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Alastair Nicholson  
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HP11 1BB

Your Ref:

Our Ref: APP/KO425/W/15/3140361

Date: 18 May 2017

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Dear Mr Nicholson

## **APPEAL AT FORMER GLORY MILL, GLORY PARK AVENUE, WOORBURN GREEN**

Thank you for your email and attachment of 29 March raising concerns about this appeal decision. Please accept my apologies for the delay in replying, due to the Inspector needing to review appeal representations before providing the comment which have informed my investigations into the points you have raised. I am also sorry to read that you are so dissatisfied with the decision.

I should begin by explaining that it is beyond the remit of the Planning Inspectorate's complaints investigation procedures to establish the "correctness" or otherwise of an Inspector's reasoning or planning judgement. Whilst we can investigate matters of fact or process, planning legislation gives us no remit to elaborate on what an Inspector has concluded or question their reasoning. We can only assess the factual accuracy of the decision and establish whether or not the Inspector has taken into account all of the evidence submitted and that his conclusions are adequately supported by his reasoning.

For ease of reference, I shall use the same numbering of points in my responses as used in your letter:

### **1. Housing Shortfall**

It does not appear a matter of dispute between the parties about whether or not a five-year housing land supply could be demonstrated at the time of the inquiry. The Statement of Common Ground makes this clear at section 5; it is reiterated in (amongst other places) the Council's opening submissions at paragraph 12 and the appellant's closing submissions at paragraph 2. As you say, the Phides Estates judgment requires decision-makers to consider the extent of any shortfall against the five-year supply requirement as this would affect the weight to be given to policies rendered "out-of-date" by reason of NPPF paragraph 49 and to the proposal's benefits in terms of increasing the supply of housing.

I note your view that the Inspector failed to consider the degree of housing shortfall but it seems clear that evidence based on the 2015 HEDNA figures, as set out in the Statement of Common Ground, indicated that the council were unable to demonstrate a figure supply greater than 3.8 years' supply (including a 5% buffer). Despite the

updating of this figure through the 2016 HEDNA, it seems apparent that despite a reduction in the FOAN, a five year supply could still not be shown. The Inspector clearly assesses this degree of shortfall as being between 3.8 and 5 years' supply, so the range is limited and the shortfall is not a massive one.

The judgment in *Shropshire Council v SSCLG and BDW trading Ltd* confirms that the requirement to properly assess the degree of housing shortfall does not require the kind of detailed analysis that takes place at a Development Plan Inquiry, nor is it always necessary to identify a specific figure - a bracket or range is acceptable. As the Planning Practice Guidance makes clear, establishing a full objective assessment of housing need (FOAN) is not an exact science and no single approach will provide a definitive answer. However, I am satisfied that the Inspector has undertaken the required assessment of degree of shortfall in reaching his conclusion on this issue, as demonstrated in decision paragraph 18.

I should also say that case law has made it clear that an Inspector deciding a planning appeal is not making an authoritative assessment which binds the council in other cases. The Inspector's conclusions in this appeal apply only to the specific proposal before him. They should not automatically be carried forward to other appeals as circumstances surrounding housing land supply will inevitably vary with time - future housing applications will inevitably feature different evidence, a primary consideration would be the housing land supply situation in existence at that point in time. Such evidence would clearly need to be considered and weighed afresh, and either the council or an Inspector may consider some of these to be acceptable. Other extant permissions that are currently dormant may also be implemented, affecting the overall supply situation.

As with the housing land supply, supply of land for offices can change over time and consideration of any future application would involve the need to update the figures, including viability. Other material considerations such as the high vacancy rate for offices in the area may change by the time of a future inquiry.

## **2. Factual misrepresentation of evidence**

I should firstly confirm that there is an important typographical error in paragraph 37, where the Inspector has inadvertently stated that there is "no shortage" of land for Class B1 offices. This should read "a shortage", a point which I understand was accepted by both parties. In the Inspector's planning balance conclusions in paragraph 58, he states that there would be some economic harm arising from the potential loss of employment uses on this site, which is in line with what he intended to say in paragraph 36. Please accept my apologies for this unfortunate typographical error and for any consequent confusion. Were the decision still within the 42 day High Court challenge period, the Planning Inspectorate may well have taken the view that it would be in the public interest to correct this error under the powers available in Section 56 of the Act but as this timescale has expired, legislation no longer allows us that option.

You will appreciate that the assertion that the Inspector has misrepresented the facts, in respect of the HEDNA and sequential test, is difficult to address through our complaints procedures. The Inspector's conclusions were based upon his professional assessment of the evidence before him but interpretation will inevitably involve reasoning and judgement, which as I have said above, we have no remit to question. The Courts would be the appropriate means of recourse where issues of this nature are concerned.

Concerning viability, the Inspector considers this matter in paragraph 36-37 and concluded that the approved offices on the site are not viable. The location of offices is also covered in paragraph 37 whilst paragraph 30 references Core Strategy Policy CS2. This identifies High Wycombe as the main focus for new development with its town

centre being the main location for large scale office uses, rather than smaller and more isolated sites such as the former Glory Mill, which is in accordance with the NPPF. The Inspector's conclusion on the likelihood of the site coming forward for offices is at the end of that paragraph. As the decision makes clear, his conclusions were based on a combination of specific factors that indicate to me that they are not unreasonable and that the Inspector has not misunderstood the Core Strategy aims.

### **3. Clarity and Coverage**

It is a well-established principle of planning case law that Inspectors do not need to mention every single material consideration in their decisions (other than to demonstrate that they have fulfilled any relevant statutory duties, such as conservation area considerations, etc.). They are only required to deal with the main or principal controversial issues between the parties, on which the acceptability or otherwise of the proposal turns and the decision document is not intended to act as a record of everything submitted or discussed at the inquiry.

The Courts have also consistently found that whilst Inspectors must, of course, give reasons for their conclusions, they are not required to provide reasons for those reasons. It is a matter of planning law that Inspector's must consider all material considerations but the weight they ascribe to them is a matter solely for their professional planning judgement. Not even the Courts would interfere in matters of professional judgement or weight unless they can be shown to be perverse, or "Wednesbury Unreasonable". I do not consider that to be the case in this instance.

I note your view that the Inspector fails to conclude on all of the identified main issues in his decision. However, it appears to me that paragraphs 18-28 assess the issue of housing land supply and conclude that the council were unable to demonstrate a five-year supply; employment land is covered in paragraphs 29-42, finding that the loss of the whole site to residential use would not be in accordance with Local Plan Policy E3 and would also result in the displacement of a long-established source of local employment (albeit that the harm would be limited); provision for community services is dealt with in paragraphs 43-46, concluding that adequate provision had been provided for, particularly in respect of affordable housing and education, whilst paragraphs 51-57 find in favour of the proposal in terms of the economic, social and environmental aspects of sustainability.

The Inspector's consideration of where the planning balance should lie, given that he found in favour of the proposal on all but one of the main issues, follows on in paragraphs 58-60. It appears to me that the Inspector's reasoning is cogent and detailed. I am therefore unable to agree with your view that the decision is lacking in coverage or thoroughness in respect of the main issues, although I recognise that you may disagree.

That said, it is of course the council's prerogative to take a different stance in respect of the issues raised and the Inspector's conclusions should a revised application be made. I would agree that in that event, many of the issues would need to be considered afresh concerning residential development on this site, as circumstances may well change in respect of the five-year housing land supply and the need for employment land.

I hope this is helpful.

Yours sincerely

*Ashley K Gray*

Customer Quality Team

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**Appeal Ref: APP/K0425/W/15/3140361**

**Former Glory Mill, Glory Park Avenue, Wooburn Green, Buckinghamshire HP10 0DF**

**Proposal (as amended): Residential development in a mix of houses, town houses and apartments for up to 110 units with associated works and infrastructure**

Dear Sir or Madam,

I wish to lodge a complaint on behalf of Wycombe District Council as the Local Planning Authority regarding your Inspector's decision of 3 January 2017 on the above appeal (copy attached). Despite considerable expense at the Inquiry (on both sides) there are a number of key points in the appeal that have not been clearly determined. This results in an unacceptable lack of clarity for the LPA, the landowner, the existing business on site, and the local community. Whilst the appeal was dismissed, and we have not subsequently pursued a judicial review, we feel it is important to put on public record our position.

The essence of our complaint is that:

- The decision fails to consider the degree of housing shortfall and the impact of this on the weight to be given to the benefits of the scheme.
- The decision materially misrepresents the facts in evidence at the Inquiry, with particular regard to the HEDNA (Housing and Economic Development Needs Assessment) evidence on the need for employment land, and in relation to the 'sequential test' for offices.
- The decision fails to address a number of issues in contention at the Inquiry, including failing to address much of the oral evidence given

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at the Inquiry. In addition the decision does not contain conclusions to all of the main issues identified by the Inspector.

Attached to this letter is a report setting out our analysis of the flaws in the decision. For the reasons set out in our report, we do not accept your Inspector's findings with respect to the points identified, and we believe it is right and reasonable for the Local Planning Authority, and any future Inspector, to be free to consider these matters afresh in any future dealing.

If you have any questions or would like to discuss any of the points raised, however trivial, please do feel free to contact me directly. I would suggest however that the original case officer, Richard White, would be your best point of contact with regards to the detail of the case. His direct line is 01494 421509 or email [richard\\_white@wycombe.gov.uk](mailto:richard_white@wycombe.gov.uk)

Yours sincerely,

*Alastair Nicholson*

***Alastair Nicholson***  
***Development Manager***

# **Wycombe District Council Assessment of the Inspector's Decision**

PINS Ref: APP/KO425/W/15/3140361

WDC Ref: 14/05704/OUT

Proposal (as amended): Residential development in a mix of houses, town houses and apartments for up to 110 units with associated works and infrastructure

Decision: Appeal Dismissed 3 January 2017

## **1. Introduction**

- 1.1. The appeal has been dismissed and the Council has not pursued a judicial review to overturn the Inspector's report. There are however a number of key points in the appeal that have not been clearly determined. Whilst the overall decision would probably not have been altered by clear determination of these points, the reasons for that decision may have been different. Consequently, the potential impact of the Inspector's findings on any future decisions has to be called into question. As such, the issues raised in the appeal will need to be considered afresh in any future application or appeal, for the reasons set out in this report.
- 1.2. This report assesses the detailed findings contained in the Inspector's decision letter and it identifies three critical shortcomings:
  - The decision fails to consider the degree of housing shortfall and the impact of this on the weight to be given to the benefits of the scheme.
  - The decision materially misrepresents the facts in evidence at the Inquiry, with particular regard to the HEDNA (Housing and Economic Development Needs Assessment) evidence on the need for employment land, and in relation to the 'sequential test' for offices.
  - The decision fails to address a number of issues in contention at the Inquiry, including failing to address much of the oral evidence given at the Inquiry. In addition the decision does not contain conclusions to all of the main issues identified by the Inspector.
- 1.3. Most of these issues are contained within the Inspector's consideration of employment land issues. Given the nature of the appeal it is fair to say that of the four main issues identified by the Inspector the employment land issues are at the very core of the appeal, and the faults of this section are therefore of great impact for the decision as a whole.

## **2. The degree of housing shortfall and weight**

- 2.1. The first issue is simply put. The Inspector has altogether failed to consider the slight degree of housing shortfall in Wycombe District and the impact of this on the weight to be given to the benefits of the appeal scheme in terms of housing supply.
- 2.2. There is now a well-established connection between a Council's housing supply position and the weight that can be attached to any development plan policies that affect the supply of housing (as set out in NPPF 49). Equally well established is the principle that such policies are still development plan policies within the statutory planning framework and as such LPAs and Inspectors still have to consider the degree of weight to be given to any such policies.
- 2.3. As part of this, and as stated by the then Mr Justice Lindblom in *Phides Estates (Overseas) Ltd v SSCLG [2015] EWHC 827 (Admin)*, "...the weight given to a proposal's benefit...will depend...on the extent of the shortfall, how long the deficit is likely to persist, what steps the authority could readily take to reduce it, and how much of it the development would meet. So the decision maker must establish not only whether there is a shortfall but also how big it is, and how significant".
- 2.4. These issues are dealt with in 7.6 – 7.23 and 10.13 of the evidence given by the Council's planning witness, Richard White. This was supplemented at the Inquiry orally and with reference to the 2016 HEDNA Common Ground update. (In the course of the Inquiry an updated HEDNA was published which affected the Housing Need figure for the district, and thereby affected the shortfall calculation.)
- 2.5. Despite the Council's evidence and the requirement in *Phides* to moderate the weight to be given to the benefits of the scheme, the decision letter adopts a more simplistic 'binary' approach. At paragraph 18 the Inspector correctly records the common ground position on the five year housing land supply overall, but offers no comment on the degree of shortfall or the other matters referred to in *Phides* or in the Council's evidence. The issue of housing supply is next mentioned in paragraphs 54 and 55 (as part of the overall planning balance) but again there is no mention of the degree of shortfall or the other relevant factors and the Inspector does not identify how much weight he has given to the benefits of releasing the site for housing in his overall balance.

### **3. Factual misrepresentation of the evidence**

- 3.1. The Inspector has factually misrepresented two parts of the evidence to the Inquiry. These are the HEDNA and the content of PPG6 (Planning Policy Guidance 6).
- 3.2. As part of the consideration of employment land issues (paragraph 29 to 37) the decision incorrectly states that the 2016 HEDNA shows “no shortage of land for Class B1 offices in the district” (paragraph 37). This statement is made at paragraph 37, as part of the context for the Inspector’s conclusions on the likelihood of the site being reused for employment purposes: “There is no shortage of land for Class B1 offices in the district as evidenced by the recent permission at Handy Cross and as identified in the 2016 HEDNA.” The Inspector has plainly stated that the HEDNA identifies that there is ‘no shortage of land for offices’ as one of two facts providing evidence for his overall proposition that there is no shortage of land for offices.
- 3.3. The HEDNA in fact shows a clear shortage of land for offices. This can be seen in the full HEDNA document and in one of the HEDNA update papers submitted at Inquiry by the Council. (This is listed in the decision as document 11 “2016 Wycombe supply/demand figures”.) This was a short note containing a single table. These were the figures provided for B1a/b office uses:

	B1a/b (m2)
HEDNA 2016 forecast NEED	68,000
Extant PP	53,900
Adopted Plan Allocations without PP	5,000
Prior approval c/use	- 21,500
Net supply	37,400
2016 net demand m2	30,600
Land estimate HA	6.1

- 3.4. Any reasonable reading of either the summary or the full documents would show that the appeal decision materially misrepresents the HEDNA. As such any conclusions drawn from this mistake cannot be relied on.
- 3.5. Secondly, in paragraph 32 the Inspector states “Since the [2003] LP was adopted, national policy towards the location of offices has changed insofar as offices are [now] seen as being a town centre use and the sequential test would need to be passed for offices to be located elsewhere”. The Inquiry was presented with the relevant statements of planning policy in place at the time (the June 1996 revision of PPG6 Town Centres and Retail Developments). Through the course of cross examination and re-examination of both Mr White (for the Council) and Mr Pritchett (for the appellant) it became clear that there

was in fact a sequential test for offices in national policy at the relevant time.

- 3.6. For ease of reference, paragraphs 1.8 to 1.13 of PPG6 set out the 'sequential approach' for Local Plans to follow. 1.14 addresses subsequent planning applications. 1.15 states:

"1.15 This approach should also apply to all key town centre uses which attract a lot of people, **including commercial and public offices**, entertainment, leisure, and other such uses. These should be encouraged to locate in city, town and district centres. Smaller-scale facilities, such as health centres, branch libraries, local offices of the local authority, primary schools, pubs and restaurants, should be encouraged in local centres." (Emphasis added.)

- 3.7. National policy on this issue has not substantially changed since the 2003 Local Plan was adopted. As such any conclusions drawn from the incorrect view that it has, cannot be relied on.

#### 4. The clarity of the decision

- 4.1. There are a number of issues where the Inspector has failed to acknowledge evidence given (and in particular oral evidence) and in some instances this has led to him materially misrepresenting the Council's position in the appeal and confusing the scope of the issues. The points set out below are not all of great significance in isolation, but however unimportant particular points may be to the overall decision, they all contribute to the conclusion that the Inspector has disregarded the majority of oral evidence given at the Inquiry. Whilst it is acknowledged that it is not necessary for an Inspector to rehearse the whole of the case in his decision, an Inspector's decision is the only formal record of oral evidence at Inquiry, and it is especially important therefore that this is dealt with adequately. This is even more critical when, as was the case here, there were a number of issues presented to the Council for the first time, for example in the cross examination of the Council's witnesses. In such circumstances the oral evidence is the only evidence on several contentious points; it is not simply supplementary to the written proofs.

*Failure to determine the issue of whether paragraph 22 of the NPPF (National Planning Policy Framework) comes within the scope of footnote 9 to paragraph 14 of the NPPF*

- 4.2. NPPF 14 sets out the presumption in favour of sustainable development and the government's policy on how to approach planning decisions when relevant policies are deemed out-of-date (e.g. due to NPPF 49 and the housing supply position). In these circumstances NPPF14 sets out the presumption in government policy that planning permission should be granted other than in

the specific circumstances described in the text. If the presumption is rebutted this does not mean that planning permission will always be refused, but it means that the merits of the case will be judged on a level balance, rather than a balance tilted in favour of approval. (And all of this is of course considered as a material consideration within the statutory framework in S38(6) of the Act.)

- 4.3. As part of this the NPPF requires consideration of whether there are any policies of restraint within the NPPF that apply to the proposal (see footnote 9 to NPPF 14). The Council argued there were in fact two such NPPF policies in this case, and as such the 'presumption' could not apply. One is the conflict with the policies within paragraphs 18 to 22 of the Framework, including the second bullet of paragraph 21 (identifying sites for investment) and the first sentence of 22, which supports the protection of allocated sites for employment where there is a reasonable prospect in the longer term for their being used for that purpose. The second conflict arises from the fact that the site is in an area at risk from surface water flooding and no sequential evidence was submitted. NPPF101 and 104 indicate that development should be restricted in such cases.
- 4.4. Of course, whether or not the NPPF14 presumption applies is only one link in the chain of reasoning that leads to the final decision to approve or refuse permission, but in finely balanced cases the decision maker's view on NPPF14 and policies of restraint can make the critical difference between approval or refusal, or perhaps to the breadth or scope of the reasons for refusal, as might be the case here. At the Inquiry the parties and the Inspector considered two relevant cases to establish whether these were policies of restraint.

*Forest of Dean District Council v Secretary of State for Communities & Local Government & Anor [2016] EWHC 421 (Admin) (04 March 2016)*

And

*Watermead Parish Council, R (on the application of) v Crematoria Management Ltd [2016] EWHC 624 (Admin) (04 March 2016).*<sup>1</sup>

- 4.5. *Forest of Dean* adopts an analytical approach to the language of various NPPF policies to determine whether they might be 'policies of restraint' in the terms of NPPF14. *Watermead* adopts an approach to the presumption in favour of sustainable development that says the presumption can be lost by

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<sup>1</sup> For completeness, whilst the High Court decision discussed in the Inquiry has subsequently been overturned by the Court of Appeal, the CoA declined to determine this particular point. See paragraph 45, *Watermead Parish Council v Aylesbury Vale District Council [2017] EWCA Civ 152 (17 March 2017)*  
<http://www.bailii.org/ew/cases/EWCA/Civ/2017/152.html> .

reason of a policy of restraint then recovered if the policy is addressed. Whilst the Council gave legal submissions against the validity of the *Watermead* approach (4.9 below) *Watermead* was accepted by the Inspector and it should therefore have been followed in his reasoning, but it was only followed for floodrisk, and not for the loss of employment land.

4.6. The Glory Mill appeal decision states:

*“22. Concerning employment use, the Council relies upon paragraphs 18 to 22 (inclusive) of the Framework. Paragraph 22 is negatively worded, seeking to avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of their being used for that use. The Council argues that this supports the protection of such allocated sites where there is a reasonable prospect of their being used. I have concluded, in respect of the main issue considered in the section below, that there is little prospect of the whole site being used for employment uses. This paragraph, therefore, is not a policy that indicates that development should be restricted. It does not prevent the overarching presumption in favour of sustainable development, and therefore the “tilted balance” in the first indented paragraph under the fourth bullet point of paragraph 14, from applying in this case.”*

4.7. Whether or not NPPF 22 is a policy of restraint was disputed by the appellant and it was therefore an issue that required a determination from the Inspector. In sentence 5 the Inspector says “This paragraph, therefore, is not a policy that indicates that development should be restricted.”

4.8. This language is at first reading seemingly unequivocal and a general conclusion that NPPF 22 is not a policy of restraint (to which footnote 9 applies), but reading this sentence in the context of the rest of this paragraph (as we must) it is highly likely that the Inspector only meant that as “there is little prospect of the whole site being used for employment uses” that he is simply concluding on this particular site at this particular time that NPPF22 “is not a policy that indicates that development should be restricted.” But equally the Inspector might think that NPPF 22 is always and in any case “not [ever] a policy that indicates that development should be restricted.”

4.9. It is not possible to confidently say from the appeal decision what the Inspector’s position on this point in fact was. The short text in 22 of the decision can also be contrasted with the more satisfactory text in 25 – 27 where the Inspector clearly addresses the general point, before applying the *Watermead* principle to the specific circumstances of the case in relation to our second ‘footnote 9’ point. This distinction is important. If the Inspector had concluded that NPPF 22 is ‘not ever a policy of restraint’, this could have wide reaching impact on a number of other sites at other times. Whereas if his view

was simply that NPPF 22 is only 'not a policy of restraint in this place and at this time', then this has a far narrower impact.

*Failure to acknowledge, consider or answer our legal submissions on the Watermead case (paragraphs 25-27)*

4.10. Whilst it will often be right and reasonable for an Inspector to follow legal precedent, in this case the Council made specific legal submissions against the case quoted, and the Inspector should have analysed these submissions at some level. However, his decision fails to even acknowledge that the *Watermead* approach was disputed, let alone respond to the substantive points made. This reinforces the impression that the Inspector has failed to have regard to our submissions at Inquiry.

*Main issue not fully considered and ultimately not determined by the Inspector*

4.11. The second main issue for the appeal is identified at paragraph 8 as 'loss of employment land'. The issue is considered in paragraphs 29 to 41 of the decision. This section begins by referring to 'loss of **employment** land' but concludes (in paragraph 41) that "the proposals would not result in the unacceptable loss of land for **new offices**". (emphasis added.) Firstly it must be noted that the scope of **employment** uses is far wider than just **offices**. Secondly, the issue of whether what mattered here was the scope for just office development, or the scope for any form of employment development, was a key issue disputed at the appeal. Given that the point was in dispute, it is entirely unacceptable for the Inspector to confuse the issue like this. Ultimately, nowhere does the Inspector determine whether the loss of the site for potential B1c/B2 or B8 employment uses is acceptable and therefore he does not conclude one way or the other on the issue he identifies: "loss of employment land".

*Misrepresentation of the Council's Development Plan strategy for employment*

4.12. Paragraphs 30 to 32 of the decision directly misrepresent the Council's development plan strategy for employment. (It is worth noting here that the Inspector was provided with a full set of DPDs at the Inquiry, not merely the extracts submitted at questionnaire stage.)

4.13. Under cross examination and re-examination Mr White gave specific oral evidence with regards to this issue. The Council submitted at the Inquiry the simple points that:

- a) The existing saved Local Plan employment allocations under Policy E3 were an integral part of the subsequent employment and sustainable development strategies set out in the more recent Core Strategy and

Site Allocations DPDs. They were at each stage judged fit for purpose as a continued part of the overall development plan.

- b) Whilst CS2 identifies High Wycombe TC as the *main* location for *large scale* offices, this does not amount to a policy that it is the only acceptable location, or that it is the one and only preferred location, and that we do not wish to see offices elsewhere.
- c) CS2 refers to “*large scale* offices” not “*all* offices”
- d) The introductory passages to the DSAP (Delivery and Site Allocations Plan) make clear that it does not set out a complete and comprehensive strategy for employment or office uses in the District as a whole.
- e) Policy DM7.2 simply imports national policy for main town centre uses. The sequential test is only triggered if Local Plan policy E3 is deemed out-of-date for the purposes of NPPF 24<sup>2</sup> as well as NPPF 49. Even if it is triggered it is clear and unarguable that all it does is introduce a requirement to evidence that an out-of-centre location is necessary. It is not a policy *against* out-of-centre locations altogether. It is in other words a ‘town centre first’ policy, not a ‘town centre and nowhere else’ policy.

4.14. Despite this, the Inspector concludes (in the last sentence of 31):

“High Wycombe town centre is now clearly the preferred location for new office development.”

4.15. Reading this sentence in context, it is plain that the Inspector means: ‘High Wycombe town centre is now clearly the preferred location for new office development *in the development plan*’. This is not true. High Wycombe Town Centre is not the *singular* “preferred” location – it is the ‘main location’ and it is to be supplemented by other locations identified elsewhere in the development plan, which includes the appeal site. Moreover, it is only described as the main location for ‘large scale offices’, not for all offices.

4.16. Having made this error, he then concludes, in the final sentence of paragraph 32:

“The loss of the appeal site for future office use, therefore, would not be in conflict with up-to-date development plan policies for the location of offices or with the Council’s strategy for office location.”

4.17. Read in context the reference to ‘up-to-date development plan policies’ must

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<sup>2</sup> “24. Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan.”

logically be a reference to the Core Strategy and DSAP policies discussed by the Inspector on the way to this conclusion. As set out above these up-to-date policies supplement and do not supersede LP E3, and taken together these form the Council's strategy for the location of offices. This includes as part of the strategy policies that support offices at the appeal site. It is not factually accurate to say therefore that the loss of the appeal site for offices would not be in conflict with the Council's strategy for office location.

#### *Treatment of expert evidence*

- 4.18. Paragraph 32 of the decision briefly covers a number of points that were discussed at considerable length at the Inquiry by multiple witnesses from both sides. However, the Inspector has not acknowledged or dealt with the expert oral evidence of Mr Deriaz on behalf of the Council which updated the comments in the Peter Brett Associates report re light industrial rents.
- 4.19. It should also be noted whilst the PBA report was written for the Council at application stage, it was NOT submitted as part of the Council's case at Inquiry, and it is wrong for the Inspector to refer to the PBA report as being written 'on behalf of the Council' in the context that he has. Paragraph 32 treats PBA as if they were speaking for us in the appeal, as opposed to advising us in the course of our consideration of the application. They were not, the evidence of Paul Deriaz should have been acknowledged as representing the Council's position superseding the earlier PBA report.

#### *Inadequate consideration of alternative employment uses.*

- 4.20. Also in paragraph 32 the Inspector states "Due to the proximity of housing B2 and B8 uses would not generally be suitable." There is no additional analysis offered despite the fact that (as with other issues mentioned) there was some considerable time spent on this point by multiple witnesses. There has never been a detailed assessment of the scope for either B2 or B8 uses. The site has a history of B2 use, the appeal scheme was for housing, and the only recent planning history relates to office proposals. No potential use should be ruled out on its planning merits without proper assessment, especially when the site has a history of past use for the purpose being considered.
- 4.21. The Inspector has also altogether failed to consider the scope for B1c light industrial uses – other than with reference to the superseded PBA comments on viability mentioned above. This is particularly difficult to reconcile, as his ultimate reasons for dismissing the appeal were the impact on an existing non-office employment use (and the desirability of retaining these jobs). SGX Sensortech comprises a mixture of manufacturing, R&D and office uses but the primary use is B1c light industrial. There is an existing successful B1c light industrial use on part of the site and yet the Inspector has not addressed the

possibility of similar uses on the remainder of the site. In the context of a development plan policy which allocates the site for the entire range of the B Classes, the scope for B1c uses has to be considered in considering NPPF 22.

- 4.22. Part of the appellant's case was that the extant consented office scheme is not currently viable. This is dealt with in paragraphs 36 and 37 of the appeal decision. At 36 the Inspector says "I do not see the argument concerning viability as being determinative in this case" but following through from 36 to 37 the issue of viability is very clearly treated contrary to this statement as a determinative factor leading to the conclusion in the last sentence of 37. This is logically inconsistent.
- 4.23. In terms of the Council's case the Inspector again attributes too much to the PBA report (which was not part of our case). His comment that "it is not clear why 6.25% is considered reasonable now" (in preference to the PBA figure) is difficult to understand given the considerable written and oral evidence of our expert witness Paul Deriaz on this point. In particular, the Inspector held a roundtable discussion where each respective expert witness produced tables of comparative yields and debated the relevance of these at some length.

*Inadequate consideration of potential alternative office schemes*

- 4.24. In the same paragraph the Inspector comments that a further planning permission would be required if the appellants wished to pursue a redesign to cater to smaller businesses. This disregards our oral evidence and the obvious point that there is considerable scope under the S96A non-material amendment process and/or a S73 application to vary the approved plans condition on the extant part-implemented permission.
- 4.25. In the last sentence of this same paragraph the Inspector says that, if a further office application was to be submitted, then it "may" fail the sequential test. A proposal that 'may fail' a policy test may equally 'not fail'. However, the Inspector then goes on in paragraph 37 to treat the fact that such an application 'may' fail the sequential test as if it 'would' fail.
- 4.26. Mr White gave clear oral evidence that in the LPA's view the particular alternatives discussed at the Inquiry would not currently fail this test. It is also worth noting that the appellants were not able to identify any suitable and available sequentially preferable sites that would indicate otherwise.
- 4.27. There are three difficulties with the Inspector anticipating the LPA refusing a future planning application for offices on the site. One problem is that without proper assessment of full evidence on the point it is impossible to be certain about the outcome of a future planning application. The second is that

whatever the position now, this can change over time. The third is that if an Inspector is drawn to contemplating the LPAs future actions then the LPAs view on this has to be of some value. It is not reasonable for any Inspector to so conclusively predetermine a possible future planning application.

#### *Interpretation of NPPF 22*

4.28. Paragraph 37 of the appeal decision concludes with reference to ‘the foreseeable future’ in connection with NPPF 22 and the time horizon for considering ‘reasonable prospects’. This is an issue that was not clearly drawn out in the appellant’s written evidence, but at the Inquiry both parties’ planning witnesses (Mr White and Mr Pritchett) agreed in examination that the NPPF 22 point should be judged “against the plan period” (as a general principle) and in this case “against the Core Strategy period”. The Inspector has departed from the position agreed by both parties without explanation, again without acknowledgement of the oral evidence.

## **5. Conclusions**

### *The impact of this on the Inspector’s conclusions*

5.1. Paragraph 37 of the decision draws together all of the above points, namely:

- the incorrect representation of the CS and DSAP;
- the incorrect assumption that a redesigned office scheme would require a fresh planning application;
- the incorrect assessment of the likelihood that such an application would fail the sequential test;

5.2. The Inspector adds to this an incorrect statement that the 2016 HEDNA shows ‘no shortage of land for B1 office’ which is demonstrably far from true. As shown by the additional papers provided at the Inquiry there is a significant shortage of such land in the District.

5.3. Therefore out of the various issues that lead to the conclusion in paragraph 37 (and then on to paragraph 54), four points are factually incorrect:

- The HEDNA indicates ‘no shortage of land for offices’.
- A new planning application would be required for any revised office scheme.
- The loss of the site for offices does not conflict with the Council’s strategy for the location of offices.

- National policy in place at the time LPE3 was adopted did not include a sequential approach for offices.
- 5.4. And the decision fails to fully consider the full scope of the evidence on any of the remaining points in this section:
- Viability
  - The likely outcome of a mooted sequential test
  - The suitability of the site for other non-office employment uses
  - The interpretation of NPPF22
- 5.5. This report has assessed the detailed findings contained in the Inspector's decision letter and it has identified three critical shortcomings:
- The decision fails to consider the degree of housing shortfall and the impact of this on the weight to be given to the benefits of the scheme.
  - The decision materially misrepresents the facts in evidence at the Inquiry, with particular regard to the HEDNA (Housing and Economic Development Needs Assessment) evidence on the need for employment land, and in relation to the 'sequential test' for offices.
  - The decision fails to address a number of issues in contention at the Inquiry, including failing to address much of the oral evidence given at the Inquiry. In addition the decision does not contain conclusions to all of the main issues identified by the Inspector.
- 5.6. These various errors, oversights and omissions together indicate that any future decision maker considering an application on this site must consider all these matters afresh, and not rely on this Inspector's report for its conclusions.

27 March 2017  
Richard White DipTP  
Principle Planning Officer  
Wycombe District Council

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## Appeal Decision

Inquiry opened on 8 November 2016

Site visit made on 17 November 2016

**by Clive Hughes BA(Hons) MA DMS MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 03 January 2017**

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**Appeal Ref: APP/K0425/W/15/3140361**

**Vacant former Glory Mill, Glory Park Avenue, Wooburn Green,  
Buckinghamshire HP10 0DF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by BAM Glory Mill Limited against Wycombe District Council.
  - The application Ref 14/07504/OUT, is dated 29 September 2014.
  - The proposal, as amended, is residential development in a mix of houses, town houses and apartments for up to 110 units with associated works and infrastructure.
  - The inquiry sat from 8 to 18 November 2016.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The application is in outline with all details reserved for future consideration.
3. On receipt of the appeal the Council resolved that had it been in a position to determine the application it would have refused it for the following reasons:
  1. *This site is allocated in the Adopted Local Plan for B Class Employment Uses (Local Plan Policy E3). Having considered the most up-to-date and most relevant evidence on the need for employment land the retention of this site for employment is considered a high priority and the prospects for this site being re-used are high, not least because part of the site is in current continuing use for B Class Employment. The proposal is therefore contrary to Policy E3 of the Wycombe District Local Plan 2004 (as saved and extended) and the National Planning Policy Framework paragraphs 19-22.*
  2. *The submitted framework plan and housing typologies plan together propose an overall form and layout of development which will be unacceptably cramped and overdeveloped, with a confused and unsatisfactory structure of public and private space. The framework plan also proposes an inadequate 5m buffer to the river in one area.*

*The illustrative details submitted show a proposal which demonstrates further unacceptable characteristics. The most significant of these are: a parking layout which will not be sufficiently legible attractive, convenient or secure to meet the needs of future residents; and, an unacceptable close juxtaposition of large flatted blocks with smaller domestic scale housing.*

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*This harm would be exacerbated if subsequent reserved matters details were to incorporate the full amount of parking required to serve the needs of the residents. Overall the submitted plans and illustrative details do not demonstrate an acceptable option for the development proposed in outline.*

*Considering both the constraints of the site, together with the constraints of the submitted framework and housing typology plans, together with the illustrative details submitted, and also the pre-application discussions held in connection with the illustrative masterplan, the Council considers that the site is not able to accommodate the quantum and character of development proposed, namely: "a mix of houses, town houses and apartments of up to 129 units with associated works and infrastructure".*

*As such the proposal is considered contrary to Development Plan Policies LPG3, LPG8, LPG10, LPG26, LPH19, CS19, DM14 and DM15 and Framework paragraphs 56-64.*

- 3. In the absence of a Section 106 Agreement, the development would fail to deliver opportunities to maximise accessibility to the site by sustainable modes of transport. The absence of adequate existing infrastructure and the site's remoteness from shops and services is such that residents of the development would be likely to be reliant on the use of the private car. This is contrary to the National Planning Policy Framework, policies CS16 (Transport) and CS20 (Transport and Infrastructure) of the Adopted Core Strategy DPD and policy DM2 (Transport Requirements of development Sites) of the Delivery and Site Allocations DPD and the aims of Buckinghamshire's Local Transport Plan 3.*
- 4. In the absence of a legal agreement to secure the provision of affordable housing provision, the development would be contrary to policy CS13 (Affordable Housing and Housing Mix) of the Adopted Core Strategy DPD (Adopted July 2008) and the Planning Obligations Supplementary Planning Document.*
- 5. In the absence of a legal agreement to secure the provision of additional primary age school places, the development would be contrary to policy CS21 (Contribution of the Development to Community Infrastructure) of the Adopted Core Strategy DPD (Adopted July 2008) and the Planning Obligations Supplementary Planning Document.*
4. On the opening day of the Inquiry the appellant sought to amend the proposals by reducing the number of dwellings from "up to 129 dwellings" to "up to 110 dwellings". The appellant also withdrew the Development Framework Plan and the Housing Typologies Plan and submitted a Parameters Plan (Drawing No BMD.152.SK.101D). The Council raised no objections to the amendment to the maximum number of dwellings or to the related changes to the plans that form part of the outline planning application. As the amendment involves exactly the same site and a reduction in the overall amount of development, I do not consider that any interests would be prejudiced by my consideration of the amendment or the Parameters Plan.
5. The Council agreed that the withdrawal of the Development Framework Plan and the Housing Typologies Plan, and their substitution with a Parameters Plan, overcomes its objections to the scale and form of the proposed development. This overcomes the second putative reason for refusal and the only evidence

given at the Inquiry in respect of this reason concerned the impact of the proposed development on the character and appearance of the adjoining Watery Lane Conservation Area.

6. At the Inquiry the appellant submitted an Agreement under section 106 of the Act. This makes provision for affordable housing, an education contribution and, at the discretion of the Inspector, a bridleway contribution.
7. The Council agreed that the provisions of the Agreement overcome putative reasons for refusal Nos 3 (part), 4 and 5 and so these were not pursued at the Inquiry. The only part of putative reason for refusal No 3 that was not agreed by the parties concerns the bridleway contribution sought by the Council in respect of improvements to the former Bourne End to High Wycombe Railway Line to a state where it is suitable for use as a bridleway.

### **Main issues**

8. The outstanding issues are:
  - Whether the Council is able to demonstrate a 5-year supply of housing against a full objective assessment of housing need (FOAN) and the implications of this in terms of national and local planning policy;
  - Whether the proposals would lead to an unacceptable loss of employment land;
  - Whether the proposals make adequate provision for community and other services including affordable housing and education; and
  - The planning balance and whether the proposals comprise sustainable development as defined in the Framework.
9. I have also had regard to my duty under s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 concerning whether the proposals would preserve or enhance the character or appearance of the adjoining Watery Lane Conservation Area.

### **Reasons**

#### *The site and its surroundings*

10. The site, which is of irregular shape, forms part of a larger parcel of land that was formerly occupied by a paper mill. The paper mill closed, in stages, and much of that larger parcel has since been redeveloped for a mix of offices and housing that lie to the north and south of the appeal site. The site is, in practice, two parcels that are separated by an access road and the River Wye. These parcels are known as Glory Park Phases B and C. The site has a total area of about 2.8ha, which includes access roads, a roundabout and the river, leaving a developable area of some 2.1ha. The majority of the developable site is vacant although there is an industrial building with associated car parking in the south eastern corner. This building, Sirius House, is occupied by SGX Sensortech Ltd. A further part of the site is in use for the parking/ storage of light vans.
11. The parts of the former paper mill that have been developed for offices lie to the north and south of the appeal site. To the south is Glory Park (Phase A) which is situated between the appeal site and recent housing further south. To

the north lies The Courtyard, an office development that is accessed through the appeal site and which, on two sides, backs onto Watery Lane. Both The Courtyard and the appeal site abut the boundary of the Watery Lane Conservation Area.

12. Phase A of Glory Park provides about 64,000 sq ft of Class B1 office floorspace. It comprises three separate buildings, 3 and 4 storeys high, with car parking. It was built as a speculative development in 2007/09 and was fully let in 2014. The Courtyard comprises a separate office development to the north of the appeal site. It was built out in 2005 and provides 11 self-contained freehold office buildings ranging in size from 2,500 sq ft to 5,500 sq ft arranged in a "U"-shape around a central parking area.
13. The appeal site is flat and is largely surrounded by hoardings. There are views into it from Old Moor Lane and a public footpath (WOO/13/1) which runs at a higher level along the eastern boundary close to Sirius House. Further to the east and north, and at a significantly higher level, is the M40. Traffic using this motorway is clearly audible on the appeal site. The site is within easy walking distance of bus stops on the A4094 with regular services to High Wycombe and Bourne End. The Wooburn Green centre is about 1km away and so is within walking or cycling distance.

#### *Planning History*

14. The site has an extensive planning history that is set out in some detail in the Statement of Common Ground (the SoCG). The wider site was used as a mill for about 150 years or more and as a paper mill since at least the late C19. There are approved schemes for the housing, The Courtyard and Glory Mill (Phase A) which have all been built. Phases B and C of the Glory Mill development, which would have been built on the current appeal site, were part of the 2008 scheme that included Phase A. It is agreed that the planning permission for Phases B and C remains extant.
15. The approved Phase B would comprise a three-storey building providing 47,425 sq ft of offices with 165 parking spaces; Phase C would comprise a four-storey building providing 75,584 sq ft of offices with 258 car parking spaces. The construction of this latter building would involve the removal of Sirius House.

#### *Planning policy*

16. The development plan comprises the saved policies of the Wycombe District Local Plan (2004) (the LP); the Wycombe Development Core Strategy (2008) (the CS); and the Delivery and Site Allocations Plan (2013) (the DSAP). There are a number of relevant policies but it was agreed that the key policy for this site is LP Policy E3 in which the site is allocated for employment uses within Classes B1, B2 and B8. This policy has been saved by virtue of The Housing and Planning Directorate's letter of 26 September 2007. The CS, at Appendix 6, lists those policies that are replaced by the CS. LP Policy E3 is not listed and so remains part of the development plan.
17. The Council is preparing a new local plan which, when adopted, is intended to replace the existing LP and CS; the DSAP will be retained. The New Wycombe Local Plan Draft Consultation Document was published in June 2016. The SoCG rightly confirms that as the plan is still at an early stage in the process it attracts little weight.

***Whether the Council is able to demonstrate a 5-year supply of housing against a full objective assessment of housing need and the implications of this in terms of national and local planning policy***

18. The SoCG says that based upon the Buckinghamshire Housing and Economic Development Needs Assessment 2015 (the 2015 HEDNA) the Council cannot demonstrate any more than a 3.8 year supply of housing (including a 5% buffer). During the course of the Inquiry, the 2016 HEDNA was published. The parties produced the 2016 HEDNA Common Ground Update (Document 8) which identified that the 2016 HEDNA concludes that the FOAN for Wycombe District is 12,824 dwellings whereas the equivalent figure in the 2015 HEDNA was 15,011. Despite this reduction in the FOAN, the Council accepts that it still cannot robustly demonstrate that it has a five-year housing land supply.
19. There is no dispute that LP Policy E3 is a relevant policy for the supply of housing. The Council cannot demonstrate a five-year supply of deliverable housing sites so this policy cannot be considered up-to-date in the context of paragraph 49 of the National Planning Policy Framework (the Framework) and the provisions of paragraph 14 need to be considered.
20. Concerning the decision-taking limb of paragraph 14, the proposals do not accord with the development plan so the first bullet point does not apply. There is therefore a presumption in favour of sustainable development unless one or other of the indented bullet points under the second bullet point applies. The first of these is the "tilted balance" whereby it needs to be determined whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
21. The second indented bullet point relates to specific policies in the Framework that indicate development should be restricted. Footnote 9 is not intended to be an exhaustive list; it only sets out examples of such policies. The Council's submissions are that there are two issues which concern specific policies in the Framework which indicate that development should be restricted. The first concerns the protection of sites allocated for employment use where there is a reasonable prospect in the longer term of their being used for that purpose; the second is that this is a location at risk from flooding. The Council's position, therefore, is that Footnote 9 is engaged and so the presumption in favour of sustainable development does not apply.
22. Concerning employment use, the Council relies upon paragraphs 18 to 22 (inclusive) of the Framework. Paragraph 22 is negatively worded, seeking to avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of their being used for that use. The Council argues that this supports the protection of such allocated sites where there is a reasonable prospect of their being used. I have concluded, in respect of the main issue considered in the section below, that there is little prospect of the whole site being used for employment uses. This paragraph, therefore, is not a policy that indicates that development should be restricted. It does not prevent the overarching presumption in favour of sustainable development, and therefore the "tilted balance" in the first indented paragraph under the fourth bullet point of paragraph 14, from applying in this case.
23. Concerning the site being a location at risk of flooding, the appellant produced a Flood Risk Assessment (FRA) which concluded that the whole site, outside of

the watercourse channel, should be classified as Flood Zone 1. This finding was not disputed by the Council. The FRA also identified a small area of potential "low risk" of surface water flooding (1 in 1000 event) to the western development area. The remainder of the site is considered at "very low risk", outside the 1 in 1000 event.

24. An outline surface water drainage strategy was proposed which shows that sufficient below ground storage can be included in any development (under roads and parking areas) which would provide attenuation storage volume up to the 1 in 100 event. The FRA concluded that the low risk of surface water flooding should be appropriately mitigated through measures included in the design of the buildings. These measures included the development adopting minimum ground floor finished floor threshold level of 43.62mAOD. This is the figure recommended for the approved commercial development on the site. The FRA also states that the proposed residential development will not increase the risk of flooding to surrounding residential and commercial properties.
25. By letter dated 17 May 2016 the Environment Agency confirmed that it raised no objections on fluvial flood risk grounds. The Council's putative reasons for refusal do not include any reason relating to potential surface water flood risk. Indeed, the Officer's Report states that "...the proposed mitigation is considered to effectively negate the future risk of surface water flooding...". Nonetheless, the provisions of paragraphs 101 and 104 of the Framework can be read as being policies that indicate that development should be restricted.
26. The consideration, therefore, is whether the provisions of Footnote 9 to paragraph 14 of the Framework, relating to "locations at risk of flooding" are such that presumption in favour of sustainable development is negated. I have had regard to *Watermead* (Document 34) and in particular to the considerations set out in paragraph 46 of that judgement. In this paragraph His Honour Judge Waksman QC considers the contention that where the proposal is a development to which a restrictive policy applies, then the presumption in favour of development is lost and gone forever. He thought that this went too far and said that "...as a matter of principle, where a restrictive policy has been dealt with, it is difficult to see why an overarching presumption in favour of sustainable development should not apply."
27. In the light of this judgement, I do not agree that the "tilted balance" in paragraph 14 of the Framework should be lost forever simply because the proposals are in a location at risk of flooding. If a scheme of development can demonstrably overcome that risk, and there is no dispute that the mitigation measures set out in the FRA would overcome the flood risk in this case, it seems unreasonable for the presumption in favour to be lost. The special circumstances arising from the site's location in a flood risk area have already been dealt with.
28. I conclude on this issue, therefore, that the Council cannot demonstrate a five-year housing land supply. In accordance with paragraph 49 of the Framework, therefore, relevant policies for the supply of housing should not be considered up-to-date. While specific policies in the Framework indicate that development should be restricted, for the reasons set out above I have found that the special circumstances, arising from the allocation of the site for employment uses and the fact that it lies in a location at risk from flooding, have already been dealt with. The "tilted balance", as set out in the first indented bullet

point of the fourth bullet point of paragraph 14 of the Framework, is therefore the appropriate balance to use in the determination of this appeal.

***Whether the proposals would lead to an unacceptable loss of employment land***

29. The appeal site is identified as an employment area on the LP Proposals Map. LP Policy E3 safeguards the land for uses falling within Use Classes B1, B2 and B8. This plan was adopted in January 2004 and was intended to guide development up to 2011. Policy E3 was subsequently saved by Direction which saved it, and other identified policies, beyond 27 September 2007. The CS was adopted in July 2008. It replaced certain identified policies but E3 was not amongst them and so remains part of the development plan. This policy is a relevant policy for the supply of housing and therefore should not be considered up-to-date for the reasons set out above.
30. The CS identifies High Wycombe, including adjoining settlements such as Wooburn Green, as the main focus for new development (Policy CS 2). It also says that High Wycombe town centre should be the main location for large scale office uses. This is in accordance with advice in the Framework which, at paragraph 24, says that local planning authorities should apply the sequential test to planning applications for main town centre uses that are not in an existing town centre and not in accordance with an up-to-date local plan. The Glossary to the Framework identifies offices as being a main town centre use. The appeal site lies well outside High Wycombe town centre.
31. This approach is carried forward in the DSAP whose vision for High Wycombe town centre includes the provision of high quality offices. DSAP Policy HWTC4 says High Wycombe town centre will be the focus of main town centre uses including offices. This plan allocates many sites in High Wycombe town centre for redevelopment, including some, such as Policies HWTC7 and 8, where any redevelopment should be primarily for Class B1 office uses, and others where mixed use schemes are proposed. The timescales for the delivery of some of these are from 2013 onwards; others have a start date of 2018. All are allocations for the plan period (2013-2026). High Wycombe town centre is now clearly the preferred location for new office development.
32. The appeal site is now seen as being only really suitable for Class B1 office use. The recent (2015) Report on Glory Park, Peter Brett Associates (on behalf of the Council) (the PBA Report) concluded that speculative light industrial development is not viable at Glory Park based on 2015 rents and costs. Due to the proximity of housing B2 and B8 uses would not generally be suitable. In any case, the locally achievable rents for Class B2 and B8 uses would make such uses unviable. Since the LP was adopted, national policy towards the location of offices has changed insofar as offices are seen as being a town centre use and the sequential test would need to be passed for offices to be located elsewhere. The loss of the appeal site for future office use, therefore, would not be in conflict with up-to-date development plan policies for the location of offices or with the Council's strategy for office location.
33. Paragraph 22 of the Framework says that planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. The site has been owned since 2006 by a company (BAM Properties) that specialises in developing for the corporate and retail markets. This site has had the benefit

of full planning permission for office development since 2008; Phase A of this permission has been built out in its entirety. While part of this first phase was occupied immediately upon completion, despite the poor economic climate at the time, Phase A only became fully let in 2014. Phases B and C have been marketed by a leading company without success. Evidence of the marketing, and level of interest, was provided to the Inquiry.

34. The appellant considers that the development of Phases B and C for office development, in accordance with the approved scheme, is not viable. It is not a town centre location and there are more accessible sites available, especially at Handy Cross which is right beside Junction 4 of the M40. I saw that while the appeal site is physically very close to the M40 there is no easy access to it, especially when travelling to or from the Birmingham direction. The options for travelling to or from Birmingham involve either joining/ leaving the motorway at Junction 4, some distance from the appeal site, or passing Junction 3 (where there is no exit to or from the north west) and turning round at Junction 2 and coming back towards the site. This would reduce the site's attractiveness, especially for a headquarters building, to many potential occupiers.
35. The new development at Handy Cross is a major competitor with many advantages. It has added 340,000 sq ft of additional Class B1 floorspace in the period to 2026. Not only has it got excellent motorway access but there is also a variety of other facilities including a Waitrose supermarket and good public transport links including a coach park. There are vacant offices currently available in the district on sites where there are better facilities than at Glory Park such as on-site security and coffee shops. There are currently vacant units available for rent or purchase at the adjoining The Courtyard scheme.
36. I do not see the argument concerning viability as being determinative in this case as it largely comes down to a decision as to whether a yield of 7.25% (appellant) or 6.75% (Council) is reasonable. The recent PBA Report assumed a yield of 7.75% (paragraph 4.4.1) so it is not clear why 6.25% is considered reasonable now. The site owners do not consider this reasonable and are simply not prepared to risk building the approved scheme without known occupiers. If the owners choose to redesign the offices, to cater for a greater number of smaller businesses, a further planning permission would be required. Notwithstanding its planning history and allocation in the local plan, the site may not pass the sequential test for the location of offices.
37. I conclude that the proposed Class B1 offices on the appeal site, as approved, are currently not viable. The appellant is therefore unlikely to implement this permission, which has been in place for about 8 years. There is no shortage of land for Class B1 offices in the district as evidenced by the recent permission at Handy Cross and as identified in the 2016 HEDNA. The Council's clear direction of travel in respect of the location of office development, as set out in the DSAP is that such development should be directed towards High Wycombe town centre. That is also in line with policies in the Framework. In all these circumstances, I do not consider that there is a reasonable prospect of the whole site being used for employment purposes in the foreseeable future.

*SGX Sensortech Ltd*

38. Sirius House is located close to the southern boundary, close to houses in Old Papermill Close. Since 2003 it has been occupied by SGX Sensortech Ltd. If the remainder of the extant planning permission for Class B1 offices in Glory

Park is implemented, this business would need to move as its building lies within the curtilage of the approved Plot C. The company says that there had always been the possibility of it moving into one of the new units. The business would have to move away if this residential scheme is allowed as it lies within the appeal site. SGX Sensortech Ltd did not appear at the Inquiry and in February 2015 withdrew its earlier objections to the development.

39. Nonetheless, it was involved in an email exchange with the Council in January 2015 which established that the company is a specialist scientific instrument maker in the field of x-ray spectroscopy. At the time the company employed 24 staff with a turnover of just under £5m. The company stated that it has a low turnover of highly trained staff and that it supports local electronic and mechanical engineering businesses for raw materials supply. The company has a short-term rolling lease.
40. Its presence on the site is a material consideration of significant weight. It is a manufacturing company located within a site allocated for employment generating uses in the development plan. The redevelopment of the site for housing would mean that the company would need to find alternative premises. The appellant produced a list of business premises that were available for lease on a given date. I recognise that this was just a snapshot and that the market is fluid with further units becoming available all the time. However, the list showed that there are very few properties that are both of similar size to that currently occupied by SGX Sensortech Ltd and are located within a reasonable distance given the likely need to transfer established and highly qualified staff.
41. I conclude on this issue that due to the amount and quality of alternative sites and locations for office development, and due to local and national policies that seek to direct new office development towards town centres, the proposals would not result in the unacceptable loss of land for new offices. Nonetheless LP Policy E3 remains part of the development plan. While it cannot be seen as being up-to-date due to the provisions of paragraph 49 of the Framework, this does not mean that it has been superseded or that it carries no weight.
42. The loss of the whole site to residential use would therefore be contrary to LP Policy E3 and would also result in the displacement of a long-established local business that provides local employment. This weighs against the scheme.

***Whether the proposals make adequate provision for community and other services including affordable housing and education***

43. The section 106 Agreement, signed and dated 18 November 2016, makes provision for 40% of the bed spaces within the residential accommodation to comprise affordable housing. The Agreement also sets out a timetable for the provision of the affordable units in relation to the occupation of market housing units. No less than 66% of the affordable units are to be affordable rented or social rented units with the balance being shared ownership dwellings. This accords with the provisions of CS Policy CS 13(2a). The Agreement also makes provision for a financial contribution towards Primary and Pre-School education. Five-year projections including planned housing growth show that schools in the area have a capacity to accommodate just 85 more dwellings before additional places are required. The size of the contribution was reduced during the Inquiry to take account of the reduced amount of development sought. The agreed sum seems reasonable.

44. The other financial contribution concerns a possible Bridleway Contribution which is only payable if this appeal determines that it is compliant with the Community Infrastructure Levy Regulations 2010 (as amended) (CIL). DSAP Policy DM4 safeguards the route of the former Bourne End to High Wycombe railway line as a new walk/ cycle route. The issue is whether the proposed residential development would create a need to provide this additional or improved infrastructure as set out in CS Policy CS 21.
45. The Council acknowledged that walking distances to facilities are satisfactory. It is possible to walk or cycle from the site to local facilities and the approved offices on the site would be likely to generate a significant amount of traffic. The Council's CIL Regulation 123 List identifies that this shared bridleway/ cycleway and footpath may be funded at least in part by the CIL. I agree that the facility would undoubtedly be used by residents of the new housing but I am not convinced that it can reasonably be said to be necessary. The Council has not demonstrated that its provision is necessary to make the development acceptable in planning terms and so the requirement for it to be provided would not accord with the CIL Regulations, with paragraph 204 of the Framework or with CS Policy CS 21.
46. I conclude on this issue that the scheme makes adequate provision for community and other services and facilities and in particular in respect of affordable housing and education. However, I do not consider that any Bridleway Contribution needs to be made in the Agreement.

### ***Other material considerations***

#### *Effect on Watery Lane Conservation Area*

47. The site abuts the southern boundary of the Watery Lane Conservation Area. This small Conservation Area, which lies between the appeal site and Watery Lane, is predominantly residential with a public house and allotment gardens. The Council agreed with the appellant's assessment in the Townscape and Visual Impact Assessment (TVIA) that, based upon the details as set out in the Development Framework and the Housing Typologies Plans, the impact of the proposals would be "slight beneficial". This took account of the proposed planting along the site boundary which would have matured by year 15.
48. The Parameters Plan, submitted with the appeal, indicates only a very narrow planting strip along the northern boundary of the site where it abuts the Conservation Area. During the Inquiry the appellant produced a Conservation Area Position Statement (Document 5) which was agreed by the Council. This concludes that the proposals would have a "neutral / slight beneficial effect". Taking account of the former use of the appeal site and its current derelict condition, and subject to the imposition of the agreed condition to ensure that this boundary is protected, I agree with that assessment. Provided that the development is set back from the boundary with an adequate planting strip to help retain the semi-rural feel to the Conservation Area, the proposals should preserve both the character and appearance of the Area.

#### *Other matters raised by third parties*

49. Many local residents have raised objections on traffic grounds, expressing concerns about the ability of the roads to cope with the traffic and the potential of overflow car parking in the area. The County Council, as highway authority,

raised no objections on highway grounds subject to the imposition of various conditions. The highway network has sufficient capacity and evidence to the Inquiry is that the residential scheme (based on 150 units rather than the proposed 110 units) would generate much less peak hour traffic than the approved office scheme. I saw that on-street parking is a problem in the area, not least outside Phase A of Glory Park where pedestrians heading towards The Courtyard are forced to use the carriageway to avoid parked vehicles. The provision and retention of an appropriate level of parking could be achieved by conditions along the lines of those suggested by the County Council.

50. Other matters that have been raised by local residents include concerns about overlooking, scale and siting of buildings which would all be addressed at the reserved matters stage. The proposed reduction in the number of units would reduce the density of the scheme. Concerns from business occupiers of units at The Courtyard about disruption during construction can be addressed by a construction management plan.

***The planning balance and whether the proposals comprise sustainable development as defined in the Framework***

51. The Framework says that the policies within it as a whole constitute the Government's view of what sustainable development means in practice. Paragraph 7 identifies that there are three dimensions to sustainable development: economic, social and environmental. Paragraph 8 says that these roles must not be undertaken in isolation and that economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
52. The proposals are clearly contrary to the provisions of the adopted local plan. Concerning the economic role, the proposals would result in the loss of land allocated for employment use. This harm, however, is limited as I do not consider it likely that the approved scheme will be built for the reasons set out above. In addition, the Council is now seeking to locate new office development in High Wycombe town centre. There is, therefore, no reasonable prospect of the whole site being used for employment purposes in the foreseeable future. This weighs in favour of the proposals.
53. However, the proposals would also involve the displacement of SGX Sensortech Ltd, a business located within the site. While the appellant has identified that there were a number of sites to which the company could potentially locate, it has not been demonstrated that any are suitable. The approved scheme for Class B1 offices here would require the company to move, but that scheme has been shown by the appellant to be unviable and so unlikely to be implemented. In economic terms the need for a successful local business to relocate, involving a significant number of employees, would be severely harmful.
54. Against this the economic benefits of providing housing are not in dispute. It would provide employment during construction and future residents would be likely to use local shops and other businesses which would help to ensure that such services remain viable. There is also an immediate need for more housing in the area and there is no identified five-year housing land supply.
55. The social dimension includes the provision of up to 110 dwellings in an area where there is a shortfall of provision and no five-year housing land supply. The provision of 40% of the bed spaces as affordable housing would be

- beneficial, given the low number of such units being built each year in the district. However, this is no more than is required under the provisions of CS Policy CS 13. The site is in an accessible location within walking distance of shops and other facilities in Wooburn Green and close to bus routes.
56. In environmental terms, the site has been largely disused for many years although Sirius House remains in use for business purposes. Part of the site is in use for the parking of light vans and much of the site is surrounded by hoardings. It abuts the Watery Lane Conservation Area. Both the TVIA and the joint position statement concerning the Conservation Area confirm that the scheme would, when the planting has matured, be beneficial to its setting. At present much of the site is visually harmful to the appearance of the area and its redevelopment for either housing or employment use would result in an improvement to the built environment.
57. The housing scheme would retain a 10m strip either side of the River Wye and this, together with the proposed Biodiversity Plan, landscaping scheme and Public Realm Management Plan would result in environmental improvements. I have also had regard to the views of the Wooburn Residents' Association who gave qualified support to the application for housing as the redevelopment of brown field land is preferred to the development of greenfield land.
58. On balance, therefore, there would be some economic harm arising from the potential loss of future Class B1, B2 or B8 employment uses on the site. The residential redevelopment of the Phase B part of the site, in particular, may make units at The Courtyard more difficult to let as it would become surrounded by housing. Of much greater concern is the need to relocate a long-established business which occupies a building within an allocated employment site. This harm has to be balanced with the identified benefits.
59. I have taken into account the many benefits of the proposals. There would be economic, social and environmental gains arising from the scheme. These need to be balanced with the conflict with the development plan and the economic harm that would arise. In particular I have given great weight to the harm that would arise from the need for a well-established local firm to relocate when no suitable alternative premises have been identified. This business occupies premises within an area allocated for employment uses. Its removal from an allocated employment site, to make way for a housing development with the potential loss of skilled employment opportunities in the area, would be unacceptably harmful.
60. The employment opportunities arising from the scheme would most probably be initially short term ones in the construction industry and subsequently jobs in service industries. This would not sufficiently compensate for the potential loss of skilled manufacturing jobs with a long-established local company. On balance, and even when the "tilted balance" in paragraph 14 of the Framework of applied, I conclude that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The appeal is therefore dismissed.

*Clive Hughes*  
Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Craig Howell Williams QC	Instructed by Julie Openshaw, Solicitor, Wycombe DC
He called	
Paul Deriaz MRICS MRTPI	Managing Partner, Deriaz Slater LLP
Richard White	Wycombe DC
BSc(Hons) DipTP	
*Bob Hearnden MRICS MCI Arb	Managing Director F3MANAGE
**Stephen Chainani	School Place Planning Commissioning Partner, Buckinghamshire County Council

\* This witness produced a written statement and took part in the round table discussion on viability but was not called to give evidence

\*\* This witness produced a written statement but was not called to give evidence

### FOR THE APPELLANT:

Jeremy Cahill QC	Instructed by Pritchett Planning Consultancy Ltd
He called	
Andrew Willcock MRICS	Director, Savills UK Ltd
Simon Tucker	Director, DTA Transportation Ltd
BSc(Hons) MCIHT MICE	
Philip Pritchett	Director, Pritchett Planning Consultancy Ltd
BSc(Hons) MRTPI	
*Laura Bradley	Managing Director, Bradley Murphy Design Ltd
BA(Hons) DipLA MLI	

\* This witness produced a written statement but was not called to give evidence

### DOCUMENTS SUBMITTED DURING THE INQUIRY

- 1 Council's notification letter and list of persons notified
- 2 Buckinghamshire: Housing and Economic Development Needs Assessment Update (HEDNA) (Draft: 20 October 2016) (ORS/ Atkins)
- 3 Statement of Common Ground on Valuation Matters
- 4 Development Appraisal (Savills (UK) Ltd) (9 November 2016)
- 5 Position Statement re Conservation Area (8 November 2016)
- 6 Final Draft of Unilateral Undertaking (with track changes)
- 7 Employment Land Use Study: RAF Daws Hill, High Wycombe (7 September 2012)
- 8 2016 HEDNA Common Ground Update
- 9 Opening statement on behalf of the appellant
- 10 Opening statement on behalf of Wycombe District Council
- 11 2016 Wycombe supply/ demand figures
- 12 Planning Policy Statement 6: Planning for town centres (extracts)
- 13 Planning Policy Guidance 6: Town centres and retail developments (1966)
- 14 Development Appraisal (Savills (UK) Ltd) (10 November 2016)
- 15 Comparison of development appraisals (WDC)
- 16 Various schedules for viability discussion
- 17 Estimated construction duration

- 18 LaSalle Company News re Kingsmead Business Park
- 19 Bundle of Enquiry Schedules for Glory Park (Savills)
- 20 Glory Mills: BAM Book value
- 21 Glory Park: Tenant target list (Savills)
- 22 Glory Park: Telephone marketing list (Savills)
- 23 Glory Park: Target occupiers (Savills; January 2014)
- 24 Agreed list of suggested conditions
- 25 Unsigned Agreement under s106 (superseded)
- 26 Market Watch (Savills; October 2016)
- 27 Strongest rise in commercial development activity in nearly a year (Savills; October 2016)
- 28 Observations by WDC in relation to details of Book Value (served on 11 November 2016, Document 20)
- 29 Appendices to Wycombe District Council Economic Study (Atkins)
- 30 2016 HEDNA (Final version 10 November 2016) paras 5.38 to 5.40
- 31 Schedule of sites for site visit and map
- 32 Closing statement on behalf of Wycombe District Council
- 33 Closing submissions on behalf of the appellant: BAM Glory Mill Ltd
- 34 *Watermead Parish Council v Aylesbury Vale District Council & Crematoria Management Ltd* [2016] EWHC 624 (Admin) (4 March 2016)
- 35 PPG Changes: Flood Risk and Coastal Change (17 November 2016) (Tetlow King Planning)
- 36 Signed Agreement under s106 between BAM Glory Mill Ltd and Wycombe DC 18 November 2016

#### PLANS

- A Site location plan
- B Drawing No BMD.152.SK.101D: Parameters plan