

**ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD**

**Land off Holyport Road, Holyport: Lodge Farm**

**Beaulieu Homes Southern Ltd**

**Section 78 Town and Country Planning Act 1990**

**PINS Ref: APP/T0355/W/19/3225689**

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**Council's Final Submissions**

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**Introduction**

1. The main issues raised by the identified reasons for refusal, as set out in the Case Management Conference Summary are as follows:
  - (i) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
  - (ii) Its effect on the spatial and visual openness of the Green Belt and on the character and appearance of the area, including the setting of Holyport;
  - (iii) Its effect on the character/appearance and heritage significance of Holyport Conservation Area, including non-designated assets within it;
  - (iv) The Council's housing land supply position;
  - (v) And, if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.
  
2. The highways issues have been addressed to the satisfaction of the Council and the Appellant through a contribution to proposed highway improvements.

### **Issue 1: Inappropriateness**

3. The construction of 150 dwellings on open, agricultural land is a very clear example of inappropriate development in the Green Belt (see NPPF 2019 paragraph 145). Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances (NPPF 143).
4. The erection of a doctor's surgery of 667 sqm and associated parking is also inappropriate development.

### **Issue 2: Harm to the Green Belt including its spatial and visual openness**

5. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green belts are their openness and their permanence. (NPPF 133).

#### Openness

6. This application is fundamentally at odds with the fundamental aim of Green Belts. It seeks to build houses and a surgery on open land in the Green Belt immediately outside Maidenhead. The openness of the land built upon would be of course permanently lost. The country park area maintains the openness of that land – but that land is open anyway and in a use that is appropriate for the GB. It is the loss of approx. 6-7 hectares of open agricultural land to housing that harms the Green Belt so fundamentally.

#### GB Purposes

7. The role of this specific area of the Green Belt was objectively assessed as part of the Council's evidence base for the emerging Plan in the July 2016 Edge of Settlement Green Belt Purpose Assessment. This concluded<sup>1</sup> that:

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<sup>1</sup> The site was assessed as parcel M34 – see pages 370371 of CD 7.2

- (a) The land makes a very strong contribution to checking the unrestricted sprawl of a built-up area and effectively contains Maidenhead and prevents it spreading and has important connections to the wider countryside;
- (b) The parcel makes a very strong contribution to preventing settlements from merging. It provides a gap of approximately 350m of open and protected Green Belt between the urban area of Maidenhead and the village of Holyport;
- (c) The land makes a strong contribution to safeguarding the countryside from encroachment. It has a largely rural character comprising agricultural fields, and displays an important connection to the wider countryside;
- (d) The land makes a very strong contribution to preserving the setting and special qualities of a historic place, namely Holyport. Holyport is a historic, rural village and the site provides an important part of the setting of Holyport Conservation Area.

8. Mr Fannon agrees with the 2016 assessment. The Green Belt purposes identified in the NPPF are to be approached with common sense. The appeal site very obviously meets the Green Belt purposes given its openness, its agricultural use, and its location separating Maidenhead from Holyport. The Appellant's attempts to downplay the Green Belt role of this site lack realism.

9. It is correct that the 2016 study considered parcel M34. However, this is effectively the appeal site. The proper starting point to assess the harm caused to the GB purposes is to recognise that the land is in the GB and assess the GB role that it performs in context, not in isolation. Once the role of the GB in this area is understood, then the effect of the development can be properly assessed.

10. Responding to the approach of Mr Cobbold<sup>2</sup>:

- (1) NC suggests that even with the development the GB will continue to restrict sprawl. This is obviously a wrong approach. The current GB boundary is along Holyport Road. This boundary is restricting the sprawl of Maidenhead across Holyport Road onto the appeal site. The role played by the appeal

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<sup>2</sup> Proof from 5.6 and debated in RTS

site as undeveloped land beyond the boundary and subject to GB protection is very clear and very strong. The urban area is contained. The development represents the total undermining of that role. Pointing to the country park beyond the new sprawl does not assist. GB policy would have failed manifestly to promote this purpose.

- (2) NC suggests that this purpose does not apply<sup>3</sup> because Maidenhead and Holyport have merged. The site visit will have given the lie to this. The settlements may touch. But they have a different character and the appeal site has a very strong role in separating the village. That role will be undermined by the development.
- (3) NC argues that the open space will assist in preventing further encroachment into the countryside. This misses the point entirely. The current site meets the purpose because it is open, rural agricultural land that is countryside. The GB boundary holds the line, and safeguards the countryside from encroachment. The proposals cross the line and build 150 houses and a doctor's surgery. The country park is not itself the problem. But it cannot somehow avoid the harm being caused to this GB purpose by the clear encroachment into the countryside.
- (4) The GB here on the appeal site includes land that is agreed to be part of the setting of Holyport Conservation Area which makes a positive contribution to the character and significance of the Conservation Area as a result of its open and rural character. As a result, this land – as is common ground – makes a positive contribution to the special character of a historic settlement;
- (5) Purpose 5 cannot be ignored. The Council's position is that GB land does contribute to the purpose of encouraging the recycling of land. It is simply that the Council in its emerging plan base (the 2016 study) treats all GB land equally for this purpose.

11. Further, notwithstanding that part of the application is for a country park, the harm to openness is caused by the erection of a high number of substantial and permanent dwellings across at least 6 hectares of the site. In no sense does the country park mitigate

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<sup>3</sup> Proof 5.9

or reduce the impact of this on the openness of the Green Belt which is permanently lost. The continued openness of the country park is simply a continuation of the existing open state of that part of the land.

12. The determination of a planning application is concerned with the land-use consequences of the development. Here, the most striking consequence is that there would be developed out 6-7ha of effectively urban development on undeveloped, open, rural GB land. The planning decision cannot itself redraw the GB boundary, but it has obvious consequences for the role of this site, and the residential development becomes fundamentally inconsistent with a GB purpose. Mr Fannon is right to talk about the site being effectively released from the GB. The boundary along Holyport Road, with housing either side, would be a nominal one pending change. This is all part of the GB harm, because the fact that the site is in the GB and fulfils all its purpose is the proper starting point for the consideration. The consequence is that the site of the residential development would not fulfil those roles, and the boundary has lost its purpose.
  
13. The Council is undertaking an exercise of assessing the Green Belt as part of its Local Plan. The NPPF is clear that Green Belt boundaries should only be altered through the preparation or updating of plans and where there are exceptional circumstances (136). Here, the Appellant is stepping outside of the proper local plan exercise which can undertake a comparative borough wide exercise and so has to meet the even more stringent development control test of very special circumstances. This is inconsistent with the intent of a plan-led system. The Appellant cannot avoid the consequences of its decision to step out, which include that a de facto boundary change is being promoted outside the comparative exercise facilitated by a plan and as required by GB policy. It has not, however, undertaken any comparative analysis of other sites which could meet. It is correct that the emerging Local Plan does propose sites in the GB<sup>4</sup> - but it certainly does not propose the appeal site. The need is to be met elsewhere where exceptional circumstances are considered to exist. It cannot then be said that this level of harm to the GB is in any sense inevitable. Indeed, the recent revisions reduce the extent of units to be provided within the GB (see below).

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<sup>4</sup> NC re x CK QC

## Character and Appearance/Visual Amenity and Openness

14. These issues will have been informed by the site visits undertaken by the Inspector, and the discussion at the round-table and so these submissions are concise.
15. The site is highly visible from public views all around the site surroundings which provide a range of open to permeable views. The character of the land is rural and agricultural albeit with some urban influences from outside the appeal site. Landscaping is a reserved matter. Mrs Illman explained screening entirely would not be the intention. There will however ultimately the landscaping comes forward be a significant loss of visual openness as a result of the planting and housing development. There will also be a loss of the rural character of the housing site for a suburban one.

### **Issue 3: Heritage impacts**

16. There is an objective assessment of the Holyport Conservation Area in the Conservation Area Appraisal<sup>5</sup>. Part of the Appeal Site is included within the Conservation Area. The Appraisal also identifies views that are important to the special character of the conservation area and these are shown on p46. A number of these views are into or across the appeal site as part of the rural agricultural setting of the historic village. This is significant. It shows how on an objective and comprehensive assessment of the special character of the conservation area when the role of the setting was expressly considered the specific and important role of the agricultural setting to the north provided by the appeal site was identified.
17. Contrary to the evidence of Ms O'Reilly, the northern setting does not have a lesser role in adding to the special character and significance of the CA – but a greater one. The analysis which identifies its specific role is in the appraisal<sup>6</sup>.
18. It is common ground between the parties (see heritage SoCG at 2.5-2.9) that:

- (a) The Conservation Area includes important open spaces which contribute strongly to its character and appearance;

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<sup>5</sup> CD7.13

<sup>6</sup> See for example 6.13, 7.15, 7.16, 7.23.

- (b) the Conservation Area was extended to include the parcel of land which is the former location of a manorial moated site (area C of the Appeal site);
- (c) The setting of the Conservation Area makes a positive contribution to its heritage value and its character and appearance. This contribution relates to a contrast between the historic village core and the open rural surroundings which provides the historic setting. In the 'Summary of Significance' the Conservation Area Appraisal summarises this as follows: "*The surrounding landscape of open fields is important in preserving the historic setting of the conservation area*".
- (d) The appeal site makes a positive contribution to the setting, and character and appearance, of the conservation area by forming a series of open fields to the north of the conservation area which have remained open through time and illustrate a degree of continuity of function, boundaries and open aspect.

19. Against this background it is also common ground that (Heritage SoCG 2.11-12):

- (a) The proposal for housing on areas A and B will give rise to less than substantial harm to the significance of the conservation area;
- (b) The proposal for housing on areas A and B will permanently alter and 'remove' three key views identified within the conservation area appraisal from the northern end of Holyport Street and the Holyport Road where Blind Lane meets that route.

20. It is also common ground that the water tower is a prominent focal point from a variety of viewpoints within and without the conservation area. The views towards and past the water tower from Holyport Street are identified as 'key' within the Conservation Area Appraisal. The proposal will give rise to a change within the setting of the water tower.

21. The appeal proposals represent a very substantial incursion into the setting of the conservation area – and the water tower - and the residential development will be entirely contrary to the current positive role played by the appeal site in adding to the significance of the conservation area. This harm has been assessed by Mrs Stileman as less than substantial, but at the higher end of the spectrum of less than substantial harm.

22. Really, the significant issue between the heritage witnesses is not the degree of change within the setting, but the degree of positive contribution made by the appeal site – whether as Ms O’Reilly considers - the northern setting has been devalued by the more modern development that has taken place as Maidenhead has expanded. The answer, is that it has not:

- (a) The appeal site remains very clearly agricultural, rural land related to the historic, rural village of Holyport – which has its own distinctive and historic village character.
- (b) The prominent feature in views from the CA out to the north is the openness and rurality of the field. The fact that this is a remnant – albeit a large one – of a wider rural setting heightens the importance of the setting in contributing to the character of the village – and highlights the effect of its loss. It is also the contrast between the plan-form and character of the village and the open, agricultural setting that is distinctive and provides the boundary adding to the character;
- (c) The northern land has been historically open and related to the village; The village was established in the 13<sup>th</sup> century, and the setting frames the village providing aesthetic and historic value, and plan-form. It also has historic significance in its own right.
- (d) These northern views – unlike the western or southern views – are specifically identified in the comprehensive CA Appraisal, and these relate to the character area analysis within it;
- (e) The fact that this is a remnant – albeit a large one – of a wider rural setting heightens the importance of the setting in contributing to the character of the village – and highlights the effect of its loss.
- (f) To move from a rural setting to the north in views from Holyport Street and along Blind Lane within the CA to views of a continuum of modern development towards Maidenhead would be a significant and harmful change, and would undermine the village character and historic plan-form effectively preventing it being a historic, rural village. It will also add noise, traffic and urban clutter.

23. For the reasons given orally and in writing by Mrs Stileman there is plainly a material adverse effect on the special character and significance of the Conservation Asset. Part of the development site is within the CA, and s72 TCP(LBCA)1990 applies. Mrs Stileman's articulation of the extent of the harm<sup>7</sup> as less than substantial but at the higher end is justified.
24. The Framework is clear as to the importance given to the protection of heritage assets. Designed heritage assets are one of the "assets of particular importance" protected by footnote 6 of paragraph 11(d)(i) of the Framework. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation – irrespective of whether any harm amounts to substantial harm, total loss or less than substantial harm to its significance (NPPF 193).
25. Any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification (NPPF 194).
26. The water tower within the appeal site is a non-designated heritage asset which is valued locally. Its significance is in part a result of its open and undeveloped setting. It is a focal point in views and has historic and aesthetic, and architectural value. It is seen focally within its open rural setting. The proposals will alter the rural, open setting to one that is more urban damaging the ability to appreciate the structure within its surroundings and impinge on its historical value.

### Heritage Benefits

27. Through its evidence the appellant has identified some proposed heritage works to be secured through the laying out of the park, and related works. It is common ground that these do not prevent there being material harm to the conservation area. They are put forward as beneficial elements to be incorporated into the future scheme.
28. Mrs Stileman considers each to be welcome, but the overall benefit is limited. Laying out of paths, restoration of an orchard, and re-se of the Lodge was reduced in value

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<sup>7</sup> See PPG18a-18

because they are historic features that relate to a long-demolished manor house. The interpretation and dissemination of archaeological information is potentially a strong heritage benefit, but would be expected in any redevelopment of such a site. It is hard to give weight to any structural works to the water tower as there is no evidence they would be of structural benefit. Increasing access to the site will not add to the significance of the asset which does not depend on it, although in principle enhanced access is a benefit.

## **Issue 4: Housing Land Supply**

### Introduction

29. It is common ground that the Housing Delivery Test results published in February 2019 indicate that RBWM has a delivery rate of 97% over the last three years.
30. The housing requirement for the purposes of 5 year HLS is agreed as 799dpa, or 3,995 across the five year period.
31. The Council has assessed its deliverable supply as 3,439 units – the Appellant as 2,107<sup>8</sup>. There are therefore 1,342 units in dispute split across 13 sites and a dispute as to the period of allowance for windfalls (see Table 2). Expressed as year's supply there is a range of 2.64 (Appellant) – 4.3 years (Council).

### Points of approach

32. For convenience, these submissions follow the approach taken in the round-table session. To avoid repetition they do not comment on each site – the Council's position is explained in the evidence of McColgan, and Table 2, and as discussed at the RTS.
33. Closed List: The definition of deliverable is in the glossary. The definition is in the first sentence<sup>9</sup> and this is exactly the same test as was in the 2012 NPPF, and was considered

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<sup>8</sup> SoCG HLS at 4.9 as updated by Hewett rebuttal 3.1

<sup>9</sup> To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within 5 years.

in cases such as St Modwen Developments Ltd v SSCLG [2017] EWCA Civ 1643. The Government chose not to change the wording of this sentence. The term deliverable is used in paragraph 73 NPPF 2019 – and the identification of the supply of specific deliverable sites. Consider an example: if there was a resolution to grant full planning permission for 100 units at the base date, and there was clear evidence that it would be granted and delivered within 5 years. On the Appellant’s approach those units do not form part of the supply even though the site would be available now, suitable now, and achievable – i.e. deliverable”. The closed list interpretation therefore directly cuts across the meaning of deliverable as set out in the NPPF.

34. There is no justification for an interpretation that contradicts the definition of deliverable. The Appellant reads “In particular” as “i.e.”. Those words do not have the same meaning. The second part of the definition provides for particular cases within that broader definition. It does not preclude other sites. This point would affect only Bellman Hanger and Grove Park (a total of 97 units).
35. Base Date – identification of sites: The question here is whether sites can enter the supply after the base date. The base date is agreed, and the Council is not seeking to change that. The base date fixes the number of completions, and forward of that date is supply. Sites added in continue to form part of the supply side of the equation. They do not alter the base date, and where they form part of the deliverable supply within 5 years of that base date they can be taken into account. The accusation of inconsistency is unwarranted. The Council has been even-handed in taking out sites that met the test of deliverability at the base date but no longer do. The inclusion of a newly identified deliverable site is no different from the exclusion of a site where the circumstances now render it undeliverable. This is separate from the question of completions which are unaffected because the base date is not changing. (This would affect 268 units although 87 would have to be added back in)<sup>10</sup>.

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<sup>10</sup> Being Water Oakley Farm, Clivemont House, 23-33 York Road, and Milestones

36. Base Date – evidence of deliverability: the point here relates to sites that have been identified as deliverable at the base date and for which more up-to-date information is available. Can it be taken into account?
37. As a matter of law, the answer is obviously yes. As a matter of policy, there is nothing that suggests the usual position of taking into account the most up-to-date information should be disappplied. If the evidence was intended to be fixed at the base date no doubt the Government would have said so. On the contrary, the PPG refers to taking into account the most up-to-date evidence<sup>11</sup>. It would be surprising if it said anything else. 68-4 is specifically about decision-taking, and refers to using the latest available evidence. 68-7 is again specifically in the context of taking planning decisions and seeks to have available up to date evidence. The Appellant, without justification, seeks to read in “at the base date” – which is simply not what it says. The plain reading of the sentence would require the evidence to be available at the date of the decision. 68-17 is in the context of annual position statements, but the principle is the same. The evidence presented to the inspector will be the most up-to-date evidence and the inspector will have to decide.
38. The position of the Appellant is not practical. In this case it would have the effect that no new evidence on the sites could be produced after the base date. That would exclude all the Appellant’s evidence on the sites. There is no reason for it at all, and none has been suggested. Why should the decision-maker – which of course includes local planning authorities – not take into account up to date evidence? It causes no unfairness, no inconsistency, and is entirely even-handed.
39. Appeal decisions on the above two points: Mr Hewett refers to a number of appeal decisions. Each appeal decision is a reflection of the evidence put before the Inspector. They do not set law or policy or establish any point of principle. Accordingly, these points are made very briefly:
- (i) MH App4: In fact the Inspector gave the Council the opportunity to produce post-base date evidence<sup>12</sup> - they just failed to take it – seemingly

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<sup>11</sup> PPG 68-4, 68-7, 68- 17

<sup>12</sup> See in particular para 68 and fn12 and 71

- choosing instead to re-write the AMR that they did rely on by supplementing it post the base date in the AMR in a one-sided way;
- (ii) MH App. 5: para 12 the Inspector found you could update with post base date information provide you did so in a comprehensive way;
  - (iii) MH App. 6: paragraph 53 relates to an attempt to change the base date of the HLS exercise. The Inspector did take into account post base date evidence (see e.g. at 30);
  - (iv) MH App. 7: See para 11.6, the point was again about the Parish Council re0analysing the district council's supply by changing the base date and not having completions information to do so fairly.

40. Extent of the shortfall/degree of precision: The parties are agreed that the extent of the shortfall is relevant to the weight to be given to the benefits of the housing delivery – as well as other factors including the amount of housing delivered, and other steps being taken to address housing delivery. However, the degree of precision with which the HLS must be found is a matter for the decision-maker in the circumstances of the case – although he will normally have to identify the broad magnitude of the shortfall<sup>13</sup>. It is therefore possible to express the finding by way of a range without resolving each point of detail.

41. Sites: The Council relies on the evidence of Mr McColgan. Mr McColgan has applied the definition of deliverable to all the contested sites, and produced through his appendices direct evidence relating to each one. Although Mr Hewett questions the evidence he produces no real site specific evidence to refute it. The test of achievability is “a realistic prospect” of delivery. It is always going to be a prediction and prone to unexpected change – but the test is realistic prospect. This should not be confused with the need for “clear evidence” in relation to category b) evidence. The evidence obviously does not have to give certainty. It has to be clear evidence. The evidence will still be clear evidence even if it recognises that the trajectory is necessarily dependent on other extraneous factors. Also emails in these circumstances should be read fairly – not as if they are letters from lawyers or planning inspectors focusing on the black letter

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<sup>13</sup> See Hallam Land Management Ltd v SSCLG [2018] EWCA Civ 1808

test of deliverability. In the present case the sites are supported by evidence from the landowners or their agents, that is from the people best placed to assess the realism of the delivery of the site. The position re windfalls can be very briefly stated. It is not reasonable to say that the Council's position of 2 year's is unrealistic when the Appellant takes a position of 2.5 years. Also, as explained by PM, there is an assumption of nothing at all coming forward within the first two years notwithstanding that these may be small sites of less than 5 units.

42. Conclusion: The Council considers its assessment of housing land supply is entirely in line with the NPPF and NPPG, based upon up to date evidence and assessed closely by reference to the test of deliverability. It recognises that there is a shortfall – but considers a performance of 4.3 years whilst not meeting the requirement of the NPPF is a relatively modest shortfall. Measures are being taken to address the shortfall both on the ground and through the plan. The issue is a temporary one. The Plan will address this, and do so in a way that is consistent with the NPPF in terms of amending GB boundaries only through the comparative process of a local plan.

### **Issue 5: Very Special Circumstances and the Planning Balance**

43. The presumption in favour of sustainable development is set out in paragraph 11(d) NPPF 2019. It is common ground that the impact on the Green Belt and the harm to the Conservation Area engage footnote 6 because there are Framework policies that protect these “important” areas or assets.
44. The effect of this is that the critical development control test is that contained within paragraphs 143 and 144 of the Framework – the development should not be approved unless there are very special circumstances such that 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.
45. The Framework stipulates that substantial weight should be given to any harm to the Green Belt (144). The Appellant advances the novel submission that this means one cannot give any more than substantial weight to the totality of GB harm. Firstly, that is not what it says. Reading the words used in context, it refers to “any harm” should be

given substantial weight. This means that if any harm is identified, it should be given substantial weight. It is open to the decision-maker to give more weight, and also to combine the numerous GB harms – openness, harm to each purpose, harm to visual amenity, and harm by reason of inappropriateness to give a cumulative assessment of very substantial harm. The ordinary meaning of the words requires identifying the full extent of each type of GB harm and give as a minimum substantial weight to each element of harm.

46. It also stipulates that great weight should be given to the conservation of designated heritage assets (193) and any harm have a clear and convincing justification (194). The same interpretation point is true here. It would be bizarre to ask the decision-maker to articulate the extent of harm within each category of harm as per the ppg – but then ignore the actual degree of harm and give a blanket great weight. The clearly right approach is to identify the degree of harm, and give great weight to the degree of harm caused. The “great weight” reflects the legal presumption in relation to the protection of listed buildings and conservation area.
47. It is common ground that “any other harm” in paragraph 144 is given a wide meaning to include any material planning considerations that weighs against the scheme.
48. It follows that the harm ranged against the development – wholly unsurprising given it is an attempt to build 150 units on agricultural fields adjacent to the GB boundary next to Maidenhead – is very substantial indeed.

#### Unmet Housing Need – market and affordable

49. The fundamental proposition at the heart of the Appellant’s case is that the delivery of 150 residential units (market and affordable) amounts to very special circumstances that clearly outweigh the harm to the GB and all other harm.
50. Paragraph 11 of the Framework applies to decision taking, and continues to apply the GB test rather than the tilted balance where there is not a 5 yr HLS because the GB is an area of “particular importance”. Indeed, footnote 6 directs the decision-maker to the GB chapter of the Framework which begins by emphasising the importance placed by

the Government on the Green Belt. In this way paragraph 11 says something as to the balance struck between housing and area of importance.

51. This also brings into focus that in applying the Framework as a whole to the application it is appropriate to consider the housing delivery position as against the requirements of the Framework.
52. The NPPF 2018 (as now reflected in the 2019 version) simplified the question of “maintaining supply and delivery” (the sub-heading above para 73) which applies for development control purposes. Paragraphs 73 to 76 explain what the Government requires in relation to maintaining supply and delivery.
53. As discussed, and agreed with Mr Cobbold, the Framework (73) provides for this specifically where the adopted housing requirements are more than 5 year old – as here. This involves the application of a Local Housing Need.
54. The working out of the LHN is explained in the HLS SoCG. Of significance:
  - (a) Step 1 is based on a forward looking projection from 2019-2029 – (SoCCG1.3) – that there is no inherent backlog because the base date is 2019;
  - (b) Step 2 adjusts for affordability based on the affordability ratio specific to RBWM;
  - (c) Step 3 applies a cap to ensure deliverability.
55. The planning guidance makes clear – and it is agreed by Mr Cobbold – that the LHN method “factors in past under-delivery as part of the affordability ratio, so there is no requirement to specifically address under-delivery separately when establishing the minimum annual local housing need figure” (ppg 68-31); “the standard method uses a formula to identify the minimum number of homes expected to be planned for, in a way which addresses projected household growth and historic under-supply (ppg 2a-2).

56. It is important to understand that the LHN is then a comprehensive figure for future need which reflects an affordability adjustment and takes into account historic under-supply and its application and method is a matter of Government policy.
57. In addition, LHN is the central means of assessing housing performance (as part of the Government's desire to boost housing) in national policy. Not only does the Framework introduce the LHN (which includes historic undersupply), it also provides a measure to monitor and respond to past delivery– the Housing Delivery Test.
58. This was also introduced by the NPPF 2018, It is used in three ways in the NPPF 2019:
- (i) In 11 fn 7 the tilted balance can be triggered where delivery of housing was substantially below (less than 75% of) the housing requirement assessed through the Housing Delivery Test;
  - (ii) Paragraph 73 requires a buffer to be added to the LHN figure. A 20% buffer is to be added where judged against the HDT there has been significant under delivery of housing, that is below 85% of the HDT;
  - (iii) Paragraph 75 requires authorities to prepare an action plan where delivery has fallen below 95%.
59. The position in RBWM as published in February is an HDT performance of 97%, that is far above the thresholds identified as substantial under-delivery (75%); significant under delivery (85%) or even perhaps material under-delivery – that is a level that requires any corresponding action within the NPPF (95%).
60. This is not to avoid the fact that RBWM cannot at present demonstrate a 5 yr HLS. But it is fairly to recognise in accordance with national policy that paragraphs 73 to 76 provide a comprehensive means of assessing the housing delivery position in an area.
61. When that comprehensive assessment is undertaken it is agreed that the HDT is not demonstrating any real shortcoming; and the supply on RBWM's case is 4.3 years. The requirement figure used for 5 yr HLS purposes is the LHN + 5%.
62. This is the approach that the Council takes, and it is fairly reflected in an assessment of moderate weight being given to 150 units, which is about 20% of one year's LHN.

63. The Appellant, by contrast, engages in an exercise that is agreed by Mr Cobbold to be inconsistent with the Framework and the PPG. The approach is inherently unreliable for a number of reasons:

- (i) The attempts to combine a past shortfall with the LHN figure are fundamentally inconsistent with the standard methodology and national guidance and lead to clear double-counting<sup>14</sup>;
- (ii) The Framework has prescribed Government policy on the maintenance of supply and demand, and the PPG 68 provides further guidance on this. Where plans are more than 5 years old then the LHN is used and all the above points come into play. The NPPF precludes the use of older housing requirements or unadopted housing requirements. Therefore, to undertake an exercise using such requirements is contrary to current national policy. This is the exercise undertaken by Mr Cobbold from 8.23-8.25. It contradicts the current Government approach to need. And, it is entirely unnecessary because the new Government method takes into account the question of past delivery in the explicit manner explained above;
- (iii) Paragraph 11 of the NPPF defines the presumption in favour of sustainable development. This requires the application of the NPPF in striking the appropriate balance, and the NPPF sets out Government policy on housing supply and delivery.
- (iv) The Appellant's approach overstates need by wrongly duplicating elements of it as a result of failing to follow government policy.

64. The headline then on housing delivery is that the extent of the housing shortfall in the borough is fully and fairly expressed by the 5 year HLS – which we say is 4.3 years.

65. If the Inspector disagrees on HLS then we agree the weight can increase as the broad magnitude of the shortfall increases. Of course, there remain other factors to take into account – the likelihood of the temporary shortfall being address through the plan, the other steps being taken, the size of the contribution – and fairly Mr Fannon considers

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<sup>14</sup> See Cobbold leading up to 8.35

that if the shortfall were as high as the Appellant's lowest case – 2.64 years – then significant weight could attach to this benefit.

### Housing Mix

66. Housing mix is a facet of housing supply. It is not a separate strand of need. There is no quantifiable need figure for RBWM as a need target or requirement looking either forwards or back.

67. It is rather a matter to be addressed through policy which can then be applied– (see NPPF 60 and 61).

68. Mr Cobbold draws attention to the figures in the SHMA (CD7.4 at paragraph 46). These need to be placed in context:

- (i) The SHMA is produced as part of an overall assessment of housing supply for Berkshire (including South Bucks) reflecting two HMAs, for the 23 year period 2013-2036;
- (ii) It is not intended to – and does not – provide a proposed mix for RBWM – and it is not expressed as a need figure but rather an “appropriate mix” for the HMA over that time period (paragraph 46);
- (iii) It recognises that the focus of new market provision will be on 2 and 3 bed properties (47) – which is largely what the appeal proposals provide – based on the original condition 4 or as proposed;
- (iv) It recognises that the evidence is produced to inform policies for their areas based on the evidence alongside measures for the management of affordable housing stock (48); and that in applying policies there will be a range of relevant factors that influence the appropriate mix;
- (v) It says nothing as to house type.

69. The reality is that these are long-term, high level strategic objectives as to the appropriate mix for the HMA with a view to policies managing mix. They are not in any sense a need figure, or requirement. They simply do not permit of the quantitative need-based analysis relied upon by Mr Cobbold.

70. Added to which of course the purpose for which this evidence-base was produced is the Plan process, through which policies will be put in place, and the appropriate mix considered through the allocations and secured and future permissions granted under those plan policies.

### Affordable Housing

71. The proposal offers a policy compliant level affordable housing – not more. That amounts to 45 units.

72. The Council accepts there is an identified need for affordable housing in the borough and that the delivery of a policy-compliant 45 units is a benefit of moderate weight.

73. The benefit is actually fairly easy to compute. There is an up-to-date figure presented by Mr McColgan<sup>15</sup> of 467 dpa. The appeal proposals would make a contribution to this need – it is about 10% of the year's need.

74. There is no need for the overcomplicated approach taken by Mr Cobbold which is prone to confuse and double count:

- (a) Mr Cobbold notes delivery over the past five years<sup>16</sup> - which is material;
- (b) He then compares a past target assessed in 2016 and assesses delivery against it, to calculate a shortfall of 1928 units.
- (c) But this shortfall does not represent a quantified shortfall because there is not a linear or simple relationship between affordable housing delivery and affordable housing need. There are, as PM explained in the RTS, and explains in his proof<sup>17</sup>, a number of factors at play. Firstly, there are factors – economic factors, earnings etc – that affect the need for affordable housing year on year. Secondly, some affordable housing assessed need is the product of unsuitable housing rather than a quantitative issue, and that need can be met by re-allocation of existing supply. Thirdly, delivering one unit

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<sup>15</sup> Table 5 AH proof

<sup>16</sup> Proof 8.37

<sup>17</sup> See 3.8 – 3.13

may allow additional movements based on housing size. Fourthly, the calculation of need is an average fixed at one point in time, and is so prone to fluctuation period to period.

- (d) This is clearly demonstrated by the evidence before the inquiry. On Mr Cobbold's analysis taking the AH need as a fixed quantitative housing requirement of 424 pa, he assesses a shortfall over 5 years of 1928<sup>18</sup> which he then combines with supply over the next five years, to suggest a "catastrophic failure"<sup>19</sup>. But the relationships simply do not hang together. Accumulating past delivery against an assumed quantified need over the past 5 years would suggest a statistical gross need of 1928 as a result of the shortfall alone. In fact, the agreed figures<sup>20</sup> are that there has been a reduction in gross need in that period.
- (e) This shows the error in analysis of this nature.
- (f) So – there is an affordable issue – but nothing like the scale presented by Mr Cobbold.
- (g) The same story is shown by Mr McColgan's analysis of affordability indicators in the borough<sup>21</sup>.

75. Mr Cobbold in his evidence then went on to consider future supply against need over a five year period. However, he has now withdrawn any reliance (proof 8.43, 8.44) on a requirement to show a five year affordable housing land supply. This is because there is no such requirement in policy as a means of assessing housing supply or delivery. In any event, analysis of that nature is unreliable for the reasons given above.

76. Seen properly, the five year supply of housing within the framework is not intended to show the specific delivery of affordable units. That is a miscomprehension. The question of affordability is specifically taken into account through the affordability adjustment at step 2 of the LHN. So – to assess a five year housing land supply already includes a sufficient allowance to address affordability in the borough in line with national policy. Mr Cobbold's analysis by comparing an affordable annual requirement

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<sup>18</sup> Proof 8.39

<sup>19</sup> 8.54

<sup>20</sup> PM AH proof at table 6

<sup>21</sup> Proof section 2

against the LHN to calculate a proportion of 68% is not helpful. The figures themselves are not comparable.

77. For these reasons, the Council accepts that the recent performance has been poor, but the affordability position in the borough is stable, and the current affordability ratio is taken into account in fixing the LHN which is then used to assess the 5 yr HLS position. Stripping out any double-counting a weighting of moderate weight is fair for a contribution of a policy compliant 45 units.

#### Measures being taken

78. . It has been established<sup>22</sup> that a number of factors will be relevant to the weight to be given to housing delivery including the steps being taken by the authority. Here, these fall into two categories – actions as plan-making authority; and actions as local planning authority and landowner.

79. The Council is promoting a Local Plan. It has last night resolved to approve the proposed changes to the proposed Local Plan for consultation, and to delegate the making of such changes as are appropriate to address responses before it is submitted to the Inspector to progress the Examination of the Plan. It follows that the Council considers it has a Plan that with the revisions proposed is sound and ready for examination.

80. The timetable going forward is identified in the Report to Full Council. The Council proposed this course of action to the Examining Inspector in July 2019 (report para 2.13); she replied dated 7 October 2019 saying that the proposed way forward seemed reasonable, and that the Council should review the representations received and make any further amendments so that on resumption the examination can proceed on the basis of the most up to date position. That consultation will now take place from 1 November to 15 December, with the Plan proposed to be submitted by the end of January or February 2020. The intention then is that the examinations could resume early next year.

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<sup>22</sup> See JF proof 7.3

81. It is of course the case that the Inspector has to conclude her examination into the soundness of the plan, and that may require changes. The Council accepts the plan as a set of policies attract limited weight. But as a process it is clear that the Council have advanced the plan in response to previous setbacks by doing a very considerable amount of work to a stage where they are consulting on a revised plan that it considers sound. This meets the identified OAN housing requirement. It has performed a comprehensive review of sites and the application of the exceptional circumstances. It does allocate sites in the Green Belt (fewer now than under the previous version – see Report at 3.5). The Appeal Site is not identified for allocation or Green Belt release. The fact that the Plan promotes allocations in the GB is of no assistance to the Appellant. It does not promote its site, but rather promotes others following a comprehensive review of potential allocations including the appeal site.
82. There is no reason to assume the failure of the Plan. The plan exists, it has been reviewed in light of the Inspector’s comments and the Council are promoting it for examination next year. When in place it will allocate sites to meet the identified housing need over the plan period and provide for a five year supply.
83. This therefore sets a programme – not of course unslippable – for addressing the temporary shortfall in five year HLS. The temporary nature of the shortfall can and should be contrasted to the essential features of the GB – its openness and permanence (NPPF 133).
84. The other measures on which the Council rely are very much on the ground measures to improve delivery in the short term of both market and affordable housing. These are described in section 4 of Mr McColgan’s AH proof. These include entering into a joint venture to deliver a number of sites with 30-38% AH; as well as maximising the development potential of identified sites, and this is bearing fruit<sup>23</sup>. It is not right to dismiss this as overlapping with the 5 yr supply because (a) it does not entirely and (b) these are examples of pro-active steps being taken and evidence an active authority taking measures to reduce the deficit.

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<sup>23</sup> See PM AH section 4 and app F to this HLS proof

## Community Park

85. The position at the end of the inquiry on the community park can be stated quite simply. There is very little – if any- evidence of specific need; and no evidence that the community wants it.
86. The Appellant has produced no study of its own seeking to identify a deficiency in parkland or open space in the particular locality. It only relies on the Council’s Open Space study 2019<sup>24</sup>. But on analysis that does not identify any particular deficiency for Holyport or Maidenhead. The Appellant indicates that the majority of the space will be parkland and open space, with the green space really being wooded areas<sup>25</sup>. Public Parks and Gardens are defined on p20. Table 8.2 confirms that there is currently an oversupply in quantitative terms of 73.88ha. Figure 8.1 confirms there is no identified accessibility concern for Holyport. The only point that Mr Cobbold can point to is that the most local park has a quality rating of “average”. That is not a deficiency at all, and is obviously a point that can be addressed without providing a new park. Therefore, there is no identified need for a new park in this location whatsoever.
87. Mr Cobbold then refers to the assessment of Natural and Semi-Natural Greenspace (defined also on p20). This is assessed separately from the park space, and so cannot provide justification for the park. In any event the quantitative assessment shows a current oversupply of 2168ha., with the commentary noting that Maidenhead has excellent access to Dorney Reach and Windsor Great Park. There is nothing in the document that suggest a need to be in proximity to such spaces. The need to a natural greenspace at this location is not established. Allotments are also addressed by the study which finds a current surplus of 16 ha. Mr Cobbold draws attention to a comment at 12.8 that at borough level demand is unusually high – however, at the local level Mr Lerner has explained that there are vacancies in the allotments available at Bray and Holyport. The Appellant seeks to attribute very substantial weight to the park as a benefit – and yet there is no evidence of a specific need for these facilities. The only exception to that is the football pitches – Mr Fannon refers to an identified overplay at Holyport FC by 0.5 matches a week<sup>26</sup>. That said, Holyport FC do not endorse the

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<sup>24</sup> CD 7.14

<sup>25</sup> See Fig 5A Ms Illman

<sup>26</sup> Proof 7.10

application<sup>27</sup>. It is really hard to see how this combination of facilities could possibly attract more than moderate weight in light of the lack of evidenced need, the lack of embracement by the community, and the fact it takes place on land that is already serving a valuable role within the Green Belt.

88. Further, the community park application must be recognised as taking place on land that already has a significant Green Belt role as agricultural Green Belt land containing and providing the setting for the settlements, and the Conservation Area of Holyport. The compensatory Green belt benefits should not form part of the justification for the release of land from the Green Belt. They are benefits that should be sought through the plan process once the decision to release land has been taken (NPPF 138).

#### Other benefits

89. Similarly, in relation to the doctor's surgery, the proposal provides for a 667 sqm doctor's surgery but the local medical practice, Holyport Surgery, has confirmed that it does not need new premises and are not in a position to progress with the proposed scheme.

90. Heritage benefits have been addressed above. They have limited weight – but they also arise in the context of a negative heritage balance – the overall heritage impact is harmful, and that must be given great weight.

91. Each benefit should be assessed in context against the benefits it brings in the light of any identified need. Mr Fannon was right to resist some form of matrix whereby one compares the weight to allotments on one part of the site to housing on another. To take such an approach is prone to misjudgement as one seeks to compare and equalise elements of the development that are not comparable.

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<sup>27</sup> JF App. 5

## **Overall Balance**

92. This scheme promotes significant residential development on open agricultural land in the GB. The importance of the GB to the Government is made explicit in the NPPF. Its essence is its openness and its permanence. It is wholly unremarkable to conclude that a new housing estate in the GB is fundamentally at odds with it, and very substantially harmful. The Appellant also deliberately steps outside the plan process and presents no alternative sites, or comparative exercise, The NPPF is clear that amendments to the boundary -which de facto this is – should be assessed through the plan, and the permanence of the GB must be respected. Yes, there are benefits that the Appellant can identify – as there are with any housing application in the borough given that there is an identified need for housing and affordable housing. The shortfall though is temporary – the GB is permanent. The balance in these terms is very clearly struck against the development, and in favour of the long-term protection of the fundamental qualities of the GB, its openness and its permanence. Further, the harm to the conservation area is of great weight quite apart from any Green Belt harm. The substantial and harmful incursion into the setting of the Conservation area is unjustified.

93. Overall, the Council considers that the benefits of the scheme fall very well short of addressing the substantial harm caused to the Green Belt and its purposes.

94. For these reasons the Council's position is that the appeal should be dismissed.

**Landmark Chambers,**

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**GUY WILLIAMS**

**25<sup>th</sup> October 2019**