



Town and Country Planning Act 1990

**Appeal by
Ministry of Justice**

Appeal APP/J0405/W/22/3307860

LPA Ref: 21/02851/AOP

**His Majesty's Prison Grendon,
Edgcott, Aylesbury,
Buckinghamshire**

**Statement of Case
on behalf**

Buckinghamshire Council

16 November 2022

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1. Introduction

1.1 On 12 October 2022 Buckinghamshire Council (BC) (the “Council”) received a notification from the Planning Inspectorate of the appeal requested by the Ministry of Justice (the “Appellant”) in relation to its refusal notice dated the 29 March 2022.

1.2 The planning application (Council application reference 21/02851/AOP) is described as:

“Outline Planning application with all matters reserved except for access, layout and scale for the construction of a new Category C prison (up to 67,000 sqm GEA) within a secure perimeter fence together with access, parking, landscaping and associated engineering works”

1.3 The above application was refused at the Buckinghamshire Council Strategic Sites Committee on 24 March 2022 for the following stated eight reasons:

1. **The location of the site is such that it has only limited access by non-car modes of travel. The absence of adequate infrastructure and the sites remoteness from major built up areas is such that it is likely to be reliant on the use of the private car contrary to local and national transport policy. The development is therefore contrary to policies S1 and T1 of the Vale of Aylesbury Local Plan, paragraphs 7, 8 and 105 of the National Planning Policy Framework, Buckinghamshire Council Local Transport Plan 4 (adopted April 2016) and the Buckinghamshire Council Highways Development Management Guidance document (adopted July 2018).**
2. **The development of the greenfield site next to Grendon Hall, by virtue of its layout, scale, and massing and light pollution would result in adverse landscape and visual impacts on the site which are considered to be harmful to the countryside (agricultural) and parkland character of the wider area and therefore the setting of other nearby heritage assets. The development would be intrusive and highly visible from a large number of these heritage assets and would negatively impact on how they are read and enjoyed by future generations. In the absence of evidence to the contrary the harm to the designated assets is considered to be on the scale medium to high of less than substantial harm. The failure to provide clear and convincing justification that this is the only site for the development of the new prison and without this the less than substantial harm is not outweighed by the**

public benefits. The development is therefore contrary to policy BE1 of the Vale of Aylesbury Local Plan, Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 and Section 16 of the National Planning Policy Framework.

- 3. The development of the North Park (NDHA) including loss of ridge and furrow, would result in total loss of a large section of the NDHA Park which would be substantially changed in character and appearance and would negatively impact the setting of the GII Grendon Hall and the GII Gates and Piers due loss of designed views from both assets and through the introduction of a competing entrance to the Park/ Hall. The development is therefore contrary to policy BE1 of the Vale of Aylesbury Local Plan and Section 16 of the National Planning Policy Framework.**
- 4. Insufficient and ambiguous information has been provided to determine whether the proposal would provide Biodiversity Net Gains. The proposal has failed to utilise the nationally recognised standard DEFRA 3.0 metric for calculating biodiversity net gains which has led to disputes over classification of existing and proposed habitats within the metric. The submitted Biodiversity Net Gain Assessment is considered not to be an accurate account of the gains generated on site and would fall below the thresholds set nationally contrary to policy NE1 of the Vale of Aylesbury Local Plan and paragraphs 174 and 180 of the National Planning Policy Framework.**
- 5. The development of this greenfield site, by virtue of its layout, scale, and massing, would result in a significant intrusion into open countryside and would have an urbanising impact on an individual basis as well as cumulatively with other nearby development in this rural location, would result in adverse landscape and visual impacts on the site and would give rise to harmful effects on the character of this area. As a result of the scale of the development, the potential for mitigation would be very limited, leading to an intrusive form of development which is highly visible from within the site and long-distance views. This would fail to respect and compliment the physical characteristics of the site and its surroundings, the scale and context, and ordering and form of the locality, contrary to the adopted Vale of Aylesbury Local Plan policies BE2, NE4 and NE5 and paragraphs 174 and 185 of the National Planning Policy Framework.**
- 6. Insufficient information has been submitted regarding species specific assessments and mitigation relating Bats and Black Hair Streak butterflies. Had the above overarching reasons for refusal not applied, the Local Planning Authority would have sought further**

information in relation to the potential impact of the proposal in order to ensure that any harm would be satisfactorily assessed and mitigated if necessary. In the absence of this information the proposal the Local Planning Authority is unable to determine the full effects of the proposal on these species, including a European Protected Species. The proposal has failed to demonstrate that there would not be an adverse impact to these species and as such is contrary to the requirements of NE1 of the Vale of Aylesbury Local Plan and paragraph 180 of the National Planning Policy Framework.

- 7. The development, by virtue of its layout has failed to demonstrate that the loss of playing field, including the loss of usable playing field/ pitch space would be replaced by an equivalent or better provision in term of quality and quantity in a suitable location, and the proposal would be contrary to policy I2 of the Vale of Aylesbury Local Plan, Exception 4 of Sport England's Playing Fields Policy, and paragraph 99 of the National Planning Policy Framework.**
- 8. Had the above reasons for refusal not applied, it would have been necessary for the applicant and the Local Planning Authority to enter into a Section 106 Agreement to secure appropriate financial contributions towards highway and transport improvements. In the absence of such a provision, the Local Planning Authority is not satisfied that the proposal will constitute sustainable development that fulfils a social, economic and environmental role, and the proposal would be contrary to the requirements of policies T1 and T5 of the Vale of Aylesbury Local Plan and paragraphs 57 and 58 of the National Planning Policy Framework.**

- 1.4 The above reasons for refusal form the basis of the Council's case against the appeal proposals.
- 1.5 Other material considerations relating to Agricultural Land Classification and Mineral Safeguarding, not specifically referenced in the above reasons for refusal, but informed part of the Council's consideration of the application, will also form part of the Council's case.

2. The Appeal Site

Site location

- 2.1 The appeal site is generally greenfield and undeveloped covering an area of 29.5ha which is set within the open countryside to the west of the village of Edgcott.
- 2.2 Broadly the appeal site lies 6 miles to the east of Bicester and 10 miles north-west of Aylesbury and is approximately 1.7 miles north of the A41 which directly links the two towns.
- 2.3 The village of Edgcott lies between 100m and 400m to the north and west of the appeal site. Existing residential areas at Springhill Road are immediately adjacent to the southern boundary of the appeal proposal.
- 2.4 Grendon Underwood at its closest point to the appeal site is approximately 900m to the south of the appeal site boundary.
- 2.5 Open agricultural land with mature established hedgerows and isolated hedgerow trees encompasses the northern and western boundaries of the appeal site.
- 2.6 The appeal site occupies the northern edge of a locally prominent ridge line which is a relative high point within the immediate surrounding landscape, c10 -15m above the properties in Edgcott.
- 2.7 In a wider context the High Speed 2 (HS2) rail line will run along the existing mainline trackway approximately 1.5km to the east of the site. The separate East West Rail route project which aims to improve train links between East Anglia and Central, Southern and Western England is approximately 3.1km to the north of the appeal site.
- 2.8 Mineral extraction has taken place within the wider context at the former Calvert brick pits approximately 600m to the north east of the site. These mineral workings have been subsequently infilled with waste and used as a landfill. The wider complex now forms part of the Greatmoor Energy from Waste Facility power station which is 1.5km to the east of the site.
- 2.9 There are two bus stops on Grendon Road approximately 600m walk from the entrance of the proposed prison. These bus stops are served by a single service which run 9 services a day towards

Aylesbury and 2 services a day to Marsh Gibbon Monday to Friday. The routes operate reduced services at weekends.

- 2.10 The nearest train station is Bicester North to the west of the appeal site. Aylesbury Parkway rail station is the closest train station to the east with Aylesbury train station located within the centre of the town.

Heritage context

- 2.11 The appeal site contributes to the setting of several designated and non-designated heritage assets (NDHA). Grendon Hall, a grade II listed building, is situated within the existing prison grounds. It's listing includes its curtilage which encompasses a walled garden. Grendon Hall was listed after the construction of the two existing prisons.
- 2.12 The existing access point from Grendon Road is marked by two gated piers and railings, which are Grade II listed.
- 2.13 Lawn House is Grade II Listed and is 80m from the appeal site's eastern boundary. Lower Farm House is approximately 130m north of the proposed access on to Grendon Road.
- 2.14 The Grade II* Church of St Michael lies approximately 450m to the north of the proposed appeal site. There is a collection of further Grade II listed buildings between St Michaels Church and the appeal site, these include the Manor Farm Cottage and Manor Farmhouse, outbuilding, hay barn and cowshed.
- 2.15 To the west of the Church are the Grade II listed Rectory Farmhouse and Rectory Barn. Collectively these properties occupy an area known as Perry Hill.
- 2.16 The Perry Hill collection of listed buildings around the Church of St Michael occupy a similar moderately elevated position¹ to that of the appeal site (situated on and around Spring Hill) with relatively clear intervisibility between the two areas due to the intervening lower topography.
- 2.17 The Grendon Underwood Conservation Area is approximately 780m south of the site at its nearest point. Vehicles accessing the proposed site via the A41, and the Broadway will travel through the western end of the Conservation Area.

¹ 89m Above Ordnance Datum

- 2.18 The Conservation Area includes 16 Listed Buildings including the Grade II* listed St Leonards Church which is directly adjacent to the Broadway between the appeal site and the A41.

The Appeal Site

- 2.19 The land within the site boundary predominantly falls within the grounds associated with the existing two adjacent prisons which are HMP Springhill (Category D open prison) and HMP Grendon (Category B secure prison).
- 2.20 The appeal site includes the remaining parkland landscape associated with the listed Grendon Hall. The western part of the site has been identified as forming part of the remaining historic park and garden associated with Grendon Hall.
- 2.21 This landscape is classified as a NDHA on Buckinghamshire's Local Heritage List (BLHL). The western parcel of the appeal site includes medieval and post medieval ridge and furrow earthworks which are also included as a NDHA on BLHL.
- 2.22 The site contains very small and isolated aspects of development that are associated with the existing prison operations², these include part of a car park which has been grassed over and an existing 5.2m high security fence and an education block.
- 2.23 Areas of grassland, deciduous woodland and land in agricultural use make up the majority of the current land use within the site boundary. Mature hedgerows and tree belts form boundaries within the site. There is also an existing large pond within the western portion of the site.
- 2.24 There are two existing public rights of way (footpaths) within the site (Council reference numbers GUN/16/1 and GUN/17/1). There are also a series of other public rights of way within the immediate vicinity of the appeal proposals³.
- 2.25 The appeal site access will be taken from Grendon Road a Classified C road which currently serves the existing Grendon and Spring Hill prisons and the adjacent residential development. The road has a 40mph speed limit which reduces to 30mph immediately north of the existing access as the road

² Details shown on demolition plan 441830-0000-PEV-GNX0011-ZZ-DR-A-9111

³ Council right of way references EDG/11/1, EDG/6/3, EDG/11/2, EDG/6/2, EDG/7/2, EDG/9A/1, EDG/9/2, EDG/8/1, EDG/9/1, EDG/7/1

passes through Edgcott. The road is unlit and incorporates a narrow sealed separated footway on the eastern side of the highway.

3. The Proposal

The Application Process

- 3.1 The appeal proposal seeks outline planning consent for the construction of a new Category C prison (up to 67,000m²). The initial submission to the Council sought to only include matters relating to access and scale.
- 3.2 During the determination process, planning officers at the Council considering the application were of the opinion that in the circumstances of the case, in particular the site's sensitive location within the open countryside and being subject to varying ground levels, that the matters relating to layout should also be included as part of the consideration of the application.
- 3.3 Using specific legal provisions⁴ afforded to the planning authority, the matters relating to layout were "called in" by officers.
- 3.4 The outline application subject to this appeal therefore seeks to formally consider matters relating to access, scale and layout.

The Appeal Proposals

- 3.5 The proposed development itself seeks outline permission for a new Category C prison. The Government describes⁵ Category C prisons as training and resettlement prisons, and notes that most prisoners in the UK are located within this type of facility. They provide prisoners with the opportunity to develop their own skills so they can find work and resettle back into the community on release. The proposed prison facility will only house male inmates.
- 3.6 The appeal proposal is split broadly in to three development parcels (western, northern and eastern parcels) and comprises the following elements:
- Six new houseblocks to accommodate up to 1,468 prisoners – Located in the eastern development parcel of the site and measuring 17.26m in height.

⁴ Article 5(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015

⁵ <https://prisonjobs.blog.gov.uk/your-a-d-guide-on-prison-categories/>

- The provision of supporting buildings:
 - o Care and Separation Unit (CASU) – Located in the eastern development parcel. This unit is 9.9m in height at its tallest;
 - o Central Services Hub – Located in the northern development parcel which is 8.9m high at its tallest;
 - o Workshops Building – Located in the northern development parcel and extends at its tallest to 11.8m in height;
 - o Kitchen Building - Located in the northern development parcel and measuring at its tallest 9.8m in height;
 - o Support Building - Located in the northern development parcel and measuring at its tallest 9.8m in height;
 - o Entrance Resource Hub - Located in the northern development parcel and measuring at its tallest 11.25m in height;
- A new vehicular access on to Grendon Road, a classified C road, capable of accepting up to 16.5m long articulated vehicles with 2.4m x 80m visibility splays;
- Ancillary associated infrastructure including, dog kennels, Poly tunnels and horticultural areas;
- Three Multi Use Games Areas (MUGA) indicatively shown between the proposed housing blocks;
- Car parking (c.453 spaces) and internal road layout;
- Perimeter “outer” fence 5.2m in height and c.1,700m in length and associated 15m wide Clear Zone;
- Flood lighting and associated lighting columns (up to 12m);
- Demolition of an existing car park and 5.2m high fence within the northern parcel;
- Acoustic fencing c.2m high at selected locations around the appeal site;

- Drainage and electrical substation infrastructure including changes to an existing drainage channel in the eastern development parcel;
- Sustainable Urban Drainage (SUDS) ponds;
- Woodland screening planting and other landscaping works.
- Retention of existing ponds and area of woodland in the north-western corner of the site;
- Relocation of existing football pitches exercise area serving HMP Springhill which is currently situated in the northern development parcel to the western development parcel.

3.7 The red line site boundary covers an area of 29.5ha, 11.09ha of which would be contained within a secured perimeter.

4. Development Plan Policy

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the statutory development plan unless material considerations indicate otherwise.
- 4.2 The appeal site currently lies within the local planning authority boundary of Buckinghamshire Council which was created as a unitary authority in April 2020. Prior to the local government reorganisation, the appeal site was located within the Vale of Aylesbury District.
- 4.3 The development plan for the Appeal site comprises the following:
- Vale of Aylesbury Local Plan (VALP) – Adopted September 2021
 - Buckinghamshire Minerals and Waste Local Plan (BMWLP) – Adopted July 2019
- 4.4 The following VALP policies are relevant to the proposed development:
- **Policy S1** **Sustainable development for Aylesbury Vale;**
 - Policy S2 Spatial Strategy for Growth;
 - Policy S3 Settlement Hierarchy;
 - Policy S5 Infrastructure;

 - **Policy T1** **Delivering sustainable transport vision;**
 - Policy T2 Supporting and protecting transport schemes;
 - Policy T3 Supporting local transport schemes;
 - Policy T4 Capacity of the transport network to deliver development;
 - **Policy T5** **Delivering transport in new development;**
 - Policy T6 Vehicle parking
 - Policy T7 Footpaths and cycle routes
 - Policy T8 Electric vehicle parking

 - **Policy BE1** **Heritage Assets**
 - **Policy BE2** **Design of new development;**
 - Policy BE3 Protection of amenity of residents;

- **Policy NE1** **Biodiversity and geodiversity;**
- Policy NE2 River and stream corridors;
- **Policy NE4** **Landscape character and locally important landscape;**
- **Policy NE5** **Pollution air quality and contaminated land;**
- Policy NE7 Best and most versatile agricultural land;
- Policy NE8 Trees, hedgerows and woodlands

- Policy I1 Green infrastructure;
- **Policy I2** **Sports and recreation;**
- Policy I3 Communities facilities, infrastructure and assets of community value;
- Policy I4 Flooding;

- Policy C3 Renewable energy
- Policy C4 Protection of public rights of way

4.5 The policies that are in **bold** are those that have been referred to specifically within refusal reasons.

4.6 Alongside the VALP, the 2019 adopted BMWLP is relevant to the appeal proposals. The following BMWLP policies are relevant to the appeal proposals:

- Policy 1 Safeguarding Mineral Resources

4.7 Neither Edgcott or Grendon Underwood have a Neighbourhood Plan at any stage of preparation or adoption.

4.8 The following Council policy documents are also referred to within the refusal reasons:

- Buckingham Council Local Transport Plan 4 (Adopted April 2016);
- Buckinghamshire Council Highways management Guidance document (Adopted July 2018);

4.9 In addition to the local planning policy documents and the national policies outlined within the National Planning Policy Framework (NPPF), Sport England's Playing Fields Policy document (dated August 2018) is also relevant, specifically to reason for refusal 7.

5. Submitted documents to be referred to by the LPA.

5.1 Alongside the relevant local and national planning policy and guidance (as contained within the NPPF and associated planning practice guidance), the following documents submitted as part of the Council's determination of the application will be referred to and used in the production of evidence to support the Council's case.

5.2 Key drawings and plans:

- Site Location Plan – Existing;
- Site Block Plan - Existing;
- Site Block Plan – Proposed;
- Site Sections – Existing;
- Site sections – Proposed;

5.3 Supporting documents and plans:

- Site Block Plan Demolition;
- Site Plan Demolition Proposed Overlay;
- Site Block Plan Proposed Alternative Sports Area Option 2;
- Landscape and Visual Impact Assessment (LVIA);
- Comprehensive Landscape Masterplan;
- Briefing Note: Response to Landscape Officer comments;
- Flood Risk Assessment;
- Proposed SUDS Strategy Report;
- SUDS Maintenance Strategy;
- Impermeable Areas Plan;
- Impermeable Area & Storage Volume;
- Greenfield runoff rate estimation;
- Proposed Surface Water Drainage Strategy Report;
- Proposed Surface Water Drainage Strategy Sheets;
- Surface Outfall Levels;
- Proposed Foul Water Drainage Strategy Report;
- Proposed Foul Water Drainage Strategy Sheets;
- Ecological Impact Assessment;

- Biodiversity Net Gain Assessment;
- Biodiversity Net Gain Area Calculation Plan;
- Biodiversity Metric (full);
- Great Crested Newt Survey;
- Bat Survey;
- Transport Assessment;
- Transport Technical Note;
- Travel Plan;
- Preliminary Site Access Design;
- Response to Sport England;
- Cover Letter from applicant (Dated 14th January 2021);
- Heritage Statement;
- Archaeological Desk-Based Assessment;
- Utility Report;
- UXO Desk Top Survey;
- Socio – Economic Statement;
- Noise and Vibration Impact Assessment;
- Topographical and Utility Survey;
- Waste Management Strategy;
- Statement of Community Involvement;
- Public Right of Way Diversion Plan;
- Planning Statement;
- Pedestrian Approach Indicative CGI;
- Aerial View Indicative;
- External Lighting Layouts;
- Energy and Sustainability Statement;
- Design and Access Statement;
- Combined Geotechnical and Ground Contamination Risk Assessment;
- BREEAM 2018 New Construction Pre-Assessment Report;
- Arboricultural Impact Assessment and Method Statement; and
- Air Quality Assessment

5.4 In addition to the relevant planning policies and the submitted appeal documents, the following documents will also be referred to:

- All highway consultation responses during the determination period;
- Any highways correspondence with both the Applicant / Appellant and the Planning Authority prior to the submission of the application and during the determination period;
- Manual for Streets (2007) and Manual for Street 2 (2010);
- CIHT Guidelines for Providing for Journeys on Foot (2000);
- Local Transport Note 1/20 (LTN 1/20) (July 2020) Cycle Infrastructure Design;
- CIHT Buses in Urban Developments (January 2018);
- Buckinghamshire Bus Service Improvement Plan (July 2021);
- Travel Plans: Guidelines for Developers (Buckinghamshire Council July 2022);
- Visual Representation of Development Proposals Technical Guidance Note 06/19;
- Understanding Historic Parks and Gardens in Buckinghamshire, Grendon Hall, March 2021, (Revised December 2021);
- The Setting of Heritage Assets, Historic Environment Good Practice Advice in Planning Note 3 (Second Edition);
- Grendon Underwood Conservation Area Appraisal (Last reviewed September 2008).

6. The Council's Case

- 6.1 The Council will demonstrate that the appeal proposal is contrary to the Development Plan for the site and that no material considerations indicate that the appeal should be determined otherwise than in accordance with the development plan. The scheme is also the subject of a vast number of objections from the local community and its elected representatives as well as generating valid concerns for other communities within the wider area.
- 6.2 The Council's case against the appeal site is based upon the eight reasons for refusal which were attached to the decision notice that was issued on 29 March 2022.
- 6.3 In addition to the reasons for refusal, the Council's case will also refer to other considerations that it attached negative weight to in the determination of the application but were not specifically referenced in the decision notice. These considerations relate to the lack of both and Agricultural Land Classification report (ALC) and a Mineral Safeguarding Assessment (MSA).

Reason for refusal 1 – Highways sustainability

- 6.4 The first reason for refusal states the following:
- 1. The location of the site is such that it has only limited access by non-car modes of travel. The absence of adequate infrastructure and the sites remoteness from major built up areas is such that it is likely to be reliant on the use of the private car contrary to local and national transport policy. The development is therefore contrary to policies S1 and T1 of the Vale of Aylesbury Local Plan, paragraphs 7, 8 and 105 of the National Planning Policy Framework, Buckinghamshire Council Local Transport Plan 4 (adopted April 2016) and the Buckinghamshire Council Highways Development Management Guidance document (adopted July 2018).**
- 6.5 Specific concerns were raised by BC acting as the Highway Authority in respect of the accessibility and sustainability of a new prison in this location. In December 2021, the Highway Authority was re-consulted in relation to further information submitted by the applicant. This additional information addressed some of the initial highway concerns, however concerns regarding the accessibility and sustainability of a new prison in this location were unresolved.

- 6.6 The Highways Authority concluded that, whilst the applicant has provided some additional transport information, which has addressed several highway issues, the Highway Authority still had fundamental concerns with the accessibility and transport sustainability of the site.
- 6.7 In reaching this conclusion, research was undertaken in relation to the location of similar existing prisons, and consideration of multiple dismissed appeal decisions⁶ which concluded that unequivocally that Grendon Underwood is an unsustainable transport location for development. The Council's case will refer to these relevant decisions.
- 6.8 The Highway Authority maintained its objection and recommended that the planning application be refused in line with the reasons outlined in reason for refusal 1.
- 6.9 The Council's case in respect of this reason for refusal will rely on evidence to demonstrate that the location of the Appeal Site is such that it has only limited access by non-car modes of travel, and that the absence of adequate infrastructure and the sites remoteness from major built up areas is such that it is likely to be reliant on the use of the private car. This is contrary to local and national transport policy. This evidence will include:
- An assessment of the local walking, cycling, and public transport infrastructure, and the distances to larger settlements, or towns;
 - That very few staff and visitors would live locally, and the wide 40-mile catchment of staff and visitors would be impractical for non-car modes of transport;
 - The link to a planned section of the Buckinghamshire Greenway cycle route and that cycle parking is a policy requirement;
 - That existing bus services are inadequate to serve the proposed prison, and that services are likely to be further reduced, in the future. Furthermore, that financial contributions towards public transport will not provide a long-term robust solution for staff and visitor journeys.
 - That the Travel Plan is only one element of the sustainable transport considerations for the site;
 - Examples of similar existing prisons located in more accessible and sustainable transport locations; and

⁶ Appeal references APP/J0405/W/17/3176173, APP/J0405/W/20/3255772, APP/J0405/W/16/3185166

- Examples of dismissed appeal decisions which concluded that Grendon Underwood is an unsustainable transport location for development.

Reason for refusal 2 – Landscape and visual impact

6.10 The second reason for refusal states the following:

2. The development of the greenfield site next to Grendon Hall, by virtue of its layout, scale, and massing and light pollution would result in adverse landscape and visual impacts on the site which are considered to be harmful to the countryside (agricultural) and parkland character of the wider area and therefore the setting of other nearby heritage assets. The development would be intrusive and highly visible from a large number of these heritage assets and would negatively impact on how they are read and enjoyed by future generations. In the absence of evidence to the contrary the harm to the designated assets is considered to be on the scale medium to high of less than substantial harm. The failure to provide clear and convincing justification that this is the only site for the development of the new prison and without this the less than substantial harm is not outweighed by the public benefits. The development is therefore contrary to policy BE1 of the Vale of Aylesbury Local Plan, Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 and Section 16 of the National Planning Policy Framework.

6.11 It is the Council's case that the appellants Heritage Assessment and Statement of Case fails to consider impact on the setting of all the heritage assets surrounding the appeal site and those within the wider landscape. The Council's position on this issue is reflected in both reasons for refusal 2 and 3 and further supplemented by reason for refusal 5, which focusses on the urbanising impact the appeal proposal will have upon the landscape.

6.12 It is the Council's case that the scale, massing and lighting associated with the appeal proposal that causes the visual and historic setting harm within the landscape and topography of this location.

6.13 The appellant may choose to justify the scale of development proposed on the basis of two existing prisons being present on the site. However, in comparison to the existing prisons the proposed much larger prison, on elevated ground, would have a far greater impact on the rural character and setting of the identified heritage assets. Furthermore, the appeal proposals will dominate views from many of these assets rather than be seen as an element within a much wider landscape.

- 6.14 During the course of the original application numerous requests were made for additional Visual Impact Assessments and Lighting Impact Assessments to be provided specifically from heritage assets located within the vicinity of the appeal site and those within the wider landscape.
- 6.15 This requested information was not forthcoming and the full extent of harm to the setting of heritage assets has therefore been reasonably assessed at (a medium to high level of) less than substantial harm. Assets include:
- Group of listed buildings close to Perry Hill including GII Old Manor House, Old Manor Cottage, and listed barns on Buckingham Road Edgcott. GII Lower Barn & Upper Barn, Rectory Farm & Rectory Barn on Church Lane Edgcott and GII* St Michael's Church;
 - Grendon Underwood Conservation Area;
 - Listed Buildings in Grendon Underwood - GII The Old Rectory, GII Daffodil Cottage, GII* St Leonard's Church;
 - Heritage Assets within the wider landscape which due to the topography of the land could be impacted by a development of this scale and nature:
 - o Quainton Conservation Area;
 - o Waddesdon Conservation Area;
 - o GI Waddesdon Registered Park and Garden;
 - o Wotton Underwood Conservation Area;
 - o GI Wotton Registered Park and Garden; and
 - o Ludgershall Conservation Area.
- 6.16 In accordance with established case law⁷, considerable weight should be given to the preservation of the settings of the above mentioned heritage assets in any balancing exercise undertaken by the decision maker.

⁷ Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council & Ors [2014] EWCA Civ 137 (18 February 2014)

6.17 It is the Council's case that the appellant has failed to provide a clear justification and associated public benefits that outweigh the medium to high scale of less than substantial harm the appeal proposal will cause to the heritage assets.

6.18 It is on this basis that the appeal proposals are contrary to Policy BE1 of the VALP.

Reason for refusal 3 – Impact upon designated and non-designated heritage assets

6.19 The third reason for refusal states the following:

3. The development of the North Park (NDHA) including loss of ridge and furrow, would result in total loss of a large section of the NDHA Park which would be substantially changed in character and appearance and would negatively impact the setting of the GII Grendon Hall and the GII Gates and Piers due loss of designed views from both assets and through the introduction of a competing entrance to the Park/ Hall. The development is therefore contrary to policy BE1 of the Vale of Aylesbury Local Plan and Section 16 of the National Planning Policy Framework.

6.20 It is the Council's case that the appeal proposal will result in the total loss of a large section of the NDHA parkland associated with Grendon Hall. The loss is caused by the introduction of a substantial new access road with associated lighting, sports pitches, SUDS ponds and acoustic fences, all of which will be unsympathetic to the existing designed rural parkland character landscaping within the NDHA North Park.

6.21 The appeal proposals will also result in less than substantial harm to the grade II listed Grendon Hall, the listing of which includes service structures and walled garden. The appeal proposal would result in less than substantial harm to the setting of this building for the reasons outlined in the following paragraphs.

6.22 The appeal proposals will result in the loss of character and relationship to the North Park (as described above) and the loss of key designed views across the North Park and into the wider landscape resulting from proposed woodland planting.

6.23 It is the Council's case that the appeal proposal will also result in the loss of significance to the views and existing open character of the approach and departure to the Hall along the main drive through

the introduction of acoustic fencing, other paraphernalia and loss of character to the North Park as described above.

- 6.24 Intensification of development, as a result of the appeal proposals, within the wider prison site on rising ground to the rear of the listed building and close to the curtilage listed structures would result in a much more dominant feature against which the assets are appreciated and read (increased scale, massing, light impact etc).
- 6.25 It is accepted by the Council that the setting of Grendon Hall is already compromised to a lesser degree by the existing prisons, however the appeal proposal will result in a far greater impact.
- 6.26 Within the Appellants Statement of Case, a low level of less than substantial harm is identified. It is the Council's case that this assessment of the harm does not take into account the clear intention behind the chosen location and orientation of the listed buildings which are tightly linked to this surrounding landscape to the north.
- 6.27 In relation to the grade II listed Gates and Piers on Grendon Road, less than substantial harm is identified to this heritage asset through the introduction of a competing entrance. This structure has been on the Council's local Buildings at Risk Register for a period of years and while repairs are proposed and welcomed, it is noted that this has also been offered up to offset harm as part of a current application for development within the curtilage listed Walled Garden.
- 6.28 It should be noted that the appellants, as current owners of the heritage assets, have a duty to maintain these in good order, this undermines the claim made in the appellants Statement of Case that any proposed enhancement to the gates and piers is a heritage benefit/enhancement.
- 6.29 In relation to the grade II listed Lawn House, less than substantial harm is identified to the setting of the asset through the intensification of development in its close proximity including loss of separation through development of the North Park. The development of North Park will introduce noise and traffic from the sports fields, new access road, car parks and lighting which will also result in need for sound barriers and screening to be installed as part of the proposals.
- 6.30 The increase in intensity and scale of the proposed development will bring activity much closer to the grade II listed Lower Farm on Grendon Road. Impact to setting is anticipated from increased traffic movements and lighting pollution. A formal assessment of harm was not made at the application stage due to the provision of insufficient information, however, less than substantial harm to the setting of the listed building is anticipated as part of the Council's case.

- 6.31 The appeal proposals will also result in the loss of medieval-post medieval earthwork ridge and furrow within the North Park. As positive archaeological feature this loss cannot be mitigated. It is accepted that this impact is not identified as a reason for refusal, it is part of the Council's case however that this would nonetheless result in heritage harm which should be weighed within the Planning balance.
- 6.32 It is in relation to the impacts stated above that it is the Council's case that the appeal proposals are contrary to Policy BE1 of the VALP and Section 16 of the National Planning Policy Framework.

Reason for refusal 4 – Biodiversity net gain

- 6.33 The fourth reason for refusal states the following:

4. Insufficient and ambiguous information has been provided to determine whether the proposal would provide Biodiversity Net Gains. The proposal has failed to utilise the nationally recognised standard DEFRA 3.0 metric for calculating biodiversity net gains which has led to disputes over classification of existing and proposed habitats within the metric. The submitted Biodiversity Net Gain Assessment is considered not to be an accurate account of the gains generated on site and would fall below the thresholds set nationally contrary to policy NE1 of the Vale of Aylesbury Local Plan and paragraphs 174 and 180 of the National Planning Policy Framework.

- 6.34 There are two reasons for refusal that concern the ecological impacts of the appeal proposals, both of which relate to objections consistently raised by the Council's ecology officers during the applications consultation period.
- 6.35 Reason for refusal 4 relates to the Biodiversity Net Gain Calculations and reason for refusal 6 relates to insufficient species-specific surveys.
- 6.36 It is the Council's case that the applicant has used a version of the Biodiversity Net Gain calculation tool that has known flaws and has subsequently been revised. The use of DEFRA metric 2.0 is no longer accepted as an accurate calculation of Biodiversity Net Gain. Use of version 3.1 has now become the accepted tool to quantify the Biodiversity Net Gain on site.
- 6.37 The Council have also identified flaws in the habitat quality assessments used within the Biodiversity Net Gain Metric. Grassland habitat on site were assigned higher values than considered acceptable and established habitats post development were given a higher classification than thought to be

achievable. Significant reductions in the proposed Biodiversity Net Gains are attributed when taking this into account.

- 6.38 It is noted that in the Appellants Statement of Case it states that a further Biodiversity Net Gain assessment is being calculated using DEFRA metric version 3.1 and that a 10% gain can be achieved. These documents must be shared with the Council at the earliest opportunity to allow a review prior to the relevant proofs of evidence being prepared.

Reason for refusal 5 – Urbanising impact upon the landscape

- 6.39 The fifth reason for refusal states:

5. The development of this greenfield site, by virtue of its layout, scale, and massing, would result in a significant intrusion into open countryside and would have an urbanising impact on an individual basis as well as cumulatively with other nearby development in this rural location, would result in adverse landscape and visual impacts on the site and would give rise to harmful effects on the character of this area. As a result of the scale of the development, the potential for mitigation would be very limited, leading to an intrusive form of development which is highly visible from within the site and long-distance views. This would fail to respect and compliment the physical characteristics of the site and its surroundings, the scale and context, and ordering and form of the locality, contrary to the adopted Vale of Aylesbury Local Plan policies BE2, NE4 and NE5 and paragraphs 174 and 185 of the National Planning Policy Framework.

- 6.40 The appeal site comprises seven fields that wrap around the west, north, and east of the existing prison. The fields are in open countryside sloping slightly away from the existing prison and include an area that was formerly part of the parkland associated with Grendon Hall.

- 6.41 It is the Council's case that the development would result in significant adverse effects on the local landscape character due to:

- The location of the site on higher, sloping ground;
- The extensive nature of the built development;
- The height of the buildings;

- The uncharacteristic style and layout of the buildings, in particular the cruciform houseblocks; and
- The associated infrastructure.

6.42 The existing prison buildings have introduced some urbanising elements into the landscape. However, the scale of the proposed development (the proposed buildings alone would more than double the footprint of the existing prison) and the sloping nature of the site means that the harm to the landscape would be noticeably exacerbated.

6.43 The proposed lighting will significantly increase the area of surrounding landscape that is subject to extensive light pollution.

6.44 The landscape proposals are inadequate to mitigate the adverse landscape impacts and the development would be a significant intrusion into the countryside resulting in a loss of the existing landscape character, including the character of the historic parkland which features remnant ridge and furrow earthworks (reason for refusal 3).

6.45 It is the Council's case that the proposals would be visually intrusive and result in significant adverse effects for a range of visual receptors. The landscape proposals when established, would not noticeably reduce the adverse landscape or visual impacts.

6.46 In relation to the submitted supporting information, it is the position of the Council that the wireframes submitted with the application do not adequately represent the impact of the development. To rectify this deficiency, visualisations in accordance with the Landscape Institute Guidance⁸ should be prepared for use at the Inquiry and the location of the viewpoints should be agreed with the Council's landscape witness.

Reason for refusal 6 – Insufficient ecological information

6.47 The sixth reason for refusal states the following:

6. Insufficient information has been submitted regarding species specific assessments and mitigation relating Bats and Black Hair Streak butterflies. Had the above overarching reasons for refusal not applied, the Local Planning Authority would have sought further information in relation to the potential impact of the proposal in order to ensure that any

⁸ Visual Representation of Development Proposals Technical Guidance Note 06/19

harm would be satisfactorily assessed and mitigated if necessary. In the absence of this information the proposal the Local Planning Authority is unable to determine the full effects of the proposal on these species, including a European Protected Species. The proposal has failed to demonstrate that there would not be an adverse impact to these species and as such is contrary to the requirements of NE1 of the Vale of Aylesbury Local Plan and paragraph 180 of the National Planning Policy Framework.

- 6.48 The Council have been frustrated throughout its consideration of the application by the failings of the appellant to produce the required set of information on multiple issues. In relation to ecological impacts, it is the Council's case that further ecological surveys are still required before any assessment regarding the appeal proposals impact upon ecological receptors can be fully undertaken.
- 6.49 A further survey effort by the appellant is still required for a Priority Butterfly species (Black Hair Streak) that are known to be present in the wider countryside.
- 6.50 In addition, further survey effort is required for bat species across the development site. Significant assemblages and species records have been identified through adjacent developments. This information is critical to establishing if protected species licences are to be required. In addition the further survey work is needed to establish how the appeal proposals will impact these species.
- 6.51 Alongside the additional bat surveys the existing lighting strategy for the site (which includes a substantial level of security lighting given the nature of the proposal) does not consider bat roost or foraging and commuting territories as this information was not submitted.
- 6.52 It is noted that within the Appellants Statement of Case that a Butterfly survey has been submitted and that the further bat survey data will be provided. These documents must be shared with the Council at the earliest opportunity to allow a review prior to the relevant proofs of evidence being prepared.
- 6.53 In the absence of this survey information and the associated assessment that the impacts upon these species will not result in an unacceptable impact, it is the Councils case that the appeal proposals are contrary to Policy NE1 of the VALP.

Reason for refusal 7 – Loss of playing field

6.54 The seventh reason for refusal states:

7. The development, by virtue of its layout has failed to demonstrate that the loss of playing field, including the loss of usable playing field/ pitch space would be replaced by an equivalent or better provision in term of quality and quantity in a suitable location, and the proposal would be contrary to policy I2 of the Vale of Aylesbury Local Plan, Exception 4 of Sport England's Playing Fields Policy, and paragraph 99 of the National Planning Policy Framework.

6.55 The northern development parcel of the appeal site is grassland, currently utilised for sports and outside activities by prisoners and staff of HMP Springhill. The area currently includes a single football pitch and a small area of outdoor gym equipment. This part of the appeal site is considered to constitute playing fields, or land last used as a playing field⁹.

6.56 Paragraph 99 of the NPPF states 'existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements;
- b) or the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.

6.57 The requirements of paragraph 99 of the NPPF align with Sport England's¹⁰ guidance with the added requirement that the new area of playing field provides equivalent or better accessibility and management arrangements.

6.58 Throughout the course of the application, Sports England have maintained their objection to the appeal proposals. some amendments were made to the layout of sports facilities within the

⁹ As defined in The Town and Country Planning (Development Management Procedure) (England) Order 2015 (Statutory Instrument 2015 No. 595)

¹⁰ Exception 4 policy of its Playing Field Policy and Guidance – August 2018

determination process; however these were not sufficient to remove the objections from Sport England.

- 6.59 Historical aerial imagery shows the existing playing field site has accommodated additional small-sided pitch provision. The existing playing field arrangement also benefits from being able to move and reconfigure pitches in different locations to reduce wear and tear on well-used areas. The playing field has in the past also been marked out with a cricket wicket. This flexibility will be lost under the proposed new playing field arrangement.
- 6.60 It is noted that there are sporting benefits to the proposal which include the provision of some facilities and enhancements such as the provision of multi use games areas (MUGAs), however overall, Sport England consider that these benefits do not outweigh the harm caused by the loss of playing fields at the site which includes loss of usable playing field/pitch space.
- 6.61 Sport England recognises that its Exception 3 policy¹¹ (loss of playing field land incapable of accommodating a playing pitch or part of a playing pitch) may apply to a small area of the heavily sloped western edge of the existing playing field, it does not apply to the whole playing field area outside the marked adult football pitch which is shown on the submitted plans.
- 6.62 The proposal is therefore considered to be contrary to Policy I2 (Sports and Recreation) of VALP and Exception 4 of Sport England's Playing Fields Policy.
- 6.63 The Council's case will support Sport England's objection to the appeal proposals.

Reason for refusal 8 – Lack of Section 106 agreement

- 6.64 The eighth reason for refusal states:

8. Had the above reasons for refusal not applied, it would have been necessary for the applicant and the Local Planning Authority to enter into a Section 106 Agreement to secure appropriate financial contributions towards highway and transport improvements. In the absence of such a provision, the Local Planning Authority is not satisfied that the proposal will constitute sustainable development that fulfils a social, economic and environmental role, and the proposal would be contrary to the requirements of policies T1 and T5 of the

¹¹ Playing Field Policy and Guidance – August 2018

Vale of Aylesbury Local Plan and paragraphs 57 and 58 of the National Planning Policy Framework.

- 6.65 At the time of the original determination of the application, no Section 106 agreement had been proposed by the appellant. There were a number of requirements that arose primarily relating to improving the highways and sustainability aspects of the proposals.
- 6.66 It is not the Council's case that these obligations outlined in the Committee Report¹² make the appeal proposal acceptable from a highways or sustainability perspective. The Appellant notes in their Statement of Case¹³ that the planning contribution identified would facilitate the development, this is not a position that the Council accepts.
- 6.67 The Council outlined a series of contributions, which if members were minded to approve the scheme against officer recommendations, would be needed as a minimum to lessen the impact of the proposals. It is not the Council's case that any associated effects will be reduced to the point of being acceptable through the commitment to deliver the obligations outlined.
- 6.68 Nonetheless, the appellant at the time of the preparation of the Committee Report failed to produce or meaningfully enter into the production of a S.106 agreement. Had the reasons for refusal not applied, it would have been necessary for the applicant and the Council to enter into a S.106 agreement to secure the necessary obligations. It is the Council's case that this failure to enter into an agreement is a justified reason for refusal.

Other material considerations not included in the reason for refusal

- 6.69 In addition to the issues and topics raised in the reasons for refusal, two further matters were given negative weight in the Council's determination of the appeal proposals. These issues relate to the impact of the proposals upon mineral safeguarding and the potential loss of best and most versatile agricultural land.

Mineral safeguarding – Policy 1 of the BMWLP

¹² Paragraph 18.1

¹³ Paragraph 5.33

- 6.70 The Council's case will refer to the appeal site being located within an identified minerals safeguarding area under Policy 1 of the BMWLP. The majority of the western parcel of the appeal proposal is highlighted on the mineral safeguarding map¹⁴ within the BMWLP as being underlain by potential sand and gravel reserves.
- 6.71 As mineral resources are finite and can only be extracted where they are found, the unnecessary sterilisation of known mineral resources is to be avoided. This is a position that is reflected in both the NPPF¹⁵ and the BMWLP.
- 6.72 As the appeal proposal is for a non-mineral extraction development, under Policy 1 of the BMWLP, the applicant was required to produce a Mineral safeguarding assessment (MSA) which provided the following information.
- The size, nature and need for the (non-minerals) development;
 - The effect of the proposed development on the mineral resource beneath or adjacent to the site;
 - Site-specific geological survey data (in addition to the Mineral Safeguarding Areas maps within the BMWLP and British Geological Survey mapping data) to establish the existence or otherwise of a mineral resource (detailing resource type, quality, estimated quantity and overburden to reserve ratio);
 - Whether it is feasible and viable to extract the mineral resource ahead of the proposed development to prevent sterilisation and the potential for use (of the mineral resource) in the proposed development, and;
 - Where prior extraction can be undertaken how this will be carried out as part of the overall development scheme, with reference to the proposed phasing of operations and construction of the non-mineral development.
- 6.73 The appellant has not produced any assessment that addresses the requirements of Policy 1 of the BMWLP. It is the Council's case that the appeal proposals are contrary to Policy 1 of the BMWLP and

¹⁴

<https://bucks council.maps.arcgis.com/apps/webappviewer/index.html?id=1520ce1d2157466d87c92461c4d138aa&%20Waste=>

¹⁵ Paragraph 212 of the NPPF

that negative weighting should be applied against the proposal in respect of this contravention of adopted local planning policy.

Agricultural Land Classification – Policy NE7 of the VALP

- 6.74 Policy NE7 of the VALP seeks to protect the best and most versatile farmland for the longer term. The Natural England Agricultural Land Classification (ALC) defines the Best and Most Versatile (BMV) agricultural land as grade 1, 2 and 3a with lower grade land at 3b, 4 and 5 defined by wetness and gradient of the land. In accordance with both the VALP and the NPPF¹⁶ Development of BMV land (1,2 and 3a) should be avoided and development directed towards land of lower grades 3b, 4 and 5.
- 6.75 The application was not supported by an Agricultural Land Classification report. The DEFRA Spatial Map confirms most of the site, land within the northern and eastern parcel as Grade 4 (poor quality) with land within the eastern parcel (not currently used for agriculture) is identified as Grade 3 (good to moderate quality).
- 6.76 Following a review of Natural England's Agricultural Land Classification Maps it would appear that it is the western development parcel which has been classified as Grade 3 'Good to Moderate'. Without the submission of an Agricultural Land Classification report the Council have been unable to determine this area's specific category to distinguish whether the western development parcel comprises of Grade 3a land or lower grade 3b land. Without evidence to the contrary, the Council and the Planning Inspector will have to assume worst case scenario in that part of the appeal site does constitute the best and most versatile agricultural land.
- 6.77 The western development parcel is shown to comprise of a SUDS basin, proposed football pitch and a new access serving the development, of which a large area is to be retained as green open space with soft landscaping. While structures are not avoided in their entirety on the western parcel, as advised by policy NE7, they are considered to be limited and therefore the Council took the view that a reason for refusal could not be sustained on this particular matter.
- 6.78 In weighing up the planning balance of the appeal proposal it will be the Council's case that this impact should be afforded negative weight by the Inspector.

¹⁶ Paragraph 174 b) and paragraph 176 and Footnote 58.

7. Summary and conclusion

- 7.1 The Council will demonstrate that the appeal proposals are contrary to the Development Plan for the site and that no material considerations indicate that the appeal should be determined otherwise than in accordance with the adopted Development Plan.
- 7.2 The appeal site is located within a fundamentally unsustainable location which will result in a an over reliance upon private car travel. This principle has been accepted on three recent separate occasions by Planning Inspectors who have agreed that the site is an unsustainable location and resultant heavy reliance upon private car usage are sound reasons to prevent development occurring within the immediate vicinity of the appeal site. The Council's position is consistent with these previous appeal decisions.
- 7.3 The impact upon heritage assets within and surrounding the appeal site are not outweighed by the limited public benefits the appeal scheme proposes to deliver. Considerable weight must be given in favour of preserving and conserving the setting of the heritage assets that surround the appeal site.
- 7.4 Through the determination of the application, it became difficult for the Council to understand if any other genuine factors were taken into consideration by the applicant for pursuing the site, other than the convenience of the land already falling within the appellants control. It will be the Council's case that this approach to rationalising the appeal site's location further undermines its justification for the harm the proposal will result in.
- 7.5 The Council will demonstrate that by the appellants own criteria, the appeal site fails to meet their own search requirements. The Council will also highlight that the appellants own criteria placed no emphasis or requirement to be adjacent to an existing prison facility.
- 7.6 The Council will draw on examples of other Category C prisons (e.g. HMP Five Wells, Wellingborough) recently constructed by the appellant to illustrate the type of site that would be suitable for this scale of development. As part of the Council's case it will be requesting that the Inspector visits this existing prison site in order to both compare the two locations and understand the scale of the appeal proposals

- 7.7 The Council's case will demonstrate that throughout the determination of the appeal proposals multiple requests for additional information to support the application were not acted upon. This is reflected in the still outstanding ecological information that relates to reasons for refusal 4 and 6.
- 7.8 The appeal proposals are contrary to multiple outlined adopted local planning policies in both the VALP and the BMWLP. Accordingly pursuant to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the decision in accordance with the statutory development plan is to refuse grant of permission.
- 7.9 It is on the basis of the above that the appeal proposal should be dismissed.