IN THE MATTER OF THE NATIONAL PLANNING POLICY FRAMEWORK
AND IN THE MATTER OF THE SOUTH DOWNS NATIONAL PARK AUTHORITY

OPINION

SECTION 1: INTRODUCTION

1. I am asked by the South Downs National Park Authority ('the NPA') for my opinion on the meaning of "major development" in paragraph 116 of the National Planning Policy Framework ('NPPF'). I previously advised the NPA on the meaning of "major development" in paragraph 22 of PPS7 ('my 2011 Opinion'). Now that PPS7 has been replaced by the NPPF, I am asked to review and update that previous advice.

SECTION 2: THE POLICY FRAMEWORK

2. Paragraph 22 of PPS7 stated:

> "Major developments should not take place in these designated areas [National Parks, the Broads, and AONBs], except in exceptional circumstances. This policy includes major development proposals that raise issues of national significance. Because of the serious impact that major developments may have on these areas of natural beauty, and taking account of the recreational opportunities that they provide, applications for all such developments should be subject to the most rigorous examination. Major development proposals should be demonstrated to be in the public interest before being allowed to proceed. Consideration of such applications should therefore include an assessment of:
> (i) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
> (ii) the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
> (iii) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated."

3. On 27 March 2012, the NPPF came into force and PPS7 (along with all other Planning Policy Statements) was revoked. However, the majority of

the content of paragraph 22 of PPS7 was incorporated into paragraph 116 of the NPPF which states:

> "116. Planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications should include an assessment of:
>
> - The need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
> - The cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and
> - Any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated"

4. Neither PPS7 nor the NPPF define "major development". While the NPPF is written with a more condensed style, there does not appear to be any substantial difference in the way the term is used in the two documents. Consequently, on a *prima facie* basis, there is no reason to consider that the definition of "major development" differs between the two documents.

SECTION THREE: THE MEANING OF "MAJOR DEVELOPMENT" IN THE NPPF

Part 1: My previous opinion

5. In my 2011 Opinion, I noted that there was no definition of "major development" in PPS7 and no relevant caselaw providing guidance on the point. In addition, I highlighted an inconsistent approach in previous Secretary of State and Inspectorate appeal decisions. Having considered this material, and the definition of "major development" contained in Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 ('the 2010 Order'), it was my opinion that, in determining whether a development was "major development" for the purposes of paragraph 22 of PPS7, it would be an erroneous approach to:

a. Simply apply the definition of "major development" contained in the 2010 Order; or
b. Apply any rigid or set criteria; or
c. Include only developments which raise issues of national significance.

6. At paragraph 38 of my 2011 Opinion I advised as follows:

> "(1) The definition of "major development" in the 2010 Order is not the definition for the term as used in paragraph 22 of PPS7.
>
> (2) Major development, for the purposes of paragraph 22 of PPS7 is any development which, by reason of its scale, character or nature, has the potential to have a serious adverse impact on the natural beauty and recreational opportunities provided by a National Park or AONB. That does not require an in-depth consideration of whether the development will have such an impact. Instead, it requires a prima facie assessment of the potential for such impact.
>
> (3) Assessing whether a proposed development is a "major development" is a matter of judgment based on all the circumstances. It is not a matter that can be determined by criteria alone.
>
> (4) However, criteria may be used to raise a presumption that a development is a "major development". That criteria might include:
>
> i. The development is EIA development;
> ii. The development falls within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended) (those developments falling within Schedule 2 have the potential to have significant environmental effects and therefore this is an appropriate criteria to apply in this context);
> iii. The development is "major development" for the purposes of the 2010 Order (although the definition in the 2010 Order does not apply directly to paragraph 22 of PPS7, the criteria set out in that definition is a useful starting point to identify development of a size, character or nature that may have a significant adverse impact on the National Park);
> iv. The development requires the submission of an appraisal/ assessment of the likely traffic, health, retail implications of the proposal. The application of this kind of criteria appears to be supported by the Secretary of State's decision in the Leda Properties appeal.
>
> (5) If the criteria above are met, the NPA must consider whether there is anything to rebut the presumption that the development is major development. Local circumstances, the particular facts of the application, and other applicable planning policies must be taken into account before coming to a view on whether the development, by reason of its scale, character or nature, has the potential to have an serious adverse impact on the natural beauty and recreational opportunities provided by a National Park or AONB.

> (6) There may also be circumstances in which an application which does not raise a presumption that it is a "major development" may nonetheless be properly regarded as a "major development" when all the circumstances are considered."

7. In essence, I advised that the determination of whether a development is a "major development" is an exercise in planning judgment based on all the circumstances, and taking into account the potential impact that the development may have on the National Park or AONB by reason of its scale, character or nature.

Part 2: Relevant case-law

8. At the time of writing my 2011 Opinion, there was no relevant caselaw to assist in defining "major development" for the purposes of paragraph 22 of PPS7. However, since then, the courts have provided guidance on the meaning of "major development" in paragraph 116 of the NPPF.

9. In ***Aston v Secretary of State for Communities and Local Government*** [2013] EWHC 1936 (Admin), Wyn Williams J rejected the submission that the definition of "major development" in paragraph 116 of the NPPF was the same as that in the 2010 Order. He said:

> "90…. The NPPF does not define or seek to illustrate the meaning of the phrase "major developments". Mr Harwood QC points out that in the Town and Country Planning (Development Management Procedure) Order 2010 Article 2 defines major development as development involving any one or more of the following:
> "(a) the winning and working of minerals or the use of land for mineral-working deposits;
> (b) waste development;
> (c) the provision of dwelling-houses where –
> (i) the number of dwelling-houses to be provided is 10 or more; or
> (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
> (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
> (e) development carried out on a site having an area of 1 hectare or more."
>
> 91 Mr Harwood QC points out, too, that this definition appears or is incorporated into other regulatory provisions. That being so, he submits that the term "major development" should be given the same meaning wherever it appears in regulations or planning policy documents and, consequently,

> the proposal to erect 14 dwelling-houses upon the appeal site constituted major development.
>
> 92 The Inspector declined to treat the application before him as major development. His view was that the development of 14 dwellings could not properly be described as major "by any published or even commonsense criterion" – see paragraph 39 of the decision letter.
>
> 93 Despite Mr Harwood's persuasive submissions I do not accept that the phrase "major development" should have a uniform meaning wherever it may appear in a policy document, procedural rule or Government guidance provided the context is town and country planning and, I presume, no contrary meaning is provided in the policy document, rule or guidance. Rather, it seems to me much more appropriate that the term should be construed in the context of the document in which it appears. In my judgment the context of the NPPF and paragraphs 115 and 116 in particular militate against the precise definition which Mr Harwood QC suggests should attach to the phrase "major development". The word major has a natural meaning in the English language albeit not one that is precise. In my judgment to define "major development" as precisely as suggested by Mr Harwood QC would mean that the phrase has an artificiality which would not be appropriate in the context of national planning policy. As Mr Kolinsky points out in his skeleton argument the Regulations in which the phrase major development is defined are procedural in nature as is the guidance contained within Circular 02/2009 which is also relied upon by Mr Harwood QC – a point with which Mr Harwood QC did not disagree. I do not consider it appropriate to import a definition which may be sensible and desirable in Regulations or guidance concerned with procedural matters into a document intended to form a detailed policy framework.
>
> 94 I am satisfied that the Inspector made no error of law when he determined that the meaning of the phrase major development was that which would be understood from the normal usage of those words. Given the normal meaning to be given to the phrase the Inspector was entitled to conclude that the Third Defendant's application to erect 14 dwelling-houses on the appeal site did not constitute an application for major development." (underlining added)

10. The underlined section of the judgment above appears to confirm that the determination of whether an application is "major development" is fact-specific and a matter of judgment for the decision maker.

11. If there were any doubt of that, it was confirmed in ***R. (Forge Field Society) v Sevenoaks DC*** [2014] EWHC 1895 (Admin), where Lindblom J affirmed the approach adopted by Wyn Williams J in defining "major development" according to "the normal meaning to be given to the phrase" and confirmed that the decision as to whether or not a

development was "major development" was a matter of planning judgement. The judge said:

> "64 In his "Late Observation Sheet" the officer referred to the presumption against "major developments" in Areas of Outstanding Natural Beauty. He noted that the NPPF "does not define major development", but that the Town and Country Planning (Development Management Procedure) Order 2010 ("the Development Management Procedure Order") "defines major residential development as 10 or more dwellinghouses". On this definition he did not regard the scheme as major development of the kind to which paragraph 116 of the NPPF would apply.
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> 65. Mr Strachan made two main submissions on this ground... Mr Strachan's second submission was that the officer also misdirected the committee on the question of whether the proposal was for "major development" in the AONB. As was held in ***R. (on the application of Aston) v Secretary of State for Communities and Local Government*** [2013] EWHC 1936 (Admin), this is not a question to be decided merely by using the definition of major development in article 2(1) of the Development Management Procedure Order.
>
> 66. I cannot accept either of those submissions.
> …
>
> 68. Mr Strachan's second submission, that the Council ought to have treated this development of six affordable dwellings as a "major development" in the AONB, is not an attractive argument either. Nor, in my view, is it supported by the decision of Wyn Williams J. in Aston.
>
> 69. The officer's advice in the "Late Observation Sheet" that the proposed development was not "major development" within the scope of policy in paragraph 116 of the NPPF was consistent with common sense, and also with the view of the inspector in ***Aston*** that a scheme for 14 dwellings was not "major development". In his judgment in that case (at paragraphs 91 to 95) Wyn Williams J. rejected the submission that the term "major development" when used in paragraph 116 of the NPPF had the same meaning as it does when used in the Development Management Procedure Order. As he said (at paragraph 91), the NPPF "does not define or seek to illustrate the meaning of the phrase "major developments"". In his view, with which I agree, that concept should be understood in the context of the document in which it appears, and in paragraphs 115 and 116 of the NPPF the context militates against importing the definition of "major development" in the Development Management Procedure Order. In this context I think "major developments" would normally be projects much larger than six dwellings on a site the size of Forge Field. But in any event it was clearly open to the Council to conclude that the proposed development in this case was not a major development to which the policy in paragraph 116 applied. This too was an entirely reasonable exercise of planning judgment, and the court should not interfere with it.
>
> 70. I therefore reject this ground of the claim." (underlining added)

12. The ***Aston*** and ***Forge Field Society*** judgments now provide a substantial degree of clarity on the meaning of "major development" in paragraph

116 of the NPPF. It is to be given its normal meaning and it will be a matter of judgment for the decision maker to reach a conclusion on whether a proposal is a "major development", having regard to all the circumstances.

Part 3: Planning Practice Guidance

13. On 6 March 2014, Planning Practice Guidance (PPG) was issued in relation to the definition of "major development" in paragraph 116 of the NPPF. It reads as follows:

> "Paragraph: 005 Reference ID: 8-005-20140306
>
> How is major development defined in National Parks and Areas of Outstanding Natural Beauty, for the purposes of the consideration of planning applications in these areas?
>
> Planning permission should be refused for major development in a National Park, the Broads or an Area of Outstanding Natural Beauty except in exceptional circumstances and where it can be demonstrated to be in the public interest. Whether a proposed development in these designated areas should be treated as a major development, to which the policy in paragraph 116 of the Framework applies, will be a matter for the relevant decision taker, taking into account the proposal in question and the local context. The Framework is clear that great weight should be given to conserving landscape and scenic beauty in these designated areas irrespective of whether the policy in paragraph 116 is applicable." (underlining added)

14. That Guidance is not conclusive but is a material consideration in determining applications and appeals. It echoes the approach of the courts in confirming that the question of whether a proposal is "major development" is context-specific and dependent on the particular application.

15. Arguably, the PPG goes further than the decisions in ***Aston*** and ***Forge Field Society*** in specifically requiring a consideration of "the local context". However, in my opinion, that requirement flows naturally from the fact that the determination of whether a proposal is "major development" is a matter of planning judgment: one cannot exercise that judgment in the abstract and must take into account the specific, and local, circumstances of the application.

Part 4: Subsequent appeal decisions

16. Since my 2011 Opinion, there have been numerous appeal decisions in relation to the meaning of "major development" in relation to both PPS7 and the NPPF. However, many of those decisions pre-date the High Court decisions in ***Aston*** (10 July 2013) and ***Forge Field Society*** (12 June 2014) and publication of the Practice Guidance (6 March 2014). Accordingly, their usefulness may be limited[1].

17. The appeal decisions post-dating the ***Aston*** decision potentially provide more useful guidance and are summarized as follows:

    a. In APP/Y2736/A/13/2197184, Land to the rear of Station Road, Ampleforth (decision dated 13 November 2013), a development of 30 housing units was proposed on a 1ha agricultural site within an AONB, abutting, but outside of, the existing built up area as defined in the Local Plan. Relying on ***Aston***, the Inspector rejected the submission that the "major development" should be construed in line with the 2010 Order. She found that "this development of 30 houses, in the context of the existing village development does not constitute major development for the purposes of paragraph 116 of the Framework" (underlining added).

    b. In APP/D3830/A/13/2198213, Land at Handcross, West Sussex (decision of 1 May 2014), a development of between 75 – 90 dwellings, with accompanying carehome, was proposed in an AONB. In finding that the proposal was "major development" for the purposes of paragraph 116 of the NPPF, the Secretary of State agreed with the following reasoning by his Inspector:

[1] For completeness, I have listed some of these appeal decisions in an appendix attached to this Opinion.

> "87. Para 116 of the NPPF indicates that permission should be refused for major developments in the AONB other than in exceptional circumstances where the proposal is in the public interest. There is no agreed definition of 'major development' and whether a proposal falls into this category is a matter of fact and degree, and subject to the context of the site. It is certainly the case that the Cuckfield appeal decision concluded that it referred to projects of national significance in relation to the definition in the Planning Policy Statement 7 which applied at the time. On the other hand, the judicial opinion quoted by the Council in the 'Aston' Case suggests that 'major' should take on its natural meaning. In the present context, a scheme of 75 or 90 houses would fall into the normal interpretation of the word 'major' in relation to the size of the village. There is not a compelling case that para 116 refers only to schemes of national or regional significance and, on balance, there is adequate reason to consider that these schemes are major developments to which the paragraph applies.
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> 88. In reaching this conclusion, account is taken of the appellants' suggestion that para 116 is intended to capture schemes which have a major effect on the AONB, which they consider does not apply to the present appeals. However, the wording of para 116 refers to major developments rather than effects. It lies with the assessment carried out in accordance with the third bullet point of the paragraph to establish the level of any effect. A limited degree of harm, or the potential for mitigation, would clearly count in favour of the proposal when establishing whether exceptional circumstances apply." (underlining added)

c. In APP/U1105/A/14/2211701, Land adjacent to Badger Close, Newton Poppleford, Devon (decision of 11 June 2014) a development of c.46 dwellings was proposed within an AONB. In dismissing the appeal, the Inspector noted:

> "At paragraph ref. 8-005-20140306, the national Planning Practice Guidance (PPG) states that the matter of whether a proposed development in these designated areas should be treated as a major development, to which the policy in paragraph 116 of the Framework applies, will be a matter for the relevant decision taker, taking into account the proposal in question and the local context. It is the Council's view that the appeal scheme comprises a major development in these terms. It was stated at the Hearing that a development of the size of the appeal scheme would be approximately 5% of the size of the existing settlement of Newton Poppleford. In the context of the village, and in the light of the scheme's visibility from a main approach road as described in respect of viewpoint 3, this seems to me to be a significant addition. Accordingly, I agree with the Council's assessment of this matter. The requirements of paragraph 116 of the Framework therefore apply.
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> 26. It was stated at the Hearing that the Council took a different view when assessing the King Alfred Way scheme, which as already noted

> would be of a similar size to that now proposed. Clearly, that is a matter for the Council. However, I note that, unlike the present scheme, the King Alfred Way does not adjoin a main approach road into the village: it also differs from the appeal site in terms of its site levels and landform. While the appellant refers to an appeal decision in Tetbury within the Cotswold AONB, where a 39 dwelling scheme was deemed to not comprise major development, my assessment is based upon the local context of the present proposal, as is required by the PPG."

d. In APP/P1615/A/13/2204158, Land off Reddings Lane, Staunton, (Coleford) Gloucestershire (decision of 23 June 2014), 15 residential units were proposed with public open space within an AONB. The Inspector found that the development would cause substantial harm to the AONB. He then noted as follows:

> "20. There were differences of views at the inquiry on whether the proposal represented a 'major' scheme in the context of paragraph 116 of the Framework and the appellant referred to a number of decisions in support of their argument that it was not major14. However, relative to the limited size of Staunton and to the location and extent of development in recent years, I regard the proposal to represent a major scheme for which planning permission should be refused." (underlining added)

18. The underlined sections of these decisions reveal a largely consistent approach of Inspectors and the Secretary of State: when addressing the question of whether a development is "major development" for the purposes of paragraph 116 of the NPPF, the question must be addressed in relation to its local context. In my opinion, that is consistent with the caselaw and with the PPG.

19. This approach is less clear in the appeal decision provided to me by instructing solicitors in relation to Burlands Field, Selbourne Road, Selborne. (decision of 13 March 2014), which involved an application for 30 dwellings in the South Downs National Park. In that decision, the Inspector noted:

> "57. The SDNPA's first reason for refusal alleges that the appeal proposal would be major development in the National Park. This is a significant point, as paragraph 116 of the Framework explicitly states that planning permission should be refused for major development in designated areas such as

> National Parks, except in exceptional circumstances and where it can be demonstrated that the development, would be in the public interest.
>
> 58. As the Framework does not provide a definition of what constitutes major development there was much debate on this matter at the inquiry. The SDNPA argued that the starting point should be to use the definition set out in the Town and Country Planning (Development Management Procedure)(England) Order
>
> 59. In this regard the SDNPA argues that a development which would increase the size of a village which currently has some 311 dwellings, by about 10%, would lead to significant adverse effects, and that such a development could not be considered anything but major.
>
> 60…the appellant argues that the origins of the phrase "major development" can be traced back to the former national planning guidance contained in PPG7 and PPS7. Both of these indicated that major development proposals include those that raise issues of national significance. Whilst it is clear that this is not a comprehensive definition, and there is no suggestion that major developments can only relate to projects of national significance, it does provide some useful guidance concerning the likely scale of development to be considered as major in the National Park context.
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> 61. With this in mind I take the view, in the current case, that although the appeal proposal would amount to a fairly significant development in the context of Selborne, its impact would be confined to the local area and, as already noted, would be less than substantial in terms of effects on heritage assets. This view is generally supported by the screening direction for Environmental Impact Assessment purposes, issued by the Secretary of State, in which the proposed development is described as a small-scale housing project.
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> 62. It is also supported by the initial consultation response from Natural England, which took the view that the development would not be likely to adversely affect the purpose of the SDNP designation. However, this response was retracted shortly before the start of the inquiry, with comments on protected landscape matters being deferred to the SDNPA. Although this decision to defer does not appear to have been taken as a result of any detailed reassessment of the proposal, the fact that Natural England's comments have now been retracted means that I cannot give them weight.
>
> 63. But notwithstanding this last point, having regard to all the matters detailed above I am not persuaded that the appeal proposal should be seen as a major development needing to be justified by exceptional circumstances, as discussed in paragraph 116 of the Framework."

20. Instructing solicitors have raised a concern in relation to this decision. That concern relates to two aspects: first, that the Inspector appears to have placed some weight on the PPG7 and PPS7 reference to projects "that raise issues of national significance"; and secondly, that the Inspector

appeared to find that the proposal was not "major development" because the impact would be confined to the local area.

21. In my opinion, the Burlands Field decision is best understood as a decision which turns on its facts, rather than a decision which purports to apply any specific test for "major development". Nonetheless:
    a. To the extent that the Inspector relied on the reference in PPG7 and PPS7 to "projects that raise issues of national significance", I consider that this ought to carry very little weight in the decision making process. I say that for the following reasons:
        i. The PPS7 and PPG7 reference to "projects that raise issues of national significance" has been removed from the NPPF and no longer has any basis in policy;
        ii. Paragraph 116 of the NPPF does not apply at all where the application is for a nationally significant infrastructure project (see paragraph 3 of the NPPF).
        iii. In any case, it is clear – as the Inspector acknowledged - that the reference in PPS7 and PPG7 was not exhaustive and it was never intended to restrict the meaning of "major developments" to those which raised issues of national significance;
        iv. In the Handcross appeal (which followed the Burlands Field decision), the Secretary of State agreed that "there is not a compelling case that paragraph 116 refers only to schemes of national or regional significance"

    b. To the extent that the Inspector found that the proposal was not a "major development" because the impact would be confined to the local area, this cannot possibly be a test of general application. If "the local area" was a highly important part of the National Park or AONB, then that local impact may be very significant indeed. In

any case, this approach appears to run counter to the observations at paragraph 88 of the Inspector's Report in the Handcross appeal (quoted above), where the Inspector noted and the Secretary of State agreed that the test in paragraph 116 of the NPPF is not whether the impact of the development is major, but whether the development itself is major. The Inspector in the Burlands Field decision appears to have reached his conclusions on whether the development was "major development" only after a careful assessment of impacts. In my opinion, that is to put the cart before the horse. While it may well be appropriate, as part of the determination of whether a proposal is "major development", to consider whether, by reason of its scale, character or nature, it has the potential to have a serious adverse impact on a National Park or AONB, "major developments" are not defined in paragraph 116 of the NPPF by their actual, assessed impacts but by the nature of the development.

22. Accordingly, to the extent that the Inspector in the Burlands Field decision did purport to apply any particular test for "major development" (which I doubt), I do not consider that those tests should be followed.

SECTION 4: APPROACH TO BE ADOPTED BY THE NPA

23. In light of the caselaw, guidance and appeal decisions since 2011, I consider that the views contained in my 2011 Opinion remain, despite various developments in the caselaw and changes to policy, largely valid. However, there are matters of nuance which need revision. Accordingly, I set out below a set of principles – derived from the caselaw, guidance and appeal decisions - to be applied by decision makers when determining whether an application is for "major development".

24. First, the overarching principle is that the determination of whether a proposal amounts to "major development" for the purposes of paragraph 116 of the NPPF is a matter of planning judgment to be decided by the decision maker in light of all the circumstances of the application and the context of the application site.

25. Secondly, the phrase "major development" is to be given its ordinary meaning. Accordingly, it would be wrong in law to:
    a. Apply the definition of major development contained in the 2010 Order to paragraph 116 of the NPPF.
    b. Apply any set or rigid criteria to defining "major development".
    c. Restrict the definition to proposals that raise issues of national significance.

26. Thirdly, in making a determination as to whether the development is "major development", the decision maker may consider whether the development has the potential to have a serious adverse impact on the natural beauty and recreational opportunities provided by a National Park or AONB by reason of its scale, character or nature. However, that does not require (and ought not to include) an in-depth consideration of whether the development will in fact have such an impact. Instead, a prima facie assessment of the potential for such impact, in light of the scale, character or nature of the proposed development is sufficient.

27. Fourthly, as a matter of planning judgement, the decision maker must consider the application in its local context. This is made clear in the PPG, but also appears implicit in the caselaw. In ***Forge Field***, for instance, Linblom J noted that *""major developments" would normally be projects much larger than six dwellings on a site the size of Forge Field."* In so observing, he appears to have contemplated the possibility that, depending on the local context, there may be circumstances in which a project of six dwellings

could amount to major development on a site the size of Forge Field. Accordingly, in principle, the same development may amount to "major development" in one National Park, but not in another; or in one part of a National Park, but not in another part of the same National Park.

28. Fifthly, the application of criteria such as whether the development is EIA development, whether it falls within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended), whether it is "major development" for the purposes of the 2010 Order, or whether it requires the submission of an appraisal/ assessment of the likely traffic, health, retail implications of the proposal will all be relevant considerations, but will not determine the matter and may not even raise a presumption either way[2].

29. Finally, and fundamentally, in making a determination, it is important to keep in mind the ordinary, common sense, meaning of the word "major". Although Lindblom J appears to have contemplated the theoretical possibility of 6 dwellings amounting to "major development" he noted (rightly in my opinion), that in ordinary language a "major development" will normally be much larger than 6 housing units. Accordingly, having considered all the circumstances, including the local context, the decision maker must take a common sense view on whether the proposed development can appropriately be described – in ordinary language - as "major development".

SECTION 5: SPECIFIC QUERY

30. I am asked whether the NPA *"should continue to apply the same definition of "major development" across the National Park and possibly reach different conclusions depending on whether the development proposed is within a larger*

[2] In this respect, in particular, I have revised the advice contained in my 2011 Opinion

town or the countryside or whether the Park should be considering a different definition of "major development" within larger towns."

31. In my opinion, the NPA should apply the same definition of "major development" to all applications it receives. However, I trust it is clear from the general advice set out above that what constitutes a major development will depend on all the circumstances, including the local context. Accordingly, it may be that the NPA reaches different conclusions in relation to identical applications in different parts of the National Park. For example, it may be that an application for 50 dwellings within a larger town in the National Park is not "major development", but an application for 50 dwellings in the countryside of the National Park is "major development". However, the determination of these matters will be a matter of planning judgment for the decision maker at the time of considering the application and will depend on whether the application, in its context, can – as a matter of ordinary language – be described as "major development".

SECTION 6: CONCLUSION

32. If there is anything else I can assist with, I can be contacted in Chambers.

JAMES MAURICI QC
Landmark Chambers
180 Fleet Street
London
EC4A 2HG
Thursday 31 July 2014

APPENDIX TO OPINION

The following appeal decisions post-date my 2011 Opinion and predate the High Court decision in ***Aston***. They address the meaning of "major development" in paragraph 116 of the NPPF. As discussed in my Opinion, I do not consider that they provide substantial assistance, but they are provided here for completeness:

- APP/N2525/A/11/2164661. Land adjacent to Northwold Farm (decision of 18 April 2012). The Inspector treated the NPPF policy as identical to the PPS7 policy and found that a development of two wind turbines was not "major development".

- APP/C3621/A/11/2159362. Land to the rear of Springfield Road, Dorking (decision of 30 April 2012). The Inspector considered that "major development" may include both published and "common sense" criteria. He found that a development of 14 dwellings was not "major development" on any criteria.

- APP/B3600/A/11/2166561. Land at Bury Hill West, Coldharbour Lane, Surrey (decision of 26 September 2012). The Inspector rejected the submission that the 2010 Order definition applied and instead adopted a contextual approach. Having regard to the scale and reversibility of the proposal, he found that a limited and temporary minerals development was not "major development"

- APP/W0340/A/12/2173977. Old Kiln Quarry, Oxford Road, West Berkshire (decision of 6 November 2012). The Inspector noted that the proposed minerals development fell within the definition of "major development" contained in the 2010 Order, but appears to have applied a broader definition when reaching the conclusion that the development was "major development".

- In APP/A1530/A/13/2195924. land north of London Road and West of the A314, Little Horkesley, Colchester, the matter in dispute was the extent to which a proposal needed to be 'in' the AONB in order for paragraph 116 of the NPPF to apply. (This matter was also addressed by the Court of Appeal in ***R (Cherkeley Campaign Ltd) v Mole Valley DC*** [2014] EWCA Civ 567). The appeal concerned "planning

permission for the change of use and development of land to form 'The Stour Valley Visitor Centre at Horkesley Park' comprising a country park, art and craft studios (The Chantry), public gardens, a central building complex to provide an indoor display ring, 'Suffolk Punch Breeding Centre', entrance building, shop, café, 'Field to Fork', 'Farming through the ages', Active Learning, 'Nature Watch', and retained greenhouse as a demonstration nursery and gardens, an 'Energy Centre', main and overflow car parks, service yard, highway improvements, ancillary works and infrastructure provision". The Inspector noted (see paragraph 281 of the inspector's report) that "the proposed development would include the erection of 8,950 m² of new buildings and the change of use of some 42 ha of agricultural land to country park. It is intended to attract more than 300,000 visitors every year from across the region and more specifically from China. It would by any measure be a major development … However, the new buildings would occupy the site of the redundant nursery, outside the AONB ... They would form the major part of the new development. While there would be the creation of the Chinese garden, the erection of fencing and the change of use of land within the AONB, these are relatively minor elements of the scheme in terms of development. The proposal cannot with any factual accuracy be described as major development in the AONB, so in my view ¶116 of the Framework cannot be invoked". The Secretary of State agreed that it was not major development <u>in the AONB</u> (see the Secretary of State's decision letter at paragraph 17).

IN THE MATTER OF THE NATIONAL PLANNING POLICY FRAMEWORK
AND IN THE MATTER OF THE SOUTH DOWNS NATIONAL PARK AUTHORITY

OPINION

Becky Moutrey
Senior Solicitor, Environment
West Sussex County Council
Room 232
County Hall
Chichester
West Sussex
PO19 1RQ
0330 2222708
becky.moutrey@westsussex.gov.uk