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# Appeal Decision

Inquiry held on 3 and 5 September 2019 and 28 to 31 January 2020

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 April 2020

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**Appeal Ref: APP/P0240/W/16/3164961**

**Land to the west of Langford Road, Henlow, Bedfordshire SG16 6AF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Limited against the decision of Central Bedfordshire Council.
  - The application Ref CB/16/02721/OUT, dated 8 July 2016, was refused by notice dated 6 October 2016.
  - The development proposed is up to 135 residential dwellings (including up to 35% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access points from Langford Road and associated ancillary works.
  - This decision supersedes that issued on 16 August 2018. That decision on the appeal was quashed by order of the High Court on 29 January 2019.
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## DECISION

1. The appeal is dismissed.

### PART 1

2. This section deals with several matters to provide the necessary background to the reasoning on the main issue.

### The Appeal

3. The appeal is being redetermined after the appellant's successful section 288 challenge of the original appeal decision<sup>1</sup>. The judgement was directed to a single ground<sup>2</sup>. The Court concluded that the Inspector erred in law in his failure to properly grapple with and provide reasons for departing from the earlier conclusions of Inspectors addressing the same issues in respect of Policy DM4, and in particular the conclusions of the Inspector in the most recent Meppershall appeal<sup>3</sup>.
4. After consideration of the submissions by the appellant and the Council I intend to determine the appeal afresh and not to confine my attention to reviewing the quashed decision, which now has no legal effect. However, the quashed

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<sup>1</sup> *Gladman Developments Limited v Secretary of State for Housing Communities and Local Government and Central Bedfordshire Council* [2019] EWHC 127 (Admin)

<sup>2</sup> Op cit paragraph 13: whether the inspector erred in considering the true nature of the decision in the *Daventry* case and whether it had a material consequence as to the merits of whether Policy DM4 was out of date, or alternatively that he failed to give adequate reasons for departing from the judgement formed by inspectors in earlier appeal decisions that the policy was out of date.

<sup>3</sup> OP cit paragraph 39

decision is a material consideration. The Council drew my attention to the principle of consistency to which I will have full regard<sup>4</sup>.

5. Since the original decision in 2018 the evidence presented by the appellant and the Council has been reviewed and updated, taking into account the changes to national planning policy in the National Planning Policy Framework and the revisions to the Planning Practice Guidance. Supplementary evidence was submitted to address the reasoning in the quashed decision on the issue of character and appearance, which covered landscape character, visual impact and coalescence. The 'library' of appeal decisions on proposed residential development in Central Bedfordshire and other local authority areas were updated regularly. After the close of the inquiry the Council drew my attention to two further appeal decisions, which were then forwarded to the appellant. I did not consider it necessary to invite submissions because the main parties had set out their cases comprehensively on the matter of 'most important policies' and the 5 year housing land supply (5YHLS) and the decisions raised no new matters.
6. I confirmed with the appellant and the Council that an accompanied site was not necessary, given that access onto the land was not required and everything that needed to be seen of the site and surrounding area could be viewed from publicly accessible places including public rights of way. I am satisfied that the unaccompanied visits I made to the area enable me to come to a suitably informed decision.

### **The Proposal**

7. The planning application was made in outline. Appearance, landscaping, layout and scale are reserved matters. Approval is sought for access at this stage, although confined to details of the main site access. There are two plans submitted for approval: the location plan and the amended plan of the layout of the proposed junctions onto Langford Road<sup>5</sup>.
8. At the inquiry the appellant confirmed that the development framework plan and the masterplan are for illustrative purposes only. The purpose of the illustrative masterplan is to provide one iteration of how the site could be developed with 135 dwellings and associated infrastructure, indicating key urban design principles. The figure of 135 dwellings was used for assessment purposes in the technical reports and is accepted as a maximum in the current proposal.
9. A unilateral undertaking, dated 18 May 2018 and made under section 106 of the 1990 Act, was given by the landowner and the appellant to the Council to secure affordable housing, open space and contributions towards education, transport and leisure facilities. A deed of variation dated 30 January 2020 updated details of wording, amended the contributions towards sports facilities, clarified the educational establishments that would provide additional capacity and introduced a waste and recycling contribution. The Council accepted that the planning obligations (as varied) satisfactorily address the second reason for refusal.

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<sup>4</sup> RD8 paragraphs 1-3 and RD25 paragraphs 1-4 and related judgements including *Davison v Elmbridge* [2019] EWHC 1409 (Admin)

<sup>5</sup> Location Plan ref 6701-L-01 C and Access Plan 4746/40/01B

10. The location plan identifies in red the application site of 6.29 hectares (ha) and to the west in blue an area of adjacent agricultural land in the same ownership (approximately 1.12 ha<sup>6</sup>) (the blue land). When determined by the Council and at the time of the first appeal the blue land was proposed as a community park, to complement the open space on the site. It was proposed to be managed as part of the open space, as set out in the unilateral undertaking. The Inspector in the quashed decision observed that there was no certainty how the community park would be provided<sup>7</sup>.
11. In the updated written evidence the term community park has been deleted and soft landscape enhancements are proposed. The final confirmed position is that the blue land would be seeded with wild meadow grass, have some small measure of woodland planting and be subject to a mowing and management regime. Public access will be granted to it and across it<sup>8</sup>. The appellant maintained that there would be no material change in the use of the blue land.
12. The appellant explained the blue land was excluded from the residential site for two reasons. A small area falls within an Important Countryside Gap and secondly because of its location in the flood plain. A condition requiring the submission of a scheme of landscaping on the blue land was likened to an approach found satisfactory by the Secretary of State elsewhere.
13. I consider the position on the blue land remains unclear. The blue land is included within the Open Space area as defined in the undertaking<sup>9</sup>. With reference to Schedule 2 the Open Space has to be used for purposes of public recreation and amenity. Reading the document as a whole the blue land is to be used only for public recreation and amenity, which to my mind exclude use for agriculture. This use would be consistent with the description of the blue land as a 'community park' in the original proposals.
14. No planning condition was put forward by the appellant specific to the landscaping of the blue land. More importantly the appellant did not satisfactorily address how the open space use would be authorised in planning terms given the existing agricultural use of the land and the exclusion of the blue land from the application for development. Alternatively, 'agriculture' includes use as meadow land<sup>10</sup>. If the blue land is now intended to remain in agricultural use, the appellant did not take the opportunity to clarify and confirm the future agricultural use of the land through the deed of variation.
15. A consequence of this lack of clarity is uncertainty over the future use and contribution of the blue land to the landscaping and green infrastructure as part of the residential development and hence the effect on the setting of the village.
16. A screening direction was issued dated 20 September 2017 under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations). In exercise of the powers conferred by Regulations 14(1) and 7(5) of the EIA Regulations, the Secretary of State directed that the development is not Environmental Impact Assessment development.

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<sup>6</sup> GDL 3/PS paragraph 2.8

<sup>7</sup> Decision dated 16 August 2018 paragraph 51

<sup>8</sup> RD26 paragraph 79

<sup>9</sup> 'the Open Space' means the informal open space and landscaping including the Play Area for use by the general public to be provided on the Site and the land edged blue on the Plan in accordance with the Planning Permission and the Open Space Works Specification (clause 1.1.39)

<sup>10</sup> Meaning of agriculture, section 336 of the 1990 Act

## Planning Policy

17. The development plan includes:

- The saved policies of the Mid Bedfordshire Plan First Review (2005).
- The Central Bedfordshire Core Strategy and Development Management Policies adopted in 2009 (the CSDMP).
- The Central Bedfordshire (North) Site Allocations Development Plan Document (2011).

18. There is not a single adopted Local Plan in place that covers the whole of the Central Bedfordshire Area. The CSDMP relates to the north part of the authority area only. The appeal site is not allocated for development within the Site Allocations DPD, a factor that carries no particular weight in this appeal.

19. The Central Bedfordshire Landscape Character Assessment January 2015 (the CBLCA) is a revision to the previous Landscape Character Assessment for the county of Bedfordshire in response to the change in administrative boundaries.

20. The Local Plan for Central Bedfordshire will set out the strategy for the area for the period 2015 to 2035. The initial examination sessions on the emerging Local Plan were completed in July 2019. Further work including a review of the Sustainability Appraisal is ongoing and reconvened hearings are expected to take place later in the year. In view of stage reached in its preparation and the likelihood of modifications, the emerging Local Plan and policies have limited weight. I will rely on the policies in the adopted development plan.

21. Material considerations include the National Planning Policy Framework (the Framework) and Planning Practice Guidance.

22. The Framework in paragraph 11 states that decisions should apply a presumption in favour of sustainable development. For decision taking this means approving development proposals that accord with an up-to-date development plan without delay; or where there are no relevant development plan policies or the policies which are the most important for determining the application are out-of-date, granting permission unless ..... (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole (*known as the tilted balance*).

23. Therefore for the purposes of paragraph 11 deciding whether the most important policies are out-of-date is essential. This involves consideration as to whether policies may have been overtaken by things that have happened since the plan was adopted, either on the ground or in some change in national policy, or for some other reason. This assessment can be either a matter of fact or a matter of both fact and judgment.

24. The Framework in paragraph 213 also states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework.

25. Having identified the most important policies and examined each policy to decide whether or not it is out-of-date, it is then necessary to assess all of the

basket of most important policies in the round to determine whether, taken overall, they could be concluded to be out-of-date.

*Most important policies*

26. The Council considers that the most important policies for determining the appeal are: CS2, CS7, CS14, CS16, DM3 and DM4, which are the policies cited in the reasons for refusal. The appellant considers that Policies CS1, CS5, CS6 and DM14 should be added to the list of most important policies for determining the appeal<sup>11</sup>. The appellant considers Policies CS1, CS5, CS6 and DM4 are out-of-date<sup>12</sup>.
27. In my view there is a distinction between the 'relevant policies' and the 'most important policies' for determining the application/appeal. In this case, relevant policies include those that set the scene or context, the development control-type policies and those that cover matters that are not controversial in respect of the development, bearing in mind the outline nature of the application. Most important policies are those that directly concern the determining issue(s) in dispute.
28. In this respect it is worth going back to the quashed decision which clearly focuses on the effect on character and appearance and Policies DM4, CS14 and CS16. I consider this remains the position. In essence, if no harm is found to local character and appearance, or the effects are positive, the appeal probably would succeed. In this a parallel may be drawn with the Clifton appeal decision<sup>13</sup>. The volume of material on the 5YHLS that has been submitted provides the context, informs the balancing exercise, as well as potentially being a determining factor in whether or not to apply the tilted balance.
29. In conclusion the most important policies for determining the appeal are Policies CS14, CS16 and DM4. Policies CS1, CS2, CS6, CS7, DM3 and DM14 are relevant policies. They cover the topics of development strategy, developer contributions, delivery of housing, affordable housing, high quality development and landscape and woodland. Policy CS5 has little relevance because it provides a framework for distribution of growth through the Site Allocations DPD and adds little to Policy CS1 in respect of the current proposal. A similar conclusion was reached by the Inspector in the quashed decision.
30. The statement of common ground also identified Policies CS3, CS4, CS13, CS15, CS17, CS18, DM1, DM2, DM10, DM15, DM16 and DM17 as relevant policies. They cover the topics of healthy and sustainable communities, accessibility, housing mix, responding to climate change, heritage including archaeology, biodiversity, green infrastructure and greenspaces. They would inform the planning conditions in the event of a grant of planning permission.

*Examination of policies*

31. Policy CS14 requires development to be of the highest quality. The first bullet point is particularly important to the outline proposal because it refers to respecting local context, the varied character and local distinctiveness of Mid Bedfordshire's places in design and the use of a range of urban design tools. It is consistent with the Framework's policy to create high quality buildings,

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<sup>11</sup> The Council and the appellant in their closing submissions used the word 'appeal' and not 'application'.

<sup>12</sup> RD26 paragraph 6

<sup>13</sup> CD 15.23

ensuring development will function well and add to the quality of the area, are sympathetic to local character and history, and optimise the potential of the site. The policy is not out-of-date and has full weight.

32. The site is in a rural, countryside location. In summary Policy CS16 Landscape and Woodland seeks to conserve and enhance the varied countryside character, local distinctiveness and landscape features, with particular reference to the Chilterns AONB and the Forest of Marston Vale. The CBLCA is now the relevant document, not the Mid Bedfordshire Landscape Character Assessment cited in the policy. This update does not have any significance for current purposes<sup>14</sup>. There is consistency with the Framework which requires policies and decisions to contribute to and enhance the natural and local environment. One of the stated ways of doing so is by recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystems, including the economic and other benefits of the best and most versatile agricultural land and of trees and woodlands. The policy is not out-of-date and has full weight.
33. I have focused on Policy CS16 rather than the companion Policy DM14 because CS16 was cited in the first reason for refusal and also because of the outline nature of the application. Policy DM14 adds very little but even if included as a most important policy it is not out-of-date for similar reasons.
34. Policy DM4 addresses development within and beyond settlement envelopes. Much of the policy is concerned with encouraging community facilities and allowing housing, employment and other settlement related development within the envelopes of a hierarchy of settlements, identified through Policy CS1, in order to promote sustainable communities. Provision is also made for certain types of recreation and community related facilities adjacent but outside the envelope. Otherwise, limited extensions to gardens is identified as the only potentially acceptable form of development beyond settlement envelopes.
35. The reasoned justification to Policy DM4 explains that the settlement envelope reflects the character of the predominant land use, using the most appropriate and clear physical features on the ground. Envelopes are not an attempt to define the extent of a particular town or village community and they are to assist in consistent application of policies in controlling development. Settlement envelopes are also a means of protecting the physical identity and separate character of places. Particular reference is made to Policy CS7, which supports proposals for 100% affordable housing and allows for exception schemes adjacent to settlement envelopes, providing certain criteria are met. Critically, the purpose of the policy is not to identify land for meeting the housing requirements, a matter for a Site Allocations Development Plan Document.
36. Developing sustainable communities and enhancing local character are consistent with policies in the Framework to enhance and maintain the vitality of rural communities, identifying opportunities for villages to grow and thrive and, as noted above, to respect local character and history, recognising the intrinsic character and beauty of the countryside. The use of settlement envelopes is not precluded by the Framework.

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<sup>14</sup> The appellant sought to attach importance to the policy reference being to the earlier Landscape Character Assessment but did not pursue the matter in the updated evidence in December 2019.



37. Inspectors have concluded that Policy DM4 shows some inconsistency with the Framework in so far as it does not distinguish between different landscapes or protect landscapes commensurate with their status. I do not see this as a primary purpose of this policy and would look rather towards Policy CS16. Moreover, the policy itself does not state the countryside will be protected for its own sake. The policy has also to be read alongside other policies in the plan. There is not a blanket ban on development in the countryside - for example Policy DM12 provides for commercial development on horticultural or redundant agricultural sites in the countryside.
38. In Central Bedfordshire a significant amount of residential development has been granted planning permission beyond settlement envelopes. The appellant argues that this indicates the policy is out-of-date because it was not formulated to allow for the requirement of the Framework to boost the supply of housing provision. I recognise that since the plan was adopted the housing requirement has increased and the role and extent of settlements probably would be reviewed in the preparation of a new plan. However, as explained above, the objectives and purposes of the policy are broader than housing provision.
39. To summarise, Policy DM4 is not fully consistent with the Framework or the scale of development now taking place in the District. Nevertheless, the policy is not 'very restrictive' as claimed by the appellant and accommodates sustainable development based on objectives that are consistent with the Framework. I conclude the policy is not out-of-date and has moderate weight.

*Appeal decisions*

40. I have referred to all the appeal decisions submitted as documents in coming to the above conclusions. In doing so I have taken account of the differing appeal procedures and cases, the amount of detail in the reasoning, the decision date and the national planning policy current at the time of the decision. In the revised Framework published in July 2018 paragraph 11 became the key paragraph on the presumption in favour of development (formerly paragraph 14). Significantly in paragraph 11(d) the out-of-date test relates to 'most important policies for determining the application', replacing 'relevant policies' in the 2012 Framework.
41. The earlier appeal decisions varied in the policies considered to be out-of-date and the approach taken in respect of Policy DM4, generally where much of the dispute focussed. The Meppershall decision<sup>15</sup> (cited in the challenge) was one where DM4 was found to be out-of-date, based mainly on the policy's blanket protection of the countryside outside settlement boundaries and its effect to frustrate the ability to achieve a 5YHLS. The Inspector noted a similar conclusion was reached in several other decisions (including Silsoe and Stotfold) and distinguished his finding from those where a different conclusion was reached<sup>16</sup>.
42. Since the Meppershall decision in May 2018 the understanding of the objectives of Policy DM4 has evolved. Following the publication of the revised 2018 Framework the common theme is one where Inspectors, who have considered the matter in any detail and come to a conclusion, have supported the

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<sup>15</sup> CD 14.29

<sup>16</sup> op cit paragraphs 17 to 23

Council's case and attached moderate weight to the policy. There is no instance where Policy DM4 was found to be out-of-date.

43. As to the policies identified as 'most important', the probability is that the details of the proposal, the evidence presented and issues in dispute have been very relevant considerations and therefore Inspector's conclusions could differ. However, significantly in all decisions post June 2019, where a firm conclusion was reached, none of the policies identified as most important were found to be out-of-date. There is no support for either Policy CS1 or Policy CS5 being a 'most important policy'. Full weight is attached to Policy DM14. I note the appellant's reliance on appeals where Policy CS5 was found to be a relevant policy and out-of-date but those conclusions were based on the paragraph 14 test in the 2012 Framework.

#### *Conclusion*

44. The most important policies for determining the appeal are Policies CS14, CS16 and DM4. When taken as whole, these policies are not out-of-date for the purpose of the decision and the tilted balance is not triggered.
45. The tilted balance may apply if the Council cannot demonstrate a five year supply of deliverable housing sites, an issue I will consider in detail later in the decision.

## **PART 2**

### **Main Issue**

46. In light of the common ground between the appellant and the Council, the main issue centres on whether the proposal would promote sustainable development in the rural area, having particular regard to (a) the effect on landscape character including settlement pattern and on the appearance of the area, and (b) the contribution to local housing requirements, including affordable housing. Additional planning matters to weigh in the balance include the effect on the best and most versatile agricultural land; the effects on community services, facilities, green infrastructure and open spaces; the ability to offer a genuine choice of travel modes and accessibility to employment, services and facilities.

### **Reasons**

#### **Character and appearance**

##### ***Site context***

47. The site is in the countryside, outside and immediately to the north of the boundary to the settlement envelope for Henlow<sup>17</sup>. The boundary to the south eastern corner of the site adjoins residential properties within the envelope on Langford Road but the remainder of the southern boundary adjoins the designated Important Countryside Gap between Henlow and Clifton (Policy CS21 of the Mid Bedfordshire Plan First Review). A small ribbon of development lies immediately to the north of the site.
48. The land has no formal landscape designation. The Council and the appellant agree that the site is not a 'valued landscape' within the terms of the

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<sup>17</sup> CD 8.12 Henlow Inset 28 (Proposals Map)



Framework (paragraph 170(a)). Nevertheless, landscape does not have to be designated to be of value and may be of value locally for a variety of reasons. The loss of undesignated countryside is capable of being harmful in the planning balance.

49. There is a good network of public rights of way in the locality, enhanced by permissive paths. Walks are promoted by information leaflets and on my site visits the paths were well used by people enjoying informal recreation in the countryside surroundings. I agree with the Council that this community use adds value to the natural and local environment.
50. With reference to the CBLCA, the site lies within the Landscape Character Type 4: Clay Valleys and Landscape Character Area 4C: Upper Ivel Clay Valley (the LCA). The level lowland of the LCA is characterised by mixed land use, predominantly of arable farmland with some pasture along the river courses, plus substantial areas of settlement. The large and medium scale geometric arable fields are bounded by hedgerow in mixed condition with some hedgerow trees, with more intimate scale pastoral fields along the River Ivel. Long views over the flat arable fields are sometimes interrupted by abrupt settlement edges. The wide views contrast with the more intimate enclosed views along the river corridors.
51. Expansion of towns and villages has been a feature of recent landscape change. Within the LCA large villages and market towns have extended along the connecting roads. Settlement is almost continual between Shefford, Clifton and Henlow.
52. The settlement analysis in the Design and Access Statement shows that historically Henlow was linear in form. New Town to the north consisted of a small group of buildings at the junction with Stockbridge Road. The short row of properties to the north of the appeal site are dated to sometime between 1921 and 1938. The growth of the village mainly occurred in the 1980s, with expansion more especially at its southern end and to the east. Expansion of New Town followed slightly later. Planning permissions from around 2010 have been for proposals of between 11 and 29 dwellings on sites towards the south of the village<sup>18</sup>. Despite the growth, the village retains a linear form and the main area of development is close to the historic core.
53. The appeal site is a medium size arable field bounded by hedgerows in mixed condition with some hedgerow trees, including a mature hedgerow along Langford Road. A greater degree of tree cover is present along the watercourse forming the boundary to the blue land. Baulk Wood lies immediately to the north. The site is integral to the landscape setting of the village and has typical characteristics that contribute to and distinguish the LCA.
54. The appellant describes the character of the site and its immediate context as urban (or settlement) fringe. This is not a description I would choose. The dense settlement of medium and large scale villages occurs to the west of Henlow. In contrast north of Henlow the 'urban' development in the locality has little influence on the site and, as the Inspector observed in 2018, the ribbon development on Langford Road is limited in extent. In my opinion the wind turbines in the distance or the small number of floodlights visible at the football

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<sup>18</sup> RD4

ground to the north, features particularly highlighted by the appellant, do not have a strong presence or influence on the local character.

55. Settlement is visible but to the west of Langford Road there is an abrupt change at the settlement edge to arable farmland. To the east lie the pastureland and meadowlands along the River Ivel. There are open views across the farmland, interrupted by blocks of woodlands and hedgerow field boundaries. The working farmsteads at Stockbridge Farm and Kingfisher Farm emphasise the agricultural land use. With reference to the CBLCA development guidelines, Langford Road is a secondary road. The Council's landscape officer made a good point in saying this highway does not bring an urban quality to the site but provides road users with rural views. I consider the site and its immediate context are more heavily influenced by rural attributes and have a rural character.
56. In summary, I agree with the appellant that the landscape is not of any particular scenic quality yet neither is it unattractive. The site and its immediate context include features and characteristics which are typical of the local landscape character and is generally representative of the wider landscape character area. Little physical change has occurred since the consideration of the proposal and the decision in August 2018.

### ***Landscape and Visual Appraisal***

57. The illustrative plans demonstrate the scale of the proposal and that up to 135 dwellings could be accommodated within a landscaped site. The plans give an idea of the balance between the amount of land that would be occupied by built development as opposed to the soft landscape and green infrastructure. They do no more, given the basic outline application. It is not possible to draw firm conclusions about the layout, design and landscaping of the proposed development. My assessment proceeds on this basis. The appellant's assessment of landscape and visual impact, which is based on the illustrative layout of buildings and open spaces, has been treated with due caution.
58. The appellant expected that the development would be built out in totality over two to three years<sup>19</sup> and that newly planted trees would grow sufficiently to be above the heights of new houses after about ten years. The retained tree stock would require management. The illustrative landscape and green infrastructure proposals indicate structural planting would be mainly on the western side of the site and into the blue land. However, a full understanding of the landscape contribution is dependent on details of a landscaping scheme and an implementation and management programme. I have already explained why there is a lack of clarity and uncertainty in the use and contribution of the blue land to the scheme.

### ***Effect on character***

59. The proposed residential development would bring a very substantial change to the use of the land and to the type and level of activities there. The scheme would result in buildings, highways and new engineered access arrangements, lighting and other infrastructure, domestic gardens, planting and amenity spaces of varying degrees of informality. In short, the land would change from an agricultural field that forms part of the wider countryside to a housing estate

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<sup>19</sup> This time period was given in oral evidence in the round table discussion on landscape character. A build programme of three to four years is given in GDL 4 UPDATE/PS paragraph 12.1.7.

- of up to 135 homes. The issue is whether or not this change would be undesirable.
60. I agree with the appellant that the development alone would result in little harm to the balance of the key landscape characteristics across the LCA as a whole, whether in the short or longer term. Nevertheless, it is more helpful to consider the changes on the site and its immediate context in order to understand the likely effects on the landscape and the settlement character.
61. The land is not in a designated countryside gap and nor would the development result in coalescence between Henlow and Langford. However, that does not mean that the site should be seen as an opportunity to link the existing ribbon development along Langford Road to the north and south of the site. The northern outlier has been physically separate from the village for many years and there is no evidence of a policy or community objective to incorporate the building group to unify the village settlement.
62. The aerial overlay<sup>20</sup> clearly demonstrates the size of the site in comparison to its surroundings. A simple measurement of the depth of the site fails to convey the proposed extent of built form across all the site area. The proposed amount of housing development contrasts sharply with the small scale fragmented ribbon development along Langford Road. Newtown, to the south of Stockbridge Road, is well related to the core of the village. North and west along Stockbridge Road the residential properties are primarily frontage development and at the western end have large open gardens to the rear.
63. The site context has shown how the countryside area north of Henlow is important to the identity and setting of the village. The proposed residential development, by reason of its very significant size, would encroach in a harmful way into an area that provides important separation between Henlow and Langford and which has been less affected by urbanising influences. This would be an outcome that the development guidelines in the CBLCA seek to avoid.
64. Along Langford Road, the field boundary to the site is formed of a mature hedgerow of largely native species (predominantly hawthorn), as well as individual trees, secondary vegetation and a ditch. Adjacent to the highway is a green verge, street lighting and narrow metalled footway. The hedgerow has two gaps that allow for access by agricultural vehicles and which also provide glimpses into the field behind. The hedgerow boundary is a feature typical of the surrounding countryside and contributes positively to the rural character of the road.
65. The proposal would result in two new access points from Langford Road into the new residential area to the west, in different places to the existing gaps. Each access would be formed by a carriageway of 5.5 metres (m) with a 2.0 m footway each side and with visibility splays of 2.4 m x 215 m. The highway works would require the removal of two 20 m sections of hedgerow. Additional pedestrian links are proposed onto Langford Road<sup>21</sup>. The highway authority has requested physical measures to help reduce speed such as a village gateway, raised table junctions and vehicle actuated signs<sup>22</sup>.

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<sup>20</sup> GDL 3/A Appendix 3

<sup>21</sup> RD1 The statement of common ground at paragraph 2.3.2 states two pedestrian access points are proposed from Langford Road

<sup>22</sup> A planning obligation makes provision for a contribution towards a Traffic Regulation Order for reducing the speed limit on Langford Road.

66. All these elements, not only the physical form but the associated activity, would contribute to a harmful loss of rural character. The appellant indicates new dwellings would be set back behind a broadened and enhanced landscape frontage. However, even if the detailed scheme adopted such a layout, the character of the frontage would be more akin to a residential street. Overall the proposal would have a strong urbanising influence and lead to fragmentation of the boundary hedgerow. For all these reasons I disagree with the appellant's analysis that the proposal would result in limited change to the character of this stretch of Langford Road.
67. The Council has drawn attention to the matter of sensory perception related to all the activity and movements associated with the proposed residential site and the introduction of street and other lighting. This marked change from an arable field with little activity for most of the time to a land use with a sustained active environment would emphasise the detrimental change in character to users of the countryside and others in the local community. The Parish Council in objecting to the proposal described the extension of built form into the countryside as unacceptable.
68. I recognise that the scheme would comply with other development guidelines in the CBLCA. The site slopes gently westwards towards Henlow Brook. Changes to the relatively flat landform would be primarily to accommodate building plots and achieve access requirements, more especially at the junctions with Langford Road. This physical effect would be negligible. The development would provide opportunities for enhancement of vegetation and watercourses linked to the provision of green infrastructure and surface water drainage arrangements. There also would be opportunities for additional planting to strengthen the western, northern and southern boundaries of the development. The beneficial effect would increase over time as planting matures. Pedestrian connections from the site out onto Langford Road would link to the public right of way leading east to the River Ivel.
69. In conclusion, the effect on landscape character would be localised. The loss of the greenfield to housing development and the associated highway and other infrastructure would have a harmful effect on the settlement pattern and the local landscape character. The conservation and any enhancement of perimeter planting and new amenity planting would be incidental.

### ***Visual impact***

70. The appellant's defined zone of theoretical visibility (ZTV) identifies the land from which potential views towards any part of the proposed development would be possible. The ZTV is very limited to the south and north mainly because of the existing settlement and woodland. It is relatively more open to the east and west, although even from these directions the subtle variations in topography and intervening landscape features limit the extent of views. I walked along all relevant stretches of the public rights of way network and observed the site from all identified viewpoints as well as from other locations. Views throughout the year have to be considered, allowing for the differences in visibility in the months when trees and vegetation are not in full leaf. Also, the magnitude and type of visual impact would be expected to lessen over time as new planting has a more beneficial effect.
71. The proposed development would not interrupt the visually sensitive views identified by the CBLCA. Nevertheless, currently the site forms part of the rural

scene, essentially open farmland, blocks of woodland, field trees and hedgerows. Farm buildings and dwellings on the edges of settlements are well integrated into local views.

72. The existing residential development along Langford Road comprises the ribbon of development north of the junction with Stockbridge Road and some 320 metres to the north the small number of dwellings on the western side of Langford Road. The visual effects table describes the new housing being seen in the context of this existing development and linking the two. However, the new housing would not be confined to a frontage development. The new housing area would be served by internal access roads and be of a much larger scale. To describe it as 'a link' fails to convey the fundamental visual change that would result. Consequently, in my opinion the assessed overall visual effects upon completion and 10 years on are likely to be underestimated for a number of receptor groups.
73. The visual impact would be experienced mainly by those with a high visual susceptibility to change, namely residents living in homes adjacent to the site, people using public rights of way where attention is focused on the countryside and also the village communities where views make an important contribution to the landscape setting enjoyed by residents. The views are not of high scenic value but the network of footpaths and bridleways are important for relaxation and exercise. Routes close to the site, within easy distance of where people live, are likely to be the most frequented. The proposed new housing probably would not be visible from all points of a route. However, the viewpoints where the impact would be most adverse are close to car parking spots or where people are likely to stop and pause to enjoy the view. The effect would be of a much higher order than existing views of properties on the settlement edge and the very different features of wind turbines and football ground floodlights.
74. Travellers using their own vehicles on the adjacent highways of Langford Road and Stockbridge Road would be expected to primarily focus on the transport route and hence would be in the category of low visual susceptibility to change. However, the site is an integral part of the rural outlook. Users of local buses would not necessarily focus on the route but be more aware of the landscape and would be in the medium category. The loss of the site to housing would be readily apparent to travellers on Stockbridge Road, as well as Langford Road.
75. Therefore, whilst the ZTV is limited to the more immediate surroundings, the visual impact would affect receptors in the high and medium sensitivity categories to a large degree.
76. In the appellant's visual effects table and in subsequent analysis, no beneficial visual effects were identified. I take no particular issue with the appraisals for residents north of the site, at Stockbridge Farm or to the north east of Clifton or for users of public rights of way (Footpaths Clifton 4 and 6). The appraisals that rely in part on the creation of a link in development, rather than closure of a gap, underestimate the overall effect (Viewpoints 2, 3, 4 and 5). For some users of Langford Road and Stockbridge Road the effect is likely to be more adverse than indicated.
77. Since the original decision, additional evidence has been produced in respect of users of public rights of way to the north and west of the site and especially Viewpoint 10. From here I found there is a clear and direct view across to the site, which blends very easily into the farmed landscape and is seen



predominantly within the context of Baulk Wood to the north and belts of trees and hedgerows. Farm buildings, dwellings and glimpses of cars were more peripheral and incidental. The photomontage confirms that the proposed new housing would act as a visual stop to the view across the field in the foreground. Whilst maturing vegetation in time would help to soften the view of the housing when vegetation is in full leaf, there is no photomontage of a winter view. In my judgement the effect would be greater than the Minor Adverse in the appraisal.

### **Conclusions**

78. The proposed residential development for up to 135 dwellings, for a site located in the countryside outside the settlement envelope, conflicts with Policy DM4. The development would not respect local context or conserve the countryside character and local distinctiveness. There is conflict with Policies CS14 and CS16. The proposal would not contribute to and enhance the local environment and in this respect fails to comply with policy in the Framework.
79. My assessments and conclusions generally are consistent with those of my colleague in 2018.

### **Housing contribution**

80. The proposal offers the prospect of new homes for the community, including affordable housing. The central matter in dispute is whether the Council is able to demonstrate a 5YHLS. The purpose of the 5YHLS is to provide an indication of whether there are sufficient sites available to meet the local housing need for the next 5 years<sup>23</sup>. The answer will inform whether a tilted balance has to be applied in accordance with national policy in the Framework and also the weight to be attached to the benefits and disbenefits of the proposed development.
81. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old<sup>24</sup>. The appellant and the Council disagree on both the local housing need figure and the amount of deliverable housing land. The Council maintains that there is a 6.03 year supply, the appellant 2.58 years.

### **Local housing need**

82. Central Bedfordshire does not have a recently adopted local plan and in this type of situation the Framework states that local housing need should be calculated using the standard method set out in national planning guidance<sup>25</sup>. It is common ground that the standard method produces a local housing need figure of 2,428 dwellings per annum (dpa) for Central Bedfordshire.
83. The Council argues that this figure cannot be relied on in Central Bedfordshire because of problems with the data. The Council submits that the Strategic Housing Market Assessment (SHMA) is the only robust and reliable assessment of housing need that is based on a recognised methodology for which national

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<sup>23</sup> Planning Practice Guidance Housing supply and delivery, Paragraph: 003 Ref ID 68-003-20190722

<sup>24</sup> Framework paragraph 73

<sup>25</sup> Framework paragraph 73 and foot note 37



planning guidance has been published. The SHMA provides the basis for the local housing need at 1,600 dpa. There is no dispute that a buffer of 5% should be added.

84. The appellant submitted that the standard method in national policy should not be set aside, taking into account the context behind its endorsement and that the standard method is a key part of delivering the Government's commitment to deliver 300,000 homes each year. The national picture shows that Central Bedfordshire is not unique or even exceptional. In the appellant's view the Council's approach promotes uncertainty, opaqueness and a return to a system that national policy and guidance has sought to move away from.
85. There are two main areas of dispute that can be summarised as (i) whether or not a departure from the standard method is justifiable, and (ii) whether the Council's SHMA methodology is an appropriate alternative.
86. The Council's approach and methodology has been scrutinised in a number of appeals. Those post-dating the revised Framework dated February 2019 have particular relevance because they come after the clarification of national policy. The land west of New Road appeal<sup>26</sup> is of interest because the decision was subject to challenge by Gladman Developments Limited. In that case the Inspector decided that a requirement of 1,600 dpa represented a reasonable level of local housing need<sup>27</sup>. The challenge did not proceed beyond the permission stage and the appeal decision stands. The same Inspector in the Park Farm appeal (a different appellant) came to the same conclusion, noting that his finding was consistent with the approach taken by a number of Inspectors in determining recent appeals<sup>28</sup>. A very recent decision dated 24 February 2020 also found in favour of the Council's case<sup>29</sup>. In this last appeal the same witnesses appeared in relation to housing need and supply and it appears similar cases were presented to those I heard. The latest decision dated 16 March 2020 again supported the Council and found a clear and convincing justification for the application of a tried and tested method as defined in the SHMA<sup>30</sup>.
87. To complete the picture, the Council's methodology was not considered in any detail in the decisions for land at Sandy Lane, Pottton<sup>31</sup>, land off Broad Street, Clifton<sup>32</sup> and land off Clophill Road, Maulden<sup>33</sup>. The two appeal decisions where the Inspector found against the Council were determined through the written representation procedure<sup>34</sup>. I was informed the Council did not submit detailed evidence on the matter and therefore for current purposes they have much less significance than the decisions where evidence was probed and tested at a hearing or inquiry.
88. Consistency in decision making is important to local planning authorities and developers and to secure public confidence in the development management

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<sup>26</sup> Appeal ref APP/P0240/W/18/3206495 and W/18/3220640, decision dated 25 June 2019

<sup>27</sup> Op cit paragraph 61

<sup>28</sup> CD 15.21 Appeal ref APP/P0240/W/18/3204513 decision dated 21 October 2019 paragraph 79

<sup>29</sup> Land west of Langford Road, Appeal ref APP/P0240/W/19/3236423

<sup>30</sup> Land north of Sunderland Road Appeal ref APP/P0240/W/18/3219213 dated 16 March 2020.

<sup>31</sup> CD 15.20 Appeal ref APP/P0240/W/18/3213352 dated 15 October 2019

<sup>32</sup> CD 15.23 Appeal ref APP/P0240/W/18/3211229 dated 13 December 2019. As set out in paragraph 52 the inspector adopted a pragmatic approach in the circumstances and accepted the Council's position that it can demonstrate a 5YHLS (which was not to be taken as meaning necessarily agreement with the Council).

<sup>33</sup> CD 15.22 Appeal ref APP/P0240/W/19/3223970 dated 30 October 2019

<sup>34</sup> CD 14.45 Limbersey Lane appeal ref APP/P0240/W/18/3211551 and CD 14.44 Cobbitts Road appeal ref APP/P0240/W/19/3219983.

system. Having said that, an inspector must exercise his or her own judgement and may depart from an earlier decision (whether on the same site or elsewhere) if there are sound reasons for doing so and they are explained.

#### *Policy context*

89. The standard method for assessing local housing need was introduced by way of a revised Framework published in July 2018. This method is to support the Government's aim to ensure local planning authorities plan for the right homes in the right places in an open, transparent and sustainable way and to ensure the debate in each area focuses on how to deliver more, better homes rather than on how many homes are needed<sup>35</sup>. Following consultation, national planning policy was clarified in February 2019 and the Government's objective of significantly boosting the supply of homes reaffirmed. The standard method was confirmed to be the most appropriate approach for providing stability and certainty to the planning system in the short term<sup>36</sup>. Use of the standard method is not mandatory but the starting point for the planning process. Where a local planning authority decides that exceptional circumstances exist to justify an alternative approach, the expectation is that the Local Plan process will be the forum for examination. This point is clearly brought out in the definition of local housing need contained in the Glossary to the Framework.
90. Planning Practice Guidance explains that the standard method uses a formula to identify the minimum number of homes expected to be planned for, in a way which addresses projected household growth and historic under-supply. The method identifies a minimum annual housing need figure<sup>37</sup>. The 2014-based household projections are used within the standard method to provide stability for planning authorities and communities, ensure that historic under-delivery and declining affordability are reflected, and to be consistent with the Government's objective of significantly boosting the supply of homes<sup>38</sup>.
91. Therefore in the absence of an up to date development plan the expectation of national policy is that the standard method will be followed and that if a local planning authority wishes to use an alternative method the debate and scrutiny should be through the local plan process, not through individual proposals and section 78 appeals. However, I agree with the Council that whilst national policy is a material consideration that must be taken into account it is not a statute that must always be followed. The important point is that clear reasons must be given for departing from policy.

#### *Methodology*

92. The Council has explained consistently throughout, in this and earlier appeals, its concerns about the standard method conclusions for Central Bedfordshire and the overestimation of population growth<sup>39</sup>. The facts are not disputed by

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<sup>35</sup> Technical consultation on updates to national planning policy and guidance, paragraph 3, October 2018 Ministry of Housing, Communities and Local Government – GDL1 UPDATE/A Appendix 1

<sup>36</sup> Government response to Technical Consultation page 6 February 2019 Ministry of Housing, Communities and Local Government –GDL1 UPDATE/A Appendix 8 page 6.

<sup>37</sup> PPG Housing and economic needs assessment Paragraph: 002 Reference ID: 2a-002-20190220

<sup>38</sup> PPG Housing and economic needs assessment Paragraph: 005 Reference ID: 2a-005-20190220

<sup>39</sup> Council's Local housing need proof of evidence, particularly paragraphs 3.1 to 3.12

- the appellant<sup>40</sup>. Rather it is more a matter of interpretation of the data, including differences on adjustments and the relevance of London Boroughs.
93. A key point is that the official projections, the CLG 2014 projections that underpin the standard method, do not provide a realistic assessment of demographic growth for Central Bedfordshire. This is said to be due to problems with the ONS 2014-based sub national population projections caused by errors in the ONS mid-year population estimates. A likely underlying cause is attributed to errors in net migration.
94. To illustrate the point a number of factors or indicators are provided. For example, the 2014-based sub national population projections indicate Central Bedfordshire would fall within the top 10% of all local authorities in England in terms of population growth, with a rate of growth that is more than double the average. According to the mid-year estimates (MYE) between 2011 and 2015 there was a growth of 18,400 people (4,590 per year) compared to an increase of 21,600 people (average of 2,160 per year) for the 10 year period 2001 to 2011. In other words, the growth in four years was equal to 85% of the total growth for the previous ten years.
95. The uncertainty over the MYE for Central Bedfordshire has been recognised by ONS. Revised mid-year estimates for 2012 to 2016 reduced the official population estimate for mid-2016 by 2,206 persons, the seventh largest reduction outside London. In addition, other sources of administrative data support a conclusion that population is not growing as fast as suggested by the MYEs, including the Patient Register, school census and pensions data. House building rates for 2011 to 2015 show a similar picture.
96. In my view the evidence over a range of indicators provides strong support for the conclusion that the MYEs for the period since 2011 very significantly overestimate population growth in Central Bedfordshire. In turn the probability is that the standard method overestimates the local housing need for Central Bedfordshire. The issue then becomes whether, in the light of this evidence, there is justification for departing from the standard method when considered against the background of formulation of national policy and the Government's objective to boost housing supply.
97. The Framework states that strategic policies should be informed by a local housing needs assessment, conducted using the standard method unless exceptional circumstances justify an alternative approach. I consider the same benchmark should be applied in the current situation outside of the local plan process. The Council's evidence on local housing need refers to the circumstances in Central Bedfordshire being exceptional, although accepting that they are not unique. The higher 'truly exceptional' test put forward in the appellant's oral evidence was shown to have no basis when tested through cross examination.
98. The Council's consultant confirmed that in local housing need analysis carried out by Opinion Research Services (ORS) for over 50 local authorities the kind of systematic error in the MYEs has only been seen in two areas – Central Bedfordshire and Aylesbury Vale, and the errors are larger in Central

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<sup>40</sup> Accepted by their witness in cross examination. Concern was registered but not pursued in any detail about the Council's comments on an ongoing ONS research project (point (xii) on page 21 of Council's Local housing need proof of evidence).

Bedfordshire. Adjustments to the Aylesbury Vale MYEs have been endorsed by the Inspector examining the Aylesbury Vale Local Plan.

99. Data was presented to place Central Bedfordshire within the national context in the form of a set of six tables based on the changes ONS has made to the MYE figures for all local authorities in England. One finding is that Central Bedfordshire had the seventh largest reduction to the 2016 MYE (within the top 2.5% of all England local authorities outside London), which represented the 14<sup>th</sup> largest percentage reduction and the 13<sup>th</sup> largest reduction to population change 2011-2016. In addition, there is no area outside London and only Westminster and Kingston-upon-Thames within London, which ranks higher than Central Bedfordshire on all six of the measures<sup>41</sup>.
100. The appellant took issue with matters to do with the ranking and in response produced other tables, which are said to focus on the extent to which UPC<sup>42</sup> and revisions to the MYE have affected the 2014-based household projections.
101. The standard method applies equally to Greater London. Nevertheless, there is justification to exclude the London Boroughs from the ranking, as the Council has done, related to the characteristics of the population, the regional dimension and role of the Greater London Authority in plan making. I also prefer maintaining a distinction of the two adjustments made by ONS (related to MYE 2012 to 2016 and to UPC 2001 to 2011) in order to ensure clarity and transparency of the effect of each adjustment. The alternative method, involving averaging, promoted by the appellant may well mask significant differences between the adjustments, as shown by the example of Tendring. Thirdly, it seems more logical in the ranking to distinguish between positive and negative changes as opposed to concentrating on size alone. As the Council explained the two have quite different implications for the application of policy.
102. In conclusion, there are clear reasons for not applying the standard method in Central Bedfordshire (the legal test). There is the evidence to show that the circumstances are exceptional when compared to many other local authority areas (the policy test).
103. The Council relies on its SHMA as the only robust and reliable assessment of housing need for Central Bedfordshire. It uses the CLG 2014-based household projections as the starting point with adjustments to reflect local demography. As an alternative to the standard method, this approach has several advantages within Central Bedfordshire. The SHMA is informing the emerging Local Plan and so brings consistency of approach within the local authority area. It is in accordance with the transitional provisions made through national policy and is based on a recognised approach. The Inspectors examining the plan raised a number of questions related to the SHMA in the hearings last year<sup>43</sup>. Most recently, whilst reserving their position, they have indicated that reconvened hearing sessions will be used to discuss the new evidence related to the review of the Sustainability Appraisal<sup>44</sup>. At the present time there is little indication that the housing requirement will be substantially revisited. The

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<sup>41</sup> Council's Local housing need proof of evidence, paragraphs 3.11 and 3.12 and Appendix 1

<sup>42</sup> Unattributable Population Change

<sup>43</sup> RD5

<sup>44</sup> RD17

SHMA was endorsed by the Inspector in the Luton Local Plan, a neighbouring local authority area. There is consistency in approach.

104. Within the standard method, as step two, the average annual projected household growth figure is adjusted to take account of the affordability of the area. In Central Bedfordshire the uplift would be capped at 40%. The Council confirmed that the uplift is in the order of 15-16% in the SHMA.
105. Linked to this matter, as well as other concerns, the appellant put forward variations on the standard method, using the 2016 household projections as a demographic baseline and the standard method's affordability adjustment. These 'hybrids' produced local housing need figures of 2,195 dpa and 1,942 dpa compared to the 1,600 dpa from use of the SHMA<sup>45</sup>. In my view these hybrids are of little assistance because they do not use a consistent method advocated through national policy, whether as a transitional provision (the Council's SHMA) or the standard method. The Government made a very conscious decision in February 2019 not to take on board the 2016 household projections.
106. By way of a 'sense check,' the Council's housing need of 1,600 dpa represents an overall increase in dwellings of over 27% over the 20 year plan period, which is of a similar level to areas such as Cambridge and East Hertfordshire. It also would represent a 36% increase in housing provision in Central Bedfordshire when compared to the period 2001-2011. Housing growth in the District would not be frustrated, nor would a Government housing policy objective be undermined.
107. With all the considerations above in mind, at the present time and for the purposes of this appeal the Council's assessment of local housing need based on the SHMA provides the appropriate figure to use in considering whether a 5YHLS can be demonstrated.
108. This finding may be thought to be contrary to the conclusion I reached in an appeal in Tendring. However, the evidence and cases presented in that appeal were very different. In particular, the Council post February 2019 did not advocate a specific methodology or rely on the housing requirement in the emerging local plan and in effect accepted the use of the standard method. Agreement was reached between the main parties that Tendring District's 5YHLS ranged from 3.50 to 4.02 years. The errors linked to unattributable population change in increasing the local housing need figure were put forward by the Council as a consideration in deciding how much weight should be attached to shortfall in the 5YHLS. The reasoning in that decision on the technical consultation, prevailing national policy objectives and guidance is consistent with my reasoning in this current decision. Furthermore, I have approached the evidence and submissions by the main parties in this appeal with an open mind, which accounts for any perceived slight change in emphasis.
109. An additional consideration is the outcome of the challenge to the New Road decision. I know only the details found in the core documents submitted for this appeal. On that basis the decision by the Secretary of State to defend the appeal decision, including the Inspector's reasoning on national planning policy on housing land supply in the Framework, is significant. A further ground of

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<sup>45</sup> GDL 1 UPDATE/PS Table 1 page 27



challenge that was defended was the adequacy of the Inspector's reasoning in respect of the 'mix and match' hybrid approach. While recognising that the grounds were not subject to a full hearing, the judge's reasons for refusing permission were strongly worded.

### ***Land supply***

110. 'Deliverable sites' is the second component in determining whether there is a 5YHLS. The Glossary to the Framework states that 'to be considered deliverable, sites for housing 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'. I regard this as the primary test.
111. In particular, two categories of sites are identified in the definition. In summary, the first includes all sites which do not involve major development and have planning permission and all sites with detailed planning permission. Sites in this group are assumed to be deliverable unless there is "clear evidence" to the contrary. In the second category clear evidence is required that housing completions will begin on site within five years. This group includes sites with outline planning permission for major development, allocated in a development plan, with a grant of permission in principle or identified on a brownfield register.
112. The appellant submitted that the Glossary definition of Deliverable introduces two closed lists of what constitutes deliverable sites. An appeal decision dated 26 October 2018<sup>46</sup> is referred to in support of that view. However, the Inspector's conclusion was based on the wording of the definition in the July 2018 Framework, wording that was revised in the February 2019 Framework. Of significance in the current definition is the use of the phrase "In particular", which does not signal the lists are closed and all-embracing. In my view if a site does not fall within either of the two categories it may still be considered deliverable if it meets the primary test.
113. Planning Practice Guidance, dating to July 2019, includes advice on the type of evidence expected to demonstrate deliverability, such as current planning status, firm progress on an application or site assessment work, and clear relevant information on site constraints<sup>47</sup>. The emphasis is on site specific evidence, which indicates that knowledge of local conditions and views of the stakeholders involved are more likely to be of most relevance as opposed to studies and research of national trends. The urgency in Government policy also has encouraged local planning authorities to be pro-active and to engage more with land owners, developers and housebuilders. This appears to be the case in Central Bedfordshire, as indicated by the measures and approach adopted by the Council and the evidence of increased housing delivery over the last few years. Placed within this context, I have treated the studies and information on national and regional build out rates produced in the appellant's evidence with caution.
114. It was agreed between the parties that the housing land supply statement of 1 July 2019 and the supporting trajectory as of 30 June 2019<sup>48</sup> would form the basis of the assessment. Subsequent updated information on progress on sites

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<sup>46</sup> CD 15.25 paragraph 30

<sup>47</sup> PPG Housing supply and delivery Paragraph: 007 Reference ID: 68-007-20190722 Revision Date 22 July 2019

<sup>48</sup> CD 15.16 and CD 15.17



has become available, which I will take into account in reviewing the trajectory. To ignore it would not be consistent with the advice in the PPG to use the latest available information in decision-taking.

115. The Council has discounted the oversupply of dwellings from its overall housing requirement. I do not take issue with this approach, especially as the Council's approach is to spread oversupply over the whole monitoring period rather than the five year period as done with undersupply.
116. The Council has published a Housing Delivery Clause Technical Note (January 2019) with information about a build rate obligation for inclusion in a section 106 agreement. I have concerns about the necessity of this type of obligation and how effective this obligation actually would be in the event of slippage in the programme. The Council was not able to provide any assurances on how the use of an injunction would be an effective remedy. The obligation is useful in so far as it is primarily an indication of what the developer considered to be deliverable when the obligation was executed. Depending on the circumstances and on other evidence, an obligation may well amount to clear evidence that the site is deliverable such that housing completions will begin on site within five years. It is not necessarily or may not be sufficient assurance as to the timing and number of units completed over the time period.

*Individual sites*

117. There are a number of sites where delivery is disputed in one form or another. Two main considerations have been addressed – whether a site is deliverable and if so how many units would be completed over the five year period. The Council has accepted that Land at Steppingley Road and Froghall Road (50 units) is not deliverable.

Land at Chase Farm (HT005)

118. Outline planning permission for a mixed use development has been granted on this Council owned site and a masterplan approved, although no reserved matters have been submitted. The new spine road and other infrastructure will be provided by the Council and no constraints in their construction have been identified. There is a programme for marketing and transfer sale of phase 1 (in the order of 200 dwellings). I am satisfied that the site is deliverable. However, to expect delivery of homes in 2020/21 is over-optimistic, which the Council now accepts. Allowing for a delayed start on site by a year results in a contribution of some 264 homes to the supply (a reduction of 96 from 360 in the trajectory).

North of Houghton Regis (HT057)

119. I have focused on the next five years rather than anticipate delivery beyond. In my view the Council has provided clear evidence that the site is deliverable, having regard to the planning status (outline planning permission, approved design codes and masterplan), infrastructure provision and the involvement of a consortium representing landowners and house builders. As to delivery rates, the Council has moderated the figures suggested by the consortium to give a more realistic outlook. Even if there is some slippage at the outset, the latter part of the five year period has leeway to enable the projected 616 homes to be delivered.

North of Houghton Regis (HT058)

120. There was a degree of agreement on this site, narrowing down the area of dispute to parcels 2, 5, 7 and 8 (860 dwellings in total).
121. Since the trajectory date of 1 July 2019, reserved matters have been approved for parcel 7, which adds support to the projected delivery of 255 homes on this parcel.
122. The Council emphasised that delivery has commenced, which would lend momentum to the building programmes. No constraints were identified in the provision of infrastructure including the main road network. The appellant's evidence to a large extent focuses on build rates across the site as a whole. My preference is to look at the information on individual parcels, in view of the involvement of named housebuilders and knowledge of the Council's discussions with each of them.
123. Parcel 2 would provide some 109 homes. Reserved matters had not been submitted but were expected and would be guided by the approved design code. There is a good prospect of the delivery of these homes within the five year period.
124. Parcel 5 is anticipated to provide some 160 dwellings. The intent to progress development was indicated with a reserved matters application last year, albeit it was withdrawn due to design concerns. That being so a resubmission would be expected to progress more smoothly to enable delivery to be achieved as projected.
125. A reserved matters application was submitted for Parcel 8 in September 2019. The Council confirmed in oral evidence that it had not been determined. Nevertheless, I consider this application, together with the more general evidence on site development, justifies the inclusion of 336 homes in the supply.
126. To conclude, I agree with the total of 960 homes for the site referred to as North of Houghton Regis (HT058). The inclusion of 83 homes on parcel 1 (HT058(i)) and 260 homes on parcels 3 and 4 (HT058(ii)) was not disputed and there is no reason for me to consider them further.

East of Leighton Linlade (Clipstone Park) (HT078)

127. The appellant considers that the 287 dwelling 5 year contribution from this site should be deleted from the trajectory. It was confirmed that three sites at Clipstone Park (HT078a, b and c) were not disputed.
128. This large site has outline permission for a mixed use urban extension including some 1,201 homes. Development has commenced and 65 homes delivered to date. At the inquiry the Council confirmed that two reserved matters applications have been approved, updating the understanding of the appellant. The main constraint to development in the short term appears to be the construction of an access road, although the Council was confident that matters would be resolved in the next six months. Bearing in mind that the trajectory indicates delivery beginning with 50 homes in 2021/22, I see no need to delete the relatively modest contribution.

Wixams (HT117)

129. This large scale residential development extends into Bedford Borough. Village 1 with 952 dwellings is complete and to that extent the site overall is considered deliverable. The relevant matter for current purposes is whether 292 dwellings (primarily Villages 2 and 3) should be included in the trajectory. The appellant points to a lack of progress on approval of reserved matters and unrealistic build out rates. The Council primarily relied on approval of a design code and reserved matters for strategic infrastructure at Village 2 and discussions of further reserved matters application(s). Design coding and ongoing discussions with the promoter are underway for Village 3. The evidence justifies inclusion of 292 units bearing in mind that the first completions are shown for 2021/22 with increasing delivery thereafter.
130. The contribution of 417 units from Village 4 and Land Parcels 4.2, 4.1 and 4.3 (sites HT117a, 117b, HT117c) is agreed.

Wixams Southern Extension (Thickthorn Park) (HT237)

131. The Council makes provision for a contribution of 265 dwellings from this site, which benefits from an outline planning permission (dated 1 November 2019) for 650 dwellings. The fact that the planning permission post-dates 1 July 2019 does not in itself exclude the site from being considered deliverable.
132. The Council rely to a large extent on a build rate programme within the section 106 agreement that requires delivery of a minimum of 240 dwellings in five years. Seemingly a housebuilder is on board and pre-commencement work is being undertaken, which improves the prospect of homes being delivered on site within the 5 year period. The Council has pushed back the expected commencement of delivery to 2021/2022.
133. The appellant drew attention to the fact that reserved matters approval for the proposed countryside park has to be in place before commencement of development and that the s106 agreement includes provision for extension of the building programme.
134. On the basis of the evidence, the trajectory is unduly optimistic on delivery and the contribution should be reduced by 65 units.

Former Flitwick Leisure Centre (HT136)

135. This is a Council owned site and a priority for development. Outline permission was granted in April 2019 for 37 dwellings, 95 extra care housing apartments, a residential care home and associated communal facilities. A new leisure centre has already been provided. No constraints regarding infrastructure are identified. Any delays in bringing forward the site related to ensuring the development meets the needs in Flitwick. The Council anticipates delivery would commence in 2022/23 with 37 dwellings. The appellant has questioned viability and demand for the type of housing in the scheme but this point is based more on a previous withdrawn application.
136. Despite being identified as a priority site there is a lack of positive evidence of firm progress towards commencement of development and ultimately delivery on homes. Consequently the 132 dwellings should be removed from the supply.

Land opposite The Lane and Lombard Street (HT148i)

137. Outline permission has been granted for 40 dwellings. In oral evidence the Council confirmed that no information was available on a potential housebuilder, the submission of a reserved matters application or progress on discharging conditions. The one factor which the Council relied on for its inclusion in the trajectory is the build rate programme that requires all 40 units to be built in five years. To my mind that alone, in the context of an absence of other evidence, does not amount to the necessary clear evidence. The site should be deleted.

Land opposite the Playing Fields and Mill Lane (HT148b)

138. The position is similar to site HT148i in so far as the Council relied on the build rate agreement. There is very little apart from pre-application advice to suggest firm progress on reserved matters. The site (62 dwellings) should be deleted.

Land east of Biggleswade (HT208)

139. Outline permission has been granted for 1,500 homes. The Council has agreed a delivery statement with the site promoter. A build rate programme also has been agreed. The appellant referred to outstanding issues around gaining access to the land, matters which were highlighted by the Inspectors examining the emerging Local Plan. The Council acknowledged that a start on site will not occur until 2023/24 and accepted a reduction of 420 dwellings from 537 to 117. However, there is not the necessary clear evidence that housing completions will begin on site within five years. The 537 dwellings should be deleted.

Windfalls

140. The appellant considers that the inclusion of a windfall allowance in addition to inclusion of small unallocated sites has resulted in double counting and that there should be a reduction of 151 dwellings.
141. By way of background a Windfall Topic Paper (January 2018) demonstrated that windfall sites have made a consistent and significant contribution to overall housing delivery and are likely to continue to do so, even with the delivery of large allocations. Therefore there is justification for including a windfall allowance in the housing supply.
142. In the trajectory there are two entries – all small sites with planning permission at 30 June 2019 and a small sites windfall allowance. Provision is made in the windfall allowance for the delivery of a total of at least 140 dwellings a year. There is no double counting. The trajectory reflects the number of dwellings with planning permission on small sites (894 net) and the average number of completed dwellings per year (rounded down to 140).

*Conclusions*

143. The total supply of 10,077 dwellings in the 1 July 2019 trajectory should be reduced by 982 dwellings, resulting in a supply of 9,095 dwellings (compared to the Council's adjusted supply of 9,511 dwellings and the appellant's figure of 6,274). Clearly this reduction is much less than the appellant's total reduction

of 3,503 dwellings<sup>49</sup> but more than the Council's accepted reduction of 566 dwellings<sup>50</sup>.

144. The Council is able to demonstrate a 5YHLS, amounting to 5.7 years. A 5YHLS is demonstrated (5.4 years) even if the five year requirement and buffer is revised to make no allowance for oversupply. The tilted balance is not engaged.
145. The development of the appeal site is not justified or necessary at this time because there are sufficient sites available to enable meeting the local housing need over the next five years. This conclusion reaffirms the conflict with Policy DM4.
146. The conclusions on supply generally do not differ significantly from those of my colleagues in the two appeal decisions issued after the close of the inquiry, who also concluded that the Council is able to demonstrate a 5YHLS.

### **Other planning matters**

#### ***Agricultural land quality***

147. A soil resource and agricultural quality survey of the red and blue land, carried out in 2016, found that 3% was grade 2 (in the south), 70% of the land was sub grade 3a and 27% of the land was sub grade 3b. A subsequent commentary<sup>51</sup> concluded that the best and most versatile (BMV) agricultural land is dominant in the eastern part of the District and much of the poorer land is restricted to rural locations not adjoining settlements. The appeal site was considered to be of no better agricultural quality and probably slightly poorer quality than many sites on the edge of settlements in the Ivel Valley.
148. The agricultural land continues to be actively farmed for crops. The land has economic benefits, albeit not quantified. Nevertheless, the site falls below the 20 ha threshold for consultation with DEFRA. Because of the high proportion of BMV land within Central Bedfordshire its loss has been necessary to provide adequate land for housing requirements.
149. The loss of this area of BMV land for residential development would not weigh significantly against granting permission in the event of a lack of a 5YHLS. However, I have concluded that is not the position at the current time and so the agricultural quality of the land is a factor in favour of resisting the proposal.

#### ***Affordable housing***

150. A planning obligation provides for 35% of the dwellings built on the site to be used for affordable housing. This level of provision complies with Policy CS7, which seeks 35% or more.
151. Affordable housing is being examined through the Local Plan process. A report to the Council's Executive in October 2019 highlighted the serious shortfall of affordable and social rented dwellings in the District – 925 units are required per annum compared to an average new supply of 217 dwellings<sup>52</sup>.

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<sup>49</sup> GDL2 UPDATE/SP Table 20

<sup>50</sup> RD21

<sup>51</sup> RD3

<sup>52</sup> CD 15.15 paragraph 4

Against this background, clearly the affordable housing would be a benefit of the scheme. Differing views have been expressed in previous appeal decisions as to the weight given to the benefit that does no more than comply with the development plan policy<sup>53</sup>. I note that in the Clifton appeal decision, where very considerable weight was given to the social benefit, at least 35% of the dwellings would be affordable. In this case the minimum amount of affordable housing sought by the development plan policy would be forthcoming on a site where the appellant has no concerns about viability due to the very strong prices paid for land in the District<sup>54</sup>. In conclusion, I attach moderate weight to the affordable housing benefit.

### ***Sustainable settlement***

152. Henlow is identified as a Large Village in the Settlement Hierarchy within the Core Strategy and is a sustainable settlement for additional housing growth.
153. The village has a range of local facilities, including a village shop/post office, a village hall and public houses, which the appellant has shown to be within 2 kilometres of the site. However, the National Design Guide defines walkable as generally being no more than a 10 minute walk (800 m). In my opinion that is a more reasonable distance for most people and is appropriate to apply in Henlow. Public transport is available, with hourly services from the bus stops nearest the site. Arlesey station has frequent main line services but is not within a convenient walking distance. The opportunity to cycle to the station was based on distance rather than a consideration of the characteristics of the route and its practicality.
154. My conclusion is that the accessibility of the site and the opportunity for future residents to use alternative forms of transport to the private car would not be as good as described in the supporting documents to the proposal. This is in large part due to the location of the site north of the village and the size of the proposed development. The development does not have the full support of Policy CS4 that promotes sustainable travel patterns.
155. Additional capacity would be necessary at Raynsford Lower School (early years and lower school education) and at Pix Brook Academy and / or Henlow Academy (Middle School and Upper School education). The planning obligations provide for the payment of financial contributions linked to first occupation of dwellings to assist in creating the necessary additional capacity. This approach is in accordance with Policy CS2 and in compliance with Policy CS3.

### ***Green infrastructure, open space, sport and recreation***

156. There is the potential for the development to enhance green infrastructure in the locality, which would be addressed through reserved matters and a detailed landscape scheme. The illustrative plans provide some indication of the location and scope of such enhancement. Planning obligations include contributions towards public footpath improvements and towards links between the site and Baulk Wood.
157. The blue land is now proposed as meadow land with some woodland planting, which in my view suggests a different type of open land to the original proposal for a community park.

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<sup>53</sup> CD 15.23 paragraphs 30, 31

<sup>54</sup> Oral evidence by Mr Still



158. There would be sufficient space within the site to provide a children's play area(s). Sports and recreation facilities off-site would be improved through financial contributions towards the refurbishment of changing rooms at Saxon Pool Leisure Centre, the provision of a skate park in Henlow and improved facilities at Langford Football Club including the refurbishment of the clubhouse. The Council has raised no concerns over these proposals.
159. To conclude, developer contributions to improve facilities in response to the additional demands from the proposed scheme are secured through a planning obligation, as required by Policy CS2. Policy CS3 is met in so far as appropriate infrastructure would be provided to support a growing community. The probable net gain in green infrastructure and contributions for improvements comply with a criterion of Policy CS17.

### ***Other matters***

160. Economic benefits would include construction spend and employment during the building programme. Input into the economy from residents of the scheme would apply over the long term. Whilst not seeking to minimise the value to the local economy, in the overall picture these benefits are not out of the ordinary and in this instance have limited weight. Planning Practice Guidance advises that it would not be appropriate to make a decision based on the potential for the development to raise money for a local authority<sup>55</sup>. Therefore a New Homes Bonus is not a consideration that has any weight. This conclusion is similar to that of my colleague in the Clifton decision<sup>56</sup>.
161. The safeguarding of the living conditions of residents in dwellings adjacent to the site would be a matter for consideration at detailed design stage.
162. The assessments on highway safety and capacity, ecology, arboriculture, archaeology, flood risk and drainage strategy did not identify any issues that could not be addressed through the reserved matters application(s) or by the use of planning conditions. The Council confirmed in the statement of common ground that such an approach was appropriate.
163. I have considered representations on highway capacity by interested parties but in the absence of any technical evidence to support the objection there are no highway reasons for rejecting the proposal.

### **Planning conditions and planning obligations**

164. The proposed planning conditions would be directed towards securing additional design details but would not overcome the identified harm to character and appearance to enable the development to proceed.
165. To meet the statutory tests planning obligations must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
166. The affordable housing planning obligation provides for a level of affordable housing required by Policy CS7. The affordable housing scheme would enable the Council to approve details of the type, tenure size, mix and location of affordable housing units, also in accordance with Policy CS7. Sufficient

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<sup>55</sup> PPG Determining a planning application paragraph: 011 Reference ID: 21b-011-20140612

<sup>56</sup> CD 15.23 (ref APP/P0240/W/18/3211229) paragraph 35

information has been provided on education provision, sports and leisure facilities to show the relevant obligations satisfy the tests. The provision of the necessary waste and recycling facilities for each dwelling would be adequately covered by the contribution. The obligation related to open space transfer and works is essential to ensure the amenity spaces and play areas are incorporated into the overall scheme.

167. The contributions towards upgrading local bus stops, providing cycle racks and a traffic regulation order have not been specifically justified in the documentation. However, the measures would encourage safety and use of sustainable travel modes in direct response to the development and appear to be proportionate in amount.

### **Planning Balance**

168. The development of up to 135 dwellings and all associated infrastructure would not respect local context or conserve the countryside character and local distinctiveness. Visual impact would be harmful too. The outline proposal for this site within the countryside conflicts with Policies CS14, CS16 and DM4, the most important development plan policies for determining the appeal. Even allowing for the moderate weight attached to Policy DM4, compliance with Policies CS2 and CS7 and the ability to resolve outstanding technical matters and design details at the reserved matters stage, the development is not in accordance with the development plan when read as a whole.

169. Turning to the Framework, the tilted balance is not engaged. Having considered all the evidence on the 5YHLS there is currently a sufficient amount and variety of land available to meet housing needs in the District. There is no imperative to bring forward the appeal site. The development is not necessary to maintain or enhance the vitality of the rural community. The proposal would result in significant harm to local character and a small loss of BMV land. The ability to promote a genuine choice of sustainable travel modes is constrained by the site's location, especially in relation to the heart of the village. Additional affordable housing would be the primary benefit. Balancing the social, environmental and economic aspects of the development, the proposal does not have the overall support of the Framework and would not promote sustainable development in the rural area.

170. There are no other considerations that indicate a decision other than in accordance with development plan.

### **Conclusion**

171. For the reasons given above the appeal should be dismissed.

*Diane Lewis*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Ms Saira Kabir Sheikh QC

She called

Mr David Clarke

BSc(Hons) PD Arb (RFS) CMLI

MArborA

Mr Jonathan Lee

BSc(Hons)

Mr Phillip Hughes

BA(Hons) DipMan MCMi

MRTPI

David Clarke Chartered Landscape Architect and  
Consultant Arboriculturist Limited

Managing Director of Opinion Research Services

Principal of PHD Chartered Town Planners

### FOR THE APPELLANT:

Mr Peter Goatley, of Counsel<sup>57</sup>

He called

Mr Timothy Jackson

BA(Hons) DipLA CMLi

Mr Tom Baker BA(Hons)

MSc MRTPI

Mr Alex Roberts BSc

Associate MRTPI

Mr Christopher Still

BSc(Hons) MRICS

Instructed by Gladman Developments Limited

Director FPCR Environmental Design Ltd

Associate Director, Savills

Director DLP Planning Limited

Senior Planning and Development Director,  
Gladman Developments Limited

## DOCUMENTS submitted at the inquiry

- RD1 Signed statement of common ground September 2019
- RD2 Appendix 7 to Proof of Evidence of Mr Baker
- RD3 Commentary on land quality in the eastern part of Central Bedfordshire
- RD4 Residential planning permissions in surrounding area
- RD5 EXAM 33 Central Bedfordshire Local Plan and email correspondence
- RD6 Council's Rebuttal to proof of Alex Roberts
- RD7 Outline opening submissions on behalf of the appellant
- RD8 Opening statement on behalf of the Council
- RD9 *R (oao Matthew Davison) v Elmbridge Borough Council* [2019] EWHC 1409 (Admin)
- RD10 List of suggested planning conditions
- RD11 Deed of Variation (draft)
- RD12 Walk 4 Langford Meadows and Stanford Lock footpath route
- RD13 Walk 6 Langford Landscape
- RD14 Unsigned Deed of Variation
- RD15 CD 15.30 Appeal decision APP/P1506/W/19/3220201 Land south of Long Road Mistley (Tendring District Council)
- RD16 Central Bedfordshire Local Plan Examination correspondence dated 09.01.20
- RD17 Exam 84: letter from Inspectors to CBC on Exam 83

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<sup>57</sup> Appointed Queen's Counsel after the close of the inquiry

- RD18 Build Rate Timetable
- RD19 Revised Table 19: Summary of impact of changes to land supply
- RD20 Plan of proposed development, Broad Street Clifton
- RD21 Table 19 land supply (revised by CBC)
- RD22 Housing Delivery Clause Technical Note January 2019
- RD22/ A Build Rate Obligations
- RD23 *Risby v East Hertfordshire District Council and others* [2019] EWHC 3474 (Admin)
- RD24 *R (oao Bates) v Maldon District Council* [2019] EWCA Civ 1272
- RD25 Closing submissions on behalf of Central Bedfordshire Council
- RD26 Outline Closing Submissions on behalf of the appellant