

<b>PINS Ref</b>	APP/C3105/A/11/2159619
<b>Site</b>	Land at Cotefield Farm, Bodicote, Banbury, Oxfordshire
<b>Appellant</b>	Banner Homes Ltd
<b>Council</b>	Cherwell District Council

### **CLOSING SUBMISSIONS OF THE COUNCIL**

1. This has been an inquiry into an appeal against the Council's decision on 12 August 2011 to refuse outline planning permission at the Site for a residential development of some 82 dwellings.
2. The Council is content to adopt the Inspector's helpful formulation of the main issues at the outset of the inquiry, namely:
  - (1) whether development outside the built-up area is justified by the need for more housing in the area; and
  - (2) if so, whether the Site is in a suitable location for that purpose.

#### ***Issue 1: Housing need***

3. The thrust of the Appellant's case is that the release of the Site for housing is justified, notwithstanding that the development plan does not provide for this, given that the Council falls short of being able to demonstrate a 5-year housing land supply.
4. The Council accepts that it cannot currently demonstrate a 5-year housing land supply. The clear conclusion of the Council's 2011 Annual Monitoring Report ("**AMR**"), as approved by the Council's Executive on 6 December 2011, is that the District only has a 2.8 year supply for the period 2011-2016 and a 2.9 year supply for the period 2012-2017, equating to a shortfall of 1597 and 1560 dwellings respectively. For the particular area known as 'Banbury and North Cherwell' within the District, which includes the Site, the supply figure for both of these periods is 1.7.

5. Plainly, this is not a position in which the Council has wished to find itself. The reality is that, up until the Inspector promulgated her decision on the London Road, Bicester appeal on 18 August 2011, the Council had been satisfied that it had more than 5 years of supply and inspectors had agreed with this analysis in two appeal decisions as recently as June 2011: APP/C3105/A/10/2134007 and APP/C3105/A/2132662. The view of the London Road Inspector that the Council's supply was "likely to be well below the 5.2 years" that it put forward at that inquiry was reinforced by the publication of the 2011 AMR in December 2011.
6. These events cannot reasonably be interpreted as suggesting that the Council has a long-standing history of failing to secure an adequate 5-year supply. Any attempt to characterize the Council as languishing in a state of inertia for months or even years on this issue would be a gross distortion of the truth. The Council's difficulties are recent, and the extent of reduction in its supply, and the speed with which this has occurred, are due in no small part to the current economic climate forcing a sober reappraisal in the 2011 AMR of the likelihood of delivery on larger and complex sites such as Bankside.
7. However, it is clear that the Council has responded swiftly to these developments. On 6 February 2012, the Council published a 'Housing Land Supply Position Statement' ("**the Position Statement**") demonstrating a real seriousness of purpose in working towards restoring the level of supply. In XX, the Appellant's planning witness, Mr Crofts, accepted that seriousness of purpose on the part of the Council and agreed that the document warranted "serious consideration" by the Inspector. That is plainly the proper approach. The document is not an empty statement of ambition lacking any useful detail. It sets out criteria for assessing sites coming forward for housing outside of the development plan, and gives specific examples of sites that are likely to be suitable for housing in the short term. In particular, the three sites at Banbury identified at paragraphs 16-17 as potential sources of supply have not been plucked out of the air, but sourced from the draft Core Strategy. To take each in turn:
  - (1) **West of Bretch Hill, Banbury:** This is a proposed allocation and there is "active developer interest" in developing the site for up to 400 dwellings. The Council has confirmed by screening opinion that the proposal does not need to be subject to environmental impact assessment, which should substantially shorten the process for delivery.
  - (2) **North of Hanwell Fields, Banbury:** This is a reserve site in the draft Core Strategy where there is again "active developer involvement" for housing on a site that has "relatively

uncomplicated ownerships” and would be “relatively straightforward” to develop. The site was the subject of an application in 2006 with an appeal dismissed in 2007 on the basis that there was no shortfall in housing land supply at the time, suggesting that reconsideration of a similar scheme today would have good prospects of success.

(3) **West of Warwick Road, Banbury:** This is also a reserve site said to subject to “active developer interest” and not considered unduly complicated from a land ownership perspective.

8. These sites have been singled out with the aim of providing a robust basis for pro-active discussions with developers about finding appropriate locations for new housing. Mr Crofts’ suggestion that the identification of these sites as potential sources of supply is wholly speculative, and that the Council is under-estimating likely difficulties in ensuring delivery on these sites (Mr Crofts, para. 6.108), does not do justice to the commentary at paragraphs 16-17 of the Position Statement, particularly the reference to expressions of genuine interest by developers. These are expressions of interest as received by the Council’s senior planning officers, who prepared this document in good faith as an aid to decision-making.
9. It was suggested in XX of Mrs Griffiths that the document serves no practical purpose because the locational criteria set out at paragraphs (i)-(v) of paragraph 31 of the Position Statement do not materially advance the position beyond that which already exists in the development plan. That is not accepted. Indeed, as Mr Crofts himself conceded in XX, criterion (iv) is a “significant concession” on the part of the Council that it is willing, in an appropriate case, to allow the built-up limits of Banbury and Bicester to be extended so as to reduce the deficiency in supply, even though the extant development plan does not provide for this. That is no small matter. It would be open to the Council to say that there should be no extension of the limits of Banbury and Bicester until the various options have been investigated further in the Core Strategy process, but in criterion (iv), the Council is indicating its willingness to give serious consideration to such sites on a case-by-case basis. That amounts to step change in approach which means that the Position Statement cannot be dismissed as a rehash of existing policy.
10. Moreover, contrary to the questions put to Mrs Griffiths in XX, there is no inevitable inconsistency between the reference in criterion (iv) of paragraph 31 to extensions having to be

“demonstrably in accordance with or complementary to the emerging plan”, and the primary requirement as stated in paragraph 34 being to ask “whether or not proposals are acceptable having regard to the statutory Development Plan and all other material considerations”. There is no great complexity here. If the extension of a built-up area is considered to be complementary to the emerging Core Strategy for the purposes of paragraph 31(iv), it could be developed in accordance with the established statutory test as set out in paragraph 34 on the basis of being a material consideration justifying the grant of permission notwithstanding that the extant development plan does not provide for it. There is no inconsistency.

11. As well as including a step change in substance, the Position Statement also represents a step change in emphasis, with the Executive expressly mandating and encouraging officers to work proactively with promoters and developers to improve the supply (see Mrs Griffiths’ Appendix 4, internal page 19). This cannot be dismissed as a mere restatement of established good practice. A sense of urgency permeates the Executive’s authorizations to officers on the question of delivery of a nature which is not found in the extant development plan, or at least certainly not to the same degree.
12. It is accepted that the Position Statement cannot carry the weight of a document that has been subject to public consultation and independent scrutiny, but these matters did not prevent Mrs Griffiths from concluding that the document should still be given significant weight in the planning balance.
13. Despite its limitations, the Position Document has strengthened the evidence base sufficiently as to make it unnecessary to accede to the Appellant’s alternative approach of planning on a case-by-case basis by appeal, leading to the type of harmful sporadic and unsustainable development outside settlement boundaries that is advanced here.
14. Moreover, whilst the Council does not seek to hide behind the 1.7 years of housing land supply for the area of Banbury and North Cherwell which contains the Site, it is relevant to note that completions in that part of the District are on track. As Table 9 of the Council’s Annual Monitoring Report (“AMR”) for 2011 shows (p. 27), the number of completions that have been achieved in that part of the District since 2006 is 1749, which works out at some 350 completions a year. Turning then to Table 13 of the 2011 AMR, row (d) shows that the

annualized requirement for housing land supply for the remainder of the plan period is some 350.1 units a year. Whatever might be the projection of land supply in this part of the District now, it has to be acknowledged that this area has an established record of delivering the goods when it comes to completions. At the very least, this is an indicator of likely future performance.

15. For these reasons, it is the Council's case that the need to develop beyond the built-up limits of Bodicote on the Site has not been demonstrated, notwithstanding the current deficiency in the Council's housing land supply. The Council's seriousness of purpose in seeking to address its shortage of housing land supply, going as far as to identify specific sites warranting particular consideration outside the formal plan process in its Position Statement, demonstrates that the need to intrude into the countryside in this location is not made out.
16. This is consistent with the overarching policy position in PPS3 that a shortfall of housing supply is not a passport to the grant of planning permission for any housing scheme anywhere without further assessment. PPS3 puts it no higher than that the absence of a 5-year supply should lead to proposals for housing being considered "favourably". It is still necessary to consider whether the scheme in question is, amongst other matters, in accordance with the spatial vision for the area (para. 69, PPS3).
17. On his reading of the Council's draft Core Strategy, Mr Crofts characterized the spatial vision for the area as "accommodating most of the housing requirement [for] outside the urban areas in a number of category 1 villages". He confirmed in XX that this analysis was based on his reading of draft Policy RA2 ("Distribution of Housing in the Rural Areas") under which, as part of a broader distribution of new housing to villages in the district, some 350 units are to be directed over the plan period to the 4 villages of "Adderbury, Bodicote, Bloxham and Deddington". The policy goes on to state that the precise number of homes to be allocated to each individual village will be set out in a DPD in due course, but "it is anticipated" in the commentary "that within each group the total number of homes will be divided broadly equally between villages" (p. 122; para B.140).
18. That might well be what is "anticipated", but the reality is that there can be no proper judgment made at this stage as to the likely distribution of units between these villages. Certainly, the policy itself, considered in isolation of the commentary, makes no mention of an equal

distribution of units between the villages in each group; indeed, as Mr Crofts accepted in XX, it is not even said that each village within each group will have to make *some* contribution to the total. So far as the terms of the draft policy are concerned, it would be met if 350 units were distributed to those 4 villages as a whole. It is eminently sensible to preserve this degree of flexibility in the draft policy where the suitability of sites and settlements to contain *any* further development is yet to be properly investigated by way of a SHLAA (which is forthcoming).

19. It follows that it is to read too much into draft policy RA2 to claim that it sets out a “spatial vision” of substantial residential development beyond the built-up limits of Bodicote. The real story that is told by the draft Core Strategy on the “spatial vision” for this area is that which emerges from Table 9 (p. 58). Of a residual requirement of 5,586 units for the District for the period 2009-2026, 2989 are to be provided in Bicester and 1472 in Banbury, making a total of 4461 units to be provided in the two main urban centres of the District (80% of the total). This leaves only 393 units to be provided in the rural south of the District (“Rest of Central Oxfordshire”) and 732 units in the rural north (“Rest of North Cherwell”). The Council’s Position Statement is entirely consistent with this very heavy bias towards directing new development towards the two main urban centres in the District.
20. To put this in the context of the Local Plan, it is significant the Appellant does not seek to argue that the proposal would comply with policies H13 and H18 of the Local Plan: Mr Crofts has accepted on its behalf that those policies are breached. However, Mr Crofts further submits that the policy, whilst still a material consideration, should no longer be applied with any enthusiasm given that it is “out of date”. That is not accepted. Mr Crofts accepted in XX that the principle underpinning policy H13 as a whole is that the built-up limits of a settlement should be respected. He further accepted that there is nothing in planning policy postdating the adoption of policy H13, at any level, that suggests that this principle is itself “out of date”. Whilst it might be said that the need to adhere to the principle has to be relaxed in certain circumstances if the justification for doing so is compelling, that is not to say that the principle itself is not still valid and relevant. Accordingly, to argue that a planning policy built on that principle is “out of date” is not a helpful observation.

21. As for Mr Crofts' argument that, of the 4 major villages of Adderbury, Bloxham, Bodicote and Deddington, Bodicote has substantially underperformed relative to the others when it comes to housing completions, again that is not a fair and meaningful observation. It is clear from Census data produced by the Council at the inquiry that, of the 4 settlements, Bodicote is materially smaller than the others in terms of its population, the number of households and the number of dwellings. Moreover, as Mrs Griffiths explained in XIC, all the other settlements offer a much wider range of services and facilities than Bodicote, making them a more sustainable choice for locating residential development. Mr Crofts accepted that in XX that he had no evidence of his own to dispute this.
22. For these reasons, it is the Council's case that the Appellant has not demonstrated a particular need develop beyond the built-up limits of Bodicote to provide a residential development of the scale proposed (82 dwellings). This is notwithstanding the shortage of housing land supply, which is not a passport to the grant of planning permission for any housing scheme of any scale anywhere. The proposal is contrary to policies H13 and H18 of the Local Plan, is not supported by PPS3 read as a whole and there is no material consideration of sufficient weight to warrant the grant of planning permission notwithstanding this breach.

## **Issue 2: Suitability of the Site**

23. The justification for refusing planning permission is strengthened further when the suitability of the Site for housing is considered in a wider sense from the perspectives of (1) sustainability; and (2) visual harm caused by the intrusion into the wider countryside.

### *Sustainability*

24. The reality is that the level of services and facilities in Bodicote is not such as to enable 82 dwellings to be developed sustainably. At Appendix 1 to his proof of evidence, Mr Crofts listed the services and facilities currently on offer in Bodicote, but as he agreed in XX, the settlement does not have any of the following: a supermarket; a doctor's surgery; a dental clinic; a restaurant; a take away; a bakery; a butcher; a leisure facility open to the public at large, such as a gym or swimming pool. It follows that if permission were granted for this scheme, a resident on the site would need to travel outside of Bodicote, most probably to Banbury, to access these

services. It can safely be assumed that a high proportion of these journeys would, for convenience, be undertaken by private car. This draws further attention to the poor credentials of the appeal scheme in terms of sustainability.

25. These poor credentials manifest themselves again in relation to the question of capacity at the only primary school in Bodicote, Bishop Loveday Church of England Aided School (**"the Bishop Loveday School"**). The County Council has advised that the school is at 98% capacity, that this is expected to be the case for some years and that the school is not suitable to be extended further. This means that it will almost certainly be the case that the vast majority of children of primary school age moving with their families to the proposed development could not be accommodated at the school and would need to travel outside Bodicote to be educated. Indeed, this is recognized in terms by the Appellant given its acceptance that a contribution towards school transport is justified as part of the unilateral undertaking. This would not be a sustainable outcome. It highlights the significant disadvantage of seeking to deliver a development on this scale outside of the strategic plan process, without the benefit of a co-ordinated approach to the provision of infrastructure in a settlement as a whole.
26. The Appellant's answer to these concerns was to draw upon the most recent admissions policy of the Bishop Loveday School which indicates that children who are normally resident in the parish of Bodicote are given very high priority in the allocation of school places [priority category (ii)]. Only children with a statement of special need or who are looked after by the County Council are given a higher priority. It was said that the substantial proportion of foundation class (F1) places allocated in 2011/12 to those in lower priority categories suggested that children resident on the Site would have no difficulty qualifying for entry into the Bishop Loveday School under the higher priority category.
27. The Council accepts the logic of that argument, but the hierarchy of priorities can only be applied to its full effect in relation to the foundation year when an entirely new class needs to be formed. The development would not lead to a reappraisal of the places already afforded to children in the more senior years (Years 1-6). This means that the capacity issue at the school would continue to bite for at least 6 years while children in the pre-existing year groups between Years 1 and 6 progress through the school. This would still necessitate, for that



minimum period of 6 years, the inherently unsustainable practice of transporting children outside of the settlement for their primary education.

*Visual harm caused by intrusion into the countryside*

28. The Council does not accept Mr Ellis' attempt to characterize the appeal scheme as 'rounding off' the village edge of Bodicote. In truth, the appeal scheme would lead to the village edge jutting out significantly beyond what would be necessary for the purposes of 'rounding off', assuming this to be a legitimate aim, which is itself not entirely clear.
29. The Council does not take issue with the methodology employed by Mr Ellis in his landscape and visual assessment. Where the parties differ is on some of the judgments made on the back of that methodology and on the published character assessment for the area.
30. Mr Ellis referred to the Cherwell District Landscape Assessment produced by Cobham Resources Consultants in 1995. The study was commissioned by the Council and it divided the District into 8 broad character areas. The Site lies in an area known as 'Ironstone Hills and Valleys' and on land designated as a "repair" landscape, where "repair" is one of 4 possible strategies identified for landscape intervention (conservation, repair, restoration and reconstruction). The study says as follows in relation to a "repair" landscape:
- "These are areas where landscape character is still reasonably strong and worthy of conservation, but where some or all of the individual features or overall structure are showing noticeable decline. Development in these or areas must be sensitively sited, designed and maintained. However, precisely because their structure is so strong, these landscapes should be able to absorb limited areas of sensitive development."
31. The use of the words "limited" and "sensitive" is important because it gives a very clear steer on the type of development that it is anticipated can be satisfactorily accommodated with the landscape.
32. Turning to the detail of Mr Ellis' assessment, he considered that the landscape character of the Site had a medium sensitivity to the appeal scheme, which would result in a medium magnitude of change resulting in a moderate adverse significance of effect (Mr Ellis, para. 7.2). The Council accepts Mr Ellis' judgment on sensitivity, but invites the Inspector to give careful consideration

to whether the magnitude of change to landscape character would be “medium” as described. To this end, it will be necessary for him to consider how Mr Ellis defines a “medium” magnitude of change in landscape terms, and how that compares with his definition of a “large” change: Mr Ellis, Appendix 2. When assessing magnitude of change, and in particular when comparing the scale and size of the proposal with what is already there, the question is how it would impact upon the site itself. If the Site is currently open arable land with no development whatsoever, such that there are no “existing elements” on the Site, it might be said that a proposal to build 82 houses on that land could not lead to anything other than a “large” magnitude of change to the landscape. Should the Inspector agree with that assessment, then applying the methodology at Table 8.3 of Mr Ellis’ Appendix 2, a large magnitude of change on a site of medium sensitivity would lead to a major significance of effect in landscape terms.

33. The Council did take issue with Mr Ellis’ observation that the appeal scheme “would provide the opportunity to enhance the appearance of the urban edge, which is currently poor” (Mr Ellis, para. 7.3). The allegation that Bodicote suffered from an urban edge with a “poor” appearance was not properly developed and not adequately supported in the evidence. In particular, the Council does not read the Appellant’s design and access statement, submitted with the application, as having formed this view. Indeed, elsewhere Mr Ellis himself described the condition of the character area as at least “ordinary”.
34. As for Mr Ellis’ assessment of the visual baseline (Mr Ellis, Section 8), Mrs Griffiths challenged some of the judgments and observations made about some of the viewpoints, although she accepted that the range selected by the Appellant was sufficiently representative of the impact as a whole.
35. Turning first to Viewpoint 1 (Rear of Blackwood Place), the Inspector is invited to approach with caution Mr Ellis’ observation that a “complex of large commercial buildings at Cotefield farm within a setting of mature trees lies to the left of the view”. Most of the buildings described a “commercial” in reality have the appearance of agricultural buildings, and the description of them as “large” should be analyzed in the context of the view as a whole, in which the buildings are not especially prominent.

36. As for Mr Ellis' claim that "[g]arden fences, trellis and hedges obscure a large part of views from properties on Blackwood Place and Molyneux Drive", that was a further overstatement, as Mr Ellis' own Figure 8.1 illustrates. It can be seen that these features have been designed purposely to provide visibility at human level, such that the suggestion that they "obscure" the view in large part is not helpful. A particular feature of the amenity of these properties, particularly the enjoyment of their rear gardens, is the openness of outlook to the rear. The Council entirely concurs with Mr Ellis' assessment that the proposal would have a substantial adverse effect on this view, to the detriment of those living in the properties shown in Figure 8.1. Mr Ellis also accepted that there would be a "major" effect on night-time views from these properties (Mr Ellis, para. 9.9), again a view shared by the Council.

37. Moving on to Viewpoint 2, Mr Ellis said as follows (Mr Ellis, para. 9.10):

"The character and composition of the view would remain largely unchanged following completion of the development. The new housing would be visible in front of the existing residential edge above a dip in the woodland belt."

38. Mr Ellis considered the magnitude of change to this viewpoint to be negligible, but the Council maintains upon applying Mr Ellis' own methodology that this is an understatement and that it would be more accurate to characterize the magnitude of change as "small". Mr Ellis further relies upon planting on the edge of the appeal scheme maturing and mitigating the impact upon this view further, but the timeframe for this mitigation planting establishing itself is not clear: it is not anticipated that this will happen quickly. Even when it has established itself, the Council does not accept that the development "would be completely screened from view", particularly in winter views (Mr Ellis, para.9.10).

39. No point was taken by the Council on the adequacy of Mr Ellis' assessment of Viewpoints 3-8. As for Viewpoint 9, Mrs Griffiths expressed concern that the assessment of the impact on this view had focused on the view as experienced by those in a private car to the exclusion of cyclists, pedestrians and users of the rugby club whose experience of the view would not be as transient. It is precisely for this reason that cyclists, pedestrians and rugby players should be considered receptors of medium sensitivity, thereby increasing the overall significance of the impact upon them (assuming medium magnitude of change) to moderate.

40. This analysis, notably the Council's agreement that there would be a substantial adverse effect on Viewpoint 1, and its own assessment that there would be a moderately adverse impact on Viewpoint 9, means that the proposal would be contrary to policy C13 of the Local Plan in that it would not seek to conserve or enhance the environment and would be an unacceptable intrusion into the open countryside.

#### **Conclusion**

41. For these reasons, the Inspector is invited to find against the Appellant on the two main issues and to dismiss this appeal. The proposal is demonstrably contrary to the policies of the development plan identified and there are no material considerations of sufficient weight to warrant granting planning permission notwithstanding these breaches.

**GWION LEWIS**  
**Landmark Chambers**  
**London**

**29 February 2012**