressed at reserved matters stage. For the above reasons, the development would result in less than substantial harm to the significance of the listed building. The level of harm would be low due to the existing setting and the proposed mitigation measures. Nevertheless, NPPF paragraphs 193 and 194 state that great weight should be given to the conservation of the listed building and that any harm requires clear and convincing justification. In line with NPPF paragraph 196, this harm will be weighed against the public benefits below. **[6.1, 7.105]**
- 12.92. The recently designated Grade II registered park and garden at Wavendon House forms part of the grounds to the Grade II* listed Wavendon House and extends close to the northern boundary of the site. The significance of the park and garden derives from its historic and design interest as an 18th century pleasure ground and park laid out by a significant landscape improver of the time (Richard Woods). Wavendon House itself has architectural and historic interest as a country estate home of 17th century origins largely remodelled in the 18th century. A mature belt of trees on the edge of the former golf course limit views between the park and garden and the site, while the listed house is further away to the north with additional landscape screening in place. Thus, the site only makes a minor contribution to the significance of both heritage assets as part of their wider setting. The development would provide trees and a landscape buffer along the boundary nearest to Wavendon House. Details could be addressed at the reserved matters stage. Given the existing screening and distances involved, there would be no harm caused to either heritage asset. **[7.105]**

Character and appearance of the landscape

- 12.93. The development would have a significant visual and landscape effect on the site itself given that it would change from agricultural fields to housing. However, as noted by the first Inspector and the first SoS decision, the site does not comprise a valued landscape and is contained by existing boundary vegetation which limits views from wider vantage points. Moreover, the site adjoins the edge of Woburn Sands and the development would be seen in the context of existing housing. Although some hedgerows and trees would be lost including those subject to a TPO, the intention is to retain and enhance planting. Little has changed in visual and landscape terms since the first Inquiry and decision. Therefore, I concur that the development would have a very limited effect on the character and appearance of the landscape. **[6.1, 6.3, 7.104, 7.117]**

The Planning Balance

- 12.94. A number of benefits have been put forward by the appellant. The provision of affordable housing beyond the minimum policy requirement should be strongly supported in line with Policy HN2 and so carries significant weight. The provision of market housing carries similar weight given the potential number that could be delivered and the eagerness of the appellant as a small to medium sized developer to deliver housing as swiftly as possible. The provision of medical facilities within the site is a potential social benefit but

only if it goes beyond mitigating the effect of the development which has not been proven. **[7.110-7.113, 7.115, 8.67, 8.68, 8.71]**

- 12.95. The economic benefits would include temporary construction employment, the provision of a range of homes for a cross-section of working people, secondary employment through increased spending in the local area and the payment of a new homes' bonus to the Council, some of which could be remitted to Woburn Sands Town Council. As such, reasonable weight can be afforded to these benefits. **[7.114, 8.69]**
- 12.96. In highways terms, while the new road through the site between Newport Road and Cranfield Road would offer an alternative route to the level crossing junction, the appellant's update TA notes very modest impacts on all junctions as a result of the development. The housing would reduce the extent and distance of car-borne commuting although not remove it altogether given the distance to major areas of employment and the relatively limited train and bus services. Therefore, only limited weight can be afforded any highway benefits. **[7.118, 8.70]**
- 12.97. The environmental enhancement of ecology and the provision of drainage measures to try and address existing problems would provide moderate benefits. Little weight can be afforded to the appellant's claim of a high quality living environment given the limited information at outline stage and the policy requirement that all development should be high quality. **[7.116, 8.72, 8.73]**
- 12.98. Taken a whole, the benefits range from limited to significant in magnitude. They can all be regarded as public benefits and set against the low level of harm to the significance of the listed farmhouse, they would provide clear and convincing justification for that harm. Having special regard to the desirability of preserving listed buildings and their setting in line with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the development would have an acceptable effect in terms of heritage assets. **[12.102-12.104]**
- 12.99. The development would have an acceptable effect on a range of other matters listed above. It would also be acceptable in terms of housing density. There are insufficient grounds for withholding permission based on routes of potential national infrastructure projects and the negative effect on best and most versatile agricultural land would not, in itself, be a reason for refusal. The conflict with Plan:MK Policy NE7 carries moderate weight as set out above and would be outweighed by the benefits. **[12.88-12.95]**
- 12.100. However, there would be conflict with Plan:MK Policies DS1, DS2 and DS5 and WSNP Policies WS5 and WS6 due to the location of the site in the open countryside. I have found that a 5 year HLS can be demonstrated and so there is no reason to reduce the weight to the conflict with these policies on that basis. Policies DS1, DS2 and DS5 are not inconsistent with the NPPF and so carry full weight, while significant weight can be afforded to Policies WS5 and WS6 based on their NPPF consistency. As policies most important for determining the application, none of these 5 policies are out of date. As such, the tilted balance in NPPF paragraph 11(d) is not engaged. **[7.119, 8.74-8.76, 12.79-12.84]**

- 12.101. The development's conflict with the development plan in terms of the location of the housing carries substantial weight as it would not accord with the spatial strategy set out in Plan:MK. While a number of benefits would be achieved, they would be insufficient to outweigh the conflict with the development plan. In line with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning permission should not be granted.
- 12.102. Alternatively, if the SoS finds that a 5 year HLS cannot be demonstrated or that the most important policies are out of date for other reasons, then the tilted balance in NPPF paragraph 11(d) would be engaged. As there are no policies in the NPPF that provide a clear reason for refusing the development (having had regard to the effect on designated heritage assets), it would be necessary to consider whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.
- 12.103. Moreover, it should be noted that if the SoS finds that there is a housing land supply shortfall, then NPPF paragraph 123 would be engaged which seeks to avoid homes being built at low densities. NPPF paragraph 123(c) states that proposals should be refused where the decision maker considers that they fail to make efficient use of land taking into account the policies of the NPPF.

13. Recommendation

- 13.1 For the reasons set out above, I recommend that the appeal be dismissed.
- 13.2 Nonetheless, if the SoS is minded to disagree with my recommendation and allow the appeal, then the conditions listed in Annex 1 should be attached to any permission granted along with the obligations set out in the S106 agreement.

Tom Gilbert-Wooldridge

INSPECTOR

ANNEX 1: SUGGESTED CONDITIONS (28)

Details, phasing and lighting

- 1) No development shall commence on any phase of the development until details of the layout, scale, appearance and landscaping for that phase (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the Local Planning Authority
Reason: To meet the requirements of the Town and Country Planning (Development Management Procedure) Order 2015
- 2) Application/s for approval of all the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. The development hereby permitted shall be begun no later than the latest of the following dates:
 - i. The expiration of three years from the date of this permission; or
 - ii. The expiration of two years from the date of the approval of the last of the reserved matters to be approved.Reason: To meet the requirements of Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Planning Act
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: PL-X-001 Rev B, PL-X-003 Rev C and PL-X-004, but only in respect of those matters not reserved for later approval.
Reason: For the avoidance of doubt and in the interests of proper planning of the development
- 4) The development hereby permitted shall not exceed 203 dwellings (Use Class C3). The use classes are those set out in the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that order with or without modification.
Reason: To ensure the development conforms to the outline planning permission
- 5) Prior to the commencement of development of any phase of the development, a phasing plan for the whole site shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt the phasing plan shall include the phasing of the delivery of all roads, footways, redway and bridleway links and Framework Travel Plan measures. The development shall take place in accordance with the approved phasing plan.
Reason: In order to clarify the terms of this planning permission and ensure that the development proceeds in a planned and phased manner. This is pre-commencement condition as the phasing plan would need to be agreed before any works begin.
- 6) The access arrangements hereby permitted shall be carried out in accordance with Proposed Site Access drawings nos.WO1188-101 Rev P05 and WO1188-102 rev.P03

Reason: To provide satisfactory highway connections to the local highway network

- 7) Reserved matters applications for each phase of the development shall include details of the proposed finished floor levels of all buildings and the finished ground levels in relation to existing surrounding ground levels for that phase. Development for that phase shall be undertaken in accordance with the approved levels.

Reason: To ensure that construction is carried out suitable levels having regard to drainage, access, the appearance of the development and the amenities of neighbouring properties in accordance with Policy D5 of Plan:MK

- 8) Reserved matters applications for each phase of the development shall include details of the proposed boundary treatments for that phase. The approved boundary treatments shall be carried out in accordance with the approved details for that phase and be completed prior to the occupation of the associated dwelling or first use of such phase of the development.

Reason: To provide adequate privacy, to protect the external character and appearance of the area and to minimise the effect of development on the area in accordance with Policy D5 of Plan:MK

- 9) Reserved matters applications for each phase of the development shall include a lighting scheme for all public and private streets, footpaths and parking areas. The lighting scheme shall include details of what lights are being proposed, a lux plan showing maximum, minimum, average and uniformity levels, details of means of electricity supply to each light and how the lights will be managed and maintained in the future. If any lighting is required within the vicinity of current or built-in bat features, it shall be low level with baffles to direct the light away from the boxes and units, thus preventing severance of bat commuting and foraging routes. The approved scheme shall be implemented prior to the occupation of each associated dwelling within that phase of the development.

Reason: In the interests of safety and amenity and in order to comply with Policies D5 and NE6 of Plan:MK

- 10) Reserved matters applications for each phase of the development shall incorporate measures to minimise the risk of crime in accordance with Secured by Design principles. All dwellings shall be designed to achieve Secured by Design accreditation (as awarded by Thames Valley Police) in accordance with details to be submitted to, and approved in writing by, the Local Planning Authority.

Reason: In the interests of reducing crime and disorder in accordance with Policy EH7 of Plan:MK

- 11) Reserved matters applications for each phase of the development shall be accompanied by a Sustainability Statement for that phase including, as a minimum, details required by Policy SC1 of Plan:MK. The approved details shall be implemented for each dwelling prior to the occupation of that dwelling.

Reason: In the interests of achieving a sustainable form of construction and to ensure the development complies with Policy SC1 of Plan:MK

- 12) No development shall take place above slab level until samples of the external materials to be used in the construction for each phase of the development (if any) have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in full accordance with the approved details.

Reason: To ensure that the development does not detract from the character and appearance of the area in accordance with Policy D2 of Plan:MK

Affordable housing

- 13) Reserved matters applications for each phase of development shall include details of the location and type of affordable housing pursuant to the development phase for which approval is sought. Each phase of the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development and location of affordable housing is appropriate and in accordance with Policy HN2 of Plan:MK

Drainage

- 14) Prior to the commencement of the development hereby permitted a detailed design, and associated management and maintenance plan, for a surface and storm water drainage scheme, based on sustainable drainage principles for the site shall be submitted to and approved in writing by the Local Planning Authority. The management and maintenance plan shall include details of the way the surface and storm water drainage scheme will be implemented for each phase of development. The approved drainage scheme shall subsequently be implemented and maintained in accordance with the approved detailed design and scheme for maintenance, and in accordance with the approved phasing details and be retained thereafter.

Reason: To ensure satisfactory and sustainable surface water drainage to prevent the increased risk of contamination and flooding on or off site in accordance with Policy FR1 of Plan:MK. This is a pre-commencement condition as it is necessary to establish a drainage scheme before works begin.

- 15) Prior to the commencement of each phase of the development, a foul water strategy shall be submitted to and approved in writing by the Local Planning Authority. No dwellings in that phase shall be occupied until the works have been carried out in accordance with the approved foul water strategy for that phase.

Reason: To ensure satisfactory and sustainable foul water drainage to prevent the increased risk of contamination and flooding on or off site in accordance with Policy FR1 of Plan:MK. This is a pre-commencement condition as it is necessary to establish a drainage scheme before works begin.

Car parking, travel and access

- 16) Reserved matters applications for each phase of the development shall include a scheme to provide car parking and cycle parking and manoeuvring of vehicles within the development in accordance with the Milton Keynes Council Parking Standards SPG (2016) or any subsequent parking standards adopted at the time any reserved matters application is

submitted and in accordance with the Council's New Residential Development Design Guide (2012) or any further guidance on parking that may be adopted at the time any reserved matters application is submitted. The approved scheme shall be implemented and made available for use for each dwelling prior to the occupation of that dwelling and shall not thereafter be used for any other purpose.

Reason: To ensure adequate parking provision at all times and to enable vehicles to draw off, park, load/unload and turn clear of the highway so that the development does not prejudice the free flow of traffic or the safety on the neighbouring highway in accordance with Policies CT3 and CT10 of Plan:MK

- 17) No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a Construction and Delivery Plan that shall outline, in accordance with the phasing as approved under Condition 5 the proposed access works and which shall include links to the existing highway, footpaths and cycle ways (including the specification thereof). Development shall then take place in accordance with the approved Construction and Delivery Plan. No other parts of the development shall begin until the new means of access for that phase has been provided and laid out in accordance with the Construction and Delivery Plan and constructed in accordance with Milton Keynes Council's standard specification.

Reason: In the interests of highway safety and to ensure adequate mitigation measures are in place. This is a pre-commencement condition to ensure that there is agreement on construction traffic and deliveries before works begin

- 18) Measures proposed within the approved Framework Travel Plan dated March 2016 will be implemented in a phased manner, in accordance with Condition 5. No phase of the development shall be occupied prior to the implementation of the agreed Framework Travel Plan measures relating to that phase. Those parts of the approved Framework Travel Plan that are identified therein as being capable of implementation after occupation shall be actioned and reported in accordance with the timetable contained within, with a minimum of annual reporting for the first five years.

Reason: To support sustainable transport objectives including a reduction in single occupancy car journeys and the increased use of public transport, walking and cycling in accordance with Policy CT2 of Plan:MK

- 19) No dwelling shall be occupied in any phase of the development until the estate road which provides access to the dwelling, from the existing highway, has been laid out and constructed.

Reason: To provide satisfactory highway connections to the local highway network in accordance with Policy CT2 of Plan:MK

Archaeology

- 20) Prior to the commencement of each phase of the development a programme of archaeological field evaluation comprising trial trenching shall be completed. The programme of archaeological evaluation shall be detailed in a Written Scheme of Investigation submitted to and approved by the Local Planning Authority in writing. On completion of the agreed

archaeological field evaluation for each phase a further Written Scheme of Investigation 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. The scheme for archaeological mitigation shall include an assessment of significance and research questions; and

- i. The programme and methodology of site investigation and recording;
- ii. The programme for post investigation assessment;
- iii. Provision to be made for analysis of the site investigation and recording;
- iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- v. Provision to be made for archive deposition of the analysis and records of the site investigation; and
- vi. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development in any phase shall take place other than in accordance with the Written Scheme of Investigation so approved. The development hereby permitted shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To enable expert investigation of cultural remains at this site of archaeological interest in accordance with Policy HE1 of Plan:MK

Ecology

- 21) Any protected species survey report in excess of three years old at the time of the commencement of development of each phase of the development shall be updated and submitted to and approved in writing by the Local Planning Authority prior to the commencement of development of that phase of the development. Natural England derogation licence(s) shall be obtained for any protected species likely to be harmed prior to the commencement of the development.

Reason: To safeguard protected species and biodiversity in accordance with Policy NE2 of Plan:MK

- 22) Prior to the commencement of development of each phase of the development, a Landscape and Ecology Management Plan which covers the landscape and ecological features of the development ensuring net gains for wildlife compliance with local and national policies shall be submitted to and approved in writing by the Local Planning Authority. The submitted plan shall include the creation of additional habitat areas and a scheme to incorporate additional biodiversity features such as swallow cups, bird and bat boxes, bricks or cavities into appropriate buildings. Thereafter the development shall be carried out in accordance with the approved scheme and all features and access to them shall be maintained in perpetuity.

Reason: To ensure the development incorporates adequate biodiversity enhancements in accordance with Policies NE3 and NE4 of Plan:MK

Tree protection

- 23) All existing trees and hedgerows to be retained in each phase of the development are to be protected according to the provisions of BS 5837:2012 'Trees in relation to design, demolition and construction - Recommendations' prior to the commencement of any works on each phase. All protective measures shall be in place prior to the commencement of any building operations (including any structural alterations, construction, rebuilding, demolition and site clearance, removal of any trees or hedgerows, engineering operations, groundworks, vehicle movements or any other operations normally undertaken by a person carrying on a business as a builder) in that phase.

Reason: To protect significant trees and hedgerows, safeguarding the character of the area and preserving habitats and to minimise the effect of the development on the area

Open space, play areas and landscaping

- 24) Prior to the commencement of any phase of the development, an open space specification which includes the location, details and specification for all areas of open space including the Neighbourhood Play Area shall be submitted to and approved in writing by the Local Planning Authority. Detailed proposals for play areas shall be submitted and agreed at the same time as the detailed housing layouts or otherwise demonstrate that the minimum buffer distances between residential property boundaries and the play area active zone can be achieved in compliance with the standards set out in Plan:MK Appendix C, or any subsequent standards. The open space specification shall also include the phasing for the laying out of all areas of open space including any Play Areas and the long term management and maintenance arrangements for all open space and play facilities, to cover a minimum period of ten years. The development shall be completed in accordance with the approved details.

Reason: To minimise the effect of the development on the area in accordance with Policy L4 of Plan:MK

- 25) Reserved matters applications for each phase of the development shall include a landscaping scheme with detailed drawings showing which trees and hedgerows are to be retained in that phase and which trees and hedgerows are proposed to be felled or lopped in that phase. The landscaping scheme shall also show the numbers, types and sizes of trees and shrubs to be planted in that phase including their locations in relation to associated infrastructure and a species list to include native species and species beneficial to wildlife. The planting plans shall include existing trees and/or hedgerows to be retained and/or removed within each phase accurately shown with root protection areas and based up to date tree surveys. Any trees or shrubs removed, dying, or which become severely damaged or diseased within two years of planting shall be replaced in the next planting season with trees or shrubs of such size and species to be agreed in writing by the Local Planning Authority.

Reason: To protect significant trees and hedgerows, safeguarding the character of the area and preserving habitats and to minimise the effect of the development on the area

Construction

- 26) Prior to the commencement of development of any phase of the development, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include Noise Action Levels (based on a noise survey) and site procedures to be adopted during the course of construction including working hours, intended routes for construction traffic, details of vehicle wheel washing facilities, location of site compound, lighting and security and how dust and other emissions will be controlled. The development shall be carried out in accordance with the approved CEMP.

Reason: To ensure there are adequate mitigation measures in place in the interests of highway and pedestrian safety and in order to protect the amenities of existing and future residents in accordance with Policies CT2 and NE6 of Plan:MK

- 27) Prior to the commencement of development on any phase, the developer shall carry out an intrusive site investigation into the ground conditions at the site to determine the likelihood of any ground, groundwater or gas contamination of the site. The results of this survey detailing the nature and extent of any contamination, together with a strategy for any remedial action deemed necessary to bring each phase 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 on that phase. Any remedial works shall be carried out on each phase in accordance with the approved strategy and validated on a phase by phase basis by submission of an appropriate verification report prior to the first occupation on that phase of the development. 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 unforeseen contamination shall also be carried out to the written satisfaction of the Local Planning Authority.

Reason: To ensure the site is fit for its proposed purpose and any potential risks to human health, property and the natural and historic environment area appropriately investigated and minimised in accordance with Policy NE6 of Plan:MK

Housing mix

- 28) Any reserved matters application shall be accompanied by details outlining the proposed housing mix strategy which takes account of the latest housing need within the District. The development shall be carried out in accordance with the approved details.

Reason: To ensure that the development hereby approved reflects housing need within the Borough in accordance with Policy HN1 of Plan:MK

ANNEX 2: APPEARANCES

FOR THE APPELLANT

Peter Goatley and James Corbet Burcher of Counsel instructed by Stephen Webb of Clyde and Co LLP.

They called:

Roland Burton BSc (Hons) MRTPI	DLP (Planning) Limited
Tim Waller BA (Hons) DipTP MRTPI	Waller Planning
Julian Hudson MA (Oxon) MSc MSc MCIHT	Scott White and Hookins
Stephen Webb	Clyde and Co LLP

FOR THE LOCAL PLANNING AUTHORITY

Reuben Taylor QC and Matthew Henderson of Counsel instructed by Sharon Bridglingsh of Milton Keynes Council.

They called:

James Williamson BA (Hons) MSs MRTPI	Milton Keynes Council
Niko Grigoropoulos BSc (Hons) MA MRTPI	Milton Keynes Council
Paul Van Geete	Milton Keynes Council
Nazneen Roy	Milton Keynes Council

INTERESTED PERSONS WHO SPOKE AT INQUIRY

Councillor Jacky Jeffries	Woburn Sands Town Council
Councillor David Hopkins	Danesborough and Walton Ward Councillor (Milton Keynes Council) and Chairman of Wavendon Parish Council
Judith Barker	Local resident
Jenny Brook	Local resident

ANNEX 3: DOCUMENTS

INQUIRY DOCUMENTS (FOR REDETERMINED APPEAL)

- RID01 Opening submissions on behalf of the appellant
- RID02 Opening statement on behalf of the Council
- RID03 High Court judgment R(oao Matthew Davison) v Elmbridge Borough Council [2019] EWHC 1409 (Admin)
- RID04 Statement by Councillor Jacky Jeffries
- RID05 Statement by Councillor David Hopkins
- RID06 Statement of Common Ground between the appellant and the Council
- RID07 Quarter 3 (1 October to 31 December 2019) monitoring data of housing starts and completions in Milton Keynes
- RID08 Babergh District Council Housing Land Supply Position Statement 2019/20 to 2023/24
- RID09 Court of Appeal judgment R (on the application of East Bergholt Parish Council) v Babergh District Council) [2019] EWCA Civ 2200
- RID10 Mid Suffolk District Council Housing Land Supply Position Statement 2019/20 to 2023/24
- RID11 Email and photograph from Stephanie Forester (local resident)
- RID12 Addendum to the Council's justification document for Section 106 contributions
- RID13 Note from the Council on the 2019 distribution of annual housing monitoring proformas
- RID14 Site visit itinerary
- RID15 Note from the Council on the Babergh and Mid Suffolk Housing Land Supply Position Statements
- RID16 Statement by Judith Barker
- RID17 Note from the appellant responding to the Council's note (RID15)
- RID18 Extract from the Encyclopedia of Planning Law and Practice 3B-2200.5 (Applications for outline planning permission)
- RID19 Note from the Council clarifying the sites removed from the 2019 five-year land supply when updated to a base date of 1 April 2019
- RID20 Errata to Roland Bolton Proof of Evidence and Statement of Common Ground on housing land supply
- RID21 Closing submissions on behalf of Milton Keynes Council
- RID22 Court of Appeal judgment City and District Council of St Albans v Hunston Properties and Secretary of State for Communities and Local Government [2013] EWCA Civ 1610

- RID23 Court of Appeal judgment R v Newbury District Council, Newbury and District Agricultural Society, Ex Parte Chieveley Parish Council [1998] EWCA Civ 1279
- RID24 Agricultural land quality maps for urban extensions to Milton Keynes compared to the appeal site
- RID25 Order from the Planning Court regarding Milton Keynes Council's claim for Planning Statutory Review of Castlethorpe Road appeal decision
- RID26 Court judgment Inverclyde District Council v Inverkip Building Company Limited
- RID27 High Court judgment Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government [2014] EWHC 754 (Admin)
- RID28 High Court judgment R (on the application of West Lancashire Borough Council) v Secretary of State for Communities and Local Government [2017] EWHC 3451 (Admin)
- RID29 Closing submissions on behalf of the appellant
- RID30 Final draft Section 106 agreement
- RID31 Final draft Section 106 agreement (with tracked changes)
- RID32 Supplementary Planning Guidance on Planning Obligations for Education Facilities
- RID33 Clean and tracked changes version of appellant's closing submissions reflecting amendments made at the Inquiry
- RID34 Clean and tracked changes version of the Council's closing submissions reflecting amendments made at the Inquiry
- RID35 Addendum to Statement of Common Ground regarding Area Tree Preservation Order
- RID36 Amended version of RID20
- RID37 Completed and executed S106 agreement

PROOFS OF EVIDENCE (FOR REDETERMINED APPEAL)

Appellant:

- APP1 Summary Proof of Roland Bolton (Housing Land Supply)
- APP2 Proof of Roland Bolton
- APP3 Appendices to Roland Bolton's Proof
- APP4 Rebuttal Proof of Roland Bolton
- APP5 Updated Appendix 3 of Roland Bolton's Proof
- APP6 Rebuttal Appendix 3a of Roland Bolton's Proof
- APP7 Summary Proof of Tim Waller (Planning)
- APP8 Proof of Tim Waller
- APP9 Appendices to Tim Waller's Proof

APP10	Rebuttal Proof of Tim Waller
APP11	Errata to Roland Bolton's Proof
APP12	Errata to Tim Waller's Proof (Appendix 5)

Local Planning Authority:

LPA1	Proof of James Williamson (Housing Land Supply)
LPA2	Appendices to James Williamson's Proof
LPA3	Rebuttal Proof of James Williamson
LPA4	Proof of Niko Grigoropoulos

STATEMENTS OF COMMON GROUND (FOR REDETERMINED APPEAL):

SOCG1	Statement of Common Ground on Housing Land Supply
RID06	Statement of Common Ground (overarching)
RID35	Addendum to Statement of Common Ground (TPO)

OTHER DOCUMENTS

TPO1	Area Tree Preservation Order dated 8 January 2020 and illustrative drawing of other TPOs
REP1	Bundle of representations in respect of the redetermined appeal

CORE DOCUMENTS (FOR REDETERMINED INQUIRY)

Core Doc Ref	Name	Drawing No. (or) Reference	Date
CD1 - Application Documents			
CD1.1	Application forms and certificates		Submitted 11/03/16
CD1.2	Application forms and certificates		Submitted 20/07/16
CD1.3	Site Location Plan	Drawing PL-X-001/B	Submitted 09/06/16
CD1.4	Parameters Plan	Drawing PL-X-003/C	Submitted 04/08/16
CD1.5	Illustrative Layout	Drawing PL-X-004/C	Submitted 17/10/16

CD1.6	Illustrative Layout (Transport)	Drawing PL-X-005/B	Submitted 17/10/16
CD1.7	Illustrative Layout (Landscape)	Drawing PL-X-006/B	Submitted 17/10/16
CD1.8	Illustrative Layout (Character Areas)	Drawing PL-X-007/B	Submitted 17/10/16
CD1.9	Illustrative Layout (Affordable Housing)	Drawing PL-X-008/B	Submitted 17/10/16
CD1.10	Design and Access Statement, Rev. A		Submitted 04/08/16
CD1.11	Supporting Planning Statement		Submitted 11/03/16
CD1.12	Transport Assessment, Revision C		Submitted 08/07/16
CD1.13	Use of TEMPRO to Forecast Traffic Impact in 2021, Addendum to Transport Assessment		Submitted 14/11/16
CD1.14	Residential Travel Plan		Submitted 11/03/16
CD1.15	Highway Access Drawings	WO1188-101 P05 and WO1188-102 P03	Submitted 05/10/16
CD1.16	Arboricultural Schedule		Submitted 11/03/16
CD1.17	Tree Survey	Drawings SJA115.01.0 - SJA115.01.06.0	Submitted 11/03/16
CD1.18	Baseline Ecological Evaluation and Impact Assessment		Submitted 11/03/16
CD1.19	Protected Species Report		Submitted 27/07/16
CD1.20	Flood Risk Assessment (incorporating Drainage Strategy)		Submitted 11/03/16
CD1.21	Further Details on Surface Water Drainage		Submitted 08/06/16
CD1.22	Geo-Environment Audit		Submitted 11/03/16

CD1.23	Landscape Character Areas	Drawing SJA115.10.0	Submitted 11/03/16
CD1.24	Landscape Masterplan	Drawing SJA115.11.0	Submitted 11/03/16
CD1.25	Landscape and Visual Impact Appraisal		Submitted 04/08/16
CD1.26	Environmental Noise Survey		Submitted 11/03/16
CD1.27	Supplementary Noise Impact Report: SoundPLAN		Submitted 11/03/16
CD1.28	Statement of Community Involvement		Submitted 11/03/16
CD1.29	Sustainability Statement		Submitted 11/03/16
CD1.30	Delivery Programme		Submitted 01/12/16
CD2 - Appellant Documents			
CD2.1	Housing Density	Drawing 213.3/101	Submitted 10/02/17
CD2.2	Appellants Statement of Case (V1)		Submitted 10/02/17
CD2.3	Appellants Statement of Case (V2)		Submitted 12/09/19
CD2.4	S106 Agreement		17/08/2017
CD2.5	Unilateral Undertaking		17/08/2017
CD2.6	Tim Waller, Planning Proof of Evidence		13/06/2017
CD2.7	Roland Bolton, Housing Land Supply Proof of Evidence		13/06/2017
CD2.8	Roland Bolton, Housing Land Supply Proof of Evidence Appendices		13/06/2017
CD2.9	Mary Fisher, Landscape Proof of Evidence		13/06/2017

CD2.10	Mary Fisher, Landscape Proof of Evidence Appendices		13/06/2017
CD2.11	Katy Jordan, Wavendon Properties Proof of Evidence		13/06/2017
CD2.12	Tim Waller Rebuttal to Planning Proof of Evidence		06/07/2019
CD2.13	Roland Bolton Rebuttal Housing Land Supply Proof of Evidence		06/07/2019
CD2.14	Peter Goatley Closing Submissions		19/07/2019
CD3 - Council Documents			
CD3.1	Pre-Application Advice Letter		18/01/2016
CD3.2	Committee Report		08/09/2016
CD3.3	Minutes of Committee Meeting		
CD3.4	Decision Notice		05/12/2016
CD3.5	Note from Council's Senior Engineer, 'Highway Observations for 16/00672/FUL		28/11/2016
CD3.6	MKC Housing Land Supply Calculation and Trajectory April 2017 -2022	www.milton-keynes.gov.uk/planning-and-building/planning-policy/five-year-housing-land-supply-annual-monitoring-report	
CD3.7	Countryside Officer Reps	<u>20160423</u>	
CD3.8	Conservation Officer Reps	<u>20160425</u>	
CD3.9	Passenger Transport Reps	<u>20160527</u>	
CD3.10	Countryside Officer Reps	<u>20160623</u>	
CD3.11	Travel Plans	<u>20160628</u>	
CD3.12	Natural England Reps	<u>20160812</u>	
CD3.13	Ecology Reps	<u>20160817</u>	

CD3.14	Urban Design Reps	<u>20160817</u>	
CD3.15	Countryside Officer Reps	<u>20160823</u>	
CD3.16	Network Rail Reps	<u>20161018</u>	
CD3.17	Highways Observations Final	<u>20161128</u>	
CD3.18	Appeal Reps from MKC Website	<u>20170515</u>	
CD3.19	[Blank Record]	-	
CD3.20	Trees	-	
CD3.21	Dev Plans	-	
CD3.22	Landscape Architecture	-	
CD3.23	Wavendon PC		
CD3.24	WS Town Council		
CD3.25	WS Town Council Appendix		
CD3.26	Jon Goodall Planning Proof of Evidence		13/06/2017
CD3.27	Jon Goodall Planning Proof of Evidence Appendices		13/06/2017
CD3.28	Jon Goodall Housing Land Supply Proof of Evidence		13/06/2017
CD3.29	Jon Goodall Housing Land Supply Proof of Evidence Appendices		13/06/2017
CD3.30	Tim Straker QC Closing Submissions		19/07/2019
CD3.31	MKC housing statistics 2019 Q2 Extract		September 2019
CD3.32	MKC June HLSP 2019		June 2019
CD3.33	Appendix 1 - Housing Trajectory 2019 - 2024		June 2019
CD3.34	MKC Assessment of Five Year Land Supply 2016 - 2021		June 2016

CD3.35	MKC Five Year Housing Land Supply Position, 2018		June 2018
CD3.36	MKC Five Year Housing Land Supply 2011-2016		November 2010
CD3.37	MKC Interim Assessment of five year land supply, 2015		November 2015
CD3.38	MKC Housing Land Supply Position 2017/18		June 2017
CD3.39	Council's Addendum Statement of Case		12 September 2019
CD3.40	Council's Addendum Statement of Case Appendices		12 September 2019
CD3.41	MKBC 2019 Annual Housing Monitoring Completed Proformas		June 2019
CD4 - National Policy			
CD4.1	National Planning Policy Framework		March 2012
CD4.2	National Planning Practice Guidance	(Electronic Only)	
CD4.3	Ministerial Statement of Greg Clark, then SSCLG		June 2010
CD4.4	White Paper 'Fixing Our Broken Housing Market', UK Government		February 2017
CD4.5	National Planning Policy Framework		July 2018
CD4.6	National Planning Policy Framework		February 2019
CD4.7	Independent Review of Build Out, Rt Hon Sir Oliver Letwin MP		October 2018
CD4.8	Independent Review of Build Out Rates Annexes		June 2018
CD4.9	Independent Review of Build Out Rates Draft Analysis		June 2018

CD4.10	Housing Delivery Test Measurement Rule Book		July 2018
CD5 - Local Policy			
CD5.1	Milton Keynes Local Plan 2001-2011		
CD5.2	Milton Keynes Core Strategy		
CD5.3	Woburn Sands Neighbourhood Plan		July 2014
CD5.4	Strategic Land Allocation Development Framework SPD		November 2013
CD5.5	Parking Standards SPD		
CD5.6	Milton Keynes Sustainable Construction Design Guide SPD		
CD5.7	Milton Keynes Affordable Housing SPD 2013		
CD5.8	Planning Obligations for Educational Facilities		
CD5.9	Planning Obligations for Leisure, Recreation and Sports Facilities SPG		
CD5.10	MKC Supplementary Planning Document Social Infrastructure Planning Obligations		
CD5.11	New Residential Development Design Guide SPD		
CD5.12	Milton Keynes Council Urban Capacity Study		February 2017
CD5.13	Milton Keynes Residential Characterisation Study: An Evidence Base For Plan:MK		March 2017
CD5.14	Landscape Sensitivity Study to Residential Development in the Borough of Milton Keynes and Adjoining Areas		December 2016

CD5.15	Milton Keynes Strategic Housing Land Availability Assessment 2012		December 2012
CD5.16	Plan: MK Topic Paper- Issues Consultation Rural Issues		September 2014
CD5.17	Woburn Sands Neighbourhood Plan - A Report to Milton Keynes Council of the Examination into the Woburn Sands Neighbourhood Plan		March 2014
CD5.18	Development Plan Policies Map Extract - Development Boundaries for Policies CS1 and H7		
CD5.19	Development Plan Policies Map Extract - Policy S10		
CD5.20	Milton Keynes School Place Planning Forward View 2017-18		
CD5.21	Newport Pagnell Neighbourhood Plan - Referendum version		
CD5.22	Milton Keynes Core Strategy Sustainability Appraisal Final Report 2010		February 2010
CD5.23	Milton Keynes Site Allocations Plan Proposed Submission Draft October 2016		October 2016
CD5.24	Plan:MK The Way Forward Development Strategy Topic Paper (2014)		
CD5.25	Milton Keynes Strategic Housing Market Assessment 2016-2031 Report of Findings Feb 2017, ORS		February 2017
CD5.26	Core Strategy Housing Technical Paper		March 2011

CD5.27	Strategic Land Allocation Development Framework SPD Adoption Statement November 2013		
CD5.28	Milton Keynes Drainage Strategy Development and Flood Risk SPG		May 2004
CD5.29	Milton Keynes Core Strategy Inspector's Report		May 2013
CD5.30	Plan:MK Draft Consultation (Reg18)		March 2017
CD5.31	Plan:MK		March 2019
CD5.32	Plan:MK Inspector's Report		February 2019
CD5.33	Plan:MK Inspector's Report Appendices		February 2019
CD5.34	Milton Keynes Council Response to Inspectors Questions for Examination Hearings - Stage 1, Matter 3		July 2018
CD5.35	Milton Keynes overall 5YLSP at April 2018		
CD5.36	Milton Keynes Council Assessment of Five Year Land Supply: 2011-2016		November 2010
CD5.37	Milton Keynes Site Allocations Plan		July 2018
CD5.38	Milton Keynes Boundary Settlement Review		October 2018
CD5.39	Sustainability Appraisal Report (to Plan:MK)		November 2017
CD5.40	Sustainability Appraisal Map		November 2017
CD5.41	MK Local Development Scheme (LDS)		September 2018
CD6 - Appeal Decisions			
CD6.1	Land North of Dark Lane, Alrewas, Burton Upon Trent, Staffordshire	PINS Ref: 2225799	13/02/2017

CD6.2	Brook Farm, 94 High Street, Wrestlingworth, Bedfordshire, SG19 2EJ	PINS Ref: 3150607	31/08/2016
CD6.3	Land South of Nanpantan Road, Loughborough, Leicestershire	PINS Ref: 3028159	16/01/2017
CD6.4	Land North of Lenham Road, Headcorn, Kent, TN27 9TU	PINS Ref: 3151144	09/12/2016
CD6.5	Land East of Seagrave Road, Sileby, Leicestershire	PINS Ref: 3152082	27/03/2017
CD6.6	Land at Wain Close, Newport Road, Woburn Sands, Milton Keynes	PINS Ref: 2224004	01/10/2015
CD6.7	Land at Burford Road, Witney, Oxford	PINS Ref: 3005737	24/08/2016
CD6.8	Land East of Wolvey Road, Three Pots, Burbage, Leicestershire	PINS Ref: 2202261	03/01/2014
CD6.9	Land at Long Street Road, Hanslope	PINS Ref: 3177851	05/03/2018
CD6.10	Land at Linford Lakes, off Wolverton Road, Milton Keynes, Bucks	PINS Ref: 3175391	27/03/2018
CD6.11	Land at Moat Farm, Chicheley Road, North Crawley	PINS Ref: 3186814	30/04/2018
CD6.12	Land off Olney Road, Lavendon	PINS Ref: 3182048	04/05/2018
CD6.13	Longdene House, Hedgehog Lane, Haslemere	PINS Ref: 3165974	10/01/2019
CD6.14	Darnhall School Lane Appeal - Decision Letter	PINS Ref: 2212671	16/04/2019
CD6.15	Darnhall School Lane Appeal - Inspectors report	PINS Ref: 2212671	16/04/2019
CD6.16	Land on East Side of Green Road, Woolpit, Suffolk	PINS Ref: 3194926	28/09/2019

CD6.17	The Globe, 50 Hartwell Road, Hanslope	PINS Ref: 3220584	05/09/2019
CD6.18	Land off Castlethorpe Road and Malt Mill Farm Hanslope	PINS Ref: 3214365	26/09/2019
CD6.19	Land at Church Farm, Wavendon	PINs Ref 3134194	12/08/2019
CD6.20	Land at Site North of Former North Worcestershire Golf Club, Hanging Lane, Birmingham	PINs Ref: 3192918	06/12/2018
CD6.21	Land to the south of Bromley Road, Ardleigh, Colchester CO7 7SE	PINs Ref: 3185776	13/09/2019
CD6.22	Land Off Colchester Road, Bures Hamlet, Essex	PINs Ref: 3207509	27/03/2019
CD6.23	Land Off Stone Path Drive, Hatfield Peverel, Essex	PINs Ref: 3162004	08/07/2019
CD6.24	Land to the South of Cox Green Road, Rudgwick, Surrey	PINs Ref: 3227970	16/09/2019
CD6.25	Land North of Leighton Road	PINs Ref: 3203307	24/01/2019
CD6.26	Land at Well Meadow, Well Street, Malpas, Cheshire, SY14 8DE	PINs Ref: 2214400	07/01/2015
CD7 - Case Law			
CD7.1	St Modwen Developments V SSCLG & East Riding of Yorkshire Council	[2016] EVVHC 968 (admin)	28/04/2016
CD7.2	Suffolk Coastal DC v Hopkins Homes & SSCLG and Richborough Estates V Cheshire East BC & SSCLG	[2016] EWCA Civ 168	17/03/2016
CD7.3	Crane v Secretary of State for Communities and Local Government	[2015] EWHC 425 (admin)	23/02/2015
CD7.4	Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and	[2017] UKSC 37	17/03/2016

	another (Respondents) Richborough Estates Partnership LLP and Another (Respondents) v Cheshire East Borough Council (Appellant)		
CD7.5	Barker Mill Estates v SSCLG & Test Valley BC	[2016] EWHC 3028 (Admin)	26/11/2016
CD7.6	St Modwen Developments Ltd v Secretary of State for Communities and Local Government and another	[2017] EWCACiv 1643	
CD7.7	Wokingham Borough Council v Secretary of State for Communities and Local Government and another	[2017] EWHC1863	
CD7.8	Barwood Strategic Land v East Staffordshire BC	[2017] EWCACiv893	30/06/2017
CD7.9	Monkhill Ltd v SSHCLG	[2019] EWHC1993	24/07/2019
CD8 - Related Applications			
CD8.1	11/00936/OUT - Committee Report		
CD8.2	11/00936/OUT -Decision Notice		
CD8.3	11/00936/OUT -Proposed Site Layout Plan		
CD8.4	11/00936/OUT - SITE/LOCATION PLANS		
CD8.5	12-01502-OUT, Officer Report		
CD8.6	12-01502-OUT, Decision Notice		
CD8.7	12-01502-OUT, Location Plan		
CD8.8	12-01502-OUT, Resolved Site Layout		
CD9 - Additional Documents from First Inquiry			

CD9.1	MK Housing Stats - Starts 2016/2017		
CD9.2	MK Housing Stats - Comps 2016/2017		
CD9.3	MK Housing Stats Appx 1a Completions 1981-2017		
CD9.4	MK Housing Stats Appx Starts, Under Cons and Completions by Tenure		
CD9.5	MK Housing Stats Appx 1g Starts Inside and Outside MK Dev Area		
CD9.6	Total Starts by Grid Square		
CD9.6a	Starts by Grid Square (200+)		
CD9.7	Total Completions by Grid Square		
CD9.7a	Housing Completions by Grid Square		
CD9.8	Summary Note of MK Housing Statistics		
CD9.9	Summary of RB PoE delivery rates		
CD9.10	Counsel Opinion on 5YHLS		
CD9.11	Council's Instructions to Counsel & appendices on 5YHLS		
CD9.12	Council's Statement of Case		
CD10 - Documents Between First and Second Inquiries			
CD10.1	Milton Keynes Borough Council request to Secretary of State to recover appeal		24/08/2017
CD10.2	Letter from PINS rejecting call-in request		30/08/2017
CD10.3	Letter from Ian Stewart MP to Secretary of State		12/09/2017

	requesting appeal is called in		
CD10.4	Letter from Clyde & Co to the Secretary of State regarding potential call-in decision		12/10/2017
CD10.5	Letter from PINS confirming appeal called in		31/10/2017
CD10.6	Letter from Minister of State for Housing and Planning to Ian Stewart MP confirming call-in		31/10/2017
CD10.7	Letter Clyde & Co to Minister of State for Housing and Planning regarding call-in		08/11/2017
CD10.8	Letter from Minister of State for Housing and Planning to Clyde & Co regarding call-in		20/12/2017
CD10.9	PINS letter and appeal timetable		02/02/2018
CD10.10	Letter Waller Planning to Secretary of State regarding recent appeal decisions		06/04/2018
CD10.11	PINS Letter re variation of appeal timetable		01/05/2018
CD10.12	Letter from Ministry for Housing, Communities and Local Government to Milton Keynes BC regarding recent appeal decisions		08/05/2018
CD10.13	Briefing Note on recent appeal decisions by Milton Keynes BC sent to Secretary of State		22/05/2018
CD10.14	PINS Letter re variation of appeal timetable		23/05/2018
CD10.15	Letter Waller Planning to Secretary of State		29/05/2018

	regarding recent appeal decisions		
CD10.16	Letter Clyde & Co to Secretary of State		23/07/2018
CD10.17	Letter from Secretary of state re. new NPPF & Site Allocations Plan		26/07/2018
CD10.18	Councillor Hopkins response to Secretary of State		01/08/2019
CD10.19	Clyde & Co response to Secretary of State		06/08/2018
CD10.20	Woburn Sands & District Society response to Secretary of State		09/08/2018
CD10.21	Other responses to the Secretary of State		07/08/2018
CD10.22	Woburn Sands Town Council response to Secretary of State		14/08/2018
CD10.23	Clyde & Co response to Secretary of State		15/08/2018
CD10.24	Local resident response to Secretary of State		05/08/2018
CD10.25	Local resident response to Secretary of State		
CD10.26	Local resident response to Secretary of State		16/08/2018
CD10.27	Local resident response to Secretary of State		17/08/2018
CD10.28	Milton Keynes BC e-mail and enclosure re. emerging Plan:MK		05/09/2018
CD10.29	Secretary of State's letter re. housing land supply, emerging Plan:MK and NPPF density policies and enclosures		27/09/2018
CD10.30	Waller Planning response to Secretary of State		05/10/2018

CD10.31	SPRU response to Secretary of State		05/10/2018
CD10.32	Correspondence between Waller Planning and MHCLG		15/10/2018
CD10.33	Decision by the Secretary of State (now quashed), incorporating the Inspector's recommendations		05/12/2018
CD10.34	Judgment by the High Court in relation to the Secretary of State's decision		14/06/2019
CD10.35	MHCLG letter re. need for further inquiry		09/07/2019
CD10.36	Clyde & Co response to MHCLG		18/07/2019
CD10.37	Milton Keynes BC response to MHCLG		30/07/2019
CD10.38	Wavendon Parish Council response to MHCLG		24/07/2019
CD10.39	Woburn Sands Town Council response to MHCLG		16/07/2019
CD10.40	Cllr Hopkins response to MHCLG		11/07/2019
CD10.41	Local resident response to MHCLG		19/07/2019
CD10.42	MHCLG letter re. second inquiry		16/08/2019
CD10.43	PINS letter re. second inquiry		22/08/2019
CD10.44	Inspector's Note of the Pre-Inquiry Meeting		
CD10.45	Email correspondence - Council were going to introduce new evidence to seek to justify 33 of the sites within their June 2019 trajectory		12/12/2019

CD11 - External Reports			
CD11.1	"Start to Finish How Quickly do Large-Scale Housing Sites Deliver?", Nathaniel Lichfield and Partners		November 2016
CD11.2	HBF Survey - Chairman's Update		
CD11.3	Home Builders Federation Planning Policy Conference presentation by John Stewart		2016
CD11.4	Housing Delivery on Strategic Sites, Colin Buchanan		2005
CD11.5	Urban Extensions Assessment of delivery rates, Savills		2013
CD11.6	University of Glasgow - (CLG housing markets and Planning Analysis Expert Panel) Factors affecting build out rates		February 2008
CD11.7	Sutton Coldfield Green Belt Sites Phase 2 Report of Study, PBA		June 2014
CD11.8	Hourigan Connolly - An interim report into the delivery of Urban Extensions 2013		
CD11.9	Ruth Stainer DCLG Planning Update		
CD12 - Niko Grigoropoulos Proof additional documents			
CD12.1	Historic England Designation Report, Wavendon House Landscape		1 November 2019
CD12.2	Final SAP Issues and Options Consultation Document		September 2014

CD12.3	Council's note submitted at the Pre-inquiry meeting re reasons for refusal		01/11/2019
CD12.4	Woburn Sands neighbourhood Plan Map		July 2014
CD12.5	MK Settlement Boundary Study		November 2017
CD12.6	Plan:MK Proposals map Sheet 4 extract		March 2019

PLANS

- Plans A
1. Site Location Plan PL-X-001 rev. B
 2. Proposed site access drawing no.WO1188-101 rev.PO5
 3. Proposed site access drawing no.WO1188-1021 rev.PO3
 4. Site Location Plan PL-X-001 rev.B (A1)
- Plan B
- Illustrative layout PL-X-004 rev.C
- Plan C
- Parameters Plan PL-X-003 rev.C

INQUIRY DOCUMENTS (FROM FIRST INQUIRY)

- ID01
- Town and Country Planning (Development Management Procedure) (England) Order 2015, extract
- ID02
- Statement of Common Ground
- ID03
- Opening Statement – Peter Goatley
- ID04
- Opening Statement – Tim Straker
- ID05a
- Housing figures, updated
- ID05b
- Summary; housing monitoring
- ID06
- Updated implications of using Core Strategy trajectory
- ID07
- Written objections from Steph Foster
- ID08
- Draft conditions 1
- ID09
- Draft Section 106 Agreement 1
- ID10
- Draft Section 106 Obligation 1
- ID11
- Development Brief for Walton Manor, Walton
- ID12
- Interventions by Milton Keynes Council to 'boost the delivery of housing'.
- ID13
- Minister opens the dual carriageways of the A421, helping to develop 2,900 new homes, October 2015
- ID14
- Funded road schemes
- ID15
- Eastern Expansion Area Delivery Pack
- ID16
- Strategic Land Allocation Delivery Pack
- ID17
- Programme of development on appeal site
- ID18
- Draft Section 106 Agreement 2

ID19	Draft Section 106 Obligation 2
ID20	Draft conditions 2
ID21	Closing submissions – Tim Straker
ID22	Closing submissions – Peter Goatley
ID23	Signed Section 106 Agreement 3
ID24	Signed Section 106 Obligation 3
ID25	Suggested conditions 3
ID26	Letter dated 30 August 2017 refusing to recover the appeal for decision by the Secretary of State
ID27	Letter dated 31 October 2017 recovering the appeal for decision by the Secretary of State

DOCUMENTS (FROM FIRST INQUIRY)

Document 1	List of persons present at the Inquiry
Document 2	Conclusion and proof – Roland Bolton
Document 3	Appendices 1-35, folder 1 - Roland Bolton
Document 4	Appendices 36-62, folder 2 - Roland Bolton
Document 5	Supplementary proof and appendices 1-4 - Roland Bolton
Document 6	Proof and appendix – Katy Jordan
Document 7	Summary proof – Mary Fisher
Document 8	Proof – Mary Fisher
Document 9	Appendices A-D – Mary Fisher
Document 10	Summary proof – Tim Waller
Document 11	Proof and appendices 1-13 - Tim Waller
Document 12	Supplementary proof and appendices 1-6 - Tim Waller
Document 13	Summary and planning proof - Jon Goodall
Document 14	Appendices 1-18 to planning proof - Jon Goodall
Document 15	Summary and housing land availability proof - Jon Goodall
Document 16	Appendices 1-20 to housing land availability proof - Jon Goodall
Document 17	Statement - Cllr David Hopkins
Document 18	Objection letters on behalf of Wavendon Residential Properties Limited and Merton College Oxford - Ian McGrane <ul style="list-style-type: none">A. Letter of objection from Integrated Transport LimitedB. Letter of objection from Heather Pugh, Partner, David Lock Associates
Document 19	Statement - Cllr Jackie Jeffreys
Document 20	Statement - Chris Jenner <ul style="list-style-type: none">A. Technical Objection Report
Document 21	Statement - Alistair Ewing
Document 22	Statement - Judith Barker
Document 23	Bundle of representations in respect of the appeal
Document 24	Inspector's index to representations
Document 25	Index to Core Documents



Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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