



Department for  
Communities and  
Local Government

Our ref: APP/J0405/V/16/3151297

Mr G Armstrong  
Armstrong-Rigg Planning  
The Exchange  
Colworth Science Park  
Sharnbrook  
Bedford MK44 1LQ

19 July 2017

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION MADE BY BELLWAY HOMES, BELLCROSS CO LTD & FOSBERN  
MANUFACTURING LTD  
LAND WEST OF CASTLEMILK, MORETON ROAD, BUCKINGHAM MK18 1YA  
APPLICATION REF: 14/02601/AOP**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Clive Hughes BA(Hons) MA DMS MRTPI, who held a public local inquiry opening on 7 February 2017 for 6 days into your client's hybrid planning application seeking outline planning permission for up to 130 dwellings with all matters other than access reserved for consideration at a later date and the change of use of land from agriculture to use as sports pitches/ recreational open space and informal open space, in accordance with application ref: 14/02601/AOP.
2. On 25 May 2016, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.

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

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

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

5. On 26 May 2017, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the implications, if any, for this application of the Supreme Court judgment on the cases of *Cheshire East BC v SSCLG and Suffolk Coastal DC v SSCLG*, which was handed down on Wednesday 10 May 2017.
6. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter. The Secretary of State has taken these representations into account in reaching his decision.

## **Policy and statutory considerations**

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case, the development plan comprises the saved policies in the Aylesbury Vale District Local Plan 2001-2011 (AVDLP) (adopted January 2004) and the Buckingham Neighbourhood Development Plan 2011-2031 (BNDP) (made 30 September 2015). The Secretary of State agrees with the Inspector and considers that the development plan policies of most relevance to this case are those set out at IR12-15.
9. Other material considerations which the Secretary of State has taken into account include: the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), the Written Ministerial Statement on Neighbourhood Planning dated 12 December 2016 (WMS) and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.
10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA), the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess. The Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas, as required by section 72(1) of the LBCA.

### *Emerging plan*

11. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State has considered the weight to be attached to the emerging Vale of Aylesbury Local Plan (VALP) applying paragraph 216 of the Framework. As to the first limb, he notes the emerging VALP is at an early stage in the process (IR16). As to the second limb, he notes that there are significant unresolved objections to the emerging VALP (IR16). As to the third limb, the Secretary of State considers, at this stage, that the relevant policies in the emerging VALP do not appear to contain obvious inconsistencies with the Framework. Overall, for these reasons, the Secretary of State agrees with the Inspector that the emerging VALP can only carry very limited weight (IR16).

## **Planning History**

12. The Secretary of State agrees with the Inspector's analysis of the planning history (IR17-21)

## **Main issues**

13. The Secretary of State agrees with the Inspector that the main issues are those set out at IR118-119.

### *Consistency with the development plan including the Neighbourhood Plan*

14. The Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The Secretary of State has carefully considered the Inspector's analysis of the development plan position at IR120-125 and IR186-191. The development plan comprises the AVDLP and the BNDP.

## **AVDLP**

15. The Secretary of State agrees with the Inspector that the proposals conflict with saved Policy RA.14 but, applying paragraph 215 of the Framework he agrees with the Inspector for the reasons given that this policy is not consistent with the Framework and, therefore, carries very limited weight (IR120). He also agrees, for the reasons given by the Inspector at IR121, that Saved Policy BU.1 is relevant to the proposals, but agrees that this also carries very limited weight as it is not consistent with the Framework applying paragraph 215. He further agrees that the proposal meets the requirements of Saved Policy GP.2 relating to the provision of affordable housing as this proposal exceeds its minimum requirement (IR121).

## **BNDP**

16. The Secretary of State has gone on to carefully consider the Inspector's analysis of the BNDP at IR122-125 and IR189-191.
17. The Secretary of State agrees with the Inspector (IR122) that Policy HP1 is the most relevant policy of the BNDP to this proposal. Concerning whether there is conflict with policy HP1, the Secretary of State notes that Policy HP1 supports housing development within the settlement boundary, identifying 5 sites for 617 dwellings and one reserve site for 300 dwellings. The application site, being outside the settlement boundary, is not allocated for housing in policy HP1 nor covered by policy HP7 which relates to windfall sites within the settlement boundary. The Secretary of State notes that the Inspector finds no conflict with these policies as he considers that the BNDP does not place a cap on housing numbers nor contain policies specifically restricting housing development outside the settlement boundary (IR 123). The Inspector, therefore, considers that the BNDP is silent in terms of the proposed development of the application site (IR 189).
18. Having carefully considered the Inspector's analysis at IR122-125 and IR 189-191, the Secretary of State does not agree with the Inspector that the BNDP is silent in terms of the proposed development of the application site as he considers there is a relevant body of policy in the BNDP (summarised at paragraph 5.18 of the Statement of Common Ground between the applicants and AVDC (GEN1)) sufficient to enable the development proposals to be considered. The Secretary of State also disagrees with the Inspector's conclusion that there is no conflict with policy HP1. The Secretary of State considers that read as a whole, including with the vision for the BNDP and its Introduction, the proposal, being an unallocated site outside the settlement boundary, conflicts with the purpose and effect of

Policy HP1. While there is no cap in the BNDP, and no obvious corollary of the site allocation policy HP1 (i.e. that land not allocated is not supported), the larger housing sites, representing both the acceptable location and level of housing, are specifically identified and allocated in the BNDP. Both larger sites and the smaller windfall sites being confined to within the settlement boundary (HP7). The application site, being both unallocated and outside the settlement boundary, falls within neither category above and, as a consequence, the Secretary of State considers the proposals are not policy compliant. This is a policy conflict to which the Secretary of State attaches very substantial negative weight in view of the Framework policy (paragraphs 183-185) that neighbourhood plans are able to shape and direct sustainable development in their area and that where an application conflicts with a neighbourhood plan, planning permission should not normally be granted (paragraph 198).

19. The Secretary of State agrees with the Inspector, for the reasons given at IR191, that the proposal complies with BNDP Policies HP4 and HP5 and does not conflict with the other cited policies in the BNDP relating to matters of detail such as landscaping, open space, and play areas.
20. Overall, for the reasons above, the Secretary of State considers that the proposals conflict with the development plan overall.

*Delivering a wide choice of high quality homes*

21. For the reasons given at IR126-127 the Secretary of State agrees with the Inspector that, taken together the Section 106 Agreement, which makes provision for 35% affordable housing, and agreed condition 20 would ensure that the scheme would deliver a wide choice of homes, widen opportunities for home ownership, and create an inclusive and mixed community.

*Five year housing land supply*

22. Paragraph 47 of the Framework states that to boost significantly the supply of housing, local planning authorities should meet the full objectively assessed needs for housing and identify a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements plus an additional 5% or 20% buffer.
23. The Secretary of State has carefully considered the Inspector's analysis of the disputed housing land supply matters relating to need and supply at IR128-159.

**Need**

24. For the reasons given at IR129-143, the Secretary of State agrees with the Inspector that the housing requirement set out in the October 2016 Buckinghamshire Housing and Economic Needs Assessment Update (HEDNA) represents the most up to date assessment of housing need, which is a reasonable basis on which to calculate the 5 year HLS for the purposes of these proposals. Using this requirement as a starting point (965 dpa), and taking account of an oversupply for the period from 2013 and allowing for the agreed 20% buffer (IR144-146), the Secretary of State agrees with the Inspector that this gives a 5 year requirement for the period 2017/18 to 2021/22 of 4,535.

## Supply

25. Having carefully considered the Inspector's analysis, footnote 11 of paragraph 47 of the Framework, the relevant paragraphs of the Guidance, and the parties' representations, the Secretary of State agrees with the Inspector's analysis as to the disputed sites for the reasons given at IR 147-157. In terms of supply, therefore, the Secretary of State agrees with the Inspector for the reasons given at IR158 that 237 dwellings should be removed from the supply side calculations as there is no reasonable likelihood of delivery within 5 years. In these circumstances, he agrees with the Inspector's calculations, for the reasons given at IR158-159, that the supply side identified in AVDC's Interim Housing Land Supply Position Statement (October 2016) should be reduced from 5,296 to 5,082 dwellings resulting in there being a land supply for the purposes of the proposal of 5.6 years.

### *The Implications of the WMS on Neighbourhood Planning*

26. Given his conclusion that AVDC can demonstrate a 5 year HLS, the Secretary of State considers that his WMS on Neighbourhood Planning of 12 December 2016 is not engaged in relation to these proposals.

### *The weight that can be given to the emerging VALP*

27. For the reasons given at paragraph 11 Decision Letter (DL) above, the Secretary of State agrees with the Inspector that the emerging VALP attracts very little weight.

### *Heritage*

28. In accordance with section 66(1) of the LBCA, the Secretary of State has paid special regard to the desirability of preserving listed structures or their settings or any features of special architectural or historic interest which they may possess. In accordance with section 72(1) of the LBCA, the Secretary of State has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.
29. The Stowe, Maids Moreton, and Chackmore Conservation Areas lie to the north east and north west of the application site. About 3km from the application site is Stowe, a Grade 1 listed building, and its Registered Park and Garden, also Grade 1 (IR168-172). The Secretary of State notes that paragraph 6.13 of the Statement of Common Ground (SoCG) between the applicants and AVDC, says that the distance of the application site from these designated heritage assets is such that there is not considered to be any appreciable level of visual impact or intrusion on their setting and that any views from the north west would be of housing set against the backdrop of existing development.
30. For the reasons given by the Inspector at IR168-172 and having carefully considered paragraphs 131-134 of the Framework, the Secretary of State agrees with the Inspector that there would be no harm to the setting and hence significance of these designated heritage assets and, therefore, no conflict with saved Policy GP.60 of the AVDLP (which seeks to protect the distinctive characteristics of registered parks and gardens) or section 12 of the Framework.

## **Other matters**

31. Concerning road traffic in the vicinity of the site, the Secretary of State agrees with the Inspector for the reasons given (IR 174-176) that the limited harm arising from increased traffic on surrounding roads would be mitigated by off site highway works undertaken or financed in relation to the proposal and that, subject to the imposition of the conditions, this is a neutral factor in the planning balance.
32. Concerning foul and surface water drainage in the area, the Secretary of State notes that the site is within Flood Zone 1. He notes a Flood Risk Assessment (FRA) has been submitted by the applicants and no flood objections were received from AVDC, the Environment Agency, or Anglian Water. He notes the suggested conditions would require the development to be carried out in accordance with the FRA and for details of foul and surface water drainage to be submitted to and approved by the LPA. He notes details of a Sustainable Urban Drainage System scheme, including its future maintenance, are secured by the s106 agreement. In these circumstances, the Secretary of State agrees with the Inspector's analysis for the reasons given (IR177-179) that the proposals would have no harmful impact on foul and surface water drainage in the area.

## **Planning conditions**

33. The Secretary of State has given careful consideration to the Inspector's analysis at IR182-185, the recommended conditions set out in the Annex to the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. The Secretary of State is satisfied they would meet the tests set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing planning permission.

## **Planning obligations**

34. Concerning the provision of community and other facilities in the s106 agreement, the Secretary of State notes that it provides for 35% affordable housing and secures benefits for future residents of the site and other residents and businesses in the district (IR 180). The provision of sports pitches and overall amenity space also exceeds the minimum standards required (IR 181). Having regard to the Inspector's analysis at IR180-181, paragraphs 203-205 of the Framework, the Guidance, and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR181 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework. However, the Secretary of State does not consider that the obligations overcome his reasons for refusing planning permission.

## **Planning balance and overall conclusion**

35. The Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The Secretary of State has carefully considered the Inspector's analysis of the planning balance at IR186-210. For the reasons given above (DL14-20), the Secretary of State considers the proposals are not in accordance with the development plan overall. The Secretary of State has gone on to consider whether there are material considerations which indicate

that the proposals should be determined other than in accordance with the development plan.

36. He agrees with the Inspector that it is relevant that AVDC has advanced this land as a potential housing site in the emerging VALP and its sustainability appraisal is a material consideration (IR192). However, for the reasons given above (DL11), he agrees with the Inspector that the VALP carries very little weight. He also agrees with the Inspector that the planning history is highly pertinent, as is the sustainability appraisal carried out by Buckingham Town Council (IR 195).
37. For the reasons above (DL15), and applying paragraph 215 of the Framework, the Secretary of State considers saved Policies RA.14 and BU.1 are inconsistent with the Framework and, therefore, the titled balance in paragraph 14 applies notwithstanding that AVDC can demonstrate a 5 year housing land supply.
38. Weighing in favour of the proposal, the Secretary of State agrees with the Inspector's analysis for the reasons given (IR197-205) that there would be economic, social, and environmental benefits arising from the scheme and considers that these benefits, and in particular the provision of market and affordable housing, weigh substantively in favour of the proposal.
39. Weighing against the proposal, he agrees with the Inspector that there would be some encroachment into the open countryside which would cause some limited visual harm (IR 206), to which he attaches modest weight, and there would be conflict with saved Policy RA.14 of the AVDLP, to which he gives very limited weight, given his conclusions at paragraph (DL11) above. However, for the reasons above (DL16-20), and considering Framework policy that neighbourhood plans will be able to shape and direct sustainable development (paragraphs 183-185) and where an application conflicts with a made neighbourhood plan, planning permission should not normally be granted (paragraph 198), he places very substantial negative weight on the proposal's conflict with the BNDP.
40. The Secretary of State considers that the adverse impacts of the proposal, especially in terms of the conflict with the BNDP, would significantly and demonstrably outweigh the benefits. The Secretary of State therefore concludes that there are no material considerations that indicate the proposal should be determined otherwise than in accordance with the development plan.

### **Formal decision**

41. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby refuses planning permission for a hybrid planning application seeking outline planning permission for up to 130 dwellings with all matters other than access reserved for consideration at a later date and the change of use of land from agriculture to use as sports pitches/ recreational open space and informal open space, in accordance with application reference:14/02601/AOP.

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

42. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for

leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

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

Yours faithfully

*Philip Barber*

Philip Barber  
Authorised by Secretary of State to sign in that behalf



## Annex A SCHEDULE OF REPRESENTATIONS

### General representations

<b>Party</b>	<b>Date</b>
Town Legal, on behalf of Bellway Homes Ltd, Bellcross Co Ltd and Fosbern Manufacturing Ltd	6 June 2017
Aylesbury Vale District Council	6 June 2017
Buckingham Town Council	16 June 2017

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

by Clive Hughes BA(Hons) MA DMS MRTPI

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

Date: 11 April 2017

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**TOWN AND COUNTRY PLANNING ACT 1990**

**AYLESBURY VALE DISTRICT COUNCIL**

**APPLICATION BY**

**BELLWAY HOMES, BELLCROSS CO LTD  
& FOSBERN MANUFACTURING LTD**

Inquiry opened on 7 February 2017

Land west of Castlemilk, Moreton Road, Buckingham MK18 1YA

File Ref: APP/J0405/V/16/3151297

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## List of abbreviations used in this Report

AVDC	Aylesbury Vale District Council
AVDLP	Aylesbury Vale District Local Plan 2001-2011
BCC	Buckinghamshire County Council
BNDP	Buckingham Neighbourhood Development Plan 2011-2031
BSP	Buckinghamshire Structure Plan 1991-2011 (adopted 1996)
BTC	Buckingham Town Council
CIL Regs	Community Infrastructure Levy Regulations 2010 (as amended)
DCLG	Department for Communities and Local Government
dpa	Dwellings per annum
EiP	Examination in Public
EMP	Ecological Management Plan
FOAN	Full Objectively Assessed Housing Need
FRA	Flood Risk Assessment
Framework	National Planning Policy Framework
ha	Hectares
HEDNA	Buckinghamshire Housing and Economic Development Needs Assessment Update 2016
HMA	Housing Market Area
IHLSPS	AVDC's Interim Housing Land Supply Position Statement (October 2016)
km	Kilometres
LEAP	Local Equipped Area of Play
LPA	Local Planning Authority
MYE	Mid-Year Estimate
NEAP	Neighbourhood Equipped Area of Play
NP	Neighbourhood Plan
ONS	Office of National Statistics
ORS	Opinion Research Services
PPG	Planning Practice Guidance
Rugby Club	Buckingham Rugby Union Football Club Limited
SA	Sustainability Appraisal
SDMC	AVDC's Strategic Development Management Committee
SHMA	Strategic Housing Market Assessment
SNPP	Sub-National Population Projections
SoCG	Statement of Common Ground
SoS	Secretary of State for Communities and Local Government
SUDS	Sustainable Urban Drainage System
UPC	Unattributable Population Change
VALP	Vale of Aylesbury Local Plan
VAP	Vale of Aylesbury Plan
White Paper	"Fixing our broken housing market" (February 2017)
WMS	Written Ministerial Statement on Neighbourhood Planning (2016)

**File Ref: APP/J0405/V/16/3151297**

**Land west of Castlemilk, Moreton Road, Buckingham MK18 1YA**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 25 May 2016.
- The application is made by Bellway Homes, Bellcross Co Ltd & Fosbern Manufacturing Ltd to Aylesbury Vale District Council.
- The application Ref 14/02601/AOP is dated 4 September 2014.
- The development proposed is a hybrid planning application seeking outline planning permission for up to 130 dwellings with all matters other than access reserved for consideration at a later date and the change of use of land from agriculture to use as sports pitches/ recreational open space and informal open space.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:
  - Its consistency with the development plan including the Neighbourhood Plan for the area;
  - Policies in the National Planning Policy Framework on delivering a wide choice of high quality homes, in particular those set out in para 50 on delivering a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities; and
  - Any other matters the Inspector considers relevant.
- The inquiry sat for 6 days on 7-10 and 23-24 February 2017.

**Summary of Recommendation: That planning permission be granted.**

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**Procedural Matters**

1. This hybrid application is in two parts. The outline part seeks planning permission for up to 130 dwellings with only the means of access to the site for determination at this stage. Details of the access are shown on Drawing No 1059624-D-003 Rev A (Plan C). An indicative site layout, street elevations and land uses are set out on illustrative plans that do not form part of the application (Plans D-F). The full part seeks the change of use of the northern end of the site from agriculture to use for recreation purposes/ sports pitches.
2. Buckingham Town Council (BTC) was accorded Rule 6(6) party status and adduced evidence accordingly in support of its objection to the planning application.
3. Prior to the opening of the Inquiry, by email dated 1 February 2017, PINS wrote to the parties setting out the issues and other matters that I had identified as being relevant to the determination of the planning application.
4. I carried out unaccompanied site visits before and during the Inquiry. These included visiting the application site and its immediate surroundings; walking from the site to Buckingham town centre and back; visiting the sites in Buckingham identified for housing development; visiting other potential housing sites referred to at the Inquiry, particularly in Winslow; viewing the area from Stowe and its Registered Park and Garden; and viewing the locations of all the proposed off-site highway works.
5. The planning application was considered by the Aylesbury Vale District Council (AVDC) on 11 January 2017 when its Strategic Development Management Committee (SDMC) resolved that had it been in a position to determine the application it would have refused it for the following reason:

*“The proposed residential development represents intrusion of built development onto green land within the countryside beyond the settlement boundary contrary to the strategy of the Buckingham Neighbourhood Development Plan and specifically contrary to the provisions of policy HP1 which makes provision for housing on other sites for development of up to 617 dwellings, without any justification advanced of sufficient weight to justify approval to a scheme in direct conflict with that policy. Approval in this case would thereby conflict with guidance in the NPPF which at paragraph 198 states that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.”*

6. During the Inquiry the applicants submitted a completed Agreement under s106 of the Act<sup>1</sup> dated 16 February 2017. Amongst other things, this Agreement makes provision for affordable housing, off-site highway works, public open space and a financial contribution towards education facilities.
7. On 7 February 2017, while the Inquiry was sitting, the Government issued the Housing White Paper “Fixing our broken housing market” (the White Paper). The parties took this consultation document into account.

### **The Site and Surroundings**

8. The application site, which has an area of about 11ha, is roughly “L”-shaped and comprises two fields in agricultural use that are separated by a mature hedge. The southern field slopes down from its north western corner towards existing housing; the change in level is about 12m. The northern field slopes slightly down from west to east. The site adjoins recent housing to the south and east, known respectively as Phases 1 and 2, and fields to the north and west. The housing to the south includes bungalows with main windows overlooking the site that are located close to the site and at a slightly lower level. In the field to the west there is a recently-planted band of trees some 12-14m deep that is within a few metres of the boundary with the application site.
9. There is a small group of industrial buildings abutting the south eastern corner of the northern field. These are relatively poor quality and, together with associated parking and external storage, are visually at odds with the well-ordered form and landscaping of the new housing. The land further to the north is separated from the site by an access track that also serves as a bridleway. To the north east is Buckingham Rugby Union Football Club (the Rugby Club) with pitches, clubhouse, lighting and parking. There is a gate from the site to the access track but no public access.
10. The site lies almost due north of the centre of Buckingham, a town with a population of about 12,000. It is the second largest settlement within the District. The site is about 1km from the town centre. Moreton Road (A413) runs from the site to Buckingham High Street (A422). For a short distance it has quite a steep gradient as it runs uphill to the north of the Old Gaol roundabout with the High Street. It is a bus route with regular services to the town centre, Aylesbury, Bicester, Milton Keynes and beyond. There are further bus links from the town centre with regular services to Cambridge, Bedford and Oxford.

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<sup>1</sup> ID42

11. The site is not subject to any particular designations. Maids Moreton and Chackmore Conservation Areas lie to the north east and west respectively. Further afield to the north-west lies Stowe, a Grade 1 Listed Building described as "The Mansion with attached service ranges (now Nugent House, Cobham House and Grafton House)" which is set within the Stowe Registered Park and Garden, also Grade 1<sup>2</sup>.

### **Planning Policy**

12. The development plan comprises the saved policies in the Aylesbury Vale District Local Plan 2001-2011 (AVDLP) (adopted January 2004) and the Buckingham Neighbourhood Development Plan 2011-2031 (BNDP) (made 30 September 2015). The saved policies in the AVDLP are mainly those used for development management purposes and a full list is set out at paragraph 5.12 of the Statement of Common Ground (SoCG) between the applicants and AVDC<sup>3</sup>.
13. The housing policies in the AVDLP had an end date of 2011 and the targets were derived from the out-of-date Buckinghamshire Structure Plan 1991-2011 (BSP) (adopted 1996). There are now no up-to-date policies in the AVDLP that relate to housing supply or settlement boundaries. Nonetheless, it is relevant to note that saved Policy BU.1 proposed the development of land at Moreton Road (site of Phases 1 & 2) for housing<sup>4</sup> subject to the criterion (c) that the proposals shall not prejudice possible development beyond 2011 on the remainder of the site (although there is some uncertainty caused by criterion (b) which refers to land to the south of Manor Farm).
14. The BNDP<sup>5</sup> was made against the background of an out-of-date local plan. The relevant policies are identified in paragraph 5.18 of the above SoCG. Of particular relevance are Policies HP1 (Allocate land for 617 new dwellings), HP4 (Provide a diverse housing mix) and Policy HP5 (Provide for affordable housing). Policy HP1 supports housing development within the boundary settlement area in accordance with Table 1 which identifies 5 sites for 617 dwellings and one reserve site (300 dwellings). Policy HP4 seeks a wide range of house types, sizes and tenures with housing from 1 to 5+ bedrooms.
15. Policy HP5 sets a minimum rate of 35% for affordable housing on sites of 1ha or 25 dwellings or more. The BNDP says that housing numbers must be in conformity with the local plan and that housing allocations from the AVDLP 2004 have now been taken up and completed. At paragraph 1.7 it says that due to the delay in the emerging local plan the housing numbers in the BNDP are based upon the DCLG 2012-based household projections in England.
16. Other relevant planning policy includes the National Planning Policy Framework (the Framework), the Planning Practice Guidance (PPG), and the Written Ministerial Statement on Neighbourhood Planning (WMS)<sup>6</sup>. The emerging Vale of Aylesbury Local Plan (VALP) was out for consultation until 5 September 2016 and it is anticipated that it will be submitted in summer 2017 and adopted at the end

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<sup>2</sup> ID3: Appendix 1

<sup>3</sup> GEN1

<sup>4</sup> ID23 Buckingham Inset

<sup>5</sup> AVDC1 Appendix 7

<sup>6</sup> CD29: Neighbourhood Planning: Written Statement – HCWS346 (12 December 2016)

of this year. The VALP is at an early stage in the process and has been the subject of significant unresolved objection. In accordance with advice in paragraph 216 of the Framework it carries very limited weight. Previous attempts to replace the AVDLP have failed with the Core Strategy (2010) being withdrawn following the revocation of regional plans. Subsequently the Vale of Aylesbury Plan (VAP) was withdrawn in February 2014 following advice from the Examining Inspector.

## Planning History

17. The site itself has no planning history other than the application the subject of this Report. The planning permissions for the development of the adjoining land to the south and east are relevant. The completed housing scheme to the south and east of the southern field, known as Phase 1, comprises 200 dwellings and was built by the current applicants. It was approved in accordance with Policy BU.1 of the AVDLP<sup>7</sup>. The related s106 Agreement secured the provision of a large (0.58ha) Local Equipped Area of Play (LEAP) close to Moreton Road. Phase 2 of this development, to the east of the northern field, comprises 80 dwellings including 28 affordable housing units managed by Hightown Housing Association.
18. The planning application for Phase 2 was refused by AVDC and subsequently allowed on appeal<sup>8</sup>. That Decision was challenged in the High Court by AVDC. The challenge was withdrawn before it was heard as by then the Council had approved a re-submission of the scheme for 80 dwellings<sup>9</sup>. Amongst other things, the Officers' Report concluded that the scheme would cause no harm to the setting of Stowe Registered Park and Garden; no harm to the identity of Buckingham or the countryside; no coalescence with Maids Moreton; that it would be well located with regard to facilities; and that it would be sustainable in economic, social and environmental terms.
19. The planning application the subject of this Report was submitted in September 2014 and was reported to the SMDC on a number of occasions. The full history, which is highly relevant, is set out in paragraphs 1.2 to 1.12 of the evidence of Michael Denman<sup>10</sup>. In brief, the application was first reported to the SMDC in March 2015 with a recommendation that it be approved. It was deferred for delegated approval upon completion of a s106 Agreement. During the negotiations on the Agreement circumstances changed in that the BNDP was nearing its final stage so it was reported back to Committee on 2 September 2015, with a recommendation that it be approved. On the same day the SoS issued an Article 31 Direction and the Committee deferred consideration of the application. The BNDP was made on 30 September 2015.
20. The application was due to be reported back to the SMDC three weeks later, again with a recommendation to approve, but an objection was received from Buckinghamshire County Council (BCC) on highway grounds arising from the cumulative impact of this site and other housing sites identified in the BNDP. The applicants agreed to make a financial contribution to improving the A413/A422 junction and it was reported back to the SMDC on 27 April 2016. Members again

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<sup>7</sup> Council reference 06/01809/APP

<sup>8</sup> CD23: Council reference 11/02724/APP: Appeal reference APP/J0405/A/12/2177458

<sup>9</sup> CD24: Council reference 13/01325/APP

<sup>10</sup> AVDC1

deferred determination and delegated authority to Officers to approve it subject to the completion of the supplementary s106 Agreement incorporating the additional highway contribution. The SoS call-in letter is dated 25 May 2016.

21. Up to this point AVDC had acknowledged that it could not demonstrate a five-year housing land supply. Circumstances changed again in that the October 2016 Interim Housing Land Supply Position Statement (IHLSPS) showed a 5.8 year supply. On 12 December 2016 the WMS was issued. The application was reported back to the SMDC on 17 January 2017 when Members accepted the Officers' recommendation that had they been in a position to determine it they would have refused it for the reasons set out in paragraph 5 (above).

### **The Proposals**

22. The residential part of the application is in outline form but an indicative site layout (Plans B & D) has been submitted along with indicative street scenes (Plan F). The proposals would provide up to 130 dwellings on the southern field of which 35% (up to 46 dwellings) would be affordable units. The dwellings would be 1 or 2 storeys in height. There would be two vehicular access points, from the western ends of Lincoln and Shetland, which are residential roads within Phase 1.
23. There would be pedestrian access from the residential part of the site to the northern field. That field would provide informal open space and two sports pitches. It is anticipated that pitches would be used by the adjoining Rugby Club. A letter has been provided that expresses the Club's interest in using the pitches as a means of alleviating over-usage of existing pitches rather than growing their numbers<sup>11</sup>. There would also be pedestrian access to this northern field from the access track/ bridleway and from the Phase 2 land. This latter access would be from a road and would also be used by maintenance vehicles.

### **The Case for Bellway Homes, Bellcross Co Ltd & Fosbern Manufacturing Ltd**

#### ***Consistency with the development plan including the NP***

24. The development plan is the AVDLP (2004) which covers the period to 2011, and the BNDP (2015) which covers the period 2011 to 2031. The AVDLP includes housing targets derived from the BSP (1996). Neither of these plans was adopted in accordance with the 2004 Act and, while some AVDLP policies have been saved they cannot attract full weight under the Framework. There are no policies or settlement boundaries in the AVDLP that address post 2011 housing needs in the district. While LP Policy BU.1 is out of date, criterion (c) sought to ensure that the Phase 1 development did not prejudice future development on the remainder of the site. Phase 1 was plan-led; Phase 2 was anticipated. This is not some random or speculative development site.
25. While the proposals conflict with Policy RA.14, no material weight should be given to this out-of-date policy or the conflict with it. To give this policy limited weight would accord with the approach of the SoS in the Newick<sup>12</sup> appeal.
26. Concerning Policy HP1 of BNDP, the site is not an allocated or reserve site but this does not make the principle of the development unacceptable, this would

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<sup>11</sup> ARP3 Appendix 9

<sup>12</sup> ARP3 Appendix 5 para 27 (SoS)



also accord with the approach of the SoS in the Newick<sup>13</sup> appeal. The BNDP does not set out that the objective or purpose of the identification of the settlement boundary is to control or limit development beyond it. The purpose of the boundary<sup>14</sup> is to support development within it provided it meets the development needs of other policies in the Plan. The policy does not contain criteria based provisions that might govern further housing provision within or outside the boundary.

27. The BNDP was promoted against the backdrop of no current or up-to-date strategic housing development plan policies. Buckingham is the second largest settlement in AVDC; it was no part of the role of the Plan to prohibit other sustainable development from coming forward in the town. The Examiner stated<sup>15</sup> that Policy HP1 does not prevent the delivery of sustainable development elsewhere. The policy is quite different to other policies governing housing development inside or outside settlement boundaries in other NPs. While not allocated, the application does not breach Policy HP1 and nor is it inconsistent with housing land supply policies in the BNDP looked at overall.
28. In any event, Policy HP1 ought not to attract full weight despite its development plan status. It does not reflect or follow-up strategic housing supply policies; it was brought forward in the context of the withdrawn VAP; and the housing numbers were formulated against an assessment of housing needs based upon the superseded 2012-based household projections which have not been adjusted for economic growth or affordable housing market signals. The circumstances therefore differ from *Crane*<sup>16</sup>.
29. While the application site is one that was considered by BTC in formulating which sites should be in Policy HP1, and was not allocated, this does not mean that it cannot contribute towards the delivery of sustainable development. BTC's Sustainability Appraisal (SA) and scoring process revealed a flawed approach. This site was marked down in several areas without justification, such as coalescence with Maids Moreton, biodiversity and heritage. This is at odds with the LP Inspector's assessment of Phase 1 and the s78 Inspector's assessment of Phase 2. In the SA for the emerging LP, AVDC's consultants identified the site as a reasonable alternative. AVDC's case officer concluded that the site is capable of supporting sustainable development; when the tilted balance was applied the proposals warranted permission. AVDC has raised no environmental concerns<sup>17</sup>.
30. Concerning other development plan policies, the scheme provides 35% affordable housing which is in excess of the requirements of LP Policy GP2 and in full accord with BNDP Policy HP5. An agreed condition ensures compliance with BNDP Policy HP4 concerning housing mix. There is no conflict with various other development management policies concerning levels of amenity, open space, landscape, trees and hedgerows and ecology; all are capable of being met through conditions, the s106 Agreement and reserved matters.

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<sup>13</sup> ARP3 Appendix 5 para 13 (SoS)

<sup>14</sup> CD2 Appendix 4 p 31

<sup>15</sup> CD2 Appendix 3 p 16

<sup>16</sup> CD38

<sup>17</sup> ID16 paragraph 2

***Policies in the Framework on delivering a wide choice of high quality homes, in particular those set out in paragraph 50***

31. Although in outline, the mix and tenure is settled in the s106 Agreement and suggested condition 20. All parties agree that the scheme is capable of delivering a wide choice of high quality homes, widening opportunities for home ownership and creating sustainable, inclusive and mixed communities. The proposals bring significant social and economic benefits.

***Whether the Council is able to demonstrate a 5-year supply of housing against a FOAN and the implications of this in terms of national and local policy***

*Approach*

32. There is agreement that it is necessary to identify a FOAN to inform the Stage 1 process in accordance with *Hunston*<sup>18</sup> and to identify the requirement figure to establish whether the Council can demonstrate a robust five-year housing land supply. The Council relies upon the ORS-produced Housing and Economic Development Needs Assessment (HEDNA) Update (2016)<sup>19</sup>. The Council did not call any witnesses to demonstrate that the assumptions in it are compliant with the Framework and the PPG. There is no evidence of any formal working arrangements or acceptance by the other commissioning authorities. Less weight should be given to the HEDNA as it is untested and unexamined. The applicants are not relying on AVDC having to meet the unmet needs of other authorities, although this seems inevitable.

*Population/ migration*

33. It is common ground that the 2014-based national projections are the starting point to estimate overall housing need. The 2014-based projection shows an increase of 45,316 persons in AVDC between 2013 and 2033; this is 2,720 more than the 2012-based projection. The periods for these projections differ; they cover different 20 year periods. The 2012-based figures used in the BNDP evidence base are unadjusted by factors identified in the PPG. Properly compared, there is a meaningful change in the housing situation.

34. Household projections can be subject to sensitivity testing specific to local circumstances based upon alternative assumptions. However, any local changes need to be clearly explained and justified on the basis of established sources of robust evidence. The only demographic assumption difference between the parties relates to migration. The applicants have found no reason to adjust the 2014-based projections as there is no robust evidence to justify why the assumptions relating to AVDC are not likely to broadly continue into the future.

35. The only change the applicants make is to substitute projection outputs in the initial years with known count estimates taken from the ONS Mid-Year Estimates (MYEs). This approach accords with paragraph 158 of the Framework and guidance in the PPG. This increases the projected population increase over 20 years (2013-2033) by 3,387 persons (169 per year). By comparison, the adjustments made by ORS reduce the figure by 10,527 persons (526 per year).

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<sup>18</sup> *Hunston Properties Ltd v St Albans C&DC* [2013] EWCA Civ 1610 (paras 21-27)

<sup>19</sup> CD21

36. There are two components to the Council/ ORS adjustments. These are, first, the use of 10 year trends rather than 5/6 year trends and secondly, to take account of "data quality issues", as described by the Council. The use of 10 year trends seems to be the ORS method; it appears to be their usual approach. Nevertheless, the difference between the methods is minor, just 93 persons. While this would contribute to the difference (13,914 persons in 2013-33), the main difference arises from the data quality issue.
37. There are two parts to this issue, Unattributable Population Change (UPC) before 2011 and the robustness of the MYEs since 2011. It is common ground that there is a notable negative UPC figure associated with the MYEs prior to the 2011 census; it is not appropriate to make an UPC-related migration adjustment to the 2014-based Sub-National Population Projections (SNPP). The reasons for this are threefold. First, ONS have investigated UPC and concluded no adjustment needs to be made. Second, it is not possible to attribute a figure for each year between 2001 and 2011 with any certainty; the figures are estimates. The applicants' evidence shows that any errors are more likely to have occurred in the first part of this period, prior to any years associated with the 2014-based SNPP trend.
38. Finally, in finding the AVL P unsound the Inspector considered that there was insufficient evidence. The consultants before ORS, GL Hearn, in the 2015 HEDNA had concluded that no UPC adjusted figure was sufficiently credible to take forward<sup>20</sup>. In the absence of robust justification or evidence, any UPC related migration adjustment to the MYEs before 2009 and 2010 is flawed.
39. It is the analysis of the patient register for Aylesbury Vale that forms the basis for the 2011-2015 migration adjustments by ORS to the 2014-based SNPP starting point population. ONS have investigated the use of patient register data and concluded it is not sufficiently robust, particularly for the working age population. In Aylesbury Vale unchallenged evidence shows a significant 3,300 persons difference between the 2011 population-based estimate and the 2011 patient register. No evidence suggests that the 2011 census data is not robust.
40. Based on analysis of the patient register, ORS significantly reduced the MYE migration flow by 30% for the period 2011-2015, a reduction of 4,181 persons over 4 years. This is an unjustified adjustment. Any MYE inaccuracy, if there is one, will not be known until the 2021 census. The patient register is not a source of robust evidence. The culmination of the ORS migration adjustments<sup>21</sup> is a reduction of 843 persons per year from the baseline trend applied by the applicants and the 2014-based SNPP. A reduction of 13,914 persons in the projected figures for 2013-2033 is not a safe foundation for establishing a FOAN.

#### *Suppressed household formation*

41. ORS accept the need for an adjustment to take account of suppressed household formation but make no adjustment to the 2014-based household formation rates in the same way as the applicants. In particular, the applicants draw attention to the suppression of household formation rates within the 25-34 and 35-44 age groups. Also relevant is the low level of completions between 2001 and 2011 when only 60% of planned delivery was achieved. The applicants adjusted the

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<sup>20</sup> CD21 paragraph 3.43

<sup>21</sup> ID26 Row G

rates based upon a 50% return to the 2008-based formation rates; a mid-point adjustment reflecting guidance in the PPG. It adds 66 dwellings per year, producing a demographic-based starting point of 1,197 dwellings per annum.

#### *Market indicators*

42. The parties agree that upward adjustments need to be made to reflect market indicators or signals. The applicants use an uplift of 15%; ORS use 10%. The parties drew comparisons between indicators of affordability in Aylesbury and Eastleigh while the applicants also looked at indicators in Canterbury where a 20% uplift was fixed by the LP Examination Inspector. The ORS approach of simply adding a 10% adjustment is inadequate judged by the difference between the affordability ratios between Aylesbury and Eastleigh.
43. The applicants' judgement is supported by evidence. The lower quartile affordability ratio for 2015 shows that Aylesbury is closer to Canterbury than Eastleigh and so a 15% uplift is reasonable, appropriate and justified based upon a more detailed analysis.

#### *Five-year housing land supply contribution*

44. The onus is on the Council to demonstrate a supply of specific deliverable sites with an additional buffer. There is no issue between the parties that a 20% buffer should be applied. Using the base date of 2013 the applicants calculate for the period 2017 to 2022 a shortfall of 602 dwellings which, added to the requirement of 6,685 dwellings (1,477 x 5) are buffered up by 20% to give a requirement of 8,894 dwellings.

#### *Supply*

45. One site, at Aston Clifton Road, advanced by the applicants as providing 200 homes as part of the supply, does not have planning permission. The removal of this reduces the supply by one month. There are 8 identified housing sites that the applicants seek to omit or push back. Of these, 6 are neighbourhood plan (NP) sites. One is not yet even in a draft NP; the other is owned by Sainsbury's and has been the subject of an undetermined planning application for over 3 years. Concerning the NP sites, examiners testing NPs are not concerned with the test of soundness or deliverability in the same way as sites allocated in LPs.
46. The 8 sites were considered in some detail. The omission of all these sites would result in a 2.8 year supply (or 2.9 years if the 200 homes at Aston Clifton Road are included in the supply). On this basis the Council cannot demonstrate a three- or five-year housing land supply. Housing land supply policies in the AVDLP and BNDP ought to be given limited weight applying paragraph 49 of the Framework. They should, in any case, be given limited weight for other reasons. It is accepted that paragraph 49 applies to NPs as a matter of law<sup>22</sup>.

#### **The implications of the WMS dated 12 December 2016 including the need for the LPA to demonstrate a three-year supply of deliverable housing sites**

47. It is accepted that this is a material consideration and that it is for the SoS to decide to what extent his WMS affects this Decision.

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<sup>22</sup> CD39

48. The WMS says it is to be read in conjunction with the Framework. It does not say that it is amending the Framework and nor can it lawfully do so. Paragraph 7 of the WMS anticipates changes to policy being brought in following the White Paper and further consultation. None preceded the WMS. The proper route for amending the Framework is via an amended Framework after consultation. It is inappropriate to assume that the SoS will allow the WMS to override published guidance in the PPG. Paragraph 7 anticipates that policy for NPs will be revised to reflect the WMS in due course. That should follow consultation.
49. In the annex to the White Paper, at A.83, it says that national policy “now states” that policies for the supply of housing in a NP, that is part of the development plan, should not be deemed out of date where the circumstances in paragraph 5 of the WMS now exist. This seems to show a contradiction between the Framework and the WMS. It appears that the proposals in the WSM will be further tweaked, see paragraph A.84, so the WMS should be given limited weight as it is liable to change.
50. In advance of the consultation it would be inappropriate and unlawful for the SoS to assume that the stated intention to revise the policy is a *fait accompli*. In this case, the failure of the Council to be able to demonstrate a three- or five-year housing land supply is in part because of the very NP allocated sites that it relies upon. It is not the case that there is no fault by those responsible for NPs, including the BNDP. The Government has set up a system that allows sites to be allocated in NPs with insufficient attention given to their deliverability.
51. In this Inquiry we are not dealing with a NP that followed on from up-to-date strategic housing policies or one that planned to deliver about 10% more homes than even the unadjusted 2012-based household projections indicated. The proposals comprise sustainable development, do not conflict with the NP and there are no local plan (LP) policies that can be given any real weight. The proposals do not conflict with BNDP Policy HP1 but even if it did, there is a lack of supply of housing land so no reason to consider that policy is not out-of-date.
52. Although BTC have indicated that they will review the BNDP when the emerging VALP has settled the housing requirement, there is no reason to refuse on prematurity grounds. BTC also said that it may not review the NP if this application is approved but no real weight can be given to this oral evidence which does not stem from a published decision of BTC. The emerging LP is likely to seek a 50% growth in Buckingham. For all these reasons, the WMS is no impediment to the application of paragraph 49 of the Framework.
53. The White Paper is proposing to deploy a standard methodology to assess FOAN. Given the complications in AVDC and the need to accommodate the unmet needs from adjoining Councils the production of a LP by 2018 is by no means certain. Nothing would be gained from postponing a decision in this case until 2018.

### **The weight that can be given to the emerging VALP**

54. The parties agree, as set out in the SoCG, that no material weight should be given to this emerging plan at this stage given the significant unresolved objections. The evidence base, however, shows that Buckingham must accommodate more housing growth in recognition of its role as a strategic settlement.

### **The effect of the proposals on the setting of Stowe House and Registered Park and Garden**

55. The applicants and AVDC agree that there would be no harm caused to the setting of any designated heritage assets so Footnote 9 of the Framework is not engaged. A heritage assessment accompanies the planning application. This matter was not raised by BTC when the application was being considered. Although unsuccessfully raised in respect of the Phase 2 appeal<sup>23</sup>, the first time that it was raised in this application was in BTC's Statement of Case<sup>24</sup>.
56. The evidence on behalf of BTC included photographs, taken with a zoom lens from outside the application site at the north west edge of the existing housing. However, two-way visibility between Stowe and housing does not automatically mean that there is any loss or harm to the significance of the asset. A visual connection is not an assessment of significance; the site makes no contribution to the setting of Stowe. The other photographs, taken from the front of Stowe, show some other housing but it cannot sensibly be said that this diminishes the significance of the asset. This is a neutral factor in the planning balance.

### **The effect of the proposals on road traffic in the vicinity of the site**

57. BTC has constantly sought to resist proposals in this area on account of concerns about highway safety. The unspent financial contributions to BCC from Phase 2 and the need for an exemplar travel plan have not helped. The broad accessibility of the land to the east of the site has been considered by a LP Inspector who recommended the BU.1 allocation; by the s78 Inspector in respect of Phase 2; and by AVDC and BCC in respect of this application. BCC has agreed that there are no highway, transport or traffic matters that would prevent the grant of planning permission.
58. BTC's concerns may be fuelled by a misunderstanding of travel plan targets as became apparent in cross examination. BTC's survey of southbound traffic was consistent with the growthed up forecasts in the applicants' Transport Assessment; the results reinforce the robustness of the Assessment.
59. The s106 makes provision for various off-site highway works that are designed to aid public transport users, cyclists, pedestrians and car drivers. The proposals will ensure the unspent Phase 2 financial contribution can be directed to bus service enhancements. The cumulative impact of the development of the BNDP sites resulted in the applicants agreeing to make a £200,000 contribution towards the A413/A422 roundabout which is designed to direct through traffic from the town centre. None of these benefits has been acknowledged by BTC. There are no negative highway impacts to weigh against the scheme.

### **The effect of the proposals on foul and surface water drainage in the area**

60. The site lies in Flood Zone 1 and has been the subject of a Flood Risk Assessment (FRA) which was updated in advance of the Inquiry. Neither the Environment Agency nor Anglian Water object to the scheme. Surface water run-off will be collected and stored and then discharged into the closest public sewer, thereby reducing existing greenfield run-off and reduce local flooding issues. There are

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<sup>23</sup> CD23 paragraph 18

<sup>24</sup> BTC Statement of Case, paragraph 5.5.3

agreed conditions suggested to secure a satisfactory design and subsequent implementation of an adequate drainage scheme.

### **Whether the proposals make adequate provision for community and other services and facilities including affordable housing**

61. Concerning affordable housing, the quantum exceeds that required by the AVDLP and fully complies with Policy HP5 of the BNDP. The s106 Agreement includes triggers to ensure that it comes forward hand in hand with the market housing and it also fixes the mix and tenure of homes to accord with Policy HP4. The change of use part of the scheme is also secured through the Agreement and agreed condition 3. This secures the sports pitches, the LEAP and the NEAP. The adjoining Rugby Club has expressed support for the pitches. The Agreement makes provision for maintenance and the transfer of the land to AVDC. It also secures the necessary sport and leisure contribution as well as education contributions which are to be spent at the Royal Latin Grammar School.

### **The planning balance: Whether the proposals comprise sustainable development as defined in the Framework and, either, whether the benefits of the scheme are sufficient to outweigh any identified harm or whether the adverse impacts of approving the development would significantly and demonstrably outweigh the benefits**

62. There will inevitably be a change in landscape character. The site lies adjacent to housing to the south and east and has well established boundaries that will be retained. It will not unduly protrude into the countryside and its impact on designated heritage assets would be neutral. Although not selected for allocation in the NP there would be no significant adverse environmental impacts. AVDC does not raise such issues. BTC's concerns about the impact on Stowe were only made when AVDC stopped conceding that it could not show a five-year housing land supply.

63. The highway impacts would not be harmful and all necessary improvements can be secured so as to mitigate any impact, making this a neutral factor in the overall balance. The proposals secure additional recreational open space and two sports pitches. These are social and environmental benefits which ought to attract moderate weight in favour of the scheme. The proposals would provide a broad mix of up to 130 homes, of which 35% would be affordable units, on the edge of the second largest settlement in AVDC. This offers economic and social benefits that attract significant weight in favour of the scheme.

64. Even if only the ordinary planning balance was to be applied then the benefits plainly outweigh the limited and inevitable harm. Planning permission ought to be granted as soon as possible to enable the development to proceed.

### **The Case for Aylesbury Vale District Council**

#### ***Introduction and application history***

65. The site has a complicated history. Throughout the application period, during the period when it was unable to demonstrate a five-year housing land supply, AVDC has been prepared to grant planning permission. The Officers' Report of 27 April 2016 gave significant negative weight to the conflict with BNDP Policy HP1 but reduced the weight to be accorded to it as it is a policy for the supply of housing and AVDC could not then show a five-year housing land supply. The tilted

balance, under paragraph 14 of the Framework, fell in favour of the grant of permission. AVDC has never, and does not now, raise any environmental concerns about the proposal.

66. This planning balance had to be revisited after the publication of the revised HEDNA and AVDC's recent IHLSPS which shows a supply of 5.8 years. The application was therefore reported back to Committee where Policy HP1 and conflict with it were accorded material weight against the development and it was concluded that there were no other material considerations which warranted the grant of permission. By then the application had been called-in.
67. AVDC based its evidence on the main issues identified by the SoS and the Inspector in which AVDC has an interest. Its evidence is limited to just four of those issues as there is agreement that no material weight can be given to the draft VALP and only BTC has raised concerns on the remaining matters.
68. AVDC considers that the SoS should grant permission if he finds (i) no conflict with BNDP Policy HP1; or (ii) that AVDC cannot show a five-year housing land supply and the level of supply is less than 3 years; or (iii) both (i) and (ii) apply.

#### ***Consistency with the development plan***

69. The only issue is whether there is conflict with BNDP Policy HP1. It is not disputed that a proposal does not have to accord with each and every policy in the development plan; it is enough that a policy accords with the development plan considered as a whole. There is nothing in that judgement<sup>25</sup>, however, that says a proposal cannot properly be refused because of conflict with a single development plan policy. What is required is an assessment of the materiality of that policy. In this case, Policy HP1 goes to the amount and distribution of housing in the plan area. It is a key policy that attends to the principle of development. Any conflict with it should be accorded significant weight and permission could only properly be given if the other material considerations indicated that it ought to be in the face of development plan conflict.
70. The meaning of a policy is a matter of law. It should be interpreted objectively in accordance with the language used and read in its proper context. The views of the Examiner are not relevant to its interpretation; nor are the words in other development plans. In this case the BNDP sets out the vision for Buckingham until 2013. It is for "an additional 617 dwellings excluding commitments". The Plan includes a reserve housing allocation to accommodate any shortfall in housing allocation during the lifetime of the Plan.
71. Policy HP1 seeks to deliver that vision and so allocates the amount and distribution of housing. It says that development within the settlement boundary will be supported provided it meets the requirements of other policies in the Plan. The policy is clear in that the reserve site will only be required if one or more of the allocated sites, with a total of 80 outstanding units, is not brought forward before 2025. That approach would not be necessary if the plan contemplated other sites coming forward on an ad hoc basis. That approach would allow the application site to come forward before the reserve site when the plan's evidence base concluded that the reserve site was preferable.

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<sup>25</sup> *R v Rochdale Metropolitan Borough Council ex parte Milne* [2000] No CO/292/2000



72. The BNDP's Policy HP7, windfalls, would also be redundant. While it is true that there is no stated maxima and it does not explicitly state the obvious corollary of the site allocation policy (that land not allocated is not supported) it is plain that the larger housing sites are identified in the plan and that smaller windfall sites are confined to within the settlement boundary. The application falls within neither category and so is not policy compliant. The applicant's approach would rob the people of Buckingham of their chance to direct where housing should go.
73. In Buckingham there are no Framework compliant housing numbers to be met and any increase required by the emerging LP will be met through review. The Government is clear that it will allow communities to revisit NPs made in advance of Framework-compliant LPs. Given that the numbers on which the Plan is based, which are around the same as the FOAN in the HEDNA, there is no certainty that the housing numbers would have to be increased.
74. While the emerging VALP indicates a requirement for 557 more homes, the supporting evidence identifies sites for some 1,212 homes so only the most sustainable sites would be needed. This choice would be made through a review of the BNDP. The applicants' case would rob the BNDP of any real purpose. The Council gave significant negative weight to the conflict with the recently-made BNDP and took account of the importance that the Government places on NPs.

***Whether the Council is able to demonstrate a 5-year supply of housing against a FOAN and the implications of this in terms of national and local policy***

75. The Council's position is as set out in its recent IHLSPS and the updated HEDNA on which that is based. The principal differences between the parties relate to the correct FOAN and the correct supply.

***FOAN***

76. There is much agreement between the parties concerning the correct approach to identifying FOAN within the context of a s78 application. It was agreed that a s78 Inspector needs to identify an objectively reasonable housing requirement against which land supply can be compared; that the starting point here is the Council's own latest assessment of housing needs; and that unless that assessment is unreasonable it should be used. Where there is no reasonable full assessment on which to rely, then the DCLG 2014-based household projections should be used as the starting point (unless supplanted by an alternative reasonable assessment). A reasonable assessment is one based on facts and judgements which are unbiased and allow for appropriate upward and downward adjustments of input assumptions. Any assessment must survive scrutiny by reference to secondary sources and other sense checks.
77. ORS are highly experienced in this field having produced some 29 SHMAs and their approach has been endorsed by Inspector after Inspector at s78 appeals and Examinations in Public (EiPs). By contrast, the applicants' witness was unable to show support for his approach at a s78 appeal. That witness accepted the need to persuade the Inspector, and by extension, the SoS, that the ORS assessment is not a reasonable basis on which to assess need. This is a high bar given the complexity of the topic and it involves professional judgement on which there may be legitimate differences of view.

### *The differences*

78. The main differences between the two assessments come down to the approach to migration and whether long or short term trends should be used; whether or not to rely on secondary sources of information in adjusting population forecasts; and the appropriate level of uplift for market indicators. Each is now considered.

### *The use of long term or short term migration trends*

79. Generally, long term trends are preferred as short term trends are more likely to capture a peak or trough in migration levels. The long term approach is supported by PAS<sup>26</sup>; by experts in demographic analysis<sup>27</sup>; and has been endorsed by Inspectors at s78 appeals and EiPs<sup>28</sup>. The HEDNA<sup>29</sup> sets out a clear justification for 10-year trends and ORS use 10-year trends for migration in other assessments. In any case, this debate goes nowhere as the outcome is similar whether the 10-year trend average is used (1,700) or the 2014-based SNPP (1,793). It cannot be said that the use of longer term trends was unreasonable.

### *Secondary sources*

80. The applicants' witness agreed that the starting point for population change is the DCLG household projections although this is a starting point that has not been tested and so should not be adopted uncritically. The PPG allows adjustments based on local demography. It is notable that HEDNA adopts the MYE data for the other three LPAs but identifies a specific problem in AVDC as previous MYE projections have overestimated population change. This overestimation has knock-on effects as errors in the MYE infect the SNPP such that this projection is unreliable. It follows that as DCLG projections are based on SNPP projections then they cannot be relied upon without adjustment. Reductions from the SNPP rate are not unusual and have been endorsed, for example, in the London Plan.

81. The applicants' criticism of the ORS approach in this context was the use of admin data as a secondary source to check and adjust population projections. It is accepted that this data is not perfect but it is endorsed by ONS<sup>30</sup>. However, ORS did not rely on this alone. The decision to adjust was based upon the ONS MYEs being overestimates (following the 2011 census rebase); the migration data based upon MYE rebase indicates population increases well above any historic levels; and secondary sources were indicating population overestimates.

82. ORS did not, therefore, just look at patient data. It was the combination of factors that led to the adjustments. The criticism of this use of admin data ignores the fact that ONS uses it and that it were other factors leading ORS to conclude that an adjustment was appropriate. This is not unreasonable.

### *The market indicators uplift*

83. The applicants' witness says that this should be 15%; ORS say 10%. The highest levels across the country are typically 20%. ORS has proposed a variety of

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<sup>26</sup> CD21 paras 3.74 – 3.76

<sup>27</sup> CD21 para 3.77

<sup>28</sup> CD21 paras 3.78 and 3.81

<sup>29</sup> CD21 pp64/65

<sup>30</sup> ARP2 appendix 7

uplifts, usually 10 or 20%. The HEDNA proposes 20% for Southern Bucks where affordability is substantially worse than in AVDC<sup>31</sup>. This is a matter of judgement and 10% applied by ORS is reasonable in the context of other applied rates.

*Sense check*

84. The overall result is that the applicants' FOAN requires an increase in housing stock in this area of between 1.86 and 2.02%. This compares with an average of 0.97% increases (with a range of 0.38% to 1.93%) based upon the housing targets in plans adopted under the Framework (and so have been tested at EiP). The updated HEDNA figure is 1.30% (the FOAN, not the target as the latter may be higher to reflect neighbouring authorities' unmet need). Even without unmet need there are only 11 plans adopted with a higher increase in stock. The HEDNA increase, if applied nationwide, would meet the Government's stated target of 1m homes by 2020. The updated HEDNA provides a FOAN which is a plainly reasonable basis on which to calculate five-year housing land supply for the purposes of this application.

*Supply*

85. As set out in the IHLSPS, a 10% deduction is applied to all sites making up the supply in order to take account of unexpected delays in delivery. The IHLSPS reduces the supply by 618 dwellings for the period 2016-2021 and by 553 for the period 2017-2022. These numbers are both in excess of the 353 suggested by the applicants in their analysis<sup>32</sup>. So the discount already applied by the Council is greater than the reduction suggested by the applicants. To reduce the supply figure and then apply the discount would amount to double counting.

86. The other factor in the supply argument is the over/under supply added to the five-year requirement. AVDC says there is an oversupply of 705<sup>33</sup> homes; the applicants say an undersupply of 602<sup>34</sup> homes. This alleged undersupply can only be endorsed if it is concluded that the HEDNA is an unreasonable basis for calculating the five-year housing land supply.

***The Written Ministerial Statement***

87. Policy statements should be read in their proper context. Two interpretations of the WMS have been advanced as to the intended method of calculating the three-year housing land supply. Is it a 5-year calculation where the results are 3 years or more or is it a symmetric three-year calculation where 3 years' need is compared to 3 years' supply? The fourth paragraph of the WMS refers to NPs not being deemed to be out-of-date unless there is a significant lack of land supply for housing in the wider local authority area. The final sentence of the penultimate paragraph says that it is "...right to take action now to protect communities who have worked hard to produce their neighbourhood plan and find the housing supply policies are deemed to be out-of-date through no fault of their own". These indicate the intention of the Minister was to ameliorate the effect of paragraph 49 of the Framework.

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<sup>31</sup> CD21 paras 7.85-7.86

<sup>32</sup> ARP3 Appendix 3

<sup>33</sup> CD7 p 9

<sup>34</sup> ARP3 p 15

88. If the symmetric three-year interpretation were adopted the WMS would have the opposite effect; it would make it harder for many authorities to demonstrate a three-year housing land supply. This is as set out in the Statement of Fact and Grounds in the ongoing claim for Judicial Review against the WMS. It would be more onerous to achieve this so the policy would have the opposite effect from that intended. Accordingly the basis for calculating the three-year housing land supply must be the ordinary five-year calculation. If the Council's submission that there is a five-year housing land supply is found to be incorrect, there is plainly a three-year supply on the basis of the above.

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

89. AVDC concludes that there is a material development plan conflict which is not outweighed by other material considerations namely the provision of housing (and the economic and social benefits that follow) and the general absence of environmental harm. Planning permission should be refused.

### **The Case for Buckingham Town Council**

#### *Compliance with housing policies in the BNDP and Policy HP1 in particular*

90. The applicants made much of whether there is silence in the BNDP in respect of sites not on the allocations list and outside the settlement boundary. BTC maintains that on a natural reading of BNDP, taken and read as a whole, the intention of the Plan is clear. The allocation of sites and the settlement boundary show where the people of Buckingham wish to see sustainable development in their town. This is one of the purposes of such Plans as set out in the Framework at paragraphs 183 and 184.

91. The BTC was advised that to prohibit any development outside the allocated sites, windfall sites or the settlement boundary might restrict future innovative development that might come forward in the plan period. This could include, for example, a scheme with 50% affordable housing that might bring substantial benefits with little in the way of adverse effects that the Council wished to see come forward. BTC were also advised that a policy preventing such development might leave it open to future challenge. In any case, the Plan is clear and such a policy was not seen to be necessary.

92. The aim of the BNDP is to consolidate residential development to the west allowing infrastructure, such as a new bus route, to be concentrated and combining it with the planned growth of the University on the Hunter Street Campus. Residents did not want to see development beyond the boundary created by the by-pass or to the north towards Maids Moreton which is locally considered to be a village distinct from Buckingham.

93. The BNDP should be read as it naturally would be, that is to say the application site is not allocated under Policy HP1; it is not a windfall under Policy HP7; and that it falls outside the settlement boundary under Policy HP1. The development is therefore not in accordance with Policies HP1 or HP7 of the BNDP. It is not where the residents wish to see sustainable development. The White Paper shows the importance of NPs. They boost housing numbers. The Government recognises that individuals and communities dislike speculative development. If the BNDP were to be set aside after just 2 years it could destroy local confidence and residents might ask whether it is worth the money spent.

94. The applicants' argument that because the development is sustainable it must be in accordance with the plan, even when outside the settlement boundary, could lead to a situation in which any sustainable development could be built. This is clearly not what is envisaged in the White Paper. As all the sites looked at by the BTC are more sustainable than this one, as many as 2,329 new homes could be built. It is legally established that NPs can include allocations. When allocations are made, and when a settlement boundary is drawn, can this logically be taken to mean that development outside the boundary is in accordance with the plan?
95. The BTC submits that the correct view is that such sites are not in accordance with the Plan. *Crane*<sup>35</sup> rejected the argument that where a site was not allocated it could still be in accordance with a plan. Such sites can be given permission but that must be on the basis of material considerations that are substantial enough to justify departing from the Plan. In this case the other material considerations, such as affordable housing and the increased supply of housing, are not sufficient to outweigh adherence to the plan led system.

*Whether the BNDP is silent or out of date*

96. BTC reject the argument that because the Plan does not explicitly say that no development is permitted outside HP1 and HP7 the plan is silent for the purposes of paragraph 14 of the Framework or that such development is permissible. It rejects the contention that this means that the development is in accordance with the Plan as a whole.

*Whether there is a five-year housing land supply/ three-year housing land supply*

97. BTC believes that AVDC can show a five-year housing land supply and so paragraph 49 of the Framework is not engaged. Even if there is any doubt, and BTC pointed to errors and oversights in the applicants' evidence, then there is a three-year housing land supply in accordance with the recent WMS. BTC also notes the Government's confirmation of a garden town in AVDC in the recent White Paper. Paragraph 49 of the Framework is therefore not engaged. If it is found that there is no three- or five-year housing land supply then the substantial weight of the BNDP policies overcomes the presumption set out in paragraph 14 of the Framework. This was confirmed by *Crane* (para 74) which says that the Framework does not say that where relevant policies in the development plan are out of date, the plan must therefore be ignored. It is for the decision-maker to give as much weight as is judged right to a proposal's conflict with the strategy in the plan or the vision in the NP.

*Weight to be given to BNDP policies where not subjected to a FOHN*

98. The BNDP housing supply figures were based upon the then current DCLG figures as is the required base in PPG and thus strategic plans. NPs can come forward in the absence of up-to-date local plans. The White Paper acknowledges that NPs help achieve the aim of supplying more new homes. In Buckingham the reserve site would supply 300 homes, a considerable number in a town of 5,800 homes. This is now considered good practice in the PPG.
99. Since the start of the NP period in 2011 some 98 homes have been delivered on windfall sites in accordance with Policy HP7. There are differing methodologies

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<sup>35</sup> *Crane vs SoS CLG & Harborough District Council* [2015] EWHC 425 para 48

that can be used to calculate housing need and these produce different figures. The White Paper has promised a standardised approach to FOAN. BTC welcomes this as it reduces the opportunity for speculative challenge once the consultation period for the plan is ended. A Planning Inquiry is not the place to debate FOAN. The DCGL figures were subjected to scrutiny; the applicants' figures have not.

100. Part of the identified need concerns students at the University and it was appropriate to consider the planned growth set out in the University's Development Plan. This was part of the evidence base for the BNDP. Government advice at the time indicated it was permissible to equate a single bedroom student unit with a home. This housing is intended for a very specific part of the market. Until the emerging LP has been adopted, suggestions that the housing supply numbers in the BNDP should be given little or no weight should be rejected as speculative at best.

*The proposed development is not sustainable and the disadvantages would not outweigh the statutory plan-led approach and the Framework*

101. Traffic considerations: BTC has found it impossible to find any data on the effect of the Travel Plan for Phases 1 and 2. This has only just been brought forward. The proposed cycle paths are unlikely to be suitable due to the road narrowing towards the town centre. There is already increased traffic on Moreton Road towards the Old Gaol roundabout and more homes are proposed that will increase this further. The option, with cars travelling north through Maids Moreton, is not a viable option. The applicants' approach to public transport is optimistic as few car drivers will make the switch.
102. Historic heritage considerations: Stowe is one of the most important and significant sites of its kind. While it may be that the impact of the development would have only a small or negligible effect, the importance of the heritage asset means that great care should be applied to concerns about the impact.
103. Sewerage/ drainage considerations: The properties are at risk from surface water flooding due to the aquifer it sits on. BTC also questions whether sewerage connections are adequate to prevent leaks downhill on adjacent housing areas.

*Conclusions; factors to be considered in calculating the beneficial weight of NP policy*

104. The BNDP promotes positively sustainable development facilitating choice for the people of Buckingham in shaping their environment. It has a clear vision for the development of the town based on the expressed preferences of the residents. The concentration of development enables more targeted infrastructure to be provided. The site scored the joint lowest mark in the SA. It has been approved by an Independent Examiner; if planning permission is granted the people of Buckingham would lose confidence in the process.
105. Government policy on NPs should carry significant weight. The WMS and White Paper make it clear that it seeks to support NPs in areas where there is doubt about a five-year housing land supply. Planning judgements can give very significant weight to NPs. If planning permission is granted here, it might reduce confidence in the NP process and, given the ability of NPs to provide housing, it might reduce the ability of such plans to deliver housing. There may be hesitation on the part of communities to embark on NPs. If there is a

disincentive to embark on one, this may affect the Government's aims as set out in the White Paper.

106. Much of the applicants' case is based upon turning the BNDP and its intentions on its head as far as the lay person is concerned. If it is accepted that the application is actually in accordance with the development plan this would mean that legalism would have succeeded over everyday language and plans "however expressed" which makes NPs accessible to everyone. BTC requests that the wishes of the people of Buckingham, in the form of the BNDP, are given due and significant weight in this decision.

### Written Representations

107. **Miss Lindsey Cobb** commented that she has noted that the application site is the subject to public consultation as part of the emerging VALP. It was not put forward as a development site in the BNDP; this plan was voted on and supported by nearly all residents. AVDC has not refused this application; simultaneously the Council is consulting on it again. The BNDP makes provision for over 600 additional homes. She urges that the application be refused or that the decision be deferred so as not to invalidate the latest consultation.

108. In respect of the consultation exercise carried out by AVDC when it processed the planning application, **16 letters of objection** to the development were received **from third parties**. These objections covered a wide range of issues including:

- Additional congestion at the Old Gaol and Town Hall;
- Nearby roads cannot cope. Avenue Road is already filled with cars in term time, dangerously parked at the junction;
- Overdevelopment and lack of sufficient infrastructure;
- Businesses suffer as people avoid the town;
- Traffic calming measures are necessary as children play in Lincoln;
- Moreton Road is dangerous, the zebra crossing does not serve its purpose;
- Insufficient open space is proposed and a financial contribution towards off-site provision is unwanted;
- The open space should be transferred to AVDC before commencement;
- Contrary to BNDP;
- Overlooking due to changes in level;
- Concerns about disposal of surface water and sewerage;
- Bus services are limited and unreliable;
- Landscape buffers are necessary to protect existing residents;
- Social housing should be integrated throughout the site;
- Brownfield sites should be used first;

- Loss of wildlife habitat;
- Noise and disruption to residents; and
- Significant visual intrusion on setting of Stowe House and Gardens.

### **Conditions**

109. A list of agreed conditions was submitted during the Inquiry<sup>36</sup>. This was discussed at a round table session.

### **S106 Agreement**

110. A completed Agreement, dated 16 February 2017, was submitted during the Inquiry<sup>37</sup>. It is signed by the applicants, AVDC and BCC. It was discussed at a round table session during the Inquiry. It makes provision for a bond to be provided to AVDC prior to the commencement of development. In respect of affordable housing, a table in the Fourth Schedule of the Agreement sets out the proposed mix of tenures and unit sizes.

111. The Agreement makes provision for various highway improvements including a substantial financial contribution towards the implementation of a slip (filter) lane at the A413/A422 junction, to help take traffic away from the town centre, and new lane markings to make the Old Gaol roundabout more efficient. Other works include improvements to bus stops with the provision of shelters and real time passenger information. There would be improvements to footpaths and cycle routes and the implementation of a comprehensive Travel Plan.

112. The Agreement also makes provision for a financial contribution towards additional sports teaching facilities at the Royal Latin Grammar School in Buckingham. The sum to be provided will depend upon the sizes of the dwellings to be built; it would be calculated in accordance with a formula and provided in accordance with a timescale set out in the Eighth Schedule. A LEAP would be provided within the site and a NEAP would be provided in a location to be agreed by AVDC. Two sports pitches would be provided on the northern field and a financial contribution made towards AVDC's sports and leisure projects. The Agreement also makes provision for a sustainable urban drainage system (SUDS) in accordance with details to be agreed by the Council. A schedule, demonstrating compliance with the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regs) was submitted<sup>38</sup>.

### **Inspector's Conclusions**

113. The following considerations are based upon the evidence given at the Inquiry, the written submissions and my inspections of the site and its surroundings. In this section, the numbers in square brackets [] refer to paragraphs in the preceding sections of this Report.

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<sup>36</sup> ID28

<sup>37</sup> ID42

<sup>38</sup> ID37



### **Proposals and plans [1, 22, 23, 111, 112]**

114. The planning application is in hybrid form, being part outline and part full. The residential part is in outline with all matters of detail other than the means of access to the site reserved for future consideration. The proposals include the construction of up to 130 dwellings on the southern field of which 35% would comprise affordable housing in full accordance with Policy HP5 of the BNDP. The northern field, which is the subject of a full application for its change of use from agriculture, would be used to provide two sports pitches, possibly rugby pitches for the adjoining Rugby Club, as well as an area of informal open space.
115. An indicative site layout plan has been submitted along with indicative street elevations of some of the dwellings. Full details of the development would need to be the subject of conditions requiring that they be submitted to and approved in writing by the LPA at a later date. The proposals include various off-site highway works which are set out in detail in the Highways SoCG. Those close to the site are identified on Drawing No 1059624–D004 Rev 01b which accompanies the s106 Agreement. These have all been agreed by BCC as highway authority who also signed the s106 Agreement.

### **Planning policy [12-16, 24-30, 69-74, 90-96]**

116. The development plan comprises the saved policies in the AVDLP (adopted January 2004) and the BNDP (made 30 September 2015). The emerging plans include the VALP which is expected to be submitted in summer 2017 and adopted at the end of this year.
117. The saved policies in the AVDLP carry less than full weight due to their age and the publication of the Framework. The housing policies had an end date of 2011 and there are no saved policies that relate to housing supply or settlement boundaries. In accordance with advice in paragraph 215 of the Framework the policies in the VALP carry only very limited weight as it is at an early stage and there are unresolved objections. Other relevant planning policy includes the Framework, the PPG, and the WMS on Neighbourhood Planning.

### **Main issues [3]**

118. The Secretary of State, in his letter dated 25 May 2016, identified the main matters on which he particularly wishes to be informed about for the purposes of his consideration of the application as being:
- Its consistency with the development plan including the Neighbourhood Plan for the area;
  - Policies in the Framework on delivering a wide choice of high quality homes, in particular those set out in para 50 on delivering a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities; and
  - Any other matters the Inspector considers relevant.
119. By email to the parties I identified the other matters as being:
- Whether the Council is able to demonstrate a 5-year supply of housing against a full objective assessment of housing need and the implications of this in terms of national and local policy;

- The implications of the WMS (12 December 2016) including the need for the LPA to demonstrate a three-year supply of deliverable housing sites;
- The weight that can be given to the emerging VALP;
- The effect of the proposals on the setting of Stowe and its Registered Park and Garden;
- The effect of the proposals on road traffic in the vicinity of the site;
- The effect of the proposals on foul and surface water drainage in the area;
- Whether the proposals make adequate provision for community and other services and facilities including affordable housing; and
- The planning balance: Whether the proposals comprise sustainable development as defined in the Framework and, either, whether the benefits of the scheme are sufficient to outweigh any identified harm or whether the adverse impacts of approving the development would significantly and demonstrably outweigh the benefits

**Its consistency with the development plan including the Neighbourhood Plan for the area [12-16, 24-30, 69-74, 90-96]**

120. The development plan comprises the AVDLP and the BNDP. There is no doubt that due to their scale the proposals conflict with the thresholds in saved Policy RA.14 of the AVDLP; the proposals exceed 5 dwellings and the site exceeds 0.2ha. However, the AVDLP was adopted in 2004 and ran until 2011. In saving this policy beyond 2007, the SoS said that this must be read in context and this must include consideration of the Framework (2012) which gives advice concerning out-of-date policies. On the basis of this advice, and taking account of the fact that the relevant policy is not consistent with the Framework, only very limited weight can be given to it.

121. Saved Policy BU.1 of the AVDLP is also relevant insofar as criterion (c) sought to ensure that the Phase 1 proposals did not prejudice the remainder of the site from coming forward post-2011. While relevant, however, this policy also carries very limited weight as it is time-expired and not consistent with the Framework. Saved Policy GP.2 relates to the provision of affordable housing; this proposal exceeds its minimum requirement. The other AVDLP policies referred to are, for the most part, development management policies that it is agreed by the parties are capable of being met. This carries limited weight, however, as they are general policies which would be likely to be capable of being met by any outline planning scheme for housing in the district.

122. The most relevant policy of the BNDP, referred to in the Council's putative reason for refusal, is Policy HP1. The site is not identified as an allocation in this policy and it clearly falls outside the settlement boundary for Buckingham. The proposals are evidently not supported by this policy.

123. AVDLP and BTC argue that as this is an unallocated site outside the settlement boundary there is conflict with Policy HP1 when this is read together with the vision for the Plan and its Introduction. The people of Buckingham had clearly decided where they wished to see further housing development; that does not include this site. However, the BNDP does not place a cap on housing numbers;

indeed it supports small windfall sites within the settlement boundary. Unlike many NPs, the BNDP contains no policies either promoting or restricting housing development outside the settlement boundary. It gives no clear policy advice as to how schemes for housing development outside the settlement boundary, such as this, should be determined.

124. In this regard there are similarities with the site at Mitchelswood Farm, Newick<sup>39</sup>. In that appeal Decision, at paragraph 11, the SoS agreed with his Inspector and said "*that the [Newick] NP does not give a clear policy basis to refuse planning permission on sites not allocated in the NP if they are acceptable in other regards*". At paragraph 13 he concluded that "*while the site is not one allocated for housing in the NNP, this does not render the proposal unacceptable in principle*." He then went on to consider whether the proposal constituted sustainable development in line with the requirements of the Framework.
125. The proposals are in conflict with the AVDLP. However, the relevant policies in that Plan are out-of-date and, importantly, not consistent with the Framework and so carry very limited weight. While the application site is not allocated for housing in the BNDP, and lies outside the settlement boundary, this does not render the scheme unacceptable in principle. When interpreted objectively in accordance with the language used, and read in its proper context as per *Tesco v Dundee*<sup>40</sup>, the BNDP does not restrict sustainable development from coming forward outside the settlement boundary.

**Policies in the Framework on delivering a wide choice of high quality homes, in particular those set out in para 50 on delivering a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities [22, 23, 31, 109, 110]**

126. This is an outline planning application with all matters other than means of access to the site reserved for future consideration. Nonetheless, the s106 Agreement<sup>41</sup> makes provision for 35% of the homes to be affordable units and the size and tenure of these is fixed by its Fourth Schedule. This ensures that there would be a range of sizes, from 1- to 4-bed units, which have been agreed by AVDC as meeting local needs.
127. Suggested condition 20, which is agreed by the parties, provides for a range of dwelling sizes from 1- to 5-bed or larger units, the precise mix to be determined at the reserved matters stage. Taken together, the completed Agreement and the agreed condition ensure that the scheme would deliver a wide choice of homes, widen opportunities for home ownership and create an inclusive and mixed community. Concerning quality, full details of the proposed development would need to be submitted to and approved by AVDC. The parties agree that there is no reason as to why the adopted development management policies cannot be fully complied with, thus ensuring a high quality development in line with that built at Phases 1 and 2.

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<sup>39</sup> ARP3 Appendix 5

<sup>40</sup> Tesco Stores Ltd v Dundee City Council [2012] UKSC

<sup>41</sup> ID42

**Whether the Council is able to demonstrate a 5-year supply of housing against a full objective assessment of housing need and the implications of this in terms of national and local policy**

128. As set out above, AVDC considers that it can demonstrate a five-year housing land supply, the applicants disagree. The matters in dispute relate to need (the FOAN) and the supply. I have also included a short section on the buffer for completeness although this is not a matter that is in dispute.

***Need (FOAN) [33-44, 76-89, 97-100]***

129. The PPG advises<sup>42</sup> that establishing the need for housing is not an exact science and that no single approach will provide a definitive answer. The starting point estimate of FOAN is provided by the DCLG household projections.

130. At the start of the Inquiry the main parties produced a "Comparison of housing need assumptions" (Version 0.1)<sup>43</sup> and this was updated by Version 0.2 at the end of the Inquiry<sup>44</sup>. This shows that there are many areas of agreement, including the HMA; the period for assessing the FOAN (2013-2033); the starting point (DCLG 2014-based household projections - an increase of 21,028 households over the Plan period); and vacancy, fertility and mortality rates.

131. The main areas of disagreement relate to migration rates, and in particular what time period should be used; sources of information, referred to as data quality issues; suppressed household formation; and the scale of the uplift necessary based upon market indicators. Based upon the different assumptions, AVDC conclude that the overall FOAN is 19,385 dwellings (969 dpa) while the applicants conclude that it is 27,540 dwellings (1,377 dpa).

*Migration/ population*

132. The PPG advises that adjustments can be made to household projection-based estimates of housing need and that these issues may include migration levels being affected. The household projections are trend based and the parties used different time periods for their calculations. The 2016 HEDNA goes into some detail in explaining why, in the opinion of ORS, a 10-year trend is preferable to a 5-year trend in terms of reliability<sup>45</sup>. It acknowledges that no one scenario will provide a definitive assessment of future population but concludes that long-term trends provide a more appropriate basis on which to consider future housing need. I consider that the methodology as set out in the 2016 HEDNA is a reasonable approach, although the difference between the parties arising from this is relatively small, just 93 persons<sup>46</sup>.

133. The PPG also advises that the household projection-based estimate of housing need may require adjustments to reflect factors affecting local demography and household formation rates. In this regard ORS used a combination of factors to conclude that a downward adjustment was in order. ORS used a combination of factors starting with their identification that the MYEs produced by ONS were

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<sup>42</sup> ID: 2a-014-20140306

<sup>43</sup> ID5

<sup>44</sup> ID26

<sup>45</sup> CD21 pp 64-65

<sup>46</sup> AVDC 10-year trend = 1,700 persons; Applicants 2014-based SNPP = 1,793 persons

overestimates, a conclusion based upon a rebase following the 2011 census<sup>47</sup>. In addition to that the migration data, based upon the MYE estimates, indicated population increases well above historic levels. The secondary sources, such as patient data, gave the same indications.

134. Taken together, this does not seem an unreasonable approach. The various assumptions are explained in the 2016 HEDNA. This significantly reduces the population projection for Aylesbury Vale. I acknowledge that the evidence as to data errors in the MYE may be more likely to affect the first few years (2001-06) but this is a matter of judgement that is better tested at an EiP. I also have reservations about the accuracy of the patient register as a secondary source of data. This was shown by the difference<sup>48</sup> between the 2011 census-based population estimate and the 2011 patient register. This difference was not adequately explained. Unfortunately ORS were not represented at this Inquiry and so were not able to expand upon the HEDNA.
135. There is a significant difference between the parties concerning the size of the starting population. The applicants have used the ONS MYE for 2013; AVDC has adjusted this for data quality reasons. Neither approach is fundamentally wrong provided that the assumptions and the data used are accurate. While I am not convinced that the AVDC position concerning patient data has been adequately explained, this is only one of three reasons which, in combination, caused the adjustment. I do not consider that this, in isolation, fatally undermines the AVDC position or that it has been unreasonable.

#### *Suppressed household formation*

136. Chapter 2a of the PPG says that the projection-based estimate of housing need may require adjustment to reflect factors affecting local demography and household formation rates which are not captured by past trends. It cites the example of formation rates being suppressed by under-supply and worsening affordability of housing. In the 2016 HEDNA, ORS make an allowance of 135 dpa<sup>49</sup> for concealed families and homeless households, with an allowance for vacancies and second homes. This increases need by 7 dpa.
137. The applicants referred to the suppression of household formation in the 25-34 and 35-44 age groups. Also relevant is the low level of housing completions in the period 2001-11 when, in accordance with the applicants' figures, there was a shortfall of about 40% of planned delivery. They argue that this ties in with the "buffer" issue in which both main parties agree that a 20% buffer is appropriate.
138. However, this shortfall is not agreed by AVDC. The requirement figures in the applicants' calculations are based upon a requirement that has not been tested at EiP and greatly exceeds AVDC's calculations. While it is not unreasonable to anticipate that the requirement in AVDC will exceed the identified need, due to constraints in other neighbouring LPAs, this cannot be taken for granted. It would be unreasonable to assume any requirement figure above the identified need in advance of the EiP. The AVDC calculation, based upon a FOAN of 965

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<sup>47</sup> CD21 pp46-47 and Figure 20

<sup>48</sup> 2011 Census-based estimate: 174,890; 2011 patient register: 178,190

<sup>49</sup> CD21 p 159 Table 122

dpa, gives a surplus in delivery/ projected delivery of 1,046 dwellings in the period 2013-2017.

139. In all these circumstances I am not convinced that the applicants' figures have sufficient weight to demonstrate that the AVDC calculations are unreliable. In any case, even using the applicants' best case, it would only add 66 dpa to the need; an increase of 59 dpa on the AVDC figure.

#### *Market indicators*

140. Both parties agreed that upward adjustments needed to be made to reflect market signals. ONS, in the 2016 HEDNA, used an uplift of 10% whereas the applicants use 15%. Due to their differing starting points this makes for a difference between the parties of about 90 dwellings per year<sup>50</sup>. While both parties used the comparison between affordability in Aylesbury and Eastleigh, the applicants also used Canterbury as a comparator where a 20% uplift has been imposed by the LP Inspector.

141. The 2016 HEDNA, in recommending an uplift of 10% for Aylesbury Vale, also recommended uplifts of 20% for Chiltern, South Bucks and Wycombe as it identified differences between the two local housing markets. While Canterbury is a recent example of a higher uplift being justified, particularly due to the lower quartile affordability ratio for 2015 being similar between Canterbury and Aylesbury Vale, it is not suggested that a similar 20% uplift is required in Aylesbury Vale. On these terms, therefore the applicant's uplift figure can be considered to be reasonable. However, the 2016 HEDNA was looking at four Council areas and it sets out several aspects of the market signals as reasons for making its comparison with Eastleigh. These show that there is more housing pressure in Buckinghamshire than in Eastleigh and it concludes that across the Buckinghamshire area as a whole a higher figure than 10% is justified.

142. This seems a reasonable response with the higher figure of 20% being recommended for those areas where affordability is much worse. In these circumstances I am not convinced that a comparison between Aylesbury Vale and Canterbury carries so much weight that it justifies a 15% uplift here. It is a matter of judgement and ONS, in compiling the 2016 HEDNA, have taken a reasonable approach in identifying that pressures in Aylesbury Vale are not so great as in the other three authorities. I consider that an uplift of 10% is reasonable.

143. Overall, therefore, I am not convinced that it has been shown that the FOAN is anything like as high as that calculated by the applicants. The AVDC calculations, as set out in the 2016 HEDNA, have not been tested at an EiP and were not defended at the Inquiry. While this means that their robustness has not been shown, this does not mean that they are either unreliable or unreasonable.

#### **Buffer [44]**

144. The second bullet point of paragraph 47 of the Framework says that LPAs should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of housing with an additional buffer of 5%. Where there has been a record of persistent under delivery of housing they should

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<sup>50</sup> AVDC 879 + 10% = 967 dpa; Applicants 1,197 + 15% = 1,377 dpa

increase the buffer to 20%. The Framework does not define the term “persistent under delivery”. The delivery has to be tested against AVDC’s annualised requirement for the relevant years based upon the actual requirement as now calculated and not against any previous figures.

145. AVDC does not dispute that a 20% buffer is now appropriate. Its recent IHLSPS uses a 20% buffer, although it states that the most appropriate buffer is being kept under review as AVDC has consistently delivered against its identified requirement in 4 of the past 5 years. The applicants consider that the delivery should be assessed against the higher requirement that they have identified. For the purposes of this Report, I have used the agreed 20% buffer.

**Supply [45, 46, 85, 86]**

146. AVDC’s five-year housing land supply<sup>51</sup>, as of October 2016, is based upon a requirement of 965 dwellings per year. Using this as a starting point, and taking account of an oversupply for the period from 2013 and allowing for a 20% buffer, AVDC considers that its five-year requirement for the period 2017/18 to 2021/22 is 4,535 dwellings. It considers that the available supply from deliverable sites is 5,531 which, allowing for a 10% non-implementation rate (-553 dwellings) and a supply from windfall sites (+318 dwellings) gives a total projected supply of 5,296 dwellings which equates to a 5.8 year supply.

147. The applicants consider that AVDC has over-estimated the housing supply as set out in the IHLSPS for the period 2017/18 to 2021/22 by 353 units. The disagreements relate to 8 sites. During the Inquiry AVDC accepted a reduction of 46 units (on sites 4 and 5). The 8 sites are therefore considered in turn, in the same order as set out in the Comparison table submitted by AVDC and the Housing Land Supply Review submitted by the applicants<sup>52</sup>.

148. *Site 1 Land adj Furze Lane, Winslow* (AVDC 250 dwellings: Applicants 200). This site has the benefit of outline planning permission for up to 250 dwellings. However, determination of the reserved matters application was deferred in January 2017. The papers for that SMDC meeting<sup>53</sup> indicate that Winslow Town Council has serious reservations about many of the submitted details including the housing mix and in particular the number and appearance of the flats. It says that the details are in direct conflict with Policy 4 of the Winslow NP.

149. The developers’ anticipated completion rates include 36 units in the first year (to June, not the end of March). I agree with the applicants that this seems optimistic as either there will need to be significant revisions to the scheme or it will have to be determined by AVDC against the backdrop of strong objections from the local community and alleged conflict with the made NP. The trajectory in CD7 shows a completion rate of 50 dwellings per year. I consider that the timescale should be put back by one year, reducing the supply by 50 units.

150. *Site 2 Above Rumbold’s Well* (BNDP Site I) (AVDC 100; Applicants 0). This site is allocated in the BDNP for housing but much of it is currently in active employment uses with several large buildings. Only the frontage units are

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<sup>51</sup> CD7: AVDC Five-year housing land supply - Interim position statement October 2016

<sup>52</sup> ID14 & ID29

<sup>53</sup> ID31

vacant. AVDC does not know the occupancy terms of the current businesses. The email from the owner's agent indicates that the viability of its redevelopment for housing has not been determined. Much of the land is in employment use and there are agents' boards advertising that part of it is available for letting for commercial use. I am not convinced that the site can reasonably be described as being available now or that it is deliverable in accordance with footnote 11 to paragraph 47 of the Framework. While the trajectory does not anticipate any delivery until year 3, even this seems unrealistic given the existing uses, the lack of any planning application and the uncertainty concerning viability. The supply should be reduced by 100 units.

151. *Site 3 Land at Winslow Rugby Club* (AVDC 50; Applicants 0). The site is allocated for housing in the Winslow NP. The trajectory shows no delivery until year 4. Access would be via the Furze Lane site and before development commences the access would need to be provided and a sports facility (rugby club) needs to be relocated. The site is to the rear of the Furze Lane site so the access road is unlikely to be built for some time. While discussions have been held between BCC and the rugby club, no proposals for new sports facilities have yet come forward and so there can be no certainty as when the site will become available. I do not consider that the site can be described as deliverable in accordance with the Framework. The supply should be reduced by 50 units.
152. *Site 4 Land off Station Road, Winslow* (AVDC 65; Applicants 0). This site is also allocated for housing in the Winslow NP. AVDC's NP Champion has confirmed that this site is proving difficult and the Council considers that the timescale should be set back by a year, reducing the supply from 65 to 30 units. The site is occupied by several businesses which need to be relocated. However, the anticipated relocation site is now the subject of a planning application for housing. While this may be refused it may be some time before any appeal is made and determined. The site is not currently deliverable and cannot reasonably be included in the supply. The supply should be reduced by 65 units.
153. *Site 5 Land off Granborough Road, Winslow* (AVDC 35; Applicants 24). This is a housing site in the Winslow NP. A planning application for 24 dwellings has now been submitted and AVDC agrees that the supply needs to be reduced by 11 units to reflect this reduced scheme.
154. *Site 6 Winslow Centre, Winslow* (AVDC 30; Applicants 0). This is a Winslow NP site for 30 units of extra care specialist housing. The Winslow centre is currently occupied by a school which is due to move in July. Some groups who use the premises need 6 months' notice but BCC, who own the site, are actively master planning it and intend to submit a planning application within a year. As the trajectory does not anticipate delivery until year 4 there seems no justification for changing the supply figure.
155. *Site 7 Gatehouse (Sainsbury's) Aylesbury* (AVDC 25; Applicants 0). Sainsbury's have recently announced plans in the press for a new scheme to replace that submitted in 2014. It is intended to provide a new 50,000 sq ft store with 33 dwellings accessed from Edge Road although no fresh planning application has been submitted yet. The trajectory shows 25 units in year 2, which now seems unrealistic. Nonetheless, the land is cleared and available and there is no reason why the units should not come forward within 5 years.



156. *Site 8 Molly's Field, Addison Road, Steeple Claydon* (AVDC 22; Applicants O). This site was the subject of a planning application in 2012 as a rural exception site by English Rural Housing Association. However, the s106 has not been completed and no permission has been granted. The Housing Association no longer has an interest in the site. No evidence has been put forward by the landowners. The land is not an allocated site in the AVDLP or the emerging VALP. While the Steeple Claydon NP team are in discussions with the landowners there is currently no certainty that it will be a housing site in the emerging NP. In these circumstances the site cannot be described as being deliverable and the 22 units need to be removed from the supply.
157. A further site, land north of Aston Clinton Road, was introduced by the applicants but they now agree that it should not be included in the supply. I agree. If it is included then all the sites that have recently come forward, as set out in ID37, would need to be considered and this adjustment to the supply side would unacceptably skew the calculations.
158. In terms of supply, therefore, I consider that the figure identified in the IHLSPS would need to be reduced from 5,296 to 4,998 dwellings. However, the figure of 5,296 already includes a 10% reduction (from 5,531) based on the probability that some of the identified sites will not come forward. To simply reduce the supply figure, which has already been reduced by 10% (553 dwellings), by a further 298 dwellings would mean an element of double counting. AVDC consider that the likelihood of some sites not coming forward is exactly the purpose of the 10% reduction included in the AVDC figures, and that is a fair point. However, for the reasons given above, four<sup>54</sup> of the identified sites should not be in the supply side calculations at all as there is no reasonable likelihood of any delivery within 5 years. This involves 237 dwellings.
159. In these circumstances the supply side should be reduced from 5,296 to 5,082 dwellings<sup>55</sup>. This still exceeds the Council's stated FOAN of 4,535 which takes account of the pre-2016 oversupply and a 20% buffer, or even a FOAN of 4,830 dwellings if the applicants' household formation figures are used. I consider that for the purposes of this Inquiry AVDC has demonstrated a five-year housing land supply.

**The implications of the WMS including the need for the LPA to demonstrate a three-year supply of deliverable housing sites [47-53, 87-88, 105]**

160. Much Inquiry time was given to the wording of the WMS. Two interpretations of the intended method of calculating whether a LPA had a three-year supply of deliverable housing sites were advanced. These centred on whether it is (i) a 5-year calculation where the results show a supply of 3 or more years; or (ii) a 3-year calculation where 3 years' need is compared to 3 years' supply.
161. Reading the WMS as a whole, it is clear that the intention is to make it easier for local people to have more of a say in local planning. The second paragraph refers to the frustration of NPs being undermined by relevant LPAs not being able to demonstrate a deliverable five-year housing land supply. Paragraphs 3 and 4 cite the impact of paragraph 49 of the Framework and say that where

<sup>54</sup> Sites 2, 3, 4 & 8

<sup>55</sup> CD7 Table 8 as adjusted:  $((5,531 - 237) - 10\%) + 318 = 5,082$  (112% or 5.6 years)

communities plan for housing in their NP, those plans should "...not be deemed out-of-date unless there is a significant lack of land supply for housing in the wider local authority area".

162. The fifth paragraph contains three bullet points that set out the circumstances that must arise at the time that a decision is made for the housing policies in a NP to not be deemed out-of-date under paragraph 49. In this case the WMS is less than 2 years old; the BNDP allocates sites for housing; and the LPA can demonstrate a three-year supply of deliverable housing sites. This final point is only achievable if a 5-year calculation is used. It is common for housing trajectories to provide a disproportionate amount of their deliverable sites in the final two years. This is the most likely timescale for sites with the benefit of outline planning permission; with a resolution to grant planning permission; or with an allocation for housing in the development plan, to come forward.
163. Reading the WMS as a whole, therefore, it seems to me that the intention must be for a 5-year calculation to be used with a requirement to have a supply of at least 3 years. That would make it less onerous for a NP to be shown to be not out-of-date. To compare 3 years' need with three years' supply would make it more difficult to achieve a three-year supply of deliverable housing sites; that is clearly not the intention. That conclusion is in line with the Treasury Solicitor's letter to Eversheds LLP dated 20 January 2017<sup>56</sup> in his response to the application for permission to apply for Judicial Review of the WMS<sup>57</sup>.
164. I have also had regard to the very fair point made by the applicants in that one of the problems that AVDC has encountered with its housing land supply relates to sites allocated in NPs. Indeed, of all the sites the applicants have challenged as being unlikely to come forward in the next 5 years, or to come forward at a slower rate in the first five years than suggested in the trajectory, almost all are allocations in NPs. This, it is alleged, is because not all the allocated NP sites have been rigorously tested for deliverability in the same way that sites allocated in local plans are tested.
165. The implications of the WMS, therefore, are that for Policy HP1 to not be out-of-date, AVDC must be able to demonstrate a three-year supply of deliverable housing sites based upon the results of a 5-year calculation. I am not a lawyer, and if the SoS is not with me on this, then Policy HP1 is only out-of-date if AVDC cannot demonstrate a three-year housing land supply based upon a 5-year calculation. In this case, however, this point is not determinative as, for the reasons set out elsewhere in this Report, AVDC can demonstrate five-year housing land supply (and therefore also a three-year housing land supply regardless of how the WMS is interpreted) and the development is not contrary to any policies in the BNDP.

### **The weight that can be given to the emerging VALP [54, 107]**

166. The draft VALP was out for consultation between 7 July and 5 September 2016. It is anticipated that it will be submitted in summer 2017 with adoption projected for the end of the year. The draft version plans to make provision for 33,000 homes over the plan period (2013-2033) but this figure and the spatial

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<sup>56</sup> ID35 p2 Ground Two

<sup>57</sup> ID36

strategy remain unresolved. Nonetheless, the application site is assessed in the SA and the draft plan recognises Buckingham's role as a strategic settlement.

167. The draft VALP has been the subject of significant unresolved objection. It is still at a relatively early stage in the process. In accordance with advice in paragraph 216 of the Framework this emerging plan attracts very little weight.

**The effect of the proposals on the setting of Stowe and its Registered Park and Garden [5, 55-56, 102, 108]**

168. Stowe, a Grade 1 listed building, and its Registered Park and Garden, also Grade 1, are located about 3km from the application site. The SoCG between the applicants and AVDC says that the distance of the site from these designated heritage assets is such that there is not considered to be any appreciable level of visual impact or intrusion on their setting. The putative reason for refusal makes no mention of any harm arising from this relationship. The SA for the BNDP does not identify this as a heritage constraint. None of the fifteen bullet points in BTC's objections to the planning application refer to any heritage impacts; it is first referred to in its Statement of Case.
169. The planning application was accompanied by a Heritage Statement which identifies that the significance of these heritage assets, and the Conservation Area in which they are located, is defined by the mansion and associated buildings located within the park and gardens. Construction of the house commenced in 1676 and it was altered and enlarged in stages between 1720 and 1779 utilising the finest architects including Sir John Vanbrugh, James Gibbs and Robert Adam. The surrounding grounds were laid out by Charles Bridgeman and altered and extended by Charles Vanbrugh, William Kent, James Gibbs and Lancelot "Capability" Brown. The grounds are of European significance as they represent the first example of natural landscape gardening.
170. The application site would not be seen in the context of these heritage assets. Due to the distance between the site and the assets, the changes in level and the mature vegetation, views between them would be distant and severely limited. No views of future housing on the site from the Registered Park and Garden have been identified; there would be no impact on this asset. The upper part of the mansion can be seen from the track to the north of the site but from within that part of the site where houses are proposed there are no such views due to intervening trees and hedges.
171. The upper parts of any houses in the north west corner of the site may be visible in the distance from the upper floor windows of the mansion. However, other houses are also visible and the impact on the setting of Stowe would be negligible. Even the BTC's use of a strong zoom lens did not justify its conclusion that there would be a "very significant intrusion into a view". From my observations the intrusion would be negligible and there would be no harm. It would not amount to even "less than substantial harm" as described in paragraph 134 of the Framework. That conclusion is in line with the SA of VALP which, in respect of site BUC043 (the application site) says that the impact on cultural heritage would be neutral or negligible<sup>58</sup>.

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<sup>58</sup> CD25 p39 (table)

172. I have had regard to the views of the Inspector who determined the appeal in respect of Phase 1<sup>59</sup>. She concluded that the development would not be seen in the context of the heritage asset due to the extent of the intervening countryside; that there would be harm to its setting; and that there would be no conflict with the development plan. While the current application site is, in part, at a higher level, the land immediately to the west of Phase 1 would remain open as it would be in use as amenity space and sports pitches.
173. The details of the housing would need to be approved by AVDC and these would be likely to include landscaping in line with the indicative layout which shows a substantial gap between the houses and the western boundary. New planting would supplement the existing hedge and the band of trees planted outside the site to the west. I conclude on this issue that there would be no harm to the significance or setting of these designated heritage assets. There would be no conflict with saved Policy GP.60 of the AVDLP, which seeks to protect the distinctive characteristics of registered Parks and Gardens, or with the Framework.

### **The effect of the proposals on road traffic in the vicinity of the site**

174. BCC, as highway authority, initially raised no objections but subsequently sought a financial contribution towards the cost of the design and provision of a left turn filter slip at the Stratford Road A413/ A422 road junction. Subject to that provision, in March 2016 BCC concluded that the outline application was acceptable. This contribution, as well as other off-site highway measures, is included in the s106 Agreement that has been signed by BCC as well as AVDC. AVDC has raised no highway objections to the development.
175. There would inevitably be an increase in traffic, although this would be likely to be mitigated, to some extent, by the Travel Plan. The Transport Assessment shows that there is capacity on the highway network to accommodate this. The s106 Agreement also makes provision for improvements to public transport infrastructure as well as measures to encourage cycling. There is no evidence to show that there would be any unacceptably harmful highway impacts arising from the development. It would certainly not have such a severe impact as to conflict with advice in paragraph 32 of the Framework.
176. I conclude on this issue that the limited harm arising from increased traffic on surrounding roads would be balanced by the off-site highway works that would be undertaken or financed by these proposals. Subject to the imposition of conditions, this is a neutral factor in the overall balance.

### **The effect of the proposals on foul and surface water drainage in the area**

177. The site is within Flood Zone 1 where housing, which is "more vulnerable", is nonetheless appropriate. A Flood Risk Assessment (FRA) was submitted with the application and in December 2016 it was updated for the Inquiry. There were no objections on these grounds from AVDC, the Environment Agency or Anglian Water. The assessment of the site in the SA for the BNDP gives this a neutral score and says that the site has no known risk of flooding.

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<sup>59</sup> CD23 paragraph 18

178. The photographs produced by BTC show that flooding can be an issue along Moreton Road but there is no evidence to suggest that the application proposals would exacerbate the problem. Indeed, due to the natural run-off from the application site towards the road the provision of a suitable drainage system within the site could improve the situation. The FRA recommends that the run-off is collected from all impermeable areas, stored and discharged at an agreed rate into the public sewer. This would result in natural surface water from the application site being reduced and so reduce any flooding currently occurring.
179. Suggested conditions 5, 6 and 7 require the development to be carried out in accordance with the FRA and that details of foul and surface water drainage are submitted to and approved by the Local Planning Authority. Details of a SUDS scheme, including its future maintenance, are secured by the s106 Agreement. In these circumstances, and in the absence of any over-riding evidence to the contrary, I conclude that the proposals would have no harmful impact on foul and surface water drainage in the area.

**Whether the proposals make adequate provision for community and other services and facilities including affordable housing [6, 30-31, 59, 61, 110-112]**

180. A completed s106 Agreement, signed by the applicants, AVDC and BCC was submitted. There are no issues concerning the legality or the enforceability of the Agreement. AVDC submitted a CIL Compliance Schedule<sup>60</sup> that shows full compliance. The Agreement provides for affordable housing at the level required by BNDP (35%) rather than the lower level required by AVDLP (30%) and the mix of housing sizes and tenures is set out. There is full compliance with BNDP Policies HP4 and HP5. Overall, the Agreement secures benefits for future residents of the site and for other residents and businesses in the District. The sports pitches and overall amenity space provision exceeds the minimum standards required and this is a benefit that weighs in favour of the development.
181. I am satisfied that the provisions of the Agreement are necessary to make the development acceptable in planning terms; are directly related to the development; and are fairly and reasonably related in scale and kind to the development. The Agreement therefore accords with the provisions of the CIL Regs and with paragraph 204 of the Framework.

**Conditions [30, 31, 60, 109]**

182. If the SoS is minded to grant planning permission I recommend that the conditions set out in the Annex to this Report be imposed on any permission granted. These conditions were discussed at the Inquiry and an agreed list, significantly amended from that set out in the SoCG, was submitted before the Inquiry closed. The application is a part outline/ part full hybrid scheme and the suggested conditions take account of this. In addition to the standard time conditions it is recommended that the approved plans are identified as the details of the access are for determination at this stage.
183. Conditions are required in respect of compliance with the FRA and for the provision of a surface water drainage scheme for the site to prevent any

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<sup>60</sup> ID37

increased risk of flooding. Details of a foul water strategy are necessary to prevent environmental and amenity problems arising from flooding. An ecological management plan (EMP) is necessary to safeguard the ecological interest of the site.

184. Details of external materials, slab levels, landscaping and tree protection need to be submitted for the approval of the LPA in the interests of the visual appearance of the area. Details of the accesses, including the timing of their provision, from Lincoln, Shetland and Twickenham Road are necessary to minimise inconvenience and in the interests of highway safety. For the same reason full details of the internal access roads, including the timing of their provision, need to be submitted to and approved by the LPA.
185. Details of the storage facilities for refuse and recyclable materials need to be approved in the interests of the living conditions of future residents and occupiers of adjoining properties. Details of the mix of dwellings to be provided to accord with Policy HP4 of the BNDP and to ensure a satisfactory mix of dwelling types. Details of measures to recycle water efficiently are necessary to conserve water resources and accord with Policy I3 of the BNDP.

**The planning balance: Whether the proposals comprise sustainable development as defined in the Framework and, either, whether the benefits of the scheme are sufficient to outweigh any identified harm or whether the adverse impacts of approving the development would significantly and demonstrably outweigh the benefits [12-16, 17-21, 89, 104-106]**

186. The development plan comprises the AVDLP and the BNDP. Concerning the AVDLP, this Plan was adopted in January 2004 and covered the period to 2011 and so is now time-expired. It is not cited in AVDC's putative reason for refusal. I agree that the Plan contains no policies that address the post-2011 housing needs of the District. Neither the policy concerning development in the countryside (Policy RA.1) nor that concerning residential development in the countryside (Policy RA.12) were listed in the SoS's Direction letter dated 24 September 2007 and so they are not saved policies and they expired on 27 September 2007. These policies now carry no weight.
187. Saved AVDLP Policy RA.14 is engaged as it relates to development on the edge of built-up areas of settlements. It limits the scale of such development to just 5 dwellings or 0.2ha and so these proposals are in conflict with the policy. However, this policy does not reflect the housing requirement or spatial distribution set out in the IHLSPS. In seeking to protect the character of the settlement and the adjoining rural area it is not fully consistent with the Framework. This policy, while extant, can only be accorded very limited weight and, for the purposes of paragraph 14 of the Framework, it is out-of-date.
188. Saved Policy BU.1, which relates specifically to land at Moreton Road, required that proposals for the housing allocation site should not prejudice the possible development of the remainder of the site after 2011. This has been met. I agree that the requirements of the other relevant saved policies, concerning development management issues, are capable of being met at the reserved matters stage. The proposals, therefore, are in conflict with one saved policy in the AVDLP; for the reasons given above, and in accordance with advice in paragraph 215 of the Framework, that policy now carries very limited weight.

189. Concerning the BNDP the relevant policy is HP1; it is the only policy cited in AVDC's putative reason for refusal. The site is not identified as a housing allocation in this policy. Nor is it covered by Policy HP7 which relates to windfall sites within the settlement boundary. The site lies outside the boundary, although it abuts it to the south and east. There are no policies in the BNDP that seek to restrict or prevent residential development outside the boundary. In terms of the residential development of the site, therefore, the Plan is silent.
190. While Policy HP1 allocates land for 617 new dwellings the Plan does not state that this is a maximum figure; there is no cap identified for residential growth in and around Buckingham. It must also be borne in mind that the BNDP was made against a backdrop of an out-of-date LP with no strategic housing policies and that BTC used the unadjusted DCLG 2012-based household projections.
191. There are policies in the BNDP that seek to ensure a wide mix of housing types (Policy HP4) and provide affordable housing (Policy HP5). Both these policies are fully met by the proposals taking account of the agreed conditions and the s106 Agreement. The other cited policies in the BNDP relate to matters of detail such as landscaping, open space and play areas that are all shown on the indicative masterplan and which are either secured through the s106 Agreement or can be secured at the reserved matters stage. While the BNDP does not offer any support for the proposals, there is nonetheless no conflict with any of its policies.
192. There are currently no emerging plans that are sufficiently far advanced and not subject to unresolved objections such that they can carry any meaningful weight. Nonetheless, it is relevant that AVDC has advanced this land as a potential housing site in the emerging VALP; its SA is a material consideration, albeit that it carries very modest weight.
193. In terms of this scheme the development plan is out-of-date (AVDLP) or silent (BNDP). The proposals have now to be considered against the provisions of the Framework and paragraph 14 in particular. This says that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted to sustainable development unless one of the arms of the fourth bullet point of paragraph 14 is triggered.
194. The Framework says that the policies within it as a whole constitute the Government's view of what sustainable development means in practice. Paragraph 7 identifies that there are three dimensions to sustainable development: economic, social and environmental. Paragraph 8 says that these roles must not be undertaken in isolation and that economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
195. The history of this planning application and in particular the considerations of AVDC are highly pertinent, as is the SA carried out by BTC. The history, including the Officers' recommendations, is set out in the various reports to AVDC's SDMC. Up until October 2016, when AVDC first identified that it had a five-year housing land supply, the application had been recommended for approval by Officers who, in carrying out the planning balance, concluded that the identified harm would not significantly and demonstrably outweigh the benefits. That recommendation was accepted and agreed by elected members. It was only the absence of a signed s106 Agreement that prevented the application from being approved by AVDC before it was called-in.

196. The Officers' balance initially involved weighing up the harm and the benefits of the development against a backdrop of there being no five-year housing land supply meaning that relevant policies for the supply of housing should not be considered up-to-date. Although I have agreed that AVDC can now demonstrate a five-year housing land supply, and therefore also a three-year housing land supply for the purposes of the WMS, I consider that paragraph 14 is still triggered. This is due to the development plan being not up-to-date/ silent for the other reasons set out above. It is therefore necessary to determine whether the proposals comprise sustainable development.
197. Concerning the first of the three dimensions of sustainable development, the economic role, granting permission would contribute towards the supply of housing in an area where AVDC has only very recently been able to demonstrate a five-year housing land supply and the supply of deliverable land remains marginal; the more so when the analysis in paragraphs 146-159 is taken into account. This site is available now and the applicants have shown, through the development of Phases 1 and 2, a willingness to build-out the scheme in a reasonable timescale. Future residents would be likely to support local shops and other businesses, generating additional expenditure in the area. The development would provide short-term employment during construction.
198. There is a s106 Agreement, signed by both the AVDC and BCC, to ensure that appropriate infrastructure is put in place. The contributions to infrastructure include off-site highway works, education, open space, sports pitches and public transport. All these weigh in favour of the development.
199. Concerning the social role, the proposals would help to build a strong, vibrant and healthy community with an agreed range of house types and sizes as well as a significant amount of affordable housing (35%) which meets the requirements of AVDC in terms of numbers, sizes and tenures. The applicants have shown that they can provide a high quality built environment as seen in Phases 1 and 2; AVDC would need to approve full details in due course. The contributions to education, cycling and sports facilities support the health of residents in the area.
200. In environmental terms, it is worth noting that in closing the advocate for AVDC stated that "...the Council has never and does not now raise any environmental concerns about this proposal". While BTC raised concerns about the impact on heritage assets at Stowe, I have found that there would be no harm to the historic environment. Concerning the natural and built environment, the site abuts housing, and a small industrial complex, on two of its sides. On a third side it is proposed to provide landscaping, amenity land and sports pitches. On the remaining side, to the west, there would be landscaping within the site to complement the existing mature hedge and the recent tree planting in the adjoining field. Taken together with a high quality design, the imposition of conditions requiring suitable landscaping, SUDS and an ecological management plan, there would be no unacceptable harm to the built or natural environment.
201. As part of this planning balance I have taken account of the SA<sup>61</sup> carried out by BTC in connection with the BNDP. This identifies that the site (Site A) scores poorly against most of the other sites that were assessed as part of the process.

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<sup>61</sup> AVDC1: Appendix 8 pp 21-22



In particular, harm is identified in respect of landscape & heritage, population, biodiversity, transport, outlying settlements and employment & economy.

202. In the SA the site scores poorly in landscape & heritage and outlying settlements terms due to the alleged coalescence with Maids Moreton. There is no mention of any impact on designated heritage assets. It is alleged that total coalescence would result which may destroy the heritage of Maids Moreton. This view is in conflict with the views of the LP Inspector and the s78 Inspector who, respectively, considered Phases 1 and 2. At the Inquiry the Council's witness agreed that there would be no coalescence as a result of the current proposals. That is a reasonable assessment as these proposals, unlike Phase 2, would maintain an open gap between the built form and the track to the north. The proposals would not cause coalescence.
203. In terms of population and transport, and the distance of the site from the town centre, it is in reasonable walking distance and no further from the defined town centre than other sites that scored more highly in this category. This site has the disadvantage of a hill between it and the centre of Buckingham, making walking or cycling less desirable, but improvements to transport and a travel plan are proposed as part of the s106 Agreement. The improvements to the junction at the Old Gaol would be beneficial, as would the financial contribution towards improvements at the A413/A422 Stratford Road junction which would help take traffic away from the centre. I consider this to be a neutral factor in the balance.
204. In biodiversity terms, the existing fields contribute little. The limited benefits mainly arise from the hedgerows, which would be retained and enhanced by additional planting. There would be no unacceptable biodiversity harm. In employment & economy terms, the site is some distance from the main employment areas in the town but due to the transport plan and other transport improvements, this is a neutral factor in the balance.
205. I have also had regard to the assessment of the site as part of the emerging VALP in which the site scored well in comparison with other potential housing sites in Buckingham, with only a small infill site within the settlement boundary scoring higher.
206. In summary, therefore, there would be economic, social and environmental benefits arising from the scheme. These, and in particular the provision of market and affordable housing, carry very significant weight. In terms of harm, there would be some encroachment into the open countryside which would cause some limited visual harm. There would be conflict with saved Policy RA.14 of the AVDLP, but for the reasons set out above this carries only very limited weight. The heritage, transport, employment and surface water drainage aspects of the development would be neutral. Taking all these factors into account, I conclude that the proposals comprise sustainable development.
207. Phase 1 of this development was plan-led (AVDLP policy BU.1); Phase 2 was allowed on appeal before being granted planning permission by AVDC. This is not a random speculative site in the countryside. With the northern field being retained for use as amenity land/ sports pitches, it represents a logical extension to this corner of Buckingham. Officers' Reports have consistently described it as being a sustainable site in Framework terms. In closing BTC cited an example of a form of development as a reason for not having any policies prohibiting development outside the settlement boundary. That example was for a housing

scheme with 50% affordable housing and no significant adverse effects. This proposal provides 35% affordable housing with no significant adverse effects and with significant benefits. It abuts Phases 1 and 2 and would provide tangible benefits in terms of housing, open space and sports facilities.

208. Nonetheless, I have had regard to the core principles as set in paragraph 17 of Framework which says that planning should be genuinely plan-led, empowering local people to shape their surroundings. Paragraph 198 of the Framework is clear that where a planning application conflicts with a NP that has been brought into force, planning permission should not normally be granted. I acknowledge that BTC has worked hard to prepare a NP that is now made.

209. However, for the reasons set out above, I have found no conflict with any policies in the BNDP. There is no cap on new housing. Buckingham is a second largest settlement in the District and I have seen nothing in the evidence that suggests that granting planning permission here would undermine the policies in the NP or result in unsustainable development.

210. Overall, I conclude that on the tilted balance set out in paragraph 14 of the Framework, the adverse impacts of approving the development proposals would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. There are no specific policies in the Framework, such as those listed at footnote 9, that indicate development should be restricted. I recognise that this recommendation will disappoint local residents who have invested time and resources in preparing the BNDP. This must be balanced against the aspirations of the Framework which seeks to boost significantly the supply of housing and which sets out a clear presumption in favour of sustainable development.

### **Overall conclusions**

211. The proposals represent a sustainable form of development that is only in conflict with one saved policy in the development plan. That policy carries only very limited weight. Taken as a whole the proposals accord with the development plan and benefits from the presumption in favour of sustainable development as set out in the Framework. The harm arising from the conflict with an out-of-date policy in the development plan is clearly outweighed by the other material considerations.

### **Recommendation**

**File Ref: APP/J0405/V/16/3151297**

212. I **recommend** that planning permission be granted subject to the conditions set out in the Annex.

*Clive Hughes*

Inspector

## APPEARANCES

### FOR BELLWAY HOMES, BELLCROSS CO LTD & FOSBERN MANUFACTURING LTD:

Mary Cook of Counsel	Instructed by Armstrong Rigg Planning
She called	
Jason Clemons BA(Hons) MA	Head of Built Heritage, WYG
MSc MRTPI IHBC	
Martin Paddle BSc CEng	Divisional Director, Mouchel Consulting Ltd
CWEM MICE FHIT MCIWEM	
Dominic Veasey BA(Hons)	Associate Director, Nexus Planning Ltd
Dip TP MRTPI	
Geoff Armstrong BA(Hons)	Director, Armstrong Rigg Planning
MRTPI	

### FOR AYLESBURY VALE DISTRICT COUNCIL:

Mark Westmorland Smith of Counsel	Instructed by Preetinder Cheema on behalf of Aylesbury Vale District Council
He called	
Mike Denman BA(Hons) BTP	Senior Planning Officer, Aylesbury Vale District Council

### FOR BUCKINGHAM TOWN COUNCIL:

Christopher Wayman BA(Hons)	Town Clerk, Buckingham Town Council
BSc(Hons) MILCM CiLCA	
He called himself and	
Katharine McElligott BSc	Planning Clerk, Buckingham Town Council
Dr Bill Truscott DPhil (Oxon)	Local resident and local historian

## CORE DOCUMENTS

CD	List of Core Documents
CD VOL1	Core Documents 1-6
CD VOL2	Core Documents 7-14
CD VOL3	Core Documents 15-21
CD VOL4	Core Documents 22-40

## DOCUMENTS SUBMITTED PRIOR TO THE INQUIRY BY THE APPLICANTS

ARP1	Proof of evidence and appendices of Martin Paddle
ARP2	Proof of evidence and appendices of Dominic Veasey
ARP3	Proof of evidence and appendices of Geoff Armstrong
ARP4	Rebuttal statement and appendices of Geoff Armstrong
ARP5	Statement of case

## DOCUMENTS SUBMITTED PRIOR TO THE INQUIRY BY THE DISTRICT COUNCIL

AVDC1	Proof of evidence and appendices of Mike Denman
ADVC2	Statement of case

## DOCUMENTS SUBMITTED PRIOR TO THE INQUIRY BY THE TOWN COUNCIL

- BTC1 Proof of evidence of Christopher Wayman
- BTC2 Proof of evidence of Katharine McElligott
- BTC3 Proof of evidence of Dr Bill Truscott
- BTC4 Transport Survey, Moreton Road (January 2017)
- BTC5 Statement of case

## OTHER DOCUMENTS SUBMITTED PRIOR TO THE INQUIRY

- GEN1 Statement of Common Ground between the applicants and Aylesbury Vale District Council
- GEN2 Statement of Common Ground between the applicants and Buckingham Town Council
- GEN3 Statement of Common Ground on Transport, Traffic and Highway Matters between the applicants and Buckinghamshire County Council
- GEN4 Email dated 1 February 2017 to the main parties from PINS setting out main issues/ matters for the Inquiry

## DOCUMENTS SUBMITTED AT THE INQUIRY

- ID1 List of appearances on behalf of the applicant
- ID2 List of appearances on behalf of Aylesbury Vale District Council
- ID3 Rebuttal statement in respect to Heritage matters by Jason Clemons
- ID4 Draft Agreement under s106 of the Act
- ID5 Comparison of housing need assumptions (AVDC)
- ID6 Projected population growth 2013-33: Upper decile
- ID7 Housing targets from Local Plans found sound under the NPPF
- ID8 Projected population growth 2013-33
- ID9 Population growth trends 2011-15
- ID10 Assessing overall housing need (ORS) (March 2016)
- ID11 Appeal decision: APP/K0235/W/15/3005128 – Land to the east of Box End Road, Kempston Rural Bedford
- ID12 Appeal decision: APP/P0240/W/15/3003634 – 16 Langford Road, Henlow, Bedfordshire
- ID13 Appeal decision: APP/C1570/W/15/3010055 – Land north of Pelham Road, Clavering, Essex
- ID14 Comparison table – AVDC and applicant's position in relation to supply
- ID15 Opening submissions on behalf of the applicant
- ID16 Opening submissions on behalf of AVDC
- ID17 Opening submissions on behalf of Buckingham Town Council
- ID18 Extract from Winslow Neighbourhood Plan 2014 (p 43)
- ID19 Neighbour notification letters and list of persons notified
- ID20 Bundle of site specific emails concerning housing land supply
- ID21 Additional emails in respect of Furze Lane (Site 1)
- ID22 Four photographs of/around Stowe House by Dr Bill Truscott
- ID23 Extract from Aylesbury Vale District Local Plan Proposals Map
- ID24 Extracts from The History and Antiquities of the Town, Hundred, and Deanery of Buckingham by Browne Willis (1755)
- ID25 Comparison of demographic based starting points: 2013 to 2033
- ID26 Comparison of housing need assumptions version 2 (8 February 2017)
- ID27 ONS Information Paper 25 May 2016 (replaces Mr Veasey appendix 7)

- ID28 List of agreed conditions
- ID29 HLS Review (Applicant)
- ID30 Decision Notice 13/02837/ASOP (Furze Lane, Winslow)
- ID31 AVDC Strategic Development Management Committee addendum papers 11 January 2017 (re Furze Lane, Winslow)
- ID32 Source of AVDC Housing delivery rates
- ID33 Extracts from six Neighbourhood Plans
- ID34 Emails (February 2017) re Bloor Homes site (Furze Lane, Winslow)
- ID35 Letter (20 January 2017) from Government Legal Department
- ID36 Statement of Facts and Grounds concerning application for Judicial review of WMS issued 12 December 2017
- ID37 S106 Agreement: CIL compliance schedule
- ID38 List of additional commitments over 10 dwellings (1 Apr-31 Dec 2016)
- ID39 Emails 10 February 2017 re access to rugby pitch boundary
- ID40 AVDC statement on implications of the Housing White Paper
- ID41 BTC statement on implications of the Housing White Paper
- ID42 Agreement under s106 dated 16 February 2017
- ID43 Closing submissions by Buckingham Town Council
- ID44 Closing submissions on behalf of Aylesbury Vale District Council
- ID45 Closing submissions on behalf of the applicants

#### APPLICATION PLANS

- A Drawing No 1444/P/01 Rev A – Location plan
- B Drawing No 1444/P/02 – Overall site plan
- C Drawing No 1059624-D-003 Rev A – Access Strategy Plan (Appendix F of Transport Assessment (Mouchel: August 2014))

#### OTHER PLANS NOT FORMING PART OF APPLICATION

- D Drawing No 1444/P/03 – Indicative residential site plan
- E Drawing No 1444/P/04 – Indicative land use plan
- F Drawing No 1444/P/05 – Indicative street scenes
- G Drawing No 1056924-D004 Rev 01b – s106 Agreement "The Highway Works"

### **ANNEX: Suggested conditions (21 conditions)**

1. Approval of details of the appearance, landscaping, layout and scale of the residential development on the southern field (hereafter called 'the reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced. The development shall be carried out as approved. Applications for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 18 months from the date of this permission.
2. The residential development hereby permitted shall begin before the expiration of 18 months from the date of approval of the last of the reserved matters to be approved.
3. The sports pitches/ recreational open space and informal open space forming the 'amenity land' shall be begun before the expiration of 3 years from the date of this permission.
4. The development shall be carried out only in accordance with the following plans:  
1444/P/01 Rev A – Site Location Plan  
1444/P/02 – Overall Site Plan (Indicative)  
1059624-D-003A – Access Strategy Plan  
The principles set out in the Design and Access Statement.
5. The development hereby permitted shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) prepared by Howes Atkinson Crowder LLP dated 8 December 2016 and the mitigation measures detailed within the FRA. The mitigation measures shall be fully implemented prior to occupation
6. No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, in accordance with the submitted FRA, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate the surface water run-off generated up to and including the critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall be subsequently implemented in accordance with the approved details before the development is completed.
7. No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until the works have been carried out in accordance with the foul water strategy so approved unless otherwise approved in writing by the Local Planning Authority.
8. An ecological management plan (EMP) shall be submitted to, and approved in writing by the local planning authority prior to the carrying out of any ground

works associated with the development. The content of the EMP, consistent with the measures in the ecology assessment (August 2014) and ecology addendum (October 2016) by Aspect-Ecology, shall include the following:

- a) Techniques and schedule of works for the establishment of 2ha of mitigatory grassland.
- b) Species and provenance of donor seed.
- c) Aims and objectives of management.
- d) Appropriate management regime for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being implemented in perpetuity). The compensatory area will be expected to be seeded before development commences.
- g) Ongoing monitoring and remedial measures.
- h) Details of native tree planting, hedge planting, pond creation within the swales, integrated bat and bird box provision and wildlife sensitive lighting scheme.
- i) Details of mitigation for badgers, reptiles and birds.
- j) Details of management measures to safeguard the water quality in the ditch on-site and any connecting watercourses.

The approved plan will be implemented in accordance with the approved detail.

9. No site clearance works or development shall take place until there has been submitted to the Local Planning Authority for their approval a Tree Protection Plan showing the type, height and position of protective fencing to be erected around each tree or hedge to be retained, consistent with the details in the submitted arboricultural impact assessment (December 2016) by Aspect-Landscape. Unless otherwise agreed in writing by the Local Planning Authority this shall comprise a barrier complying with Figure 2 of British Standard 5837:2012 positioned at the edge, or outside the Root Protection Area shown on the Tree Protection Plan. No site clearance works or the development itself shall be commenced until such a scheme is approved by the Local Planning Authority and thereafter the development hereby permitted shall only be carried out in accordance with that scheme. The area surrounding each tree/hedge within the approved protective fencing shall remain undisturbed during the course of the works, and in particular in these aspects:
  - a) There shall be no change in ground levels.
  - b) No materials or plant shall be stored.
  - c) No buildings or temporary buildings shall be erected or stationed unless these are elements of the agreed tree protection plan.
  - d) No materials or waste shall be burnt nor within 20 metres any retained tree; and
  - e) No drain runs or other trenches shall be dug or otherwise created, without the prior written consent of the Local Planning Authority.
10. The details to be submitted for approval in writing by the Local Planning Authority in accordance with condition 1 shall include full details of both hard and soft landscape works within the residential land parcel and a phasing plan for their implementation. For hard landscape works, these details shall include; proposed finished levels; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials. For soft

landscape works, these details shall include new trees and trees to be retained showing their species, spread and maturity, planting plans, written specifications (including cultivation and other operations associated with plan and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities. The approved works shall be carried out in accordance with the approved phasing plan.

11. Any tree or shrub which forms part of the approved landscaping scheme which within a period of five years from planting fails to become established, becomes seriously damaged or diseased, dies or for any reason is removed shall be replaced in the next planting season by a tree or shrub of a species, size and maturity to be approved by the Local Planning Authority.
12. The details to be submitted for approval in writing by the Local Planning Authority in accordance with condition 1 shall include details of the materials proposed to be used on the external surfaces of the buildings comprising the residential development. This development shall be carried out using the approved materials unless otherwise agreed in writing by the Local Planning Authority.
13. The details to be submitted for approval in writing by the Local Planning Authority in accordance with condition 1 shall include details of the new access to Shetland and Lincoln. No part of the development shall be occupied until the new accesses to have been sited, laid out and constructed in accordance with the approved details.
14. Full details of the new access from Twickenham Road to the amenity land in the northern field parcel shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development. The access shall be constructed in accordance with the approved details prior to the first use of the sports pitches.
15. The details to be submitted for approval in writing by the Local Planning Authority in accordance with condition 1 shall include details of the estate roads and footways for the residential development. No dwelling shall be occupied until the estate roads approved in writing by the Local Planning Authority which provides access to it from the existing highway have been laid out and constructed in accordance with the approved details.
16. The details to be submitted for approval in writing by the Local Planning Authority in accordance with condition 1 shall include a scheme for the parking, turning and the loading/unloading of vehicles. The approved scheme shall be implemented and be made available for use before the relevant part of the development is occupied and that area shall not be used for any other purpose.
17. The development shall not begin until a Construction Traffic Management Plan including details of:
  - Phasing of the development;
  - Construction access;



- Management and timing of deliveries;
  - Routing of construction traffic;
  - A condition survey of the surrounding highway network;
  - Vehicle parking for site operatives and visitors;
  - Loading/off-loading and turning areas;
  - Site compound;
  - Storage of materials;
  - Precautions to prevent the deposit of mud and debris on the adjacent highway.
- Has been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall thereafter be carried out in accordance with the approved management plan.
18. The details to be submitted for approval in accordance with Condition 1 shall include details of bin and recyclables storage associated with the residential development. The development shall be carried out in accordance with the approved details.
19. The details to be submitted for approval in writing by the Local Planning Authority in accordance with Condition 1 above shall include details of the proposed slab levels of the dwellings in relation to the existing and proposed levels of the site and the surrounding land, with reference to fixed datum point. The dwellings shall be constructed with slab at levels that have been approved in writing by the Local Planning Authority.
20. The details to be submitted for approval in writing by the Local Planning Authority in accordance with condition 1 shall confirm provision of a mixture of housing size and types (in the form of one, two, three, four and five bedroom or larger homes).
21. Details of measures to recycle rainwater and use water efficiently in the design of the new dwellings shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the approved dwellings. The dwellings shall thereafter be carried out in accordance with the approved details.



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

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

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

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

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

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

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

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

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

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

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

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

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

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