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## Appeal Decision

Inquiry Held on 13, 14, 15 and 16 February 2018

Site visit made on 12 February 2018

**by P W Clark MA MRTPI MCMI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 March 2018**

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**Appeal Ref: APP/P0240/W/17/3181269**

**Land off Mill Road, Cranfield, Bedfordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Ltd against the decision of Central Bedfordshire Council.
  - The application Ref CB/17/01042/OUT, dated 28 February 2017 was refused by notice dated 26 May 2017.
  - The development proposed is the erection of up to 78 residential dwellings with public open space, landscaping, sustainable drainage system (SuDS) and land for provision of a doctor's surgery.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 78 residential dwellings with public open space, landscaping, sustainable drainage system (SuDS) and land for provision of a doctor's surgery on Land off Mill Road, Cranfield, Bedfordshire in accordance with the terms of the application, Ref CB/17/01042/OUT, dated 28 February 2017, subject to the eighteen conditions attached as an appendix to this decision.

### Procedural matters

2. The application is made in outline form with all detailed matters reserved for later consideration. An informal, unaccompanied, site visit was made the day before the Inquiry. The outline nature of the proposal and the nature of the objections to it meant that no matter arose during the Inquiry which required elucidation from a further site visit. Consequently, with the agreement of both parties no further, formal, accompanied site visit was made.
3. The appeal is accompanied by a Unilateral Undertaking which provides for
  - 35% of the dwellings to be provided as Affordable Housing
  - Land for a Doctor's surgery or Medical Centre
  - Financial contributions of
    - Up to £80,884.44p towards the provision of early years places at Cranfield Academy School
    - Up to £269,614.80p towards the provision of lower school places at Cranfield Academy School

- Up to £271,297.73 towards the provision of middle school places at Holywell Middle School
- Up to £332,682.85p towards improving facilities at Wootton Upper School
- Up to £57,584 towards the cost of providing medical services
- £5,000 towards the costs of connecting footpath 22 to the north-western boundary of the site
- £5,088 towards the provision of a 3G Sports pitch
- A Management Company to maintain open space associated with the development.

As detailed in subsequent sections of this decision, I am satisfied that the provisions of the Unilateral Undertaking comply with the CIL Regulations and so may be taken into account in making this decision.

4. The Inquiry sat on the dates listed above. It closed on 16 February 2018 save in respect of one item, namely the receipt of a signed and dated Unilateral Undertaking not differing in content from the draft Undertaking and its proposed amendment submitted to the Inquiry (Inquiry Documents 1 and 12).
5. Twenty-one appeal decisions and nineteen legal cases are referenced in the Core Documents submitted to this Inquiry and a fair number were referred to in evidence or submissions. I have not referenced each and every one in this decision, except where necessary to draw a distinction.
6. On 5<sup>th</sup> March 2018 the government published the consultation draft of the revised National Planning Policy Framework. As this is a consultation document, its content could change. It is not extant government policy and does not therefore lead me to conclusions other than those I have reached.

## **Main Issues**

7. There are five. They are; the effect of the proposal on
  - the character and appearance of the locality
  - the demand for and supply of local social infrastructure, particularly education and health services
  - the safe operation of Cranfield Airport
  - the living conditions of potential future residents in terms of noise

and; whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh its benefits.

## **Reasons**

### *Character and appearance*

8. The site of this proposed development is a single arable field, flat and largely featureless. It abuts a similar field to its south-west beyond which is a second, smaller, field, woodland and existing developed parts of Cranfield. The site is embraced on two sides to its south-east and north-east by formerly similar

fields now undergoing development for housing and sports pitches. Beyond those, to the east and north is existing development on slightly higher ground. This existing development curves round to the north of the development under construction and ends with the floodlights of Cranfield United Football Club. To the west of that, without any obvious countryside gap, and adjoining the appeal site's north-west side is the outfield of Cranfield Airport. The end of its runway and associated landing lights, about 175m beyond the boundary hedge, are visible from an intervening footpath, one of the few points from which the site can be clearly seen at close range. Although still farmland, the site is now largely isolated from and somewhat tenuously connected to open, undeveloped, countryside.

9. The National Planning Policy Framework (NPPF) advises that local planning authorities should set criteria based policies against which proposals for any development on landscape areas will be judged. It advises that distinctions should be made between the hierarchy of international, national and locally designated sites so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.
10. Although predating the NPPF, the Council's adopted Core Strategy and Development Management Policies (the Local Plan) policies CS16 and DM14 effectively comply with the NPPF by recognising four distinctions in Central Bedfordshire; at the highest level is the Chilterns AONB, followed by the distinctive Greensand Ridge and Flit Valley. For much of the rest of the District the Mid Bedfordshire Landscape Character Assessment August 2007 and its successor the Central Bedfordshire Landscape Character Assessment January 2015 provide comprehensive landscape evidence to help underpin planning and management decisions in the District.
11. Although these place the site not within the despoiled Marston Clay Vale but on the plateau of the Clay Farmland, the Local Plan includes the site within the designated area of the Forest of Marston Vale. This designation seeks not so much the retention or protection of the existing landscape but rather, as paragraph 1.05.04 of the Central Bedfordshire Design Guide September 2014 (Design Guide 1) puts it, the creation of a new landscape by the year 2030. Designation recognises the need to regenerate environmentally damaged landscape through woodland creation.
12. The summary of landscape character: key characteristics of the Cranfield to Stagsden Clay Farmland Character Area 1A in the 2015 Landscape Character Assessment makes clear the ways in which the landscape character in the vicinity of this site has been degraded to such an extent that the document records that it has resulted in the removal of much of the historic dimension of the landscape<sup>1</sup>. It refers to the strong visible presence of Cranfield Technology Park and University with its associated urban infrastructure, the audible and visual presence of Cranfield Airfield and the presence of variable field boundaries, including short flailed and gappy hedges. All these features are experienced when visiting the site.
13. The site is countryside and is defined as such through the operation of Local Plan policy DM4 which applies Settlement Envelopes intended to define the boundaries between settlements and surrounding countryside. The proposal

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<sup>1</sup> Central Bedfordshire Council Landscape Character Assessment January 2015 paragraph 2.72

would be contrary to its implied prohibition of development outside settlement envelopes (made explicit in supporting text). The policy goes beyond government policy, set out in the fifth bullet point of NPPF paragraph 17 which recognises the intrinsic character and beauty of the countryside but is consistent with other government policy, set out in the eighth bullet point of NPPF paragraph 17 and reflected in the third bullet of Local Plan policy DM3, to encourage the effective use of land by reusing land that has been previously developed (brownfield land), rather than a greenfield site.

14. The Council's Site Allocations Development Plans Document allocates significant areas of land for development outside of the settlement envelopes of policy DM4, including allocation HA07 at Cranfield. About 71% of the Council's currently identified housing land supply lies outside the settlement envelopes. All proposed allocations in the emerging Local Plan (currently undergoing final consultation prior to submission for examination) are outside settlement envelopes. It appears that the Council itself does not seem to regard policy DM4 as binding when it comes to allocating or permitting sites for development. Consequently, the moderate weight given to this policy in recent appeal decisions APP/P0240/W/17/3176444 ("Potton") and 3175605 ("Meppershall") appears generous. The policy is not therefore, of itself, determinative of this appeal but nor is it to be excluded from consideration.
15. Despite the conflict with Local Plan policy DM4 and the third bullet of policy DM3, I conclude that the resultant loss of this particular piece of countryside, visible at short range only to a limited number of footpath users, not protected but designated for relandscaping, partially enclosed by existing development and heavily influenced by the urbanising effects of Cranfield Airport and University, would result in very little harm indeed to the character and appearance of the locality. It would respect its local context in accordance with Local Plan policy CS14. Were it not for policy DM4, the proposal would clearly comply with Local Plan policy CS1 which designates Cranfield as a minor service centre where new housing development will help deliver new community infrastructure and facilities that benefit the sustainability of the town. I deal below with the question of woodland cover, sought by policies CS16 and DM14.

#### *Social infrastructure*

16. There is common agreement that the development would give rise to a need for expanded provision of schools to serve the development and for a contribution to the provision of a 3G sports pitch. Provision is made within the Unilateral Undertaking for an appropriately proportioned financial contribution to pay for that expansion to take place. There is no suggestion that the financial contribution would not be expended to achieve its intended purpose and so I am satisfied that it would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development proposed. I am therefore satisfied that it would meet CIL Regulation 122. The Council has confirmed that it would also meet CIL Regulation 123 and there is no information to the contrary.
17. There is also common agreement that the development would exacerbate an existing need for expanded premises for a doctor's surgery in Cranfield. Provision is made within the outline proposal for the use of land for such

- purposes and within the Unilateral Undertaking for the land to be reserved for a reasonable period and for a proportionate financial contribution to the construction of additional premises.
18. However, other developments have made similarly proportionate contributions in the past and an appropriate site was conveyed to the NHS for such a purpose some years ago yet the NHS still has no current proposal to provide premises and is reported to be seeking a commercial price from alternative providers to use the land which it was given for the purpose intended. It is reported still to be considering its options. I therefore can have no confidence that the provisions within the Unilateral Undertaking, otherwise acceptable in themselves, would actually lead to a delivery of the expanded premises universally acknowledged to be required.
19. The appellant correctly points out that it is not for this development to solve the existing problems of Cranfield and that there are other doctors' surgeries, some 3-4 miles away, which could accept potential residents of this appeal proposal as patients. But that is to miss the point, which is not that the Cranfield surgery would not accept patients (I was informed that it continues to register new patients) but that, having registered patients, its premises are inadequate to deal with them. There is no information to show that the alternative practices referred to would have any more adequate premises for the numbers presenting, which would include those arising from the potential residents of this appeal proposal.
20. In contrast, the arrangements outlined in the appeal proposal itself, together with the provisions of the Unilateral Undertaking, would be capable of making the development acceptable in planning terms, if they could be shown to be effective. To this end I have considered whether a condition is necessary to secure the implementation of the use of the land for provision of a doctor's surgery as indicated within the terms of the appeal proposal.
21. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In this case, I am satisfied that a condition (14) would be necessary since, without it, there can be no assurance that the provisions of the Unilateral Undertaking would lead to any materially effective outcome. It would be relevant to planning and to the development proposed since the development proposed includes the use of land for provision of a doctor's surgery. I am persuaded by the appellant's argument that it would not be reasonable to restrict the commencement of the rest of the development until after the completion of the doctor's surgery because it is the delivery of the rest of the development which provides the financial resource from which the development's financial contribution to the construction of the surgery derives. But I consider that it would be quite reasonable to require the two elements of the appeal site to progress in tandem and for full occupation of the development to be delayed until the expenditure of the financial contribution has been committed to the achievement of its intended purpose, not necessarily on this site, since another site is also reportedly on offer.
22. With such a condition in place, I conclude that the proposal would not only have an acceptable effect on the demand for and supply of local social infrastructure, particularly education and health services, through the Unilateral Undertaking providing for the demand arising from the appeal proposal itself

but the appeal proposal overall would also provide a positive planning benefit to the area through the allocation of a site within it where financial contributions to the same purpose from other developments could be expended. It would therefore comply with Local Plan policy CS2 which requires contributions to be made from any development necessitating additional or improved infrastructure. It would also comply with the CIL regulations.

*The safe operation of Cranfield Airport*

23. The flight path of aircraft landing at and taking off from the main runway at Cranfield Airport would not pass over the site but would be at right angles to it, approximately 175m from its north-western boundary. Nevertheless, the management of Cranfield Airport has expressed concerns lest the development, both in its construction and in its eventual use, compromise any of several aspects of the safe operation of the Airport.
24. These include;
- The definition of the airspace free of obstacles within which it should be safe for aircraft to fly on approach and take-off, known as Obstacle Limitation Surfaces (OLS)
  - Electronic Aids to navigation (Distance Measuring Equipment and Instrument Landing System, the latter comprising a Localiser and Glide Path Equipment)
  - Aeronautical Ground Lighting and the potential for confusion with other lighting
  - Avoidance of bird strike
25. The appellant's evidence, which was not contradicted, is that the proposed development would not cause a breach to any of the Obstacle Limitation Surfaces at Cranfield Airport if built form does not exceed a ridge height of 10m and is limited to an area east of a line consistent with a projection on to the site of the western boundary of the housing development in progress to the north-east of the site. There would also need to be a limitation to the expected height of any planting on the western part of the site. These limitations could be required by conditions (4) and (5) but they would preclude compliance with the afforestation aspirations of Local Plan policies CS16 and DM14.
26. In relation to electronic aids to navigation, the appellant's evidence, which was not contradicted, is that, with the same limitations to the development envelope, interference with the beams used in the electronic aids to navigation would not exceed acceptable limits. The introduction of more modern Instrument Landing System equipment, which is foreseen by the Airport management, would be likely to result in less interference and so the development would not limit the Airport's future plans for increasing activity.
27. As the appellant's uncontradicted evidence points out, many airports in the United Kingdom operate satisfactorily in complex built environments with equally complex lighting characteristics. Subject to satisfactory detailed design proposals, the lighting of the development ought not to affect the ability of the Cranfield Aeronautical Ground Lighting installations to meet the Airport's regulatory requirements. A condition (6) can require the submission of lighting details which can then be subject to the detailed scrutiny required.



28. The avoidance of bird strike is assisted by the elimination of features which attract birds, such as water bodies or the planting of trees or shrubs which produce fruit or berries. Although landscaping is a reserved matter in any event, it would be possible at this outline stage to require by condition (5) that any landscaping omits such features and that any landscaping of the western part of the site be limited to grassland maintained in accordance with the Airport's long grass policy. Such a condition would preclude compliance with the afforestation aspirations of Local Plan policies CS16 and DM14.
29. Nevertheless, it must be accepted that such limitations can only reduce, not eliminate, the risk of bird strike. During my site visit I observed the operation of an Airport service vehicle firing detonators so as to disperse a flock of birds grazing on the grass adjacent to the runway, despite the Airport's existing long grass policy. It would still be necessary for the Airport management to maintain such precautionary activity.
30. I conclude that, with the recommended limitations in place, the proposal would not prejudice the safe operation of Cranfield Airport. No specific development plan policy to secure the operational safety of the Airport is referred to in the relevant reasons for refusal but it ought to go without saying that such would be in the public interest. However, compliance with this requirement necessarily precludes compliance with the afforestation aspirations of the Forest of Marston Vale and so, would result in conflict with Local Plan policies CS16 and DM14. However, it is unlikely that achievement of those aspirations could be allowed on this site in any event and so I do not regard conflict with those policies as having significance in the determination of this appeal.

*Living conditions*

31. At present, the frequency of operations at the Airport is at an historic low (about 22,000 movements per annum). But it is licensed for a much higher level of activity (150,000 movements per annum) and the Airport management has aspirations to revive its fortunes, partly through the creation of an Air Park. Permission for a version of this concept was given in 2008 and was reportedly commenced but not completed so is apparently still live. There is a current application for a revised scheme. If permitted and implemented, this is expected to give rise to a level of activity of 45,000 movements per annum.
32. There can be no guarantee that the aspirations of the Airport management will succeed. There is no specific policy support stated in the Local Plan. Nevertheless, paragraph 3.21.6 of its supporting text advises that the continued aviation use of the Cranfield Airfield will be protected and paragraph 4.6.18 recognises its important contribution to the local economy. In the exercise of the precautionary principle, it would be sensible to proceed on the basis that there is likely to be a resumption of an increased level of activity at the Airport.
33. The Airport's current planning application for an Air Park is accompanied by an Environmental Statement. Technical Annex 7 of this is concerned with Noise and Vibration. There is no suggestion that it overestimates the potential noise effects of the likely increased Airport operation associated with the Air Park. Figure 8.7 of this Technical Annex, accepted as realistic by the appellant for the purposes of this appeal, shows that the entire site would be within a contour of 60dB<sub>L<sub>Aeq,16hr</sub></sub> and that about half of the developable area of the site (as defined

- in relation to the conditions canvassed above with reference to the safe operation of the Airport) would lie between the 63 and 66  $\text{dBL}_{\text{Aeq},16\text{hr}}$  contours.
34. Figure 8.9 of the Technical Annex shows that an SEL 90dBA contour (indicative of one aircraft taking off) for the take-off of a Lear 35 jet (likely to be used at the Airport) would encompass the entire site. This is relevant because the intended revival of the Airport is likely to encompass a significant element of individual noise events caused by jet aircraft arrivals between the hours of 06.00 and 07.00, within the hours defined as night-time operation and when people are particularly susceptible to sleep disturbance.
  35. The first aim of the government's Noise Policy Statement for England is to avoid significant adverse impacts on health and quality of life from environmental, neighbour and neighbourhood noise within the context of government policy on sustainable development. The Noise Policy Statement advises that the Significant Observed Adverse Effect Level (SOAEL) is likely to be different for different noise sources, for different receptors and at different times.
  36. The World Health Organisation Guidelines for Community Noise 1999 advise that suitable internal and external noise levels, for steady sound in and around residential properties should be  $30\text{dBL}_{\text{Aeq},8\text{hr}}$  in bedrooms at night,  $35\text{dBL}_{\text{Aeq},16\text{hr}}$  in living rooms during the day and  $50\text{dBL}_{\text{Aeq},16\text{hr}}$  in outdoor living areas if only moderate annoyance is tolerated,  $55\text{dBL}_{\text{Aeq},16\text{hr}}$  if serious annoyance can be tolerated. It also advises that a level of  $45\text{dBL}_{\text{Amax},\text{fast}}$  should not be exceeded in bedrooms at night by individual noise events.
  37. The WHO recommended figure of  $55\text{dBL}_{\text{Aeq},16\text{hr}}$  for outdoor areas corresponds to the  $57\text{dBL}_{\text{Aeq},16\text{hr}}$  contour which the government will continue to treat as the average level of daytime aircraft noise marking the onset of significant community annoyance according to paragraph 3.17 of the Aviation Policy Framework March 2013. SOAEL, if set at this level of significant community annoyance, should be avoided according to National Planning Practice Guidance (Guidance) paragraph 005 Reference ID: 30-005-20140306.
  38. However, the government's Consultation Response on UK Airspace Policy: A framework for balanced decisions on the design and use of airspace, October 2017 refers to evidence from recent research which shows that sensitivity to aircraft noise has increased, with the same percentage of people reporting to be highly annoyed at a level of  $54\text{dBL}_{\text{Aeq},16\text{hr}}$  as occurred at  $57\text{dBL}_{\text{Aeq},16\text{hr}}$  in the past. It goes on to record the government's intention to set a Lowest Observed Adverse Effect Level (LOAEL) at  $51\text{dBL}_{\text{Aeq},16\text{hr}}$ , which tends to imply that the government regarded the previous figure of 57 as a LOAEL, not as SOAEL.
  39. Moreover, it is a higher figure, of  $63\text{dBL}_{\text{Aeq},16\text{hr}}$ , at which the government expects and proposes to continue to expect airport operators to offer financial assistance towards acoustic insulation to residential properties affected by increases in airport noise caused by airport developments and it is that figure which is used in Cranfield Airport's Environmental Statement Technical Annex 7, referred to above. A still higher figure, of  $69\text{dBL}_{\text{Aeq},16\text{hr}}$ , is the level at which the government continues to expect airport operators to offer households assistance with the cost of moving. There is no expectation that any of the developable part of the appeal site would experience such a level of noise.



40. Support for the use of these higher figures as SOAEL is gained from British Standard 8233:2014, Guidance on sound insulation and noise reduction for buildings. This (in paragraph 7.7.2, table 4) reflects the WHO Guidelines but also advises that where development is considered necessary or desirable, despite external noise levels above WHO guidelines, the internal target levels may be relaxed by up to 5dB and reasonable internal conditions still achieved.
41. These guidelines are phrased in terms of smoothed or equalised (in laymen's terms, averaged) measurements ( $L_{Aeq}$ ). These are designed principally for evaluating continuous (steady sound) noise sources, whereas noise from an airport such as Cranfield is more intermittent. In line with WHO guidelines, the BS observes that regular individual noise events (for example, scheduled aircraft) can cause sleep disturbance. A guideline value may be set in terms of SEL or  $L_{Amax,fast}$ . As noted above, the WHO guideline for a bedroom interior at night is  $45dB L_{Amax,fast}$ .
42. Paragraph 7.7.3.2 of the BS advises that for traditional external areas that are used for amenity space, such as gardens and patios, it is desirable that the external noise level does not exceed  $50dB L_{AeqT}$ , with an upper guideline value of  $55dB L_{AeqT}$  but it goes on to advise that it is also recognised that these guideline values are not achievable in all circumstances where development might be desirable. It advises that in higher noise areas, such as urban areas adjoining the strategic transport network, a compromise between elevated noise levels and other factors, such as making efficient use of land resources to ensure development needs can be met, might be warranted and that in such a situation, development should be designed to achieve the lowest practicable levels in these external amenity spaces but should not be prohibited.
43. The appellant's evidence, not contradicted, is that noise attenuation of between 31.9dB(A) and 34.9dB(A) can be achieved through the use of standard thermal double glazing and conventional construction of brick and block walls, tiles on felt pitched roofs, mineral wool and plasterboard ceilings. This would achieve WHO and BS guidelines for steady sound levels in bedrooms at night even in the light of the enhanced noise levels predicted by the Airport's Environmental Statement Technical Annex 7. In oral evidence, again not contradicted, the appellant's noise expert averred that it would also be possible to design attenuation to achieve the WHO recommendation that  $45dB L_{Amax,fast}$  should not be exceeded in bedrooms at night as a result of individual noise events. I have no reason to disbelieve the assertion, although technical details of the construction envisaged were not provided.
44. The appellant also produced evidence, not contradicted, to show that it would be possible to design a scheme layout which, in effect, provided a noise barrier along the north-western edge of the part of the site to which development would be limited by considerations of the Airport's safe operation. The noise barrier would shield to its east the external amenity areas and other housing within the proposed site. Modelling showed that the exposure to sound of the external amenity areas of the development would then be reduced to between 60 and  $63dB L_{Aeq,16hr}$ . Although not correct to say that it is just at the onset of significant community annoyance in the Aviation Policy Framework of 2013 (which is  $57 dB L_{Aeq,16hr}$ ) and although exceeding the WHO recommendations, it would be within the higher levels indicated by the British Standard as acceptable where developments are considered necessary or desirable in order to ensure that development needs can be met.

45. I therefore conclude that, even with a layout which provided a noise barrier as described, there would be significant community annoyance (in the terms of the Aviation Policy Framework 2013) deriving from noise conditions in external amenity areas as the Airport returns its activity to existing permitted and historic levels. That would be contrary to local Plan policy DM3, bullet 7 of which requires compliance with current guidance on noise. The nature of the noise is that it would be intermittent, frequent given the number of air movements anticipated, but not continuous and it would be experienced in outdoor amenity areas, not in bedrooms where people are trying to sleep.
46. This conclusion would have led to a dismissal of the appeal except that current guidance in the relevant British Standard advises that for external amenity areas a compromise between elevated noise levels and other factors, such as making efficient use of land resources to ensure development needs can be met, might be warranted. Hence, consideration of whether development needs in Central Bedfordshire can be met is first required before reaching a final conclusion, in addition to taking account of other material considerations which might anyway lead to a conclusion otherwise than in accordance with the development plan. I now turn to that consideration.

*The planning balance*

47. The development needs and other material considerations which are of concern in this case are for housing, since it has already been established that at least one other site is available to meet the needs of a doctor's surgery in Cranfield. This observation is not intended to detract from the recognition that the allocation of land for a doctor's surgery on site would be a planning benefit, simply recognition that the benefit is not overwhelming.
48. All parties are agreed that the housing requirements set out in the Local Plan policy CS5 are irrelevant to this case because the Local Plan only relates to the former Mid Bedfordshire District and not to the housing market area as sought by NPPF paragraph 47 and because the Local Plan simply applied the figures of the now revoked East of England Plan. These were due to be reviewed for the period 2011 to 2021 but were not reviewed before the plan was revoked and so are now out of date.
49. In contrast to the situation in the Sayers Common case (Appeal reference APP/D3830/A/12/2189451RD) where it was accepted by all parties that Mid Sussex District Council did not have an agreed Objectively Assessed Housing Need or requirement figure so that there was no figure against which to assess or judge supply, all parties are agreed and recent appeal decisions (references APP/P0240/W/16/3152707 ("Clophill") and APP/P0240/W/17/3176444 ("Potton")) confirm that, for Central Bedfordshire the SHMA of May 2017, tested at the Luton Local Plan examination, identifies an Objectively Assessed Housing Need of 1,600 dwellings per annum.
50. In contrast to the Hunston case ([2013] EWCA Civ 1610) where there was not even the inkling of a new Local Plan in preparation, the preparation of a new Local Plan for Central Bedfordshire has progressed to the point at which consultation is in progress at the time of this appeal preparatory to the submission of the plan for examination, expected by the end of March 2018. There is no suggestion in this case of using a figure below the full objectively assessed needs figure. Nor is the Local Plan process yet to come up with a figure constrained by policy.

51. As it turns out, the Local Plan process has come up with a figure which is enhanced, not constrained, by policy, in order to take account of unmet needs arising from the adoption of the Local Plan for Luton which lies within the same Housing Market Area as Central Bedfordshire. The latest version of the emerging Local Plan was opened to consultation on 11 January 2018. Its publication and content is therefore a new factor, not considered in the previous Claphill and Potton appeal decisions referred to above. It identifies a housing requirement equivalent to 1,968 dwellings per annum. Although the figure in the emerging plan is not yet a tested and adopted housing requirement, it is nevertheless a material consideration in calculating the significance of the benefit which would be provided by the housing proposed in this appeal.
52. Against the Objectively Assessed Housing Need of 1,600 dwellings per annum the Council's January 2018 Five Year Land Supply Statement claims an identified supply of 1,651.4 dwellings per annum (a supply of 5.87 years). If this figure is correct then there would be little disproportionate benefit arising from the housing resulting from this appeal proposal.
53. In making this calculation, the Council has
- Reduced its five-year OAHN by reference to oversupply in a previous five-year period
  - Excluded the unmet needs of Luton from the demand side of the equation without a balancing exclusion from the supply side of the equation
  - Applied a buffer based on historic housing delivery within the period of its own administrative existence rather than within the period of a housing cycle and by reference to disputed targets
  - Made no allowance for the uncertainties of predicting delivery

I consider the merits of each of these points in turn in the following paragraphs.

54. The Council's January 2018 Five Year Land Supply Statement notes a surplus of 469 dwellings when assessed against what was needed to be provided during the 2.75 years prior to the commencement of that five-year assessment. That number is deducted from what would otherwise be a five-year figure of 8,000 (excluding any buffer). In one other, similar, case which was brought to my attention (reference APP/F4410/W/16/3158500) it was pointed out that although the NPPF advises increasing the buffer to deal with under-delivery, it is silent on over-delivery. In that case the Council did not provide a justified rationale for its approach and so it was considered to be flawed.
55. I am not so convinced because, in this case, the OAHN is not even a requirement, let alone a minimum requirement to be exceeded. NPPF paragraph 47 advises that the five-year supply is to be calculated against housing requirements for the whole of the plan period and that the cumulative intent of a succession of five-year supplies is to meet (it does not say exceed) the housing target. The recommended use of a buffer in case of under-delivery is brought forward from a later five-year supply; it is not added to it. Although there is no explicit government policy support for the concept that under or over-delivery in one five-year period is counted against a future five-year's

supply, I do not find that it is prohibited and so the Council's approach in this appeal is not unreasonable.

56. The Council's action in excluding the unmet needs of Luton from the demand side of the equation is unquestionably correct, since an OAHN is meant to be objective, excluding any elements of adjustment through policy decisions such as accommodating the unmet needs of another authority. However, a supply side of the equation which is not then adjusted to take account of land releases exceptionally justified as a matter of policy by the unmet needs of Luton as are some components of the Central Bedfordshire supply produces a skewed result. I fully accept that such exceptional releases of land are not and cannot be reserved for Luton residents and are as available to meet the needs of Central Bedfordshire residents as any other but an equation which compares a "policy off" objective assessment of need against a "policy on" supply is an unbalanced assessment.
57. In order to boost significantly the supply of housing, NPPF paragraph 47 advises adding a buffer, moved forward from later in the plan period, to the identified five-year supply. The buffer should be either 5% or 20%, depending on past delivery. The council has examined past delivery only in relation to the period of its existence, ignoring the earlier part of the housing market cycle, although records exist. This gives a misleading picture.
58. Having said that, the relevant passage in the NPPF refers to a "persistent" under-delivery. The records for the complete housing market cycle do indeed show that for the early part of the cycle there was continued under-delivery, year on year. But, the more recent records equally show that the under-delivery has not persisted and indeed that an over-delivery has occurred, though not yet sufficient to make up the shortfall for the early years. Having looked at the records for the complete housing market cycle, my view is that the under-delivery has not persisted and that the Council's use of a 5% buffer is justified. Whether the target figures for the earlier parts of the housing market cycle are correct or not does not alter this assessment.
59. Both parties in this appeal have sought to identify, with finite certainty, the quantity of housing development expected to be delivered within the next five years. I have no disagreement with my colleague's judgement, in the "Potton" inquiry, that the Council's approach, of proactively monitoring and contacting site owners and developers every quarter is a more realistic and pragmatic one than applying an average rate of delivery. It is, however, far more labour-intensive and remains open to criticism of inaccuracy or disagreement on individual sites, as the appellant's evidence demonstrates.
60. I have no information which would permit me to come to a convincing conclusion in favour of either party's expectations of delivery on individual sites. Nor do I regard the effort as fruitful because of the inherent uncertainty and unreliability of forecasts of future events. As the Council acknowledged in response to my question, although adjustments are made to owners' or developers' more unrealistic aspirations, there is no systematic allowance for the uncertainties of prediction up to five years ahead so the result of the laborious effort involved gives a spurious impression of precise accuracy.
61. In practice, as the appellant pointed out without contradiction, the Council's laborious method produces results which have been consistent over-estimates in every five-year supply forecast it has made. The over-estimate has never

been less than 10%. Without endorsing each and every one of the appellant's minute criticisms of the figures for a number of individual sites, I have no reason to believe that the current statement of housing land supply is any more accurate in its predictions than its precursors.

62. Taking all of the above into account, I find that the Council's assessment of its five-year housing need based on OAHN and including a 5% buffer is accurate at about 8,257. But its assessment of housing supply needs to be adjusted downwards by a factor balancing the exclusion of Luton's needs from the equation and by a factor reflecting the inherent uncertainty and unreliability of forecasting future events. The first factor is put by the appellant at about 700 dwellings. The Council's previous over-estimates of supply have never been less than 10%. These two factors are likely to turn the Council's expected five-year surplus of 1,430 dwellings into a small deficit of about 200-250 dwellings.
63. As mentioned earlier, the housing requirement included in the latest stage of the Council's emerging Local Plan is a material consideration. It is untested, and so cannot be taken as sound although it is nearing the point at which the Council can be taken as believing it to be sound.
64. A five year requirement based on that figure would be 9840. Deducting the surplus for 2015-17 would leave a requirement of 9371. Adding a 5% buffer would produce a figure of 10,332. The Council's calculated trajectory is 9687. The requirement includes the unmet needs of Luton and so, no balancing adjustment to the supply side of the equation would be called for. But a 10% reduction in expected supply to reflect the uncertainty of future predictions would still be appropriate, resulting in a figure of deliverability of 8718 and a shortfall of 1,614, or about 300-350 dwellings per annum.
65. Based on either approach, the present shortfall in the five-year housing land supply for Central Bedfordshire can be seen to be either 40-50 dwellings per annum or 200-250 dwellings per annum. Whichever way one looks at it, the contribution from this site, up to 78 dwellings towards making good the shortfall, would be of considerable social benefit.
66. In addition to the contribution which the appeal proposal would make to housing supply in general, the Unilateral Undertaking allows for 35% of dwellings to be provided as affordable housing. Though this does no more than comply with policy CS7, policies exist to seek planning benefits, not just to avoid planning harms, so it is a benefit to be included in the balance nonetheless. I am satisfied that the provision in the Undertaking would comply with the CIL Regulations. There are also economic benefits which would flow from the development both from its construction and from the spending power of those it would house. A further small benefit resulting from the development would be the completion of a footpath link sought in the Cranfield Green Infrastructure Plan 2010.
67. Planning Law requires that applications for planning permission (and hence, appeals) must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration, together with its presumption in favour of sustainable development. For decision-taking, this presumption in favour of sustainable development means approving development proposals that accord with the development plan without delay and, where the development plan is absent, silent or relevant policies are out of date, granting permission unless any



- adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the NPPF taken as a whole or where specific policies in the Framework indicate development should be restricted.
68. Applying these principles in this case is not straightforward since I have concluded that the proposal does not accord with Local Plan policies DM3 (bullet 3) and DM4 but that such non-accordance would cause very little harm indeed. Conflict with policy DM3 (bullet 7) would lead to significant community annoyance but is not by itself determinative of this appeal and consideration should also be given to whether the development proposed is considered necessary or desirable in order to ensure that development needs can be met. It would comply with Local Plan policy CS14 but with neutral effect. Non-compliance with Local Plan policies CS16 and DM14 has no significance in the determination of this appeal. It would comply with policy CS1 were it not for its conflict with policy DM4 which results in little harm and is therefore of little significance. There would be some benefit from compliance with policy CS2.
69. Although many of the conflicts with policy would lead to little harm, the development does not generally accord with the development plan, read as a whole, so the NPPF advice does not lead to approving the proposal without delay. Policies CS1, CS2, CS14, CS16, DM3, DM4 and DM14 are not out of date but Policy CS5 clearly is and so, to that extent, triggers what some call the “tilted balance” of the final bullet point of NPPF paragraph 14, although that phrase does not actually occur.
70. The other material considerations indicate considerable social and economic benefits from the provision of housing in general and from affordable housing in particular so, applying the decision making process of s38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 requires a balancing process between the harms and benefits identified.
71. Either way, the decision depends on a balance being assessed. This proposal would cause very little harm to the character and appearance of the area through the loss of a small quantity of countryside. Its failure to lead to an afforestation of the site has no significance. In the event of Cranfield Airport’s aspirations being realised, the community resulting from the appeal proposal would experience considerable annoyance from Airport noise in the enjoyment of its amenity space. There would be some benefit from the provision of land for use as a doctor’s surgery, from the provision of a desired footpath and from a contribution to the provision of a sports pitch. There would be considerable social and economic benefits from the provision of housing in general and affordable housing in particular.
72. Overall, my judgement is that other material considerations would outweigh the harm caused by conflict with certain Local Plan policies. The adverse impacts would certainly not significantly and demonstrably outweigh the benefits when assessed against NPPF policies taken as a whole. I have considered all other matters raised but they do not cause me to come to a different conclusion and so the appeal is allowed and permission granted, subject to conditions.



### *Conditions*

73. Some conditions have been the subject of discussion earlier in this decision; I do not repeat that discussion here.
74. The Council made suggestions for 22 conditions. I have considered these in the light of Guidance and the model conditions appended to the otherwise superseded Circular 11/95, the Use of Conditions in Planning Permissions, preferring the wording of the latter where appropriate. A number of suggested conditions are, in effect, merely informatives indicating the content of reserved matters which the Council would seek to have submitted but, unless it is necessary to restrict the discretion of both applicant and local planning authority at this outline stage, I have not imposed those, since the submission of details and reserved matters will be the subject of evaluation when they are submitted.
75. The first three are standard conditions applicable to all outline consents. The appellant suggested a reduction on the periods allowed for compliance but the Council's housing shortages are not so acute as to justify the more onerous requirement.
76. Details of drainage would not necessarily be submitted as part of reserved matters but their submission and approval is necessary (condition 7) to ensure that the development would be adequately drained and that surface water drainage does not involve the use of open water bodies which would encourage the presence of birds to the detriment of Airport safety. Until such details are approved, it is not possible to ascertain that a management and maintenance plan would be necessary and so I do not impose the suggested condition requiring such at this stage. If required, it could be imposed when details are considered. A condition (17) to raise ground floor levels above potential surface water flood levels is imposed as recommended by the submitted Flood Risk Assessment.
77. Details of construction to achieve acceptable internal noise levels would not necessarily be submitted as part of reserved matters but their submission and approval is necessary to ensure that acceptable living conditions in the interior of dwellings would be secured. The condition (8) does not require details of layout, which are required anyway as a reserved matter but it should be noted that the layout will need to be evaluated for its effectiveness in providing a noise barrier protecting the external amenity areas of the site when details are submitted.
78. I have not imposed an ecological enhancement condition because the enhancements (water feature, hedgerow enhancement, tree planting and the provision of bat boxes and bird boxes) suggested in the appellant's submitted Ecological Appraisal would not be appropriate in the light of the need to ensure the safe operation of Cranfield Airport. The submission of landscaping details is a reserved matter in any event. When submitted, the details can be examined for their contribution to ecological enhancement consistent with the safe operation of the Airport.
79. A condition is suggested to give effect to the Council's policy CS13 requiring the use of renewable energy options and the conservation of water resources amongst other matters. A Written Ministerial Statement (WMS) in March 2015 sets out the government's new national planning policy on the setting of

technical standards for new dwellings. The WMS advises that existing Local Plan policies relating to water efficiency should be interpreted by reference to the nearest equivalent new national technical standard. For energy efficiency standards, the WMS advises that local planning authorities will continue to be able to set and apply policies in their Local Plans which require compliance with energy performance standards that exceed the energy requirements of Building Regulations until commencement of amendments to the Planning and Energy Act 2008 in the Deregulation Bill [now Act] 2015. The relevant amendment is not yet in force, which in practice means that for the time being LPAs can require an energy performance standard equivalent to former CSH level 4. I have imposed conditions ((13) and (16)) applying this advice.

80. Details of the provision of fire hydrants and of facilities for storage of refuse and recycling materials would not necessarily be submitted as reserved matters. Yet it is necessary that such details are provided so that the local planning authority can satisfy itself that arrangements would be adequate (conditions (9) and (10)). Provision also needs to be made for the contingency of finding unexpected contamination during construction (condition (15)).
81. Because the development could only be accessed through other residential streets and because of its proximity to the Airport, construction in accordance with a method statement would be necessary. That would not necessarily be provided through the submission of reserved matters and so a condition (12) is imposed.
82. Although details of layout are a reserved matter, a condition (18) is necessary to secure the implementation of any feature which is of public benefit. One such is the provision of a footpath, linking the housing on the development with footpath 22 to the north-west, a benefit sought by the non-statutory Cranfield Green Infrastructure Plan 2010. Although third parties provide anecdotal reports of traffic congestion at peak times in Cranfield, there is no technical evidence to show that a Travel Plan is necessary other than the statement in the submitted Framework Travel Plan that the developer recognises the importance of reducing the potential negative transport related impacts of the proposed development and the need to provide for and encourage a range of sustainable travel option as an alternative to single occupancy car use. For that reason, I impose a condition (11) requiring the submission and approval of a travel plan.

*P. W. Clark*

Inspector

## CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") for any part of the site shall be submitted to and approved in writing by the local planning authority before any development takes place on the relevant part of the site and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) No built development shall take place outside the areas shown as "Proposed Development Area" and "Proposed area for doctor's surgery" on FPCR Environment and Design Ltd's drawing number 6390-L-10 revision D dated 7 February 2017 entitled Phase 2 Development Framework. Within the two areas referred to, no building shall have a ridge height exceeding 10m above ground level.
- 5) Outside the areas shown as "Proposed Development Area" and "Proposed area for doctor's surgery" on FPCR Environment and Design Ltd's drawing number 6390-L-10 revision D dated 7 February 2017 entitled Phase 2 Development Framework, no planting shall take place which would bear fruit or berries or which could be expected to grow to a height which would breach the Obstacle Limitation Surfaces of Cranfield Airport and no water body shall be formed. Grassland shall be maintained in accordance with the Airport's long grass policy.
- 6) No development shall take place until details of external lighting have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details which shall be retained in an operational state thereafter. No external lighting other than that approved shall be installed on the development.
- 7) No development shall take place until details of foul and surface water drainage have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained in an operational state thereafter. No dwelling hereby permitted shall be occupied until its foul and surface water drainage has been implemented in accordance with the approved details.
- 8) No development shall take place until details of construction to provide sound attenuation in dwellings against external noise sources from the expected operation of Cranfield Airport sufficient to achieve internal noise levels of no greater than
  - 35dB<sub>L<sub>Aeq</sub>, 16hour</sub> between 0700 and 2300 in living rooms
  - 30dB<sub>L<sub>Aeq</sub>, 8hour</sub> between 2300 and 0700 in bedrooms
  - 45dB<sub>L<sub>Amax</sub></sub> between 2300 and 0700 in bedrooms

have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until it has been constructed in accordance with the approved details which shall thereafter be retained in operational condition.

- 9) No development shall take place until details of facilities for storage of refuse and recycling materials have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) No development shall take place until details of the provision of fire hydrants have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details which shall be retained operational thereafter. No dwelling shall be occupied until served by an operational fire hydrant.
- 11) No development shall take place until details of a Travel Plan have been submitted to and approved in writing by the local planning authority. The development shall be carried out and carried on thereafter in accordance with the approved details.
- 12) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - v) wheel washing facilities;
  - vi) the position, height and reach of any crane
  - vii) measures to control the emission of dust, dirt and noise during construction;
  - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - ix) delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 13) No development shall take place until details of a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details which shall thereafter be retained in operation.
- 14) No dwelling shall be occupied until a contract has been let for the expenditure of the Healthcare Contribution detailed in the Unilateral Undertaking associated with this development towards the provision of accommodation for medical services for the residents of the

development, either on the appeal site or elsewhere and no more than 75% of the dwellings hereby permitted shall be occupied until the medical services accommodation has been completed and made available for occupation for its intended purpose.

- 15) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development of the part of the site affected is resumed or continued.
- 16) No dwelling shall be occupied until the Building Regulations Optional requirement of 110litres/person/day water consumption has been complied with for that dwelling.
- 17) The finished floor level of the ground floor of any dwelling hereby permitted shall be raised a minimum of 150mm above external ground levels.
- 18) No more than 75% of the dwellings hereby permitted shall be occupied until a footpath has been provided linking the housing hereby permitted with the boundary of footpath 22 to the north-west of the site, approximately in the position shown in the plan attached as Appendix 4 to Timothy Jackson's Proof of Evidence.

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                         |  |
|-------------------------|--|
| Saira Kabir Sheikh QC   | Instructed by LGSS                     |
| She called              |  |
| Phillip Hughes BA(Hons) | Principal, PHD Chartered Town Planners |
| DipMan MRTPI MCMI       |  |

### **FOR THE APPELLANT:**

|                           |  |
|---------------------------|--|
| Giles Cannock, of Counsel | Instructed by Christopher Still                |
| He called                 |  |
| Peter Giles BSc (Eng)     | Chief Technical Officer, Osprey Consulting     |
| FIET                      | Services                                       |
| Simon Urquhart DipANC     | Associate Director and Principal Environmental |
| MIOA                      | Scientist, Wardell Armstrong LLP               |
| Timothy Jackson           | Director, FPCR Environment and Design Ltd      |
| BA(Hons) DipLA CMLI       |  |
| Neil Tiley AssocRTPI      | Associate, Pegasus Group                       |
| Christopher Still         | Planning and Development Director, Gladman     |
| BSc(Hons) MRICS           | Developments Ltd                               |

### **INTERESTED PERSONS:**

|               |                   |
|---------------|-------------------|
| Alan Bastable | Parish Councillor |
| Ken Matthews  | Ward Councillor   |
| Sue Clark     | Ward Councillor   |

## **Additional DOCUMENTS submitted at the Inquiry**

- 1 Draft Unilateral Undertaking
- 2 Consultation on stopping up footpaths
- 3 Note on the January 2018 Housing Land Supply Statement
- 4 Statement of Common Ground
- 5a Five Year Land Supply Statement January 2018
- 5b Housing Trajectory January 2018
- 6 Suggested Conditions
- 7a Turnberry Letter 13 February 2018
- 7b SRL letter 30 January 2018
- 8 Delivery rates in Central Bedfordshire
- 9 e-mail from Terry McAlpine, CBC SuDS officer
- 10 Accuracy of quarterly trajectories
- 11 Suggested conditions with Gladman commentary
- 12 Amendments to Draft Unilateral Undertaking

## **Additional DOCUMENTS submitted (by agreement) following the Inquiry**

- 13 Unilateral Undertaking signed and dated 27 February 2018