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## Appeal Decisions

Hearing held on 9 July & 10 July 2019

Site visits made on 11 June, 9 July & 11 July 2019

**by Mr J P Sargent BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 September 2019

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### **Appeal A: APP/Y0435/W/18/3214365**

#### **Land off Castlethorpe Road, Hanslope MK19 7HQ**

- 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 Mr Simon Hill (Appellant A) against the decision of Milton Keynes Council.
  - The application Ref 18/01625/OUT, dated 2 July 2018, was refused by notice dated 3 October 2018.
  - The development proposed is up to 50 dwellings, including 34% affordable dwellings, surface water attenuation, open space, landscaping and associated highway works.
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### **Appeal B: APP/Y0435/W/18/3214564**

#### **Malt Mill Farm, Castlethorpe Road, Hanslope MK19 7HQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by McCann Homes Limited (Appellant B) against the decision of Milton Keynes Council.
  - The application Ref 18/00724/FUL, dated 20 March 2018, was refused by notice dated 9 August 2018.
  - The development proposed is the demolition of the equestrian centre and the erection of 51 dwellings with associated works.
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## Decisions

### **Appeal A**

1. The appeal is allowed and outline planning permission is granted for up to 50 dwellings, including 34% affordable dwellings, surface water attenuation, open space, landscaping and associated highway works at land off Castlethorpe Road, Hanslope MK19 7HQ in accordance with the terms of the application, Ref 18/01625/OUT, dated 2 July 2018, subject to the conditions in the relevant Conditions Schedule below.

### **Appeal B**

2. The appeal is allowed and planning permission is granted for the demolition of the equestrian centre and the erection of 51 dwellings with associated works at Malt Mill Farm, Castlethorpe Road, Hanslope MK19 7HQ in accordance with the terms of the application, Ref 18/00724/FUL, dated 20 March 2018, subject to the conditions in the relevant Conditions Schedule below.

### **Application for costs**

3. At the Hearing an application for costs was made by McCann Homes Limited against Milton Keynes Council, and that is the subject of a separate Decision.

### **Procedural matters**

4. Over 2 weeks after the close of the Hearing the Council wrote to the Planning Inspectorate and implied an Inquiry might have been a more suitable way to test the housing evidence. However, the parties were given opportunity at the start of the Hearing to say whether the procedure should remain as such or be changed to an Inquiry. Despite knowing the appellants were intending to challenge the inclusion of over 5,500 houses in its trajectory, the Council accepted it should remain as a Hearing, and at no point before the close did it say otherwise. I was also informed that at recent housing Inquiries in the Borough the housing land evidence had been explored in a Hearing format. Taking all this together, I consider a Hearing was appropriate.
5. At the Hearing it was made clear that, unless it was said evidence related to just one case, it would be applied to both. This was to achieve consistency, and I have written my decisions on that basis.
6. Appeal A is for outline planning permission only, with all matters but access reserved for subsequent consideration. However, for the purposes of my assessment Appellant A accepted it was reasonable to assume all the houses in this scheme would be 2 storeys high.

### **Main Issues**

7. Although submitted by 2 different appellants, these appeals concerned similar developments on neighbouring sites and were refused for a very similar reason. Therefore, the main issues with each scheme are
  - a) the effect on the Council's spatial development strategy;
  - b) the effect on the character and appearance of the area;
  - c) whether it would result in undue reliance on the private motor vehicle;
  - d) (in the case of Appeal A only) the effect on the availability of best and most versatile agricultural land and
  - e) if harm would be caused by any of these issues, whether that harm would be outweighed by other material considerations.
8. Appeal A was also refused because of the lack of a legal undertaking to ensure the necessary mitigation, but that has now been submitted and the Council considered this concern has been addressed.

### **Reasons**

#### ***The effect on the spatial development strategy***

9. In the Local Plan, *Plan:MK*, Policies DS1 and DS2 say new homes will take account of the settlement hierarchy it identifies, which concentrates development on the most sustainable locations. To this end the hierarchy states the majority of such development will be focussed on or adjacent to the existing urban area of Milton Keynes. In the rural area of the Borough

development will be concentrated in the key settlements of Newport Pagnell, Olney and Woburn Sands. Elsewhere, it will occur within villages such as Hanslope and other rural settlements at locations identified in made neighbourhood plans. Neither policy advocates open market housing outside of settlement boundaries in the rural area.

10. The site of Appeal A is a roughly square grassed field whilst Appeal B relates to an Equestrian Centre. It is common ground that both appeals concern land that is outside the settlement boundary of Hanslope as defined in the development plan, although the settlement boundary runs along the northern side of the site of Appeal A and then down its eastern side on the opposite side of Castlethorpe Road. As a result, by being outside of the settlement boundary Policy DS5 of *Plan:MK* states they are both in the open countryside.
11. Policy DS5 says it provides a vision for development outside of settlement development boundaries. In such areas planning permission will only be granted for certain limited forms of development, none of which accord with what is now proposed in either scheme. Whilst Hanslope does not have a made neighbourhood plan, on my reading of the policy that does not mean the settlement strategy these policies otherwise outline should be set aside.
12. Accordingly, I conclude the proposals would each be contrary to the Council's spatial housing strategy and so would each therefore conflict with Policies DS1, DS2 and DS5 in *Plan:MK*.

***The effect on the character and appearance of the area***

13. The *National Planning Policy Framework* (the Framework) states, in paragraph 170(b) that planning decisions should recognise the intrinsic character and beauty of the countryside. It adds that development (whether or not in the countryside) should be sympathetic to the local character including the surrounding built environment and landscape setting. *Plan:MK* Policy DS5 broadly seeks to reflect this approach with its acceptance of limited forms of development in the open countryside, given its recognition of the importance of safeguarding the open countryside's character.
14. The countryside around Hanslope is not subject to any specific designation. However, it is nonetheless a pleasant, undulating rural landscape of fields, lanes, hedges, farmsteads and so on that is typical of much of lowland Britain.
15. Turning first to Appeal B, when leaving Hanslope along Castlethorpe Road this site is separated from the village by the sizeable field subject of Appeal A with its dense mature boundary planting along the road frontage. Similarly, when approaching Hanslope on this road from the south the site of Appeal B is seen over fields with the main body of the village set beyond. As such, I consider it is perceived as being divorced from the settlement and in a countryside location. Although a line of houses is on the opposite side of the road, to my mind their scale and presence are not sufficient to undermine this impression to any material degree.
16. On the site are a number of large buildings that are grouped towards its northern side. I understand these were originally built for agricultural purposes, but are now used as an indoor arena, stables, and other activities connected to the equestrian operation. Smaller stable blocks, hay stores, horse walkers and similar are spread around and a ménage is against the

southern boundary. The larger buildings are set back from Castlethorpe Road behind the owners' house, a cottage and some older agricultural barns and buildings that have been converted to housing. As such, although now used for equestrian purposes, when seen from the public domain the complex of the house, the converted older barns, and the large modern buildings of an agricultural style appears to resemble that of a farmstead typically found in the countryside. Therefore, whilst I accept the large modern buildings are of little design merit, the cluster of which they are a part is not alien to or at odds with the intrinsic character of this rural area.

17. To my mind with its dwellings, fences, road layouts and so on the suburban nature of this housing development would not relate as well to the rural character of its surroundings. Therefore, it would be discordant in this countryside location, and indeed, given my findings about the effect of the existing complex, its impact in this regard would be more harmful than what is there now.
18. Concerning the matter of appearance, I was advised that the houses would be built on levels comparable to those currently on site. When coming from the south, although the existing large buildings can be seen at present their impact is reduced as they are set back on the northern side beyond the ménage and driveway. In contrast, the proposed houses would be more prominent as some would be close to the southern boundary and elevated relative to the fields beyond. They would therefore create a relatively hard, lengthy residential edge to the development that would be apparent for some distance. Similarly, when looking from the footpaths to the west the houses would extend over a greater area than the existing buildings, and those around the edges of the site would be taller and more prominent. The scheme would therefore constitute a suburban intrusion into this rural landscape that, even when compared to what is on site now, would not relate well to its surroundings and would detract unacceptably from the appearance of the countryside.
19. In coming to this view, I appreciate the site is not 'open' as it contains large buildings. However, Policy DS5 in *Plan:MK* defines 'Open Countryside' simply as being all land outside development boundaries. It therefore does not exclude land outside settlement boundaries on which there are buildings. Indeed, across rural areas it is common to find complexes similar to this, but to my mind they still form part of the open countryside, and their inclusion seems reasonable, given their link to the landscape and the fragmenting effect that would result from their omission.
20. I have also given significant weight to the findings of the Appellant's *Landscape and Visual Appraisal* (LVA). I appreciate that the scheme's visual impact would, in geographical terms, be relatively confined, but that is not uncommon with development in rural areas. I am aware too that the LVA's findings place heavy reliance on the screening provided by the boundary planting. However, while this would soften the impact to some extent, its effect would be limited, it would take some time to become established and it would not necessarily remain for the lifetime of the development. Therefore, the boundary landscaping would not be sufficient to overcome the change in the character and appearance of the site resulting from the scheme, and so these points do not allay my concerns.

21. Accordingly, I conclude the development subject of Appeal B would cause harm to the character and appearance of the countryside, thereby conflicting with Policy DS5 in *Plan:MK* and the Framework.
22. Turning to Appeal A, this gently sloping square field abuts the southern boundary of the settlement. To the south lie the large buildings on the site of Appeal B with the converted older buildings adjacent, while fields are to the west beyond hedging and a footpath. Along the eastern boundary is a thick mature line of trees and shrubs, with Castlethorpe Road beyond. The houses on the far side of that road can be seen over the intervening landscaping.
23. Again, when leaving Hanslope along the road, in my opinion the northern boundary of this site is clearly the point where the village ends, as the relatively dense development adjacent to the road abruptly stops to be replaced by the field and its hedging. When looking from the south and west although the site is seen against the backdrop of housing to the north and (to a lesser extent) the east that is not uncommon in rural areas and does not unduly diminish its appearance or character as part of the countryside. As stated above, I have found that the existing complex on the site of Appeal B is not at odds with the character of the rural area and so its impact on the perception of the site of Appeal A in this regard is limited. Accordingly, despite its proximity to the settlement I consider the site is still perceived as part of the countryside.
24. When looking from the footpaths, road and houses around, the introduction of housing would detract unacceptably from the character and appearance of this area of countryside, by introducing a strong urban form on this field. Moreover, this impact would be exacerbated by the creation of a new access through the trees and shrubs on the eastern boundary, as this would not only allow views into the site but would also remove a significant length of this landscaping that plays an important role in creating a rural character to this section of Castlethorpe Road. However, I acknowledge that the enclosed nature of the site, with housing on 2 sides and the large buildings on the site of Appeal B on the third, means that whilst harm would be caused in this regard it would nonetheless be limited.
25. Appellant A's *Landscape & Visual Impact Assessment* accepts there will be a degree of landscape harm. However, it states that any such effect would be limited because of the constrained views and the proximity to the settlement edge. On the first of these points I acknowledge that the topography and the hedging means the impact of the scheme would not be widespread. However, as stated above, that is not an uncommon situation in the countryside and, of itself, does not allay the harm. Concerning the second point, many rural sites are seen in the context of neighbouring houses, whether in a settlement or not, but to accept that as overcoming the harm could lead to the cumulative erosion of the countryside. Extensive areas of landscaping are also proposed, shown indicatively as being in the south-east corner and on the western side. While these may soften the impact of the development, to my mind they would not overcome the adverse effects identified.
26. Accordingly, I conclude the development subject of Appeal A would cause some harm to the character and appearance of the countryside, which would be sufficient to render the scheme in conflict with Policy DS5 in *Plan:MK* and the Framework.

***Reliance on private motorised transport***

27. Hanslope, as one of the larger settlements in the Borough, has a range of facilities to cater for the day-to-day needs of its residents. Legal agreements submitted by the appellants mean these 2 developments would make financial contributions to the health and education provision in the village that the Council deem to be proportionate to their potential impact.
28. It would take a while for the effects of these contributions to be realised if they were to involve the school and health centre being enlarged. That though is a common situation when securing money in this way through legal agreements associated with planning permissions. I appreciate that the health centre is on a constrained site but that does not necessarily mean the contributions cannot in some way be used to accommodate the increased pressures to be placed upon it. A legal agreement associated with a permission elsewhere in the village has resulted in the provision of a car park to serve the health centre, and while there appears to be uncertainty over its use, I have no reason to assume that will not be clarified in line with any relevant agreements. Accordingly, I consider these contributions for health and education provision comply with the 3 tests in the *Community Infrastructure Levy Regulations 2010* by being necessary to make each development acceptable, directly related to the development, and fairly and reasonably related in scale and kind to the development (the 3 tests).
29. Through the legal agreements the developments would also provide pavements along the western side of Castlethorpe Road, running from their entrances to where the pavement within the village now starts. I consider the distances from the sites to these services would not be excessive, and with this pavement facility there would be the realistic option for residents of the schemes to walk to the shops, school, places of worship, public houses and so on. Again, the provision of these pavements would comply with the 3 tests.
30. However, as a smaller rural settlement Hanslope does not have all the facilities that are available in larger centres. In particular it has few job opportunities, limited retail and no education above primary level. As a result, residents of each proposal would have to travel from the village to access these facilities and services.
31. The nature of the surrounding roads and the distances involved mean that it is most unlikely the schemes' residents would make these journeys by bicycle. A bus route runs through the village, and indeed the stops are close to the sites. Although its evening and weekend timetable is limited and would impose some restriction on the opportunities for anyone who was reliant upon it, this service is relatively frequent for a rural area and so would be of some value in reducing car dependency or allowing access to services for those with no access to a car.
32. I therefore conclude that the schemes would result in some increased reliance on the private motor vehicle as residents travel out of Hanslope for education, jobs, shopping and so on. However, 2 sizeable housing schemes have been recently allowed elsewhere in the village, and in the one subject of an appeal the Inspector did not find this situation to be unacceptable. Taking this into account, and mindful of the services in the village itself and the presence of the bus service, I consider this aspect would not justify dismissing the appeals. As such, the schemes would not be contrary to the aims of the Framework with regard to minimising travel.

***Best and most versatile land (Appeal A only)***

33. The Framework says planning decisions should recognise the economic and other benefits of the best and most versatile agricultural land, which it defines as being land in grades 1, 2 and 3a of the Agricultural Land Classification.
34. Some 73% of the site of Appeal A is of grade 3a quality. As such there would be a loss of what I consider to be a significant amount of best and most versatile land. I realise that, in the context of the Borough as a whole, this area would be relatively small. However, if that was seen as a reason to put aside this concern it could well lead to a gradual on-going and appreciable erosion of such land.
35. Accordingly, I find the scheme subject of Appeal A would result in an unacceptable loss of best and most versatile agricultural land, in conflict with advice in the Framework.

***Other Concerns***

*Cumulative effect on the character of the village*

36. The 2 other sizeable developments that are being built in Hanslope would provide a combined total of in the region of 300 dwellings. If the appeals before me were permitted that would result in the number of houses in the village increasing by nearly 50% over its 2011 figure. However, I understand the 2 on-going schemes have made or will make contributions to address their impacts on services and facilities, and as stated above the schemes before me will similarly provide the contributions deemed necessary by the Council. Beyond this I have no basis to consider any impact on the character of the settlement would constitute a material harm sufficient to warrant dismissing these planning appeals.

*Highway safety*

37. Although Castlethorpe Road was closed to through traffic during the week of the Hearing, it was open when I visited a month before.
38. I have no reason to consider the junctions of the developments with the road would have inadequate sight splays or in some other way be deficient.
39. With regard to the wider area various alterations to the carriageway are proposed under these schemes through the legal agreements that, again, would in my opinion, comply with the 3 tests. Taking these into account, even if traffic flows associated with each development were assumed to be those for free standing sites rather than sites in a suburban setting, and even if I were to assume the stated existing flows from the Equestrian Centre were an over estimate, on the evidence before me it has not been shown the schemes would have any material effect on the safety of junctions, bends and roads in the wider area. Moreover, the evidence does not demonstrate they would result in a cumulatively severe impact on the road network. Indeed, this is a view I would maintain when taking into account the other developments being built in Hanslope.
40. Whilst it was said that some of the activities undertaken at the Equestrian Centre could just be displaced to other fields nearby, I have no certainty that

would occur. If such a change required planning permission, any highways impacts could be explored then.

*Living conditions*

41. The schemes would inevitably result in a degree of change to the living conditions of the residents in the cottage and converted agricultural buildings between the site of Appeal B and Castlethorpe Road, as they would create some noise and disturbance, and affect outlook and the general sense of seclusion. Appeal A would have similar impacts on the existing and proposed houses immediately to the north, whilst use of the access could affect the residents on the east side of Castlethorpe Road. However, change does not necessarily lead to the effect on living conditions being unacceptable. To my mind any separation would be sufficient to mean there would not be an undue impact arising from overlooking or loss of outlook, while the noise and disturbance would not be so great as to cause unreasonable harm.

*Need for the equestrian centre (Appeal B)*

42. Any need for the equestrian centre subject of Appeal B does not affect the planning merits of the scheme.

*Ecology*

43. In the light of the evidence submitted, it has not been shown that harm caused by either scheme to ecology could not be mitigated by a suitably worded condition.

*Effect on infrastructure*

44. Taking into account the education and health contributions discussed above, I have no reason to consider the schemes would cause unacceptable harm or pressure to the village's infrastructure.

**Conclusions on the above matters**

45. Accordingly, I have found each scheme, considered in isolation, would conflict with the Council's spatial strategy, and unacceptably harm the character and appearance of the area, while Appeal A would also cause harm by reason of the loss of best and most versatile agricultural land that would result. In these regards the schemes would conflict with the development plan policies cited and with the Framework.

**Material considerations**

46. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* says 'the determination [of planning proposals]... must be made in accordance with the [development] plan unless material considerations indicate otherwise'. With this in mind a number of factors have been cited by the appellants in each case as being material considerations to be balanced against any development plan conflict.

*Housing land supply*

47. The Framework states that a local planning authority should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing against its housing requirements. If it



cannot achieve that, then, notwithstanding the primacy of the development plan, the most important policies for determining the application should be considered out-of-date and permission should be granted unless the application of policies in the Framework provide a clear reason for refusing the development, or any adverse impacts of the scheme would significantly and demonstrably outweigh the benefits. This is known as the tilted balance as it is weighted in favour of allowing housing, although it still provides scope to resist developments in certain instances.

48. The Council had a recently adopted local plan, but for its housing position at this Hearing it was nonetheless relying on its updated annual land supply position of June 2019. Based on this it maintained it had a 6.42-year supply of deliverable housing sites, which equated to 2,858 homes above the requirement of 10,087.
49. Principally through Appellant B, the parties challenged this on 2 grounds. Firstly, it was contested that the Council trajectory did not reflect past experience where, in many years, the Council consistently overestimated the expected delivery. It was therefore said that an optimism bias in the region of 25% should be applied. Appellant B advised that the effect of this would be to reduce the Council's housing land supply by 1.4 years to 5.02 years. Secondly, there was no clear evidence for the delivery of 5,837 houses in the trajectory (hereafter called the contested houses). These were listed in the table in appeal document B4 (the table) and it was said they should all be deleted, thereby reducing the Council's supply from 12,945 houses to 7,108 houses. Overall, at the Hearing, the housing witness for Appellant A said he considered the Council had a 4.5-4.7-year supply whilst Appellant B said the Council's supply was 3.5 years
50. The case concerning the contested houses focussed on the definition of a deliverable site contained within the Framework. This says there had to be a '*reasonable prospect*' that housing will be delivered on the site in 5 years. Sites with detailed planning permission should be treated as deliverable unless there is '*clear evidence*' the homes will not be delivered in 5 years, whilst sites with outline planning permission can only be considered deliverable where there is '*clear evidence*' the housing completions will begin on site in 5 years. It was contended that the Council had not provided the clear evidence necessary to support its inclusion of the houses on 51 sites given in that table, some of which were allocated for housing but had no extant permissions, while others had outline planning permission and no reserved matters approval.
51. There is no definition in the Framework as to what constitutes '*clear evidence*', but its application now is stricter than the tests in place before the current version of the Framework was published. This introduces a material difference to the assessment of housing land availability done under the examination of *Plan:MK* as that exercise was based on the previous version of the Framework. However, in the context of a section 78 appeal, there has to be a reasonable limit to the amount of information that can be forthcoming concerning the development of many sites elsewhere in the borough, and so an element of proportionality has to be applied to the evidence. Furthermore, the nature of the housing market, and the fact that many of the sites are under the control of parties not involved in the appeal, means any such evidence can never be expected to be watertight or irrefutable, and must always be accepted with some flexibility and uncertainty.

52. The *Planning Practice Guidance* (PPG) provides advice of what such clear evidence may include (paragraph ID:68-007-20190722). This advice is relatively general in nature and is not exhaustive. However, from its content it is apparent that, for outline planning permission, reserved matters approval does not yet need to be granted on larger sites for it to be deemed deliverable. Moreover, where firm progress is being made towards the submission of an application, a written agreement between the planning authority and the developers about delivery intentions could be clear evidence.
53. To assist me further in considering what constitutes clear evidence I received from Appellant B a recent decision by the Secretary of State concerning land off Stone Path Drive in Hatfield Peverel in Braintree District (appeal document B2). In this the Secretary of State deemed certain sites in the housing trajectory of that Council were not supported by clear evidence. The detail I have about these sites and the basis for the Secretary of State's view is limited though and does not bring me much clarity on the matter. It is nonetheless noticeable that, in line with the most recent advice in the PPG, the Secretary of State did not appear to exclude all the sites without planning permission or indeed all the sites with just outline planning permission. On the other hand, some sites with applications being considered were excluded.
54. In the light of the definition in the Framework I accept that an outline permission, of itself, does not mean a site is deliverable. However, in considering the potential to move forward such sites I am also aware that the principle of housing has been established and only the details are outstanding.
55. When compiling its trajectory, the Council relied not only on the planning status of the land but also on pro forma. It sent these to landowners and/or developers to ask them to confirm their anticipated build-out rates. Mindful of the PPG, I consider this to be the sort of information that, in some circumstances, can be seen as clear evidence.
56. The appellants criticised this evidence source because the pro forma asked the developer to confirm whether the Council's expectations for the site were correct, and it was said this unduly weighted the responses. I have no reason to consider though that those who returned the pro forma would not modify the information if they considered it misleading or inaccurate.
57. The Council was specifically asked about how it had responded to the stricter definition of deliverable housing sites now in place. In reply, it said it had obtained a higher response rate for pro forma and it had greater certainty on completion rates on larger sites, and these allowed projections to be reviewed more onerously.
58. With regard to the specific contested houses, Category 3 of the table comprised allocated sites with no extant permissions and no applications pending. Of these, no proforma has been submitted for 4 sites and while there has been discussion and consultation on proposals that does not amount to clear evidence. Site 13 was initially granted permission 15 years ago, while the planning permission on site 19 has also lapsed, and so, in the absence of any strong evidence to the contrary, the intent to develop those sites over the next 5 years is, to my mind, called into question. With site 48 the pro forma gives a start date as being unknown, and the pro forma for site 31 has been completed by a developer with no control of the site and so its reliance must be limited. Although pre-application discussions are underway on many of these sites, and

some are Council-owned these in themselves do not show the clear evidence necessary to overcome the various concerns highlighted above. These sites amount to a total of 926 houses.

59. In Category 5 of the table (sites with outline permission granted before July 2018 but no extant applications), sites 1, 2, 3 and 4 have had outline planning permission for over 10 years, and while developers are showing an interest, in the absence of any strong evidence to the contrary, this is not sufficient to constitute the clear evidence necessary to show they will be coming forward in the next 5 years. No evidence has been submitted for site 8 while the evidence from the Council highlights difficulties in bringing forward site 7. The development proposals for site 11 are based on a 'best estimate', which again falls short of the standard necessary to satisfy the definition of deliverable. These sites would provide a total of 757 houses.
60. Finally, Category 6 in the table identifies sites with outline permissions and reserved matters applications pending. In this category on sites 5 and 6 the reserved matters applications only account for a proportion of the overall identified housing figures. This leaves roughly 1,034 houses outstanding for which there is little evidence to show they will be coming forward within the required period.
61. Therefore, based on those sites alone, I have not been given clear evidence for 2,717 houses on the Council's trajectory. This would bring the figure down from 12,945 to 10,228, or just over 5 years' supply.
62. Turning to the optimism bias, the appellants' figures are based on past performance by the Council and in their view results in the annualised supply needing to increase by some 25%. I realise the Council has not achieved the delivery rates expected and has it has not persuaded me that it has in place mechanisms, processes or similar to support the dramatic up-turn in delivery of the magnitude now anticipated. However, on the other hand the emphasis of Central Government, for this Council and for others, is for delivery to increase, and so I therefore consider that the appellants' reliance on the continuation of past rates to be inappropriate. Indeed, delivery has improved recently. The figure for over-optimism should therefore, in my opinion, lie somewhere between that given by the Council and the figure stated by the appellants. I have no particular guidance as to where that would be, but balancing the 2, a point midway seems reasonable.
63. The variation in figures between the 3 main parties demonstrates the difficulties in establishing the housing land supply position, as it inevitably involves an element of judgement and the making of assumptions. However, from the above I consider I have not been shown clear evidence for at least some 2,717 of the table, though this could be more if I looked through the rest of the contested houses. I have also found the optimism bias should be modified to balance past performance against the increasing pressure for increased delivery. As such, on what has been presented to me in this appeal, I find there is a housing supply of deliverable sites in the region of 4.4 years.
64. An additional concern was also raised about the scale of the buffer. However, given the Council's delivery of housing over the past 3 years, as measured by the Housing Delivery Test, I consider 5% to be appropriate. The delivery figure may well drop when the next set of results is published, but I am in no position to make that assumption now or to consider the scheme on that basis.

65. In assessing this matter, I have been made aware of the appeal decision at The Globe in Hanslope (appeal document C10) dated September 2019. In that the Inspector found the Council could demonstrate a 5-year supply of deliverable housing sites, and indeed considered some of the sites I have discounted above nonetheless met the definition for deliverability. Clearly the view of that Inspector has been driven by the written and oral evidence put to him. I accept that the Council's evidence could have been similar to that at this Hearing. However, that inspector found the Council had '*reduced its calculations of housing land supply to reflect the stricter definition*', but that was not particularly apparent in what was before me. Moreover, I note too that the over-optimism arguments do not form a strong theme in that decision. Finally, as the appellant was different, the agents were different and the Hearing lasted only one day instead of the 2 in this case (the second day of which was entirely given over to housing land supply issues and included a length and forensic site-by-site analysis of the table), the evidence offered will not be the same as presented to me. Therefore, the weight I have given his findings has been limited.

#### *Affordable housing*

66. Both schemes are to deliver policy-compliant levels of affordable housing, and I consider this element of the submitted legal agreements accords with the 3 tests. To my mind this is a benefit, especially given the difficulties of providing affordable housing in the Borough. Indeed, it is a significant benefit in the case of Appeal A as policy provision is to be exceeded but the scale of that difference means the additional weight that is given in the balancing process is slight.

#### *Previously developed land*

67. It was accepted that, although originally laid out for agriculture, the equestrian use on the site of Appeal B meant that was now previously developed land. In paragraph 118(c) the Framework states that planning decisions should '*give substantial weight to the value of using suitable brownfield land within settlements for homes*'. In my view where settlement boundaries have been defined in the development plan, it is quite reasonable to rely on those when seeking to define what constitutes '*within settlements*' for the purpose of this paragraph. Given this, on this point I cannot afford the scheme the '*substantial weight*' to which the Framework refers.

68. However, even if there was not to be reliance on the development plan's settlement boundaries, I consider that visually this site is not within Hanslope and so again paragraph 118(c) would not apply.

69. Notwithstanding that, I accept that if I were to find there was a housing need then, with all other things being equal, siting that development on previously-developed land is preferable to locating it on an undeveloped site.

#### **Planning Balance**

70. Accordingly, I have found a harm and a conflict with the development plan would occur due with each development due to its effect on the development strategy in the Borough, and its impact on the character and appearance of the area. Furthermore, Appeal A would also result in an appreciable loss of best and most versatile agricultural land.

71. However, there is also the benefit of policy-compliant affordable housing provision being provided in with Appeal B and being exceeded slightly in Appeal A, and Appeal B is making use of previously developed land. Furthermore, I have also found there to be a shortfall in housing land supply, with the evidence before me leading me to find there is a supply in the region of 4.4 years.
72. To my mind, and mindful of its constrained location, I consider the harm caused by the scheme subject of Appeal A to the countryside and by the loss of best and most versatile land do not clearly and demonstrably outweigh the benefits highlighted.
73. Moreover, even accepting the greater impact on the character and appearance of the countryside associated with Appeal B, I nonetheless consider the benefits of addressing this shortfall would not be clearly and demonstrably outweighed by the harm.

### **Conditions**

74. In relation to Appeal A specifically, the standard reserved matters conditions should be added. Given this there is no further need to require the submission of landscaping details or parking. In the interests of the character and appearance of the area, the number of units should be limited to a maximum of 50 while having regard to highway safety the access should solely be from where shown. The reserved matters application should also include details of affordable housing so as to ensure that those needs are met. A sustainability appraisal should also be forthcoming to ensure the development has regard to energy efficiency.
75. I am not satisfied though that an element of self-build housing needs to be secured for a short period within the development phase to render the scheme acceptable.
76. Turning to Appeal B in the interests of the character and appearance of the area materials, levels and landscaping (including tree protection) should be agreed. Having regard to highway safety each house should have vehicular access and parking provided, and in the interests of promoting alternative travel, cycle parking should be secured. Mindful of the effect on wildlife, external lighting should be of a type and location approved, and if the scheme is not commenced by a date on which the existing reports expire, new ecology reports should be produced. The proposed solar panels should be implemented to promote reliance on alternative energies.
77. I am not satisfied though that any further pavement details are required or that a condition is needed to require the access to be in accordance with the vehicle crossing details.
78. Concerning both appeals, to safeguard highway safety, the access and sight splays should be provided and the gradient of the access should be limited. Having regard to ecological issues, a landscape and biodiversity enhancement scheme and management plan should be agreed, while to protect the living conditions of those around and also highway safety, a construction environmental management plan should be approved by the local planning authority. A condition addressing any possible contamination should also be imposed so as to protect the living conditions of future occupants, while the

possible effect on historic heritage justifies an archaeology condition. The archaeology conditions though will vary between the schemes to take account of one being on a green field and the other being on previously developed land. Drainage details should also be agreed to ensure that aspect of each scheme is satisfactory.

79. Of these conditions, in order to allow any findings to be taken into account in construction the conditions concerning archaeology, levels, drainage, tree protection any new ecology report and contamination need to be approved before the developments commence. Similarly, as the construction environmental management plan would define how the site would be developed from the outset this too needs to be a pre-commencement condition.

### **Conclusions**

80. Accordingly, for the reasons stated I conclude that both Appeal A and Appeal B should be allowed.

*J P Sargent*

INSPECTOR

## **CONDITIONS SCHEDULE - APPEAL A**

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place 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. The development shall be in accordance with the Illustrative Landscape Masterplan hereby approved, insofar as it concerns the access details.
5. The number of units hereby permitted shall not exceed 50.
6. Prior to the commencement of development, a Witten Scheme of Investigation (WSI), comprising an archaeological field evaluation with trial trenching, shall be submitted to and approved in writing by the Local Planning Authority. Within 3 months of the completion of the archaeological field evaluation a further WSI for a programme of archaeological mitigation in respect of any areas of significant buried archaeological remains shall be submitted to the Local Planning Authority for approval, and this WSI shall also include the programme (including timetable) for post-investigation assessment and subsequent analysis, publication, dissemination and deposition of the resulting material. No development shall take place on land within the further WSI other than in accordance with that WSI and the post-investigation assessment and subsequent analysis, publication, dissemination and deposition of the resulting material shall be in accordance with the approved programme and timetable.
7. Prior to the commencement of development, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority to address the procedures to be undertaken during the construction phase. The development shall then be undertaken in accordance with the approved CEMP.
8. Prior to the commencement of development details shall be submitted to and approved in writing by the Local Planning Authority of the results of a survey detailing the nature and extent of any contamination within the site, together with a strategy for any remedial action deemed necessary to bring the site to a condition suitable for its intended use. Any necessary ground contamination remedial works shall then be carried out in accordance with the approved strategy.
9. The Reserved Matters details shall be accompanied by details of the intended affordable housing provision, a sustainability statement and drainage details,

together with a timetable for the implementation of those elements. Once approved in writing by the Local Planning Authority, the affordable housing, the requirements of the sustainability statement and the drainage scheme shall then be provided in accordance with the details and timetable.

10. The Reserved Matters application shall be accompanied by a Landscape and Ecology Management and Enhancement Plan (the Plan), to achieve a biodiversity enhancement (including a timetable for its implementation). Once approved in writing by the Local Planning Authority, the approved Plan shall then be implemented in accordance with the approved timetable, and its components shall thereafter be retained.
11. Access to the site shall be solely from the access point hereby approved.
12. Prior to the first occupation of the development, sight splays of 2.4m by 43m shall be provided at the access with Castlethorpe Road and thereafter kept clear of any obstruction greater than 0.6m above carriageway level
13. The gradient of the access shall not be greater than 1 in 14 for the first 5m of its length from Castlethorpe Road.



## **CONDITIONS SCHEDULE - APPEAL B**

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. Unless otherwise modified under the conditions below, the development shall be carried out in accordance with the following drawings (prefixed V16-129-): SLP02 rev A; P50 rev G; P51 rev B; P52 rev B; P53 rev B; P54 rev B; P55 rev B; P56 rev B; P57 rev B; P58 rev B; P59 rev B; P60 rev B; P61 rev A; P66; P67.
3. Prior to the commencement of development, a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority to address the procedures to be undertaken during the construction phase. The development shall then be undertaken in accordance with the approved CEMP.
4. Prior to the commencement of the development details shall be submitted to and approved in writing by the Local Planning Authority of the proposed finished floor levels and ground levels across the proposed development. The development shall then be undertaken in accordance with those approved details.
5. Prior to the commencement of development details shall be submitted to and approved in writing by the Local Planning Authority of the results of a survey detailing the nature and extent of any contamination within the site, together with a strategy for any remedial action deemed necessary to bring the site to a condition suitable for its intended use. Any necessary ground contamination remedial works shall then be carried out in accordance with the approved strategy.
6. Prior to the commencement of development the applicant, or their agents or successors in title, shall secure the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority.
7. Prior to the commencement of development, details of the foul and surface drainage schemes, together with their associated management and maintenance plan(s) and a timetable for their implementation, shall be submitted to and approved in writing by the Local Planning Authority. The approved schemes shall then be implemented in accordance with the approved management and maintenance plan(s) and the approved timetable for their implementation.
8. Prior to the commencement of the development a Tree Survey Report, an Arboricultural Impact Assessment and Tree Constraints Plan and a Tree and Hedge Protection Scheme, together with a timetable for implementing any of their recommendations or works, shall be submitted to and approved in

writing by the Local Planning Authority. The development shall then be implemented in accordance with these documents and in accordance with the approved timetable(s).

9. No development shall take place above slab level until details have been submitted to and approved in writing by the Local Planning Authority of external materials for the development hereby permitted, and the development shall then be undertaken in accordance with those approved details.
10. No development shall take place above slab level until details of the landscaping scheme, together with a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall then be implemented in accordance with the approved details and timetable. Any trees that die, are removed, are severely damaged or diseased within 2 years of planting shall be replaced in the next planting season with trees of a similar size and species.
11. No development shall take place above slab level until a Landscape and Ecology Management and Enhancement Plan (the Plan), to achieve a biodiversity enhancement (including a timetable for its implementation), has been submitted to and approved in writing by the Local Planning Authority. The approved Plan shall then be implemented in accordance with the approved timetable, and its components shall thereafter be retained.
12. Prior to the first occupation, sight splays of 2.4m by 63m shall be provided at the access and thereafter kept clear of any obstruction greater than 0.6m above carriageway level.
13. The gradient of the access shall not be greater than 1 in 14 for the first 5m of its length from Castlethorpe Road.
14. No dwelling shall be occupied until the estate roads and footways that provide access to it from Castlethorpe Road have been laid out and constructed in accordance with the approved details, and the estate roads shall be retained for that purpose thereafter.
15. Prior to the first occupation of each house, its parking provision shall be laid out in accordance with the approved drawings and thereafter retained for that purpose.
16. Prior to the first occupation of each dwelling its cycle parking provision shall be provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority. Those cycle parking facilities shall thereafter be retained for that purpose.

17. Prior to its first installation the details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority, and shall then only be installed in accordance with the approved details.
18. If the development has not commenced before 29 February 2020, prior to the commencement of development updated ecology reports, together with a timetable for the implementation of any recommendations, shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be implemented in accordance with the approved recommendations and timetables of these updated reports.
19. Prior to the first occupation of each dwelling solar photovoltaic panels shall be installed on that dwelling in accordance with details that have first been approved in writing by the Local Planning Authority.

**APPEARANCES**

FOR MR HILL (Appellant A):

Mr S Elliott	Agent
Mr P Goatley	Counsel
Mr M Harris	Agent
Mr J Hill	Appellant
Mr A MacQuire	Agent
Mr J Paynter (site visit only)	Agent

FOR McCANN HOMES LIMITED (Appellant B):

Mr S Dix	Agent
Ms J Harris (site visit only)	Agent
Mr Z Simon	Counsel
Ms J Smith	Agent

FOR THE LOCAL PLANNING AUTHORITY:

Ms S Bayton	Senior Planner with the Council
Mr J Williamson	Senior Planner with the Council

INTERESTED PERSONS:

Cllr G Bowyer	Ward Councillor Newport Pagnell North & Hanslope
Mr B Cass	Local resident
Cllr J Cass	Hanslope Parish Council & local resident
Ms L Cook	Local resident
Ms E Courtney	Local resident
Mr R Daniels	Agent representing a number of local residents
Cllr A Geary	Ward Councillor Newport Pagnell North & Hanslope
Mr J Geary	Local resident
Mr L Lean	Local resident
Cllr E Price	Hanslope Parish Council & local resident

## **DOCUMENTS SUBMITTED AT OR AFTER THE HEARING**

From Mr S Hill (Appellant A)

- A1 Drawing number 6612/ASP4
- A2 Document entitled 'Extracts from the National Planning Policy Framework (February 2019) relevant to 5-year housing land supply'
- A3 Document entitled 'Extracts from the Planning Practice Guidance on 5-year housing land supply' (downloaded 5 July 2019)
- A4 Revised housing trajectory
- A5 Document concerning housing supply in Milton Keynes
- A6 Judgement of Wavendon Properties Limited v Secretary of State for Housing Communities and Local Government and Milton Keynes Council
- A7 Email to the Planning Inspectorate dated 12 July 2019 with attachments concerning the development immediately to the north and details of the area of land to be used for the future expansion of Hanslope Doctors Surgery
- A8 Email to the Planning Inspectorate dated 29 July 2019 concerning the appropriateness of a Hearing
- A9 Email to the Planning Inspectorate dated 2 August 2019 responding to Cllr Cass' letter
- A10 Email to the Planning Inspectorate dated 2 August 2019 concerning pre-commencement conditions
- A11 Email to the Planning Inspectorate dated 13 August 2019 concerning amendments to the PPG
- A12 Email to the Planning Inspectorate dated 11 September 2019 concerning appeal decision APP/Y0435/W/19/3220584

From McCann Homes Limited (Appellant B)

- B1 A table of contested housing sites
- B2 Secretary of State decision concerning Land off Stone Path Drive, Hatfield Peverel, Essex CM3 2LG dated 8 July 2019.
- B3 Email to the Planning Inspectorate dated 11 July 2019 providing a suggested archaeology condition
- B4 Email to the Planning Inspectorate dated 16 July 2019 with the table of contested sites in a revised order
- B5 Email to the Planning Inspectorate dated 23 July 2019 highlighting amendments to the PPG
- B6 Email to the Planning Inspectorate dated 26 July 2019 concerning the appropriateness of a Hearing
- B7 Email to the Planning Inspectorate dated 2 August 2019 confirming no comments to make concerning Cllr Cass' letter
- B8 Email to the Planning Inspectorate dated 2 August 2019 concerning pre-commencement conditions
- B9 Letter to the Planning Inspectorate dated 11 September 2019 concerning appeal decision APP/Y0435/W/19/3220584

From Milton Keynes Council

- C1 Numerous pro forma and associated documents relating to housing developments on sites across the Borough
- C2 Email exchange with the Planning Inspectorate
- C3 Email to the Planning Inspectorate dated 11 July 2019 containing details of the development immediately to the north and Policy HN5 from Plan:MK.
- C4 Response to the suggested archaeology condition from McCann Homes Limited
- C5 Email to the Planning Inspectorate dated 26 July 2019 discussing the suitability of a Hearing
- C6 Email to the Planning Inspectorate dated 26 July 2019 explaining why it has discussed the suitability of a Hearing
- C7 Email to the Planning Inspectorate dated 6 August 2019 concerning amendments to the PPG
- C8 Email to the Planning Inspectorate dated 9 August 2019 concerning pre-commencement conditions for Appeal A
- C9 Email to the Planning Inspectorate dated 9 August 2019 concerning pre-commencement conditions for Appeal B
- C10 Appeal decision APP/Y0435/W/19/3220584 concerning The Globe, 50 Hartwell Road, Hanslope

From Interested Parties

- D1 Consultation document entitled 'Proposal to expand Hanslope Primary School by 1 Form of Entry at Year R' from Cllr J Cass
- D2 Letter to the Planning Inspectorate from Mr J L Lean dated 9 July 2019
- D3 Letter to the Planning Inspectorate from Cllr Cass dated 12 July 2019 concerning agricultural land and the legal agreement concerning the health centre