



TOWN AND COUNTRY PLANNING ACT 1990

**AGAINST THE DECISION OF CHERWELL DISTRICT
COUNCIL TO REFUSE PLANNING PERMISSION FOR**

**ERECTION OF UP TO 43 NEW HOMES, ACCESS FROM STATION ROAD
AND ASSOCIATED WORKS INCLUDING ATTENUATION POND**

AT LAND OFF RAILWAY HOUSE, STATION ROAD, HOOK NORTON

ON BEHALF OF GREYSTOKE LAND LTD

LPA REF: 21/0500/OUT

OUR REF: PF/10430

APPELLANT'S STATEMENT OF CASE

JULY 2021

1.0 INTRODUCTION

1.1 On 12th February 2021 an application (21/00500/OUT) for outline planning permission was submitted to Cherwell District Council (the LPA) via the planning portal for the following form of development:

‘The erection of up to 43 new homes, access from Station Road and associated works including attenuation pond.’

1.2 All matters of detail other than access from the public highway were reserved for subsequent approval.

1.3 The LPA validated the application on the 16th February 2021 and formally acknowledged receipt of the application by letter dated 1st March 2021.

1.4 The formal plans on which the decision of the Council has been taken are as follows:

- Dwg No. 20147.201 Site Location Plan
- Dwg No. 22263-01 Rev C Proposed Site Access

1.5 The application was accompanied by the following documents:

- Design and Access Statement (**CD A6**)
- Preliminary Ecological Appraisal (**CD A7**)
- Drainage Statement (**CD A8**)
- Heritage Desk Based Assessment (**CD A9**)
- Landscape Visual Assessment (**CD A10**)

- Planning Statement (**CD A11**)
- Transport Statement (**CD A12**)

1.6 During the application process, following receipt of consultation responses, further submissions were made to the LPA. Beginning on 13th April 2021, these submissions comprised:

- 13th April 2021: Response in respect of Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (**CD A18**)
- 28th April 2021: A Technical Note in response to comments raised by the Wildlife Trust (**CD A19**)
- 19th May 2021: A Flood Risk Assessment Addendum (**CD A20**)
- 21st May 2021: A response to matters raised by the Council’s Landscape Architect (**CD A21**)
- 28th May 2021: A further response to matters raised by the Council’s Landscape Architect (**CD A22**)

1.7 The application was reported to Committee on 17th June 2021 with a recommendation for approval subject to a S106 Agreement and Conditions (Officer Report **CD A23**).

1.8 The application was refused by Planning Committee by Notice dated 21st June 2021 (**CD A24**).

2.0 THE REASONS FOR REFUSAL

2.1 The application was refused by notice dated 21st June 2021 for the following reasons:

RfR 1

'The proposal constitutes development which extends beyond the existing built up limits of the village into the open countryside. By virtue of its layout form, location and loss of existing landscaping to form the access off Station Road, the proposal would result in an incongruous and visually intrusive form of development which would cause demonstrable harm to the visual amenities of the rural landscape and open countryside. Notwithstanding the Council's present inability to demonstrate that it has a five-year housing land supply, as outlined by paragraph 11(d) of the National Planning Policy Framework, the adverse impact of the development of this site would outweigh the benefits of the proposal. The proposal is therefore contrary to, saved Policy C28 of the Cherwell Local Plan 1996, Policies Village 2, ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1, Policy CC1 of the Hook Norton Neighbourhood Plan and Government guidance contained within the National Planning Policy Framework.'

RfR2

'In the absence of a satisfactory planning obligation, the applicant has failed to adequately demonstrate that the infrastructure and affordable housing directly required as a result of this scheme will be delivered. This would be contrary to Policies BSC3 and INF1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within paragraphs 34, 56 and 57 of the National Planning Policy Framework.'

RFR 1

2.2 RfR 1 asserts that the proposals are contrary to:

- Saved Policy C28 of the Cherwell Local Plan 1996;
- Policies Village 2, ESD13 and ESD15 of the Cherwell Local Plan 2011-2031 Part 1; and
- Policy CC1 of the Hook Norton Neighbourhood Plan 2018.

2.3 It states that the proposed new housing would:

‘result in an incongruous and visually intrusive form of development which would cause demonstrable harm to the visual amenity of the rural landscape and open countryside.’

Saved Policy C28 of the Cherwell Local Plan 1996

2.4 Saved Policy C28 relates to the ‘Layout, design and external appearance of new development’ and states that:

‘control will be exercised over all new development, including conversions and extensions, to ensure that the standards of layout, design and external appearance, including the choice of external-finish materials, are sympathetic to the character of the urban or rural context of that development. In sensitive areas such as conservation areas, the area of outstanding natural beauty and areas of high landscape value, development will be required to be of a high standard and the use of traditional local building materials will normally be required.’

2.5 The application was submitted in outline form with all matters reserved except for access. It is considered that matters of design will be dealt with at the reserved matters stage. Notwithstanding this, it is considered that the indicative layout and design principles set out within the Design and Access Statement provide an acceptable basis for a detailed application to be prepared, which would address this policy more specifically.

2.6 The site does not lie within a conservation area, is not within an area of outstanding natural beauty nor an area of high landscape value. The site does not have any landscape designations and is identified as existing open space. Indeed the Committee Report (paragraph 9.52) states that:

‘none of the landscaping is of a high quality other than it creates a soft edge along Station Road’.

2.7 A recent appeal decision in relation to land at Merton Road, Ambrosden (Appeal Ref: APP/C3105/W/19/3228168 – **CD D3**) it was accepted on behalf of the Council at Inquiry that reliance is no longer placed upon Policy C28 in respect of impact and character as these are matters of limited relevance in respect of an outline application when they are reserved for subsequent approval. Notwithstanding this concession at the Public Inquiry, it is evident that the LPA continues to argue that the form and layout shown on illustrative layout plan Dwg No. 20147.101 Rev B (**CD A16**) can be the basis of a refusal of outline planning permission. The LPA is requested to accept that form and layout are matters for the submission of Reserved Matters – and do not constitute sound and clear cut objections for the refusal of this application.

2.8 The fact that development is proposed on land beyond the confines of the existing built-up limits of Hook Norton is axiomatic of the consequence arising from the failure of the LPA to make

provisions to meet the **minimum** requirements for the delivery of housing to meet development needs.

Policy Village 2 of the Cherwell Local Plan 2011-2031

- 2.9 Policy Village 2 relates to ‘Distributing Growth across the Rural Areas’ and specifically anticipates that a total of 750 homes will be delivered at Category A villages, which includes Hook Norton. It states that:

‘this will be in addition to the rural allowance for small site “windfall” and planning permissions for 10 or more dwellings as at 31st March 2014.’

- 2.10 Policy Villages 2 continues by setting out that when identifying and considering sites for development, particular regard will be given to specified criteria.
- 2.11 Hook Norton is considered to be one of the more sustainable Category A villages with a good range of community facilities and a regular bus service (488 route), which provides an hourly service between Banbury and Chipping Norton.
- 2.12 Paragraph 9.14 of the Committee Report (**CD A24**) states that:

‘Cherwell’s position on 5 year housing land supply is reported in the Council’s 2020 Annual Monitoring Report (AMR). The 2020 AMR demonstrates that the District presently has a 4.7 year housing land supply for the period 2021 – 2026. An additional 509 homes would need to be shown to be deliverable within the 5 year period to achieve a 5 year supply as required by the NPPF.’

2.13 It goes onto state (paragraph 9.29) that the AMR 2020 identifies that in the 12 months to 31st March 2020 there were 144 dwellings completed at Category A villages against a requirement for 750 dwellings. A further 193 dwellings were under construction and between 1st April 2014 and 31st March 2020 there have been a total of 415 net housing developments. Although the Council is well on the way to delivering the total of 750 dwellings set out in Policy Villages 2, this figure has not yet been delivered. The Committee Report concludes (paragraph 9.31 that:

'at this time in terms of delivery this development would appear to be acceptable in policy terms'

2.14 The Council's housing land supply position means that, under paragraph 11d of the NPPF, the policies in the development plan relating to housing provision are to be considered out of date and the weight afforded to these policies is therefore reduced. Where policies are out-of-date, there is a presumption within the NPPF of granting planning permission for sustainable forms of development unless:

- i) The application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii) Any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Policy ESD13 of the Cherwell Local Plan 2011-2031

2.15 Policy ESD13 relates to 'Local Landscape Protection and Enhancement' and states that:

'Development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided.

Proposals will not normally be permitted if they would:

- cause undue visual intrusion into the open countryside,*
- cause undue harm to natural landscape features and topography,*
- be inconsistent with local character, or*
- impact on areas judged to have high level of tranquillity.*
- Harm the setting of settlements, buildings, structures or other landmark features, or*
- Harm the historic value of the landscape.'*

2.16 Policy ESD13 does not preclude development but rather requires development to respect and enhance local landscape character, securing appropriate mitigation where damage to the local landscape cannot be avoided.

2.17 The indicative master plan has been prepared with local landscape and historic character in mind and has incorporated carefully considered mitigation measures and proposed screening in response to the LVIA in order to prevent and minimise adverse landscape and visual effects as part of an iterative design process. Mitigation measures are designed to integrate the proposals into the surrounding landscape. An extensive 7.5m planting buffer is proposed along the western and northern edges of the site to screen views and reduce the visual scale and massing of proposals when viewed from Council Hill and adjacent footpaths. In addition to this, extensive areas of open space and green corridors are proposed within the development to further break

up the massing of built form and ensure built form is successfully screened by proposed mitigation experienced by the receptors on Council Hill, and significantly limiting the degree of change experienced by receptors on these footpaths.

2.18 The appearance of Hook Norton surrounded by substantial woodland when viewed from Council Hill is a result of layers of vegetation belts surrounding and throughout the village, rather than the result of areas of substantial woodland being situated on the edge of Hook Norton. The proposed mitigation measures reflect this local character extending the treed edge of Hook Norton and, once established, are likely to have a similar screening effect to that of the existing vegetation belts of similar size that currently surround the village. Once mitigation has been established, the proposals will not be seen to be visually intrusive into the open countryside but rather conform to the established local character and integrate well into the surrounding landscape with limited to no visibility from Council Hill.

2.19 The residential development of Ironstone Hollow to the immediate west of the appeal site has been successfully screened by intervening vegetation and, once established, a similar effect can be experienced by the proposed mitigation incorporated into the appeal site design.

2.20 Several character areas are established within the illustrative master plan (**CD A16**) and Design & Access Statement (**CD A6**) to reflect the local character of Hook Norton and follow the guidance as set out within the Council's Countryside Design Summary Supplementary Planning Guidance (**CD D4**) and within the Oxfordshire Wildlife and Landscape Study (**CD E1**).

2.21 Two recent appeals were allowed at Hook Norton Road, Sibford Ferris (Appeal Ref: APP/C3105/W/19/3229631 – **CD D5**) and Merton Road, Ambrosden (Appeal Ref: APP/C3105/W/19/3228169 – **CD D3**), where there were very similar landscape and mitigation considerations which are considered relevant to Hook Norton.

Policy ESD15 of the Cherwell Local Plan 2011-2031

2.22 Policy ESD15 relates to 'The character of the Built and Historic Environment' and states that:

'New development proposals should respect the traditional pattern of routes, spaces, blocks, plots, enclosures and the form, scale, and massing of buildings. Development should be designed to integrate with existing streets and public spaces and buildings configured to create clearly designed active public frontages.'

2.23 The application was made in outline with all matters reserved except for access. It is considered that matters of design would be dealt with at the reserved matters stage. Notwithstanding this, it is considered that the indicative layout and design principles set out within the Design and Access Statement provide an acceptable basis for a detailed application to be prepared, which would address this policy more specifically.

2.24 This is recognised in paragraph 9.80 of the Committee Report (**CD A23**), which concludes:

'It is considered that in granting outline planning permission an acceptable layout would be negotiated, and that such matters would be fully considered as part of any such reserved matters application.'

2.25 Whilst the Council's Landscape Architect considers the development would have an adverse impact on the landscape setting of the village, the Committee Report (paragraph 9.47) recognises that:

'The Ironstone Hollow development was visually stark when first built and formed the new urban edge to the village but due to the existing landscape boundary the impact of this existing residential estate is screened and softened to a point that the development is part of the character of the approach to Hook Norton. The development of this site with a strong landscape buffer will, over time, replicate this existing landscape boundary along the edge of Ironstone Hollow and therefore replicate the rural edge of the village.'

2.26 The Council's Landscape Architect also considers the impact of the development along the public right of way along the northern section of the site to be 'very harmful'. Again, this matter is addressed in the Committee Report (paragraph 9.48), stating:

'this impact would be reduced with the provision of the landscape along the north and western boundary of the site. Furthermore, the indicative layout plan submitted with the application shows the development would allow for an area of open space on the western side of the development which would ensure that the impact of the development on the footpath along the shared boundary with Ironstone Hollow is reduced to a minimum.'

2.27 The Committee Report (paragraph 9.51) considers that the proposal would result in built development on a green field site and would urbanise the countryside and thus conflict with Policy ESD 15 but accepts 'the impact would be localised and would reduce over time'.

2.28 In concluding the landscape and visual impact section of the Committee Report, the Officer states:

'It is considered that the development of the site would comply with the criteria under Village 2 Policy and the harm of the development would be outweighed by the benefits of the residential development.'

Policy CC1 of the Hooks Norton Neighbourhood Plan

2.29 Policy CC1 relates to the 'Protection and enhancement of local landscape and character of Hook Norton'. It states that:

'Any development must be located and designed so that it is readily visually accommodated into its surroundings and setting, and provides a positive contribution to the locally distinctive character and context of Hook Norton.'

Proposals which would introduce development to isolated sites in the open countryside which would adversely affect the tranquillity, unspoilt character and amenity value of the landscape will not be permitted.

*Development which makes use of previously developed land and buildings will **generally be preferred** to greenfield locations. Residential gardens are not considered previously developed land and redevelopment of residential gardens to provide inappropriate housing is specifically not supported where it would result in a cramped form of development or otherwise detract from the character of the village.'* [emphasis added]

2.30 There is no defined settlement boundary surrounding Hook Norton. Policy H2 of the HNNP does not identify a need for housing to stay within the existing settlement limits but rather to take account of existing or potential alternative uses of the site and to comply with policies of the Neighbourhood Plan.

RfR 2

2.31 The Appellant is willing to enter into Planning Obligations that may be lawfully demanded pursuant to Regulation 122 of the CIL Regulations 2010. The Obligation will include a policy compliant provision for affordable housing; a financial contribution towards education facilities; and health facilities, where justified. During the application process the Appellant invited the Local Planning Authority to identify the facilities that may be considered lawful to demands arising from the proposed scale of development. In this respect the LPA have identified the following items:

- Provision of 35% affordable housing
- Payment of a financial contribution towards Community Hall Facilities in the locality of £55,075.58
- Payment of a financial contribution towards Outdoor Sport Provision in the locality of £97,182.15
- Payment of a financial contribution towards Indoor Sports Provision in the locality of £40,228.34
- Payment of a financial contribution towards the provision of refuse/recycling bins for the development of £106 per dwelling
- Payment of a financial contribution towards the improvement of the 488 bus service in the village of £52,550
- Payment of the Council's monitoring costs of £1500

2.32 The Appellant's willingness to progress preparations of Planning Obligations with the LPA was reported to Planning Committee. Paragraph 9.110 of the Committee Report states:

*'The application is not supported by any draft heads of terms although it is accepted that the applicant has confirmed that they are prepared to enter a planning obligation that may be lawfully demanded pursuant to Regulation 122 of the CIL Regulations 2020. The obligation will include a policy compliant provision for affordable housing; education facilities; health facilities and other facilities considered lawful. **As part of the process of the application the applicant has confirmed that on granting outline planning permission work on the S106 will progress to an agreement which is policy compliant** (emphasis added). As such it is considered that the development will comply with Policies BSC3 and INF1 of the CLP 2015 as well as guidance outlined in paragraph 54 of the NPPF.'*

[emphasis added]

2.33 The Report concludes at paragraph 9.111:

'The application is not supported by any draft heads of terms for a S106. But as noted above the applicant is in agreement to comply with a S106 requirement in association with the development. Therefore, this application will comply with Policy INF of the CLP 2015 as well as guidance outlined in paragraph 54 of the NPPF.'

2.34 As such, RfR2 is not a sound and clear-cut objection to this development as the Council have not specified what they mean by 'infrastructure', which is meaningless and provides no basis for refusing an application which has been validated and therefore contains all necessary information to assess the necessary infrastructure.

2.35 RfR2 also contains reference to the provision of affordable housing which the Appellant has made clear at every stage will be provided in compliance with Policy. This is a matter that can be dealt with by way of a planning condition and the advice is that permission should not be refused for a reason which may be dealt with by condition.

3.0 PLANNING BALANCE

3.1 Cherwell District Council find themselves in a situation where they are failing to deliver sufficient land to meet the housing needs of the District.

3.2 They are failing to meet the social objective of sustainable development in that the basic development needs in the provision of a home are not being provided, therefore the decision-taking matrix for this application is provided by paragraph 11(d) of the Framework.

3.3 There are no policies within the Framework to provide a clear reason for refusal, therefore decision taking falls within paragraph 11(d) ii.

3.4 In summary, the constituent parts of the reasons for refusal are as follows:

- a) *The proposal constitutes development which extends beyond the existing built up limits of the village into the open countryside*
- b) *Layout and form*
- c) *Location*
- d) *Loss of existing landscape to form access off Station Road*

a) *The proposal constitutes development which extends beyond the existing built up limits of the village into the open countryside*

Response:

3.5 If the Council are failing to provide development within the urban area, which is their stated preference, and are not delivering sufficient land to meet the needs of the district, then land will need to be taken from the periphery of the Category A villages.

b) Layout and form

Response:

- 3.6 The Council have already conceded in the Ambrosden Inquiry (**CD D3**) that reliance is no longer placed upon Policy C28 in respect of impact and character as these are matters of limited relevance in respect of an outline application when they are reserved for subsequent approval.

c) Location

Response:

- 3.7 Policy Villages 2 of the CLP 2011 – 2031 sets out the criteria to be considered in identifying and considering sites. The criteria are set out below, along with the Appellant's response.

- *Whether the land has been previously developed land or is of lesser environmental value*

Response:

It is accepted that the site has not been previously developed nor does it have any environmental designation.

- *Whether significant adverse impact on heritage or wildlife assets could be avoided*

Response:

The appeal is supported by a Heritage Assessment which confirms that the site is not within a conservation area or include any listed buildings. There are no objections to the principle of development on ecological grounds.

There are no objections to the proposed development from Oxfordshire County Council Archaeology or the Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust.

- *Whether development would contribute in enhancing the built environment*

Response:

The committee report (paragraph 9.47) recognises that:

‘The development of this site with a strong landscape buffer will, over time, replicate the existing landscape boundary along the edge of Ironstone and therefore replicate the rural edge of the village.’

- *Whether best and most versatile agricultural land could be avoided*

Response:

The land falls within Grade 3 agricultural land classification thereby avoiding the use of best and most versatile agricultural land.

- *Whether significant adverse landscape and impacts could be avoided*

Response:

The appeal is supported by an LVIA (CD A10), and responses to matters raised by the Council’s Landscape Architect (CD A21 and CD A220 which demonstrate that adverse landscape and impacts can be avoided.

- *Whether satisfactory vehicular and pedestrian access/egress could be provided*

Response:

A satisfactory vehicular and pedestrian access/egress can be provided. There are no objections to the proposed development from Oxfordshire County Council Highways.

- *Whether the site is well located to services and facilities*

Response:

The site is located on the periphery of Hook Norton which is one of the more sustainable Category A Villages with a good range of facilities and an hourly bus service between Banbury and Chipping Norton.

- *Whether necessary infrastructure could be provided*

Response:

All necessary infrastructure can be provided and there are no objections to the proposed development from the statutory consultees.

- *Whether land considered for allocation is deliverable now or whether there is a reasonable prospect it could be developed within the plan period*

Response:

The land is deliverable now, subject to the grant of planning permission.

- *Whether land the subject of an application for planning permission could be delivered within the next five years.*

Response:

The land could be delivered well within the next five years.

- *Whether the development would have an adverse impact on flood risk.*

Response:

The appeal is supported by a Drainage Statement (**CD A8**) and a Flood Risk Assessment Addendum (**CD A20**) which confirm the development will not have an adverse impact on flood risk.

There are no objections to the proposed development from the Environment Agency or Local Lead Flood Authority (LLFA).

d) Loss of existing landscape to form the access off Station Road

Response:

- 3.8 The proposal is for the creation of a ramped access into the site which would allow for the access road to gradually drop into the site. This would necessitate the removal of some boundary landscaping however none of the landscaping is of a high quality other than it creates a soft edge along Station Road. The proposals include enhancement of the landscaping along Station Road which would mitigate the impact of the loss of the landscaping in order to create the access point.

Planning Balance Conclusions

- 3.9 It is asserted that there are no adverse impacts which would significantly and demonstrably outweigh the benefits of granting planning permission.
- 3.10 Substantial weight should be given to the provision of open market housing.
- 3.11 Substantial weight should be given to the provision of affordable housing.
- 3.12 It is accepted that the development will result in the loss of 2.26 hectares of agricultural land and there will be an impact on the character of the immediate area in the short/medium terms but a technical note has been produced in response to the objections of the Wildlife Trust (**CD A18**) to demonstrate how a net biodiversity gain can be achieved. The objection from the Wildlife Trust has been withdrawn. Moderate weight should be attached to this benefit.
- 3.13 There will be economic benefits arising from the development both during and post construction. Moderate weight should be attached to this benefit.
- 3.14 In conclusion, the impacts on landscape do not significantly and demonstrably outweigh the benefits of this development. Accordingly, planning permission should be granted without delay.

4.0 PLANNING OBLIGATIONS

The Appellant is in agreement with the S106 contributions listed below which are being sought which are considered may be lawfully demanded pursuant to Regulation 122 of the CIL Regulations 2010.

4.1 The following Obligations have been identified:

- Provision of 35% (15 units) of affordable housing to be provided on site – tenure proportions to be split 70/30 between social rented units/shared ownership units
- Payment of a financial contribution towards Community Hall Facilities in the locality of £55,075.58
- Payment of a financial contribution towards Outdoor Sports Provision in the locality of £97,182.15
- Payment of a financial contribution towards Indoor Sports Provision in the locality of £40,228.34
- Payment of a financial contribution towards the provision of refuse/recycling bins for the development of £106 per dwelling
- Payment of a financial contribution towards the improvement of the 488 bus service in the village of £52,550
- Payment of the Council's monitoring costs of £1,500

5.0 CONCLUSION

5.1 It is submitted that the proposal is one which clearly should be permitted. It comprises a modest and appropriate scale of development adjacent to a Category A village, and where there are no technical objections to withhold consent.

5.2 In addition, it is considered that the LPA has failed to have proper regard, not only to the terms of the application, but to a proper interpretation and application of policy – which has led to the refusal of a sustainable development.