IN THE MATTER OF LAND TO THE NORTH OF ASTON ROAD, HADDENHAM, BUCKINGHAMSHIRE

AND IN THE MATTER OF AN APPLICATION FOR PLANNING PERMISSION BY LIGHTWOOD STRATEGIC LTD REFERRED TO THE SECRETARY OF STATE UNDER SECTION 77 OF THE TOWN AND COUNTRY PLANNING ACT 1990

PINS REF: APP/J0405/V/15/3014403

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CLOSING SUBMISSIONS

ON BEHALF OF HADDENHAM PARISH COUNCIL

INTRODUCTION

1. The planning application the subject of this Inquiry proposes a development of up to 280 dwellings on a 22 hectare site, currently comprised of open fields north of Aston Road on the south-eastern side of Haddenham. It forms part of the open countryside beyond the built-up limits of the village.

2. By his letter dated 27th March 2015 [**CD1**], the Secretary of State recovered that planning application for his own determination. His reasons for doing so included a concern that the proposal may be in conflict with the (at that time emerging) Haddenham Neighbourhood Plan, an issue of very considerable importance since, as noted by Mr Justice (now Lord Justice) Lindblom in the first sentence of his important judgment in ***Crane v SSCLG*** [2015] EWHC 425 (Admin) [**CD34**]:

> *"Neighbourhood plans are seen by the Government as an important part of its so-called 'localism agenda'."*

3. Moreover, and since recovering the planning application for his own determination, the Haddenham Neighbourhood Plan [**CD16**] has now been made, as recently as two months ago,

on 11th September 2015, following a referendum in which it achieved an overwhelming majority, with over 86% of those who participated voting 'yes'.

4. If that Neighbourhood Plan was sufficiently important to motivate the Secretary of State to recover the planning application when it was emerging, it is even more important now that it has been made, and for two main reasons:

    a. First, it is now part of the development plan. It therefore receives the statutory priority afforded by section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the PCPA") under which applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Under the section 38(6) test, "while material considerations may outweigh the requirements of a development plan, the starting point is the plan which receives priority. The scales do not start off in even balance": ***South Northamptonshire Council v SSCLG*** [2013] EWHC 11 (Admin) [**CD39**].

    b. Second, it receives extremely strong Government policy support under the National Planning Policy Framework ("the NPPF"). In particular, and as stated in paragraph 198 of the NPPF:

        "… Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted".

5. The Neighbourhood Plan had, of course, also recently been made in the ***Crane*** case, a case which concerned in terms the weight properly to be attached to a recently made Neighbourhood Plan when it allocated certain sites for housing development, but **not** the application site in question, in circumstances in which the Local Planning Authority did not have a 5 year supply of deliverable housing land. Given this, the ***Crane*** case is plainly of seminal importance to the determination of this application since it is all square with it.

6. The same cannot be said, of course, with respect to ***Woodcock Holdings Ltd v SSCLG*** [2015] EWHC 1173 (Admin) [**CD13**], which is a case that concerns an emerging Neighbourhood Plan

only, not one which had been made and brought into force, which therefore forms part of the development plan, and to which paragraph 198 of the NPPF therefore applies.

7. However, and in a Proof of Evidence which is 64 pages long and refers to and/or exhibits numerous legal cases and decision letters, nowhere did Mr Weaver even refer to either the ***Crane*** case or the underlying Broughton Astley decision (nor for that matter did Ms Jarvis).

8. The omission of any reference to ***Crane*** is surprising given its greater relevance (as a case concerning a **made** Neighbourhood Plan) and given, also, that ***Woodcock Holdings*** cites ***Crane*** with approval and considers it in detail. Indeed, Mr Weaver stated under cross examination that he was "very familiar" with the ***Crane*** case.

9. Mr Weaver offered no explanation of why he decided not to raise it in his Proof, merely indicating that the Inspector would know the importance of ***Crane***. And that was not his only omission. Mr Weaver also confirmed that he was familiar with the Winslow decision letter [**CD46**] and yet he had not raised this either, despite relying on numerous other decision letters. Most startling of all perhaps, Mr Weaver's lengthy Proof of Evidence made no reference at all to paragraph 198 of the NPPF.

10. The omission of these matters substantially diminishes the assistance which may be derived from Mr Weaver's evidence.

THE LEGAL STATUS OF THE HADDENHAM NEIGHBOURHOOD PLAN

11. The Applicant is seeking permission to challenge the making of the Haddenham Neighbourhood Plan by judicial review. However, unless and until it is quashed (and it is being robustly defended by both the Parish and District Councils) you are required to presume its validity. That follows from the decision of the House of Lords in the seminal case of ***Hoffmann-La Roche & Co. A.G. v. Secretary of State for Trade and Industry*** [1975] A.C. 295 [**CD40**], in which Lord Diplock stated as follows [at 365 D-F][1]:

[1]The comment was made in respect of statutory instruments not planning decisions, but the same principle applies.

"Under our legal system… the courts as the judicial arm of government do not act on their own initiative. Their jurisdiction to determine that a statutory instrument is ultra vires does not arise until its validity is challenged in proceedings inter partes either brought by one party to enforce the law declared by the instrument against another party or brought by a party whose interests are affected by the law so declared sufficiently directly to give him locus standi to initiate proceedings to challenge the validity of the instrument. ***Unless there is such challenge and, if there is, until it has been upheld by a judgment of the court, the validity of the statutory instrument and the legality of acts done pursuant to the law declared by it are presumed****." (Emphasis Added)*

12. As a matter of law, therefore, you and the Secretary of State must proceed on the basis that the Haddenham Neighbourhood Plan is a valid part of the development plan.

13. Moreover, the Applicant's judicial review of the making of the Haddenham Neighbourhood Plan is not (contrary to Mr Weaver's position at paragraph 7.28 of his Proof of Evidence) a "material consideration" for the purposes of section 38(6) of the PCPA, and cannot (contrary to Mr Weaver's position at paragraph 7.29 of his Proof of Evidence) reduce the weight to be afforded to that Plan:

    a. First, it does not "relate to the use and development of land" (the test set out in ***Stringer v Minister for Housing and Local Government*** [1970] 1 WLR 1281 at 1294 [**CD41**]) but relates only to the validity of the Haddenham Neighbourhood Plan itself; and

    b. Second, to treat the fact of the judicial review as a material consideration militating against deciding the application in accordance with the development plan would be flatly inconsistent with the presumption of validity set out in ***Hoffmann-la-Roche***. One cannot presume validity and reduce weight on the basis of possible invalidity at the same time.

14. Mr Weaver's position (which he maintained only equivocally in his evidence but which was the motivating force behind much of Mr Boyle QC's cross examination) is therefore, with respect, wrong in law. It is also, again with respect, absurd. If development plans could be

attacked in this manner in Inquiry proceedings, such proceedings would be ungovernable: it would encourage an exhaustive analysis of the evidence base behind every policy in every part of the development plan. That cannot be right and, for the reasons set out above, is not right.

15. Mr Weaver's position is also contrary to the approach of the Secretary of State in the Winslow Decision Letter [**CD46**], dated 20th November 2014, also concerning a site in Aylesbury Vale's area of authority, and on another application for development in breach of a Neighbourhood Plan. At DL6 the Secretary of State, consistently with the legal position we have set out above, stated as follows:

> *"6. The Secretary of State has carefully considered the request of the appellant to delay the decision on this appeal until the outcome of the judicial review to the Winslow Neighbourhood Plan is known. However, the Secretary of State considers that there is no need to delay this decision and has proceeded on the basis that full weight is attributed to the Winslow Neighbourhood Plan, as part of the statutory development plan."*

16. Finally, Mr Weaver's position is not shared by the District Council. As Mr Westmoreland Smith stated at paragraph 5 of his Opening Submissions:

> "*The recent application for judicial review of the HNP by the Applicant is immaterial to the decision before the Secretary of State. The HNP forms part of the development plan unless and until it is quashed by the courts".*

17. For all these reasons, Mr Weaver's position should be rejected. And, in addition, much of Mr Boyle QC's cross examination of Professor Sir Roderick Floud and Mr Nick Lock, which went only to issues of validity of the Neighbourhood Plan, is wholly irrelevant and of no assistance in the determination of this application.

18. We add this. The Parish Council very fairly disclosed as Core Documents the authorities on which it was relying on this legal issue ahead of the Inquiry. It then set out its legal position in its Opening Submissions (paragraph 3). The Applicant has provided no authorities in support of its position and has not addressed the issue in its Opening Submissions or elsewhere. To

spend so much Inquiry time on issues of validity without attempting to justify the relevance of that issue is unreasonable.

THE CRANE CASE

19. With those introductory comments in mind, I turn to the ***Crane*** case [**CD34**], and at some little length, so important it is to the matters now under consideration.

20. In ***Crane*** the Court had to decide whether a decision on an appeal under section 78 of the Town and Country Planning Act 1990 ("the TCPA"), in which the Secretary of State had given "very substantial negative weight" to the proposal's conflict with a recently made Neighbourhood Plan, was lawful, given that the policies of the development plan for the supply of housing land were acknowledged to be "out-of-date".

21. There were three policies for housing development in the Neighbourhood Plan under consideration in ***Crane*** – Policies H1, H2 and H3. However, Policy H1 was the only policy in which specific allocations of land were made for housing, its objective being to allocate land "for at least 400 new homes". It allocated two sites for new housing development and a reserve site, which in total were intended to produce 528 new dwellings. In addition to this, Policy SD1, "Presumption in Favour of Sustainable Development", provided that the Parish Council would support proposals that accorded with the policies in the neighbourhood plan and, where they are relevant, the policies of the core strategy, and that "[when] commenting on development proposals [it] will take a positive approach that reflects the presumption in favour of sustainable development contained in [the NPPF]".

22. The claim in the ***Crane*** case raised two main issues:

    a. First, whether the Secretary of State erred in law in concluding that the proposed development was in conflict with the Neighbourhood Plan then under consideration; and

    b. Second, and if the Secretary of State was correct in determining that the proposed development was in conflict with the Neighbourhood Plan, whether the Secretary of State misinterpreted or misapplied government policy in the NPPF when

deciding that "very substantial negative weight" was given to that conflict notwithstanding the fact that the policies of the development plan for the supply of housing land were out-of-date.

Issue (1) – Conflict with the Neighbourhood Plan

23. On behalf of Mr Crane, it was submitted that the Secretary of State had erred in his interpretation of the Neighbourhood Plan and in applying its policies to Mr Crane's proposal. In particular, the Secretary of State had referred to "conflict" with the Neighbourhood Plan. However, the Plan did not define a "settlement boundary", nor contain any specific policy restricting the development of the appeal site. Policy H1 simply allocated sites for new housing development but did not preclude development on other sites. According to Mr Crane, the Secretary of State had inferred from Policy H1 that there was some "counterpart policy protection for unallocated land", but that was not permissible.

24. However, Mr Justice Lindblom did not accept that argument. In his view the Secretary of State had not misconstrued the Neighbourhood Plan, or any of its individual provisions. He made, *inter alia,* the following points:

    a. The allocations in Policy H1 represented both the acceptable location and the acceptable level of new housing development in the plan period [42] and were the result of a process of selection, having emerged as the sites chosen for allocation in the light of public consultation and the evaluation of options. They had been selected in preference to other available sites which developers and landowners – including Mr Crane – had suggested. They were also the planned "maximum" provision of new housing for those sites without too much expansion into the surrounding countryside. The Parish Council was seeking to achieve reasonable clarity and certainty as to where the new housing would go, and not to encourage developers to promote large proposals on unallocated sites. It achieved this without needing to define a settlement boundary, or any express "limits to development".

    b. Further, in deciding which sites should be allocated for housing and which should not, the Parish Council had considered the sustainability of the new housing it was planning [at 44]. This could be seen in the policies specifying the particular

requirements for the allocated housing sites; in the policies relating to other allocations; and in the overarching policy for sustainable development (SD1). As such, the Plan was composed of policies, both specific and general, which connected to each other to form a coherent whole: a full picture of the development and infrastructure for which the Parish Council had planned.

c. It followed that a proposal for housing on a site other than those allocated in Policy H1 (unless a windfall, for which Policy H3 made provision) would not accord with the Plan and would be contrary to its strategy for housing development [at 46]. Such proposals would therefore be in conflict both with the Neighbourhood Plan itself and, as a result, with the development plan as a whole.

d. The notion that the Plan, properly construed, allowed for development so long as it did not conflict with specific policies for the protection of the environment and would not frustrate or delay development on any of the allocated sites was to be rejected [at 47]. That was not what the Plan said and was not what it meant. Such an interpretation could not be squared with the Plan's obvious purpose in providing for sustainable development in the Parish and would undo the balance that was struck when the Plan was prepared – the balance between the aim of allocating sites for additional housing whilst avoiding excessive expansion into the countryside. It would, accordingly, negate the strategy which the Parish Council conceived.

e. Importantly, Mr Crane's argument could not be reconciled with the true purpose and effect of the allocations in Policy H1 [at 48]. In particular, and if that interpretation were right, "… there would have been no point in the Parish Council going through the exercise of selecting the sites it allocated for housing development and formulating the policies and text which support those allocations." Indeed, Mr Justice Lindblom went on to state [also at 48]: "That, I think, is beyond any sensible dispute"; and [at 49] "I do not think any other interpretation is possible. The construction for which Mr Hill contends is, in my view, clearly wrong".

Issue (2) – Government policy in the NPPF

25. As to the second issue, it was submitted on behalf of Mr Crane that:

    a. Once the decision-maker had found the "policies for the supply of housing" out-of-date, such that paragraph 14 of the NPPF was engaged[2], and having thus reduced the weight to be given to the development plan by concluding that the plan was out-of-date, the decision-maker cannot then dramatically increase its weight to a level that was overriding [at 57].

    b. Further, the Secretary of State misinterpreted and misapplied policy in paragraph 198 of the NPPF in three ways [at 59]:

        1. First, in concluding that conflict with an out-of-date Neighbourhood Plan was capable of attracting the normal presumption against approving development in conflict with the Neighbourhood Plan, in paragraph 198 of the NPPF;

        2. Second, in concluding that such conflict could be regarded as one of the "adverse impacts" contemplated in paragraph 14 of the NPPF; and

        3. Third, as in (a) above, in concluding that such conflict could be given "very substantial negative weight", capable of overriding the "substantial weight" he gave to the benefit of the additional housing proposed – a conclusion contrary to the clear purpose of paragraph 49 of the NPPF.

26. However, Mr Justice Lindblom did not accept any of these arguments either. In his view, the Secretary of State was plainly entitled to give the relevant considerations the weight that he did. In particular:

[2] So as to require him to consider whether the development would have "adverse impacts" that "significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole", or "specific policies in [the NPPF] indicate development should be restricted".

a. Under section 70(2) of the TCPA and section 38(6) of the PCPA, Government policy in the NPPF, including the "presumption in favour of sustainable development" in paragraph 14, was only a material consideration external to the development plan and did not modify the statutory framework for the making of decisions on applications for planning permission but operated within that framework – as the NPPF itself acknowledges in paragraph 12 [at 62].

b. Accordingly, it was for the decision-maker to decide what weight should be given to NPPF policy in so far as it was relevant to the proposal and the Court will not intervene unless the weight given to it by the decision-maker can be said to be unreasonable in the ***Wednesbury*** sense [also at 62].

c. Once the Secretary of State had found Mr Crane's proposal to be in conflict with the development plan – as he correctly did – he had to consider whether, in the light of the other material considerations in the case, he should nevertheless grant planning permission, entailing a classic exercise in planning judgment whereby his task was to weigh the considerations arising in the application of relevant policy in the NPPF, and any other material considerations beyond those arising from the development plan, against the statutory presumption in favour of the development plan enshrined in section 38(6) of the 2004 Act (just what the NPPF itself envisages, in paragraphs 12 and 196) [at 63].

d. The Secretary of State did exactly what he had to do in this regard, and in a legally unassailable way [at 64] given that the NPPF does not displace the statutory "presumption in favour of the development plan" [at 70]. In particular:

    1. Neither paragraph 49 of the NPPF nor paragraph 14 says that a development plan whose policies for the supply of housing are out-of-date should be given no weight, or minimal weight, or indeed any specific amount of weight [at 71].

    2. Further, the presumption in favour of the grant of planning permission in paragraph 14 is rebuttable and the absence of a five-year supply of housing

land will not necessarily be conclusive in favour of the grant of planning permission [at 72].

3. The reference in paragraph 14 of the NPPF to its policies being "taken as a whole" is important since the NPPF includes the policy on Neighbourhood Plans in paragraphs 183 to 185, and the statement in paragraph 198 that: "Where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted" [at 73].

4. Paragraph 14 of the NPPF does not, therefore, remove the general presumption in paragraph 198 against planning permission being granted for development which is in conflict with a Neighbourhood Plan that has come into effect [at 74];

5. In the ***Crane*** case the Secretary of State did, therefore, exactly what paragraph 14 of the NPPF required him to do [at 75]:

    a) He weighed the "adverse effects" of the proposal against its "benefits" in the light of the policies in the NPPF "taken as a whole" – including both its policy on housing supply and its policies on neighbourhood planning.

    b) Given that the Neighbourhood Plan had been brought into force, he was required to consider the proposal's conflict with that Plan under the policy in paragraphs 183 to 185 and 198 of the NPPF.

    c) The presumption in paragraph 198 was, therefore, a consideration to which he was entitled to give significant weight.

    d) He was also entitled to attach great importance to the concept, in paragraph 185 of the NPPF, that Neighbourhood Plans "will be able to shape and direct sustainable development in their area", which

was "more than a statement of aspiration" in that once a Neighbourhood Plan has become part of a development plan it "should be upheld as an effective means to shape and direct development in the neighbourhood planning area in question, for example to ensure that the best located sites are developed".

e) This reasoning led to the conclusion that the proposal's conflict with the Neighbourhood Plan had to be given "very substantial negative weight" – which was enough weight "significantly and demonstrably" to outbalance the benefit of the additional housing proposed.

6. This was a conclusion in line with government policy in the NPPF, giving appropriate weight to the proposal's conflict with a Neighbourhood Plan which had just emerged from its statutory process and justified the rejection of the proposed development. The Secretary of State was not persuaded to make a decision which, in his view, would "undermine public confidence in neighbourhood planning", even though the proposed development would not cause unacceptable harm to the character and appearance of the area and would be sufficiently accessible, since that proposal "was clearly alien to the Parish Council's vision for its area manifest in the Neighbourhood Plan" [at 77].

7. There was, accordingly, nothing legally wrong with the Secretary of State's conclusion that, although the policies for the supply of housing in the development plan were not up-to-date, and although the development then before him would add to the supply of housing in the district, the proposal's conflict with the Neighbourhood Plan was, in itself, a powerful and decisive factor against granting planning permission [at 78].

27. Furthermore, ***Crane*** has resonance even closer to home. In the Winslow decision letter [**CD46**] (familiar to Mr Weaver but not referred to in his Proof) the Secretary of State rejected the

proposal in terms almost identical to those used and upheld in ***Crane***, stating as follows at [25-26] when disagreeing with his Inspector's recommendation to approve that proposal:

> *"25. The Secretary of State notes the Inspector's conclusions on neighbourhood planning at IR183, but the Winslow Neighbourhood Plan is now made and is part of the development plan. The Secretary of State has given consideration to the policies on neighbourhood planning at paragraphs 183-185 and 198 of the Framework. Paragraph 183 states that Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Paragraph 184 states that neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community. Paragraph 185 states that, outside the strategic elements of the Local Plan (which is not up to date in Aylesbury Vale District), neighbourhood plans will be able to shape and direct sustainable development. The Secretary of State regards this purpose as more than a statement of aspiration. He considers that neighbourhood plans, once made part of the development plan, should be upheld as an effective means to shape and direct development in the neighbourhood planning area in question. Paragraph 198 is clear that, where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.*
>
> *26. In view of the Framework policy on neighbourhood planning, and after having had regard to all the representations in response to his communications of 2 and 20 October 2014, the Secretary of State places very substantial negative weight on the conflict between the appeal proposal and the Winslow Neighbourhood Plan even though its policies relevant to housing land supply are out of date in terms of Framework paragraph 49. He concludes that this and the other adverse impacts, together, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. He therefore concludes that there are no material circumstances that indicate the proposal should be determined other than in accordance with the development plan."*

THE WOODCOCK HOLDINGS CASE

28. Nothing in the ***Woodcock Holdings*** case [**CD13**] undermines the above analysis of Mr Justice Lindblom in the ***Crane*** case. In particular:

a. In so far as the ***Crane*** Issue (1) above is concerned, "Conflict with a Neighbourhood Plan", in ***Woodcock Holdings*** it was held [at 76-78], consistently with and applying ***Crane***, that a proposal for housing on an unallocated site was in conflict with an approved Neighbourhood Plan which contained comprehensive site allocations.

b. Further, and so far as the ***Crane*** Issue (2) above is concerned, "Government Policy in the NPPF", ***Woodcock Holdings*** expressly adopted the approach in ***Crane*** [at 87]. Moreover, the case was factually distinguishable from ***Crane*** since:

    1. In ***Woodcock Holdings*** the Neighbourhood Plan was **still** emerging – it had not completed its statutory process, and the presumption in paragraph 198 did **not** apply; and

    2. In ***Woodcock Holdings***, unlike ***Crane***, it was accepted that the Secretary of State had failed to apply paragraph 49 of the NPPF and consequently did not engage in the ***Crane*** weighting exercise at all [at 88].

29. It is also helpful to bear in mind the other "important differences" between the two cases identified by the Judge in ***Woodcock Holdings*** [at 79], where it was noted that in ***Crane***, unlike ***Woodcock Holdings***, the Secretary of State gave an explicit and detailed explanation as to why the proposal was in clear conflict with the comprehensive spatial strategy of the Neighbourhood Plan.

30. It is with that in mind that I therefore turn to the Haddenham Neighbourhood Plan.

HADDENHAM NEIGHBOURHOOD PLAN

Haddenham Parish Council's Case

31. The Haddenham Neighbourhood Plan [**CD16**] was made as recently as 11th September 2015, barely two months ago, and was the result of extensive community engagement involving surveys, consultations and workshops, having proceeded through the complete statutory preparation process of consultation, sustainability appraisal, examination, a referendum, and the Local Planning Authority's formal resolution to make it. Further, the Plan was

independently reviewed by the Neighbourhood Planning Independent Examiner Referral Service (NPIERS) which was wholly complimentary when it concluded:

> *"This is an excellent report. Comprehensive consultation has been carried out. The Plan meets the basic conditions and could go forward to a referendum."*

32. It did go forward to a referendum and, as noted above, was approved overwhelmingly. It is, therefore, the authentic voice of localism and how Haddenham residents wish to shape and direct sustainable development in their area, ensuring that the best located sites are developed and that other sites are protected from development.

33. The aim of the Haddenham Neighbourhood Plan is to ensure that the area develops and grows, but in a way that is economically, socially and environmentally sustainable and which improves the local communities. Its vision for Haddenham is clearly set out in paragraph 5.0.1:

> *"A well-designed, well-connected village that is a pleasant and vibrant place to live and work; a busy, active and dynamic community with a shared purpose and direction, a sense of history, and a strong community spirit that is valued by residents".*

34. To this end the Haddenham Neighbourhood Plan identifies the features that are central to its vision and the spatial planning that underpins that vision. For example, at paragraph 3.0.2, the point is made that the village lacks both the central focus of the kind found at Thame, Aylesbury, Buckingham, Wendover and the wider range of facilities found in those settlements. Paragraph 6.0.5 states, likewise, that there is, in Haddenham, very limited shopping and no secondary school. As a result, paragraph 6.0.5 goes on to explain that all new development will necessarily generate significant daily out-migration for journeys to work, the majority of shopping, and all secondary school journeys which "will have a significant impact on the transport infrastructure both within, and into and out of, the village and represents a major sustainability challenge".

35. In addition, whilst paragraph 3.3 recognises that the village is well-connected to strategic routes and larger settlements by road and rail, it also says this in relation to the location of the application site adjacent to Church End:

"The village is also reasonably well-served with a bus route (Arriva 280) which connects Aylesbury to Oxford, but recent changes to the route mean that Church End is no longer served by the bus."

36. Chapter 5 sets out six cross-cutting objectives, derived through the consultations in order to help achieve this vision. Importantly, the first of these ("To maintain and improve village spirit") expressly recognises, at paragraph 5.1.1, the:

"… imperative to limit the impact on the Conservation Area and its rural setting from external developments, including impacts on approaches, both long and short views into and out of the village to open countryside, and traffic through, the village core".

37. So far as new housing development is concerned, the Haddenham Neighbourhood Plan sets out both the level and location of the planned growth. The reasons for the amount of new housing planned over the Plan period, and the location of the allocations, are clearly set out in the Plan (see, in particular 6.2 to 6.5 and Annex C [**CD37**]), supported by the Sustainability Appraisal/Strategic Environmental Assessment [**CD31**].

38. In particular, the spatial strategy locates most development on the north side of the village, limiting the adverse impacts of traffic having to use the narrow village streets (since the new dwellings will be within walking distance of the railway station, the principal employment sites at Thame Road and Pegasus Way, and the existing bus services running to Aylesbury, Thame and Oxford); and giving effect to the imperative to limit the impact on the Conservation Area and its rural setting from external developments. See Annex C [**CD37**] at pages 3-4. See also: the Sustainability Appraisal/Strategic Environmental Assessment [**CD31**] at paragraphs 7.21-27, and especially at 7.25-26, which state:

"7.25 The Glebe allocation (HD5, formerly HD6 in the Pre Submission Plan) has increased from 50 to 85 dwellings in the Submission Plan. It is another site that is part of a larger site that is considered by the Parish Council to be unsuitable and unacceptable if developed as a whole. Such a proposal appears to be capable of delivering between 224 and 400 homes, which is of a scale that would be one means of delivering Option A to the Spatial Strategy of Policy 1. This scale of development in this location would have negative effects on the Conservation Area and on traffic and

access that would not be capable of being mitigated with measures in a policy that could overcome these disadvantages.

7.26 However, in dividing the larger site into three and increasing the chosen site to 85 dwellings, the policy will have positive effects on housing without undermining the character of the village or the Conservation Area or creating traffic problems that cannot be effectively accommodated. This appears to be a reasonable compromise that will enable a viable, sustainable development scheme to come forward that will win the support of the local community at the referendum."

39. It is against that backcloth that Policy HD1 sets out the Plan's spatial strategy for sustainable growth to be achieved through the allocation of five sites providing a total of 430 dwellings, setting out a clear justification for the allocation of the five selected sites. Of these:

    a. The airfield site was allocated for business development and up to 300 dwellings (Policy HD2); and

    b. Part, but only part, of the application site the subject of this Inquiry was also allocated for housing development, but only for up to 85 dwellings (Policy HD5).

40. Paragraphs 6.9.1 to 6.9.3 of the Haddenham Neighbourhood Plan explain why the whole of the current application site has not been allocated:

    "6.9.1 This site has been previously proposed for development; the independent inspector … [AVDC Local Plan EIP] found that development of the site for 100 dwellings (the application at the time) would be 'totally unrelated to and impossible to integrate with the rest of the village' with the existing footpath 'singularly unattractive for people walking alone or after dark'. It was also considered that it would destroy the 'sense of Church End in its historic rural setting' and have a seriously detrimental effect on the character and setting of the Church End part of the Haddenham Conservation Area.

    6.9.2 These issues still represent material considerations for future planning applications and would be exacerbated by significantly higher numbers of houses. Development on the site would, in one sense, 'round off' the village but it would increase traffic flow through the

historic core of the village and affect views from the neighbouring properties in Willis Road, The Gables and the eastern side of Church End.

6.9.3 However, by dividing the site into 3 sections, a parcel of land to the north of the site could be delivered without a disproportionately adverse impact on the Conservation Area. The Glebe Lands would also be an appropriate site for a new burial ground – particularly as it is geographically well-connected to St Mary's church. The delivery of a burial ground will be explored by a working group as a specific project as defined in Chapter 12."

41. You will recall that, in his evidence in chief, Professor Sir Roderick Floud took you to the table at page 5 of the Site Assessment Report [**CD37**] which showed the scoring of the different Glebe sites (009A, B and C). Please note that there is a huge discrepancy between the scores attained by the different sites, with the B and C sites achieving a mere 25 points and 20 points respectively. This low scoring of the more general site is simply ignored by the Applicant.

42. And yet much time was spent by Mr Boyle QC in cross examination of both Professor Sir Roderick Floud and Mr Nick Lock on an alleged scoring defect of just 2 points (36 versus 34) of the Glebe 009A Site. As noted above, however, this goes only to the validity of the Plan and is therefore irrelevant as a matter of law in this Inquiry. In addition, the three Plans presented by Mr Lock yesterday, read in conjunction with Sir Roderick's witness statement in the High Court proceedings), show that the scoring of 34 for the 009A Site, arrived at using the same consistent methodology as for all other sites, is correct. And in any event, the sort of nit-picking to which Mr Boyle QC was reduced is wholly misconceived in a neighbourhood planning process, one in which a range of planning judgments had to be made, and in which the strategy arrived at has been endorsed overwhelmingly at referendum, voted for by people who live in the locality and know it intimately from personal experience.

43. As in ***Crane*** (see **CD34** at paragraph 42), the Haddenham Neighbourhood Plan has, therefore, given explicit consideration to the potential development of the whole of the application site and rejected that for reasons which are clearly set out and have been endorsed by the local community. Moreover, it has allocated just one part of the site for housing and for up to 85 dwellings only.

44. The development proposed in this application therefore conflicts with the spatial strategy of the Haddenham Neighbourhood Plan in exactly the same way as the proposed development in ***Crane*** conflicted with the Neighbourhood Plan then in issue:

    a. The allocations in Policies HD2-HD6 represent both the acceptable location and level of new housing development and were the result of a process of selection, having emerged as the sites chosen for allocation in the light of public consultation and the evaluation of options.

    b. In deciding which sites should be allocated for housing and which should not, the Parish Council had considered the sustainability of the new housing it was planning.

    c. It followed that a proposal for housing on a site other than those allocated would not accord with the Plan and would be contrary to its spatial strategy for housing development.

    d. The notion that the Plan, properly construed, allowed for development other than in accordance with the allocations would negate the spatial strategy which the Parish Council conceived and the local community endorsed.

    e. Such an argument could not be reconciled with the true purpose and effect of the allocations – if right, there would have been no point in the Parish Council going through the exercise of selecting the sites it allocated for housing development

45. Moreover:

    a. Since the Haddenham Neighbourhood Plan has been made very recently and forms part of the development plan, unlike in ***Woodcock Holdings***, paragraph 198 of the NPPF applies, so that there is a clear presumption against planning permission being granted; and

b. The proposal's conflict with the Neighbourhood Plan is, in itself, "a powerful and decisive factor against granting planning permission", in the words of ***Crane*** [at 78], significantly outweighing the benefit of providing additional market and affordable housing.

46. This proposal should, therefore, be considered in exactly the same way as the Secretary of State considered the proposal in ***Crane***. To do otherwise would, again in the words of ***Crane*** [at 77], "undermine public confidence in neighbourhood planning", and particularly so given that the Neighbourhood Plan has only "just emerged from its statutory process" and the proposed development is "clearly alien to the Parish Council's vision for its area manifest in the Neighbourhood Plan."

Rebuttal of Council's Case

47. Aylesbury Vale District Council has, however, adopted a stance significantly departing from the Secretary of State's position in ***Crane*** (a position which, as already described, has been upheld as a matter of law by the High Court) and announced, in its July 2015 "Briefing Note"[3], that: "… we cannot reject housing applications just because there is conflict with housing supply policies in a recently made or draft Neighbourhood Plan."

48. Following the "leaking" of the above Briefing Note a further "Clarification Note" was circulated on behalf of Aylesbury Vale District Council, on 4th August 2015 [**CD15**], which stated as follows in its most relevant part:

> *"… [T]he Woodcock judgement … states that the Secretary of State accepts that paragraph 198 does not give "enhanced status to neighbourhood plans as compared with other statutory development plans". The Secretary of State has therefore agreed that his interpretation of paragraph 198 of the NPPF which formed the basis of the previous judgement [Crane] was not correct."*

49. It would seem to be the case, therefore, that this Council consider that the above concession in ***Woodcock Holdings*** (recorded by the Judge at [24]), whether rightly made or not, means that ***Crane*** is wrong in law, and by inference his Winslow Decision Letter [**CD46**] also.

[3] "Implications of a recent court judgement in relation to neighbourhood plans and the approach to the determination of planning applications" [**CD14**]

50. However, that concession is completely irrelevant to ***Crane***, the true basis of which judgment was **not** any assertion or finding (none was ever made in ***Crane***) that Neighbourhood Plans do have enhanced status (whatever that might mean) over and above other parts of the development plan. Rather, and as already made clear, the judgment in ***Crane*** proceeded entirely upon an entirely different basis, being that:

    a. Where there is a breach of **any** development plan, it is for the decision-maker to consider whether he should nevertheless grant planning permission, weighing other material considerations against the statutory presumption in favour of the development plan enshrined in section 38(6) of the 2004 Act [at 63].

    b. In undertaking that balancing exercise, neither paragraph 49 of the NPPF nor paragraph 14 prescribe the weight to be given to policies in a plan which are out-of-date, which was entirely for the decision-maker (albeit they will "normally", **not** necessarily, be given less than the weight due to policies which provide fully for the requisite housing supply) [at 71].

    c. However much weight the decision-maker gives to housing land supply policies that are out-of-date, the question he then has to ask himself under paragraph 14 of the NPPF is whether, in the particular circumstances of the case before him, the harm associated with the development proposed "significantly and demonstrably" outweighs its benefits, when assessed against the policies in the NPPF "taken as a whole", or specific policies in the NPPF indicate development should be restricted. The reference in paragraph 14 of the NPPF to its policies being "taken as a whole" is important and requires a decision-maker applying the presumption to consider every relevant policy in the NPPF including "the policy on neighbourhood plans in paras 183 to 185, and the policy on determining applications where there is conflict with an extant neighbourhood plan, in para 198" [at 72-73].

    d. In this regard, the Secretary of State was fully entitled to give "very substantial negative weight" to the conflict between the appeal proposal and the recently approved Neighbourhood Plan, even though the Plan was currently out-of-date in

terms of housing land supply, given that it had just emerged from its statutory process and made manifest the Parish Council's vision for its area and to give, additionally, significant weight to paragraph 198 of the NPPF [at 75-77]

51. The lawfulness of attributing "significant weight" to paragraph 198 of the NPPF in respect of the breach of a very recently approved Neighbourhood Plan, even when the Local Planning Authority do not have a 5 year housing supply, was not, therefore, the result of any "enhanced status" being given to a Neighbourhood Plan over and above any other part of the development plan. Rather, it was simply a result of the section 38(6) test and the NPPF approach, in which the Secretary of State was entitled to attribute whatever weight he thought appropriate to the breach of that Neighbourhood Plan, even though its policies were out-of-date, including very substantial weight, noting (especially) that:

    a. The statutory and policy framework clearly accommodate the possibility of a Neighbourhood Plan being made when the Local Plan does not provide for a 5 year housing supply, so as to be out-of-date on being made;

    b. In that case the Neighbourhood Plan had been made in such circumstances, following full consultation and all due statutory processes, very recently indeed;

    c. So made, the Neighbourhood Plan established the Parish Council's vision and spatial strategy for that locality;

    d. The planning application was for a proposal in breach of that vision and strategy; and

    e. Paragraph 198 of the NPPF was part of the relevant policy framework, and one of the material considerations to which the Secretary of State had to have regard, when deciding what weight to attribute to that breach.

52. Moreover, the following points also need to be made with regard to the cases of ***Crane*** and ***Woodcock Holdings***:

a. ***Crane*** itself was never appealed;

b. ***Woodcock Holdings*** did not overturn or disagree with ***Crane*** (and neither has any other case); and

c. Most importantly, not only is ***Woodcock Holdings*** entirely distinguishable from ***Crane*** on the facts, but it also plainly endorses ***Crane*** on the law. In particular:

    1. In [87], [105] and [107] of the judgment in ***Woodcock Holdings*** the learned Judge agreed with Mr Justice Lindblom in ***Crane*** [at 71] that the NPPF does **not** prescribe the weight to be given to out-of-date policies when undertaking the paragraph 14 NPPF balancing exercise (in application of paragraph 49 of the NPPF when housing supply policies are out-of-date because of the lack of a 5 year supply of housing land).

    2. In [88] of the judgment in ***Woodcock Holdings*** it is made plain that the Secretary of State had **not** applied paragraph 49 of the NPPF to the policies of the draft Neighbourhood Plan at all, and the paragraph 14 NPPF balancing exercise was **never** carried out in that case (because the Secretary of State wrongly thought that it did not have to be in respect of an emerging Neighbourhood Plan but only in respect of a made Neighbourhood Plan).

    3. By way of contrast that balancing exercise had been undertaken (and found to be exemplary by Mr Justice Lindblom) in the context of the made Neighbourhood Plan in the ***Crane*** case; and

    4. The learned Judge in ***Woodcock Holdings*** went out of his way to distinguish ***Crane*** from ***Woodcock Holdings*** by reference to the following:

        a) He specifically contrasted [at 77] the "poor quality of the reasoning" in the decision letter then in issue to the "clear reasoning of the decision letter" in ***Crane***; and

b) He pointed out [at 79] that in ***Crane***, unlike in ***Woodcock Holdings***, the Secretary of State had given an explicit and detailed explanation as to why the proposal was in clear conflict with the comprehensive spatial strategy of the Neighbourhood Plan then in issue.

53. Hence the proposition made by Aylesbury Vale that "… we cannot reject housing applications just because there is conflict with housing supply policies in a recently made … Neighbourhood Plan" [**CD14**] is simply wrong, as is its explanation for adopting that position.

54. And that mistake made by Aylesbury Vale really matters, not just for Haddenham but for the whole Vale. So far as we understand matters, the Secretary of State has had to call-in a number of applications to Aylesbury Vale District Council which directly conflict with the relevant made Neighbourhood Plans and in which the recommendation had been to approve the application – on a site in Buckingham, another in Great Horwood, and here in Haddenham.

Rebuttal of Applicant's Case

55. I have already made the point that the Applicant's evidence, like the Council's, simply ignores the case of ***Crane***, and that it ignores, also, paragraph 198 of the NPPF. The consequence is that the entirety of the Applicant's case is also ill-founded.

56. I give two obvious examples (beyond the misconceived notion, which I have already addressed, that the fact the Applicant is seeking permission to claim judicial review of the making of the Haddenham Neighbourhood Plan is a material planning consideration which somehow reduces its weight). They are, however, important examples: the decisions on Issues (1) and (2), as decided in ***Crane.***

Issue (1) – Conflict with the Neighbourhood Plan

57. At paragraph 7.36 of Mr Weaver's Proof of Evidence he asserts that the proposal before us is not contrary to the Haddenham Neighbourhood Plan, all on the basis (as explained by Mr Weaver in paragraphs 7.37-7.42 of his Proof of Evidence) of the re-drafting of Policy HD1 following consideration by the independent examiner so that it reads as follows:

"Policy HD1: The Neighbourhood Plan supports sustainable growth. To achieve this Policies HD2-HD6 allocate specific development sites in the Neighbourhood Plan."

58. This, it is said, properly construed, does not prohibit development on unallocated sites, and is to be taken to mean that there is no breach of the Neighbourhood Plan by a proposal for a very significant housing development on a site that has been considered for allocation in that Plan and roundly rejected.

59. Mr Weaver's position, with respect, relies on reading the first sentence of Policy HD1 in splendid isolation and wholly ignoring the rest of the Plan, including the very next sentence in Policy HD1, which makes it unambiguously clear that the support for sustainable growth expressed in the first sentence is to be achieved by the allocations in Policies HD2-HD6. This taking of a phrase out of context by Mr Weaver is a transparently illegitimate approach to interpretation of policy.

60. Mr Weaver's argument has, moreover, been roundly rejected by Mr Justice Lindblom in ***Crane*** [at 42-48], and in particular as follows [at 48]:

"48. As Ms Lieven points out, Mr Hill's argument cannot be reconciled with the true purpose and effect of the allocations in policy H1. If the interpretation of the plan urged on me … were right, there would have been no point in the parish council going through the exercise of selecting the sites it allocated for housing development and formulating the policies and text which support those allocations. That, I think, is beyond any sensible dispute."

61. Indeed, Mr Weaver's argument did not find favour even in ***Woodcock Holdings***, upon which case Mr Weaver does purport to rely, with the learned Judge accepting [at 76-77] that the Secretary of State had been entitled to conclude that a proposal for housing on an unallocated site was in conflict with the approved Neighbourhood Plan.

62. Moreover, it is implicit in the fact that the Applicant is seeking to challenge the Neighbourhood Plan by way of judicial review that the Applicant itself acknowledges that it is prejudiced by the Neighbourhood Plan, and precisely because there is such a significant

difference between that Plan and this proposal, the point made by Mr Gilbert in his Proof of Evidence at paragraph 6.

Issue (2) – Government policy in the NPPF

63. Further, the Applicant has simply ignored what Mr Justice Lindblom held in ***Crane*** in respect of the weight to be attached to that breach of the Neighbourhood Plan, taking no cognizance at all of the very clear finding [at 77-78] that the Secretary of State was entitled to find that a proposal's conflict with a recently **made** Neighbourhood Plan is, in itself, a "powerful and **decisive** factor" against granting planning permission under the balancing test prescribed by paragraph 14 of the NPPF.

64. And that factor was "decisive" in the ***Crane*** case:

    a. **Even when** the policies for the supply of housing in the development plan, including (necessarily) those within that Neighbourhood Plan, are out-of-date and the proposed development would add to the supply of housing in the district; and

    b. **Even if** the proposal would not, for example, cause unacceptable harm to the character and appearance of the area and would be sufficiently accessible.

65. That signals the importance attached by the Secretary of State to neighbourhood planning and the spatial strategies in Neighbourhood Plans, approved by referendum, and by which local communities expect to shape and direct development in their area. And yet you find no reflection of that in any part of Mr Weaver's evidence – see for example paragraphs 5.44, 6.6 and 7.30-7.34 of his Proof of Evidence. He has simply ignored the most relevant legal authority on this flagship legislation for neighbourhood planning and the approach it requires.

66. Under cross examination, Mr Weaver sought to distinguish ***Crane*** on the basis that in that case the Neighbourhood Plan made provision beyond the Core Strategy, but that is a distinction without a difference since both cases involve circumstances in which there is a lack of a 5 year supply. And in any event (as Mr Weaver accepted in cross examination) his point about the Core Strategy in the ***Crane*** case has no application to the Winslow decision letter [**CD46**], and

yet in that decision, too, "very substantial negative weight" was given to conflict to the Neighbourhood Plan leading to the dismissal of the appeal.

67. Finally and since the Applicant has also relied on the Earls Barton decision letter [**Weaver Appendix 13**] (although it was not put to the Parish Council's witnesses in cross examination), please note the following two points:

    a. First, the Earl's Barton Neighbourhood Plan was, as was the Neighbourhood Plan in ***Woodcock Holdings***, an **emerging** Plan only. However, Haddenham has a **made** Neighbourhood Plan, as was the case in ***Crane***.

    b. Second, the application in Earls Barton comprised just 39 dwellings for a settlement with around 2,350 dwellings and a Neighbourhood Plan growth target of just under 400 dwellings, representing about 1.7% overall growth and a 10% higher figure than the growth target. However, at Haddenham, the figures are over 10% overall growth and a 45% higher figure than the Neighbourhood Plan housing growth target.

SITE SPECIFIC ISSUES

68. It has already been noted that the proposal's conflict with the Neighbourhood Plan is, in itself, "a powerful and decisive factor against granting planning permission", in the words of ***Crane*** [at 78], significantly outweighing the benefit of providing additional market and affordable housing. That was so, in ***Crane*** [at 77-78], even though:

    a. The policies for the supply of housing in the development plan were not up-to-date and the proposed development would add to the supply of housing in the district; and

    b. The proposal then before him would not cause unacceptable harm to the character and appearance of the area and would be sufficiently accessible.

69. Hence, I do not propose to dwell at length in closing on the additional, site specific, harms to which this development would give rise. That is not, however, to underrate their importance

and I urge you to pay careful attention to the range of evidence you have heard on site specific matters, both from the Parish Council and from the various local residents who have given evidence in opposition to this application. I will address site specific matters under two headings: sustainability and heritage. In both cases, they arise by reference to the infelicitous location of the site.

Sustainability

70. The application site lies on the south side of Haddenham, well away from the two primary destinations of the railway station and the business parks on Thame Road and Pegasus Way, all of which lie on the north side of the village. As a result, there would be increased traffic along the narrow village streets as commuters travel to the railway station and the business parks. This is contrary to vision of the Haddenham Neighbourhood Plan and its spatial strategy.

71. In addition, although the amenities within the centre of the village are potentially within walking distance of the application site for some people, the elderly and those with children are unlikely to make the journey on foot, particularly in inclement weather. The Local Plan Inspector in 2002 recognised the limitations of the Aston Road site in this respect (at paragraphs 9.1.37 and 9.1.38 of his report [**CD10**]), which again confirms the relatively unsustainable location of the application site.

72. Furthermore, and despite assurances given in the planning application, it is very possible that Church End will not benefit from an improved bus service to overcome its current lack of accessibility by sustainable transport modes. Arriva withdrew its 280 service (Aylesbury-Thame-Oxford) from Church End a few years ago, and as recently as October 2014 the company informed a public meeting that it has no plans to reinstate the service to the southern end of the village. To do so would only serve to delay passengers who use the service to get to Aylesbury, Thame and Oxford along the A418 to the north of Haddenham. Although the Applicant suggests that an annual payment of £97,566 will be made by way of a Bus Service Contribution, the Section 106 is unsupported by any costings and brings with it absolutely no guarantee that any bus operator will commit itself to the service described, in which case any such payment could simply be reimbursed to the Applicant.

73. That really matters because, as identified by the County Highways Authority in their letter of 11th November 2014 commenting on the planning application (Appendix AHJ/A to Mr Jones' Proof):

> *"It is essential that the non-car accessibility requirements of the site are met, otherwise the development will become isolated and car dominated, contrary to policy."*

If the Secretary of State cannot be sure that the bus service improvements can be delivered, permission should be refused on this basis alone.

74. Permission should also be refused if the Secretary of State cannot be sure that a footway along Aston Road can acceptably be delivered. That follows from the terms of the same letter from the County Council and their required Condition 2 and depends on land ownership, the dimensions and other characteristics of the verges, and full consideration of the potential heritage impacts.

Heritage

75. By statute and policy, heritage has a special place in the planning system. In particular:

a. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("PLBCAA") requires "special regard" be had to the desirability of preserving listed buildings or their settings; and section 72(1) of the same Act provides a similarly worded and equivalent duty with respect to buildings or other land in a Conservation Area.

b. In a recent Court of Appeal case, ***East Northamptonshire District Council v Secretary of State for Communities and Local Government*** [2015] 1 WLR 45 [**CD42**], it was found that the desirability of preserving or enhancing listed buildings and their setting should be afforded "considerable importance and weight". The Court also found that the nature of the parallel section 72 duty, despite a slight difference in wording, was the same.

c. It has subsequently been confirmed in ***R (on the application of The Forge Field Society and others) v Sevenoaks District Council*** [2015] JPL 22 [**CD43**] that:

1. A finding of harm to the setting of a listed building or to a Conservation Area gives rise to a "strong presumption" against planning permission being granted - the presumption is a statutory one.

2. Whilst that presumption can be rebutted, the other material considerations (or "public benefits" under the terms of the NPPF) must be ″powerful enough to do so" [at 49].

3. If the justification is that there is a need for development of the kind proposed, which in this case there was, but the development would cause harm to heritage assets, which in this case it would, the possibility of the development being undertaken on an alternative site on which that harm can be avoided altogether will add force to the statutory presumption in favour of preservation. Indeed, the presumption itself implies "the need for a suitably rigorous assessment of potential alternatives" [at 59].

d. The importance of the "strong presumptions" created by sections 66 and 72 is also shown by the fact that they have to be "demonstrably applied" i.e. given clear and express recognition and application in decisions (see: ***R (Hughes v South Lakeland DC*** [2014] EWHC 3979 (Admin) [at 53 and 56] [**CD44**]).

e. Paragraph 132 of the NPPF requires "great weight" to be given to the conservation of designated heritage assets. It also states that "the more important the asset, the greater the weight should be" and gives Grade I and Grade II* listed buildings as "designated heritage assets of the highest significance". And paragraph 134 (which requires to be read in conjunction with paragraph 132) requires that "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use."

76. Hence, and as a matter of both law and policy, it is wrong to treat "less than substantial harm" to the setting of a listed building or a Conservation Area as a "less than substantial objection" to the grant of planning permission: see ***East Northamptonshire*** at [29]. Rather, such a finding gives rise to a statutory "strong presumption" against planning permission being granted and, if that presumption is to be rebutted, other material considerations must be "powerful" enough to do so. Further, the presumption gives rise to the need for a suitably rigorous assessment of potential alternatives.

77. In this case, Haddenham has a highly significant Conservation Area through its historic core, including numerous listed buildings. Paragraph 5.1.1 of the Neighbourhood Plan notes that "the community … recognize an imperative to limit the impact on the Conservation Area and its rural setting from external developments, including impacts on approaches, both long and short views into and out of the village to open countryside, and traffic through, the village core" and Mr Bell rightly accepted in cross examination that this imperative was an appropriate one. He also accepted that the spatial strategy in the Neighbourhood Plan (including the HD5 allocation being limited to 85 dwellings) was informed by a consideration of heritage issues, that the spatial strategy arrived at had the strong support of the local community as expressed through the referendum, and that the application scheme is far larger than that envisaged by the Neighbourhood Plan.

78. Yet both he and Ms Jarvis maintained, contrary to the clear views of the local community, that the application scheme could be brought forward without any heritage harm. Both distanced themselves from the original views of Officers and relied on the much more brusque findings in the Corrigendum of no heritage harm. Indeed, Mr Bell went even further than this in his oral evidence (though notably not in his Proof) and suggested that the net impact of the proposal in heritage terms would be beneficial.

79. With respect, the views of the Parish Council and the local community they serve should be preferred. Indeed, Mr Bell's evidence in particular needs to be treated with very considerable caution given his startling ignorance of certain basic matters. To take two examples:

    a. His Proof of Evidence makes no reference to the Grade II* listed buildings of Grenville Manor (at 3 Aston Road), the Barn to the South-West of Manor

Farmhouse, Church Farm House (at 13 Church End) and The Turn (Townside)[4]. When the Inspector raised the issue of Grade II* listed buildings, Mr Bell appeared unaware of them and then stated that they were "not in the vicinity of the site", something which is plainly incorrect (particularly so far as Grenville Manor and Church Farm House are concerned).

b. Even more startlingly, Mr Bell was ignorant of the fact that the Grade I listed Church is lit at night, a matter which should be completely obvious to anyone who has seen the Church at night and, indeed, anyone who has visited the Church at all, whether by day or night.

80. How Mr Bell felt able to judge heritage impacts in the absence of such fundamental information simply beggars belief. Let me, then, make some straightforward points on heritage impact.

81. First, as noted above, the Application is fundamentally reliant on the delivery of a footway along Aston Road. In cross examination, the alternative footways shown on Figures SCGT/4 and SCGT/5 were put to Mr Bell and his comments are highly revealing. Both plans show how close the footway would run to the Grade II* listed Grenville Manor at 3 Aston Road and yet Mr Bell at no stage referred to this until it was put to him in cross examination. He then accepted that the footway could cause heritage harms if designed in certain ways but asserted that it would not cause any harm if designed well. That is not correct – as noted by the Inspector, the lack of footways in this area contributes to the rural character of the setting of the conservation area and listed buildings and so any footway will cause heritage harm. Further, and in any event, Mr Bell had no knowledge of Buckinghamshire County Council's Highway Protocol for Conservation Areas and neither he nor any of the other Applicant witnesses could give any detail of how the footway might be constructed. As a result, even if certain sorts of footways would not cause heritage harms in this area, there is no likelihood on the evidence available that such a "harmless" footway would be achievable. The Secretary of State must therefore proceed on the basis that the footway cannot be delivered without heritage harm.

[4] See [**CD23**]

82. Second, Mr Bell accepted that there were views of the Church tower from Stanbridge Road. His position (Proof paragraph 5.7) was, however, that the affected views would be "distant and occasional". This considerably understates the nature and importance of the views of the Church Tower, as Mr Gilbert noted, and as you will see from your site visit. There are a considerable number of very clear views of the Church tower, currently over an agricultural field but what would become the very large area of housing development in the application scheme. Mr Bell also accepted the "rural character" of Aston Road, though he held to the astonishing position (paragraph 4.25 of his Proof) that this rural character "will not change significantly" as a result of this 280 dwelling scheme and all of its inevitably associated impacts. It is straightforwardly inevitable, however, that a substantial housing proposal in this location, with all its associated impacts, will cause heritage harms.

83. Third, one such impact is traffic generation. Mr Bell accepted that traffic impacts could in principle cause heritage harms, but he suggested there would be no such harms in this case. Yet he was not clear on what those traffic impacts would be. And, indeed, there is intrinsic uncertainty on those impacts, since it is not clear whether there will be a car park for the proposed burial ground. If there is a car park on site, it will contribute to the traffic impacts on heritage from the site. If there is not, it will result in increased traffic impacts in the Conservation Area. None of this appeared to have been considered by Mr Bell in his view that traffic impacts would not cause heritage harms in this case.

84. Applying all of the above to this case, it is clear that the proposal will inevitably cause heritage harms. It conflicts with the protection afforded by the Neighbourhood Plan to the Conservation Area and the listed buildings it contains. It is subject to the statutory "strong presumption" against planning permission being granted which is harmful in heritage terms. "Great weight" counts against it under paragraph 132 of the NPPF. And under the paragraph 134 test, its public benefits are manifestly insufficient to outweigh the heritage harms. It is also quite clear that a housing development such as this could easily be developed on another site where heritage harm would not be an issue.

85. The heritage impacts of this proposal therefore provide an additional compelling basis for refusing permission, especially noting footnote 9 to paragraph 14 of the NPPF.

CONCLUSION

86. As Mr Justice Lindblom correctly observed in ***Crane***, neighbourhood planning is seen by the Secretary of State to whom you are reporting as an important part of the localism agenda. So it is; the Secretary of State has twice decided that the statement in paragraph 185 of the NPPF that Neighbourhood Plans will be able to shape and direct sustainable development in a neighbourhood is "more than a statement of aspiration"[5].

87. But for this to be achieved, local volunteers, publicly spirited and unpaid, have to give up their own time, assess the alternative possibilities, consult widely, and have their proposals subjected not just to independent examination but also to referendum, thus ensuring that the basic conditions and other requirements are met and that those proposals accurately reflect the will of the people who live there and not just those who take a lead in the process by which the proposals are first formulated.

88. That, of course, was here done and the proposals were emphatically endorsed by those who live in Haddenham and who overwhelmingly supported the spatial strategy, and the vision, of the Haddenham Neighbourhood Plan.

89. And yet, despite that overwhelming public support, those unpaid, local volunteers who brought forward the Neighbourhood Plan to public acclaim, have now been made subject to a frankly hostile approach from the Applicant for having done so. For example:

    a. The Applicant produced considerable documentation on the first day of the Inquiry [**CD47-56**] without any explanation as to why this could not have been produced in advance of the Inquiry (as the Parish Council had, despite a clear inequality of arms, very fairly done with the Core Documents it had added [**CD37-46**]).

    b. That additional documentation produced by the Applicant included a Plan [**CD49**] which identified Sir Roderick Floud's personal address and that of two others. The Plan was put to him in cross examination, with the obvious intention of seeking to imply that he was improperly influenced by personal interest – and yet no direct question was even asked of him with regard to this implied accusation so as to

[5] **[CD38]** and [**CD46**]

enable him to meet it. He therefore had to do so as a member of the public in the public session and very fairly pointed out that:

1. The Plan produced by the Applicant did not mark the homes of others involved in the Plan-making process and who lived in places close to the allocations;

2. It is an inevitable, wholly unavoidable, consequence of localism that those who do take the lead in formulating Neighbourhood Plans will live locally – they are meant to be 'locally' generated; and

3. The allocations which were proposed were tested by referendum and overwhelmingly supported by local residents.

c. The suggestion was made, this time in cross-examination of both Professor Sir Roderick Floud and Mr Nicholas Lock, that it was in some way improper of the Haddenham Parish Council to seek to have the Neighbourhood Plan sufficiently progressed for it to be taken into account, and given weight, in the decision on this Application – and yet it is a Core Principle of the NPPF that planning should be genuinely Plan-led; and the proper and intended role of a Neighbourhood Plan is, in a Plan-led system, precisely that it be able to shape and direct sustainable development in the neighbourhood. It is no fault of the Parish Council that the Application was made according to a developer's timetable which was designed to pre-empt the making of the Neighbourhood Plan and its ability to exert that intended influence.

d. Both Professor Sir Roderick Floud and Mr Nicholas Lock were subjected to hostile cross-examination, the former taped, questioning in huge detail the veracity of their recollections of the Plan-making process, one which has been candidly explained and led to the emergence of proposals which were overwhelmingly approved by local residents, and when such questioning went only to the validity of the Plan – a matter wholly irrelevant to this Inquiry, for reasons of law.

90. Neighbourhood Planning was surely not meant to be undertaken in this way; it cannot possibly have been the intention of the Secretary of State to encourage local residents to formulate Neighbourhood Plans and then to be exposed to such attacks. Thankfully, the spokespeople for Haddenham Parish Council are robust enough to withstand such hostility; but for others, elsewhere, the kind of experiences to which they have been made subject will be a profound disincentive to getting involved and participating in the process. The Secretary of State does need to understand this and to make clear to developers that they should show a little more restraint and respect.

91. Returning to the main matter in hand, and for all of the reasons which I have set out above, the Parish Council respectfully invites you to recommend to the Secretary of State the refusal of planning permission for this proposal.

92. In particular, granting planning permission would undermine the credibility of the whole neighbourhood planning process since it would involve the aspirations of the local community being put aside for this proposal, notwithstanding that it conflicts with the Neighbourhood Plan's strategy and less than three months after that Plan has been made. That, of itself, is "a powerful and decisive factor" against granting planning permission as decided in ***Crane*** [at 78]; and all the more so when the proposal causes additional harms – on designated heritage assets and in terms of accessibility – precisely because it fails to reflect the Neighbourhood Plan's vision as to how to shape and direct sustainable development in Haddenham.

93. In the end, this case is, essentially, indistinguishable from ***Crane*** and the public interest in consistent decision-making[6] therefore compels that the same decision be reached.

PAUL STINCHCOMBE QC

NED HELME

39 Essex Street Chambers, London, WC2R 3AT

27th November 2015

[6] ***North Wiltshire DC v Secretary of State for the Environment*** [1993] 65 P & CR 137