



Appeal Decision

Hearing Held on 4 June 2019

Site visit made on 4 June 2019

by Grahame Gould BA MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st October 2019

Appeal Ref: APP/P0240/W/18/3204513

Park Farm, Park Road, Westoning MK45 5LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for permission.
 - The appeal is made by European Property Acquisition Limited against the decision of Central Bedfordshire Council.
 - The application Ref CB/17/04959/OUT, is dated 12 October 2017.
 - The development proposed was described as 'residential development of up to 73 units comprising of flats and houses, including demolition of up to two no. units on Manor Close. Proposal also includes for a village shop, a village hall and burial ground to be located within the site'.
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Decision

1. The appeal is dismissed and planning permission is refused for a residential development of up to 73 units comprising of flats and houses, including demolition of up to two units on Manor Close and a village shop and burial ground to be located within the site.

Preliminary and Procedural Matters

2. The appealed application was accompanied by an 'Initial Sketch Scheme' drawing (16142(D)002 Revision A), showing the possible number and layout of the dwellings and the shop within the development. However, only the matter of access is for approval, with all other matters (ie appearance, landscaping, layout and scale) having been reserved for future consideration. I have therefore treated the sketch scheme shown on the previously mentioned drawing as being purely illustrative.
3. The application as originally submitted included the provision of a new village hall within the development. However, at the hearing the appellant confirmed that the village hall should no longer be considered as being part of the development. That is because it is now intends that in the event of the appeal being allowed a contribution of £300,000 would be paid to assist with the making of improvements to the existing hall in Church Road. The description for the development that I have used in my formal decision above reflects the change of position with regards to the village hall.
4. The appeal is against the failure of the Council to determine the planning application within the prescribed period and so there is no decision notice. However, the Council's planning committee resolved on 6 February 2019 that

had it been in the position to determine the application it would have refused planning for four reasons. Those putative reasons, in summary, relate to the development's: inappropriateness within the Green Belt and its effect on the openness of the Green Belt; the effect on the character and appearance of the area, given the site's location within the countryside; the effect on the setting of the adjoining medieval circular moated site and fishponds, which is a scheduled ancient monument (SAM), and buried archaeology within the site; and the suitability for this site for housing having regard to the risk of flooding and the absence of the site having been sequentially tested in that respect.

5. At the opening of the hearing only a draft (ie unexecuted) Section 106 agreement was available, setting out various planning obligations with the intention of securing: 35% (26 units) affordable homes provision within the development; and the paying of infrastructure contributions for education facilities, improvements to the Westoning Village Hall, sports pitch works at Westoning Recreation Ground and waste bin provision. The appellant undertook to submit to the Planning Inspectorate a certified copy of an executed S106 agreement by 28 June 2019, with that deadline subsequently being extended to 5 July.
6. At the hearing there was some discussion as to how the delivery of the shop would be secured, given I indicated that this was something I considered could not be addressed through the imposition of a planning condition, in the event of the appeal being allowed. The Council submitted that it was not supportive of a shop's provision and would therefore not agree to a planning obligation being added to any S106 agreement that it would become a signatory to. Given that an alternative approach for the shop's delivery would be for the landowners¹ to enter into a planning obligation, secured through a Unilateral Undertaking (UU) made pursuant to Section 106 of the Act. I indicated at the hearing that should the appellant wish to follow this approach then a certified copy of an executed UU should be submitted to the Planning Inspectorate in line with the deadline for the S106 agreement's submission.
7. No certified copies of either an executed S106 agreement or a UU have been received by the Planning Inspectorate. That is something I return as an 'other matter' below.
8. After the appeal's submission the Government published a revised version of the National Planning Policy Framework in July 2018, which was further revised in February 2019 (the Framework). In association with the revisions to the Framework the Government also made changes to the Sections 2a (Housing and economic needs assessment) and 3 (Housing and economic land availability assessment) of the Planning Practice Guidance (the PPG) concerning the method for calculating the five year supply of housing (5yrHLS). Those changes to the PPG were made in September 2018 and February 2019. The revisions to the national policy and guidance had implications for the appeal cases originally submitted by the appellant and the Council.
9. Given the changes to the national policy and guidance the appellant and the Council were given the opportunity to update their cases, particularly in relation to the matter of 5yrHLS. Those case updates were submitted by the appellant and the Council to the Planning Inspectorate respectively in April

¹ Including any successors in title

and May 2019. However, at the opening of the hearing it transpired that the Planning Inspectorate had not transmitted the Council's updated evidence to the appellant, potentially disadvantaging the appellant at the hearing. Having given the appellant's and the Council's 5yrHLS witnesses some time to discuss their respective cases while other matters were being covered at the hearing and then heard submissions from the parties about how the matter of 5yrHLS could be addressed, it was agreed that I would hear the appellant's and the Council's cases with respect to housing delivery only.

10. However, with respect to the parties' housing requirement cases it was agreed that I would not hear the evidence. Instead I decided that the appellant should have until 21 June to make written submissions relating to the Council's previously unseen written evidence. It was further agreed that the Council would have until 5 July to make a written response to any new written submissions made by the appellant. On that basis to allow for further written submissions to be made I adjourned the hearing at the end of the day on 4 June.
11. Included amongst the Council's response to the appellants post hearing submissions were a pair of linked appeal decisions APP/P0240/W/18/3206495 and APP/P0240/W/19/3220640, dated 25 June 2019, concerning a site at Land west of New Road, Clifton (the Clifton appeals). Those appeals having been coincidentally determined by me, following a hearing held on 21 May.
12. Following the receipt of the Council's further comments the appellant was given the opportunity to submit 'final comments' by 21 July. The appellant's final written comments took the form of the submission of two written representations appeal decisions, APP/P0240/W/18/3211551 (Land south of Limbersey Lane, Maulden) and APP/P0240/W/19/3219983 (Land off Cobbitts Road, Maulden) (the Maulden written representation appeals).
13. Additionally, on 10 July 2019 the Council submitted a copy of appeal decision APP/P0240/W/18/3218992 which concerns land at Clophill Road, Maulden.
14. It was further agreed at the hearing that following the receipt of any post hearing written submissions I would review that documentation and consider whether there was a need for me to hear further submissions at a reconvened hearing.
15. On 22 July 2019 the Government published some further modifications to the PPG relevant to this appeal. However, those changes to the PPG were largely of a presentational nature, with a new section 68 (Housing supply and delivery) being added and comprising content largely moved from the earlier versions of sections 2a and 3 referred to above. A section on the Green Belt (section 64) was also added to the PPG that, amongst other things, sets out some very brief clarification on the factors to be considered when assessing Green Belt openness effects. Given the nature of the revisions made to the PPG I considered that there was no need for me to seek the appellant's or the Council's comments on them. Taking account of both the receipt of the appellant's and the Council's additional comments concerning the 5yrHLS position and the changes to the PPG, the parties were advised on 21 August that I considered that there was no need for me to hear any further evidence and the hearing was closed in writing on that date.

16. The Council is in the process of preparing a new Local Plan for its area and the examination hearings for that emerging Local Plan (eLP) were held earlier this year. The appellant and the Council are agreed that 'limited weight' should be attached to the policies of the eLP for the purposes of the determination of this appeal². Given that the eLP is still capable of being change through its examination I am of the view that limited weight should be attached to it for the purposes of the determination of this appeal when regard is paid to paragraph 48 of the Framework.

Main Issues

17. Apart from the portion of the site within Manor Close this proposal would involve development within the Green Belt. There is agreement that the majority of the development would be 'inappropriate development' in the Green Belt³, having regard to the provision of the Framework. Taking account of paragraphs 143 to 145 of the Framework I agree that this proposal would be inappropriate Green Belt development. Paragraph 143 of the Framework states that would, by definition, be harmful to the Green Belt and this development should therefore '... not be approved except in very special circumstances ...'. That harm to the Green Belt is something that attracts substantial weight (paragraph 144 of the Framework). Given that I consider the other main issues are:

- The effect of the development on the openness of the Green Belt;
- The effect of the development on heritage assets, most particularly the setting of the SAM and buried archaeology;
- The suitability of this site for housing having regard to the risk of flooding;
- The effect of the development on the character and appearance of the area; and
- Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development.

Reasons

Development Plan and National Planning Policy Context

18. The appellant and the Council agree that Policy DM4 (development within and beyond settlement envelopes) of the Central Bedfordshire Core Strategy and Development Management Policies of 2009 (the CSDMP) is a 'most important'⁴ development plan policy for the purposes of the determination of this appeal. The Council also considers that I should treat Policies CS16 (landscape and woodlands) and DM14 (landscape and woodlands) of the CSDMP as most important policies. With respect to the matters of the making of developer contributions to mitigate the effects of the development on local infrastructure and the provision of affordable housing there is further agreement that respectively Policies CS2 and CS7 are relevant.

² Paragraph 3.9 of the Statement of Common Ground

³ Paragraph 4.3 of the signed Statement of Common Ground of 22 May 2019

⁴ Having regard to the language used in paragraph 11(d) of the Framework

19. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise, with national policy and guidance being one such material consideration. The CSDMP covers the period up to 2026 and although its adoption predates the publication of the original Framework in 2012, paragraph 213 of the extant Framework states that existing development plan policies should not be considered as being out-of-date simply because they were adopted prior to the publication of the Framework. Weight is to be attached to development plan policies according to their degree of consistency with the Framework.

CSDMP Policies

20. Policy DM4, through the identification of settlement envelopes (boundaries), differentiates the built up areas of settlements from the open countryside beyond. Policy DM4 identifies the types of development that will generally be permissible within settlements and essentially discourages development within the countryside.
21. The settlement boundaries have been defined without regard to the CSDMP's overall new development requirements and the wording of Policy DM4 sets out no criteria for assessing any need that there might be for any new building within the countryside or for the assessment of the impact of any such development. Policy DM4, to a degree, therefore protects the countryside for its own sake and in that regard departs from paragraph 170 of the Framework, by not distinguishing between different levels of protection for landscapes and the countryside's intrinsic character and beauty. Given the supporting text for Policy DM4 it is apparent that settlement envelopes have been drawn not only to protect countryside for its own sake, but also to prevent the coalescence of settlements.
22. Although Policy DM4 seeks to protect the countryside from development, following the CSDMP's adoption sites have been allocated for development outside settlement envelopes, through the adoption of the Central Bedfordshire Allocations Development Plan Document of April 2011. From the numerous appeal decisions relating to the Council's area that have been drawn to my attention it is apparent that permissions have been granted by the Council⁵ and on appeal for housing beyond the settlement boundaries.
23. I therefore consider that it is evident that Policy DM4 has not been operating as an absolute bar upon the provision of housing beyond settlement boundaries for appropriate sites or solely as a policy for the supply of housing. I therefore consider that while Policy DM4 is not wholly consistent with national policy, because it does not distinguish between different landscapes, that moderate weight should be attached to this CSDMP policy. In that regard I note that a number of other Inspectors have approached Policy DM4's application in a similar vein, such as in the instances of the determination of the appeals for land at Bayley Gate Farm, Cranfield, land off Taylor's Road, Stotfold and land off Sutton Road, Potton⁶. As this scheme would not fall within one of the exceptions for development referred to in Policy DM4, this proposal would be contrary to this development plan policy.

⁵ Paragraph 19 of the decision for appeal APP/P0240/W/16/3166033

⁶ Paragraphs 73 and 74 of APP/P0240/W/17/3190779, paragraph 22 of APP/P0240/W/16/3166033 and paragraph 24 of APP/P0240/W/17/3190687

24. Policies CS16 and DM14 contain multiple criteria and having regard to the wording of the Council's second putative reason for refusal I consider that Policy CS16's second and fourth criteria are of most relevance because they address the conservation and enhancement of the varied countryside character and local distinctiveness, including landscapes of lesser quality, having regard to the Council's Landscape Character Assessment (LCA)⁷. I consider that Policy CS16's second and fourth criteria are generally consistent with national policy insofar as paragraph 170 of the Framework states 'Planning policies and decisions should contribute to and enhance the natural and local environment by: ... (b) recognising the intrinsic character and beauty of the countryside ...'. I therefore consider that substantial weight should be attached to Policy CS16 for the purposes of the determination of this appeal.
25. With respect to Policy DM14, I consider that its second and third criteria are of particular relevance because they indicate that: development that would have an unacceptable landscape impact will not be permissible and within the Flit Valley development will be required to conserve or enhance the landscape. I consider that the aforementioned criteria of Policy DM14 are generally consistent with the provisions of paragraph 170 of the Framework and that substantial weight should be attached to Policy DM14, on a similar basis to the way that I have approached Policy CS16.

National Policy (the Framework)

26. The first (Green Belt), third (heritage assets) and fourth (flood risk) of the Council's putative reasons for refusal rely on policies stated in the Framework, as opposed to any development plan policies. Policies of the Framework therefore form a significant part of the policy context for the determination of this appeal.
27. With respect to the Green Belt, paragraph 133 states that 'The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of the Green Belts are their openness and their permanence'. The Green Belt serves five purposes (paragraph 134) and of those purposes, the third, assisting in safeguarding the countryside from encroachment, is the most relevant to this case. Given the 'inappropriateness' of the development, as I have explained above there would, by definition, be harm to the Green Belt and that means for the purposes of paragraph 143 this development '... should not be approved except in very special circumstances'. Paragraph 144 goes on to explain that Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations'.
28. Paragraph 155 advises that in areas at risk of flooding inappropriate development, in flood risk terms, should be avoided by directing it away from areas at highest risk. Paragraph 158 states:

'The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding ... The

⁷ The Central Bedfordshire Landscape Character Assessment January 2015

sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.'

29. Paragraph 159 goes on to advise that if it is not possible for development to be located in zones with a lower risk of flooding, taking account of wider sustainable development objectives, then an exception test may have to be applied. In order for an exception test to be passed it will be necessary to demonstrate that there would be wider sustainability benefits for the community outweighing the flood risk and the development will be safe from flooding for its lifetime, taking account of the vulnerability of its users without increasing the risk of flooding elsewhere (paragraph 160). Paragraph 163 explains that development in areas at risk of flooding should only be allowed, having regard to sequential and exception tests, when it can be demonstrated that: (a) within the site the most vulnerable development is located in areas of lowest flood risk, (b) the development is appropriately flood resistant and resilient, (c) sustainable drainage systems can be provided, (d) any residual risk of flooding can be safely managed and (e) safe access and escape routes would be available.
30. With regard to heritage assets, paragraph 189 requires developers to describe the significance of the heritage assets affected by their proposals, with the amount of that description being proportionate to the importance of the asset and the effect upon it. Where a development site has the potential to include a heritage asset of archaeological interest, developers should be required to undertake a desk based assessment and field evaluation where necessary. In determining a planning application, local planning authorities should identify and assess the significance of the affected heritage asset taking account of all available evidence, in order to avoid or minimise any conflict between the asset's conservation and any aspect of the proposal (paragraph 190). Significance for the purposes of heritage policy relates to the value of a heritage asset, with the significance deriving from an asset's physical presence, as well as its setting (Annex 2 of the Framework).
31. Paragraphs 193 to 195 address the consideration of the effect of new development on the significance of heritage assets, with great weight to be given to the conservation of those assets, irrespective of whether any potential harm would be substantial, a total loss or less than substantial. In instances when a development would result in substantial harm to a heritage asset, ie total or substantial loss, planning permission should be refused unless there would be substantial public benefits outweighing the harm. Additionally footnote 63 of the Framework advises that 'Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets'. Footnote 63 being of relevance because the third of the Council's putative reasons contends that archaeology near the SAM could be affected by the development.
32. Paragraph 200, amongst other things, provides guidance on the approach to be taken to enhancing or better revealing the significance of the setting of heritage assets. In that regard developments that would preserve the setting that makes a positive contribution to an asset should be treated favourably.

Green Belt Openness

33. The site is an essentially rectangular piece of land with an area of 4.18 hectares⁸. Much of the site comprises paddocks used in association with the operation of a livery stable that also utilises a collection of farmyard type buildings. The livery stable buildings are situated in the eastern end of the site and would be demolished as part of the development. The eastern extremity of the site is occupied by a pair of houses in Manor Close and they would be demolished to facilitate vehicular and pedestrian access to the development from Park Road.
34. Although the paddocks have been sub-divided into plots of varying sizes, that sub-division relies on post and rail fencing or fencing of a more temporary/flexible nature. I found the paddocks to be land of an open nature, ie generally free of built development, forming part of the expanse of essentially open countryside to the south of Westoning's built up area. Providing up to 73 dwellings and a shop would mean that the site would be dominated by built development and that would be at odds with the 'fundamental aim' of the national policy to keep land within the Green Belt permanently open (paragraph 133 of the Framework). While parts of the site would be free from built development, being set aside for open and play space and a burial ground, I consider those areas would only to a very modest degree provide mitigation against the overall loss of openness that would arise from this development.
35. On this issue I conclude that there would be a harmful loss of openness within the Green Belt, with the development failing to accord with the Green Belt's third purpose 'to assist in safeguarding the countryside from encroachment' (paragraph 134 of the Framework). As there would be a sizeable amount of new built development, I consider there would be significant harm to Green Belt openness, with there also being significant harm to the purposes of the Green Belt arising from the encroachment into the countryside.

Heritage Assets

36. The western end of the site adjoins the SAM and forms part of the SAM's setting. The SAM is the location for the original medieval circular moated manor house with associated fishponds, the latter now being dry. The reasons for the SAM's designation stated in its List Entry refer to it as a '... very well preserved, high status moat with important royal connections ...'. A new manor house, Westoning Manor, a grade II listed building, was built in the 1840s and that lies around 200 metres from the site's western boundary. The SAM, together with St Mary Magdalene church, forms one of the focal points of the medieval village. The other focal points being the area around the junction between Church Road and Tyburn Lane and further east in the area around Westoning Lower school⁹.
37. Historically the SAM's setting would have been very open, with it comprising fields. In the past the area between the SAM and the heart of the modern day village would essentially have been free from built development, with the amount of land surrounding the original manor house being commensurate with its occupier's status. The field enclosure in the immediate vicinity of the

⁸ Area taken from the information contained on the application form

⁹ The committee report for the appealed application

SAM postdates the medieval manor house's construction. The SAM's setting has therefore evolved since the construction of the original moated manor house, with it now comprising a mixture of treed parkland associated with the later manor house, grassland and equestrian uses and the southern extent of the built up area of the present day village.

38. I found the SAM's presence, as the location for a moated medieval manor house, and thus its significance, not to be readily appreciable when looking towards it from the site, including when walking along public right of way FP7 (the PROW), given the nature of the tree cover along the boundary shared between the SAM and the site. That is due, in no small measure to the presence of the row of trees that follow the line of the ditch beyond the site's western boundary.
39. The scheme would increase the amount of built development in the vicinity of the SAM, in effect bringing the village's built up area closer to the designated heritage asset. That would mean that there would be some reduction in the extent of land free from development surrounding the SAM. However, I consider that change would not have an appreciable effect on the SAM's setting, with it, in my view, now being necessary to have prior knowledge of the SAM's presence to be aware that the appeal site forms part of the setting of a SAM dating back to the medieval period. That is because, as I have indicated above, the SAM's presence is not readily appreciable from the appeal site and from the perspective of any outward views from the SAM there would continue to be a meaningful degree of physical separation from built development, with the intention for the western extremity of the development site to act as the scheme's area of open space. The latter being something that could be addressed through the determination of any subsequent reserved matters application(s).
40. I am mindful that Historic England (HE) has some concerns about this development's effect on the SAM's setting. However, HE has commented that those concerns are insufficient for it to raise an in principle objection, with the harm to the SAM's setting being put by it as 'less than substantial'¹⁰. I also consider it of note that HE provided guidance on the ways its concerns could be addressed in the event of the development receiving planning permission.
41. So, while there would be some effect upon the SAM's setting, I consider that would amount to a small degree of 'less than substantial harm' and of itself would not warrant the withholding of planning permission. I consider my finding in this regard to be consistent with HE's advice.
42. The Council's concern about the development's implications for any buried archaeology arises because of the site's proximity to the SAM and the absence of much in the way of past archaeological evaluation within this part of Westoning, with the SAM having been one of the focal points for the medieval settlement. As the appeal site occupies some of the intervening land between the medieval settlement's focal points, I consider it reasonable to expect that this site may contain buried archaeology of significance.
43. The appellant has undertaken an archaeological desktop study together with a geophysical survey. The geophysical survey has revealed some anomalies, which can only reliably be explained, and then have any significance

¹⁰ Letter to the Council of 9 November 2017

attributed to them, once an intrusive archaeological investigation has been completed, ie through the undertaking of trial trenching.

44. However, to date no trial trenching has been undertaken and there is therefore potential for buried archaeology associated with the medieval settlement to be present within the paddocks. That is not least because the submitted archaeological assessment records that there appears to have been little or no disturbance due to past ploughing¹¹, with the result that buried archaeology could remain preserved in-situ. The appellant puts the site's archaeological potential as being of a 'medium' level relating to '... settlement, industrial or agricultural ...' activity¹². To gain a full appreciation of the site's archaeological potential, the appellant's archaeologist accepts there is a need for trial trenching, covering around 5%¹³ of its area to be undertaken, with the necessary trenches being around thirty metres long and two metres wide. It has been submitted that this is something that could be addressed by imposing a planning condition requiring the completion of a post permission intrusive investigation of the site.
45. The absence of trial trenching to date has been explained on the basis of the site's current use for the keeping of horses. I appreciate that there is a need to safeguard the wellbeing of those horses. However, the site is quite extensive and I am not persuaded that it would be impossible to safeguard the wellbeing of the horses while progressive trial trenching was being undertaken. Given that there is potential for there being buried archaeology present and it is not possible, on the available information, to quantify what significance any finds might have. I consider that this is a matter that could not reasonably be addressed through the imposition of a planning condition. That is because if post permission any archaeology of significance was to be encountered that could significantly affect the permission's implementation.
46. On the available evidence I therefore conclude that there has been a failure to demonstrate that there would be no unacceptable effect on buried archaeology, with the existing evidence base being inadequate to establish the significance of any buried archaeology that might be present and affected by this development. I consider that reliance on a post permission condition would not provide adequate mitigation for the safeguarding of what amounts to a non-designated heritage asset, given that the affected land immediately adjoins a SAM that was one of the focal points of a medieval settlement. In the face of the inadequacy of the field evaluation that has been undertaken to date I consider this proposal would not accord with national policy, most particularly paragraphs 189 and 190 of the Framework. I consider this deficiency of the application amounts to a significant harm.

Flood Risk

47. Based on the Environment Agency's (the EA) flood risk maps the site for the most part is in an area with a low probability of flooding, ie Flood Zone 1 (FZ1), with the north western end being in a location with a medium to high probability of flooding, ie Flood Zones 2 and 3 (FZ2 and FZ3). To minimise the risk of flooding it is intended that the dwellings would be situated within the

¹¹ Paragraph 7.1.1 of the Archaeological Desk Based Assessment of February 2017

¹² Paragraph 8.1.5 of the Archaeological Desk Based Assessment of February 2017

¹³ The figure quoted by Mr Wain on the appellant's behalf at the hearing.

part of the site falling within FZ1, with the open space area and burial ground being sited within the parts of the site that are in FZ2 and FZ3.

48. The application is accompanied by a site specific flood risk assessment demonstrating that the development could be engineered so as to avoid its occupiers being subjected to an unacceptable level of flood risk. In that regard the EA has not raised an objection to this development¹⁴. However, the EA's advice is caveated, in line with what is now contained in paragraph 158 of the Framework¹⁵ and section 30 (flood risk and coastal change) of the PPG, so that planning permission should not be granted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. That means a sequential test should be performed to establish whether the development could be accommodated wholly in a location or locations at a lower risk of flooding, ie in FZ1.
49. Paragraph 033 of the PPG¹⁶ provides guidance for conducting sequential tests for individual planning applications, with the area to be tested being defined by local circumstances '... relating to the catchment area for the development type proposed ...'. The development has been promoted on the basis of the Council being currently unable to demonstrate a 5yrHLS and given that, and the scale of the development, I consider that the catchment for applying the sequential test should be the whole of the Council's area and not just Westoning and its immediate environs.
50. The guidance in paragraph 033 of the PPG is supplemented by guidance published by the EA, which is entitled 'Flood risk assessment: the sequential test for applicants'¹⁷. The EA's guidance advises that the consideration of potential alternative sites should include, amongst other things, adopted and draft local plan sites that might be suitable for the proposed development.
51. A 'flood risk sequential assessment report' (the sequential test report) has been submitted as part of the appeal. The sequential testing that has been undertaken is based on a search for sites capable of accommodating between 50 and 100 dwellings. Sites outside that range having been discounted because it is said they would not be comparable with the appeal development. It is argued that there are no sequentially preferable sites, with the appellant reaching that view on the basis of only considering single sites of a size capable of accommodating between 50 and 100 dwellings.
52. However, I am of the view that limiting the search for alternative sites to ones within a range capable of accommodating between 50 and 100 dwellings has been artificially restrictive. I say that because I see no reason, in particular, why either two or more sites, cumulatively capable of accommodating between 50 and 100 homes or sites capable of accommodating more than 100 dwellings should be discounted. While that may not fit with the appellant's development model, I consider that does not justify discounting sites falling outside the range of 50 to 100 dwellings. It is also unclear why the prospective housing allocations that the Council has identified for Westoning, which have indicative capacities of 135 dwellings (land off Flitwick Road) and 85 dwellings (West View Farm) have been discounted.

¹⁴ Letter of 14 February 2018

¹⁵ Previously paragraph 101 of the Framework

¹⁶ Paragraph: 033 Reference ID: 7-033-20140306

¹⁷ Originally published on 1 April 2012 and updated on 28 February 2017 and available on the Department for Environment, Food and Rural Affairs' website via a link embedded in the PPG

53. Although the previously mentioned prospective allocation sites are in the Green Belt, they appear not to be within either FZ2 or FZ3 and accordingly in flood risk terms would be sequentially preferable to the appeal site. I therefore consider that the exclusion of the prospective allocation sites from the sequential testing has been unduly restrictive and does not accord with the EA's guidance that I have referred to above.
54. It also appears that the consideration of extant housing allocations or prospective allocations has been highly selective, with an emphasis on the area in close proximity to Westoning. That being portrayed by the extract from the Strategic Housing Land Availability Assessment included as Figure 3 within the sequential test report. As I have indicated above, given the scale of the development and its promotion on the basis of there being an absence of a 5yrHLS, I consider that the catchment area for sequential testing should have been across the whole of the Council's area.
55. Given what I have said above I consider that the sequential testing has been inadequate. On this issue I therefore conclude that having regard to the risk of flooding, the suitability of this site for housing has not been demonstrated. There is therefore unacceptable conflict with the provisions of paragraph 158 of the Framework and the allied guidance in the PPG concerning planning and flood risk. I consider this harmful aspect of the development to be a significant one.

Character and Appearance

56. This site is not subject to any national or local landscape designations. However, the site's paddock area is representative of the fields that characterise the countryside to the south of Westoning. This site is located at the boundary of two landscape character areas, 'LCA6B' and 'LCA7A' identified in the LCA. However, when visiting the site, I did not find it to exhibit many of the landscape 'Key characteristics' for either LCA6B or LCA7A stated in the relevant sections of the LCA. I therefore consider that the site is not particularly representative of the landscape character attributes of either the Mid Greensand Ridge or the Flit Greensand Valley.
57. The provision of an estate of houses, with a shop, burial ground and some incidental open space would alter the site's character and appearance, with essentially open grazing land being replaced by a development of an essentially urban form. However, much of the site's southern boundary is marked by a mature hedgerow and the development would be bounded by housing to the north and east. The development would therefore be of a quite enclosed nature and I consider it would not be harmful to the character and appearance of the area, including the landscape quality within either LCA6B or LCA7A, with it being appreciable to a limited number of receptors, namely the users of the PRoW and the occupiers of some of the dwellings adjoining the site. Some hedgerow removal would be necessary to form the access to the development from Park Road. However, I consider that hedgerow loss would not have a significant effect on the character and appearance of the area, given that it would be of a limited extent.
58. Given the proximity of the established housing in Westoning and Park Road, an A class road, I am not persuaded that the formation of a housing estate, including the installation of street lighting, would have any particular significance for the 'tranquillity' of this part of the countryside. In those

respects, I consider there would be little to differentiate the appeal scheme from prospective housing allocation on the eastern side of Park Road.

59. I therefore conclude that development would not adversely affect the character and appearance of the area and that with the imposition of appropriate planning conditions it would accord with Policies CS16 and DM14 of the CSDMP. In this regard I also consider that there would be no conflict with paragraph 170b) of the Framework because there would be no unacceptable harm to the intrinsic character and beauty of this part of the countryside. As I have found that there would be no adverse effect on the character and appearance of the area, this would be a neutral effect of the development. While I have found the development would not have an adverse effect on the character and appearance of the local landscape, that finding does not diminish my concern that there would be an unacceptable loss of openness in Green Belt terms.

Other considerations

Planning Obligations

60. With respect to the matters intended to be the subject of any planning obligations, I have treated those matters as though an executed S106 agreement and/or UU had been submitted, albeit as I have explained above neither an executed S106 agreement nor UU has been received by the Planning Inspectorate. That is because the payment of the infrastructure contributions sought by the Council appears to be an uncontroversial matter in this instance. There would have therefore been the potential for me to extend the deadline to allow for the submission of any executed S106 agreement and/or UU had I considered that appropriate, having first considered all other issues raised by this case.
61. Policy CS2 requires developers to make infrastructure contributions to ensure that new developments address their effects on the infrastructure provision in the Council's area. Policy CS7 addresses the provision of affordable housing and in this instance would require 35% of the dwellings (up to 26 units) within the development to be affordable homes. Having regard to the provisions of national policy relating to the provision of infrastructure and affordable housing, as set out in the Framework, I consider that for the purposes of the determination of this appeal that Policies CS2 and CS7 should be considered as being consistent with national policy and should therefore have full weight attributed to them.
62. There is agreement between the appellant and the Council that there is a need to provide affordable housing at the level of 35% and had there been a planning obligation in place to secure the provision of 26 affordable homes then there would be compliance with Policy CS7. That said I attach moderate weight to the potential to provide affordable housing in this instance because while this would assist in meeting a continuing need within the Council's area, it is likely that any development of a comparable scale would be expected to provide affordable housing in compliance with Policy CS7.
63. The final draft version of the S106 agreement that I have been provided with indicates that it is intended that various contributions would be paid to fund education, village hall (off-site), sports pitch and refuse storage facilities. Having regard to the provisions of Policy CS2 I am content that planning

obligations would be necessary to mitigate the development's demands on local infrastructure. With the level of the necessary infrastructure contributions being agreed between the parties, the inclusion of appropriate obligations within a S106 agreement and/or UU would mean that compliance with Policy CS2 could be achieved. I therefore consider that this development would be capable of having a neutral effect upon local infrastructure provision.

64. The development would include the provision of a local shop of 478 square metres¹⁸ with up to 22 car parking spaces, which it is contended would serve the needs of the occupiers of the development as well as other residents of Westoning. However, while there is one local shop in Westoning, which has limited off-street parking available to it, no need for a second local shop has been demonstrated. Nor is there any noteworthy support amongst the local community for a new shop to be provided, with there being some concern that a new shop could affect the viability of the existing shop. In the absence of a clear need for a new local shop I consider this to be a very modest benefit of the development.
65. Westoning Parish Council has been looking to provide additional burial space within the village for around 20 years¹⁹. However, it was submitted that this would not be a particularly accessible location for such a facility to serve the whole of the village. The Parish Council does not favour the appeal site as a location for a burial ground and I therefore consider this to be a very modest community benefit of the development.

On-site open and play space

66. The on-site open and play space, as shown on the initial sketch scheme drawing, would appear not to be particularly generous and would primarily meet the needs of the occupiers of the development. While residents from further afield in Westoning might make use of the development's open and play space, given the likely extent of this space I consider that wider community use of it would be limited. I therefore consider this to be a very modest community benefit of the development.

Housing Land Supply

67. For the purposes of the preparation of the eLP the Council has jointly undertaken a Strategic Housing Market Assessment (SHMA) with Luton Borough Council to identify a full objectively assessed housing need (FOAHN) for their areas. The most recent version of the SHMA having been published in December 2017 and it identifies a FOAHN for Central Bedfordshire of 32,000 dwellings between 2015 and 2035, ie 1,600 dwellings per annum (dpa). However, as the eLP's examination has not been concluded the appropriateness or otherwise of the FOAHN identified by the Council remains to be determined by the examining Inspectors. Accordingly, no references that I make to the FOAHN identified by the Council should be taken as having any bearing on the examining Inspectors' consideration of the housing requirement as part of the eLP's examination.
68. In the context of maintaining the supply and delivery of housing paragraph 73 of the Framework states:

¹⁸ Based on the floor area quoted on the planning application form

¹⁹ The evidence of Mr Rayment given at the Hearing

'... Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old³⁷'.

[Footnote 37 states 'Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance'.]

69. As the CSDMP is more than five years old this is an instance when the national policy and guidance indicates, in the context of determining a planning application, that a local housing need (LHN) figure should be calculated using the 'standard method' (SM) as the means of identifying a minimum annual housing need figure. It is agreed that when the SM is applied then the LHN figure for Central Bedfordshire is of the order of 2,427 dpa. When a 5% buffer is applied to that LHN figure that yields 2,548 dpa or 12,742 dwellings over five years²⁰. The Council has submitted that if the SM is used then over the next ten years one new dwelling for every five existing in 2019 would need to be built²¹. However, the Council contends that using the SM yields an inaccurate housing requirement for its area. That is because the SM relies on the use of the Government's 2014 household projections, which in turn utilise census mid-year estimates (MYE) provided by the Office for National Statistics (ONS).
70. The Council has argued with force that the MYEs for its area historically have been inaccurate because their migration component has inflated the population estimates by around 7,200 people. In that regard it has been submitted that the MYEs suggest that between 2011 and 2015 Central Bedfordshire's population grew by 18,400 people compared with estimates for 2001 and 2011 which indicated the population increased by 21,600. Applying the MYEs in the Council's area, the population increase between 2011 and 2015 would be equivalent to 85% of the total growth for the preceding ten years²².
71. As a sense checking exercise for the accuracy of the MYEs the Council has reviewed other administrative data sources, namely the patient register, school census and pension records, and found those data sources do not support the level of population growth identified by the MYEs. The Council further contends that the house building rates between 2011 and 2015 do not support the rate of population growth indicated by the MYEs for this period²³.
72. The Council's consultant on 5yrHLS matters (Opinion Research Services [ORS]) has stated that of the fifty or so local authorities it has acted for only two exhibit '... this kind of systematic error' with the MYEs. Those authorities being Aylesbury Vale and Central Bedfordshire²⁴, with ORS stating that '... Central Bedfordshire is an extreme outlier in terms of the degree of error

²⁰ Paragraph 3.10 of Appendix 9 of the appellant's statement of case of April 2019

²¹ Paragraph 2.13 of the Written Statement of Opinion Research Services of 16 May 2019

²² Paragraph 8(vi) of the Summary contained within the Opinion Research Services' Written Statement of 16 May 2019

²³ Paragraph 8(x) of the Summary of Opinion Research Services' Written Statement of 16 May 2019

²⁴ Paragraph 2.11 of the of Opinion Research Services' Written Statement of 16 May 2019

present in the previous iterations of the Mid-Year Estimates'²⁵. In this regard the SM's application in the Council's area, because of particular issues with the reliability of the MYEs, generates a five year housing need figure that appears improbable, given the total housing stock would need to increase by 20% over the next ten years to meet the calculated figure.

73. Prior to the February 2019 revisions to the Framework and the PPG being published, the Government undertook a technical consultation and the Council made representations. However, given the very specific concerns that the Council has about the use of the MYEs in its area and the consequences of their use for the SM calculation, I consider it unsurprising that the Government did not introduce any exceptions in the Framework and/or the PPG to address statistical issues affecting what appears to be an extremely small number of Councils. I consider therefore the absence of any exceptions in the national policy and guidance to address the Council's very particular concerns about the reliability of the MYEs and the household projections founded on them, does not diminish the Council's concern. As I have outlined above in this instance the use of the SM generates a five year housing requirement figure that does not seem plausible.
74. For Central Bedfordshire it appears that the five year housing need, derived by using the SM and the addition of a 5% buffer, yields an inappropriate figure. So, while the Framework and the PPG are important material considerations, I consider the inaccuracy of the MYEs, and associated implications for the 2014 household projections for Central Bedfordshire, is also an important material consideration. Accordingly, for the purposes of the determination of this appeal, I consider that the weight to be attached to the use of the SM should be greatly reduced. In that regard I am mindful of the Court of Appeal's judgement concerning the Secretary of State for Communities and Local Government and West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441 (the West Berkshire judgement). That judgement having been referred to by both the appellant and the Council in their written evidence²⁶.
75. In connection with the West Berkshire judgement it has been put to me that, while it has been established that exceptions to national planning policy can be made, for the purposes of considering a 5yrHLS position the national policy and guidance only allows for a departure to be made from the SM in connection with plan-making²⁷, but not when planning applications are being determined. I consider the appellant's interpretation of the West Berkshire judgement's implications is too narrow. That is because while it is the Government's strongly held view that the SM should be used in circumstances such as this, the Court of Appeal has held:

'a policy-maker (notably central government) is entitled to express his policy in unqualified terms. He is not required to spell out the legal fact that the application of the policy must allow for the possibility of exceptions' (paragraph 17 of the judgement).

²⁵ Paragraph 9 of ORS's Supplemental Response submitted with the Council's Rebuttal Statement of July 2019

²⁶ Paragraph 4.4 of the Council's supplementary statement of case of May 2019, paragraph 2.8 of the appellant's response to the Council's supplementary statement of case and paragraph 6 of the Council's rebuttal statement of July 2019

²⁷ Paragraphs 2.8 and 2.9 of the appellant's 'Response to Council Supplemental Statement of Case'

76. The West Berkshire judgement goes on to explain at paragraph 19 that policy makers cannot fetter the use of discretion in decision making, with it being reasonable for decision makers to have regard to 'relevant factors'. In this instance, as I have explained above, I consider there is a relevant factor, namely the inaccuracy of the MYEs, meaning that in this instance the weight to be attached to the five year housing need figure derived from the use of the Government's preferred methodology should be greatly reduced.
77. The approach I have taken to the weight to be applied to the SM for the purposes of the determination of this appeal is based on the extensive written evidence that has been presented to me. That approach is also consistent with the way I considered this matter in determining the Clifton appeals. I, however, recognise that the Inspectors who determined the Maulden written representation appeals approached the weight to be attached to the application of the SM in a different way, based on the evidence before them. I do not know how the evidence available to those Inspectors compares with the written evidence that has been presented to me in connection with this appeal. Notwithstanding that I am required to determine this appeal based on the evidence that is before me and that is how I have considered this particular matter.
78. It has also been put to me that Aylesbury Vale District Council has not approached the issue of any inaccuracy in the MYEs for its area in the same way as Central Bedfordshire Council. While that may be the case the evidence presented to me by the Council is that there is an inaccuracy in the MYEs and that is something that I should consider and that is what I have done.
79. So, having found that the use of the SM yields an inappropriate figure, that leaves the FOAHN figure of 1,600 dpa that the Council has identified through the preparation of its SHMA. While that housing requirement figure has been calculated using a methodology no longer favoured by the Government, it is based on the application of a previously recognised methodology. Given the evidence put to me, I therefore consider that a requirement of 1,600 dpa represents the most appropriate need figure to be used in connection with the determination of this appeal. That finding is consistent with the approach taken by a number of Inspectors in determining other recent appeals drawn to my attention by the Council.
80. The appellant has submitted that if the FOAHN figure of 1,600 dpa is used then '... the Council would, on that basis, be able to demonstrate a 5 year supply'²⁸. Given that submission on the appellant's behalf I consider there is no need for me to comment on the parties' housing delivery evidence.
81. For all of the reasons set out above I consider that it has been demonstrated that there is currently a 5yrHLS. In any event even if there was no 5yrHLS, what is now commonly referred to as the 'tilted balance' in favour of granting planning permission would not apply in this instance. That is because there is no dispute that this scheme would amount to inappropriate development within the Green Belt and that harm gives rise to conflict with policies of the Framework '... that protect areas or assets of particular importance ...' providing '... a clear reason for refusing the development proposed' (paragraph 11d)i). That is something that Mrs Turnbull, for the appellant,

²⁸ Paragraph 2.7 of the appellant's Response to Council Supplemental Statement of Case

accepted during the hearing, with the provision of additional housing to be treated as part of the appellant's very special circumstances case.

82. The parts of the eLP's evidence base that have been put before me suggest that within the vicinity of Westoning's established built up area there is some capacity for additional housing to be provided. That is because the Council, as part of the plan-making process, has identified two prospective housing allocations, land off Flitwick Road and West View Farm, which potentially could, in combination, accommodate around 220 dwellings. Those sites are also in the Green Belt, however, they appear not to raise the same flood risk and archaeological issues as the appeal site. The provision of housing at the appeal site would assist in providing housing in the Council's area. However, I consider that benefit of the development should be considered as being no more than a very modest one. That is because the appeal site appears not to be the only one in the vicinity of Westoning that could deliver new dwellings at a time when a 5yrHLS has been demonstrated to be present.

Planning Balance: Whether the other considerations advanced in support of the development are sufficient to clearly outweigh any harm to the Green Belt, and any other harm, such as to amount to the very special circumstances necessary to justify the development

83. The definitional harm to the Green Belt by reason of this development's inappropriateness weighs substantially against this proposal. The harm to the Green Belt arising from the loss of openness and encroachment into the countryside further weigh significantly against this development. I further consider that there would also be significant harm weighing against the development arising from the inadequacy of the current understanding about the significance of any buried archaeology that might be affected by the development. Additionally, I consider that there is significant harm weighing against the development associated with the failure to clearly demonstrate, in flood risk terms, that the site would be sequentially preferable to any other site or sites that might be capable of accommodating this development.
84. There would also be some effect on the significance of the setting of the SAM. That effect, while being in the category of less than substantial harm, is nevertheless something that great weight should be attached to²⁹. As the harm to the SAM would be less than substantial it needs to be weighed against the public benefits of the proposal in accordance with the advice in paragraph 196 of the Framework. The development would provide additional housing. However, for the purposes of the determination of this appeal it has been demonstrated that a 5yrHLS is currently available and I therefore consider that the provision of the proposed housing would be a public benefit of only moderate weight. For the reasons given above I also consider that the provision of the local shop and the burial ground attract very little positive weight.
85. As explained in the policy section above there would also be some conflict with the CSDMP, given that the development would not come with the exceptions stated in Policy DM4. However, that development plan conflict only attracts moderate weight against the development for the reasons I have also given above.

²⁹ Paragraph 193 of the Framework

86. The development's effect on the character and appearance of the area, would be a neutral one. I therefore consider that for this aspect of the scheme no weight should be applied either for or against the development in the overall balance.
87. The social and economic benefits associated with the provision of: market and affordable housing, the shop; the burial ground; improvements at the existing village hall; and on-site open and play space, during the occupational and/or the construction phases of the development, are the main other considerations advanced in support of the development by appellant. In the appellant's opinion those other considerations, when taken together, amount to the very special circumstances necessary to justify permission being granted for what it is argued would be a sustainable form of development.
88. Overall, I consider the benefits of the scheme and the other considerations highlighted by the appellant are insufficient to outweigh the harm to the Green Belt and the other harms I have identified. I am therefore of the view that the other considerations do not amount to the very special circumstances necessary to justify the development. I have found that there would be Green Belt harm, as well as other harms arising from the effect upon buried archaeology and the absence of adequate sequential testing for the purposes of the assessment of flood risk. Those harms give rise to conflict with various policies contained within the Framework and I therefore consider that this development cannot be considered to be a sustainable one.

Conclusion

89. For the reasons given above I therefore conclude that the appeal should be dismissed.

Grahame Gould
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Sinead Turnbull	DLP Planning Limited
Alex Roberts	DLP Planning Limited
Ianto Wain	Oxford Archaeology
Ian Brazier	Abington Consulting Engineers Limited

FOR CENTRAL BEDFORDSHIRE COUNCIL:

Alexander Booth QC

Phillip Hughes	PHD Chartered Town Planners
Martin Oake	The Council's Archaeologist
Jonathan Lee	Opinion Research Services

INTERESTED PERSONS:

Andrew Rayment	Westoning Parish Council
Mr Peters	Local Resident
Mr Ellis	Local Resident

HEARING AND POST HEARING DOCUMENTS

- 1) The appellant's response to the Council's supplemental statement of case, with appendices
- 2) The Council's rebuttal statement in response to the submission of item 1), with appendices
- 3) Copy of the transcript for Cawrey Limited and the Secretary of State for Communities and Local Government [2016] EWHC 1198 (Admin)
- 4) Copy of appeal decision APP/P1560/W/18/3196412 dated 20 May 2019 issued under S56(2) of the Act which superseded the version of this decision issued on 3 April 2019.
- 5) Copy of appeal decision APP/P0240/W/18/3218992 (Land at Clophill Road, Maulden)
- 6) Copies of appeal decisions APP/P0240/W/18/3211551 (Land south of Limbersey Lane, Maulden) and APP/P0240/W/19/3219983 (Land off Cobbitts Road, Maulden)