

*Cherwell*

DISTRICT COUNCIL  
NORTH OXFORDSHIRE

**Cherwell District Council**

**TOWN AND COUNTRY PLANNING ACT 1990**

**APPEAL BY GREYSTOKE LAND LTD**

**LAND OFF RAILWAY HOUSE, STATION ROAD, HOOK NORTON**

**LOCAL PLANNING AUTHORITY REF NO: 21/00500/OUT**

**PLANNING INSPECTORATE REF NO: APP/C3105/W/21/3278536**

**HEARING STATEMENT OF CHERWELL DISTRICT COUNCIL**

**JANUARY 2022**

## 1. INTRODUCTION

- 1.1 This Hearing Statement is made on behalf of Cherwell District Council (“**the Council**”) in respect of an appeal by Greystoke Land Ltd (“**the Appellant**”) under Section 78(1) of the Town and Country Planning Act 1990 against the Council’s refusal to grant Outline 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, North of Station Road, Hook Norton OX15 5LS. A copy of the location plan and illustrative proposed site plan is at **Appendix 1**.
- 1.2 The application was considered at a meeting of the Council’s Planning Committee on 17<sup>th</sup> June 2021, where it was recommended to grant planning permission. The application was refused by a decision notice dated 21<sup>st</sup> June 2021 for two reasons.

## 2. SITE AND SURROUNDINGS

- 2.1 A full description of the appeal site and its immediate surroundings is set out in the committee report and will be expanded upon in the in the Statement of Common Ground. In summary, the appeal site is a greenfield site in open countryside, beyond the existing built up limits of the village of Hook Norton, a “Category A” village
- 2.2 **Appendix 2** is the interactive policies map of the Cherwell Local Plan 2011-2031 Part 1. The map does not identify a “built-up limits” of Hook Norton or any other Category A village. However, it is evident that the rear gardens of houses off Ironstone Hollow constitute the edge of the built-up limits. The appeal proposal is located between 10m (at the south-west corner of the appeal site) and 100m (at the north-west corner of the appeal site) from the built-up limits. Between Hook Norton and the appeal site is a defined landscape belt, coloured green on the CLPP1 policies map.

## 3. THE DEVELOPMENT PLAN

- 3.1 Under section 38(6) of the Planning and Compulsory Purchase Act 2004, applications and appeals are to be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 3.2 The development plan comprises:

1. Cherwell Local Plan 2011-2031 Part 1 (CLPP1). Relevant policies mentioned in the Decision Notice are Village 2, ESD13, ESD15, BSC3 and INF1.
  2. 'Saved' policies within the Cherwell Local Plan 1996 (CLP 1996). The relevant policy mentioned in the Decision Notice is CS28
  3. Hook Norton Neighbourhood Plan (HNNP). The relevant policy mentioned in the Decision Notice is CC1. The HNNP was 'made' on 19 October 2015.
- 3.3 Refusal Reason 1 does not refer to HNNP policy H1. However, there is conflict with this policy because the proposal does not constitute "conversions, infilling, and minor development". More specifically, it involves more than 20 dwellings being built in the same location. This constraint reflects an "Objective" on page 6 of the HNNP: "**1.6 To limit the size of individual developments to ensure that growth in the parish is sustainable and does not negatively impact on the infrastructure and amenities for existing residents.**"
- 3.4 There is scope at Reserved Matters for the development to be built in two phases of about 20 dwellings each, built five or more years apart. In which case, there would only be limited conflict with policy H1. This analysis is consistent with paragraph 16 of the Secretary of State's decision letter at **Appendix 3** (Sibford Road, Hook Norton APP/C3105/A/14/2226552)<sup>1</sup>.
- 3.5 Refusal Reason 1 does not refer to HNNP Policy CC3 (local distinctiveness, variety, and cohesiveness). CC3 states:
- The traditional pattern of growth which characterises Hook Norton is small scale and gradual change. This must be reflected in the extent and amount of any development in Hook Norton.*
- 3.6 At 43 houses, the form of the appeal proposal is not "small scale"<sup>2</sup>. The extent and amount of development proposed is not consistent with a traditional pattern of growth and gradual change. Assuming the development is built in two phases of about 20 dwellings each, built five or more years apart, there will be limited conflict with policy CC3.
- 3.7 Conflict with HNNP policies H1 and CC3 does not materially change the substance of the Council's first refusal reason.

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<sup>1</sup> Notwithstanding the SoS analysis, the Sibford Road development was completed in one phase of 54 houses.

<sup>2</sup> Policy CC1 defines 'minor development' as typically less than 10 dwellings

### Cherwell Local Plan 2011-2031

- 3.8 The strategy for the distribution of development is summarised by the following extracts of the Cherwell Local Plan 2011-2031 Part 1 (CLPP1). Page 10 states:

***Vision, Strategy and Objectives***

*vi. Underpinning the Local Plan is a vision and a spatial strategy for Cherwell District. Our spatial strategy for how we manage the growth of the District can be summarised as:*

- *Focusing the bulk of the proposed growth in and around Bicester and Banbury.*
- *Limiting growth in our rural areas and directing it towards larger and more sustainable villages.*
- *Aiming to strictly control development in open countryside.*

- 3.9 Policy BSC1 and its supporting paragraphs explain the housing strategy in more detail. At paragraph B.96, the strategy includes:

*“Providing a positive vision for the future of Cherwell: a strategic growth and investment approach to the towns; an enlarged settlement in the centre of the District, further development at the villages to sustain them.”*

*“... concentrating development in sustainable rural locations to protect the intrinsic character and beauty of the countryside and to support thriving rural communities.”*

### Policy Villages 1: Village Categorisation

- 3.10 This policy identifies the most sustainable villages (Category A) and their 'satellite' villages where minor development within built-up limits will, in principle, be supported (typically a site of less than 10 dwellings). Policy Villages 1 groups villages into three separate categories (A, B and C), with Category A being the most sustainable settlements in the District's rural areas and having physical characteristics and services that enable them to accommodate limited housing growth. There is no policy target for the delivery of housing via Policy Villages 1.
- 3.11 Hook Norton is identified by the CLPP1 as a Category A village. As the appeal site comprises land outside the built-up limit of Hook Norton, Policy Villages 1 does not apply. Instead, the key policy is “Policy Villages 2” of the CLPP1.

## Policy Villages 2: Distributing Growth across the Rural Areas [PV2]

### 3.12 Policy PV2 states:

*A total of 750 homes will be delivered at Category A villages. This will be in addition to the rural allowance for small site 'windfalls' and planning permissions for 10 or more dwellings as at 31 March 2014.*

- 3.13 Policy PV2 does not contain a temporal dimension, a phasing dimension or a spatial dimension. There are 23 Category A villages and some so far have delivered few or no houses. The appeal proposal causes no conflict with the first paragraph of PV2. However, there is conflict with the final paragraph of PV2, for reasons set out later.

## **4. ANNUAL MONITORING REPORT (2020)**

- 4.1 The latest Annual Monitoring Report (2020) states that between 1 April 2014 and 31 March 2020, at Category A villages there were 415 dwellings completed and 193 dwellings under construction. Once those houses are completed, 81% of the PV2 target (750) will have been delivered. The Cherwell Local Plan runs to 2031 and it is highly likely that 750 homes will be delivered before the end of the Plan period.

- 4.2 The AMR states that Cherwell District has a 4.7 year housing land supply for the period 2021-2026. This means that the Council is not complying with national policy on housing land supply set out in the NPPF. Relevant policies in the development plan relating to housing supply are out of date and the weight to be afforded these policies is reduced. The tilted balance in paragraph 11(d) of the NPPF is engaged by reason of the housing land supply position.

## **5. HOUSING NEED AND SUPPLY AT HOOK NORTON**

- 5.1 With reference to CLPP1 paragraph B.96, there is no evidence that Hook Norton is declining nor that the proposed development is necessary to "sustain" Hook Norton or "support a thriving rural community".
- 5.2 148 homes (market and affordable) have been granted planning permission at Hook Norton between 1<sup>st</sup> April 2011 and 30<sup>th</sup> June 2021. All 148 houses have been completed. Of these 148 houses, 46 are affordable homes. There has been strong delivery of housing at Hook Norton since the start of the Plan period.

5.3 The Hook Norton Neighbourhood Plan states that “*It shares with many rural areas a lack of affordable homes and a need to retain local services to enable the village to continue to thrive.*” However, there is no up-to-date Housing Needs Survey for Hook Norton. The comment from the Housing Strategy Officer of Cherwell District Council is at **Appendix 4**. She states:

*There has been a relatively large amount of housing growth already in the village which has yielded a number of new affordable homes (most recently 20 new dwellings at Bourne Lane) so we would firstly need to determine if there is sufficient need for more affordable homes in the area by way of a Parish Needs Survey. Any new affordable homes that were provided must be appropriate to the findings from this and be in-line with the housing policies outlined in the Hook Norton Neighbourhood Plan 2014 – 2031.*

## 6 RELEVANT APPEAL DECISIONS

6.1 The following 13 appeal decisions at **Appendices 5 to 17** are relevant insofar as they all involve:

- Decisions made after the adoption of the CLPP1 (July 2015).
- Residential development of land outside Category A villages.
- Considerations of character and appearance.

6.2 In order of decision date, these are:

1. The Hale, Chesterton (11 February 2016 – APP/C3105/W/15/3130576). This was a proposal for 51 houses. The appeal was considered by Hearing and was dismissed. Paragraphs 27 to 35 deal with “character and appearance”.
2. Lince Lane, Kirtlington (12 May 2016 - APP/C3105/W/15/3134944). This is a proposal for 75 houses. The appeal was considered by Hearing and was dismissed. Paragraphs 40 to 48 deal with “character and appearance”.
3. Northampton Road, Weston on the Green (8 February 2017 - APP/C3105/W/16/3158925). This is a proposal for 26 houses. The appeal was considered by written representations and was dismissed. Paragraphs 19 to 24 deal with “character and setting”.
4. Heatherstone Lodge, Finmere (17 May 2018 - APP/C3105/W/17/3169168). This is a proposal for 47 houses. The appeal was considered by written representations and was dismissed. Paragraphs 15 to 22 deal with “settlement pattern and character and appearance.”

5. Station Road, Cropredy (17<sup>th</sup> May 2018 – APP/C3105/W/17/3187461). This is a proposal for 37 houses. The appeal was considered by Hearing and was dismissed. Paragraphs 5 to 12 deal with “character and appearance of the area and Cropredy Conservation Area”.
6. Blackthorn Road, Launton (18 September 2018 - APP/C3105/W/17/3188671). This is a proposal for 72 houses. The appeal was considered by public inquiry and was allowed. Paragraphs 24 to 34 deal with “character and appearance”.
7. Main Street, Fringford (24<sup>th</sup> January 2019 – APP/C3105/W/18/3204920). This is a proposal of up to 10 houses. The appeal was considered by written representations and was dismissed. Paragraphs 8, 9 and 24 deal with “character and appearance”.
8. Merton Road, Ambrosden (9<sup>th</sup> September 2019 - APP/C3105/W/19/3228169). This is a proposal for 84 houses. The appeal was considered by public inquiry and was allowed. Paragraphs 36 to 54 deal with “character and appearance”.
9. Tappers Farm, Bodicote (30<sup>th</sup> October 2019 – APP/C3105/W/19/3222428). This was a proposal for 52 houses. The appeal was considered by Hearing and was allowed. Paragraphs 22 to 30 deal with “character and appearance”.
10. Northampton Road, Weston-on-the-Green (17<sup>th</sup> December 2019 - APP/C3105/W/19/3233293). This was a proposal for 18 houses. The appeal was considered by Hearing and was dismissed. Paragraphs 18 to 22 deal with “character and appearance”.
11. Hook Norton Road, Sibford Ferris (23<sup>rd</sup> December 2019 - APP/C3105/W/19/3229631). This was a proposal for 25 houses. The appeal was considered by public inquiry and was allowed. Paragraphs 24 to 34 deal with “character and appearance”.
12. Clifton Road, Deddington (19<sup>th</sup> October 2020 - APP/C3105/W/19/3242236 & APP/C3105/W/20/3247698). This was a proposal for 15 and 14 dwellings respectively. The appeals were considered by written representations and were allowed. Paragraphs 9 to 26 deal with “character and appearance”.
13. Berry Hill Road, Adderbury (10<sup>th</sup> September 2021 – APP/C3105/W/20/3255419). This was a proposal for 40 houses. The appeal was considered by Hearing and was allowed. Paragraphs 20 to 28 deal with “character and appearance”.

6.3 The appellant specifically relies upon the Ambrosden and Sibford Ferris appeal decisions on the grounds of “very similar landscape and mitigation considerations”. The Council does not regard these two appeal decisions are particularly important.

All of the 13 appeals above were determined in light of site-specific circumstances and none involved land at Hook Norton. Furthermore:

- Of the 13 appeals above, only one (Adderbury) involved a site with a Made Neighbourhood Plan.
- In the case of the Sibford Ferris appeal, the inspector held that “the principle of some form of development on at least part of this site has been accepted [by the Council]” and “moderate weight” was given to the inclusion of the part of the appeal site in the Council’s Housing and Economic Land Availability (HELAA 2018) for up to 10 houses. None of those circumstances apply to this appeal proposal.

6.4 **Appendix 3** is an appeal at Sibford Road, Hook Norton (7 December 2015 - APP/C3105/A/14/2226552). This was a proposal for 54 houses. The appeal was considered by public inquiry and it was allowed. It is similar to the current appeal proposal insofar as

- The decision was made by the Secretary of State after the adoption of the CLPP1 (July 2015) and the HNNP (October 2015).<sup>3</sup>
- It involved residential development of land outside the boundary of Hook Norton.

6.5 On the other hand, it can be distinguished from the current appeal by virtue of:

- Character and appearance was not a main issue. Policies ESD13 and 15 and CC1 were not relevant policies.
- Location at a different part of Hook Norton, 450m apart from each other.

6.6 In light of these differences, the Sibford Road appeal decision has limited weight as a material consideration.

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<sup>3</sup> The Inspector’s report ref 2226552 was submitted to the Secretary of State before their adoption



## 7. FIRST REASON FOR REFUSAL

### 7.1 The Decision Notice states:

*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.*

### **Impact on the visual amenities of the rural landscape and open countryside – an assessment**

#### Scope of the assessment

7.2 The Decision Notice refers to "...layout, form...." Layout and form are defined on page 6 of the National Design Guide (and throughout the NDG). The planning application is outline with all matters reserved except access. However, the application involves a proposed description ("up to 43 new homes") accompanied by a suite of documents that rely upon a masterplan:

- Illustrative Layout Plan 20147/101/B
- Transport Statement
- Flood Risk Assessment and Drainage Statement
- Landscape and Visual Appraisal
- Design and Access Statement
- Planning Statement. Paragraph 1.3 states "An illustrative site layout plan (Drawing No. 20147.101) has been prepared to show the proposed layout of the site...."

7.3 Illustrative Layout Plan 20147/101/B is a reliable indicator of layout and form. Indeed, the broad parameters of landscaping, open space, green infrastructure, SUDs attenuation and vehicular access (a fixed point), allied with scale (up to 43 houses),

will largely define the detailed layout and form at Reserved Matter stage. Therefore it is legitimate for the decision maker to consider layout and form at outline stage and their impact on the character and appearance of the locality.

- 7.4 'Location' involves considering the impact of 43 houses and related infrastructure in context with its wider surroundings. Page 10 of the NDG states "*Context is the location of the development and the attributes of its immediate, local and regional surroundings.*" Paragraphs 41 to 49 of the NDG are also particularly relevant.
- 7.5 Vehicular access is a detailed matter and its impact on the character and appearance of the area can also be considered at outline application stage.

### Analysis

- 7.6 Consultation comments from the Council's landscape officer (Mr Tim Screen) are at pages 7 and 8 of the committee report. The Council agrees with the landscape officer's comments. The committee report examines "landscape and visual impact" at paragraphs 9.43 to 9.56. The Council broadly agrees with the committee report assessment at paragraphs 9.43 to 9.56. For example:

*9.51. As such, while the proposal would result in built development on a green field site and would urbanise the countryside and would thus conflict with Policy ESD 15.....*

*9.53. That said, the proposed access road would have a significant impact on the street scene and on the rural setting to this part of the village. The development would therefore be contrary to Policy Village 2 as well as Policies C28 and C30 of the CLP 1996 and Policy ESD13 of the CLP 2015.*

- 7.7 However, the Council disagrees with these elements of the committee report

*9.43. It is also considered that due to the strong existing natural boundary to the west, south and north the site appears on the edge of the built area of the village and with the site being part of a larger field with no clear boundary to the site along the eastern edge the site is not viewed as a built form of the village.*

- 7.8 The appeal site is not located "on the edge of the built area of the village". It is separated from the edge of the village by a gap of between 10m and 100m, between which is mature native landscaping.

*9.55. The development of the site on its own would not enhance the built environment as the site is open countryside but with the provision of the significant landscape buffer the development as a whole would ensure that the edge of the village would be enhanced.*

7.9 Additional landscaping will not “ensure that the edge of the village would be enhanced.” The village does not need enhancing, given the robust landscape buffer to the east of the rear gardens of Ironstone Hollow. This existing landscape buffer is a strong, coherent and defensible boundary that contains the village and marks the clear transition of the village to open countryside. Ironstone Hollow is not overly intrusive and does not dominate the appeal site. Furthermore, the proposed landscaping belt on the eastern side of the appeal site, which is an arbitrary line drawn across an open field, will unsuccessfully mitigate the development as a whole.

7.10 The committee report then goes on to conclude at paragraph 9.56:

*For these reasons 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. The development would also comply with saved Policies C28 and C30 of the CLP 1996, Policies ESD13 and ESD15 of the CLP 2015 as well as Policies CC1 and H1 of the Hook Norton Neighbourhood Plan.*

7.11 The Council disagrees. The proposed development will not comply with 3 of the 11 criteria of PV2. As set out in more detail below, there is substantial conflict with:

- *Whether the land has been previously developed land or is of less environmental value;*
- *Whether development would contribute in enhancing the built environment;*
- *Whether significant adverse landscape impacts could be avoided*

7.12 The benefit of residential development, along with any other benefit and harm, is a matter for consideration in the final balancing exercise. Benefit and harm are not matters to be taken into account when considering compliance or conflict with PV2 and its 11 criteria. Indeed, paragraph 9.53 of the committee report correctly states the proposal conflicts with PV2.

## Relationship with the Development Plan

### Cherwell Local Plan 2011-2031

- 7.13 The final paragraph Policy Villages 2 gives 11 criteria for considering sites at Category A villages.

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

Fail. The site is greenfield land that has a high environmental value.

*Whether significant adverse impact on heritage and wildlife assets could be avoided;*

Pass.

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

Fail. The development will urbanise an attractive field that contributes to landscape and visual amenity. The built environment of Hook Norton will not be enhanced by up to 43 homes and associated landscaping.

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

Pass.

*Whether significant adverse landscape impacts could be avoided;*

Fail. The proposal causes significant adverse landscape effects that cannot be avoided by additional landscaping.

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

Pass.

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

Pass

*Whether necessary infrastructure could be provided;*

Pass.

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

Pass.

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

Pass.

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

Pass.

7.14 With regard to all the criteria set out above, the appeal proposal is not a suitable site for residential development and it conflicts with Policy Villages 2. Conflict with the final paragraph of PV2 results in the appeal proposal being in conflict with PV2 as a whole and conflict with the CLPP1 as a whole.

7.15 The proposal is in conflict with Policy ESD 13. It does not respect and enhance local landscape character nor secure appropriate mitigation where damage to local landscape character cannot be avoided. The proposal will:

- *Cause undue visual intrusion into the open countryside*
- *Cause undue harm to important natural landscape features and topography*
- *Be inconsistent with local character*
- *Harm the setting of Hook Norton*

7.16 The proposal is in conflict with Policy ESD 15. It does not “complement and enhance the character of its context through sensitive siting, layout and high quality design.” It conflicts with the first and fourth bullet points of the policy:

- *Be designed to deliver high quality safe, attractive, durable and healthy places to live and work in. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions*
- *Contribute positively to an area’s character and identity by creating or reinforcing local distinctiveness and respecting local topography and landscape features, including skylines, valley floors, significant trees, historic boundaries, landmarks, features or views, in particular within designated landscapes, within the Cherwell Valley and within conservation areas and their setting*

#### Hook Norton Neighbourhood Plan

7.17 The HNNP does not have a policy that prohibits the principle of residential development outside the built-up limit of Hook Norton. Nor does it include a Policy

Map of the village. Taking into account the large number of completed and committed housing at the village, the HNNP “*therefore does not allocate nor anticipate a need to allocate any sites for 10 or more dwellings.*”

7.18 Pages 16 and 17 state:

*“This Plan therefore seeks to provide clarity about the type of development which is appropriate in Hook Norton.... Large developments are not acceptable to the community.... Sustainable housing growth in Hook Norton therefore focuses on small scale development to provide incremental and balanced growth which respects the character of the area.”*

7.19 The appeal proposal conflicts with policy CC1 because it:

- is not “visually accommodated into its surroundings”;
- does not provide a positive contribution to the “locally distinctive character and context of Hook Norton”; and
- is an isolated site in the open countryside.

7.20 As set out earlier, if the proposed development is built in two phases of about 20 dwellings each, five or more years apart, there will be limited conflict with HNNP policies H1 and CC3. If not, there will be significant conflict with H1 and CC3.

#### Cherwell Local Plan 1996

7.21 There is conflict with Policy C28 because the proposed layout is unsympathetic to the rural context of the development.

#### National Design Guide 2019

7.22 The NDG builds on Chapter 12 of the National Planning Policy Framework (NPPF) which requires, amongst other matters, that new development reflects its landscape context and setting. The proposal is in conflict with the NDG.

### National Planning Policy Framework

7.23 Chapter 12 of the NPPF deals with “achieving well-designed places”. For the reasons given above, the proposal is in conflict with paragraphs 126, 130 and 134 of the NPPF.

## **8. SECOND REASON FOR REFUSAL**

8.1 The second reason for refusal relates to the absence of a signed legal undertaking to mitigate the impacts of the development on existing community services and infrastructure serving the development. This reason for refusal is capable of being resolved by completing a suitably worded Section 106 agreement to address:

- Affordable housing;
- Community hall facilities;
- Indoor and outdoor sports provision;
- Refuse/recycling bins;
- Financial contribution to the improvement of the 488 bus service
- Monitoring fees

8.2 If a suitable Section 106 agreement is not completed, the proposed development will be in conflict with 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.

8.3 In its Statement of Case (para 2.35), the appellant states “*This is a matter [affordable housing] 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.*” The delivery of affordable housing should be achieved by a S106 agreement and not a planning condition.

## 9. BENEFITS

### Benefits

9.1 Benefits of the proposal are summarised as:

#### Market housing

9.2 Paragraph 60 of the NPPF involves significantly boosting the supply of homes “*where it is needed*”. However, the appeal proposal is located where there is a limited need for market housing. This is because:

- The vision, strategy and objectives of the CLPP1 are to focus growth (the “strong urban focus”) at Bicester and Banbury. To put the urban focus into context, the Plan strategy requires that only about one quarter of houses are delivered in the rural area (“rest of district”), of which a major portion is the proposed new settlement of 1600 homes at RAF Upper Heyford. Growth is limited in the rural areas.
- The CLPP1 strictly controls development in open countryside. One of the Core Planning Principles at CLPP1 paragraph B.96 is to “protect the intrinsic character and beauty of the countryside”.
- There has been significant market housing built and committed at Hook Norton since the start of the Plan period.
- There is no evidence of market housing need at Hook Norton. The HNNP “*does not anticipate a need to allocate any sites for 10 or more dwellings.*”
- The Hook Norton Neighbourhood Plan only allows limited, small-scale development at Hook Norton. The scale of proposed market housing is excessive in that context.

9.3 Taking into account the above factors and the shortage of housing in Cherwell district (less than 5 year supply), the Council gives significant weight<sup>4</sup> to the benefit of market housing.

#### Affordable housing

9.4 The appeal proposal will deliver 35% affordable housing (the minimum policy requirement for rural areas). This type of housing will help to meet the high level of

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<sup>4</sup> “Significant weight” is given to the benefit of “housing delivery” in the committee report, para 10.7. In the Ambrosden appeal, the inspector gave ‘moderate weight’ to the benefit of market housing (para 86) in a “flat balance”.



affordable housing need of Cherwell District. At a local level, there is no up-to-date Housing Needs Survey for Hook Norton. There has been significant affordable housing built and committed at Hook Norton since the start of the Plan period. On balance, this benefit attracts significant weight<sup>5</sup>.

#### Other benefits

9.5 These are:

1. Construction jobs. Due to a temporary construction period - limited weight.
2. Increased expenditure in shops and services of Hook Norton - limited weight.
3. Biodiversity enhancement. The appellant refers to a Technical Note received 28<sup>th</sup> April 2021 “to demonstrate how a net biodiversity gain can be achieved.” Although landscaping is a reserved matter, the scheme is capable of delivering a net gain. Moderate weight.

## **10. SUMMARY AND CONCLUSION**

10.1 In respect of the first refusal reason, the proposal constitutes the large-scale residential development of an un-allocated, attractive greenfield site located outside the built-up limits of Hook Norton, in the open countryside. More specifically:

- The appeal site is clearly visible from public footpaths and a main road through the village. It has countryside on four sides and is physically detached from the village.
- The field will be transformed by large scale urbanisation. This will cause substantial harm to the intrinsic character and beauty of the open countryside. Proposed mitigation by additional landscaping will not compensate for this harm to landscaping and visual amenity.
- The proposed eastern boundary of the appeal site and its associated landscaping is an incongruous, arbitrary line across the field.
- The proposed vehicular access off Station Road will result in significantly harmful effects, not mitigated by additional landscaping and a ramped access.
- Substantial harm to the rural setting of Hook Norton.

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<sup>5</sup> Significant weight” is given to the benefit of affordable housing in the committee report, para 10.7. Significant weight is also given to this benefit in the Ambrosden appeal decision para 85.

- 10.2 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise<sup>6</sup>. The harm summarised above conflicts with the following development plan policies:
1. Cherwell Local Plan 2011-2031 policies Village 2, ESD13 and ESD15
  2. Cherwell Local Plan 1996 policy CS28.
  3. Hook Norton Neighbourhood Plan policies H1, CC1 and CC3.
- 10.3 Having regard to the Council's current housing land supply position, i.e. less than a 5-year housing land supply, paragraph 11d of the NPPF is engaged. The most important policies are out of date. That does not mean that they carry no weight and nor does it mean that the lack of a deliverable 5 year housing land supply leads inevitably to the grant of planning permission. Rather, the key housing supply policies above have reduced weight.
- 10.4 Provided the development is built in two phases of about 20 dwellings each, five or more years apart, the conflict with HNNP policies H1 and CC3 is limited.
- 10.5 The combined benefits of the proposal, which include market and affordable housing, attract significant weight in favour of the appeal. On the other hand, there is substantial harm to the visual amenities of the rural landscape and open countryside and clear conflict with a raft of policies in the development plan relating to these matters.
- 10.6 In the final balance, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits identified, when assessed against the policies of the Framework as a whole. In conclusion, the appeal should be dismissed.

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<sup>6</sup> S.38(6) of the Planning and Compulsory Purchase Act 2004 and NPPF paragraph 47.

**APPENDICES**

1. Location Plan and Illustrative Site Masterplan
2. Hook Norton extract of the interactive policies map of the Cherwell Local Plan 2011-2031 Part 1
3. Sibford Road, Hook Norton (7 December 2015 - APP/C3105/A/14/2226552).
4. Comments from Housing Strategy Officer
5. The Hale, Chesterton (11 February 2016 – APP/C3105/W/15/3130576).
6. Lince Lane, Kirtlington (12 May 2016 - APP/C3105/W/15/3134944).
7. Northampton Road, Weston on the Green (8 February 2017 - APP/C3105/W/16/3158925).
8. Heatherstone Lodge, Finmere (17 May 2018 - APP/C3105/W/17/3169168).
9. Station Road, Cropredy (17<sup>th</sup> May 2018 – APP/C3105/W/17/3187461).
10. Blackthorn Road, Launton (18 September 2018 - APP/C3105/W/17/3188671).
11. Main Street, Fringford (24<sup>th</sup> January 2019 – APP/C3105/W/18/3204920).
12. Merton Road, Ambrosden (9<sup>th</sup> September 2019 - APP/C3105/W/19/3228169).
13. Tappers Farm, Bodicote (30<sup>th</sup> October 2019 – APP/C3105/W/19/3222428).
14. Northampton Road, Weston-on-the-Green (17<sup>th</sup> December 2019 - APP/C3105/W/19/3233293).
15. Hook Norton Road, Sibford Ferris (23<sup>rd</sup> December 2019 - APP/C3105/W/19/3229631).
16. Clifton Road, Deddington (19<sup>th</sup> October 2020 - APP/C3105/W/19/3242236 & APP/C3105/W/20/3247698).
17. Berry Hill Road, Adderbury (10<sup>th</sup> September 2021 – APP/C3105/W/20/3255419).







Scale



HOUSE UNITS						
House Type	Bed Spaces	Storey Heights	Area m2	Area ft2	Number	Mix %
2 Bed	2	2	74	797	9	21
2 Bed	2	2	108	1163	1	2
3 Bed	3	2	89	958	11	26
3 Bed	3	2	102	1098	5	12
3 Bed	3	2	106	1141	4	9
3 Bed	3	2	108	1163	3	7
3 Bed	3	2	150	1615	4	9
4 Bed	4	2	164	1765	6	14
<b>Total</b>					<b>43</b>	

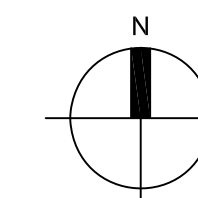


Notes

- 1) Do not scale directly from this drawing.
- 2) This drawing is to be read in conjunction with all other relevant MHP drawings and information supplied by other consultants.
- 3) Hatch patterns displayed on this drawing are indicative only and do not represent actual paving units or material sizes.
- 4) All tree planting in proximity to buildings to be checked by engineers to ensure foundation detailing is appropriate.

B	LAP area identified on plan	05/02/21	BD	PSH
A	Additional annotation included	09/11/20	DAL	PSH
Rev:		Date:	Drawn:	Checked:
Project: Hook Norton, Station Road				
Client: Grey Stoke Land				
Title: Illustrative layout				
Drawing number:		Rev:		
20147.101		B		
Status: FOR INFORMATION				
Drawn By:	Checked By:	Date:	Scale @ A1:	
DAL	PSH	09-10-20	1:500	

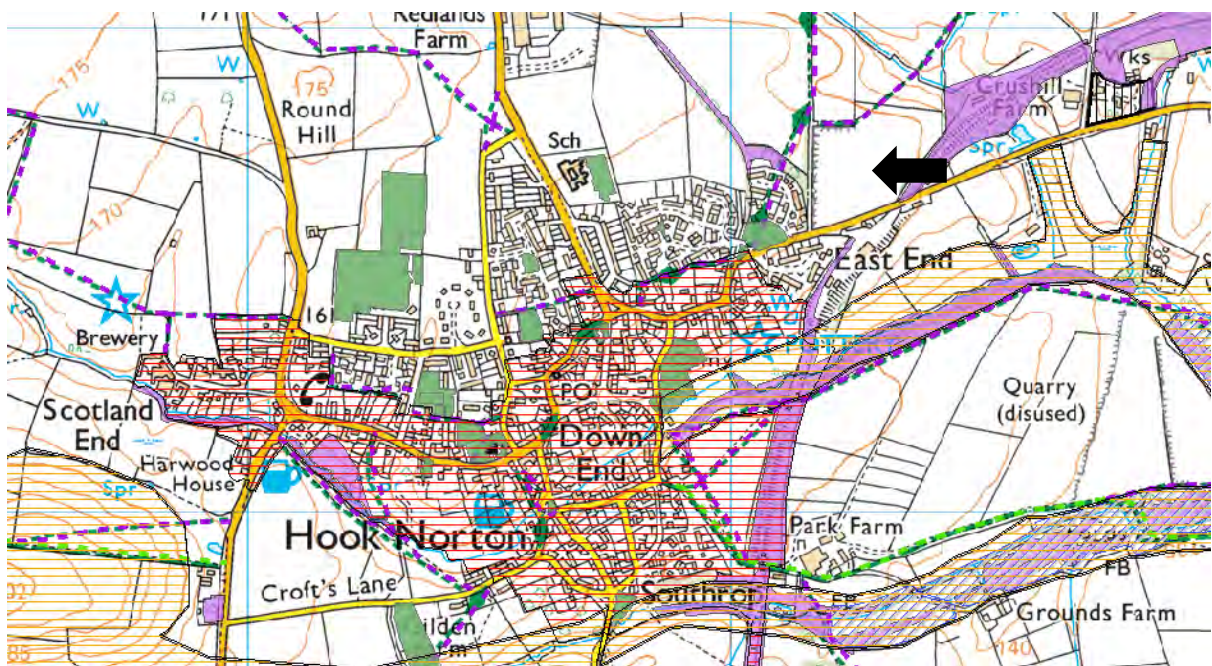
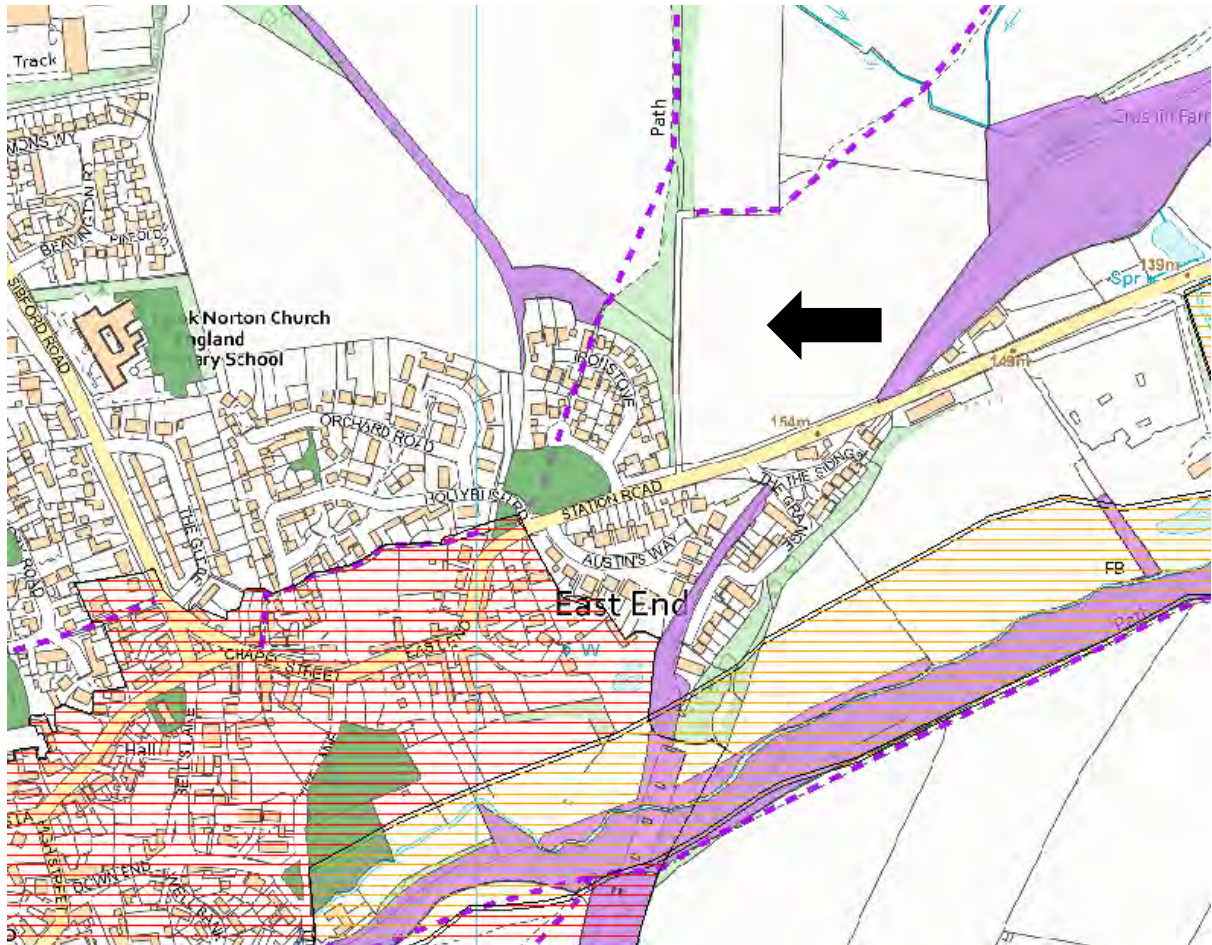
Hook Norton - Station Road  
Illustrative Layout







**Cherwell Local Plan 2011-2031 Part 1 interactive policies map (the centre of the appeal site is identified with a black arrow)**









Department for  
Communities and  
Local Government

Mr C Still  
Gladman Developments Ltd  
Gladman House  
Alexandria Way  
CONGLETON  
Cheshire  
CW12 1LB

Our Ref: APP/C3105/A/14/2226552

7 December 2015

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY GLADMAN DEVELOPMENTS LTD:  
LAND AT SIBFORD ROAD, HOOK NORTON, BANBURY, OXFORDSHIRE OX15 5LA  
APPLICATION REF: 14/00844/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Tim Wood BA(Hons) BTP MRTPI, who held a public local inquiry on 13 – 14 January and 31 March 2015 into your appeal against the refusal of Cherwell District Council ('the Council') to grant outline planning permission for the erection of up to 54 residential dwellings, landscape, public open space and associated works, in accordance with application ref 14/00844/OUT, dated 23 May 2014.
2. On 20 October 2014 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposal for residential development of over 10 units in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions (except where indicated otherwise because of changes in circumstances since the Inspector's report was submitted) and agrees with his recommendation, allows the appeal and grants planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Matters arising after the close of the inquiry**

4. On 13 July 2015 the Secretary of State wrote to the Council to seek information about the number of planning obligations which had been entered into on or after 6 April

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2010 and which provide for the funding or provision of a project, or provide for the funding or provision of that type of infrastructure for which an obligation is being sought in relation to this appeal proposal. Responses were received from the District and County Councils, both dated 20 July 2015.

5. It then came to the Secretary of State's attention that the Cherwell Local Plan 2011-2031 Part 1 was formally adopted by Cherwell District Council on 20th July 2015. On 30 July he wrote to the main inquiry parties to invite representations on the following matters:
  - a. The relevance of the adoption of the Cherwell Local Plan 2011-2031 Part 1 and of any policies therein to the facts of this appeal;
  - b. Whether there is a demonstrable five year supply of deliverable housing sites;
  - c. Progress with the Hook Norton Neighbourhood Plan and the relevance of any policies therein to the facts of this appeal;
  - d. Any other matters which the parties considered to be material to their case.
6. He received responses from Allen Bruton dated 31 July, the Council and Hook Norton Neighbourhood Plan Steering Group, both dated 6 August, and the appellant dated 14 August. These responses were recirculated for further comment on 17 August. He received replies from the Council dated 27 and 28 July, and from the appellant dated 28 July.
7. The Secretary of State has given careful consideration to all the responses to his communications of 30 July and 17 August. As all the responses were circulated to the main inquiry parties, he does not consider it necessary to summarise them here or attach them to this letter. Copies of the correspondence can be obtained upon request to the address at the bottom of the first page of this letter.

### **Statutory and Policy considerations**

8. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan comprises the Cherwell Local Plan 2011-2031 Part 1, as noted above, together with the remaining saved policies of the Cherwell Local Plan 1996 (CDLP) which have not yet been replaced and the Hook Norton Neighbourhood Plan (HNNP) which having successfully passed referendum on 3 September 2015 was made by the Council on 19 October 2015.
9. At the time of the Inquiry the parties agreed that the CDLP policies relevant to this appeal were policies C8, C9, H5, H13, H18 and ENV1 (IR12). However, of these, only policies C8, H18 and Env1 have been retained following adoption of the Local Plan Part 1. The Secretary of State considers that the most relevant policies in the now adopted Local Plan Part 1 are those listed at IR13 and 54. The policies in the HNNP that he considers to be most relevant to this case are considered at paragraphs 16 – 17 below.
10. Material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (The Framework), the associated planning practice guidance, the Community Infrastructure Levy (CIL) Regulations 2012 as amended and the Written Ministerial Statement on Neighbourhood Planning of 10 July 2014.

## **Main issues**

### *Housing land supply*

11. At the time of the Inquiry it was common ground that the Council could not demonstrate a 5 year supply of housing land. Consequently the Inspector took the view that relevant policies for the supply of housing could not be considered up to date (IR14 and 53). The Secretary of State has had regard to the Appellant's case concerning housing land supply in their representations referred to at paragraph 6 above. However the Secretary of State is more persuaded by the reasoning put forward by the Council in its representations also referred to at paragraph 6 above. In particular, the Secretary of State notes that the Inspector who examined the newly adopted Cherwell Local Plan Part 1 endorsed the housing trajectory as being effective and up to date, which includes a housing land supply for the next five years. Moreover, that Inspector found that the modified new housing total and revised housing trajectory represent a reasonable and realistic, deliverable and justified basis for meeting local needs over the plan period. Consequently the Secretary of State takes the view that at present the Council can demonstrate a 5 year housing land supply consistent with the relevant policies in the recently adopted Local Plan Part 1. Applying paragraph 49 of the Framework, the Secretary of State considers that the relevant policies in the Local Plan and Neighbourhood Plan for the supply of housing should be considered up-to-date, and he gives those policies full weight.

### *Whether the proposal complies with the Local Plan*

12. After taking into account representations in the correspondence referred to at paragraph 6 above, the Secretary of State considers that in this case the key policy in the recently adopted Local Plan Part 1 is Policy Villages 2. He has given careful consideration to the Council's representations on this policy, but is persuaded by the Appellant's representations. Policy Villages 2 does not restrict the proportion of the 750 dwellings referred to in this policy that may be built in any one village, including Hook Norton, nor control phasing of that figure up to 2031. Moreover, the Council has accepted that Hook Norton is a relatively sustainable location, a conclusion which is endorsed by the Inspector (paragraph 19 below). For this reason the Secretary of State takes the view that it would be acceptable for Hook Norton to provide a relatively larger share of the 750 dwellings than other villages listed in Policy Villages 2. In the circumstances of this appeal the Secretary of State does not consider that allowing up to 54 dwellings would undermine the sustainable strategy to which the Council's representations refers.

13. The Council has suggested that the proposal does not fully comply with the criteria in Policy Villages 2. However, notwithstanding that the site is in agricultural use the Secretary of State agrees with the Inspector that the proposal would meet the three dimensions of sustainable development at paragraph 7 of the Framework (IR66 and paragraph 19 below). As regards whether development would contribute in enhancing the built environment, the appeal is for outline planning permission. Ensuring good design, in order to make a positive contribution to the locally distinctive character of the village, is an issue for further consideration at the reserved matters stage. All in all, the Secretary of State considers that the appeal proposal broadly accords with the criteria in Policy Villages 2.

14. The Secretary of State has considered the degree of conflict with the relevant remaining saved policies of the CDLP, as identified at paragraph 9 above. CDLP Policy H18 on new dwellings in the countryside states that planning permission will

not be granted for residential development beyond the built-up limits of settlements, other than in specified exceptions which are not relevant here (IR52). CDLP Policy C8 seeks to prevent sporadic development in the countryside and its supporting text states that it will apply to all new development proposals beyond the built-up limits of settlements. However saved policies H18 and C8 predate and must be read alongside the recently adopted Policy Villages 2 which, subject to criteria referred to in paragraph 13 above, does allow some residential development beyond the built-up limits of Category A settlements including Hook Norton. As the Secretary of State has concluded in paragraph 13 above that the appeal proposal broadly accords with Policy Villages 2, he considers that in the circumstances of this appeal there is conflict between that policy and saved policies H18 and C8. The Guidance states that if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted (Ref 21b-013-20150327). Consequently the Secretary of State places no weight on the conflict between the appeal proposal and saved Policies H18 and C8. For the reasons at paragraph 18 below he finds no conflict with CDLP Policy Env1.

*Degree of conflict with the Hook Norton Neighbourhood Plan*

15. The HNNP does not allocate any sites for development, so there are no allocated sites that might be held back if the appeal were allowed. Nor does the HNNP identify the appeal site for any special environmental protection.
16. The Secretary of State has carefully considered the relevant policies in the HNNP that the appeal parties raised in the representations listed at paragraph 6 above. HNNP Policy HN-H1 sets out that sustainable housing for Hook Norton means conversions, infilling and minor development. Each of these is defined, with minor development being small scale and typically less than 10 dwellings. The Policy states that proposals for up to 20 dwellings may be permitted where this does not result in more than 20 dwellings being built in any location at any time. The examiner who examined the HNNP concluded at paragraph 74 of his report that it is not entirely clear what is meant by “no more than 20 dwellings being built in any location at any time”. The Secretary of State agrees with that assessment. Like the examiner, the Secretary of State’s understanding is that this policy wording could be taken to mean that there may be locations where more than 20 dwellings would be acceptable over a period of time, but that no more than 20 dwellings should be built in any one discrete phase of development. In the Secretary of State’s view, development of the whole appeal site would not necessarily conflict with Policy HN-H1, providing construction were to proceed incrementally in the form of three or more separate phases, each of no more than 20 dwellings built at say five year intervals. In view of this, the Secretary of State considers that the degree of conflict between the proposal and Policy HN-H1 is limited and he finds no evidence that any significant material harm would ensue if this development were to be completed more rapidly than is allowed by Policy HN-H1.
17. The Secretary of State has also considered the other HNNP policies that are raised in representations from the Council and HNNP Steering Group, including policies on character and design matters. However, as indicated above, these matters including layout and materials are properly addressed at the reserved matters stage and the Secretary of State finds no evidence of any significant policy conflict in granting outline planning permission.

### *Odour and insects*

18. The Secretary of State agrees with the Inspector's analysis and conclusions at IR57 – 63. For the reasons given he agrees that it is likely that the future occupiers of the proposed residential development will be subjected to a slight adverse effect as a result of odours generated by the adjacent Redlands Dairy Farm (IR78), but there is an absence of empirical evidence which supports the Council's contention that the appeal site is subjected to a level of odours that would be unacceptable to residents (IR60). Though siting new homes closer to Redlands Dairy Farm could well mean that concentrations of insects will be greater as a result of being closer, there is no evidence to suggest that the levels of insects will be at unacceptably high levels (IR63).

### *Other matters including the sustainability of Hook Norton as a location for development*

19. The Secretary of State agrees with the Inspector's assessment regarding the matters considered at IR64 – 66. He agrees that the proposal would be sustainable development in terms of paragraph 7 of the Framework (IR66).

### **Conditions**

20. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions at IR80 – 87. The Secretary of State considers that conditions 1 – 23, as set out in Annex A of the IR and in Annex A of this letter, meet the tests of paragraph 206 in the Framework and comply with the Planning Practice Guidance (IR81).

### **Section 106 Planning Obligations**

21. The Secretary of State agrees with the Inspector's assessment of the executed Section 106 Unilateral Undertaking, which contains some provisions the justification for which is disputed by the appellant (IR67 - 77). For the reasons given the Secretary of State agrees with the Inspector that obligations relating to primary education, the bus shelter, the bus service improvement contribution, refuse bins and re-cycling, the outdoor sport contribution, the LEAP/LAP commuted sums, and the open space management contribution are justified and necessary in order to make the proposal acceptable and comply with the requirements of Regulation 122 of the CIL Regulations and paragraph 204 of the Framework. The Secretary of State also agrees that for the reasons given the remainder of the obligations are not to be justified or necessary (IR76), and he has therefore not taken them into account in deciding this appeal.
22. Having regard to the Inspector's recommendation at IR77, the Secretary of State has given careful consideration to responses to his letter of 13 July referred to at paragraph 4 above. In the light of those responses he is satisfied that all the obligations that he has taken into account in this appeal are compliant with Regulation 123(3) of the Community Infrastructure Levy Regulations 2010, as amended.

### **Overall balance and conclusion**

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any decision must be made in accordance with the Development Plan unless material considerations indicate otherwise. The Secretary of State considers that the proposal accords with the up to date Cherwell Local Plan 2011-2031 Part 1 (see paragraph 12 above), which is now part of the Development Plan, and he places no weight on the conflict between the appeal proposal and saved Policies H18 and C8 for the reason at paragraph 14 above. However he has identified a limited conflict with Policy HN-H1

in the recently made HNNP. Furthermore, paragraph 198 of the Framework states that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted. However, in the circumstances of this case the Secretary of State gives no more than moderate weight to the conflict with the HNNP in view of the limited nature of that conflict. In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State has gone on to consider whether there are any other material considerations which indicate that the appeal should be allowed and outline planning permission granted, despite the limited conflict with the HNNP.

24. Notwithstanding the Secretary of State's finding that there is at present at least 5 years' housing land supply in Cherwell District, a significant benefit of the proposal is that it will contribute to boosting housing supply, including a 35% proportion of affordable housing, in line with the relevant policies of the Local Plan Part 1. The Secretary of State considers that this factor weighs heavily in favour of the appeal.
25. The provisions of the Section 106 Unilateral Undertaking would satisfactorily address the infrastructure and related impacts of development.
26. The proposal would be sustainable development and paragraph 187 of the Framework states that decision takers should seek to approve applications for sustainable development where possible. Overall, the Secretary of State considers that the benefits of this sustainable development would clearly outweigh the harm in terms of the limited conflict with the HNNP and the slight adverse effect on future occupiers as a result of odours generated by the adjacent Redlands Dairy Farm. He therefore concludes that the material circumstances in this case indicate that the appeal should be allowed and outline planning permission granted.

#### **Formal decision**

27. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation and hereby allows your appeal and grants outline planning permission for the erection of up to 54 residential dwellings, landscape, public open space and associated works, in accordance with application ref 14/00844/OUT dated 23 May 2014 and subject to the conditions in Annex A.

#### **Right to challenge the decision**

28. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. From 26 October 2015, this must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
29. A copy of this letter has been sent to Cherwell District Council. A notification e-mail or letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Julian Pitt*

**JULIAN PITT**

Authorised by Secretary of State to sign in that behalf

## **Annex A**

### **Conditions of planning permission - Application ref 14/00844/OUT**

1. No development shall commence until full details of the layout, scale, appearance, and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.
2. In the case of the reserved matters, application for approval shall be made not later than the expiration of 18 months beginning with the date of this permission.
3. The development to which this permission relates shall be begun not later than the expiration of one year from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.
4. The number of dwellings accommodated on the site shall not exceed 54.
5. Prior to the commencement of the development, details for the construction of the site access arrangement shall be submitted to and approved in writing by the Local Planning Authority. Details shall be in accordance with the Site Access Arrangement (Drawing number C13578-001) and the approved Site Access Arrangement shall be implemented prior to first occupation of the first dwelling, in accordance with the Oxfordshire County Council design guide for Residential Roads.
6. No structure exceeding 1m metre in height measured from carriageway level shall be placed within the visibility splays of the site access.
7. Prior to the first occupation of each dwelling hereby approved, the parking areas shall be constructed, laid out, surfaced, drained and completed in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority, and shall be retained for the parking and manoeuvring of vehicles at all times thereafter.
8. Prior to first occupation a travel plan shall be submitted to and approved in writing by the local Planning Authority and thereafter shall be implemented in accordance with the approved plan.
9. Prior to the commencement of the development hereby permitted, a detailed scheme for the surface water and foul sewage drainage of the development shall be submitted to, and approved in writing by, the Local Planning Authority. The approved surface water drainage scheme shall be carried out prior to commencement of any building works on the site and the approved foul sewage drainage scheme shall be implemented prior to the first occupation of each building to which the scheme relates. The drainage works shall be laid out and constructed in accordance with the Water Authorities Association's current edition "Sewers for Adoption".
10. Prior to the commencement of the development hereby approved, full details of the construction of the balancing pond(s) and timing for implementation, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved balancing ponds shall be constructed in accordance with the approved details.
11. No works of site clearance or development shall take place until an ecological enhancement scheme, including timing for implementation, has been submitted to



and approved in writing by the local planning authority. The ecological enhancement scheme shall be implemented in accordance with the approved scheme.

12. No removal of mature trees shall take place until such time as they have been checked for bats immediately prior to removal. Should bats be found to be present in a tree due for removal, a bat mitigation scheme must be submitted to and approved in writing by the Local planning authority prior to the removal of the trees concerned. Development shall be carried out in accordance with the mitigation measures approved as part of the scheme.
13. As part of the Reserved Matters, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-
  - a. details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
  - b. details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation
  - c. details of the hard surface areas, including pavements, pedestrian areas, reduced- dig areas, crossing points and steps.
14. As part of the Reserved Matters, a landscape management plan, to include the timing of the implementation of the plan, long term design objectives, management responsibilities, maintenance schedules and procedures for the replacement of failed planting for all landscape areas, other than for privately owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the landscape management plan shall be carried out in accordance with the approved details.
15. Prior to the commencement of the development hereby approved, full details of a scheme of supervision for the arboricultural protection measures, to include the requirements set out in a) to e) below, and which is appropriate for the scale and duration of the development works, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the arboricultural protection measures shall be carried out in accordance with the approved details.
  - a. Written confirmation of the contact details of the project Arboriculturalist employed to undertake the supervisory role of relevant arboricultural issues.
  - b. The relevant persons/contractors to be briefed by the project Arboriculturalist on all on-site tree related matters
  - c. The timing and methodology of scheduled site monitoring visits to be undertaken by the project Arboriculturalist.
  - d. The procedures for notifying and communicating with the Local Planning Authority when dealing with unforeseen variations to the agreed tree works and arboricultural incidents
  - e. Details of appropriate supervision for the installation of load-bearing 'structural cell' planting pits and/or associated features such as irrigation

systems, root barriers and surface requirements (eg: reduced dig systems, arboresin, tree grills)

16. All tree works granted consent shall be carried out in accordance with British Standard 3998: Recommendations for Tree Works and all subsequent revisions thereof and shall be undertaken by suitably qualified and insured arboricultural contractors.
17. Prior to the commencement of development, a scheme for the design and installation of a vegetative barrier adjacent to the northern boundary of the site should be submitted to and approved in writing by the Local Planning Authority. The design of the vegetative barrier should take account of the presence of the noise attenuation barrier along the northern boundary of the site and should include details of species, mix, planting location and growth rates of the chosen vegetation. A mixture of deciduous and evergreen species should be used in the barrier and the barrier should be a minimum of 3 rows and 9m wide. The scheme should include arrangements for the maintenance of the vegetative barrier. The barrier should be planted in the first planting season following commencement of the development and shall be fully implemented prior to the first occupation of any building to which the scheme relates. The barrier is to be maintained in place throughout the life of the development.
18. Prior to the commencement of development, a scheme for the design and installation of a noise attenuation barrier, adjacent to the northern boundary of the site and utilising the principles detailed within the Noise Assessment Report (Ref: Wardell Armstrong LE12230-001), shall be submitted and approved in writing by the Local Planning Authority. The barrier shall be fully implemented prior to the first occupation of any building to which the scheme relates.
19. Prior to the commencement of development, a scheme for the design and installation of acoustically treated passive ventilation, utilising the principles detailed within the Noise Assessment Report (Ref: Wardell Armstrong LE12230-001) shall be submitted and approved in writing by the Local Planning Authority. The scheme shall be fully implemented prior to the first occupation of any building to which the scheme relates.
20. No development shall take place until a scheme for the affordable housing has been submitted to and approved by the local planning authority. Such a scheme shall detail all of the affordable housing as meeting the Homes and Communities Agency, Design and Quality Standards and Code for Sustainable Homes Level 3, and 50% of the Affordable Rented Housing as meeting Lifetime Homes Standards, or an alternative equivalent national standard applicable at the time of implementation. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing outlined below. The scheme shall include:
  - a. The numbers, type, tenure and location on the site of the affordable housing provision to be made which shall be clustered in no more than 15 dwellings together throughout the development and which shall consist of not less than 35% of the total dwellings 70% of which shall be Affordable Rented Housing and 30% of which shall be Shared Ownership Housing or other such low cost home ownership as is agreed with the local planning authority.
  - b. The timing of the construction of the affordable housing and all necessary infrastructure including serviceable roads, utilities (power, heating,

sewerage) and public access, its phasing in relation to the occupancy of the market housing. No more than 70% of the open market dwellings shall be occupied before the affordable housing is completed and ready for occupation and transfer of the affordable housing to a Registered Provider or the Council

- c. The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing, subject to any Mortgagee in Possession clause to be submitted as part of the affordable housing scheme and agreed with the local planning authority.
- d. The occupancy criteria to be used for determining the identity of the occupiers of the affordable housing, which shall require the Affordable Rented Housing to be allocated via the Council's Choice Based Lettings system, determined by its Allocations Scheme and the Shared Ownership shall be allocated to those qualifying under the Help to Buy Agents applicable criteria.

For the purpose of this condition, the following definitions apply

*Affordable Housing*

Affordable Rented Housing and Intermediate Housing provided to eligible households whose needs are not met by the market. Affordable Housing should meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision

*Affordable Rented Housing*

Rented housing let by registered providers of social housing to households who are eligible for social rented housing (as such term is referred to in the definition of "Affordable housing" contained in the glossary to the National Planning Policy Framework) Affordable Rent is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80 percent of local market rent

*Shared Ownership Housing*

Housing which is offered via the Registered Provider on a low cost home ownership basis to the first occupier and so the first occupiers initial share is between 25% and 75% with an average share equal to one half of the equity in the relevant housing unit and so that the remaining half shall be let by way of a lease in the form of the HCA model lease for shared ownership.

- 21. Prior to the commencement of the development hereby approved, including any demolition and any works of site clearance, a Construction Environmental Management Plan (CEMP), which shall include details of the measures to be taken to ensure that construction works do not adversely affect biodiversity and the local environment, and shall include construction vehicle management, routing, wheel washing and hours of operation, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved CEMP.

22. Prior to any demolition and the commencement of the development a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application site area, which shall be submitted to and approved in writing by the Local Planning Authority.
23. Following approval of the Written Scheme of Investigation referred to in condition 22 and prior to any demolition on site and the commencement of the development (other than in accordance with the agreed Written Scheme of Investigation), a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority.

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# Report to the Secretary of State for Communities and Local Government

by Tim Wood BA(Hons) BTP MRTPI

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

Date 4 June 2015

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**TOWN AND COUNTRY PLANNING ACT 1990**

CHERWELL DISTRICT COUNCIL

Application by GLADMAN DEVELOPMENTS LTD

Inquiry held on 13 and 14 January and 31 March 2015

Land at Sibford Road, Hook Norton, Banbury, Oxfordshire OX15 5LA

File Ref(s): APP/C3105/A/14/2226552

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**File Ref: APP/C3105/A/14/2226552**

**Land at Sibford Road, Hook Norton, Banbury, Oxfordshire OX15 5LA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Ltd against the decision of Cherwell District Council.
- The application Ref 14/00844/out, dated 23 May 2014, was refused by notice dated 5 September 2014.
- The development proposed is the erection of up to 54 residential dwellings, landscape, public open space and associated works.
- The appeal was recovered for decision by the Secretary of State on 20 October 2014 as the appeal involves residential development of over 10 units in an area where a neighbourhood plan has been submitted to the local planning authority by a qualifying body.

**Summary of Recommendation: That planning permission should be granted**

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**Procedural Matters**

1. I sat on 13 and 14 January and on 31 March 2015. I made an accompanied visit to the site and the adjacent farm on 31 March and I made unaccompanied site visits to the wider surrounding area on 12 January and 1 April 2015. The Inquiry was adjourned on 14 January and after some discussion during the Inquiry, it was agreed that we would resume sitting on 31 March 2015. The Council did not write to notify interested parties of the date and venue for the resumption of the Inquiry. However, as interested parties were present when the resumption date was agreed and the fact that all the evidence had been heard on the first 2 days, it was considered that the resumed Inquiry could proceed without any prejudice arising in relation to interested parties.
2. The appeal relates to an Outline application with the means of access to be determined at this stage.
3. An executed Section 106 Agreement was submitted at the Inquiry; I discuss its contents and implications later in the report.

**The Site and Surroundings**

4. The appeal site amounts to 2.70ha of agricultural land and is located to the north of Hook Norton, on the east side of Sibford Road. The site is bounded to the north by Redlands Dairy Farm and to the east by open countryside. To the south of the site is Hook Norton Primary School.
5. The site lies outside but immediately adjacent to the development boundary of Hook Norton as defined in the Cherwell District Local Plan.

**Planning Policy**

6. The development plan consists of the saved policies of the Cherwell District Local Plan (CDLP) which was adopted in 1996.
7. Work on a replacement to the CDLP, the Cherwell Local Plan 2011 was abandoned in December 2004. Notwithstanding, the Council decided that it would be used as interim planning policy for development control purposes.

8. The emerging Cherwell Local Plan was submitted to the Secretary of State for examination on 31 January 2014. The appointed Inspector raised concerns relating to housing delivery and progress has been delayed in order to allow the Council to propose modifications. These were submitted and the examination resumed in December 2014 and the Inspector's report is awaited.
9. The Hook Norton Neighbourhood Plan is the subject of a recent Examiner's report, although it had not progressed to a referendum at the time of closing the Inquiry.

### **Other Matters Agreed between the Council and the Appellant**

10. A Statement of Common Ground was submitted at the Inquiry; this sets out a number of relevant common views as agreed by the Council and the appellants. I do not seek to repeat each and every matter here but draw attention to ones of particular note.
11. In relation to the Council's second reason for refusal, it is agreed that the concerns expressed therein can be met by a suitable Planning Obligation. Furthermore, any issues relating to noise could be addressed by suitable planning conditions.
12. In relation to planning policy, the relevant policies in the CDLP are C8, C9, H5, H13, H18 and ENV1. With respect to the non-statutory Cherwell Local Plan 2011, it is set out that it is a material consideration but one of very limited weight.
13. In relation to the emerging Cherwell Local Plan, as there are currently unresolved objections, the weight that may be attached to its policies is reduced. The relevant policies are agreed as being BSC 3, BSC 10, BSC 11, Policy Villages 1 and Policy Villages 2.
14. Both main parties agree that the Council is unable to demonstrate a 5 years' supply of housing land, only being able to show a supply of 3.4 years. In order to rectify this it has been agreed that additional greenfield sites beyond the existing settlement boundaries will be required. The delivery of market and affordable housing in this context is seen as having significant weight in the planning balance of this appeal.
15. A number of issues are set out in the Statement which do not give rise to any conflict between the main parties. The single main issue between the Council and the appellants is identified as the effects of odour from Redlands Farm on future residents of the appeal site and (although insects are also added to this in other evidence), further, that they disagree on the weight to be attached to the benefits and the impacts when undertaking the planning balance.

### **The Case for Gladman Developments Ltd**

16. The appeal site lies on the edge of the settlement of Hook Norton and under the adopted CDLP of 1996, taken in isolation, the proposal is contrary to Policies H13, H18 and C8. However, the Council's policies and the defined settlement boundary are long out of date, as the CDLP was to run until 2001. In addition, the Council can only demonstrate a 3.4 years supply of housing land; set against the requirements of the National Planning Policy Framework (the Framework), these relevant policies for the supply of housing are out of date. Therefore, the proposal is to be judged in accordance with paragraph 14 of the Framework,

- namely that permission should be granted unless any adverse impacts of doing so significantly and demonstrably outweigh the benefits of the scheme.
17. Hook Norton is identified as a Category A Village in the emerging Local Plan, meaning that it is one of the more sustainable villages in the District. Furthermore, the emerging Local Plan envisages that in such villages development sites for 10 or more dwellings will arise, either through a more detailed allocations plan or through planning applications. The sustainability of the village as a location for residential development is emphasised in the 2014 SHLAA update.
  18. In relation to the Hook Norton Neighbourhood Plan, whilst it now has progressed to the stage where the Examiner's report has been published, it remains the case that a referendum still has to be held and so full weight cannot be given to it. In addition, Policy HN-H1 of the Neighbourhood Plan is a relevant policy for the supply of housing for the purposes of paragraph 49 of the Framework; in the absence of a 5 years' supply of housing site Policy HN-H1 cannot be considered up to date.
  19. The provision of additional homes in the context of the Council's significant shortfall is a substantial benefit and the provision of 35% affordable homes adds weight in favour of the scheme. There is no question in relation to the viability of the scheme. There are economic benefits that the scheme would deliver, including additional construction jobs and associated employment and also additional economically active residents who would add significant expenditure to the local area.
  20. The issue of the effects of noise generated at the neighbouring farm on the future residents at the appeal site has been raised. However, the Council is satisfied that suitable conditions requiring passive ventilation would enable residents to close their windows and sufficiently insulate themselves from any noise, should it occur.
  21. Assessments of the odour arising from the neighbouring farm and the effects on future residents have been undertaken in accordance with the guidance produced by the Institute of Air Quality Management (IAQM). The assessment incorporates a predictive element and an observational element (in the form of sniff tests on site). The outcome suggests no more than a slight adverse effect in the northern part of the appeal site; not one which should prevent the scheme from going ahead and not one which would significantly and demonstrably outweigh its benefits. Indeed, in the SHLAA, the Council envisaged residential development of the appeal site and saw no overriding issues in relation to the farm.
  22. The approach taken in evidence appropriately categorises the source odour potential and the effectiveness of its flow to the appeal site (pathway effectiveness). The enterprise at Redlands Farm is appropriately seen as an intensive livestock rearing operation; this is a "moderately offensive" category using the IAQM Guidance and so gives a "medium" categorisation for the unpleasantness of the "source odour potential". The presence of a slurry lagoon is a normal and expected part of such an operation and does not therefore automatically result in a worse categorisation.
  23. In terms of the pathway effectiveness, the appeal site is to the south of the slurry lagoon and so prevailing winds would result in smells being taken away



from the appeal site. When winds are generally from the north, not all areas of the appeal site would be affected. The relatively short distance from the slurry lagoon to the proposed houses and gardens and the fact that the lagoon is open is offset by the intervening area of vegetation within the farm and that proposed to be developed, plus a barrier which would make a contribution to dispersion and dilution. Therefore, the pathway effectiveness is rightly assessed as "moderate". The predictive assessment correctly concludes that there would be a "slight adverse" effect from odour for the northern part of the site.

24. The sniff tests were appropriately carried out in accordance with the IAQM Guidance. They were carried out in a variety of conditions with temperatures ranging from 1 degree C to 25 degrees C and with wind spread across all directions. In July 2014 a sniff test was carried out in high summer temperatures with a breeze from North/North-East. The interpretation led to the conclusion that a "slight adverse" effect would arise on future residents.
25. There are activities on the farm which are said to generate more smells than is otherwise the case. In the middle part of the day slurry separation is undertaken and the sniff tests, which were all done in the early or late part of the day, would not pick these up. However, there has been no demonstration of the odour producing effect of this process. It is not clear if the slurry pumping was on-going when some of the sniff tests were done; these were done when the wind was from the south-west and so demonstrates that there is little effect in these conditions. There is very little potential for the potentially greater odour-producing operations and the 'worst' weather conditions occurring simultaneously; the conditions observed in June 2014 occur for only 0.4% of the time and slurry pumping took place on 28 days in 2014 and so the potential worst case is restricted. The point is more forceful for the clear out of the slurry lagoon which happens annually and is said to take 2 -3 days.
26. The Council has been unable to produce any evidence of its own which may indicate that odours would be unacceptable within the appeal site; no sniff testing has been done by them and they have placed the burden of proof, inappropriately, on the appellant.
27. The relevant test set in paragraph 109 of the Framework is that new development should not be adversely affected by unacceptable levels of pollution; this is not a no-impact test but one of judging the effect, which then needs to be balanced against the benefits of the scheme.
28. Policy ENV1 of the adopted CDLP which is referred to in the Council's first reason for refusal is not relevant as it deals with the effects of pollution generating new development, not the effects of existing sources on new development.
29. There is an absence of any evidence which supports the allegation that the future residents of the proposal would be subjected to unacceptable levels of flying insects as a result of the neighbouring farm. There are no records of any complaints about the existing situation and no other similar examples are referred to.

### **The Case for the Council**

30. The Council presents evidence from individuals with extensive experience of dealing with dairy farms, including the owner of the neighbouring farm. It is

their considered view that problems arising from odour will be inevitable and significant. Local residents have also referred to unacceptable levels of odour arising from the farm.

31. To a large extent the evidence in relation to odour relies on judgement and the informed judgement of the Council's witnesses should carry considerable weight.
32. The appellant's conclusion of a "slight adverse" is flawed as they have failed to ensure that testing has taken place when the odour generating activities are undertaken. There was 1 assessment in July 2014, 17 in September/October and 3 in December. With one exception all of the assessments were undertaken either at the beginning or the end of the day and so would have missed the slurry separation which happens in the middle of the day. The exception was on 7 October when the wind was from the south-west and so would not have affected the appeal site. In relation to slurry pumping, this was only undertaken on 2 days and the wind was in the wrong direction (additionally it is not known if the pumping was going on when the sniff tests were done). Digging sludge out of the lagoon and slurry agitation are summer activities and it is not known if these were caught in the only summer sniff test at 5pm on 25 July 2014.
33. The appellants state that they have captured a range of wind directions and temperatures in their testing (notwithstanding that there was only 1 occasion when it could be considered to be warm). However, they cannot demonstrate that they have captured the odour generating activities. The appellants failed to contact the owner of the farm in order to co-ordinate testing at the relevant times. For these reasons the appellants' assessment is seriously deficient.
34. There are additional flaws in the way that the appellants have presented their findings; for each of the 17 days' observations the figures are given as an average. This is inappropriate and results in a misleadingly low figure. The unacceptable effects of a relatively high scoring odour in an afternoon will not be made acceptable by an odour-free morning. In relation to the IAQM guide for recording the odour level, the appellant has under-recorded the results as they have given scores of, for example, 2 which is 'odour present but cannot be described' but have then described the source. If the source can be described it should have a score of at least 3.
35. In terms of the predictive assessment, the appellant's categorisation of the source odour potential as medium ignores the huge size of the slurry lagoon and that slurry and sludge are within the most offensive odour category. The proximity of the lagoon to the proposed nearest properties reinforces the Council's case.
36. In part, the appellant relies on mitigation from planting between the lagoon and the proposed houses. Aside from the fact that the appellant mis-calculated this distance as 38m when it is actually 23m, there is little evidence that a vegetative buffer would be effective. The case referred to by the appellant actually shows an increase for one of the two years after a tree buffer was planted. We also suggest that the effectiveness of planting may be far less for odours arising from wet sources where the source is molecular, rather than particulate as in a dry source, such as a poultry farm.

37. The appellant also proposes a fence which they say will halt the airflow; however no aerodynamic modelling has been produce which indicates what the effects will be.
38. The Council's witnesses have considerable experience of dairy farms and this leads them to conclude that any future residents on the appeal site will inevitably be subjected to unacceptable levels of insects arising from the farm. This very large dairy herd produces vast quantities of manure, slurry and silage, which attract insects and provides a breeding ground for them. The appellant states that there are no recorded problems of such nuisance in the village at the moment, but this ignores the fact that the appeal site is closer to the farm and so insect concentrations will be significantly higher. The appellant has not undertaken any assessment of the likely impact of insects in order to refute the Council's claim.
39. The significant odour and insect nuisance that would arise would prevent the existing farm and the proposed residential development from happily co-existing. This would give rise to pressure from the residents for the farm to reduce its operations or to close altogether. The Council's witnesses confirm that best practices are already used in order to reduce any potential nuisance and so no more could be done. The farm is a large enterprise, giving local employment and spending significantly in the local area. The reduction or closure of the farm's operations would have an inevitable and negative economic consequence.
40. In relation to the benefits of the scheme, the Council accepts that the provision of new homes would be a significant one, but should not be over-stated. There is a need for affordable homes in the District generally, but not in the village given that the need of 25 as recorded in the Bourne Lane appeal (APP/C3105/A/12/2184094) will have been met by the Bourne Lane and Stanton Engineering developments. The village is a relatively sustainable location but, again should not be over-stated. In relation to economic benefits of the scheme, these should not be given weight as the effect on Redlands Farm will more than counterbalance any benefits brought about by the proposed development.

### **The Case for Mr P Watkins for Hook Norton Neighbourhood Plan Steering Group**

41. The HNNP is important for this appeal and it is the reason why the Secretary of State is determining this appeal. We have reviewed the appellants' evidence and set out a number of comments, the first of which is to draw attention to the confusion on the appellants' behalf in referring variously to the 'draft' plan and 'submission'.
42. The appellant refers to the HNNP not being in conformity with the emerging Local Plan; we would point out that Neighbourhood Plans are not tested against emerging plans. The HNNP is consistent with the Spatial Strategy. The appellant mis-represents the contents of the HNNP in relation to the size of acceptable developments. The HNNP does not allocate sites, but this does not indicate any weakness in it and is often the case for neighbourhood plans. The appellant's comparison with the Adderbury case is inappropriate, not least because that neighbourhood plan was in the very initial stages of preparation, in contrast with the HNNP.

43. There is widespread support for the HNNP and the appellants' reference to a significant number of unresolved objections over-states the position. There were only 3 real objections; not a significant number and in any event are from applicants, including this one.

#### **The Case for Mr A Bruton**

44. The appellants propose a fence or bund in an attempt to mitigate against the odour and insects from Redlands Farm. Neither would fit in with the landscape here. The odour assessment confirms that even when the wind is from the south-west the smell of slurry was present on site (as set out for 19 February 2014).
45. Hook Norton is a rural village with poor access to jobs, services and public transport and there is heavy reliance of the private car. The proximity of the farm with a large amount of machinery could pose a real safety threat to children who may stray onto the farm.
46. Noise, odour and insects are problems which the appellant has failed to address. In relation to noise, their suggestion is that future residents should remain inside with no windows open; this is not normal behaviour. This would also impose unrealistic restrictions on the normal use of gardens. The snap-shots represented by the sniff tests do not reflect what it would be like to live in close proximity to the farm year-round.

#### **The Case for Mr C Henderson of the Parish Council**

47. The increase in population represented by the proposal and those others in the pipe-line could not readily be assimilated into the village. The roads leading into and out of the village are narrow and do not allow safe passage of vehicles, particularly larger ones. Footpaths are inadequate and often mean stepping onto the roads. The proposed increase in the population would bring about a large increase in vehicles and would generate a need for additional school places. The increase in traffic will lead to conflict with the school access and the development site opposite. Other sites in the area are more suitable.
48. There is no mains gas supply in the village and there is not space to provide domestic oil tanks. Therefore all domestic power is by electricity which does not align comfortably with the village being a Low Carbon Community.

#### **Written Representations**

49. 2 letters of objection were received at the appeal stage and both authors of these attended and spoke at the Inquiry. At the application stage 95 letters of objection were recorded in the Council's Committee report. Most of the matters raised in the letters were raised at the Inquiry. Additional matters related to general unsustainability of the location, lack of public transport, needs more affordable housing, loss of village atmosphere, affects on landscape value of the area and problems with broadband connections.

#### **Conclusions**

50. The following considerations are based upon the evidence given at the Inquiry, the written representations made and my inspection of the site and the

surrounding area. In this section the numbers in square brackets [] refer to paragraphs in the preceding sections of the Report.

51. At the beginning of the Inquiry I identified that the main issue in this appeal is the effects of odour and insects arising from Redlands Farm on the future residents of the proposed development. The Statement of Common Ground (SOCG) adds that there is disagreement between the appellant and the Council in relation to the weight to be attributed to the benefits and the impacts of the proposal when undertaking the planning balance.

#### *Planning Policy Context*

52. It is agreed that the Development Plan consists of the saved policies of the Cherwell District Local Plan (Adopted 1996) (the LP). The LP was adopted in 1996 and covered the period to 2001. The relevant policies for the purposes of this appeal are C8, C9, H5, H13, H18 and ENV1. Policy C8 seeks to prevent sporadic development in the countryside and C9 resists development outside Banbury and Bicester which would be of a size that would be incompatible with a rural location. Policy H5 aims to secure affordable housing where there is a need. Policy H13 states that development in Category 1 settlements (of which Hook Norton is one) will be restricted to infilling, minor development within the built-up area and conversions. Policy H18 states that planning permission will not be granted for residential development beyond the built-up limits of settlements, other than in specified exceptions, which are not relevant here. Policy ENV1 states that development which is likely to cause materially detrimental levels of pollution will not normally be permitted. [6,12,13]
53. The SOCG accepts that the Council cannot demonstrate a 5 years' supply of housing land and so the relevant policies for the supply of housing cannot be considered as up to date. Therefore, it appears to be common ground that Policies C8, C9, H13 and H18 are not up to date. [14]
54. The emerging Cherwell Local Plan (CLP) was submitted for examination in January 2014 but progress was delayed for further work on housing delivery and the examination resumed in December 2014. In the light of unresolved objections at that stage, the Council and the appellant agree that less weight can be given to the emerging CLP. The following policies are relevant, BSC 3, BSC 10, BSC 11, Policy Villages 1 and Policy Villages 2. Policy BSC 3 relates to the provision of affordable housing; Policy BSC 10 and BSC 11 relate to securing the provision of open space and outdoor recreation. Policy Villages 1 relates to allowing for small scale developments within village boundaries and Policy Villages 2 relates to the distribution of housing growth across the rural areas. It seems to me that even though the main parties have agreed that some weight may be attached to these policies, although they qualify this by stating that the weight should be reduced, the fact that these policies (Villages 1 and Villages 2) relate to the supply of housing, they may not be considered as up to date. [8,13]
55. The emerging Hook Norton Neighbourhood Plan (HNNP) has now been the subject of the Examiner's report, which recommends that it should proceed to a referendum, with a number of recommended modifications. Although some progress has been made, full weight is not given to the HNNP as the statutory process has not been completed. In addition, Policy HN-H1 'Sustainable Housing Growth' which seeks to limit the nature and scale of housing development, can be considered as a relevant policy for the supply of housing and so cannot be

considered as up to date in the light of the lack of a 5 years' housing land supply. [9]

56. In these circumstances paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered as being up to date. Paragraph 14 of the Framework then sets out that, where the development plan is out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

*Consideration of the effects of odour*

57. The appellant has undertaken a predictive assessment and also undertaken sniff tests in a variety of meteorological conditions at different times of the year. Their conclusion is that there would be a slight adverse effect on residents in the northern part of the site. The appellant's assessment appropriately categorises the dairy farm as within the "moderately offensive" category of table 5 of the IAQM Guidelines and so sits in the "medium" category of table 8 for the "unpleasantness" of the source odour potential. I consider that this is more realistic than trying to separately categorise the slurry lagoon, rather than considering it as part and parcel of the intensive livestock concern. [21,22]

58. With regard to the pathway effectiveness, I have taken account of the proximity of the proposed housing to the main adjacent odour source. Although this is quite close, this must be off-set to some degree by environmental factors, not least of which is the prevailing wind direction, which would result in odour being taken away from the appeal site. I accept that there would certainly be times when winds from other directions would have the potential to carry odours from the farm to parts of the appeal site, but these would be unlikely to affect the whole site and would not be for the majority of the time. Although the cases presented by example are not clear, there appears to be some beneficial effect of providing vegetation between the source and receptor. In this case, there is an existing dense vegetative area within the farm which lies between the slurry lagoon and the appeal site. I consider that this, augmented by measures contained in the proposal, would have some beneficial effects in protecting the appeal site. As a consequence, I consider that the appellant's categorisation within a moderately effective pathway for odour is realistic here. Using these factors in combination and using table 10 of the IAQM Guidance, the resultant likely magnitude of odour effect is "slight adverse effect". [23,36]

59. The appellant has undertaken sniff tests and the results are presented in the documentation. The Council are critical as they consider that they have not been done at appropriate times when the odour generating activities at the farm may be on-going. From my consideration, it seems that the sniff tests have been undertaken in a variety of conditions in relation to temperatures and wind directions. Although it may be possible to criticise the comprehensiveness of the tests and the fact that they were not specifically co-ordinated with the farm to coincide with the odour generating activities, the Council has offered no sniff testing which accords with the IAQM Guidance of its own to show what effects would be found at those relevant times. Indeed, the Council criticise the appellant for not contacting the farm owner, but he appears as a Council witness at the Inquiry and so would have been possible for them to co-ordinate appropriate sniff testing. [24,25,32]

60. The evidence that the Council does offer in this respect is the opinion of the farm owner and another witness with many years experience of dairy farms. Whilst I do not seek to dismiss their experience, such evidence is not comparable with the structured sniff tests which methodically record temperature, wind speed and the type and strength of smells, in accord with the IAQM Guidance. Although some letters of representation mention odours from the farm, in this respect, there is an absence of empirical evidence which supports the Council's contention that the appeal site is subjected to a level of odours that would be unacceptable to residents. In addition, some of the odour generating activities referred to by the Council take place infrequently and so, even if weather conditions were to be conducive to odour transfer, it would be inappropriate to base my judgement on the strength of such infrequent events. [26,30,31,33,34,38]
61. There was some discussion at the Inquiry of the relevance of Policy ENV1 of the LP; this states that development which is likely to cause materially detrimental levels of pollution (in its varied forms) will not normally be permitted. Notwithstanding that the supporting text envisages situations where the pollution source is already established and new development within its area is proposed, the wording of the policy is clear and does not strictly apply to the proposed development here. Nevertheless, the matter is legitimately considered within the appeal as paragraph 109 of the Framework seeks to prevent proposed developments from being put at unacceptable risk from pollution. [28]

#### *The effects of insects*

62. The Council's case rests on the opinion of the owner of the farm and others with much experience of dairy farms, that the level of flying insects generated by the farm will be such that they will cause nuisance to future residents of the appeal site. The Council adds that the appellant has failed to provide an adequate assessment to allay any concerns in this respect. [38,39]
63. Apart from the anecdotal statements made by their witnesses, there is very little in the Council's evidence to assess the level of flying insects locally, or if that level would be sufficient to have an unacceptable effect on neighbours, if the proposal were to go ahead. I accept that the dairy farm gives rise to a level of insects and even in March at the time of my site visit, some were present around the herd and feed. The Council cite 2 examples locally but these are for different practices which may give rise to different levels of insects. There are no records of any formal complaints regarding flies from the farm affecting existing homes within the village. Whilst I accept that siting new homes closer to the farm could well mean that concentrations of insects will be greater as a result of being closer, there is simply no evidence to suggest that the levels of insects will be at unacceptably high levels. In this instance I do not see it as necessary to rely on the appellant to prove the negative of the argument. [29,38,39]

#### *Other Matters*

64. The Council states that, as a result of the likely unacceptable residential environment that would be created, future residents would register complaints about the farm, which would inevitably lead to the scaling back of operations or its ultimate closure. In my judgement, for the reasons set out above, such a scenario is unlikely to arise and so is not given weight of any significance in my judgement.

65. Apart from the matters addressed above, some seek to question the principle of Hook Norton as a sustainable location for new residential development, including its safe access by road. I note that the County Council as Highways Authority has raised no objections in this respect. In addition, the District Council have accepted that Hook Norton is in a relatively sustainable position. From my own assessment, I did not see anything which leads me to conclude that access by road would be particularly inconvenient or unsafe, nor would it be made so by the additional proposed development. Furthermore, in a recent appeal I note that another Inspector and the Secretary of State concluded favourably on the sustainability of Hook Norton and I find nothing to depart from this view.
66. In respect of the overall sustainability of the proposal, I have had regards to paragraph 7 of the Framework and I am satisfied that, taken as a whole, the three dimensions of sustainability are met. With this finding in mind, paragraphs 49 and 14 of the Framework then apply.

### **The Planning Obligation**

67. The appellant has submitted a completed Unilateral Undertaking which contains provisions for all of the requested items of the Council and the County Council. However, the appellant disputes the justification for a number of these items.
68. The Undertaking has been drawn up in the light of Policies TR1 and R12 of the Local Plan and the draft supplementary planning document 'Planning Obligations' (SPD). The draft SPD is used by the Council and offers advice which is consistent with national advice, although as a draft document I give less weight to it than if it had been adopted. I have taken the relevant Local Plan policies and the draft SPD into account, as well as Regulation 122 of the Community Infrastructure Levy regulations 2010 (as amended) and the tests in paragraph 204 of the Framework.
69. The Undertaking contains provision for a contribution towards the cost of a new classroom as part of the expansion of Hook Norton Church of England Primary School. It is anticipated by the County Council that the proposed development would generate a need for 18.33 pupil places. Department for Education advice is that in Oxfordshire £11,582 is required per pupil place. The appellant does not dispute the need for this contribution. On the basis of these matters, the contribution is necessary to mitigate the effects of the proposed development.
70. Provisions for contributions to improve bus services and a bus shelter are included and justified as the route mentioned would improve connectivity with Banbury and Chipping Norton allowing residents better access to services and employment opportunities. I consider that these are necessary in order to make the scheme acceptable in accessibility terms.
71. A contribution towards the stock of books at the local library is sought and included, although its need is questioned by the appellant. The County Council had confirmed that Hook Norton Library has the capacity to cope with the proposed increase in population. The contribution is sought on the basis of an additional 2 books per additional resident. From the evidence before me, there is little to conclude that the existing stock of books at the library is insufficient to meet the needs of the population nor would it be as a result of the increase proposed herein. Therefore, this contribution has not been justified.



72. A contribution is included which would go towards the provision of 3 refuse bins and a food caddy for each dwelling. The appellant considers this is not necessary and cites other appeal decisions which support that stance. The Council point to the Secretary of State's decision at the nearby Bourne Lane (APP/C3105/A/12/2184094) dated September 2013 wherein it was determined that such a contribution was justified. I accept that there are decisions which both support and reject the need for such a contribution. However, in the light of the fact that the Secretary of State has given consideration to this matter relatively recently and within a very short geographic distance, I see no reason to depart from his conclusions; therefore I find that the contribution is necessary to facilitate the collection and disposal of household waste.
73. Provisions are included for an Outdoor Sports Contribution, a LEAP/LAP Commuted Sum and Other Open Space Management Commuted Sum. These include, respectively: increasing the capacity of sports pitches at Hook Norton Sports and Social Club, which is currently running at capacity at peak times and so any increase in population could not be accommodated, in terms of additional use; a local equipped area of play and a local area for play are proposed and their maintenance would be ensured by the sum, if adopted; similarly the proposed open space would need to be maintained and the commuted sum would ensure this, if it is adopted by the Council. I consider that these matters are necessary and justified and relate directly to the proposed development.
74. The Undertaking also includes an Administration/Monitoring Fee separately for both the District and County Councils. At the Inquiry the District Council stated that they no longer think that the contribution for them to be necessary, in the light of this, I consider that no justification is offered. In relation to the County Council a detailed justification was presented, which included reference to the recent High Court judgement of *Oxfordshire County Council and SoS* case at Banbury Road, Adderbury. In the case before me, the County Council would be involved in contributions relating to public transport, the bus stop and the primary school contribution. The bus stop contribution would be payable upon implementation of the scheme; the public transport contribution would be payable prior to first occupation and; the primary education contribution would be payable in 4 instalments, 3 of which are deferred to various stages of occupation.
75. The contribution sought, and included is for £3,750. The County Council states that monitoring fees are charged on a sliding scale and relate to the level of financial contributions payable under the obligation. The amount of the fee here was formulated on the basis of 9 other contributions relevant to the County Council. At the conclusion of the Inquiry a number of those contributions were no longer sought; in addition I have recommended that others are not justified. This has resulted in the inclusion of just 3 of the contributions being justified in my view. In the light of the judgement referred to above, there is a planning judgement to be made in relation to administration/monitoring fees and in this case it seems to me that, at least the primary education contribution would require some monitoring in order to keep track of the stages of development and whether payments had been made at those appropriate times. However, the sum sought and included relates to a much larger suite of contributions and so I cannot conclude that the same fee is justified for this much less comprehensive number of contributions.

76. Therefore, in relation to the Unilateral Undertaking, of all of the obligations included, it is considered that those relating to primary education, the bus shelter, the bus service improvement contribution, refuse bins and re-cycling, the outdoor sport contribution, the LEAP/LAP commuted sums, and the open space management contribution are justified and necessary in order to make the proposal acceptable and comply with the requirements of Regulation 122 of the CIL Regulations. The remainder of the obligations, for the reasons set out above are judged not to be justified or necessary and so I recommend should not be taken into account in relation to this appeal.
77. It is noted that the County Council have not pursued some items that were previously included in its list of obligations; this has been done in the light of Community Infrastructure Levy Regulation 123(3) and planning obligations for pooled contributions and they have acknowledged that more than 5 schemes are contributing to some items, now removed from their request. I recommend that, should the Secretary of State accept my recommendation to grant planning permission, then an additional check should be undertaken so that it can be made certain that none of the other accepted obligations are affected by this matter.

### **Conclusions and Planning Balance**

78. On the basis of the evidence before me, I have concluded that it is likely that the future occupiers of the proposed residential development will be subjected to a slight adverse effect as a result of odours generated by the adjacent dairy farm. However, this is seen in the context of an agreed inability by the Council to be able to demonstrate a 5 years supply of residential land and an agreed position wherein "significant weight" (SoCG) should be attached to the delivery of market and affordable housing.
79. Paragraph 14 of the Framework states that where the development plan is out of date planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits. In my judgement, the harmful effects are predicted to be slight and it is acknowledged that significant weight should be given to the benefit of additional housing, within this sustainable location. Therefore, I consider that the adverse impacts of granting planning permission are insufficient to significantly and demonstrably outweigh these significant benefits.

### **Conditions**

80. Appendix A contains a full list of conditions that I recommend if the appeal is allowed. The list is based on the largely agreed set of conditions submitted at the Inquiry and discussed at the conditions session. I have considered the conditions in the light of the advice in the national Planning Practice Guidance. I have made some amendments to the wording of the conditions in order to better reflect the Guidance and as a result of discussions at the Inquiry and I have excluded some for the reasons given.
81. Conditions requiring the timely submission of reserved matters and commencement of the development are necessary and reasonable. It was agreed at the Inquiry that the standard time-limits could be reduced in order to ensure that the development makes a prompt contribution to housing delivery in the District; I agree that this is reasonable. I shall also recommend a condition

- that limits the number of dwellings to a maximum of 54 in order to comply with the terms of the application.
82. In order to ensure a safe and convenient highway access and so that the surrounding network is not prejudiced conditions requiring the agreement of details of the new junction, the retention of visibility splays and the provision of on site parking are necessary. So that the development is satisfactorily drained and does not contribute to flooding, I have recommended conditions requiring a foul and surface water drainage scheme and one which requires a balancing pond, to be implemented and retained as part of the development.
83. So that the proposal contains a suitable provision for wildlife and ecology an enhancement scheme is necessary and I have recommended a condition requiring that one is submitted, agreed and implemented as part of the development. In the same interest, I have included a condition that requires that any tree scheduled for removal should be checked for bats and, if found, a mitigation scheme should be agreed.
84. Although landscaping is a reserved matter, I recommend that conditions that set out what measures should be included in any future scheme for submission, should be included, for the sake of clarity; this would also include a management plan. In addition a scheme for arboricultural protection should be agreed and all tree works should be carried out in accordance with the relevant British Standard. A separate condition requiring a vegetative barrier between the appeal site and the adjacent farm is included in the interests of residential amenity.
85. As a result of the submitted assessment about noise from the adjacent farm, it is necessary that a noise attenuation barrier should be erected adjacent to the relevant boundary of the site and that acoustic passive ventilation is installed in the dwellings.
86. In order to comply with Policy H5 of the Local Plan to make suitable provision for affordable homes, I have recommended an appropriate condition. So that the construction process does not unacceptably affect the local environment, a condition requiring the agreement of a Construction Environmental Management Plan is included. In the interests of sustainable transport I have included a requirement for a Travel Plan. Suitable conditions have been included which require that an archaeological investigations and suitable measures taken, if necessary.
87. Conditions relating to boundaries for the individual houses, external lights, refuse stores and cycle stores were included on the list at the Inquiry. However, I consider that these matters are more appropriately addressed at the reserved matters stage and so have not recommended them in my list. A condition requiring that fire hydrants are provided was requested by the Council. The appellants confirmed that this is covered by the Building Regulations and in this instance, I shall not include such a condition as it is covered by other legislation.

### **Recommendation**

88. I recommend that outline planning permission should be granted.

*S T Wood*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

H Flanagan	Of Counsel
He called	
E Addae-Bosompra	Development Control Planner
R Lowther	Anti-Social Behaviour Manager
T Kernon	Director, Kernon Countryside Consultants Ltd
R Gasson	Owner, Redlands Farm

### FOR THE APPELLANT:

A Evans	Of Counsel
He called	
C Still	Planning and Development Manager, Gladman Developments Ltd
G Harker	Peter Brett Associates LLP

### INTERESTED PERSONS:

I Prosser	Oxfordshire County Council
C Henderson	Hook Norton Parish Council
A Bruton	Local resident
P Watkins	Hook Norton Neighbourhood Plan Steering Group

### APPLICATION PLANS

2013-068-100	Location Plan
C13578/001	Access Plan

### DOCUMENTS SUBMITTED AT THE INQUIRY

1. Supplementary Note in Response To Appellant's Evidence, from Mr Kernon
2. 3 tabulated sheets containing sniff tests in December 2014, from the Appellant
3. Plan indicating the location of objectors, from the Council
4. Public Transport Developer Funding Contribution, statement from County Council
5. Updated Statement of Justification from Oxfordshire County Council
6. Table of Appeal Results, from County Council
7. Copy of High Court judgement, Oxon County Council and Cala Homes
8. Statement of Justification for Oxfordshire County Council (Additional Comments)
9. Statement of Justification County Council (Education)
10. Response form the Appellant to Contributions Sought
11. Hook Norton Neighbourhood Plan Submission Version July 2014
12. Hook Norton Neighbourhood Plan, Examiner's Report
13. Statement from Mr Henderson
14. Statements (2 documents) from Mr Bruton
15. Statement from Mr Watkins
16. Unilateral Undertaking
17. Final set of Conditions

## **APPENDIX A – SCHEDULE OF CONDITIONS**

1. No development shall commence until full details of the layout, scale, appearance, and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.
2. In the case of the reserved matters, application for approval shall be made not later than the expiration of 18 months beginning with the date of this permission.
3. The development to which this permission relates shall be begun not later than the expiration of one year from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.
4. The number of dwellings accommodated on the site shall not exceed 54.
5. Prior to the commencement of the development, details for the construction of the site access arrangement shall be submitted to and approved in writing by the Local Planning Authority. Details shall be in accordance with the Site Access Arrangement (Drawing number C13578-001) and the approved Site Access Arrangement shall be implemented prior to first occupation of the first dwelling, in accordance with the Oxfordshire County Council design guide for Residential Roads.
6. No structure exceeding 1m metre in height measured from carriageway level shall be placed within the visibility splays of the site access.
7. Prior to the first occupation of each dwelling hereby approved, the parking areas shall be constructed, laid out, surfaced, drained and completed in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority, and shall be retained for the parking and manoeuvring of vehicles at all times thereafter.
8. Prior to first occupation a travel plan shall be submitted to and approved in writing by the local Planning Authority and thereafter shall be implemented in accordance with the approved plan.
9. Prior to the commencement of the development hereby permitted, a detailed scheme for the surface water and foul sewage drainage of the development shall be submitted to, and approved in writing by, the Local Planning Authority. The approved surface water drainage scheme shall be carried out prior to commencement of any building works on the site and the approved foul sewage drainage scheme shall be implemented prior to the first occupation of each building to which the scheme relates. The

drainage works shall be laid out and constructed in accordance with the Water Authorities Association's current edition "Sewers for Adoption".

10. Prior to the commencement of the development hereby approved, full details of the construction of the balancing pond(s) and timing for implementation, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved balancing ponds shall be constructed in accordance with the approved details.
11. No works of site clearance or development shall take place until an ecological enhancement scheme, including timing for implementation, has been submitted to and approved in writing by the local planning authority. The ecological enhancement scheme shall be implemented in accordance with the approved scheme.
12. No removal of mature trees shall take place until such time as they have been checked for bats immediately prior to removal. Should bats be found to be present in a tree due for removal, a bat mitigation scheme must be submitted to and approved in writing by the Local planning authority prior to the removal of the trees concerned. Development shall be carried out in accordance with the mitigation measures approved as part of the scheme.
13. As part of the Reserved Matters, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include: -
  - a. details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
  - b. details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation
  - c. details of the hard surface areas, including pavements, pedestrian areas, reduced- dig areas, crossing points and steps.
14. As part of the Reserved Matters, a landscape management plan, to include the timing of the implementation of the plan, long term design objectives, management responsibilities, maintenance schedules and procedures for the replacement of failed planting for all landscape areas, other than for privately owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the landscape management plan shall be carried out in accordance with the approved details.
15. Prior to the commencement of the development hereby approved, full details of a scheme of supervision for the arboricultural protection

measures, to include the requirements set out in a) to e) below, and which is appropriate for the scale and duration of the development works, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the arboricultural protection measures shall be carried out in accordance with the approved details.

- a. Written confirmation of the contact details of the project Arboriculturalist employed to undertake the supervisory role of relevant arboricultural issues.
  - b. The relevant persons/contractors to be briefed by the project Arboriculturalist on all on-site tree related matters
  - c. The timing and methodology of scheduled site monitoring visits to be undertaken by the project Arboriculturalist.
  - d. The procedures for notifying and communicating with the Local Planning Authority when dealing with unforeseen variations to the agreed tree works and arboricultural incidents
  - e. Details of appropriate supervision for the installation of load-bearing 'structural cell' planting pits and/or associated features such as irrigation systems, root barriers and surface requirements (eg: reduced dig systems, arboresin, tree grills)
16. All tree works granted consent shall be carried out in accordance with British Standard 3998: Recommendations for Tree Works and all subsequent revisions thereof and shall be undertaken by suitably qualified and insured arboricultural contractors.
17. Prior to the commencement of development, a scheme for the design and installation of a vegetative barrier adjacent to the northern boundary of the site should be submitted to and approved in writing by the Local Planning Authority. The design of the vegetative barrier should take account of the presence of the noise attenuation barrier along the northern boundary of the site and should include details of species, mix, planting location and growth rates of the chosen vegetation. A mixture of deciduous and evergreen species should be used in the barrier and the barrier should be a minimum of 3 rows and 9m wide. The scheme should include arrangements for the maintenance of the vegetative barrier. The barrier should be planted in the first planting season following commencement of the development and shall be fully implemented prior to the first occupation of any building to which the scheme relates. The barrier is to be maintained in place throughout the life of the development.



18. Prior to the commencement of development, a scheme for the design and installation of a noise attenuation barrier, adjacent to the northern boundary of the site and utilising the principles detailed within the Noise Assessment Report (Ref: Wardell Armstrong LE12230-001), shall be submitted and approved in writing by the Local Planning Authority. The barrier shall be fully implemented prior to the first occupation of any building to which the scheme relates.
  
19. Prior to the commencement of development, a scheme for the design and installation of acoustically treated passive ventilation, utilising the principles detailed within the Noise Assessment Report (Ref: Wardell Armstrong LE12230-001) shall be submitted and approved in writing by the Local Planning Authority. The scheme shall be fully implemented prior to the first occupation of any building to which the scheme relates.
  
20. No development shall take place until a scheme for the affordable housing has been submitted to and approved by the local planning authority. Such a scheme shall detail all of the affordable housing as meeting the Homes and Communities Agency, Design and Quality Standards and Code for Sustainable Homes Level 3, and 50% of the Affordable Rented Housing as meeting Lifetime Homes Standards, or an alternative equivalent national standard applicable at the time of implementation. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing outlined below. The scheme shall include:
  - a. the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall be clustered in no more than 15 dwellings together throughout the development and which shall consist of not less than 35% of the total dwellings 70% of which shall be Affordable Rented Housing and 30% of which shall be Shared Ownership Housing or other such low cost home ownership as is agreed with the local planning authority.
  
  - b. the timing of the construction of the affordable housing and all necessary infrastructure including serviceable roads, utilities (power, heating, sewerage) and public access, its phasing in relation to the occupancy of the market housing. No more than 70% of the open market dwellings shall be occupied before the affordable housing is completed and ready for occupation and transfer of the affordable housing to a Registered Provider or the Council
  
  - c. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing, subject to any Mortgagee in Possession clause to be submitted as part of the

affordable housing scheme and agreed with the local planning authority.

- d. The occupancy criteria to be used for determining the identity of the occupiers of the affordable housing, which shall require the Affordable Rented Housing to be allocated via the Council's Choice Based Lettings system, determined by its Allocations Scheme and the Shared Ownership shall be allocated to those qualifying under the Help to Buy Agents applicable criteria.

For the purpose of this condition, the following definitions apply

#### Affordable Housing

Affordable Rented Housing and Intermediate Housing provided to eligible households whose needs are not met by the market. Affordable Housing should meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision

#### Affordable Rented Housing

Rented housing let by registered providers of social housing to households who are eligible for social rented housing (as such term is referred to in the definition of "Affordable housing" contained in the glossary to the National Planning Policy Framework) Affordable Rent is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80 percent of local market rent

#### Shared Ownership Housing

Housing which is offered via the Registered Provider on a low cost home ownership basis to the first occupier and so the first occupiers initial share is between 25% and 75% with an average share equal to one half of the equity in the relevant housing unit and so that the remaining half shall be let by way of a lease in the form of the HCA model lease for shared ownership.

21. Prior to the commencement of the development hereby approved, including any demolition and any works of site clearance, a Construction Environmental Management Plan (CEMP), which shall include details of the measures to be taken to ensure that construction works do not adversely affect biodiversity and the local environment, and shall include construction vehicle management, routing, wheel washing and hours of operation, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved CEMP.

22. Prior to any demolition and the commencement of the development a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the application site area, which shall be submitted to and approved in writing by the Local Planning Authority.
  
23. Following approval of the Written Scheme of Investigation referred to in condition 22 and prior to any demolition on site and the commencement of the development (other than in accordance with the agreed Written Scheme of Investigation), a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority.



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**











A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

#### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.





-  Application Site (2.65ha)
-  Proposed Residential (2.15ha)  
Up to 54 dwellings
-  Proposed Green Infrastructure (0.50ha)
-  Local Equipped Play Area (0.04ha)
-  Existing trees and hedgerows
-  Proposed Planting
-  Potential Vehicular Access
-  Indicative Vehicular Access Layout
-  Public Rights of Way
-  Balancing Pond






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 Fax: 01260 288801  
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Rev	Date	By	Revision notes
*	*	*	*
<b>Planning</b>			

<b>Project</b>	<b>Sibford Road Hook Norton</b>
<b>Title</b>	<b>Location Plan</b>

<b>Drawn by</b> dmf	<b>Issue date</b> 17.07.13
<b>Scale(s)</b> 1:2500@A3	
<b>Drawing No</b> 2013-068-100	





Planning Application Comments

**Planning Application Number:** 21/00500/OUT

**Drawing Number(s):** 20147.101 Rev B – Illustrative Layout

**Site Name:** Land North of Railway House, Station Road, Hook Norton

**Planning Officer:** Wayne Campbell

**Date of Comments:** 23<sup>rd</sup> March 2021

**Comments by:** Natalie Harvey

This Planning Application proposes the erection of up to 43 new homes. In accordance with Policy BSC 3 in the Cherwell Local Plan 2011 – 2031, this would provide up to 15 affordable units, calculated at 35% of the overall number of dwellings. Tenure proportions would be split 70/30 between Rented units/Shared Ownership units and we would seek social rent.

There has been a relatively large amount of housing growth already in the village which has yielded a number of new affordable homes (most recently 20 new dwellings at Bourne Lane) so we would firstly need to determine if there is sufficient need for more affordable homes in the area by way of a Parish Needs Survey. Any new affordable homes that were provided must be appropriate to the findings from this and be in-line with the housing policies outlined in the Hook Norton Neighbourhood Plan 2014 – 2031.

The conclusion at Point 4.1 of the applicant's Planning Statement states that the provision of affordable housing should be given substantial weight, but we could only agree with this if it addressed our – yet to be identified - housing needs. Additionally, point 2.6 in the applicant's Planning Statement references policies HN CC1 – CC5 in the Hook Norton Neighbourhood Plan but does not mention any of the relevant housing policies in the Neighbourhood Plan (HN H1 – H5) and instead refers to general planning considerations. As stated above, our intention is to accommodate the housing policies set out in the Neighbourhood Plan.

Although there is a District-wide need for more affordable housing, new affordable housing provided in the village should primarily meet a local need. It is noted that the house types which are proposed are 2, 3 and 4-bedroom homes but as these house types have already been provided on recent new sites in the village we may seek other house types such as 1-bedroom houses or bungalows in addition to these.

In terms of space, dwellings must comply with the DCLG Technical housing standards – nationally described space standard. The indicative size of the proposed dwellings are, on the whole, too small to fulfil this criteria.

**Housing Strategy & Development Team**  
**Housing Service**

To ensure the creation of mixed and cohesive communities, affordable housing should be fully integrated with market housing. It should also be visually indistinguishable from the market housing and evenly distributed across the site.

We expect at least 50% of the rented dwellings to meet Approved Document Part M4(2) Category 2.

We also expect that 1-bedroom dwellings will have a minimum of 1 parking space per unit, and all 2, 3- and 4-bedroom dwellings should have a minimum of 2 parking spaces per unit. Car parking spaces for units compliant with Part M4(2) should meet the requirements of the relevant part of the document.

The Registered Provider taking on the affordable housing units would need to be agreed with the Council.



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## Appeal Decision

Hearing held on 15 December 2015

Site visit made on 15 December 2015

**by Sara Morgan LLB (Hons) MA Solicitor (Non-practising)**

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

**Decision date: 11 February 2016**

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**Appeal Ref: APP/C3105/W/15/3130576**

**Land north of Green Lane and east of The Hale, Chesterton, Oxfordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Philippa and Georgina Pain against the decision of Cherwell District Council.
  - The application Ref 15/00454/OUT, dated 5 March 2015, was refused by notice dated 12 June 2015.
  - The development proposed is application for outline planning permission for up to 51 dwellings with vehicular access from The Hale, together with public open space, and surface water retention pond and associated infrastructure. All matters other than the main site access reserved.
- 

### Decision

1. The appeal is dismissed.

### Preliminary

2. The application was in outline, with all matters apart from main site access reserved for future determination.
  3. The Council's third reason for refusal related to the absence of an undertaking under section 106 to secure affordable housing and to mitigate effects on local community infrastructure. The appellants have now submitted a completed undertaking, the contents of which have been agreed with the District Council and Oxfordshire County Council.
  4. The undertaking appears not to include a covenant by the appellants to comply with the covenants in the Third Schedule, which casts some doubt as to whether those covenants would be enforceable. However, that is clearly a drafting error which could have been rectified if the development was acceptable in all other respects. Subject to that drafting issue, the undertaking would overcome the third reason for refusal.
  5. The matters which the undertaking seeks to secure are the provision, laying out and transfer of public open space within the development and the payment of contributions towards its maintenance; payment of contributions towards the provision or improvement of community facilities at Chesterton Village Hall; the provision of affordable housing in accordance with requirements of the development plan; payments to Oxfordshire County Council of contributions towards the improvement or extension of Chesterton Primary School and the cost of a new secondary school at Bicester; and the payment of a contribution
-

towards the costs of making a traffic regulation order and constructing a cycleway.

6. I am satisfied that the provisions of the undertaking satisfy the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and in the National Planning Policy Framework ("the Framework"), in that the obligations are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. In addition, it was confirmed at the hearing that the contributions intended to be secured by the undertaking would not be affected by the restrictions on the pooling of contributions contained in Regulation 123(3) of the 2010 Regulations. I shall therefore take the contents of the obligation into account in reaching my decision.

### **Main Issues**

7. The main issues are:
- (i) Whether the Council can demonstrate a five-year housing land supply.
  - (ii) Whether the development would accord with development plan policy relating to the supply of housing.
  - (iii) The effect of the development on the setting of Chesterton and on the character and appearance of the surrounding area.
  - (iv) Whether the development would amount to sustainable development.

### **Reasons**

#### ***Housing land supply***

8. The appellants originally argued that the Council could not demonstrate a five-year supply of deliverable housing sites, as required by paragraph 47 of the National Planning Policy Framework (the Framework). This was on the basis, it was argued, that the Council in calculating its supply incorporated a buffer of 5% and not the 20% necessary in cases of persistent under-delivery of housing.
9. However, in recent appeal decisions<sup>1</sup> the Secretary of State and a colleague Inspector have both concluded that the Council can demonstrate a five year housing land supply consistent with the policies in the Cherwell Local Plan 2011 – 2031 Part 1 (the 2015 LP). There is no evidence before me to persuade me to reach a different conclusion from the Secretary of State and my colleague Inspector. Indeed, the Council's 2015 Annual Monitoring Report (AMR), approved after the hearing on 4 January 2016, shows a slight increase in supply, to 5.3 years from the 5.1 years reported in the previous AMR.

#### ***Development plan policy***

10. When the Council made its decision on the appeal application the development plan included saved policies of the Cherwell Local Plan 1996 (the 1996 LP). In June 2015, the Council adopted the 2015 LP. This has replaced many of the policies relied on in the Council's reasons for refusal, although some saved policies of the 1996 LP remain extant and relevant.

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<sup>1</sup> APP/C3105/W/14/3001612 27 August 2015; APP/C3105/A/14/2226552 7 December 2015

11. The 2015 LP strategy is to meet the district's housing needs by concentrating development on the two towns of Bicester and Banbury and on a small number of strategic sites outside those towns. This is reflected in policies BSC 1, which sets out the overall housing provision for the district, and in policies Villages 1 and 2, which sets out housing numbers to be provided in the villages of the district. The Local Plan Inspector noted in his report that the aim of the strategy is to alter the local pattern of housing growth, as a disproportionate percentage has taken place in the smaller settlements, adding to commuting by car and congestion on the road network at peak hours. He endorsed this strategy as being the most sustainable strategy for the district, reflecting the guidance in the Framework<sup>2</sup>.
12. As far as the rural area is concerned, policy Villages 1 categorises villages into service villages (Category A), satellite villages and all other villages. Policy Villages 2 provides that "a total of 750 homes" will be delivered at Category A villages from 1 April 2014 until 2031 in addition to small site windfalls (ie sites of less than 10 dwellings). Chesterton is a Category A village.
13. The Local Plan Inspector referred in his report to "around 750 homes in total", and clearly the 750 figure is not an absolute maximum. But I agree with the Inspector who determined an appeal relating to land off Lince Lane, Kirtlington<sup>3</sup> that any significant increase above 750 could lead to unconstrained growth which would result in non-compliance with the 2015 LP strategy for rebalancing housing growth away from the villages and rural areas. The use of the figure of 750 in the policy must have some form of constraining effect on total numbers, otherwise the policy would be meaningless in terms of its contribution towards the overall strategy of the Plan.
14. The position at the time of the Hearing was that 571 dwellings out of the 750 were anticipated to come forward over the next 5 years, leaving 179 to be provided over the whole of the remainder of the plan period. There is no phasing requirement in policy Villages 2, but the strategy in the 2015 LP is for the provision of sustainable development over the whole of the plan period and the whole of the district. If disproportionate numbers of dwellings are permitted in any one settlement, then other settlements where housing sites have yet to be identified may not be able to meet their needs, including affordable housing needs, without undermining the local plan strategy.
15. The Secretary of State in a recent decision relating to land at Sibford Road Hook Norton has considered policy Villages 2. The Secretary of State noted that there was no restriction on the proportion of the 750 dwellings to be provided in any one village, or any phasing provision. He concluded that it would be acceptable for Hook Norton to provide a relatively larger share of the 750 dwellings than other Category A villages, on the basis of its relatively sustainable location<sup>4</sup>.
16. However, Hook Norton is a far larger village than Chesterton, and appears to have a somewhat wider range of facilities. The Secretary of State's conclusions relating to Hook Norton cannot be read across to apply also to Chesterton, given the significant differences between those two settlements. Indeed, the implication of his conclusion with regard to Hook Norton is that some other

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<sup>2</sup> Para 212 of Report on the Examination into the Cherwell Local Plan 9 June 2015

<sup>3</sup> APP/C3105/W/14/3001612

<sup>4</sup> APP/C3105/A/14/2226552 at paragraph 12 of the decision.

Category A villages would provide a relatively smaller share of the 750 dwellings. That is consistent with the view of the Kirtlington Inspector that the size of the village in question in relation to others is a factor to take into account in the distribution of development. I see no reason to disagree with that view.

17. If the 750 dwellings required by Villages 2 were to be distributed across the Category A villages pro rata on the basis of population, only 15 dwellings would be required in Chesterton. But in fact Chesterton is already committed to provide 45 dwellings, which have been approved in principle subject to a section 106 undertaking being completed. These will be on land immediately to the north of the appeal site, now known as The Paddocks. If the appeal proposal were permitted as well, then 12% of the 750 district wide total would be provided in one relatively small village. This would be disproportionate.
18. The development at The Paddocks is in addition to 44 dwellings approved on appeal<sup>5</sup> on land off Green Lane in 2013, which do not count towards the 750. That development is in the course of construction. Together with the developments already permitted, if the appeal proposal were to be allowed there would be a significant increase in the population of the village over a short timescale.
19. Chesterton has a limited range of facilities within the village itself. These include a primary school and nursery, a public house, a village hall and playing fields, and a bus service (25/25A). There are very limited employment opportunities, and most or all of those who live in the village would have to travel to work, to do their shopping and to access most public services.
20. Although the edge of the Bicester urban area is reasonably close to the village, roads are not pedestrian or cycle friendly due to their width and the traffic using them, there are no footways, and consequently cycling or walking to any part of Bicester, including the newly opened park and ride facility just off the A41, is unlikely to be a realistic option for most people.
21. Even as it is, the bus service is very limited, with buses running towards Bicester every 2 hours from mid-morning. There does not appear to be a travel to work service into Bicester. There are more frequent services to Oxford, an hour's ride away, in the early morning, and travelling to work in Oxford and back by bus appears to be possible, but during the day the buses revert to being 2-hourly.
22. The bus service is subsidised and not viable without subsidy. There appears to be a strong possibility that the subsidy from Oxfordshire County Council towards the 25 service will be withdrawn, and that would result in the village losing most of its buses. Consequently the likelihood in reality is that future residents of the development would be dependent on the private car for virtually all of their travel needs.
23. I have taken account of the conclusions of the 2009 CRAITLUS<sup>6</sup> study on the overall sustainability of villages, which scores Chesterton slightly higher than Hook Norton, but that study was completed some 6 years ago. Given the current information relating to bus services I would not expect similar scores to be achieved by Chesterton now.

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<sup>5</sup> APP/C3105/A/12/2183183

<sup>6</sup> Cherwell Rural Area Integrated Transport and Land Use Study – Halcrow Group Ltd August 2009

24. The Green Lane appeal decision was determined at a time when the now adopted 2015 LP was still emerging, and it appears that Chesterton was then being proposed for, potentially, around 22 new dwellings. The Inspector noted that a regular bus service and close proximity to Bicester contributed significantly to the village's overall sustainability rating. She also noted the scope in the submitted section 106 agreement to maintain and/or improve bus services. She found insufficient grounds for concluding that Chesterton was not a sustainable location for 44 additional dwellings.
25. The position now is that, whilst the proximity of the village to Bicester reduces the *length* of journeys to most facilities, on the basis of the current highly infrequent bus services those journeys are likely to be made by car. That likelihood will be increased if, as appears probable, the current subsidy is withdrawn. This leads me now to conclude that Chesterton would not be a sustainable location for the scale of new development being proposed in this appeal, which of course is additional to that approved at Green Lane, as well as The Paddocks.
26. My overall conclusion on this issue, for these reasons, is that the appeal development would conflict with the overall strategy of the 2015 LP for the provision and location of housing. It would also conflict with policy ESD 1 of the 2015 LP, which requires the impact of development on climate change to be mitigated by, amongst other things, delivering development that seeks to reduce the need to travel and which encourages sustainable travel options.

### ***Character and appearance***

27. The appeal site is an arable field, roughly triangular in shape, bounded on one side by The Hale, on one side by Green Lane and an existing cul-de-sac development, and on a third side by The Paddocks. The Paddocks is currently undeveloped, but will be the site of up to 45 dwellings. There was at the time of my visit a substantial hedgerow between The Paddocks and the appeal site.
28. The appellant has described the proposal as "rounding off", but that description does not, in my view, reflect the extent to which the development would extend built form into the countryside. Once The Paddocks has been constructed, the north-eastern boundary of the site would abut development. But the other boundaries would in the main be Green Lane and The Hale, both of which have the character of country roads where they adjoin the appeal site.
29. The site has no specific designation in either landscape or environmental terms, but it is at present an arable field, and clearly visually part of the countryside. It is typical in character of the flat landscape which surrounds the village. Because of its open nature it provides a rural and agricultural setting to the village, forming a rural foreground to views from The Hale, over what is at present an open boundary with very little boundary planting to obstruct views. Even when the development of The Paddocks has taken place, it would continue if undeveloped to provide a rural setting to the village.
30. The Hale is, in character, very rural despite the amount of traffic using it at present. On the other side of The Hale is a golf course, but this is itself rural in character despite its somewhat manicured appearance. The lane is only just wide enough in places for two vehicles to pass, and has narrow verges. Typically of a country lane, it has no footway. All of these elements reinforce its rural character.



31. The development would introduce a major change to the character of The Hale. At least in the short to medium term, the views across the open field from the lane would become views of a suburban development. However carefully the development was designed and landscaped, its appearance would be suburban. Whilst boundary planting could, in time, lessen the visual impact of the development, it would not conceal the existence of the development, and indeed the openness of the field and the part that openness plays in the setting of Chesterton would also be lost.
32. The site access needed to provide safe access to the development would also have a visually suburbanising effect, as would the new footway along The Hale required by the highways authority to provide a safe pedestrian access to the village. The lane would no longer provide a rural approach to the village. The existing pleasant rural character of The Hale, and the contribution the site plays in the rural setting of the village, would be lost.
33. The development of The Paddocks does not form any sort of precedent for the development of this site. Policy Villages 2 requires new housing in villages, and it is likely that many of the schemes coming forward will involve development of agricultural land and a significant change in character. But The Paddocks is closer to existing development and is a more visually contained site. It was also permitted at a time when the Council could not demonstrate a 5 year supply of housing land and before the 2015 LP was adopted, so that the policy context, and the weight to be given to the provision of additional housing, was different.
34. Even so, development at The Paddocks, with its associated highway works, will have a suburbanising effect on the northern end of The Hale. Adding development on the appeal site would result in virtually the whole length of The Hale becoming suburbanised, to the significant detriment of its rural character. There is no justification in housing land supply terms for this harm. In addition, in the case of the appeal site, the visual harm would be greater because the site is further from the main part of the village and protrudes to a greater extent into the countryside. The harm would be limited to short or medium distance views, as there are no long-distance views of the site, but nonetheless in those short to medium views the harm would be noticeable and material.
35. I conclude that the development would have a significantly harmful effect on the setting of Chesterton and on the rural character and appearance of the area. It would conflict with saved policy C8 of the 1996 LP, which seeks to avoid sporadic development in the open countryside. This policy is still relevant as it seeks to resist unnecessary development in the countryside, and it has not been rendered out of date by housing land supply considerations. There would also be conflict with policy ESD 13 of the 2015 LP, because it would cause undue visual intrusion into the open countryside, be inconsistent with local character and harm the setting of Chesterton.

***Whether the development would amount to sustainable development***

36. The Framework contains a presumption in favour of sustainable development. That requires development that accords with the development plan to be approved without delay. I have found that this development would not accord with various provisions of the development plan, as well as with the overall housing strategy in the 2015 LP. That document is very recently adopted, and

up to date. The Council is able to demonstrate a five-year supply of housing, and so its policies for the supply of housing cannot be said to be out of date. Consequently, the final bullet point of the Framework's paragraph 14 does not apply.

37. The Framework identifies three dimensions to sustainable development: economic, social and environmental. Dealing first with the economic role, allowing the development would bring more dwellings forward, which would deliver some economic and employment benefits, as well as New Homes Bonus funding for the Council and Council tax revenue. It would also accord with the intention of paragraph 47 of the Framework to boost significantly the supply of housing.
38. But my conclusion is that the site is not particularly well located for housing and I am not satisfied this is the right place for further development. The 2015 LP has identified and seeks to co-ordinate development requirements, including the necessary supporting infrastructure. This development would not accord with the strategy of the 2015 LP, a strategy which is very recently adopted and which the Local Plan Inspector considered was fully consistent with national guidance in the Framework.
39. Turning to the social aspect of sustainability, whilst the additional housing would contribute towards the need for housing in the district, those needs could at present be met without developing this site. The appellants have referred to the need for Cherwell to address Oxford City's unmet housing need in the future. The Local Plan Inspector addressed this issue in his Report in considering the duty to co-operate, and noted that there was as yet no final agreement on how or where the new housing needs of Oxford City would be met. There is no evidence before me as to the extent of that need or how it might be addressed, and it would be speculative and premature to regard this site as being able to meet any of that need in the absence of any such evidence.
40. The development would contribute towards the district's need for affordable housing, as 35% of the dwellings would be affordable. But according to the Council there is only a small level of need for affordable housing in Chesterton at the moment, and so the development would not be meeting the affordable housing needs of the village but of the wider district. The site's poor accessibility and lack of services means that it is a far from ideal location to perform that function. I also share the concerns of the Parish Council as to the ability of the village to absorb the large cumulative increase in population that would occur if this proposal were to be permitted as well as the other two developments already permitted or approved in principle.
41. The unilateral undertaking (if fully enforceable) would secure contributions towards public space and educational facilities, but those would merely mitigate an otherwise adverse impact from the development on local facilities. The contribution towards a speed limit on The Hale would provide a safer walking route between The Hale and Green Lane. The contribution towards making a new cycleway to link the village with the new park and ride site would assist in improving accessibility and highway safety. But accessing the park and ride site from the village by foot or cycle would still require the use of roads with no footways for a considerable distance, which would be likely to deter many users. The benefits would thus be limited.

42. On the environmental dimension of sustainability, the development would have a harmful effect on the rural character of the countryside. There would be some benefits to biodiversity from the proposed pond and linear swales and additional planting. But the likely reliance of occupiers on the private car for their travel needs would have environmental disbenefits.
43. Taking all these considerations into account, I conclude that the harm the development would cause would significantly outweigh the benefits, and that it would not amount to sustainable development as envisaged in the Framework.
44. I have taken all other matters raised in the representations and at the hearing into account, but none of them lead me to alter my conclusion that the appeal should be dismissed.

***Overall conclusions***

45. For the reasons given above I conclude that the appeal should be dismissed.

*Sara Morgan*

INSPECTOR





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## Appeal Decision

Hearing held on 2 & 3 February 2016

Site visit made on 3 February 2016

**by C J Anstey BA (Hons) DipTP DipLA MRTPI**

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

**Decision date: 12 May 2016**

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**Appeal Ref: APP/C3105/W/15/3134944**

**Land off Lince Lane, Kirtlington, Oxfordshire, OX5 3HE.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Limited against the decision of Cherwell District Council.
  - The application Ref 14/02139/OUT, dated 22 December 2014, was refused by notice dated 25 March 2015.
  - The development proposed is the demolition of the existing bungalow and agricultural buildings and residential development of up to 75 dwellings, including highway works, landscaping and public open space.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Inquiry an application for costs was made by Cherwell District Council against Gladman Developments Limited. This application is the subject of a separate decision.

### Preliminary matters

3. The appeal application was made in outline form and seeks permission for residential development of up to 75 dwellings. All matters are reserved for subsequent approval apart from access.
  4. The application was accompanied by a Development Framework Plan (Ref.6225-L-02 Rev E) and an Access Plan (Ref. 4746/22/05), showing access off Lince Lane. Included in the appellant's submissions were a number of other plans: FPCR Footpath Plan (6255), FPCR Illustrative Masterplan (Ref: 6225 Aerial Rev B), FPCR Sketch Proposal for Possible Treatment of Open Space (Ref. 6225-L-04 Rev B), FPCR Framework Plan / 95 Homes Scheme Overlay, FPCR Historic Growth Plan Rev C, and CGMs Regression Map. I have taken these plans into account in assessing the likely impacts of the appeal scheme.
  5. Refusal reason no. 2 relates to the absence of a satisfactory planning obligation relating to infrastructure and affordable housing. A signed planning obligation by deed of agreement, dated 3 February 2016, was submitted during the Hearing. This covers a range of matters including a combined local area of play and local equipped area of play, community facilities, public amenity space,
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affordable housing, bus stops, footpaths, travel plans, bus services, and primary education. There is disagreement between the parties as to certain matters covered within the obligation, including affordable housing and primary education. I consider that the appellant's arguments with regard to these issues are persuasive and consequently I accept the details of the agreement, including the appellant's wording where alternatives are included. I consider that the planning obligation is compliant with *paragraph 204* of the *National Planning Policy Framework (the Framework)* and *Regulation 122* of the *CIL Regulations 2010*. I shall therefore take the contents of the obligation into account in reaching my decision.

6. In my view the appeal proposal is materially different from the scheme for the site that was dismissed at appeal in 2015 (Ref: APP/C3105/W/14/3001612). In reaching this view I am mindful that the current appeal proposal is for 20 fewer dwellings, involves a considerable reduction in the area of land to be given over to built development, and significantly increases the amount of open space and landscaping to be provided. I also believe that there are justified grounds for a reconsideration of the 5 year housing land supply position given the recent publication of the Council's Annual Monitoring Report (8 January 2016).

### **Main Issues**

7. The two main issues in this case are:
  - (i) whether local policies for the supply of housing are up-to-date and accord with national guidance, having regard to the 5 year supply of housing land; and
  - (ii) the effect on the character and appearance of the area and the rural setting of Kirtlington.

### **Reasons**

#### **Description**

8. Kirtlington is a village located to the west of Bicester and north of Oxford. It sits aside the A4095 and has a population of around 1,000. The appeal site, which measures about 5.8 ha in area, is a level square-shaped field located next to the south-western edge of the village. The south-east corner of the field has a frontage onto Lince Lane which forms part of the main route (A4095) through the village. The site is bounded by Kirtlington Golf Club to the south and west, by a field to the north and by dwellings on Oxford Close and Lince Lane to the east. There is a bungalow and a group of farm buildings in the south west corner of the site known as Corner Farm. A public right of way runs north-south across the site, adjacent to the eastern boundary with Oxford Close, exiting onto Lince Lane in the south and Hatch Way at the north.
9. The appeal scheme is for up to 75 dwellings (of which 35% would be affordable homes). The housing would be located on the eastern part of the site (2.46ha), next to the main built-up part of the village, whilst the western part would remain undeveloped and given over to informal open space. A locally equipped area of play would be provided within the housing development and there would be areas of planting within and around the boundaries of the site. Vehicular access would be taken from Lince Lane and provision is included for the improvement of the existing right of way across the site and pedestrian links to the village.

### **Planning policy**

10. *Section 38(6) of the Planning and Compulsory Purchase Act 2004* requires that any application for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
11. The Development Plan for the area includes saved policies from the *Cherwell Local Plan (CLP1)*, adopted in 1996, and *The Cherwell Local Plan 2011-2031 (CLP2)*, adopted in July 2015. There are a number of policies in *CLP1* and *CLP2* that I consider to be relevant to the determination of this appeal. These are dealt with at an appropriate point in my reasoning, as is the amount of weight to be attached to these policies having regard to the *Framework* and the *Planning Practice Guidance (the Guidance)*.

### **Issue1. Housing land supply**

#### *Housing supply policies*

12. *CLP2* seeks to ensure that growth is located in the most sustainable locations within the District. The overall strategy inherent in this Plan is to focus housing growth in the two main towns, Bicester and Banbury, and on a small number of strategic sites outside these towns, whilst ensuring that the level of development in the villages respects the character and beauty of the rural areas and meets local needs.
13. *Policy Villages 1: Village Categorisation* of *CLP2* identifies Kirtlington as a *Category A Service Village*. As such it is considered to be one of the District's more sustainable villages, based on a range of criteria including population, size, services and facilities, and access to public transport. The policy makes it clear that minor development, infilling and conversions will be allowed within the built-up limits of the village. The appeal site lies outside the built-up limits of Kirtlington. *CLP2 Policy Villages 2; Distributing Growth across the Rural Areas* aims to secure the provision of 750 homes in the 23 category A service villages. 500 of these have already been identified. One of the policy criteria specifies that in considering sites consideration will be given to whether there would be a significant adverse landscape impact.
14. *Policy H18: New Dwellings in the Countryside* of *CLP1* specifies that new dwellings beyond the built-up limits of settlements will only be allowed where there is an essential need, for instance where there is an agricultural justification.

#### *Matters agreed and in dispute*

15. It is accepted by the two main parties that the housing requirement for the District is 22,840 for the period 2011-2031 and that this figure should be used as the basis for the consideration of the annual requirement and the shortfall. This gives an annual base requirement for 1,142 dwellings or 5,710 for the 5 year supply period before any buffer is added. Although Cherwell, along with other authorities, will need to have regard to Oxford's unmet housing need in the future currently there is no agreement between the relevant authorities on how or where this should be met.
16. Between 2011 and 2015 (i.e. the first 4 years of the plan period) some 2,052 dwellings out of the requirement for this period of 4,568 dwellings have been delivered, leaving an agreed shortfall of 2,516 dwellings. The two main parties



also agree that the appropriate period for the 5 year supply is 2015-2020 and that the housing requirement, including the shortfall, should be delivered within this period. I have no reason to take issue with these agreed matters.

17. The two main parties are at odds as regards the size of the buffer that should be applied and whether the buffer should be applied to the base requirement for the 5 year supply period (i.e. 5,710 dwellings) and the past shortfall (i.e. 2,516 dwellings) , or just the former. Consequently the amount of new dwellings that need to be delivered over the 5 year supply period is disputed.
18. As regards the supply side of the equation there is a large measure of agreement between the parties as to the number of dwellings that are likely to come forward on most of the identified sites. However the appellant contends that there are 6 sites that would not deliver at the rate anticipated by the Council and that consequently the Council's housing supply figures should be reduced to take account of this.

*5% or 20% buffer*

19. *Paragraph 47 of The Framework* states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. This paragraph also makes it clear that where there has been a record of persistent under delivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
20. The Council argues that the appropriate buffer to apply is 5% whereas the appellant believes that it should be 20%. The appellant contends that as the Council has failed to meet its housing targets for 8 consecutive years there has been persistent under-delivery in the District.
21. It is accepted that the Council did not meet its housing target in the 3 years prior to the start date of the *CLP2* in 2011. Furthermore in the first 4 years of the *CLP2* plan period only 2,052 dwellings out of the requirement for 4,568 have been delivered. Against a base requirement of 1,142 dwellings per annum there has been an under-delivery in each of these 4 years. Net delivery has been 356 dwellings in 2011/12, 340 dwellings in 2012/13, 410 dwellings in 2013/14 and 946 dwellings in 2014/15. Although the total delivery figure for 2015/16 is not yet available it would appear, on the basis of completions so far, that this is likely to be similar to the completion figure for 2014/15.
22. Persistent under-delivery of housing is not defined in the *Framework*, nor is the time-period for its establishment. Consequently I consider that before reaching any conclusions as to whether persistent under-delivery exists there is a need to take account of local circumstances, including the Council's approach to boosting significantly the supply of housing.
23. I understand that shortfalls in housing delivery prior to 2011 were taken into account in the Oxfordshire Strategic Market Assessment (2014). This assessment provided a new objective assessment of housing need for the District and formed the basis for the housing figures in the *CLP2* (i.e. 1,142

homes per annum or a total of 22,840 dwellings for the plan period). Consequently the *CLP2* provides for a level of housing that seeks to address levels of under-delivery prior to 2011.

24. *The CLP2* was recently adopted in July 2015. Inherent in the *CLP2* is the Council's strategic decision to promote a high level of employment and housing growth within the District. As a result the LP seeks to increase substantially the amount of housing to be delivered in comparison to what has happened in the past. During the Examination of the plan the total number of dwellings to be accommodated was increased from 16,750 for the period 2006-2031 (670 per year) to 22,800 for the period 2011-2031 (1,140 per year). A considerable increase in provision by any standard. To achieve this strategic housing sites are identified in the plan, as well as extensions to others.
25. It is self-evident that such a significant change in policy direction cannot occur on the ground over-night, particularly when a great deal of the planned new housing is to be provided on strategic sites. To my mind it is inevitable that there will be some time before the large sites start to contribute in a meaningful way to meeting the District's housing needs. In reaching this view I am mindful that bringing forward such sites is likely to involve negotiations between a variety of parties, including land-owners, developers, building companies, Councils, and infrastructure providers. Consequently in the early part of the plan period it is not surprising that the completion figures are below the annual requirement. This is recognised in the housing trajectory of the *CLP2*.
26. It is clear from the evidence before me that the District Council is actively engaged in bringing forward the large strategic allocations so that they come on stream and start delivering homes at the requisite level as soon as possible. The housing completion figures for 2014/15 and part of 2015/16 indicate a considerable increase in the number of dwellings delivered compared to the first 3 years of the plan period. In my judgement, therefore, there is a reasonable prospect of the annual delivery figures rising considerably above the rates achieved in the first few years of the plan period and delivering at the required level anticipated in the *CLP2*.
27. Having regard to all these matters I do not believe that under-delivery within the District can yet be described as persistent. However I accept that the tipping point is not too far distant if the number of homes provided continues to fall below the *CLP2*'s housing requirement. Consequently in my judgement a 5% buffer remains, for the time-being, appropriate.

*Application of the buffer & the 5 year and annual requirement*

28. I consider that the shortfall since 2011 is part of the requirement. *The Framework* is clearly designed to boost the housing requirement and consequently in my view the 5% buffer should be applied to all of the elements that constitute the requirement, including the shortfall since 2011.
29. Consequently I consider that the requirement for the purposes of the 5 year supply is some 8,637 dwellings (i.e. 1.05 x 5 year base requirement of 5,710 and shortfall of 2,516). This in turn gives an annual requirement over the 5 year supply period of 1,727 dwellings.

*Supply of sites*

30. The appellant accepts the Council's housing land supply figures apart from those relating to 6 sites. The appellant argues that there are likely to be 858 fewer dwellings delivered on these sites in the 5 year period than estimated by the Council (i.e. 8176 dwellings compared to 9,034 dwellings). The difference of 858 dwellings is due to the appellant's different assumptions about start dates and the rate of housing delivery on the sites. As a result it is argued for the appellant that within the 5 year period there will be 100 fewer dwellings West of Bretch Hill, 125 fewer at Salt Way and West of Bloxham Road, Banbury, 35 fewer at South-West Bicester Phase 2, 380 fewer at North West Bicester Phase 2, 68 fewer at Graven Hill and 150 fewer at South-East Bicester.
31. Estimating how many dwellings are likely to be delivered on sites over the next 5 year period in the District is extremely difficult. Inherent to any assessment are various assumptions that may or may not prove to be accurate. Having carefully considered the Council's estimated start dates for the 6 sites in question I do not find them to be unreasonable or over-optimistic. In my view sufficient lead-in times have been included to enable the various stages inherent in bringing each site forward for development to be completed. In reaching this view I note that the Council's estimates are based on a site by site analysis and recent discussions with developers, agents and with other interested parties. Consequently I endorse the Council's lead-in times used in its 5 year housing supply calculations.
32. I also accept the Council's assumed delivery rates on the sites West of Bretch Hill, South-West Bicester Phase 2 and South-East Bicester. These are broadly in line with the delivery rates anticipated for the appellant once development on these sites commences.
33. I do, however, have reservations about the Council's anticipated delivery rates on the three other sites and consider that more cautious assumptions are required. At Salt Way and West of Bloxham Road, Banbury it is anticipated by the Council that completion rates will double from 50 dwellings in 2016/17 to 100 dwellings for each of the subsequent 3 years. As the Council has already accepted that delivery on this site could be as low as 75 dwellings per annum it would be more appropriate to assume this figure for the 3 years after the year of commencement. This would lead to 75 fewer dwellings delivered at Salt Way and West of Bloxham Road, Banbury than assumed by the Council.
34. The Council assumes that from 2016/17, North West Bicester Phase 2 will deliver at a rate of 210 dwellings per annum. Given what has happened in terms of house completions at North West Bicester Phase 1 I consider this assumption may be overly optimistic and a more realistic figure for Phase 2 would be 125 dwellings per annum. This would mean the delivery of 255 fewer dwellings at North West Bicester Phase 2 than currently assumed by the Council.
35. The development at Graven Hill is a large self-build scheme. The Council anticipates that once key infrastructure works are completed in 2017 development would continue apace in subsequent years. Given the novel nature of this scheme and the likely involvement of numerous parties there is a need, in my view, for a level of caution once this development commences. Consequently for 2018/19 the assumed figure for delivery should be reduced

by 50 dwellings, thereby reducing the overall figure for the site by a similar number.

36. In summary, therefore, I find that the number of dwellings that are likely to be delivered on sites in the District is 380 dwellings fewer than the anticipated by the Council giving a total delivery figure for the period 2015-2020 of 8,654 dwellings.

*Summary of 5 year supply*

37. I have found that there are sites in the District capable of delivering some 8,654 dwellings over the next 5 years. Given the requirement for 8,637 dwellings (i.e. 1727 per year) I am satisfied that there is a five year supply of housing land within the District.

*Policies for the supply of housing*

38. I have found that that there is a 5 year supply of housing land in the District. Consequently the various policies in *CLP1* and *CLP2* relating to the supply of housing and referred to above are not out of date. I also believe that these policies accord with national planning policy as they endeavour to locate new housing development of an appropriate scale in sustainable locations whilst paying due regard to environmental impacts. Consequently the policies are consistent with *the Framework* and should be accorded full weight.
39. I conclude, therefore, on the first main issue that as the policies for the supply of housing are up-to-date and accord with national guidance they should be accorded full weight.

***Issue 2: Character and appearance***

40. *Policy ESD13: Local Landscape Protection and Enhancement of CLP2* is designed to ensure that development respects and enhances local landscape character and appropriate mitigation is secured where damage cannot be avoided. The policy also states that proposals will not be permitted if they cause undue visual intrusion into the open countryside, are inconsistent with local character, or harm the setting of settlements.
41. *CLP2 Policy ESD15: The Character of the Built and Historic Environment* is a lengthy policy dealing with the appearance of new development and its effect on the character and appearance of an area. Amongst other things it seeks to ensure that new development contributes positively to an area's character and identity by creating or reinforcing local distinctiveness and respecting local topography and landscape features, in particular within designated landscapes, within the Cherwell valley and within conservation areas and their setting. Development will also be expected to integrate with existing streets and public spaces.
42. One of the policy criteria of *CLP2 Policy Villages 2; Distributing Growth across the Rural Areas* specifies that in considering housing sites consideration will be given to whether there would be a significant adverse landscape impact.
43. The above mentioned policies are designed to ensure that careful regard is paid to local character. As this concern is one of the key components of *the Framework* these policies should be accorded full weight. Even if it is considered that elements of these policies relate to housing land supply they

should still be given full weight in the light of my findings as to the 5 year supply.

44. In my judgement the proposed development would not have a significant impact on the landscape of the wider area, including the Cherwell River Valley. The flat topography of the site and the surrounding land form means that medium and long distance views of the site are very limited. I note that the two main parties agree that the appeal scheme would have a limited effect on the wider landscape.
45. I have serious reservations, however, about the impact of the scheme on the local landscape and the setting of the village. At present the appeal site is undeveloped and in agricultural use, is located beyond the built-up area, and is clearly part of the countryside that borders this part of the village. In its current form I consider that the site makes an important contribution to the pleasant rural setting of the southern part of Kirtlington. The field is visible from a number of local viewpoints, including from Lince Lane and from the public right of way along the eastern boundary of the site. Consequently the site provides a soft and attractive edge to the village and positively contributes to the enjoyment and experience of those moving around the village. The current western edge of this part of the village does not unduly detract from the important contribution that this field makes to local character.
46. I acknowledge that the current appeal proposal is significantly different from that considered at appeal in 2015 and that a real effort has been made to improve the layout and form of the scheme with a view to mitigating the impact on the local area. However the construction of up to 75 dwellings on the eastern part of the appeal site would substantially reduce the open nature of the field and suburbanise this edge of the village to an undesirable extent. In spite of the landscaping proposed I believe the new development would appear prominent from local viewpoints, particularly during the winter months, and cause unacceptable harm to the village's rural setting.
47. I have paid careful regard to the appellant's landscape evidence, including the Landscape and Visual Impact Appraisal and the other material submitted. I acknowledge that the landscape immediately to the west and south of Kirtlington, of which the appeal site is a part, is not rare, or of exceptional quality. However this does not alter my finding that the proposal would cause real harm to the local landscape, which is clearly valued by local people, and the rural setting of the village. Detailed design, siting, layout or landscaping would be unable to ameliorate this harm to an acceptable extent.
48. I conclude, therefore, on the second main issue that the proposal would cause significant damage to the character and appearance of the area and the rural setting of Kirtlington. This brings the scheme into conflict with *Policies ESD13, ESD15 and Policy Villages 2 of The Cherwell Local Plan 2011-2031 and paragraph 109 of the Framework* which seeks to protect and enhance valued landscapes.

#### **Other matters**

49. Local people have raised a number of concerns including the impact on highway safety, traffic congestion, social cohesion, residential amenity, bio-diversity, the capacity of local services and facilities, sewerage, drainage and flooding. However, having considered all the material before me, including the

views of statutory authorities and the various reports submitted, none of these matters individually or cumulatively would be likely to cause overriding harm, and they are not, therefore grounds for dismissing the appeal. I consider that the provision of an acceptable system of foul drainage can be secured through an appropriately worded planning condition.

### **Overall planning balance**

50. It is evident, given the limited size of Kirtlington, that the appeal proposal for up to 75 dwellings does not constitute minor development. Furthermore the appeal site is located outside the built-up limits of the village and there is no essential need for the development. Consequently the appeal scheme is clearly at odds with local planning policy relating to the supply of housing in the District, which seeks to steer most new housing towards the main towns and identified strategic sites whilst limiting development in the villages. Considerable weight needs to be given to this conflict. I have also concluded that the proposal would cause significant damage to the character and appearance of the area and the rural setting of Kirtlington. As a result the scheme is contrary to local planning policy relating to local character. Again considerable weight needs to be given to this finding.
51. *Paragraph 14 of the Framework* makes it clear that there is a presumption in favour of sustainable development, which has three dimensions: economic, social and environmental. In my judgement the appeal scheme would fulfil the economic role of sustainable development and would contribute to building a strong, responsive and competitive economy, by helping to ensure that there is housing land available to support growth. In terms of the social dimension the scheme would contribute to boosting housing supply by providing a range of sizes and types of housing, including a significant number of much-needed affordable housing units. It is likely that the increased population that would result would help to sustain facilities and services in the village and contribute to the vitality of village life. Appropriate contributions are to be made to the provision of educational and community facilities.
52. As regards environmental considerations the site is reasonably well located for access to a range of services and facilities and to larger centres. The planning obligation would secure improvements to bus services, thereby reducing reliance on the private car. The proposal would also provide a considerable amount of open space, including play provision, for the benefit of the community and secure improvements in biodiversity. It would improve the condition of the footpath link across the site and facilitate better connections with the existing footpath network. I consider that substantial weight should be given to these findings.
53. In my judgement, however, in view of the fundamental conflict with the adopted strategy for the location of housing in the District and the significant environmental harm identified I do not consider the proposed scheme constitutes sustainable development. Consequently the 'presumption in favour' set out in *Policy PSD1: Presumption in Favour of Sustainable Development of CLP2 and the Framework* does not apply.

### **Overall Conclusion**

54. My overall conclusion, therefore, is that the proposal is clearly at odds with the development plan and that other material considerations do not outweigh this

conflict. *Paragraph 12* of the *Framework* indicates that in such a situation development should be refused. Consequently there are compelling grounds for dismissing the appeal. I have taken account of the favourable officer recommendation for the appeal application, the comments relating to the site contained in the SHLAA, and the various appeal cases referred to me. However they do not outweigh the conflict with the development plan in terms of housing strategy and environmental harm. None of the other matters raised outweigh the considerations that have led to my decision.

*Christopher Anstey*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Freddie Humphries	Counsel for the appellant
Helen Ball BA (Hons) MPlan MRTPI	Gladman Developments Ltd.
Phil Rech BA BPhil LD CMLI	FPCR
Richard Mowat MA MRTPI	Johnson Brook Ltd.
Robert Hindle BSc MRICS	Rural Solutions Ltd.

### FOR THE LOCAL PLANNING AUTHORITY:

Killian Garvey	Counsel for the Council
Alex Keen BA (Hons) MA MRTPI	Team Leader – Minor Developments
Yuen Wong BA MA MRTPI	Senior Planning Officer
Clare Mitchell MA MA	Design & Conservation Team Leader
Gary Owens	Investment & Growth Team Leader

### FOR THE COUNTY COUNCIL

Richard Oliver

### INTERESTED PERSONS:

Helen Macbeth	Parish Council representative & local resident
Christine Marsh	Local resident
James Macnamara	District Councillor
Jane Moore	Local resident
Mr Barnes	Local resident



## **DOCUMENTS HANDED IN DURING THE HEARING**

1. Council's letters of notification of appeal & lists of persons notified.
2. Attendance lists.
3. Correlation – Population and CRAITLUS Score.
4. Design & Access Statement (August 2014) Gladman/Barnes Walker.
5. Previous appeal decision ((Ref: APP/C3105/W/14/3001612).
6. The Cherwell Local Plan 2011-2031 Part 1 (July 2015).
7. Additional information requested by Inspector as to housing land supply.
8. Further additional information requested by Inspector as to housing land supply.
9. County Council's assessment of education and transport contributions.
10. Report relating to the County Council's Cabinet's decision relating to bus services.
11. Kirtlington Parish Council's Hearing Statement.
12. County Council's statement relating to the expansion of the primary school.
13. Statement of Facts and Grounds – Hook Norton Appeal.
14. High Court Judgement relating to monitoring/administration fee.
15. Appeal decision – Huby, North Yorkshire..
16. Correspondence relating to sewerage.
17. Foul drainage condition note.
18. Cherwell LP Part 1 Inspector's Report (June 2015).
19. Appeal decision – Great Totham, Essex.
20. Signed Planning Obligation (3 February 2016)

## **PLANS HANDED IN DURING THE HEARING**

- A. FPCR Footpath Plan(6225 – appended to the legal agreement).
- B. FPCR Illustrative Masterplan (Ref. 6225 Aerial Rev B).
- C. FPCR Sketch Proposal for possible treatment of open space (Ref. 6225-L-04 Rev B).
- D. FPCR Framework Plan/95 Homes scheme overlay.
- E. FPCR Illustrative Masterplan /95 Homes scheme overlay.
- F. FPCR Historic Growth Plan Rev C.
- G. CgMs Regression Map.
- H. Extract from LP Proposals Map.
- I. Itinerary for site visit.
- J. Previous appeal – Framework Plan



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# Appeal Decision

Site visit made on 16 January 2017

**by Robert Parker BSc (Hons) Dip TP MRTPI**

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

**Decision date: 8 February 2017**

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**Appeal Ref: APP/C3105/W/16/3158925**

**Land to the west of Northampton Road, Weston on the Green, Oxfordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Clive Tredwell against the decision of Cherwell District Council.
  - The application Ref 15/01953/OUT, dated 19 October 2015, was refused by notice dated 23 March 2016.
  - The development proposed is erection of up to 26 dwellings including creation of a new access, associated landscaping, open space and drainage infrastructure.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The application is submitted in outline with all matters reserved. I have dealt with the appeal on that basis, treating the layout plan as illustrative. Although there are a number of options for accessing the site the stated preference is to share the access road for Phase 1 of the development which has already been granted planning permission<sup>1</sup> on land immediately to the south. The intention is to link both schemes together to create a single cohesive development of up to 46 dwellings.
3. The appellant has provided a copy of a signed s106 planning obligation in respect of affordable housing, public open space and play area provision within the site and contributions towards primary education and libraries. I shall return to this below.
4. There is currently a neighbourhood plan (NP) under preparation for Weston on the Green. Paragraph 216 of the National Planning Policy Framework (the Framework) states that from the day of publication decision-takers may give weight to relevant policies in emerging plans. However, the draft NP is yet to be submitted for examination and therefore I cannot know for certain whether its policies are in general conformity with the strategic policies of the Local Plan, as is the requirement. Accordingly, whilst the emerging NP is a material consideration I have given it limited weight.

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<sup>1</sup> Council Ref 13/01796/OUT - This permission relates to a scheme of up to 20 dwellings.

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## **Main Issues**

5. I consider that the main issues in this case are:
  - a) whether the principle of development on this scale is acceptable, having regard to the policies of the development plan and the location of the site in relation to services and facilities;
  - b) the effect of the proposal on the character and setting of the village; and
  - c) in light of my findings on the above issues and any benefits brought forward by the proposal, whether the scheme would constitute a sustainable form of development.

## **Reasons**

### *Principle of development*

6. The starting point for any assessment must be the development plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise.
7. The development plan in this particular instance comprises The Cherwell Local Plan 2011-2031 Part 1 (2015) (CLPP1) together with the saved policies of the Cherwell Local Plan 1996 (CLP). The former was examined after the publication of the Framework and adopted very recently. It is common ground that its policies are up-to-date and consistent with national planning policy.
8. In order to meet the strategic targets for housing delivery, Policy Villages 2 of the CLPP1 states that a total of 750 homes will be delivered at Category A villages, in addition to the rural allowance for small site windfalls and planning permissions for 10 or more dwellings as at 31 March 2014. The policy explains that sites will be identified through the preparation of the Local Plan Part 2, through the preparation of Neighbourhood Plans where applicable, and through the determination of applications for planning permission. A number of detailed criteria are set out for identifying and considering sites. The list is not exhaustive, but of particular relevance to this case is the requirement to assess whether the site is well located to services and facilities.
9. Category A villages are by definition the most sustainable rural settlements in the district. However, the classification is fairly crude and there is wide variation in terms of population size and facilities available. I am told that Weston on the Green is the second smallest of the Category A settlements with a population of 523 based on the Census 2011. This contrasts with Kidlington which boasts a population of well over 13,000 and a far greater range of services and employment opportunities.
10. Although Policy Villages 2 does not prescribe an upper limit for the number of houses to be accommodated at each village, there is a judgement to be made on whether the size of the proposed development is appropriate to the settlement and the facilities it offers. Each proposal must be considered on its own merits having regard to the particular circumstances of the case.
11. Weston on the Green contains a basic core of services including a general store and Post Office, village hall, church and two public houses. During my visit I also saw a playing field and equipped children's play area. Occupants of

the proposed housing scheme would be able to access these facilities on foot via a new section of footway which would be constructed alongside the B430 Northampton Road. The Council considers that the development would have poor connectivity to the existing village but I note that the footpath has already been agreed for the Phase 1 scheme. Having regard to this, and my observations at the site visit, I am satisfied that provision for pedestrians would be safe and that the walking distance to the village shop and other amenities would be within reasonable limits for most people. The new footway would not be lit but then neither is the remainder of the village – hence this factor does not carry significant weight against the scheme.

12. Until recently, Weston on the Green was on a bus route between Kidlington and Bicester. I am advised that the service was withdrawn by its operator in July 2016. The appellant contends this to be inconsequential on the basis that the service was infrequent. It is argued that the village retains a 'wide range of services' that reduce the need to use a car. However, it seems to me that the local facilities are limited and there would be an essential need for residents to travel further afield on a regular basis for schooling, healthcare, shopping/leisure and employment opportunities. The now defunct bus service, which comprised four or five buses in each direction on a six day a week basis, was of a reasonable frequency (taken in a rural context) and provided residents with the opportunity to use sustainable modes of transport.
13. As it stands, residents now have no real choice of transport other than the private car and community transport. This brings into question the sustainability of the village and the proposed development itself. I have no means of knowing whether Weston on the Green would have achieved Category A status in the absence of a bus service. Nevertheless, the loss of public transport is a significant 'other material consideration' which would justify making a departure from development plan policy.
14. I appreciate that additional housing would help to support existing services and facilities in the village. However, there is no substantive evidence to show that these are struggling. Moreover, it seems to me that the vitality of the community can be maintained with fewer new houses. Taken in combination with the Phase 1 approval, I consider that the appeal proposal would result in a disproportionate expansion to the village in population terms. In my opinion, concentrating so many houses in this particular location without public transport would be inherently unsustainable.
15. Policy ESD1 of the CLPP1 states that measures will be taken to mitigate the impact of development within the district on climate change. This will include, amongst other things, delivering development that seeks to reduce the need to travel and which encourages sustainable travel options including walking, cycling and public transport to reduce dependence on private cars. Policy SLE4 includes a similar requirement for development to facilitate these travel modes where reasonable to do so. The proposal would conflict with both policies.
16. The latest position according to the Council is that 535 dwellings have already been approved under the provisions of Policy Villages 2, with a further 94 units in the pipeline pending the completion of legal agreements. The figure put forward by the appellant is 470 units. Even taking this lower number, and allowing for some non-implementation of permissions, the existing

commitments will go some considerable way towards meeting the 750 total set out within development plan policy.

17. I appreciate that this is not a ceiling. However, it seems to me that there is a high probability of the figure being exceeded early in the plan period. Any significant increase over and above that number would have implications for other Category A villages later in the plan period. Unconstrained growth in the rural areas would threaten the local plan's spatial strategy of biasing housing development towards the main towns of Bicester and Banbury with more limited growth elsewhere. In light of this, and mindful that the ability of the Council to demonstrate a five-year supply of deliverable housing sites is not being disputed, I consider that there is no overriding need for the appeal scheme on housing delivery grounds.
18. Given the scale of the proposed development and the non-availability of public transport, I conclude that the principle of development is unacceptable. Accordingly, I find the scheme to be in conflict with Policy Villages 2, Policies ESD1 and SLE4 and the overall spatial strategy of the CLPP1.

*Effect on character and setting of the village*

19. The appeal site comprises a field of about 1.5 hectares located at the northern end of the village, immediately beyond the site for Phase 1. The land is subdivided into paddocks which are used for grazing horses. The topography is relatively flat and there are well established hedgerows along the west and east boundaries.
20. The existing hedgerows would partially screen the development in views from the Northampton Road and local public rights of way. I accept the finding of the Landscape and Visual Impact Appraisal that the effect on the wider landscape would be limited. I also acknowledge the intention to provide open space and landscaping as part of the scheme. Notwithstanding this, the proposal would urbanise the northern edge of the village and irreversibly alter its character. In my judgement the incursion of built form into open countryside would unacceptably detract from the rural character and setting of the settlement.
21. I appreciate that layout is a reserved matter and that the illustrative site plan can be refined. However, there is nothing to persuade me that this would be anything other than a modern estate type development bolted onto the edge of the village. On the basis of the information before me, I am unable to determine that the scheme would enhance the built environment which is one of the key considerations of Policy Villages 2. Neither can I be satisfied that it would reinforce local distinctiveness in accordance with the requirements of Policy ESD15.
22. It was evident from my observations that Weston on the Green has evolved gradually over the years. Modern housing is very much apparent, but recent developments have tended to comprise individual dwellings or small clusters of houses. The result is a comfortable blend of old and new, with the latter being absorbed into the settlement. The proposal, by contrast, when taken together with Phase 1, would be read as a single development of 46 units. In the context of a village of approximately 200 or so dwellings which has developed organically over time, this quantum of development would be materially harmful to the local character and identity.

23. In addition to the policies cited above, Policy ESD13 of the CLPP1 seeks to resist development that would cause undue visual intrusion into the countryside, harm the setting of settlements or be inconsistent with local character. In my view the proposal would conflict with all three criteria.
24. Accordingly, I conclude on this issue that the proposal would unacceptably harm the character and setting of Weston on the Green contrary to Policy Villages 2 and Policies ESD13 and ESD15 of the CLPP1.

### **Other Matters**

25. The appellant has placed great emphasis on the Strategic Housing Land Availability Assessment (SHLAA) which was updated in 2014. This exercise identified the appeal site and Phase 1 land as having development potential for up to 50 homes. Whilst this is a material consideration it does not take account of the recent changes in public transport provision and this lessens the weight that I can attach to it. In any event, the SHLAA is part of the evidence base for the CLPP1 and does not have the same status as a local plan allocation. It should not prejudice the outcome of a planning application.
26. Many of the matters raised by the parish council and local residents have been addressed in my analysis above. However, I have noted a number of other concerns, including in relation to surface water flooding, foul drainage, precedent, highway safety and the effect on heritage assets. I have given these matters careful consideration but based on the information before me they would not constitute reasons to dismiss the appeal.

### **Planning balance**

27. The Framework establishes that there are three dimensions to sustainable development: economic, social and environmental. Housing applications should be considered in the context of the presumption in favour of sustainable development. Paragraph 14 explains that proposals that accord with the development plan should be approved without delay.
28. There is no suggestion that the development plan is absent, silent or out-of-date and no challenge to the Council's assertion that it is able to demonstrate a five-year supply of deliverable housing sites. Consequently, the second limb of paragraph 14 is not engaged.
29. The proposal would result in the delivery of additional market and affordable housing, the latter being 35% of the total number of units in accordance with Policy BSC3 of the CLPP1. The provision of dwellings of different tenures, including family homes, would constitute a social benefit of granting planning permission and this factor attracts significant weight.
30. The scheme would create jobs during the construction phase and increase spending from new residents in the local economy. It would also help to support services in the village. The local authority would gain financially from increased Council Tax revenues and monies from the New Homes Bonus. These all constitute economic benefits which carry modest weight in favour of the development.
31. Set against this, the absence of any public transport opportunities means that future residents would be heavily reliant upon the private car for accessing schooling, healthcare, shopping/leisure and employment opportunities. The

resultant carbon emissions would be a significant environmental disbenefit which would be at variance with the Council's aspirations for sustainable housing growth.

32. The development would also adversely affect the character of the village as a result of its scale and consequent urbanising effect on the village setting. This harm would be irreversible and as such I attach it substantial weight. It would bring the proposal into conflict with the environmental role of sustainable development.
33. The provision of public open space and a play area, the footpath link and financial contributions towards primary education and libraries would comply with the requirements of Policies BSC10, BSC11 and INF1 of the CLPP1. These aspects of the proposal would either serve occupants of the scheme directly or mitigate the impact of the development on existing infrastructure. As such, they are neutral factors in the overall planning balance.
34. Paragraph 8 of the Framework explains that the three roles of sustainability should not be undertaken in isolation, because they are mutually dependent. To achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
35. On balance, I consider that the social and economic benefits are outweighed by the environmental harm and for this reason I find that the proposal would not be sustainable development in terms of the Framework. Notwithstanding the category A status of Weston on the Green, the proposal fails to satisfy Policy Villages 2 and Policies PSD1, ESD1, ESD13, ESD15 and SLE4 of the CLPP1 and is not compliant with the development plan as a whole.

### **Planning Obligation**

36. I have commented on the planning obligations above and weighed these in the planning balance where appropriate. However, given that I am dismissing the appeal I have not considered the wording of the s106 agreement in any detail. Moreover, there is no need for me to consider compliance with the tests under Regulation 123 of the Community Infrastructure Levy Regulations.

### **Conclusion**

37. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Robert Parker*

INSPECTOR





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# Appeal Decision

Site visit made on 23 May 2017

**by David Spencer BA(Hons) DipTP MRTPI**

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

**Decision date: 14 June 2017**

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**Appeal Ref: APP/C3105/W/17/3169168**

**Heatherstone Lodge, Banbury Road, Finmere MK18 4AJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Siteplan UK LLP against the decision of Cherwell District Council.
  - The application Ref 16/01209/OUT, dated 20 June 2016, was refused by notice dated 28 November 2016.
  - The development proposed is an outline application for residential development.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The application was submitted in outline with all matters reserved but was accompanied by supporting documentation including, amongst other things, a Landscape and Visual Impact Assessment (LVIA), Transport Statement, Interim Travel Plan and Flood Risk Assessment. The appeal site extends to just over 2.3 hectares and whilst scale would be a reserved matter the application form and both main parties have referred to up to 47 dwellings and I have dealt with the appeal on this basis.
3. During the appeal the appellant submitted a signed and dated Unilateral Undertaking (UU) in accordance with Section 106 of the Town and Country Planning Act 1990. The UU presents a number of planning obligations relating to affordable housing provision, open space and play area and various highway related matters.

## Preamble and Main Issues

4. The development plan comprises of, amongst other documents, the Cherwell Local Plan 2011-2031 Part 1 July 2015 (the CLPP1) which has been prepared in accordance with the National Planning Policy Framework (NPPF). Policy ESD 1 of the CLPP1 seeks to secure a sustainable distribution of growth in the rural District including reducing the need to travel more generally and in particular the dependency on private cars. Policy Villages 2 of the CLPP1 amplifies how growth will be distributed across the rural areas by setting out that a total of 750 homes will be delivered at Category A villages, including Finmere.
  5. I note Policy Villages 2 does not restrict the proportion of the 750 dwellings referred to in this policy that may be built in any one village or control phasing of that figure to 2031. The most recent relevant appeal decision in the District before me (APP/C3105/W/16/3158925) found similar in that Policy Villages 2 does not prescribe a limit for the number of houses to be accommodated at
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each village. In principle the development plan sanctions additional housing on sites capable of accommodating 10 or more dwellings in communities such as Finmere. It is clear, however, that when the development plan is taken as a whole, judgements need to be applied on the suitability of each major housing proposal in Category A villages, based on the particular circumstances.

6. Therefore, the two main issues in this appeal are as follows:
  - i. Whether the potential scale of development would be appropriate to the settlement and the facilities it offers, having regard to the relevant policies of the development plan: and
  - ii. The effect of the proposal on the settlement pattern of Finmere and the character and appearance of the surrounding area.

## **Reasons**

### *Issue 1 - Scale of development*

7. Finmere is a small village whose principal facilities comprise of a primary school, a public house and a village hall with sports field and play area. All of these facilities would be within a reasonable and safe walking distance from the appeal site. There is neither a shop nor post office in the village and I have no evidence that there are medical facilities or appreciable employment opportunities. I have very little evidence on the criteria applied in identifying Category A villages and Finmere's selection within this spatial tier. Given the local and national planning objectives to secure sustainable patterns of growth and reducing dependence on the private car, the relatively limited day-to-day service provision in Finmere requires, in my view, a prudent approach to the scale of additional housing development in the village.
8. One of the nearest settlements is Tingewick which has, amongst other things, a shop and post office. At nearly 2 kilometres I am not persuaded that it is within a reasonable walking distance from the appeal site. It is within a cycling distance but the connecting route via Sandpit Hill is primarily at the national speed limit, with little natural surveillance and extensively without footway or lighting. In my view it is not a particularly desirable route, particularly in winter months. Accordingly, I am not persuaded that car dependency would be reduced at the appeal site to access such basic daily services. I have been referred to farm shops at Newton Purcell and Stowe but again both of these are beyond reasonable walking distance and only likely to be attractive to the most ardent cyclist.
9. The nearest towns are Brackley and Buckingham and both provide a good range of services and significant employment. Both towns are well beyond a reasonable walking distance and at the upper margins of a daily cycling commute. Cycle lane infrastructure only applies to the local A421 bypass and does not extend beyond this in either direction to both towns. Accordingly, there are long stretches of the A421 to Buckingham and either the A421 or A422 to Brackley which have no cycle lane or footway, very limited lighting and roundabouts. Whilst my site visit only represents a snapshot, I noted these were busy roads. In my view, taking account of these conditions, cycling would not provide an attractive form of transport to the nearest towns.
10. Public transport via bus in Finmere is limited with evidence on site supporting the Local Planning Authority's (LPAs) submission that some bus services have

now been withdrawn since the planning application was submitted. There remains a limited daily service connecting the village to the towns of Brackley and Buckingham but the frequency is intermittent and not conducive to commuting. In my view, public transport would not provide an appealing or practicable mode for many necessary journeys and not at all in the evenings or on Sundays. Accordingly, I do not find the limited public transport would reduce dependency on the private car at the appeal proposal.

11. The appellant has produced an Interim Travel Plan and submits that travel planning including the use of smarter technologies could reduce the need to travel. Nonetheless, the likely scale of the appeal proposal would result in a sizeable development in a small rural community with limited services and poor connectivity by transport modes other than the private car. In this context I am not persuaded that travel planning measures would have a notable effect on travel behaviour. Consequently the scale of the appeal proposal would be at odds the need to assign most growth to the most sustainable locations where dependency on the car can be reduced.
12. Reference has been made to the latest position in a recent appeal decision (APP/C3105/W/16/3158925) that of the rural allocation to 2031 of 750 homes in Policy Villages 2 some 535 dwellings have been permitted and a further 94 units are in the pipeline. Whilst 750 is not to be regarded as an upper limit, the recently adopted strategy for sustainable development in the CLPP1 actively seeks to manage most housing developments to the more sustainable locations of Banbury and Bicester. The corollary of that is to avoid unconstrained growth in less sustainable locations.
13. Accordingly, a development of up to 47 houses would represent a sizeable amount of the remaining balance of the CLPP1 rural apportionment at an early stage of the plan period. It would do so in a location where the sustainability credentials are currently limited and would leave little plan-led manoeuvrability to sustainably align the proportionate rural growth within other settlements in the Category A villages tier with better sustainability attributes. I therefore find the appeal proposal would prejudice a more balanced distribution of rural housing growth and undermine the sustainable housing strategy in the CLPP1.
14. I therefore conclude that the potential scale of the proposed development at a settlement with few facilities and poor public transport connectivity renders the appeal proposal unacceptable. It would conflict with CLPP1 Policies ESD 1 and Villages 2. It would also fail to accord with the objectives of the NPPF to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and to mitigate and adapt to climate change.

*Issue 2 - Settlement pattern and character and appearance*

15. Notwithstanding the fact that some modern development has occurred at moderate depth at Chinalls Close and Stable Close, the established and predominant character of Finmere remains a linear settlement reflecting its historical evolution along a shallow valley. Accordingly, large parts of the village are concealed within the fold of the valley such that there is little pronounced sense of settlement in the wider rural landscape. This is typical of settlement pattern in the host landscape national character area.
16. In contrast the appeal proposal would constitute a dislocated limb of development projecting southwards on rising land into countryside at stark

variance to the established linear form. It would also extend by some margin beyond the line created by Stable Close and due to intervening paddocks it would have a limited relationship to the pattern of development at Chinalls Close and at the eastern end of the old Banbury Road. The appeal proposal would largely appear as an incongruously isolated projection of development into the surrounding countryside.

17. The unconnected form of the proposed development from the rest of Finmere would be accentuated by the proposed elongated access via the old Banbury Road. Only occasional dwellings are served from this road which has a particularly rural character at the appeal site. This would serve to emphasize that the appeal proposal would be poorly integrated with the existing settlement and community. I noted the interconnecting footpaths across adjoining paddocks but these would not overcome my concern that the development would harmfully extend away from the village rather than meaningfully integrate with it. It would appear and function as a separate development, harmfully at odds with the established pattern of the village.
18. I accept the proposed development would not be noticeable from within Fulwell Road however it would be visible from numerous rural routes and paths to the south of Finmere. It would involve the loss of undulating countryside whose green, open character positively contributes to the wider landscape containing Finmere. Whilst development is visible in some perspectives of the appeal site, the site itself remains to be read, principally, as part of a wider patchwork of fields across gently rolling hills. I accept the appeal site is only one part of a wider non-valued landscape but the effect at a local level on the loss of an appreciable area of verdant openness would be significantly adverse.
19. The old Banbury Road (the former A421) now forms a rural byway with evidently very little vehicular traffic due to its restricted access and terminated function. Utilising this road to serve a development of up to 47 dwellings would harmfully erode its rural character and its role as a largely undisturbed route into the countryside. The detrimental urbanising effects of the vehicular access and proximity of the appeal proposal on this byway adds to my concerns about the appeal proposal's impact on the rural character of the locality.
20. I agree with the appellant's LVIA that in some views intervening trees and hedges, notably where the former A421 diverges from the bypass road, screen the site and these could be strengthened by further planting. Elsewhere, however, especially from within the old Banbury Road and from the bridleway to the west of the site including the lane to Hill Leys, it is evident that the appeal site occupies rising land above a shallow valley. The rural character of the appeal site is clearly discernible in these close views. Due to the combination of topography and proximity I am not persuaded that additional landscaping would effectively assimilate the proposed scale of development and the residual impacts on the rural character and appearance would be detrimental. Consequently, the appeal proposal would result in a highly visible encroachment into the countryside. This would occur at some distance from the current built settlement edge of Finmere which is not delineated by the rural old Banbury Road or the lane to Hills Ley to the west. Visually, the appeal proposal would have a significant adverse effect on the experience of several rural rights of way which pass close the appeal site.

21. Whilst layout would be a detailed matter, the appeal proposal would also inherently urbanise the experience of using those footpaths that cross the appeal site. These presently provide a pleasant route from village edge into gently undulating countryside. In visual and sensory terms the enclosing effect of the appeal proposal on users of these paths at the appeal site would be of a high magnitude given the nature of the receptors and the effect, from my observations on site, would be at least moderately adverse. This again, adds to my concerns about the harm to the rural character at the appeal location.
22. I therefore conclude that the appeal proposal would result in significant harm to both the settlement pattern of Finmere and the character and appearance of the surrounding area. As such the appeal proposal would be contrary to CLPP1 Policies ESD 13, ESD 15 and Villages 2 and Policies C8 and C28 of the Cherwell Local Plan 1996. These policies seek, amongst other things, to ensure that development positively contributes to the area's character and identity and is sympathetic to its particular context. The proposal would also fail to accord with the objectives of the NPPF to take account of the character of different areas and to recognise the intrinsic character and beauty of the countryside.

#### *Other matters*

23. The LPAs decision also set out reasons for refusal relating to archaeology and flood risk. On the former, I see no reason, particularly in light of the updated geophysical work submitted by the appellant as part of this appeal, why the matter could not be appropriately conditioned to accord with Policy ESD 15 of the CLPP1. Similarly, I am satisfied that matters relating to surface water drainage could also be the subject of appropriate conditions thereby satisfying the requirements of Policy ESD 6 of the CLPP1.

#### **Overall planning balance**

24. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. As set out above the appeal proposal would conflict with the development plan's approach to sustainable patterns of growth and would result in harm to the settlement pattern of Finmere and the character and appearance of the surrounding area. These conflicts with the development plan are significant factors which weigh heavily against the grant of planning permission.
25. The appellant submits that a five year housing land supply based on the CLPP1 is only just being achieved in the District. I accept, as demonstrated in the appeal decisions submitted by the appellant that a demonstration of a five year housing land supply is not in itself a cap on additional housing development. However such development must be, either, in accordance with the development plan or demonstrably sustainable where the plan is absent, silent or relevant policies out of date.
26. The appellant submits that the scale of housing need and the housing requirement in the CLPP1 is now out-dated given unmet need in the wider Oxfordshire Housing Market Area (HMA). It is evident that Oxford City is unable to meet its housing need in full and as such apportionment to other authorities within the HMA will be required. However, the CLPP1 examination grappled with this matter in the context of the NPPF and it is to be dealt with by way of a short-term review of the Plan, which is in hand. As such, I consider the housing requirement in the CLPP1 and the relevant policies for the

supply of housing, including Policy Villages 2, to be up-to-date and should be accorded full weight. The second bullet point of paragraph 14 of the NPPF is therefore not engaged and the development plan prevails. I now turn to consider whether other material considerations indicate otherwise that permission should be granted.

27. There would be benefits arising from the appeal proposal in terms of adding to the supply of housing and securing rural affordable housing in line with development plan policy. However, these benefits are moderated given there is a five year housing land supply. There would also be modest economic and social benefits from the construction jobs, provision of a play area, additional residents to support existing village facilities and Council Tax and New Homes Bonus receipts. I also find that the appeal proposal, subject to conditions, would not have unacceptable effects on matters such as flooding, highway safety, archaeology and the amenities of nearby residences. Consequently, there would be modest social and economic benefits arising from the appeal proposal.
28. These benefits, however, would be, significantly and demonstrably outweighed by the significant harms identified in respect of the environmental dimension of sustainable development. The NPPF is clear that sustainable development means that economic, social and environmental dimensions should be sought jointly and simultaneously. On this basis, having balanced the factors, the appeal proposal would not constitute sustainable development. It would be contrary to the up-to-date development plan, where the other material considerations before me do not indicate other than dismissing the appeal.
29. In view of this it is not necessary for me to consider further, in detail, the provisions contained in the submitted UU.

### **Conclusion**

30. For the reasons above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*David Spencer*

INSPECTOR.







## Appeal Decision

Hearing held on 24 April 2018

Site visit made on 24 April 2018

**by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 17<sup>th</sup> May 2018**

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### **Appeal Ref: APP/C3105/W/17/3187461**

#### **Land at Station Road, Cropredy, Banbury**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Catesby Estates Ltd against the decision of Cherwell District Council.
  - The application Ref 17/00778/OUT, dated 7 April 2017, was refused by notice dated 7 August 2017.
  - The development proposed is demolition of existing building and outline planning application for residential development of up to 37 dwellings (Use Class C3) including means of access into the site (not internal roads) and associated works, with all other matters (relating to appearance, landscaping, scale and layout) reserved.
- 

#### **Decision**

1. The appeal is dismissed.

#### **Procedural Matters**

2. The application was submitted in outline with all matters reserved apart from access. I have treated all details shown on the sketch masterplan, street elevations and street plan as indicative with the exception of the accesses onto Station Road. At the same time, the development parameters plan (drawing number 3502A) seeks to establish the broad locations for different elements of the development. Therefore, I have had regard to this plan as part of the formal application plans.
3. The application was refused for two reasons. The second reason related to the absence of completed and satisfactory planning obligation to address the infrastructure requirements arising from the development. A final draft planning obligation was discussed at the hearing, where the Council confirmed that it was satisfied with the contents and that it addressed the second reason for refusal. A signed and executed planning obligation was provided following the hearing. My decision below refers to individual elements of the planning obligation where appropriate. However, given that I am dismissing the appeal, it has not been necessary for me to consider the wording of the obligation in detail in terms of compliance with national policy and legal tests.

#### **Main Issue**

4. The main issue is the effect of the proposed development on the character and appearance of the area, including Cropredy Conservation Area, and the setting of the Grade II listed building known as Springfields.

## Reasons

### *The character and appearance of the area and Cropredy Conservation Area*

5. The village of Cropredy is situated between the Oxford Canal to the east and a railway line to the west which connects Banbury to Leamington Spa. It lies at the bottom of a valley with land rising to the east and west and is surrounded by fields and countryside. The railway line past Cropredy runs along an embankment with trackside vegetation along much of it. This provides a considerable visual break and screening from the adjoining countryside, although views of the village are possible from higher ground to the west at Great Bourton. The rural surroundings to the village are a key quality in terms of its character and appearance.
6. The appeal site is situated on the south-western edge of Cropredy and forms two parts. The smaller part is towards the southern end of Station Road near to the railway bridge. It would function as underground attenuation for surface water from the development as well as strategic planting. The larger part abuts the railway embankment to the west and consists mainly of paddocks and areas of tree planting between Cup and Saucer to the north and a Network Rail access road to the south. The only built structure is a large barn that would be demolished as part of the proposed development. The appeal site includes the entirety of Spring Lane from Station Road to the embankment.
7. Cropredy Conservation Area covers much of the village with the exception of modern housing along the western and southern sides and in the north-east corner. Its character and appearance is greatly informed by the richness of historic buildings, with frequent use of ironstone and red brick walls and a variety of architectural details. The network of narrow streets and lanes is another important element along with open spaces around the church and adjoining Cropredy Bridge and the canal. All of these elements contribute positively to the significance of the conservation area.
8. The conservation area is surrounded by fields and countryside with a number of footpaths into and out of the village. These footpaths and gaps in built development provide views to and from the countryside and provide a rural setting to the conservation area. As part of the surroundings in which the conservation area is experienced, this rural setting makes a positive contribution to the significance of this heritage asset as well as enhances the overall character and appearance of the area.
9. At the same time, the modern buildings along the western and southern sides of Cropredy beyond the conservation area boundary also form part of the surroundings in which the conservation area is experienced. Many of these buildings such as those on the east side of Station Road or at Cherry Fields and Cup and Saucer have simplicity of scale and form with sympathetic materials and detailing. As such, while they also form part of the setting of the conservation area, they do not detract from its significance.
10. The northern end of Station Road is within the conservation area along with the first part of Spring Lane as far as Manor Farm Barns. Apart from the junction onto Station Road, Spring Lane is a rough gravel track that leads between housing on the south side of the lane and the rear of housing at Cherry Fields. Much of this housing is modern, although Manor Farm Barns appears to date from the late 19<sup>th</sup> century based on historic mapping.

11. Spring Lane is not a public right of way but provides a route from Station Road and the conservation area to the countryside beyond the railway embankment. Along the first part, the informality of its surfacing and the pleasant view back to historic buildings within the conservation area on Station Road is tempered by the largely modern housing either side including boundary fencing and driveways. A new house adjacent to Cherry Fields is under construction adding to the number of modern houses along the lane.
12. Spring Lane opens out beyond the conservation area boundary towards the embankment as it passes the paddocks on either side and has an increasingly rural feel. However, the embankment largely obscures views of the countryside beyond except for a framed glimpse through the bridge. Views from this part of Spring Lane towards the centre of the village are across modern housing to the north and north-east. The housing and the existing barn largely obscures views of the conservation area from this part of Spring Lane. Therefore, Spring Lane makes no more than a moderate contribution to the character and appearance of the village and the conservation area.

*The setting of the listed building known as Springfields*

13. Springfields dates from the 17<sup>th</sup> century with later alterations. It is a two storey building constructed from ironstone with a large tiled roof. The Conservation Area Appraisal identifies Springfields as one of five major farmsteads within the village. Although the appellant casts doubt on this claim, the building has the scale and appearance of a farmhouse. Thus, its special interest and its significance are greatly informed by its architectural and historic qualities.
14. Springfields occupies a large plot of land with extensive garden space especially to the south and north. The plot is enclosed by tall hedging and trees along much of its front boundary but also to the side and the rear in terms of planting and other boundary treatments. To the west of Springfields are a small copse and one of the paddocks in front of the railway embankment. The evidence is not conclusive in terms of whether the land to the west has a functional and historical relationship with Springfields. A horse-shoe shaped range of buildings occupied the space roughly where the copse is now located before this disappeared in the late 19<sup>th</sup> century and Manor Farm Barns emerged. The land is in separate ownership and Springfields is a residential dwelling today. Nevertheless, both the historic mapping and current site circumstances reveal that land to the west of Springfields, including the appeal site, was and is largely free from built development, forming a green and open backdrop to this listed building.
15. Existing vegetation to the side and rear of Springfields, including the copse, do not completely screen views to and from the listed building especially when foliage is absent. Moreover, there are clear views of the listed building from within the paddock and appeal site to the south-west with the church tower behind. Although not currently publicly accessible, the paddock undoubtedly forms part of the surroundings in which the listed building is experienced. In its current undeveloped state, the paddock makes an important contribution to the setting of the listed building and in turn contributes positively to its significance. While there is modern housing along Station Road to the east, this is on the opposite side of the road to Springfields and set back by

vegetation and generously sized front gardens. As such, this housing does not detract from the qualities of the land to the west of Springfields.

*The proposed development and its effects*

16. The proposed development does not seek to fix matters relating to appearance, landscaping, layout or scale. Nevertheless, the parameters plan indicates that housing would be delivered on two development parcels within the paddocks to the north and south of Spring Lane. Housing in the larger development parcel to the south would extend most of the way to the Network Rail access road.
17. Housing development across the two paddocks would inevitably change the character and appearance of land either side of Spring Lane. Given the size and shape of the two development parcels, it would be hard to avoid a cul-de-sac form of development while up to 37 houses within this space would likely result in a suburban appearance. However, there are existing cul-de-sac developments nearby at Cup and Saucer and Cherry Lane with relatively similar density levels to the sketch masterplan. The appellant's Design and Access Statement notes that building heights would be no greater than 2.5 storeys which would be similar to surrounding housing. The railway embankment and vegetation would limit any effects on the wider landscape setting of the village.
18. The appearance of properties, including materials, could be sympathetic to the overall built form of Cropredy in a similar way to existing modern housing. A suitable mix of terraced, semi-detached and detached properties could be achieved, while there is little evidence to corroborate the Council's claim that a large-scale housebuilder would seek to impose a standardised form of development on this site. Detailed design matters could be secured at reserved matters stage and applications refused if necessary.
19. Spring Lane would require alterations in order to serve this scale of development. This would include a widening of the access onto Station Road as well as the carriageway to accommodate two-way traffic and a footway. The surfacing of the lane would need to be addressed but at this stage the exact materials have yet to be established. The appellant indicates a shared surface arrangement with low level kerbs, while photomontages suggest a bonded gravel material rather than tarmac. There is little evidence that such an arrangement and material could not be employed here. As such, Spring Lane would retain some of its informality. Moreover, given the existing modern housing that flanks the lane, the addition of further housing next to the lane would not be greatly harmful. The openness of the paddocks either side of the lane would be lost, but the route through to the countryside would remain and there would be limited negative impact on views towards the village and conservation area given existing modern buildings. Thus, the adverse effects to Spring Lane and its contribution to the overall character and appearance of the village and the conservation area would be limited. The harm to the significance of the conservation area would consequently be modest.
20. With regards to Springfields, housing development would take place to the west and south-west of the listed building. The copse would remain and existing boundary vegetation to the south would be strengthened. However, it is likely that gaps in planting would remain and the absence of foliage from autumn to early spring would increase intervisibility. Moreover, housing would intrude on the view from the southern part of the paddock towards Springfields and the church beyond. The proposed open space and play area next to the

Network Rail access road would do little to prevent this encroachment. As a consequence, there would be an erosion of the open and undeveloped backdrop to Springfields and a considerable encroachment of built development into the setting of the listed building. This would result in harm to the significance of the heritage asset.

21. Paragraph 132 of the National Planning Policy Framework (NPPF) states that great weight should be given to the conservation of a designated heritage asset and any harm should require clear and convincing justification. Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 ('the LBCA Act') states that special regard shall be paid to the desirability of preserving a listed building or its setting. There is also a desirability to sustain and enhance the significance of heritage assets in paragraph 131 of the NPPF.
22. The harm to the significance of the listed building would be less than substantial as the development would not directly affect the building or the grounds surrounding it. However, given the extent of the erosion of the open and undeveloped setting to the listed building through the introduction of a number of houses, I attach considerable importance and weight to the harm. Paragraph 134 of the NPPF requires less than substantial harm to be weighed against the public benefits of the proposed development.

#### *The public benefits*

23. The development would provide up to 37 dwellings of which 35% would be affordable housing secured through the planning obligation. It is feasible that a range of housing types could be achieved through the reserved matters stage to cater for local housing needs. As noted below, there is no lack of a five-year housing land supply and I have limited information on any identified housing need within the district. Nonetheless, the delivery of the amount of housing proposed would represent a significant public benefit.
24. There would be economic benefits arising from the construction of the development and subsequent investment by new residents into local services and facilities, as well as the delivery of New Homes Bonus and increased Council Tax Revenue. These would represent reasonable public benefits.
25. The financial contributions towards education, community halls and offsite sports facilities are intended to make the development acceptable in planning terms to mitigate the effects of development on existing infrastructure. Likewise, the provision of a sustainable urban drainage scheme would address the effects of the development and I have little evidence that it would improve existing flood risk issues. The provision of new play areas and new and enhanced recreational routes would serve residents of the development and mitigate effects. Similarly, the protection and enhancement of landscape and biodiversity habitats would largely address the effects of development. None of these elements can be regarded as public benefits and so carry neutral weight in the overall balance.
26. The development would be on the edge of Cropredy with easy access by foot or bicycle to local facilities including the primary school, village shop and public houses. On the other hand, the frequency of the bus service has reduced considerably and it is likely that future occupants of the development would be largely reliant on the private car to access facilities beyond the village. This



broadly cancels out any public benefits arising from the site's location to services and facilities.

27. The public benefits of the proposal carry significant weight, but would not outweigh the considerable weight I have found in terms of the harm to the significance of the Grade II listed building known as Springfields. Concluding on the main issue, the development would have a negative effect on the character and appearance of the area with particular reference to the setting of Springfields. As a consequence, it would conflict with Policies ESD15 and Villages 2 of the Cherwell Local Plan 2011-2031 Part 1 ('the Local Plan 2011-2031') and Policy C28 of the Cherwell Local Plan 1996 ('the Local Plan 1996'). There would also be conflict with paragraphs 131, 132 and 134 of the NPPF and Section 66(1) of the LBCA Act.
28. Amongst other things, Policy ESD15 requires new development to complement and enhance the character of its context through sensitive siting and layout, and conserve, sustain and enhance designated heritage assets and their settings. Policy Villages 2 deals with the distribution of housing in Category A villages like Cropredy, where particular regard will be given to avoiding significant adverse impact on heritage assets when considering sites for development. Policy C28 requires development to be sympathetic to the character of the urban or rural context of that development.

#### *Planning balance*

29. The Council states that it can demonstrate a five-year supply of housing land with the figure of 5.6 years put forward at the hearing. The appellant has not sought to dispute this position. It has also not been argued that any relevant policies are out of date or that the development plan is absent or silent. Therefore, the fourth bullet point of paragraph 14 of the NPPF does not apply in this instance. Nevertheless, there is still a need to determine the proposed development in accordance with the development plan unless material considerations indicate otherwise.
30. I note that the appeal site has formed part of successive Strategic Housing Land Availability Assessments (SHLAA) as a suitable, available and achievable site. However, each extract that I have been provided with highlights potential constraints including heritage assets. The SHLAA is an indication of housing supply and does not guarantee that sites will be allocated and/or granted planning permission as each proposal should be assessed on its own merits.
31. I also note that Cropredy is identified as a Category A village in the Local Plan 2011-2031 as one of the most sustainable villages in the district. Policy Villages 2 sets a total of 750 homes to be delivered in Category A villages, although it was acknowledged at the hearing that the total is not a ceiling. Cropredy has not received any significant housing development within the current plan period and no other site has been deemed suitable or deliverable in the SHLAA. However, the proposal results in harm to a listed building that is not outweighed by the benefits and so the village status and lack of other housing sites does not justify the development in this instance. Based on the housing land supply position and the large percentage of houses already built or granted permission in Category A villages against the 750 total in Policy Villages 2, there is no pressing need for the proposed development in terms of housing delivery.

32. The development would fail to preserve the setting of the listed building and would be contrary to Policies Villages 2 and ESD15 of the Local Plan 2011-2031 and Policy CS28 of the Local Plan 1996. The benefits outlined above do not provide a clear and convincing justification for the harm and do not outweigh the harm or policy conflict. The third and fourth bullet points of paragraph 14 of the NPPF and the presumption in favour of sustainable development do not apply to this proposal. Therefore, there are no material considerations that lead me to conclude against the development plan and the harm I have identified.

### **Other Matters**

33. Interested parties have raised concerns with a number of other matters including flood risk, traffic conditions and the proximity of the railway line. However, given my findings on the main issue and the overall planning balance, it has not been necessary to consider these matters in any detail.

### **Conclusion**

34. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Tom Gilbert-Wooldridge*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Stuart Andrews	Eversheds Sutherland
Louise Steele	Framptons
Jo Vallender	The Environmental Dimension Partnership Ltd
Charles Mylchreest	The Environmental Dimension Partnership Ltd
Jon Vernon-Smith	Urban Design Box
Ed Barrett	Catesby Estates
Rebecca Birch	Catesby Estates

### FOR THE LOCAL PLANNING AUTHORITY:

Nathanael Stock	Cherwell District Council
Dr Garry Campion	Cherwell District Council

### INTERESTED PARTIES WHO SPOKE AT THE HEARING:

Jesse Crosse	Local resident
Stephen Moffat	Local resident
Richard Oliver	Oxfordshire County Council

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Regulation 122 Compliance Statement, submitted by Oxfordshire County Council.
2. Regulation123 Compliance Note, submitted by Oxfordshire County Council.

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

1. Correct version of minutes from Cherwell District Council Planning Committee meeting of 27 October 2015 (Appellant's Core Document 2.5), submitted by the appellant.
2. Appeal decision APP/C3105/W/16/3163551, submitted by the local planning authority.
3. Developer Contributions Supplementary Planning Document (February 2018), submitted by the local planning authority.
4. Signed and dated planning obligation, submitted by the appellant.







## Appeal Decision

Inquiry Held on 10, 11 and 12 July 2018

Site visit made on 12 July 2018

**by Kenneth Stone BSc Hons DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 September 2018**

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**Appeal Ref: APP/C3105/W/17/3188671**

**Land off Blackthorn Road, Launton OX26 5DA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Manor Oak Homes (Mr William Main) against the decision of Cherwell District Council.
  - The application Ref 17/01173/OUT, dated 24 May 2017, was refused by notice dated 4 August 2017.
  - The development proposed is the development of up to 72 dwellings with associated large area of Public Open Space.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the development of up to 72 dwellings with associated large area of Public Open Space at Land off Blackthorn Road, Launton OX26 5DA in accordance with the terms of the application, Ref 17/01173/OUT, dated 24 May 2017, subject to the conditions contained in the schedule at the end of this decision.

### Procedural matters

2. The application was submitted in outline with all matters except for access to be reserved for future consideration. The application was supported by various plans and these are identified in the final signed Statement of Common Ground (CDC2) at paragraph 4. It was confirmed that the Feasibility layout, as it is referred to there (the drawing title on the plan is illustrative layout) was for illustrative purposes only to demonstrate one way in which the site could be developed.
3. During the conditions session it was also confirmed that JPP Consulting Plan T7866PM-01-A, from the Transport Assessment revision A, formed part of the plans for which permission was sought. The Council originally refused planning permission for five reasons; by the start of the Inquiry the Environment Agency and the Oxford County Council Drainage Officer withdrew their objections. This resulted in the Council no longer pursuing its objections on grounds of flooding or drainage. The Council confirmed that if a satisfactory obligation was provided to ensure the provision of infrastructure necessary to serve the development it would no longer contest that issue.
4. A completed and executed planning obligation in the form of a planning agreement pursuant to section 106 of the Town and Country Planning Act 1990

was provided by the close of the Inquiry. I return to the planning obligations secured below.

5. The revised National Planning Policy Framework (the Framework) was published on 24 July 2018 and the parties were given the opportunity to comment on the relevance this will have on their case.
6. The Government published a Written Ministerial Statement in relation to Housing Land Supply in Oxfordshire. I have had regard to the Statement.

### **Main Issues**

7. The main issues are:
  - Whether the location and scale of the proposed development would conflict with the development plan's strategy for the distribution of housing in the district; and
  - The effect of the proposed development on the character and appearance of the settlement of Launton and the surrounding area.

### **Reasons**

8. The development plan for the area comprises the saved policies from the Cherwell Local Plan 1996 (CLP 1996) and the Cherwell Local Plan 2031 part 1 (CLP 2031 (part 1)).
9. The Council is in the process of a partial review of the CLP 2031 (part 1) to address the apportionment of Oxford's identified unmet need to the surrounding district Councils. The Council submitted the Local Plan Part 1 Partial Review (Oxford's Unmet Housing Need) to the Secretary of State on 5<sup>th</sup> March 2018. This has not been the subject of public scrutiny. Whilst the Council may have agreed the level of unmet need it is to receive from Oxford in terms of the proportionate apportionment in the context of this appeal the review carries only little weight at this point in time.
10. Reference is made in the CLP 2031 (part 1) to the Cherwell Local Plan 2031 part 2 (CLP 2031 (Part 2)) however this appears to be in the very early stages of preparation with an issues consultation paper being published in January-March 2016. I have no evidence before me of any further progress on that plan and therefore I am of the view it carries very little weight in the determination of this appeal.

### *Location and scale of development*

11. Underpinning the CLP 2031 (part 1) is a spatial strategy for Cherwell District which focusses the bulk of the proposed growth in and around Bicester and Banbury. It limits growth in the rural areas, directs it towards larger and more sustainable villages and aiming to strictly control development in open countryside.
12. Policy BSC1 identifies that 22,840 dwellings will be provided for between 2011 and 2031; distributed between Bicester, Banbury and the Rest of the District. A significant proportion of the 'rest of the district' figure relates to a strategic allocation at RAF Upper Heyford, the remainder distributed through the categorisation of Villages in Policy Villages 1: Village categorisation and Policy Villages 2: Distributing Growth Across the rural areas. The plan seeks to alter

the local pattern of recent housing growth, as a disproportionate percentage (almost half) has taken place in smaller settlements, adding to commuting by car and congestion on the road network at peak hours. The number of new homes outside the two main towns would be around a quarter of the overall plan total.

13. Launton is identified as a category A - service village in Policy Villages 1. Policy Villages 2 confirms that over the plan period a total of 750 homes will be delivered at category A villages. There is no further distribution of delivery within the villages and there is no timeframe or trajectory for delivery associated with the overall figure. All parties accept that the headline figure is not a ceiling and that conflict would only arise if there was a material increase over and above the identified 750 dwellings. This is consistent with the Framework's approach to significantly boost the delivery of housing.
14. The 2017 Annual Monitoring Report for the district identifies that a total of 664 dwellings have been identified for meeting the Policy Villages 2 requirement. By March 2017 there had been 103 completions on those sites. The proposed development would make provision for up to a further 72 dwellings taking the total to 736 (664 + 72). The 750 figure in the policy would not be breached. Furthermore the 750 figure refers to dwellings delivered, of which to date there are only 103, substantially below the 750 figure. As a matter of fact allowing this appeal would not breach this aspect of Policy Villages 2, I return to the criteria based aspects below.
15. My attention is drawn to the dismissal of an appeal in 2015<sup>1</sup> on the grounds that the provision of 95 homes in one location at that early stage of the local plan period would leave little scope for development in other category A villages either in terms of numbers or timing and would thus not be in accordance with the Plan's housing strategy. This was shortly after the plan had been adopted in 2014. Matters have moved on and information is available to consider whether performance across the rest of the district is meeting the aspiration of the strategy.
16. This proposition has been taken forward in more recent appeal decisions<sup>2</sup> however none of these have been the subject of the full scrutiny of Public Inquiry. Further, there are also significant site specific differences between those decisions and this appeal related to heritage concerns, sustainability and harm to character and appearance.
17. Whilst the level of planning permissions and resolutions to approve is approaching 750 the number of units built is still substantially below that figure. That equates to a delivery rate of some 34 units per annum based on the delivery since 2014. If that were continued the delivery would be too low to reach 750 in the plan period. The latest AMR figures demonstrate that completions and planning permissions outstanding in the two principle towns of Bicester and Banbury amount to in the region of two thirds of housing delivery. The remaining one third being delivery in the rural areas, a substantial proportion of which is at a strategic allocation location. This demonstrates that the overall intention of the strategy to deliver housing in the most sustainable locations of the main towns and strategic allocation and to limit development in the rural areas is succeeding. The proportion of housing being delivered at the

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<sup>1</sup> APP/C3105/W/14/3001612

<sup>2</sup> APP/C3105/W/16/3158925, App/C3105/W/17/3169168 and APP/C3105/W/17/3187461.

smaller villages is significantly less than half of delivery as was identified as a main driver for the development of the strategy.

18. The 750 figure is not an upper limit and it would require a material exceedance to justify arriving at a conclusion the policy was being breached. Whilst the figure is moving towards the actual figure there is still some headroom available. Time has moved on and we are now further into the plan period, any permissions that are now granted will take time to produce the delivery of housing and therefore it is likely that the delivery of the units identified in this appeal would not arise until the plan was in the second half of its term. It is in my view no longer appropriate to characterise this as early in the plan period. The CLP 2031 (part 2) plan has the potential to review the implications of these policies or a formal review of the part 1 plan could come forward.
19. On the basis of the evidence before me I am satisfied that the proposed development would not lead to a breach of this aspect of Policy Villages 2 or the overall plan strategy.
20. In any event, there is evidence to demonstrate that housing delivery is strengthening. That it is focussing in the main towns of Bicester and Banbury and the strategic allocation and that the contribution from the more sustainable villages (category A villages) in the rural area to the overall delivery of housing is achieving the plans overall need in a manner consistent with the strategy. Whilst I accept that the delivery of all of the level of housing anticipated through Policy Villages 2 could reduce the flexibility later in the plan period I have been provided with no evidence that the granting of permission here would prevent development at a more sustainable location in another Category A village.
21. Indeed it is no part of the Council's case that Launton is not a sustainable village and does not have the services and facilities to meet the day to day needs of the future residents of the proposed development. The number of units proposed would not be excessive in relation to the services and facilities available in the village. The village contains a number of facilities including two pubs, a convenience store, farm shop, primary school, community hall and small business enterprises. It is categorised as a Category A village which are those villages in the district with the highest sustainability credentials in the rural area. The village is also well served by public transport. The additional demands placed on existing facilities would be addressed through the provision of the planning obligation. The scale of the development would not substantially detract from the character of the village as I conclude below. The increase in the number of new homes would not therefore result in materially harmful effects.
22. Any future developments at Category A villages in the future would need to be considered in the context of the circumstances pertaining at that time which would include, but not be limited to, matters such as whether the 750 figure had been materially exceeded, the specific needs for that development in relation to the village and the effect on the overall settlement strategy.
23. On the basis of the above conclusions I am satisfied that the location and scale of the proposed development would not conflict with the development plan's strategy for the distribution of housing in the district. The development would not conflict with policy BSC1, Policy Villages 1 or Policy Villages 2 and would

not undermine the overall strategy of the development plan, with which it would comply.

### *Character and appearance*

24. The Council's reason for refusal alleges that the application contained insufficient information to enable it to assess the impact of the proposed development on its surroundings.
25. I have had regard to the advice in the Planning Practice Guidance with regard to Design and Access Statements (DAS) and to the two court cases<sup>3</sup> submitted in Closing by the appellant to address the concern of the adequacy of the DAS. Given that the application is in outline with all matters reserved, other than access, much of the detailed layout, design and appearance are matters more properly considered at reserved matters stage. With the application before me the focus is on whether the scale and quantum of development could be satisfactorily accommodated on the site. As the PPG advises DASs are concise reports to provide a framework for applicants to explain how the proposed development is a suitable response to the site.
26. The PPG goes on to advise that the DAS must explain the design principles and concepts and demonstrate the steps taken to appraise the context and how the design takes that context into account. There is no prescriptive formulaic sequencing or ordering of steps that are to be undertaken or how these are to be ordered or reported in the final report. Given the outline nature of the application I am satisfied that there is sufficient depth and detail of analysis of the site and context and how the scheme has taken these matters on board in reaching its proposed outcome. The illustrative master plan is also just that, illustrative as one way in which the scheme could come forward, and is not set in stone.
27. The Council's witness Mr Stock confirmed under cross examination that he accepted that there was sufficient information before the Inquiry to enable me to make a proper assessment of these matters. I am satisfied that the amended DAS, the proofs of evidence of the various witnesses, the additional information submitted during the Inquiry including APP 8, along with my visits to the site and surrounding area enable me to come to an informed conclusion on the effect of the development on the character and appearance of the surrounding area.
28. Launton is a category A larger village in the rural area of the district. Its historic form was based on a linear settlement pattern focused predominantly along Station Road and West End. There was some consolidation of built form around the cross roads created by Blackthorn Road and Bicester Road. There remain a number of historic buildings fronting primarily onto Station Road and West End with a scattering along Bicester Road and a number at the junction of Blackthorn Road and Station Road. The historic core and buildings are identifiable and visible along the main roads and it is from these vantage points that the visual contribution the historic buildings make is most readily apparent. To the north and west Launton has significantly increased in density, depth of development and form which readily detaches the historic linear form

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<sup>3</sup> Two High Court Decisions: Michael Jonathan Parker v Secretary of State for Communities and Local Government and Rother District Council and Peter Bull [2009] EWHC 2330 (Admin). & [2011] EWHC 2325 (Admin) the Queen on the application of Bizzy B Management company Limited v Stockton-on-Tees Borough Council v Python Properties (A Firm).



of the village from the countryside and surrounding fields. Similarly to the south much of the physical relationship to the rural hinterland has been interrupted with more modern development.

29. The appeal site is located to the east and south of Station Road. The site is open fields. However the site is not readily appreciated or viewed from Station Road and there are limited views when the historic core and field pattern surrounding the village would be read in the same views. There have been some modern developments to the rear of these properties in Station Road including at The Green which further detaches the rural fields from the historic core of the settlement.
30. Approaching the village from the south along Blackthorn Road there is modern development on one side of the road up to the point where the entrance feature demarking the entrance to the village is located. On the opposite side of the road the land is also developed, in the form of a pumping station and water works. The proposed development would abut the built development of the edge of the village and provide for a significant area of retained open space. The site is reasonably well screened from the wider countryside, with significant areas of tree planting and hedge boundaries. In this regard I am satisfied that, designed with care, the proposed development would not be unduly assertive or excessively intrusive such that it would undermine the intrinsic character and beauty of the countryside at this location. A suitable layout arrangement could address Blackthorn Road in a manner consistent with the existing development fronting the road. The development would not, in my view, result in the appearance that the village boundary had appreciably extended into the open countryside as the development would be within the village entrance demarcation and would be well contained by landscape features.
31. The development is proposed with a single point of access. It would therefore be a cul-de-sac of some 72 units. The illustrative layout suggests this would be with a principle spine with roads off it. I saw a number of Culs-de-sac in the village. Whilst none contained as many dwellings as that proposed in this scheme, there were a number with a similar pattern (single point of entry and accesses off a central spine) and a comparable size, eg at Sherwood Close (57 properties) and Skinner Road and Ancil Avenue (46 properties). I do not consider that the scale of development would inevitably lead to an excessively complex road layout.
32. It is no part of the Council's case that the setting of individual listed buildings would be affected by the proposed development. Further, the Council does not object to the effect of the development on landscape character. The design and appearance of the buildings, the materials to be used, the layout of the scheme are all matters that would be considered at the reserved matters application. I have neither seen nor heard anything to suggest that a competent architect could not design a scheme that would be in keeping with its surroundings.
33. I am satisfied that the provision of a Cul-de-sac including development fronting Blackthorn Road could be made to reflect the character and appearance of the surrounding area and the village. There would be change, that is not in dispute; a field would be developed for housing but that would not in my view result in material harm to the character and appearance of the village. There is

no identified landscape harm and any residual impact can be addressed by condition, the reserved matters can ensure the design and appearance of the scheme is compatible with and reflects local distinctiveness.

34. For the reasons given above I conclude that the proposed development would not harm the character and appearance of the settlement of Launton and the surrounding area. Consequently the proposal would not conflict with policies ESD15 of Policy Villages 2 in the CLP 2031 (part 1) or policies C28 and C30 in the CLP 1996. The development would therefore comply with the development plan in these regards.

### **Planning Obligations**

35. The appellant has provided a planning obligation in the form of a deed of agreement under section 106 of the Town and Country Planning Act 1990, Section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011.
36. Overall the Obligations of the agreement are related to requirements of development plan policies and are all necessary to make the development acceptable in planning terms. They are all, furthermore, directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development where appropriate. The planning obligations therefore comply with the tests set out in the Framework, the advice in the National Planning Practice Guidance and with Regulation 122 of the CIL Regulations 2010 (CIL). There is no conflict with CIL Regulation 123(3).

### **Other matters**

37. At the outset of the Inquiry in my opening I identified whether the Council can demonstrate a five year supply of deliverable housing sites as a main issue to address. I dealt with housing land supply as a discreet topic and conducted this as a hearing style discussion session. I have taken account of the latest Written Ministerial Statement in relation to Housing Land Supply in Oxfordshire. However, given my conclusions in respect of the main issues above, if I accept the Council's position on its Housing Land Supply, my overall conclusion would be that the proposals accord with an up-to-date development plan. They would therefore benefit from the presumption in favour of sustainable development under paragraph 11 c of the Framework. This overall conclusion would not change taking on board the governments WMS on Housing Land Supply in Oxfordshire. It is therefore not a matter on which my decision turns.
38. The proposed development would provide for market housing and affordable housing. The positive contribution to the supply and delivery of housing in the district given the Government's objective of significantly boosting the supply of homes (Framework paragraph 59) is a benefit of significant weight. The District has identified it has a high need for affordable housing. Securing the provision of affordable housing, through the planning obligation, therefore is also a significant positive benefit of the scheme.
39. The appeal scheme identifies a significant area of public open space the scheme would include details to enhance the biodiversity and conservation target area landscape qualities in the area. In this regard this would assist in fulfilling policy ESD11 and a minor benefit is derived from the scheme as a



result of the enhancements to biodiversity that could be secured through the development of the site.

40. The additional traffic generated by the proposed development would not result in material harm to highway safety. There is no objection from the Highway Authority and the design of the access has been accepted on the basis of the information submitted. There was no evidence to demonstrate that there would be significant inconvenience or hazard that would be caused by the proposed access location or the additional traffic that would pass through the cross roads in the centre of the village.

### **Conditions**

41. A list of draft conditions was provided by the Council (CDC1) and updated during the Inquiry (CDC 6). I have considered the conditions in the context of the advice in the Planning Practice Guidance and the model conditions set out in the annex (which remains extant) to the otherwise now cancelled Circular 11/95, the use of conditions in Planning Permissions. A number of the suggested conditions are in effect informative or advisory indicating the content of future submissions under the reserved matters, or cover matters that fall squarely within the ambit of the reserved matters. Unless it is necessary to restrict the discretion of both applicant and local planning authority at this outline stage, I have not imposed such conditions, as the submission of details/reserved matters would be the subject of evaluation.
42. Conditions 1 to 3 are the standard outline conditions and there is no reason to vary these other than removing access as a reserved matter as that was the basis of the application. Conditions 4 through to 8 address matters related to access, parking and travel. They are required to ensure the development is satisfactorily accessed and that suitable parking provision (both car and cycle) is provided and maintained on site and to ensure that the site is accessible by a range of modes of transport.
43. Conditions 9 through to 11 are required to ensure that the development is safe from flooding and does not result in an increased risk of flooding elsewhere. Launton is not connected to mains gas. Conditions 12 and 13 are required to avoid an excessive proliferation of above ground fuel tanks that could compromise the design and appearance of the final development. It could be argued that this could be left to the reserved matters but it is an important design principle and the imposition of such a condition now will ensure this matter is properly addressed at an early point in the consideration of the design of the detailed scheme.
44. Condition 14 will ensure that adequate regard is paid to the potential for buried remains and condition 15 ensures that appropriate consideration is given to securing the biodiversity enhancements and on the basis of policy ESD11. A Construction Environment and Management Plan (condition 16) is required to ensure the site is safely accessed during development, to safeguard the living conditions of surrounding residents and to ensure the development is carried out in a neighbourly manner. The site includes previously developed land and conditions 18 through to 21 address the potential for the site to be contaminated and the necessary steps to be undertaken in the event contamination is encountered. Condition 22 requires the removal of an existing residential dwelling unit to ensure the satisfactory completion of the proposed development.

45. Conditions 4, 10, 11, 12, 14, 15, 16, 17, 18, 19 and 22 are 'pre-commencement' form conditions, or include such elements, and require certain actions before the commencement of development. In all cases the matters they address are of an importance or effect and need to be resolved before construction begins.

### **Overall conclusions**

46. I have concluded that the proposed development would accord with the strategy and objectives of the CLP 2031 (part1) and that there would be no conflict with policies BSC1 or Policy Villages 1 or Policy Villages 2 in that plan in respect of the scale and location of the development. Moreover, I have concluded that there would be no material harm to the character and appearance of the village or the surrounding area and therefore no conflict with policy Villages 2 or ESD15 in the CLP 2031 (Part 1) or policies C28 and C30 in the CLP 1996. On this basis I conclude that the proposed development would be in accordance with the development plan as a whole and as such would amount to sustainable development in the context of paragraph 11 of the Framework for which there is a presumption in favour of.

47. Section 38(6) of The Planning and Compulsory Purchase Act 2004 requires that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

48. Even if I were to accept the Council's position in terms of its five year housing land supply, that there was a 5.4 year supply, that would not alter my conclusions in respect of the development plan, the presumption in favour of development or the section 38(6) position. The issue of housing land supply therefore is not determinant in this appeal.

49. The proposal accords with the development plan and there are no other material considerations that indicate a decision otherwise would be appropriate. The scheme benefits from the presumption in favour of development as set out in the Framework. I therefore will grant planning permission without delay.

50. With the imposition of the above mentioned conditions and for the reasons given above, I conclude that the appeal should be allowed.

*Kenneth Stone*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Gwion Lewis	Counsel, instructed by Amy Jones, Solicitor Cherwell District Council
He called	
Yuen Wong BA(Hons) MA MRTPI	Principal Planning Policy Officer Cherwell District Council
Nathaneal Stock BA(Hons) DipTP MRTPI	Team Leader General Developments Team Cherwell District Council

### FOR THE APPELLANT:

Paul Tucker (and Sarah Reid)	Queens Counsel, instructed by Huw Mellor
He called	
Huw Mellor BA(Hons) MRTPI	Partner Carter Jonas LLP.
Ashley Thompson BA(Hons) PGDip ARCH MA ARB RIBA	Director ATA (Architecture) Ltd.
Jacqueline Mulliner BA(Hons) BTP(Dist) MRTPI	Director and Head of National Planning Terence O'Rourke Ltd.

### INTERESTED PERSONS:

Mr Robert Armstrong	Local Resident
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## **DOCUMENTS SUBMITTED BY CHERWELL DISTRICT COUNCIL (CDC)**

CDC1	Draft List of suggested conditions
CDC2	Signed copy of the Statement of Common Ground
CDC3	Opening submissions on behalf of the Council
CDC4	Extract of Planning Supporting Statement by Barwood Strategic Land II LLP in respect of Land West of Bloxham Road, Banbury
CDC5	Home extensions and Alterations – Design Guide for Householder Applications March 2007 Cherwell District Council
CDC6	Updated Draft list of suggested conditions
CDC7	Update from Oxford County Council on its submissions in respect

- of Planning Obligations and compliance with Regulation 123 of the Community Infrastructure Levy (CIL) Regulations 2010.
- CDC8 Copy of Developer Contributions Supplementary Planning Document (SPD) February 2018 published by Cherwell District Council.
- CDC9 Closing submissions on behalf of Cherwell District Council

**DOCUMENTS SUBMITTED BY the APPELLANT (APP) – MANOR OAK HOMES**

- APP1 List of appearances for the appellant
- APP2 Unsigned final draft of the Statement of Common Ground
- APP3 Draft of Final version of the Planning Obligation agreement
- APP4 Schedule of developer responses to the 2017 AMR comprehensive review of sites (on disputed sites only)
- APP5 Pack containing details of consultation on amended illustrative amended plan carried out by the appellant.
- APP6 Revised Flood Risk Assessment (Revision E: June 2018 R-FRA-T7866PM-01-E) by JPP Consulting.
- APP7 Opening submissions on behalf of the appellant
- APP8 Aerial photograph with existing Culs-de-sac and dwelling numbers identified.
- APP9 Extract from Planning Policy Guidance on Design and Access Statements.
- APP10 Letter from one of the site owners to confirm the tenancy arrangements related to the existing 'caravan' on site.
- APP11 Certified copy of the planning obligation by deed of agreement
- APP12 Closing submissions on behalf of the appellant (including two attachments of cited court cases).

### **Schedule of conditions for appeal APP/C3105/W/17/3188671**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) Prior to the commencement of the development hereby approved, full details of both means of access between the land and the highway, including, position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the Local Planning Authority.

The means of access shall also include:

- lengths of footway on the north side of Blackthorn Road in either direction from the site access
- two uncontrolled crossing points
- alterations to the existing traffic calming and village entry treatment

Thereafter and prior to the first occupation of the development, the means of access shall be constructed and retained in accordance with the approved details.

- 5) No dwelling shall be occupied until car parking space(s) to serve that dwelling have been provided according to details that have been submitted to and agreed in writing by the Local Planning Authority. All car parking shall be retained unobstructed except for the parking and manoeuvring of vehicles at all times thereafter.
- 6) No dwelling shall be occupied until cycle parking space(s) to serve that dwelling have been provided according to details that have been submitted to and agreed in writing by the Local Planning Authority. All cycle parking shall be retained unobstructed except for the parking of cycles at all times thereafter.
- 7) Prior to occupation of the first dwelling hereby approved, a Residential Travel Plan Statement shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the Travel Plan shall be operated and reviewed in accordance with details to be included in the agreed Travel Plan Statement.
- 8) Travel Information Packs, the details of which are to be submitted to and approved in writing by the Local Planning Authority prior to first occupation of the development, shall be provided to every resident on first occupation of each dwelling.

- 9) The development permitted by this planning permission shall be carried out in accordance with the Flood Risk Assessment (FRA) Proposed Residential Development, Land off Blackthorn Road, Launton, Bicester, Oxfordshire by JPP Consulting Civil and Structural Engineers, Revision E, June 2018 R-FRA-T7866PM-01-E and the following mitigation measures detailed within the FRA:

- There shall be no built development within the 1% annual probability (1 in 100) flood extent with 35% allowance for climate change; and
- Finished floor levels will be located a minimum of 150mm above the predicted flood level.

The mitigation measures shall be fully implemented prior to occupation of the dwellings to which they relate and in accordance with the timing/phasing arrangements embodied within the scheme.

- 10) No development shall take place until a scheme for the provision and management of a minimum 10m buffer zone alongside the Launton Brook shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme. The buffer zone covered by the scheme shall be free from built development (including lighting), domestic gardens, footpaths and formal landscaping.

The scheme shall include:

- Plans showing the extent and layout of the buffer zone;
- Details of any proposed planting scheme (for example native species);
- Details of the timing and implementation of the scheme;
- Details demonstrating how the buffer zone will be protected during development and maintained over the longer term including proposed financing, the body responsible for management and production of a detailed management plan.

- 11) Prior to the commencement of the development hereby approved, a surface water drainage scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development. . The scheme shall also include:

- Discharge Rates
- Discharge Volumes
- Maintenance and management of SUDs
- Sizing of features – attenuation volume
- Infiltration tests to be undertaken in accordance with BRE365
- Detailed drainage layout with pipe numbers

- SUDS (list the suds features mentioned within the FRA to ensure they are carried forward into the detailed drainage strategy)
- Network drainage calculations
- Phasing plans
- Flood routes in exceedance (to include provision of a flood exceedance route plan).

The scheme shall be implemented in accordance with the approved details

- 12) Prior to the commencement of development details of the services and energy infrastructure shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to the occupation of any dwelling hereby permitted.
- 13) Notwithstanding any provisions contained within the Town and Country Planning (General Permitted Development Order) 2015 (and any Order or Statutory Instrument amending, revoking or re-enacting that order), No above ground fuel tanks to serve the proposed development shall be provided unless with the prior written approval of the local planning authority.
- 14) An archaeological investigation shall be completed in accordance with a Written Scheme of Investigation which shall first be submitted to and approved in writing by the Local Planning Authority prior to any demolition on the site and the commencement of the development.
- 15) Prior to the commencement of the development hereby approved, including any demolition, and any works of site clearance, a method statement for enhancing Biodiversity on site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the biodiversity enhancement measures shall be carried out and retained in accordance with the approved details.
- 16) Prior to the commencement of the development, a Construction Environment and Traffic Management Plan (CEMP), which shall include details of the measures to be taken to ensure construction works do not adversely affect residential properties adjacent to or surrounding the site together shall be submitted to and approved in writing by the Local Planning Authority. The CEMP will include a commitment to deliveries only arriving at or leaving the site between 0930 and 1630. Thereafter the development shall be carried out in accordance with the approved CEMP.
- 17) Prior to the commencement of the development hereby permitted a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model shall be carried out by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and shall be submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local



Planning Authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.

- 18) If a potential risk from contamination is identified as a result of the work carried out under condition 16, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.
- 19) If contamination is found by undertaking the work carried out under condition 17, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.
- 20) If remedial works have been identified in condition 18, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 18. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.
- 21) If, during development, contamination not previously identified is found to be present at the site, no further development shall be carried out until full details of a remediation strategy detailing how the unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. Thereafter the remediation strategy shall be carried out in accordance with the approved details.
- 22) No development subject of this permission shall commence until the mobile home that is the subject of certificate of lawfulness 09/01814/CLUE dated 18 March 2010, and associated structures, have been removed from the site.

END







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# Appeal Decision

Site visit made on 6 November 2018

**by Jonathan Hockley BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24<sup>th</sup> January 2019**

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**Appeal Ref: APP/C3105/W/18/3204920**

**Fringford Cottage, Main Street, Fringford OX27 8DP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Stuart Wright against the decision of Cherwell District Council.
  - The application Ref 18/00249/OUT, dated 6 February 2018, was refused by notice dated 16 April 2018.
  - The development proposed is a residential development of up to 10 dwellings.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The application was submitted in outline with all matters reserved aside from access. I have treated the appeal in the same manner, and have thus treated all plans submitted as indicative, except those relating to access.

## Main Issue

3. The main issue in this case is whether the proposed development would provide a suitable site for housing, having regard to the character and appearance of the area including the setting of nearby listed buildings, the proximity of services, and the effect of the scheme on the living conditions of the occupiers of Bakery Cottage.

## Reasons

4. Fringford is a fairly small village based upon Main Street and the roads leading off this street. The SPD<sup>1</sup> states that the village has a dispersed settlement pattern. However, dispersed settlements are cited as having a large open space at their centre, whereas in Fringford's case the southern end of the village is characterised by a large village green sited opposite the settlement's primary school, with the rest of the village having more of a linear pattern, based around Main Street/The Green. This street is largely lined with housing of varying ages, although development is more sporadic on its south east side than its north west side, with numerous side roads and cul-de-sacs fed off this side of the street. In this development pattern St Michael's Close, which lies to the north of the appeal site appears as somewhat of an anomaly, being one of the few streets accessed to the south of Main Street.

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<sup>1</sup> Cherwell Residential Design Guide Supplementary Planning Document, July 2018

5. The roughly rectangular appeal site lies on the south east side of the street and mainly consists of a fairly large field/paddock set to the rear of Fringford Cottage, and would be accessed by an improved existing drive set to the side of this property, currently used to access the rear of the house and outbuildings.
6. On the other side of the access lies the northern side of Bakery Cottage. This cottage is part of a row of four properties which seemingly consists of 2 central one and a half storey thatched properties bookended by 2 two-storey tile roofed houses. Bakery Cottage is one such end property. The structure is a Grade II listed building, with, from the listing description, the central thatched elements of the whole building being listed. To the rear the houses have relatively shallow areas for sitting out in, opening out into a more open area which has the character of an orchard at its end and appeared to have partly communal access to the properties.
7. The proposal would provide up to 10 dwellings, with the indicative layout detailing how these could be accommodated within the site. The rear of the site would appear to project slightly further to the south east than the existing rear line of development from St Michael's Close. To the south west, while the top of the site would fall in a rough line from the rear of the orchard type land to the rear of Bakery Cottage and its attached neighbours, the majority of the site would border open fields. The south east end of the site borders further fields/paddocks, and a footpath runs along the north east side of the site.
8. The proposal would introduce a reasonably substantial new housing scheme into an area of the village which has remained free of development, and would push the visual envelope of the settlement across from the rear of St Michael's Close towards the south west. In this context I do not agree that physically it would tie in with St Michael's Close rounding off this part of the village; to my mind St Michael's Close is something of an anomaly in terms of the development of the village and the proposal would accentuate this anomalous effect, however the detailed design was considered. Such an effect would be clearly visible from reasonably substantial stretches of the nearby public footpath, where the scheme would mask the current views of the linear development to the rear of Main Street that predominates in this area of the village to the south west of St Michael's Close, and would appear poorly integrated with the village form, causing harm to the character and appearance of the area.
9. The appellant has submitted a Landscape and Visual Assessment, which considers the impact of the proposal on the adjacent footpath, stating that the value of viewpoints along the footpath is high and medium depending on location but that users of the footpath would be viewing the site in a transitory way while they focus on the route ahead. However, the speed of transition on a rural footpath would be slow and given the extent of views that can and would be possible of the site I consider that the scheme would clearly alter the perception of the village form and development pattern from such viewpoints. I also do not consider that such harm would be mitigated by landscaping, which would take time to establish and would do little to change or mask the form of the proposal compared to the areas to the south.
10. Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires that when considering whether to grant planning permission for

development which affects the setting of a listed building, special regard should be had to the desirability of preserving its setting.

11. Paragraph 193 of the National Planning Policy Framework (the Framework) says when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Significance can be harmed or lost through alteration or destruction of a heritage asset, or by development within its setting. The Framework defines setting as the surroundings in which the asset is experienced. Elements of setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.
12. I note details of a consent granted to the rear of Bakery Cottage for a 2 storey extension. However, be that as it may, and despite other alterations to the rear of the 4 cottages, part of the character of the listed building derives from its rural setting, including the orchard type rear garden and parts of the surrounding farmland in proximity to the building, including the appeal site, despite its distance in parts from the actual built structure of the listed building. Such areas all fall within the surroundings of the heritage asset in which it is experienced and thus fall within the setting of the listed building.
13. For the reasons given above the development of the site would have an adverse effect, changing and altering an element of the setting of the heritage asset from a rural to a suburban one. However, given that the development would only occupy a proportion of the setting of the heritage asset and no harm would be caused to the historic fabric of the listed building, such harm would be less than substantial.
14. Concern is raised over the effect of the scheme upon the living conditions of a neighbouring resident. The proposal would result in the existing access serving Fringford Cottage being improved and the residents of the additional proposed 10 houses using it to access their properties, in fairly close proximity to Bakery Cottage. I noted on my site visit the peaceful sitting out area to the rear of this Cottage, which is located next to a fairly high wall marking the boundary between the two properties. This boundary is largely supplemented by evergreen trees.
15. The width of the access is such that space can be left between the side of the access road and the boundary wall, allowing for more substantial landscaping to be planted, and supplemented with an acoustic fence as suggested by the appellant. The amount of traffic generated by 10 residential properties would not be substantial, and I do not consider that harm caused by the proposal in this regard, with the benefit of suitable conditions for mitigation, would be substantial.
16. Policy Villages 1 of the Local Plan<sup>2</sup> designates Fringford as a 'service village' where minor development, infilling and conversions are permissible. Supporting text to the policy states that infilling refers to the development of a small gap in an otherwise continuous built-up frontage. Under such a definition the proposal would not constitute infilling. Further supporting text states that in assessing whether proposals constitute acceptable 'minor development',

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<sup>2</sup> The Cherwell Local Plan 2011-2031, Part 1, Adopted July 2015.

regard will be given to the size of the village and the level of service provision, the site's context within the existing built environment, whether it is in keeping with the character and form of the village, its local landscape setting and careful consideration of the appropriate scale of development.

17. Evidence is submitted of the facilities within the settlement. These mainly consist of the primary and pre-school, public house, church and village hall. While therefore some services are present within the village these are by no means comprehensive. Furthermore, there is mixed evidence concerning bus services to and from the village, with regular bus services only taking place on a Thursday and possibly a Friday, supplemented by a demand responsive bus. The Thursday service only appears to include 1 journey each way and the demand responsive option only runs between the hours of 10:15 and 14:30.
18. Aside from the school and the pub therefore I consider that the future residents of the proposal would use private transport for most of their day to day needs. I also note in the context of policy Villages 1 that the bus service as it exists today represents a downgrade on a previous service that existed at the time of the adoption of the local plan, and do not consider that the provision of a travel pack to future residents would mitigate the lack of a regular scheduled bus service. While acknowledging that sustainable transport options vary from urban to rural areas I do not consider therefore that the proposed 10 houses would be located within an area with sufficient service provision.
19. I am not convinced therefore that, while noting the size of the scheme compared to the size of the village overall, given the level of service provision in the village, particularly when coupled with the harm that I have identified above that the scheme would cause to the character and form of the village, that the proposal would constitute 'minor development' in the context of Fringford and therefore consider that the scheme would be contrary to policy Villages 1.
20. Policy Villages 2 allocates 750 dwellings across service villages during the plan period, but does not state how such houses will be distributed across the various settlements. In identifying sites for such provision, particular regard will be given to various criteria, including whether the land has been previously developed or is of lesser environmental value, whether development would contribute in enhancing the built environment, and whether the site is well located to services and facilities. There is disagreement between the parties over the proportion of the site which would constitute previously developed land. However, notwithstanding this point, given my views above over the sites conflict with policy Villages 1 and that the development would not contribute to enhancing the built environment or would be well located to service and facilities then I am of the view that the proposal would also be contrary to policy Villages 2.
21. Policy ESD 1 of the Local Plan states that measures will be taken to mitigate the impact of development within the District on climate change, including by distributing growth to the most sustainable locations as defined in the Plan and delivering development that seeks to reduce the need to travel and which encourages sustainable travel options. While the proposal would be located in the most sustainable location as defined in the Local Plan the weight I provide to this is reduced by the bus service reduction since the local plan was adopted and the development would not reduce the need to travel or encourage

sustainable travel options. In the round I therefore consider that the proposal would also be contrary to this policy.

22. Policies ESD13 and ESD15 of the Local Plan are also cited in the decision notice. While I do not consider that the scheme would be contrary to the element of policy ESD15 which states that development proposals should consider the amenity of existing development, I am of the view that the proposal would be contrary to other parts of policy ESD15 as well as to ESD13, which together state that proposals will not be permitted if they would be inconsistent with local character or harm the setting of settlements, buildings or structures, and should conserve, sustain and enhance designated heritage assets.
23. The scheme would create 10 new properties, which would provide economic and social benefits for the local area in terms of both the construction of the houses and also the activities of the future residents of the dwellings, as well as through the New Homes Bonus. However, such public benefits in an area where both parties agree does not have a lack of housing supply would not outweigh the less than substantial harm that would be caused to the significance of the nearby listed building, to which I am required to give great weight to, and the proposal would therefore be contrary to the Framework.
24. I therefore conclude that while the proposed development would not have an adverse effect on the living conditions of the occupiers of Bakery Cottage, it would not provide a suitable site for housing, having regard to the character and appearance of the area including the setting of nearby listed buildings and the proximity of services. The proposal would be contrary to policies Villages 1, Villages 2, ESD1, ESD13 and ESD15 of the Local Plan, as well as to the Framework.
25. The appellant refers me to a Council Housing and Economic Land Availability Assessment (HELAA) which considered that the site could accommodate 14 dwellings, and notes that as part of this process the site was visited by Council planning officers to appraise. Planning Practice Guidance states that the use of a HELAA can be to inform assessments of housing land supply and that it is an important evidence source to inform plan making but does not in itself determine whether a site should be allocated for development; it is the role of the HELAA to provide information on the range of sites which are available to meet need but it is for the development plan to determine which of the sites are the most suitable to meet those needs. Above I have considered that the proposal would be contrary to the development plan, and while I provide moderate weight to the HELAA this does not outweigh such conflict.

#### *Other matters*

26. The decision notice contained two reasons for refusal relating to drainage and the lack of a planning obligation. During the course of the appeal both matters have been resolved between the parties and a completed unilateral undertaking, agreeable to the Council, has been submitted by the appellant. Based on all that I have seen and read I have no reason to disagree with the main parties views on the drainage strategy for the site. In terms of the unilateral undertaking, while I note that it provides for off-site open space and play area contributions, as well as a footpath contribution, given that I am dismissing the appeal on other grounds I have not considered this matter further.

## **Conclusion**

27. I have concluded that overall the proposed development would not provide a suitable site for housing and would be contrary to the development plan. Material considerations advanced do not lead me to an alternative decision and the scheme would also be contrary to the Framework.
28. Therefore, for the reasons given above, and having regard to any other matter raised, I conclude that the appeal should be dismissed.

*Jon Hockley*

INSPECTOR







## Appeal Decision

Inquiry opened on 20 August 2019

Site visit made on 22 August 2019

**by Philip J Asquith MA(Hons) MA MRTPI**

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

Decision date: 9<sup>th</sup> September 2019

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**Appeal Ref: APP/C3105/W/19/3228169**

**Land at Merton Road, Ambrosden, OX25 2NP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Ltd against the decision of Cherwell District Council.
  - The application Ref. 18/02056/OUT, dated 26 November 2018, was refused by notice dated 20 February 2019.
  - The development proposed is the erection of up to 84 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Merton Road. All matters reserved except for means of access.
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### Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of up to 84 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Merton Road. All matters reserved except for means of access, at land at Merton Road, Ambrosden, OX25 2NP in accordance with the terms of the application Ref. 18/02056/OUT, dated 26 November 2018, subject to the conditions in the schedule at the end of this decision.

### Procedural Matters

2. The application was submitted in outline with all matters except for access to be reserved for future consideration. The application was supported by a Development Framework Plan<sup>1</sup> (DFP) which, it was confirmed at the inquiry, was for illustrative purposes only and which I have treated as such.
3. The Appellant submitted a Unilateral Undertaking (UU) under s106 of the Town and Country Planning Act 1990 (as amended) containing a number of planning obligations. As the awaiting of comments on this from the Council had prevented a signed version being submitted during the inquiry, I agreed to accept a completed UU within 14 days of its close. A signed and certified UU was duly submitted. I have taken the various obligations into account in arriving at my decision. These are discussed below.

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<sup>1</sup> Drawing No. CSA/3888/103 Rev F

## Main Issues

4. The Council refused permission for four reasons. The third reason related to the Council's concern that the Appellant's Ecological Appraisal had provided insufficient detail as to whether a net gain in biodiversity could be achieved by the proposed development. Further, it suggested that insufficient surveys had been carried out to demonstrate that the development would not cause unacceptable harm to Great Crested Newts, a protected species.
5. However, in its Statement of Case the Council indicated that its concern regarding a net gain in biodiversity could be dealt with by the imposition of a condition should planning permission be granted. Furthermore, the Appellant submitted to the Council additional survey information on Great Crested Newts, together with a mitigation strategy. A Statement of Common Ground (SoCG) between the Appellant and the Council confirms that the additional information submitted provides adequate detail to confirm that survey work has been completed and that the proposed mitigation strategy is adequate to meet Natural England's standard licensing requirements.
6. It is also agreed that the information submitted is adequate to confirm that the proposed development would not affect the favourable conservation status of the species and that with the application of the suggested mitigation methods a derogation licence from Natural England would be likely to be forthcoming. As a result, the Council agreed that the matters relating to the third reason for refusal had been resolved and that mitigation could be achieved through the imposition of a suitably worded condition.
7. As a consequence of the above and having considered all the evidence provided, I consider the main issues in this case to be:
  - whether the proposal would lead to an over-concentration of new housing development in Ambrosden which would undermine the Council's housing strategy and prejudice a more balanced distribution of housing growth, contrary to Cherwell Local Plan policy and policies in the National Planning Policy Framework (the Framework);
  - the effect of the proposed development on the character and appearance of the surrounding area and on the significance of the Grade II\* listed Church of St Mary the Virgin through change in its setting; and
  - whether the proposal makes adequate provision for necessary infrastructure directly arising from its development.

## Reasons

### *Development Plan*

8. The relevant development plan comprises the Cherwell Local Plan 2011 – 2031 (Part 1) (CLPP1), adopted July 2015, and saved policies of the Cherwell Local Plan 1996. In regard to the latter, the only policy referred to within the reasons for refusal is Policy C28. Amongst other matters this seeks to ensure appropriate standards of layout, design and external appearance. These are matters of limited relevance in respect of an outline application when they are reserved for subsequent approval. On behalf of the Council it was accepted at the inquiry that reliance is no longer placed on this policy in respect of impact on character and appearance.

9. Having regards to CLPP1, it was also accepted by the Council's planning witness that only those policies referred to within the reasons for refusal are relied upon and that it can be assumed no conflict arises with other policies.
10. The spatial strategy for the district underpinning CLPP1 is to focus the bulk of proposed growth in and around Bicester and Banbury. Growth within rural areas is to be limited, with this being directed towards the larger and more sustainable villages and with development in open countryside being strictly controlled.
11. CLPP1 Policy Villages 2 (PV2) concerns the distribution of growth across the district's rural areas. It indicates that a total of 750 homes will be delivered at Category A villages<sup>2</sup>. This is in addition to the rural allowance for small site windfalls and planning permissions for 10 or more dwellings that existed as at 31 March 2014. Category A villages are 'Service Centres' listed under Policy Villages 1. These are considered to be the most sustainable villages, of which Ambrosden is one, which offer a wider range of services and are well connected to major urban areas, particularly by public transport.
12. In considering sites under this policy particular regard is to be given to a list of 11 specified criteria. Amongst these are: whether the land has been previously developed or is of lesser environmental value; whether significant adverse impact on heritage or wildlife assets could be avoided; whether development would contribute in enhancing the built environment; whether significant adverse landscape impact could be avoided; and whether the site is well located to services and facilities<sup>3</sup>.
13. Under Policy ESD 13 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 be permitted if, amongst other matters, they would cause undue visual intrusion into the open countryside, be inconsistent with local character, or harm the setting of settlements, buildings, structures or other landmark features. Policy ESD 15 indicates that new development will be expected to complement and enhance the character of its context through sensitive siting, layout and high-quality design.
14. The Council's fourth reason refusal referred to the absence of satisfactory obligations under s106 to secure a range of necessary infrastructure. It consequently listed a range of CLPP1 policies with which the development would conflict, and which aim to secure satisfactory provision in respect of matters such as affordable housing, public services / utilities, open space and recreation facilities, contributions to mitigate transport impact and adaptation measures to ensure more resilience to climate change. The Council accepts that the proffered s106 UU now addresses these matters.
15. The Cherwell Local Plan Part 1 Partial Review aims to help satisfy the unmet housing needs of Oxford over the period 2011 – 2031. This was submitted for Examination in March 2018 and hearing sessions into the Review were held in February 2019. It sets out policies to achieve the delivery of an additional

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<sup>2</sup> The accompanying text to the policy makes it clear that this quantum would be made up from sites for 10 or more dwellings

<sup>3</sup> It is only these particular criteria with which the Council considers that the proposal would conflict

4,400 dwellings within Cherwell district, with allocations being made as close to Oxford as possible. At the time of the inquiry no formal report on the Examination had been issued although the Inspector's preliminary conclusions support the 4,400-figure to be accommodated within Cherwell. There is agreement between the Appellant and the Council that the part of the district within which Ambrosden is situated is unaffected. The Appellant considers that the emerging Partial Review sits alongside, rather than interfering with, the CLPP1 strategy for the district.

*First reason for refusal - housing strategy and distribution of housing growth*

16. The 750 homes figure for Category A villages is a component of the overall provision made by CLPP1 Policy BSC1 to meet the district's housing requirement of 21,734 between 2014 and 2031<sup>4</sup>. The Council contends that it can demonstrate both a three-year and a five-year supply of deliverable housing land within the district. This is not contested by the Appellant for the purposes of this appeal<sup>5</sup>.
17. The overall housing strategy of the CLPP1 is to rebalance growth to concentrate it within Bicester and Banbury. In crude terms the strategy seeks to provide for about three quarters of new dwellings over the plan period in the two towns. This compares with a proportion of about half in the period leading up to the plan's adoption when the other half had taken place in smaller settlements, adding to commuting by car and road congestion at peak times.
18. The Appellant notes that if up to 84 dwellings were to be provided on the appeal site this would represent less than 0.4% of the district's requirement over the plan period. If the proposed scheme were to be added to the stock of planning permissions recorded in the Council's Annual Monitoring Report, some 82.7% of permissions identified would be in Bicester and Banbury (the figure being 82.2% if added to the stock of permissions identified in the Council's 2019 update).
19. The Council's table of the district's residential completions and planning permissions from 2011 to 31 March 2019 (with a baseline of the latter date) records that, of the 14,170 dwellings built or permitted, some 27% were in the 'rest of the district' with 73% located in the towns of Bicester and Banbury. The Council accepts that the overall strategy of the plan to deliver most housing to Bicester and Banbury is currently succeeding.
20. The Council's evidence notes that the totals of completed dwellings under PV2 (271) and those benefitting from permissions (479) add up to the 750-figure sought under the policy. It is not claimed there would be a current breach of the policy (since only 271 have been *delivered*). However, granting permission for up to 84 dwellings, which would be likely to be built out within a short time, together with the other 479 committed and deliverable dwellings, could give rise to a total of 834 dwellings being delivered several years prior to 2031, the end date of CLPP1.
21. There is agreement that the 750-figure is not a ceiling or cap. However, the Council has referred to previous appeal decisions where PV2 has been engaged.

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<sup>4</sup> The provision for the 'rest of the district' outside Bicester and Banbury is a total of 2,350 which is made up of the 750 plus the specific allocation of 1,600 at the former RAF site at Upper Heyford

<sup>5</sup> SoCG on spatial strategy, August 2019

The Inspector in dismissing an appeal for up to 95 dwellings in Kirtlington in 2015 noted that "... any significant increase over and above 750 could lead to unconstrained growth which would result in non-compliance with the strategy for rebalancing housing growth away from the villages and rural areas"<sup>6</sup>. This was a conclusion shared by the Inspector dismissing an appeal for 26 dwellings at Weston on the Green<sup>7</sup>.

22. In granting permission for a housing development in Launton<sup>8</sup> in September 2018, the Inspector noted that 750 was not an upper limit and that it would require a material exceedance to justify arriving at a conclusion that the policy was being breached. The Council considers that the addition of 84 dwellings would be a material exceedance of the 750, would therefore be contrary to PV2 and would weaken the strategy of the strong urban housing focus of the plan.
23. I am not convinced by the evidence provided by the Appellant's planning witness that the 750-figure has no development management significance. The Inspector determining the appeal against a residential development for up to 51 dwellings in Chesterton considered the use of figure of 750 in PV2 must have some form of constraining effect on total numbers, otherwise the policy would be meaningless in terms of its contribution towards the overall strategy of the plan<sup>9</sup>. Nevertheless, neither within Policy PV2 itself nor within CLPP1 as a whole is the term 'material exceedance' found. Even if to exceed the 750-figure by 84 units now at a point less than halfway through the CLPP1 plan period was to be regarded as a material exceedance, the question arises what planning harm would arise from such a breach? This is bearing in mind that such a quantum of housing would not be *delivered* until later in the plan period.
24. Policy PV2 does not contain any temporal dimension in that it does not specify when during the plan period housing should be delivered, nor does it contain any phasing element. Similarly, other than relating to Category A villages, the policy has no spatial dimension.
25. A concern of the Council is that to allow an exceedance of the magnitude envisaged could lead to unrestrained growth in Category A villages, although it was acknowledged at the inquiry that a precedent argument was not being advanced. However, I accept that there is force in the point advanced by the Appellant that the specific management criteria of Policy PV2 would seem to ensure that it is a self-regulating policy; if the point is reached where the number of dwellings granted in Category A villages is likely to undermine the Council's overall spatial strategy, a series of planning harms is likely to emerge. These might include the point where local infrastructure is unable to cope, land of higher environmental value is sought, or out-commuting and traffic congestion manifest themselves.
26. Further concerns of the Council are that allowing the proposal would lead to an over-concentration of development in Ambrosden and a disproportionate share of the PV2 housing provision. Existing recent housing developments in the village (Church Leys Farm and Ambrosden Court) permitted under Policy PV2

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<sup>6</sup> CD 6.03, APP/C3105/W/14/3001612, para 9. (The CD references are to Core Documents submitted for the inquiry)

<sup>7</sup> CD 6.05, APP/C3105/W/16/3158925, para 17

<sup>8</sup> CD 6.07, APP/C3105/W/17/3188671, para 18

<sup>9</sup> CD 6.04, APP/C3105/W/15/3130576, para13



amount to 129 units, which is 17% of 750<sup>10</sup>. If allowed, the proposal would represent a 25% share of the increased total of 834.

27. In an appeal decision on a 54-dwelling proposal in the Category A village of Hook Norton, acknowledged as a relatively sustainable location, the Secretary of State took the view that it would be acceptable for the village to provide a relatively larger share of the 750 dwellings than the other villages listed in PV2<sup>11</sup>. There are some 23 Category A villages which display a wide range of populations, facilities and locations. Whilst the Council categorises these as the more sustainable settlements it is apparent that, comparatively, some settlements are clearly more sustainable than others.
28. Ambrosden is by population the fifth largest Category A village, with a population of in the region of 2,250<sup>12</sup>. It benefits from a range of services including pre-school nurseries, primary school, food shop, post office / general store, village hall, two churches, hairdresser's, public house, recreational facilities and a limited opening doctor's surgery<sup>13</sup>. It is some 4.6km from Bicester, has two bus services through the village which connect to Bicester and Oxford, the more frequent S5 providing an hourly service through the week and on Saturdays. An off-road cycle path links the village with Bicester.
29. The CLPP1 allocates a considerable amount of land for employment uses on the southern and south-eastern outskirts of Bicester between the edge of the town and Ambrosden, with some development already in place. Whilst these areas are beyond what could be regarded as realistic daily walking distances for most people, they are within ready cycling distances. I address the more specific locational considerations of the appeal site in relation to village services and facilities below.
30. By comparison with the location and the range of facilities available in many of the other Category A villages, Ambrosden is one of the most sustainable settlements. There is agreement between the Appellant and the Council that this is the case. It is therefore unsurprising that recent housing schemes within the village have been permitted. On this basis, and against a background of no spatial apportionment of additional housing between Category A villages, and the intent of Policy PV2 that development should be enabled in the most sustainable locations, further development of the nature proposed would not be disproportionate.
31. The Council has expressed concern that allowing the proposal and exceeding the PV2 750-figure would make it more difficult for other Category A settlements to meet local housing needs within the second half of the plan period. However, no evidence has been provided as to the level of specific local housing need in any of the villages within the district and need is not disaggregated across different settlements. Policy PV2 does not contain a requirement to demonstrate a local housing need. Furthermore, should specific needs within villages be identified, Policies PV1 and PV3 would be relevant considerations to cater for this. Policy Villages 1 allows development within the built-up limits of villages, whilst PV3 provides for meeting specific identified

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<sup>10</sup> In addition, there is an 89-unit development at Springfield Farm that was permitted prior to 31 March 2014

<sup>11</sup> CD 6.13, APP/C3105/A/14/2226552, decision letter para 12

<sup>12</sup> This was a 2014 figure, so with more recent housing development in the village the figure is now likely to be higher

<sup>13</sup> Evidence at the inquiry suggested that this was to close

housing needs through small-scale affordable schemes within or immediately adjacent to villages. The proposed scheme need not therefore pose any undue constraint on other villages to meet any specific or identified housing needs.

32. I have carefully noted views expressed by colleague Inspectors in the various appeal decisions to which reference was made during the inquiry. None of these decisions was made at a time when the 750-figure of delivered and committed dwellings had been reached. Concerns have been expressed in some decisions as to the possibility of contributing to unconstrained growth, as already noted<sup>14</sup>. But these decisions were made in the context of what were then hypothetical situations where the 750-figure might be breached.
33. I have not been privy to the evidence on which their decisions have been based, some of which were several years ago when the CLPP1 was in its very early years. It is not clear whether the decisions were informed by the examination of arguments which have been advanced in respect of the present proposal. Having regards to the detailed evidence provided in the present case, and for the reasons set out above, I do not consider that the Council has demonstrated how in its own right allowing the appeal would lead to the undermining of the Council's overall housing rebalancing strategy contrary to the intent of Policy PV2. The purpose of limiting growth within the rural 'rest of the district' is not an end in itself but is intended to ensure delivery of the rebalancing strategy of an urban focus of new development in Banbury and Bicester. I find that agreeing to the proposal need not make the maintenance of its strategy materially more difficult.
34. Part of the CLPP1's spatial strategy is to strictly control development in the open countryside. However, current national policy within the Framework does not couch protection of the countryside in terms of 'strict control'. It is also clear, and accepted, that in applying Policy PV2 locations on the edge of Category A villages would be used and are therefore likely to be in open countryside locations. I consider that should a proposal satisfy Policy PV2, if there was any inconsistency between it and one of the Council's objectives, such as strict protection of the countryside (which in itself could be considered to not be on all fours with the Framework's absence of a blanket protection of the countryside), the policy should take precedence. This was a point conceded by the Council.
35. Overall, I consider the proposal would not materially undermine the Council's housing strategy or prejudice the achieving of a more balanced housing growth.

*Second reason for refusal*

*a) Character and appearance*

36. The appeal site extends to about 4.12ha comprising part of a grassed field used for hay-making located at the south-western edge of Ambrosden. Whilst somewhat irregularly shaped, it has a hedged frontage to Merton Road from which vehicular and pedestrian access would be taken. To its north it has a short boundary with a densely vegetated low embankment to a railway line running from Bicester to the Ministry of Defence depot at Arncott. It is

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<sup>14</sup> For example CD 6.03, APP/C3105/W/14/3001612 and CD 6.05, APP/C3105/W/16/3158925

- bounded to its north-eastern side by a residential curtilage and by paddocks, whilst reedy remnants of ponds associated with the former Ambrosden Hall, and further agricultural land, lie to the north-west.
37. Amongst the criteria of CLPP1 Policy PV2 to which particular regard should be given in assessing development in villages such as Ambrosden is whether significant adverse landscape impacts can be avoided. This recognises some development on the countryside edge of settlements is likely to be necessary. It is axiomatic and almost inevitable that some harm will result from the change from open countryside to built development.
38. The application was accompanied by a Landscape and Visual Impact Assessment (LVIA). Within the context of the appeal the Appellant's landscape witness carried out her own assessment of the landscape and visual effects of the proposal to be read in conjunction with the LVIA. Additionally, in respect of the appeal, the Ambrosden Parish Council commissioned its own review of the original LVIA. I have had regard to all these together with the evidence produced on behalf of the Council.
39. In terms of landscape character, the appeal site lies within the Clay Vale Landscape Character Type<sup>15</sup>, and the Clay Vale of Otmoor as defined in the Cherwell District Countryside Design Summary<sup>16</sup>. The site is part of what was originally parkland associated with the demolished Ambrosden Hall. The sinuous area of reed and marshy land to the immediate north-western side of the site is the remnant of former parkland ponds. However, the historic and landscape connections and appearance of parkland have long since disappeared and in my view the appeal site does not possess any readily perceptible associated landscape or visual qualities. The site is not subject to any statutory or non-statutory designations for landscape character, quality or value. It is part of a pleasant but unremarkable rural landscape.
40. The Council suggests that development on the site would conflict with the criterion of PV2 relating to the consideration of whether the land is previously-developed or is of lesser environmental value. It is not previously-developed and the term 'lesser environmental value' is a relative one. The Appellant suggests that reference to 'lesser environmental value' was plainly aimed at plan-making where a comparative exercise could be undertaken. However, as the CLP Part 2 does not exist such an exercise is not possible. By reason of the site's absence of specific landscape quality designations, and not being Best and Most Versatile agricultural land, it is reasonable in the present context to consider it as land of comparatively lesser environmental value.
41. The proposal, in whatever eventual form it might take, would clearly have a completely transformative effect on the site itself by reason of the introduction of residential development and its associated components into a currently open field. However, I have no reason to disagree with the view of the Council's landscape witness who concurred with the Appellant's LVIA assessment that the landscape character of the site and surrounding area has a medium sensitivity, as does the townscape of the adjoining area. Further, the effect of the proposal on landscape and townscape character of the surrounding area would be 'moderate adverse' on completion. There would be potential for this

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<sup>15</sup> Oxfordshire Wildlife and Landscape Study

<sup>16</sup> Supplementary Planning Guidance, June 1998



- to decrease by year 15 with the maturation of landscaping and the weathering of the built development.
42. In terms of the landscape and visual impact evidence produced at the inquiry, the Council's concern centred on the visual aspects of the proposal. There is agreement as to the selection of viewpoints used within the LVIA. The relatively low-lying and well vegetated landscape near the site means that views are generally limited when seen from far- and middle-distance locations. Impact on the few possible far- to middle-distance views from the south would be negligible. Impact on views from closer at hand along bridleway 295/4, about 1.5km to the south-east, would in my judgement be only slightly adverse. This is as a result of distance, existing vegetative screening, that which could be incorporated into the development, and the already present appearance of roofscapes of dwellings within the village<sup>17</sup>.
  43. From along footpath 295/7, about 500m to the south-west, oblique views are possible across the site over field hedging for a length of about 80m. There are current views of the tower of St Mary's, which is seen in conjunction with the roofscape of housing. Although at the detailed design stage it may be possible to retain views of the church, the extension of built development closer to the viewer would, in my opinion, result in a moderate adverse impact even at year 15.
  44. When approaching Ambrosden from the south-west along Merton Road the site is screened by existing vegetation almost until it is reached, when there are direct oblique views across it. The DFP suggests the incorporation of a sustainable drainage system (SuDS), open space and a children's play area towards the site's frontage which would serve to maintain views of the tower of St Mary's from the road. There would be substantially adverse impacts on views in the early stages of development until landscaping matured and the proposal became assimilated.
  45. There would be impacts for residential receptors in Jasper Row to the opposite side of Merton Road who currently have views across the open farmland. However, separation and detailed design could ensure that, other than alteration of views for private individuals, there would be no detriment to overall living conditions.
  46. The development would result in a significant extension of the village to its south-western side beyond the single-track railway line that crosses Merton Road via a level crossing, pushing the built edge further into the open countryside. It is certainly the case that the part of Ambrosden to the south-western side of the railway line is currently less developed than the main body of the village.
  47. However, from my site inspections it is my view that the railway line does not represent a clear physical or visual demarcation or barrier that suggests further development beyond it would be ill-related or poorly connected to the overall village structure. Housing that presently exists to the south-western side of the line clearly has the appearance and feel of being an integral part of the village, with the railway line not forming a disjointing element. There has been the recent in-depth development of Ambrosden Court to the southern side of

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<sup>17</sup> Impact on views of the Church of St Mary the Virgin in terms of its setting are considered below

Merton Road and a recent permission for an additional five dwellings to the rear of Home Farm Close.

48. I am mindful of the comments of the Inspector who determined the appeal against the refusal of permission for the Ambrosden Court development<sup>18</sup>. In his decision allowing the appeal (which concerned an application that was in outline) he expressed the view that the proposal would cause a moderate amount of harm to the appearance and character of the countryside, and some local landscape harm. The Council subsequently approved the appropriate reserved matters and the development has been completed.
49. The development clearly appears as a new element in respect of which weathering and nascent landscaping have not had chance to soften its impact. Nonetheless, I consider Ambrosden Court has now to be viewed as an existing, appropriate and acceptably-designed component of the village. I have no reason to suppose that the Council would not be able to exercise similar appropriate control over the details of layout, overall design and landscaping for development on the appeal site. In this regard the Parish Council has criticised the nature of the landscaping as shown on the Appellant's FDP. However, this plan is for illustrative purposes only and as landscaping is a reserved matter the Council would have control over this should the development proceed.
50. In my view, the village is now as much defined in terms of its character by the development that has taken place in the second half of the 20th century and that which has occurred very recently. This is largely estate housing that has spread out from the historic village core near the Church of St Mary the Virgin. In terms of scale and nature, a development of up to 84 dwellings, complemented by appropriate landscaping and open space, would not be at odds with the overall character of the village. This is particularly bearing in mind the recent approvals at Springfield Farm (89 dwellings), Church Leys Farm (85 dwellings) and Ambrosden Court (45 dwellings).
51. The Council suggests that the abrupt and stark transition from what is described as an 'urban' to a rural environment at the south-western end of the village is part of local distinctiveness. I am not convinced that this is a particularly beneficial characteristic that necessarily needs to be respected by new development or one which would be undermined if the proposal went ahead. Nor do I consider that Ambrosden possesses any other particular individual element of distinctiveness with which the proposed development would materially conflict. Through detailed control, the opportunity exists to provide a development with an appropriate and fitting layout, appearance and landscaping.
52. I do not share the Council's concern that if developed in accordance with the illustrative DFP, with the likely set back of housing from Merton Road (to accommodate the SuDS, play area and the maintenance of views of St Mary's Church tower), this would be an uncharacteristic feature. It may not be a current feature of development to the south-western side of the railway line. Nonetheless, the set back of residential development behind open space is clearly an established element within Ambrosden as a whole and its replication therefore would not be an overtly alien feature.

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<sup>18</sup> CD 6.02, APP/C3105/A/13/2206998

53. The proposal includes both a vehicular and a separate pedestrian access from the site onto Merton Road, and the Council considers the site would have poor connectivity with the village. It is the case that all car, pedestrian and cycle traffic would be funnelled onto Merton Road to access the rest of the village and its facilities. There would be a need to provide improved footpath linkage from the site to the village. It is also suggested that a footpath could be provided to the south-west to link the site with the existing public right of way 295/7. This is considered further below. Through detailed design I have no reason to suppose that acceptable levels of permeability within the site itself could not be achieved. In general, I do not consider the degree of connectivity of the site represents a significant drawback of the scheme.
54. Overall, I conclude that whilst inevitably rendering localised change the proposal, subject to subsequent careful attention to layout, design, external appearance and landscaping, would not have any significant adverse impact on the character and appearance of its surroundings. Opportunity would exist to provide an acceptable, fitting and suitably mitigated development that could contribute positively to this entrance to the village. As such, it would not conflict with these relevant criteria of Policy PV2 to which particular regard should be given. Nor would there be conflict with Policies ESD 13 or ESD 15.

*b) Impact on the significance of the Church of St Mary the Virgin*

55. It is an agreed position that the Grade II\* listed church is the only heritage asset which has the potential to be impacted upon by the proposed development. The church, dating in parts from the 12<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> centuries with restoration in the 19<sup>th</sup>, is stone-built with a three-stage tower to its western end. The proposed development would have no direct effect upon the church, being separated from it by over 300m. There would be no change in the experience and appreciation of the church from within its surrounding churchyard or from within Ambrosden.
56. However, it is an agreed position between the Appellant and the Council that there would be an impact on its significance as a result of change in its setting by reason of alterations of views of its tower from the south-west. There is further agreement that the proposal would result in less than substantial harm to the church's significance; the Council considering the harm to be minor whereas the Appellant considers the degree of harm to be very minor.
57. I consider that the heritage significance of the church derives principally from the architectural and historic interest of the physical fabric of the asset and the evidential, historic and aesthetic value contained as an example of a church originating in the early medieval period.
58. The church tower provides a landmark feature within the rural landscape. The Council considers its visibility reflects the social importance of religion in times past and the manner in which local communities used a prominent church tower to mark their presence in the landscape. At present there are clear views of the tower across the grassed appeal site when viewed from Merton Road on the approach to the village. It is also seen, as already noted above, from a limited stretch of footpath 295/7 to the south-west and, more distantly, from the bridleway 295/4. Whilst the agricultural surrounds to the village have some historic associative connection with the church, these connections are no longer discernible and make only a very minor contribution to the historic, evidential and aesthetic value of the heritage asset via setting.

59. The tower is currently seen rising above and between rooftops of housing to its western side and these comprise a major element of its setting, which has changed over time. The planning permission for five dwellings to the rear of Home Farm Close would introduce an additional foreground residential element. In order to maintain views of the tower on the approach into Ambrosden the FDP suggests the setting back of residential development within the site to form a visual corridor. This would be achieved through the imposition of a condition to ensure that this was secured at the reserved matters stage. Detailed design may also allow the positioning of dwellings to maintain some views from footpath 295/7.
60. I accept that the proposal would result in a more 'channelled' view of the church tower from Merton Road and this would be across a more developed foreground. However, any change that would be wrought would relate more to impact on its landmark significance rather than the heritage significance of the asset. I consider that the proposed development would result in a very minor impact on the overall heritage significance of the church as a result in change in its setting. Having regards to the Framework, this amounts to less than substantial harm and in my judgement would be at the lowermost end of less than substantial harm. In accordance with Framework paragraph 196, where there would be less than substantial harm this should be weighed against the public benefits of a proposal. This is carried out below in the overall planning balance and conclusions.

*Third reason for refusal - whether the proposal makes adequate provision for necessary infrastructure directly arising from its development*

61. The signed s106 UU by the Appellant and landowners provides obligations to both the Council and to the County Council. Those to the Council include the provision of contributions towards: the extension / enhancement of Bicester Leisure Centre and the expansion and / or upgrade of the Whitelands Farm Sports Ground at Bicester; the improvements / expansion of the existing community facilities at Ambrosden Village Hall or towards the development of Graven Hill Community Centre; and waste and recycling bins for each dwelling. A further obligation would secure a scheme for the establishment of a Management Company Structure to be approved by the Council for the purposes of managing and maintaining the proposed open space and SuDS within the appeal site.
62. The UU secures the provision of 35% of the dwellings as affordable units through the need for the agreement of an Affordable Housing Scheme. This would include details of numbers, type, tenure, location and phasing of the housing, the arrangements for the transfer of the affordable housing to a Registered Provider, arrangements to ensure the provision is affordable for both first and subsequent occupiers, and allocation arrangements.
63. Provision is made to ensure that either a Biodiversity Offsetting Scheme is agreed and implemented or that a Biodiversity Contribution is paid. The former would be a scheme to ensure the development does not result in any biodiversity loss and would include a management plan for the provision and maintenance of offsetting measures for not less than 30 years. The latter would be towards the costs of enhancement and long-term biodiversity within the vicinity of the site.

64. Obligations to the County Council include the payment of financial contributions towards: improvement of the bus service between Oxford and Bicester, including increasing the frequency of service; capacity enhancement of the junction of Ploughley Road and the A41; the expansion of permanent capacity at the Five Acres Primary School in Ambrosden; and the costs of monitoring the Travel Plan, which is to be submitted pursuant to an attached condition, and the other obligations to the County.
65. The Council has submitted a compliance statement in respect of the obligations, which includes an appended compliance statement from the County Council. I am satisfied that the above obligations are necessary to make the development acceptable in planning terms. They are all directly related to the development, are fairly and reasonably related in scale and kind to it and are designed to mitigate the development where appropriate. The obligations therefore comply with the requirements of Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and comply with the tests set out in paragraph 56 of the Framework and advice in National Planning Practice Guidance.
66. The Council's compliance statement notes that the Council's Developer Contributions Supplementary Planning Document expects residential development to contribute towards the provision of additional health care infrastructure generated by population growth where there is insufficient existing capacity, well located to serve the development. At the inquiry local concern was expressed about the future of the currently-limited opening of the doctors' surgery in Ambrosden. However, whilst the Oxfordshire Clinical Commission Group was consulted on the application, no comments were received from it. The Council indicates that, as such, it could not justify a request for contributions towards health care infrastructure in the locality.
67. The UU also includes a contribution of £40,000 towards the cost of provision of a footpath link between the appeal site and footpath 295/7 to the south-west of the site. This is to improve the site's connectivity to the existing public rights of way network, and countryside generally, for recreational purposes given that there is no existing footpath linkage alongside Merton Road from Ambrosden.
68. The County Council considers such a contribution fulfils the CIL tests. Cherwell Council considers this not to be the case. It is concerned that there are too many uncertainties regarding its delivery (given the 400m - 500m length of connection, the possible need for third party land, and the possible need for planning permission, which might be resisted because of fears of 'urbanisation'). Whilst I acknowledge these concerns, in the context of the appeal the Council has expressed concerns generally about the appeal site's connectivity.
69. In my view, the proposed link would be a necessary element to promote walking and recreational activity for occupiers of the proposed development. It would accord with the Framework's exhortations to improve sustainable modes of transport and recreational access. As such, I have taken this obligation into account and it too fulfils the requirements of the CIL regulations.
70. Given the above, I am satisfied that the proposal makes adequate provision for the necessary infrastructure arising from its development.



*Other matters*

71. Having regards to the site's location in relation to services and facilities, there is agreement between the Appellant and the Council that it is within walking distance of local facilities in what is a sustainable settlement. However, the Council's planning witness suggests that it is not *well* located as per the relevant criterion in Policy PV2. It is my view that certain facilities are within what, for most, would be ready and reasonable walking distances of the site (post office, hairdresser's, village hall, public house, parish church), whilst others are more distant but easily cyclable.
72. Walking distance from the centre of the appeal site to the nearest bus stops on Ploughley Road (to gain access to a wider range of services, facilities and employment) would be about 800m. However, the walk is level and through a generally pleasant village environment (as opposed to a potentially busier urban one where reasonable walk distances are generally assumed to be lower) that would make use of the bus a not unrealistic option as an alternative to use of the car. The proposal includes provisions to promote sustainable travel. These include the commitment to improve the footpath which would link the development back into the village, a contribution towards bus services, the provision of a Travel Plan and electric vehicle charging infrastructure. Overall, I consider the proposal to be in general compliance with the relevant PV2 criterion.
73. Traffic and transport-related matters did not form part of the Council's reasons for refusal, other than in regard to the absence of a mechanism for securing mitigation and the encouragement of use of sustainable modes of transport. However, these issues were a concern of the Parish Council and a number of local residents who submitted representations.
74. In response to detailed criticisms made on behalf of the Parish Council, the Appellant produced a Technical Note response. The Appellant's transport consultant also attended the inquiry to answer queries and requests by the Parish Council in respect of highways matters. The County Council, as highway authority, has reviewed both the details submitted with the original application, which included a Transport Assessment, and the Technical Note response. This resulted in the conclusion of a SoCG with the Appellant in which it is agreed that all transport and highways matters have been addressed and resolved. A separate SoCG with Cherwell Council also confirms the proposal would have no adverse impact on the safe and efficient operation of the highway network, subject to suitable conditions and obligations.
75. A particular raised concern is the nature of the footpath link along Merton Road into the village. The application plans provide for the footway to be extended from the site to join that existing adjacent to No. 66 Merton Road. The existing footpath to the northern side of Merton Road is of variable quality in terms of surfacing and width. However, as a result of the relatively low pedestrian flows along it, together with those which would be generated by residents of the proposed development, this is not an issue raised by the highway authority.
76. Nonetheless, as pointed out by certain residents, and as I saw on my visits, there exists a narrowing 'pinch point' in the footway adjacent to Holly Tree Cottage caused by the presence of telegraph poles. There is concern that these present difficulties for those with mobility aids and for pedestrians with pushchairs or prams.

77. In accordance with condition No. 12 attached to the permission Ref. 13/00621/OUT<sup>19</sup>, a scheme for their removal should have been submitted to the Council and should have been implemented prior the occupation of dwellings on what is now the completed Ambrosden Court development. The Council confirmed at the inquiry that this matter was the subject of enforcement investigations. This would seem to be the likely means by which this matter could be resolved. However, a similar condition to that which was imposed on the above permission could be included on a permission for the present proposal, subject to there being no necessity for a scheme for removal if this had already occurred prior to first occupation.
78. From the detailed evidence provided and subject to the provisions of the s106 UU, and the imposition of appropriate conditions discussed below, I have no reason to conclude differently to either the Council or the local highway authority that the proposed development would be acceptable in terms of highway capacity and safety.
79. Potential flooding and drainage issues are other matters of concern that have been raised by local residents. The application was accompanied by a detailed Flood Risk Assessment. A further Technical Note on flood risk and drainage issues was produced in the context of the appeal. A SuDS drainage scheme is proposed to manage excess runoff from the development and maintain runoff to pre-development rates, with surface water attenuation provided to accommodate a 1 in 100-year event plus 40% climate change allowance. Subject to appropriate mitigation the proposed development would be at minimal risk from flooding and would not increase flood risk elsewhere. The Council has agreed in a SoCG with the Appellant that drainage matters are capable of being controlled via approval of reserved matters, by condition and / or via planning obligations. I have no reason to disagree.
80. Concerns have been raised regarding increased light pollution. The Council's Environmental Health Officer has raised no objections to the proposal. A suitable condition could require the provision of an appropriate lighting design at the reserved matters stage. This could ensure that not only is extraneous light minimised but also that it would not be harmful to the local bat population.
81. I have noted the synopsis of the survey results amongst village residents carried out by the Parish Council. However, there is no detail as to who the respondents were and to what extent they are representative of the village population. The response rate of 66 is relatively low and not indicative of widespread concern about the proposal.

*Conclusions and the planning balance*

82. In terms of the Council's housing strategy and distribution of housing growth there would be no conflict with the thrust and intent of Policy PV2. There would be some limited degree of landscape and visual impact resulting from the transformative nature of development on this edge of settlement site. However, the proposal would not cause undue visual intrusion into the open countryside, would not be inconsistent with local character, or harm the setting of Ambrosden. It would therefore not conflict with Policy ESD 13. Control that

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<sup>19</sup> CD 6.02, APP/C3105/A/13/2206998

- could be exercised at the reserved matters stage could ensure there should be no conflict with Policy ESD 15.
83. Less than substantial harm would result to the significance of the listed church of St Mary the Virgin as a result of change to its setting. This would be very minor harm given the intention to maintain a visual corridor so that the church tower would remain visible on the south-western approach to the village. Nevertheless, considerable weight and importance should be attached to harm arising to listed buildings resulting from a change in their setting in accordance with s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Having regards to paragraph 196 of the Framework, when a development would lead to less than substantial harm to the significance of a heritage asset the harm should be weighed against the public benefits of the proposal.
84. Having regards to such benefits, the Appellant points to the scheme's provision of 35% (up to 30) of the proposed dwelling units as affordable housing. This follows from the requirement of CLPP1 Policy BSC3, the Local Plan noting that that Cherwell district has a high level of need for affordable housing<sup>20</sup>. No evidence of a specific need for affordable housing in Ambrosden has been provided. Nonetheless, the need within the district should be seen within the context of a locally widening gap in the ratio of house prices to earnings.
85. Within the district the lower quartile house price is more than eleven times lower quartile annual earnings<sup>21</sup>. This is higher than for England as a whole (7.29) and greater than the South East region (10.51). The affordability ratio has increased more rapidly in the district than in Oxfordshire over the CLPP1 plan period and it is apparent that market housing is increasingly unaffordable for many. As such, even though the proposal would simply be policy-compliant in regard to the quantum of affordable housing, I give significant weight to this provision in helping to address what is clearly a district-wide need.
86. I accord moderate weight to the benefit of the market housing element of the proposal against the Government's national objective of significantly boosting the supply of homes<sup>22</sup>. More limited weight is also attached to the economic and financial benefits that would arise through construction spending and the direct and indirect job creation which could result, and the generation of household expenditure which would support the local economy.
87. Some local scepticism was expressed at the inquiry as to whether the additional residents of the proposal would contribute to sustaining the vitality of the village. However, it is my view that there would be some potential benefits arising from the support and additional spending and patronage of existing village facilities.
88. The appeal site has little present ecological value. Through the scheme's ability to provide open space and landscaping a positive contribution to biodiversity could result, as could the opportunity recognised in the Flood Risk Assessment for betterment in terms of runoff rates. I attach modest weight to these aspects.

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<sup>20</sup> Paragraph B.104

<sup>21</sup> Mortgages typically being capped at 4.5 times annual salary

<sup>22</sup> Framework paragraph 59



89. Through the s106 obligations financial contributions would be made to bus service provision, highway improvements, education and community facility provision. However, as these directly stem from the proposal itself these are neutral benefits.
90. I consider that the potential benefits of the proposal outweigh the less than substantial harm to the significance of the heritage asset of St Mary's that would result from change in its setting. There would be accord with the relevant criterion of Policy PV2 in that there would be no significant adverse impact on this heritage asset.
91. Overall, the proposal would accord with the CLPP1 and would comply with the economic, social and environmental overarching objectives of sustainable development as set out in the Framework<sup>23</sup>. For these reasons, and having considered all other matters raised, I consider the proposal to be acceptable and that the appeal should be allowed.

*Conditions*

92. The Appellant and the Council discussed draft conditions during the inquiry, culminating in an agreed set presented towards its close. I have considered these against the tests for conditions as set out in paragraph 55 of the Framework, amending where necessary for accuracy and consistency.
93. In addition to the usual conditions relating to the necessity for approval of reserved matters, and the specification of plans to which the permission relates, a condition is appropriate limiting the maximum number of dwellings to 84, for the avoidance of doubt and to ensure a satisfactory form and density of development. Also, to ensure a satisfactory form and standard of development compatible with the surroundings and one which is made secure, conditions are necessary limiting the ridge height of dwellings, the provision and implementation of a landscape management plan, and the need for an application for Secured by Design accreditation. For the same reason and as referred to above, I shall impose a condition in order to protect views across the site of the tower of St Mary's to preserve its significance as an important heritage asset.
94. In the interests of highway safety, a condition is required to ensure the access to the site is constructed before the first occupation of dwellings. I shall impose a condition requiring the submission of a scheme for the removal of telegraph poles adjacent to Holly Tree Cottage. This is to ensure the removal of the footway obstruction and improve pedestrian access. Submission of a scheme would only be required if the poles had not already been removed prior to the commencement of development. To promote sustainable travel choices the approval and subsequent operation of a Residential Travel Plan is required, as is a condition requiring that each dwelling is provided with ducting to allow for the future installation of electrical vehicle charging infrastructure.
95. A condition is necessary requiring the approval and subsequent implementation of a surface water drainage scheme, to ensure adequate drainage and sufficient capacity to accommodate the development. To ensure the protection of breeding birds a condition is required to time limit removal of trees and

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<sup>23</sup> Framework paragraph 8

hedgerows, and a condition is needed requiring the agreement of a lighting strategy to prevent light pollution and to protect bats. Similarly, to safeguard the protected species of Great Crested Newts, a condition is needed to ensure mitigation measures identified in the Appellant's Great Crested Newt Mitigation Strategy are implemented.

96. To safeguard the recording of any archaeological remains within the site I shall impose conditions requiring the agreement and subsequent implementation of an Archaeological Written Scheme of Investigation. To ensure highway safety and the protection of residential amenity, agreement of a Construction Environment and Traffic Management Plan is required. Conditions relating to studies to identify whether there are potential contaminants within the site are required to minimise risk to those involved in construction and subsequent occupiers and in light of the past infilling of pond features.
97. Additional conditions have been suggested requiring details to be provided of services and energy infrastructure and the withdrawal of permitted development rights for the provision of above-ground fuel tanks. Having regards the former, I do not consider this to be necessary as such detail is covered by other legislation. In respect of the latter, I have been provided with no evidence to suggest that the exceptional withdrawal of this permitted development right under the Town and Country Planning (General Permitted Development Order 2015 is necessary.

*Philip J Asquith*

INSPECTOR

## Schedule of Conditions

### *Reserved matters*

1. Details of the appearance, landscaping, layout, and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.
4. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following drawings:

Drawing No. CSA/3888/107 (Site Location Plan)

Drawing Number 18166-001 Rev A Access Design – Priority Junction & Emergency Access (Access Plan).

5. The number of dwellings hereby permitted shall not exceed 84.
6. No building on the site shall exceed 8.5m at ridge height, and no building at the edge of the development shall exceed 7.5 at ridge height.
7. Any reserved matters application relating to layout and / or landscaping shall maintain a visibility corridor that secures a view of the Church of St Mary the Virgin from Merton Road, in broad accordance with the illustrative Development Framework Plan Drawing No. CSA/3888/103/F.
8. As part of the reserved matters, a Landscape Management Plan, to include the timing of the implementation of the plan, long-term design objectives, management responsibilities, maintenance schedules and procedures for the replacement of failed planting for all landscaped areas, other than privately-owned domestic gardens, shall be submitted to and approved in writing by the local planning authority. Thereafter, the Landscape Management Plan shall be carried out in accordance with the approved details.

### *Highways and Travel Plan*

9. Prior to the first occupation of the development hereby permitted, the approved means of access as detailed on Drawing No. 18166-001 Rev A (Access Plan) shall be constructed and retained thereafter in accordance with the approved details and all ancillary works specified shall be undertaken. The visibility splays shall be kept permanently clear of all obstructions in excess of 0.6m in height.
10. Prior to commencement of development a scheme for the removal of the two telegraph poles from the footway outside Holly Tree Cottage shall be

submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented in full before the first occupation of any of the dwellings hereby permitted on the site. Such a scheme shall only be required if both poles have not already been removed prior to the commencement of development.

11. Prior to the occupation of the first dwelling of the development hereby permitted, a Residential Travel Plan, including a Travel Information Pack, shall be submitted to and approved in writing by the local planning authority. Thereafter, the Travel Plan shall be operated and reviewed in accordance with the approved details. The approved Travel Information Pack shall be provided to each household on first occupation of each dwelling.

*Drainage*

12. Development shall not begin until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall not be implemented other than in accordance with the approved details and shall be retained as such thereafter.

*Ecology*

13. No removal of hedgerows, trees or shrubs shall take place between 1 March and 31 August inclusive, unless the local planning authority has confirmed in writing that such works can proceed, or a recent survey (no older than one month) undertaken by a competent ecologist to assess nesting bird activity on site together with details of measures to protect the nesting bird interest on the site, has been submitted.
14. Prior to commencement of development, a lighting strategy for the publicly-accessible areas of the site, which includes details of light spill and which adheres to the Bat Conservation Trust Guidelines, shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall be carried out in accordance with the approved strategy.
15. The mitigation measures regarding Great Crested Newts identified in the Great Crested Newt Mitigation Strategy produced by FPCR, dated July 2019, shall be implemented in full prior to commencement of development, except where the timing is stated otherwise by the Great Crested Newt Mitigation Strategy, and maintained thereafter.

*Design*

16. Prior to commencement of development above slab level, an application shall be made for Secured by Design accreditation for the development hereby permitted. The development shall not be carried out other than in accordance with the approved details prior to the occupation of any dwelling hereby permitted.
17. Each dwelling shall be provided prior to its first occupation with ducting to allow for the future installation of electrical vehicle charging infrastructure to serve the dwelling.

*Archaeology*

18. Prior to commencement of development, a professional archaeological organisation acceptable to the local planning authority shall prepare an Archaeological Written Scheme of Investigation relating to the application site which shall be submitted to and approved in writing by the local planning authority.
19. Following the approval of the Written Scheme of Investigation referred to in Condition 18, and prior to the commencement of development (other than in accordance with the Written Scheme of Investigation), a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the local planning authority.

*Construction Management*

20. Prior to commencement of development, a Construction Environment and Traffic Management Plan (CEMP), which shall include details of measures to be taken to ensure construction works do not adversely affect residential properties adjacent to the site, together with details of the consultation and communication to be carried out with local residents, shall be submitted to and approved in writing by the local planning authority. The CEMP shall include a commitment to deliveries only arriving at or leaving the site between 09.30 and 16.30. The development shall be carried out in accordance with the approved CEMP.

*Potential Contamination*

21. Prior to commencement of development, a desk study and site walk-over to identify all potential contaminative uses on the site and to inform a conceptual site model, shall be carried out by a competent person in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and shall be submitted to and approved in writing by the local planning authority. No development shall take place until the local planning authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.
22. If a potential risk from contamination is identified as a result of the work carried out under Condition 21, prior to commencement of development, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors, and to inform remediation strategy proposals shall be documented as a report undertaken by a competent person. This shall be in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and shall be submitted to and approved in writing by the local planning authority. No development shall take place unless the local planning authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

23. If contamination is found by undertaking the work carried out under Condition 22, prior to the commencement of development a scheme of remediation and / or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the local planning authority. No development shall take place until the local planning authority has given its written approval of the scheme and / or monitoring required by this condition.
24. If remediation works have been identified as necessary under Condition 23, the development shall not be occupied until the remediation works have been carried out in accordance with the scheme approved under Condition 23. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the local planning authority.
25. If, during development, contamination not previously identified is found to be present at the site, no further development shall be carried out until full details of a remediation strategy detailing how the unsuspected contamination shall be dealt with has been submitted to and approved in writing by the local planning authority. Thereafter the remediation strategy shall be carried out in accordance with the approved details.

*(End of the conditions schedule)*

## APPEARANCES

### FOR THE APPELLANT

Jonathan Easton, of Counsel

instructed by Gladman  
Developments Ltd

He called

Robert Barnes BA(Hons) MA MRTPI

Director, Planning Prospects Ltd

Simon Blinkhorne BSc CMIHT

Odyssey

Evidence also provided at the round table session by:

Silke Gruner BHons CMLI

CSA Environmental

Hannah Armstrong BA(Hons) MSc IHBC ACIfA

Pegasus Group

Dr Suzanne Mansfield MCIEEM CMLI

Senior Ecology Director, FPCR  
Environment & Design Ltd

### FOR CHERWELL DISTRICT COUNCIL

Richard Langham, of Counsel

instructed by the District  
Solicitor, Cherwell District  
Council

He called

Andrew Murphy BA(Hons) MSc MRTPI

Director, Stansgate Planning  
Consultants Ltd

Evidence also provided at the round table session by:

Tim Screen BA(Hons) Dip LA CMLI AIEMA

### INTERESTED PARTIES

Maureen Cossens

Local resident

Mark Longworth

Chairman, Ambrosden Parish  
Council

Sheila Mawby

Local resident

Pam Newall

Local resident

Malcolm Cossens

Local resident

Trevor Furze

Furze Landscape Architects, on  
behalf of Ambrosden Parish  
Council

Dan Sames

Councillor, Cherwell District  
Council, Ambrosden and  
Bicester South Ward

For the round table session on obligations and conditions

Chris Nicholls

Oxfordshire County Council

Nathaniel Stock

Cherwell District Council

Tom Darlington

Cherwell District Council

**DOCUMENTS** (handed in at the inquiry)

1. Further draft Unilateral Undertaking
2. List of draft conditions
3. Complete copy of the Cherwell Local Plan 2011 – 2031
4. Appellant's opening statement
5. Council's opening statement
6. Mrs Cossens's statement
7. Schedule X: residential completions and permissions at 31/03/2019 (net)
8. Copy of the Appellant's transport response Technical Note
9. Copy of a letter from Mr Cossens, dated 18 June 2019
10. Compliance Statement in respect of planning obligations, Cherwell District Council
11. Statement of Common Ground on transport matters between the Appellant and Oxfordshire County Council
12. Copy of email dated 21 August from Simon Blinkhorne of Odyssey regarding position and qualifications
13. Copy of email from Mark Longworth regarding highway matters that Ambrosden Parish Council would wish to be taken into account should planning permission be granted
14. Updated list of draft conditions
15. Draft of suggested Condition No. 7
16. Updated draft Unilateral Undertaking and copy of Lasting power of attorney – property and financial affairs
17. Extract from a committee report on planning application 13/00344/Hybrid, land at Springfield Farm, Ambrosden
18. A3 bundle of photographs reproduced from Appendix C to Ms Gruner's proof of evidence
19. Council's closing submissions



20. Appellant's closing submissions

21. Copy of judgement; Bassetlaw District Council v Secretary of State for Housing EWHC 556 (Admin) [2019]

(Document submitted after the inquiry)

A. Signed and certified copy of a Unilateral Undertaking, dated 2 September 2019





## Appeal Decision

Hearing Held on 4 September 2019

Site visit made on 4 September 2019

**by M Allen BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 October 2019

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**Appeal Ref: APP/C3105/W/19/3222428**

**Land at Tappers Farm, Oxford Road, Bodicote OX15 4BN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Hollins Strategic Land LLP against the decision of Cherwell District Council.
  - The application Ref 18/00792/OUT, dated 4 May 2018, was refused by notice dated 31 October 2018.
  - The development proposed is an outline application (all matters reserved except for access) for the demolition of existing buildings and erection of up to 52 no. dwellings, with associated works and provision of open space.
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### Decision

1. The appeal is allowed and planning permission is granted for an outline application (all matters reserved except for access) for the demolition of existing buildings and erection of up to 46 no. dwellings, with associated works and provision of open space at Land at Tappers Farm, Oxford Road, Bodicote OX15 4BN in accordance with the terms of the application, Ref 18/00792/OUT, dated 4 May 2018, subject to the following conditions set out in the attached Schedule.

### Procedural Matters

2. The application was submitted in outline. The application form indicates that approval was sought only for the matter of access. I have determined the appeal on this basis.
3. During the course of the application, the number of units proposed was reduced from 52 dwellings as set out in the planning application form, to 46 dwellings. It was agreed at the hearing that the description should reflect this reduction in numbers, as such I have included this in the decision above.
4. The appellant submitted a draft agreement under s106 of the Town and Country Planning Act 1990 (as amended) at the hearing. At that time a number of amendments were being made and the agreement was unsigned. I agreed to allow 7 days for the submission of a signed and completed agreement, which has now been received. I have taken this agreement and the obligations therein into account when making my decision.
5. Prior to the hearing the Council highlighted that a number of the notification letters sent to interested parties did not contain the details of the date of the

hearing. At the start of the hearing I asked for the parties' views on this matter. The Council duly informed me that the correct details were sent with the notification letters and that it was only a saved office copy that lacked the details. The Council confirmed that the correct notification had therefore taken place. I was satisfied that interested parties had been notified and I proceeded with the hearing on this basis.

6. Since the close of the hearing the appellant has drawn my attention to a recent appeal decision. The Council has had the opportunity to comment on this decision. I am satisfied no prejudice has been caused and, as such, I have taken it into account when making my decision.

### **Main Issues**

7. The main issues raised in this case are:
  - i) whether the development is acceptable in principle;
  - ii) the effect of the development on the character and appearance of the area; and
  - iii) whether the scheme makes adequate contribution towards the provision of infrastructure.

### **Reasons**

#### *Principle of development*

8. The development plan for the area consists of the Cherwell Local Plan 2011 – 2031, Part 1 (the CLP 2011) and the saved policies of the Cherwell Local Plan 1996 (the CLP 1996). At the hearing, the Council agreed that only the policies referred to in the decision notice were being relied on, namely Policies Villages 2 (PV2) and ESD15 of the CLP 2011 and Policies C15 and C33 of the CLP 1996.
9. The spatial strategy as set out in the CLP 2011 directs most growth to locations within or immediately adjoining Banbury and Bicester. Growth within the remainder of the district is limited and directed towards the larger villages. It was acknowledged by the Council that the appeal scheme would not affect its overall housing strategy.
10. PV2 identifies that 750 homes will be delivered at Category A villages, of which Bodicote is one of twenty-three, as defined in Policy Villages 1 (PV1). It was highlighted at the hearing that Policy Villages 2 contains no requirements in respect of the distribution of housing across the Category A villages, as well as no timeframe or trajectory for their delivery. Both main parties agreed that the 750-figure provided in the policy is not a ceiling or limit. It is also noteworthy that the policy requires the delivery of 750 units, not just a requirement to grant planning permission for this number.
11. My attention has been drawn to a previous appeal decision in the district<sup>1</sup> in which the Inspector noted that it would require a "material exceedance" of the 750-figure in order to conclude that there would be any conflict with PV2. The Council stated that if this appeal were allowed, it would not trigger a material increase over 750 dwellings. Furthermore, the figure refers to dwellings delivered, not consented, of which according to the Council there are 271. There are also a further 425 under construction. Since March 2014, there has

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<sup>1</sup> APP/C3105/W/17/3188671, decision date 18 September 2018

- been a delivery rate of 54 dwellings per year from PV2, which would result in the delivery of 750 homes by 2028, three years before the end of the plan period (2011-2031). This however assumes that the delivery of housing will continue at this rate and that all permissions that have been granted will not only be implemented but completed.
12. The appellant has suggested that a 10% lapse rate for sites should be applied in recognition that not all sites granted planning permission will necessarily come forward. The Council disagree with this point and contend that it is likely that all sites will be delivered. Whilst I acknowledge that the delivery rate has increased in recent years, this will undoubtedly fluctuate from year to year, as evidenced by the fact that the Council state that in 2014/15 only two homes were delivered. There is also reference to the Council's Annual Monitoring Report (2018) identifying that permission for 33 dwellings had either lapsed or not been issued, suggestive of some permitted schemes not being delivered.
  13. In my view, it is not realistic to expect that all dwellings that have the benefit of planning permission will, in fact, be delivered. I acknowledge the Council's opinion that there should not be a lapse rate applied, given that when undertaking reviews of permissions they liaise directly with developers and agents, the submission of applications to discharge planning conditions can be taken as an indication of intent to implement a permission and there is a good record of delivery. However, this does not account for any circumstances where a development may not come forward. As such, I do not consider it realistic to expect a 100% delivery rate for the permitted dwellings.
  14. Even if all sites were delivered, and as I state above, I am not convinced that they will be, it is accepted by the Council that the grant of permission for an additional 46 dwellings would not lead to a material increase over the figure expected by PV2.
  15. I note that reference is made to Bodicote having been subject to permissions for a number of developments which would deliver 99 new dwellings. However, there is no reference in PV2 to any distribution of new dwellings across the twenty-three Category A villages. Furthermore, given the close proximity of Bodicote and the appeal site to Banbury, together with good accessibility to larger settlements and the services that are within Bodicote itself, the site would be one of the most accessible locations, with access to services, for new residential development, which is reflected in its categorisation in PV1 as a Category A or "Service" village.
  16. The Council also has concern that allowing the appeal scheme would restrict the potential for a more even spread of housing across all of the Category A villages. However, PV2 does not require any spatial distribution. Moreover, the development is near to one of the main settlements, Banbury, which provides for access to a good range of services and with access to a range of transport modes.
  17. The appellant has drawn my attention to a recent appeal decision<sup>2</sup> in the district which allowed up to 84 dwellings under PV2. Notwithstanding the stance taken at the hearing, the Council now consider that this permitted scheme together with the appeal scheme would result in a material increase over the 750-dwelling delivery target. However, the Council are including 31

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<sup>2</sup> APP/C3105/W/19/3228169, decision date 9 September 2019

dwellings for which there is a resolution to grant permission. Whilst this matter is noted, these are not schemes for which planning permission currently exists and until such time that a decision is issued on them, it is open to the Council to consider any subsequent change in circumstances that may occur.

18. The grant of permission for these 84 dwellings adds to the number of dwellings above 750 which have permission, but the number of dwellings that have currently been delivered falls far short of this figure (271 as referred to above). There will undoubtedly be a point where there will be a situation that will result in the material increase over the 750 dwellings figure and at that time there will be some planning harm arising from the figure being exceeded, for example harm to the overall locational strategy of new housing in the district. There is no substantive evidence before me to demonstrate that this is the case in this appeal. Clearly, when considering any subsequent schemes however, this matter will need to be carefully scrutinised.
19. However, at this time, no evidence of such harm has been presented and, in my view, the allowing of this appeal for 46 dwellings would not harm the overall strategy of the development plan which is to concentrate housing development in and around Banbury and Bicester. This is particularly so given the specific circumstances of this site, including its close proximity to Banbury.
20. The Council contended that both policies PV1 and PV2 should be considered together. However, I find nothing to suggest that this is the case, and both appear to be discrete policies against which development proposals can be assessed. In any event, it is conflict with PV2 that the Council allege, and it is this matter which I have considered. There is no mention of conflict with PV1 in the Council's reason for refusal.
21. Accordingly, I am satisfied that the scheme would not result in a material increase over the target of delivering 750 dwellings and thus the principle of development is acceptable on this site in accordance with Policy PV2 of the CLP 2011.

*Character and appearance*

22. The site lies to the northern fringe of Bodicote and currently comprises of a grassed field with a number of buildings associated with a farm shop which operates at the site, together with associated external storage, with an area of caravan storage also. The site also contains several mature trees which are the subject of a Tree Preservation Order (TPO). Access to the site is gained from the adjacent White Post Road.
23. The site is enclosed along Oxford Road to the east by hedging which contains a number of trees. This boundary effectively screens the site from the majority of views from Oxford Road. To the north, along White Post Road, the site is enclosed by a mixture of hedging and post and rail fencing. There are however clear views into the site from this road where it appears as a field surrounded by existing development, particularly the existing farm shop buildings and the school located to the east. To its southern extremity, the site borders existing residential development, comprised of two-storey dwellings.
24. The Council contend that the site comprises the last undeveloped gap which provides separation between Bodicote and Banbury and as such is an important green space preventing the coalescence of these two settlements. It was also

- stated at the hearing that when leaving Banbury and entering Bodicote, there is the feel of leaving the larger settlement and entering a village. However, in my view, this overstates the importance of the site, as a whole, as a separating feature. I observed there to be development on the other side of Oxford Road, extending northwards, which stretches beyond the appeal site. This existing development already diminishes the distinction between Bodicote and Banbury and the introduction of development on the appeal site would not materially worsen this.
25. There is an area of vegetation between the northern extremity of the site and the Bankside flyover at the southern edge of Banbury which provides a much stronger visual break between the settlements. This would be unaffected by the proposal. Moreover, the existing development that lines Oxford Road does not, in my view, result in a village feel or appearance to the area. Whilst I acknowledge that the whole of the eastern boundary of the site currently comprises hedging, it is located near to existing built development and is not reflective of a rural countryside location. Furthermore, the indicative layout submitted, shows that dwellings would be set off the eastern boundary, with the provision of a green corridor which would limit the visibility of dwellings from Oxford Road. As a consequence, the introduction of built development within the appeal site would not have an unacceptably urbanising effect.
26. The Council also refer to the area surrounding the site having a spacious and open feel. However, there is built development to the immediate south of the site, as well as to the east. This significantly limits any sense of spaciousness. Whilst a school lies to the west, with its associated playing fields, this does little to create a sense of spaciousness. I appreciate that the majority of the site is currently not covered by built development, however the proposed residential development would not be out of character with its context of nearby development.
27. Additionally, the indicative layout submitted with the application shows that proposed dwellings would not extend into the northern part of the site, which would be left open as amenity open space. This would re-enforce the visual break provided by the existing landscaping I refer to above and ensure that from viewpoints in close proximity to the site along White Post Road, an open aspect is retained to an acceptable degree, with buildings set back within the site. It would also provide a "green link" with the mature trees and landscaping to the west of the site, along Salt Way. Thus, a distinction between the two settlements would be maintained.
28. The matter of access is for determination at this stage and the submitted details show the creation of a new vehicular access to the east of the existing. Whilst it is likely that this will be a more formal and well-defined feature at this location, given the context of the site, in particular the appearance of the formal and engineered slip road onto Oxford Road and the Bankside flyover, this would not be unduly prominent or appear as a discordant element. The Council also express concern in respect of the prominence of the development in views from Sycamore Drive to the north west. However, these would not be close up views and where the development may be visible, it would be in the context of the amenity open space to the north and set back into the site. As such, I consider that any visual effect in this regard would be acceptable.



29. The mature trees within the site are the subject of a TPO and whilst there is no immediate concern over the removal of these trees, the matter of the future maintenance of the trees was raised at the hearing. In this respect, I note that the indicative layout of the site takes into account the existing trees and positions buildings around them. As such, whilst I appreciate that these details are indicative only, I have no substantive evidence before me to persuade me that the scheme would have an adverse effect on the future health of the protected trees, particularly in light of the matters of layout and landscaping being for future consideration.
30. Accordingly, I find that the scheme would not harm the character or appearance of the area and as such there would be no conflict with Policies Villages 2 and ESD15 of the CLP 2011 and Policies C15 and C22 of the CLP 1996. Together, and amongst other things, these policies seek to ensure that significant adverse landscape impacts are avoided, that new development reinforces local distinctiveness, that the coalescence of settlements is resisted and that important undeveloped gaps are preserved.

#### *Infrastructure*

31. The appellant provided a draft planning obligation by deed of agreement under section 106 of the Town and Country Planning Act 1990 (as amended), section 11 of the Local Government Act 1972 and section 1 of the Localism Act 2011. Subsequent to the hearing, the appellant has now provided a signed and completed agreement.
32. The agreement contains obligations following discussions with the Council, since the application was refused. Prior to the hearing, a table was provided outlining all of the requirements that the Council sought to be secured by way of the legal agreement. These include:
- Affordable housing
  - Open space and landscaping
  - Off-site sports and Community facilities
  - Primary medical care
  - Public transport services
  - Primary school provision
  - Refuse Disposal
  - Transportation and Highways
33. The submitted details outline the basis on which the contributions are sought, with reference to development plan policies and the adopted Developer Contributions Supplementary Planning Document (SPD) (2018). At the hearing, the appellant raised concern in respect of two of the required contributions as set out: Primary Medical Care (PMC) and Refuse Disposal (RD).
34. In respect of PMC, I note that the NHS Oxfordshire Commissioning Group highlights that North Oxfordshire, particularly the Banbury area, is mostly at capacity in terms of PMC and that housing growth will require additional or expanded infrastructure to be provided. I consider this to be reasonable, given the proximity of the site to Banbury where there is an identified shortfall in service provision. In regard to RD, the appellant initially had concerns that there was insufficient justification for a contribution in this respect, highlighting that facilities were ordinarily funded through Council Tax income. The Council clarified that the contribution would be towards bin provision for new dwellings, which is not funded by Council Tax. Following this, the appellant was satisfied



that the RD contribution was justified based on the SPD. I have no reason to disagree.

35. Having reviewed the details of the contributions, they are necessary to make the development acceptable in planning terms, directly related to the development as well as fairly and reasonably related in scale and kind to the development.
36. Accordingly, the scheme would comply with Policies INF1, BSC3, BSC7, BSC10, BSC11, BSC12 and SLE4 of the CLP 2011. Together, and amongst other things, the policies seek to ensure development provides a proportion of affordable housing, that education needs are met, that schemes make adequate open space, outdoor sport, recreation and community facility provision, that infrastructure is provided to meet the District's growth and that the transport impacts of development are mitigated.

### **Other Matters**

37. Interested parties have raised concerns in respect of the effect of the development on wildlife in the area, as well as on highway safety, in particular the effect of additional traffic and potential conflict with traffic in association with the adjacent school. However, I note that the Council do not object to the proposal on the basis of these matters. Furthermore, I have no substantive evidence to show that there would be any detriment in respect of these matters. As such, they have little bearing on my decision.
38. There has also been concern in respect of the effect on infrastructure in the area. The contributions secured by the legal agreement are intended to mitigate the effects of the proposal on such matters and as such the scheme would not result in any harm in this regard.
39. I note that concern has been expressed by interested parties in respect of the proximity of proposed dwellings to existing ones. However, the matter of the layout of the site is for later determination. There is also reference to the loss of the existing farm shop, as well as the use of the grassed area for events. The Council have raised no objection on this basis and in the absence of a policy basis for protecting these existing uses I find that I have no reason to find differently.
40. There was reference to the ability of the Council to demonstrate a three and five-year supply of deliverable housing sites. As I have found above that the scheme accords with an up-to-date development plan, this is not a matter which I need to consider further.

### **Conditions**

41. A list of draft conditions was provided prior to the hearing and as set out in the Statement of Common Ground; these were agreed by both main parties. Nonetheless, there was a discussion on these suggested conditions at the hearing. I have considered the conditions in light of the advice of the Planning Practice Guidance and the six tests.
42. I have imposed standard conditions relating to the submission and timing of reserved matter applications and the commencement of development. A condition is also required to ensure compliance with the submitted plans, but only in respect of access, as this is not a reserved matter.

43. Given the proximity of the site to Oxford Road, I have imposed a condition requiring details of measures to ensure that the living conditions of residents will not be adversely impacted on by noise. A condition is also imposed in respect of biodiversity enhancements, as required by Policy ESD10 of the CLP2011, as well as requiring that the development incorporate the recommendations of the Habitat Survey Report. In order to protect retained trees a condition in respect of an Arboricultural Method Statement is required.
44. In order to ensure the development does not adversely affect the natural environment and or the living conditions of nearby residents, I have included a condition requiring the submission of a Construction Environmental Management Plan. In order to ensure that any contamination of the site is satisfactorily dealt with, conditions are required in respect of site investigation and any necessary remediation, together with measures to deal with unsuspected contamination.
45. I have included a condition in respect of the construction details of the vehicular access, in the interests of highway safety. Similarly, a condition is required stopping up the existing vehicular access. In order to ensure the potential for buried remains within the site is properly addressed a condition is included requiring a written scheme of archaeological investigation. So that there is no conflict between residential properties and the existing farm shop, a condition is included requiring the demolition of all existing buildings prior to the occupation of any dwelling.
46. In the interests of sustainable transport and to ensure the site is accessible by a range of transport modes, conditions are included requiring travel plan statements and travel information packs to be provided to occupiers, as well as ducting to allow for the installation of electric charging points. I have also included a condition preventing occupation of any dwelling until necessary upgrades to the wastewater, surface water and water supply infrastructure have been completed. To facilitate communications infrastructure, a condition is necessary in respect of high-speed broadband facilities.
47. In the interests of biodiversity, I have imposed a condition requiring full details of external lighting to be submitted with the reserved matters application in respect of layout. Also, in this regard I have included a condition preventing site clearance or demolition of buildings during the bird nesting season.
48. A condition is recommended in respect of the reserved matters reflecting the principles set out in the submitted parameters plan, landscape strategy plan and indicative species list. However, only the matter of access is for determination at this stage and it has not been evidenced that the illustrative details submitted would be the only satisfactory way to develop the site. As such, I do not consider this condition is necessary.
49. To safeguard landscaping that contributes to biodiversity, a condition is recommended requiring a landscape and ecological management plan. However, as landscaping is a reserved matter it is not necessary to impose such a condition at this stage. Similarly, it is not necessary to impose a condition securing the implementation of landscaping or the retention of trees and hedgerows, as these are matters that should properly be dealt with under future reserved matters.

50. Conditions have been recommended in respect of the construction of internal roads and footways, vehicular parking areas and manoeuvring areas and provision of cycle parking facilities. Whilst access is for determination at this stage, this refers only to the means of access to the site. As such, these matters can be dealt with satisfactorily under a subsequent reserved matters application in respect of layout.

### **Conclusion**

51. I have found that the scheme would not result in a material increase over the target of delivering 750 dwellings and therefore would not conflict with Policy PV2 of the CLP 2011. I have also found that the scheme would not result in harm to the character and appearance of the area. Furthermore, a completed legal agreement has been submitted securing the necessary contributions. The scheme therefore complies with the development plan.

52. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

*Martin Allen*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Sarah Reid, of Counsel

instructed by Hollins Strategic Land  
LLP

Stephen Harries BSc (Hons), MRTPI

Director, Emery Planning

Nigel Evers, CMLI

Director, Viridian Landscape Planning

### FOR CHERWELL DISTRICT COUNCIL:

Linda Griffiths

Principal Planning Officer, Cherwell  
District Council

Yuen Wong

Principal Planning Policy Officer,  
Cherwell District Council

### INTERESTED PERSONS:

Cllr Mrs Heath

Councillor, Cherwell District Council,  
Adderbury, Bloxham and Bodicote  
Ward

Zzazz Foreman

Bodicote Parish Council

Eileen Meadows

Local Resident

Matthew Case

Oxfordshire County Council

## DOCUMENTS

- 1 Draft Section 106 Planning Agreement
- 2 Drawing Number IL1002 Rev C – Parameters Plan Final
- 3 Letter from Bovis Homes dated 29<sup>th</sup> August 2019
- 4 Letter from Emanuel Land & Real Estate dated 18<sup>th</sup> June 2018
- 5 Letter from the Land Team UK dated 6<sup>th</sup> June 2018
- 6 Extract of appellants closing submissions made at Inquiry in respect of Appeal ref APP/C3105/W/17/3188671
- 7 Addendum to CIL table

## Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall commence not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Drawing number 1608/01 (Proposed Site Access Arrangements White Post Road), dated April 2018.
- 5) The first reserved matters application shall be accompanied by a specialist acoustic consultant's report demonstrating that internal noise levels in habitable rooms within the dwellings and external noise levels for outdoor areas (including domestic gardens and recreation areas) will not exceed the criteria specified in the British Standard BS8233:2014 'Guidance on sound insulation and noise reduction for buildings'. Where mitigation measures are required in order to achieve these standards, full details, to include any acoustic barriers, planting, glazing and ventilation requirements as necessary, shall also be included. The approved mitigation measures shall be implemented prior to the first occupation of the affected dwellings and the first use of the outdoor areas. The measures shall be retained as approved at all times.
- 6) The first reserved matters application shall be accompanied by a method statement for protecting and enhancing biodiversity on the site, to include all details of proposed bat and bird boxes and all integrated features within buildings, together with timings for their installation. The method statement shall also include details in respect of the implementation of the recommendations as set out in Section 6 – Conclusions and Recommendations of the "Extended Phase 1 Habitat Survey Report", prepared by REC, dated April 2018. The biodiversity protection and enhancement measures shall be carried out and retained in accordance with the approved details.
- 7) As part of the reserved matters application in respect of layout, a surface water drainage scheme for the site shall be submitted. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development. The scheme shall also include:
  - Discharge Rates
  - Discharge Volumes
  - SUDS (Sustainable Drainage Systems) (the suds features mentioned within Section 5.3 of the Flood Risk Assessment)
  - Maintenance and management of SUDs
  - Infiltration tests to be undertaken in accordance with BRE365 – Soakaway Design
  - Detailed drainage layout with pipe numbers
  - Network drainage calculations

- Phasing plans
- Flood routes in exceedance (to include provision of a flood exceedance route plan).

The scheme shall be implemented in accordance with the approved details.

- 8) The reserved matters application in respect of layout shall include full details of all external lighting, including predicted lux levels and light spill and details showing that lighting avoids vegetation and site boundaries. The lighting shall at all times accord with the approved details.
- 9) No development, other than demolition, shall commence before an Arboricultural Method Statement (AMS) has been submitted to and approved in writing by the Local Planning Authority. The AMS shall include protective fencing specifications and details of construction methods close to retained trees and hedges; and shall be undertaken in accordance with BS: 5837:2012 (including all subsequent revisions). Thereafter, the development shall at all times be carried out in accordance with the approved AMS.
- 10) No development shall take place, including any works of demolition, until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by the local planning authority. The CEMP shall include details of:
- i) Construction traffic management measures;
  - ii) Measures to ensure construction works do not adversely affect biodiversity and protect habitats and species of biodiversity importance;
  - iii) Measures to ensure construction works do not adversely affect nearby residential properties, including any details of consultation and communication with local residents.

The approved CEMP shall be adhered to throughout the construction period for the development.

- 11) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
- i) a survey of the extent, scale and nature of contamination;
  - ii) the potential risks to:
    - human health;
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
    - adjoining land;
    - ground waters and surface waters;
    - ecological systems; and
    - archaeological sites and ancient monuments.

- 12) No development shall take place where (following the risk assessment required by Condition 10) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 13) No development shall take place, other than demolition, before full details of the means of access between the land and the highway, including layout, construction, materials, surfacing, drainage and vision splays have been submitted to and approved in writing by the local planning authority. The means of access shall be completed in accordance with the approved details prior to the occupation of any dwelling and thereafter retained as approved.
- 14) No development shall take place until a Written Scheme of Archaeological Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include
  - i) the programme and methodology of site investigation and recording;
  - ii) the programme for post investigation assessment;
  - iii) the provision to be made for analysis of the site investigation and recording;
  - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
  - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 15) Prior to the occupation of any dwelling hereby approved, all existing buildings as shown on Drawing Number S18-225 (Topographical Land Survey) shall be demolished and the resultant debris and materials removed from the site.
- 16) No dwelling shall be occupied before a Travel Plan Statement and Travel Information Pack have been submitted to and approved in writing by the local planning authority. The approved documents shall be provided to each dwelling on its first occupation.
- 17) No dwelling shall be occupied until a system of ducting to allow for future installation of electrical vehicles charging infrastructure has been provided to serve that dwelling.



- 18) No dwelling shall be occupied until written confirmation has been provided that either:
- i) all wastewater network, surface water network and water network upgrades required to accommodate the development have been completed, or
  - ii) a housing and infrastructure phasing plan has been submitted to and approved in writing by the local planning authority, allowing properties to be occupied on a phased basis.

Where a housing and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the approved details.

- 19) No dwellings shall be occupied until it has been provided with service connections capable of supporting the provision of high-speed broadband to serve that dwelling.
- 20) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 21) Prior to the first use of the access hereby approved, the existing access onto White Post Road shall be permanently stopped up by means of the installation of a verge and full-height kerb and shall not be used for any vehicular traffic whatsoever.
- 22) Any vegetation clearance and all works to demolish existing buildings shall take place outside of the bird nesting period (1 March to 31 August inclusive), unless a check for breeding birds has been undertaken by a suitably qualified surveyor within 24 hours of work commencing. If a nest (or a nest in construction) is found, a stand-off area should be maintained until the young have fledged.







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## Appeal Decision

Hearing Held on 29 October 2019

Site visit made on 29 October 2019

**by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)**

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

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**Appeal Ref: APP/C3105/W/19/3233293**

**Land to the West of Northampton Road, Weston-on-the-Green OX25 3RQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Greystoke Land Limited against the decision of Cherwell District Council.
  - The application Ref 19/00596/OUT, dated 14 March 2019, was refused by notice dated 21 June 2019.
  - The development proposed is described as for residential development of up to 18 dwellings with associated access, internal roads, car parking, public open space, landscaping, drainage and other associated infrastructure.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. During the course of the appeal, the Appellant sought to make an amendment to the proposed development with the intention that the amended proposal be considered and determined on the basis of 100% affordable housing provision. At the Hearing the main parties were given the opportunity to provide final verbal submissions in respect of the proposed amendment.
3. In deciding whether to accept the proposed amendment to the appeal scheme, I am mindful of the principles of *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37] and the guidance contained within the *Planning Appeals: Procedural Guide*. In this instance I have concluded that, by reason of the nature of the proposed amendment, the amended proposal would be so changed, that to make my decision on that basis would deprive those who should have been consulted the opportunity of such consultation. Consequently, this appeal has been determined on the basis of the original application and submissions.
4. Following the submission of the planning application and appeal in relation to this matter, the Weston-on-the-Green Neighbourhood Plan (the WNP) has been submitted for, and has progressed through, the examination process. I have considered the Report of the Examination as provided within the appeal submissions and, by reason of its advanced stage, I have given substantial weight to the WNP in the determination of this appeal.
5. Outline planning permission is sought with all matters reserved. The details submitted with the application include reference to layout. Whilst not formally part of the scheme and provided for illustrative purposes, I have nevertheless

treated these details as a useful guide as to how the site might be developed. I have determined the appeal on this basis.

6. At the Hearing, the Council confirmed that it has withdrawn its objections in relation to the effect of the proposed development on the existing drainage network and the potential for flooding in the surrounding area. The Appellant has been made aware of this change to the reasons for refusal and has had the opportunity to comment. However, at the Hearing interested parties raised further concerns regarding the potential for flooding and, consequently, whilst I have not considered this matter to form part of the main issues in this appeal, I will return to this subject within the Other Matters section provided below.

## **Main Issues**

7. The main issues in this appeal are:

- Whether the proposal would constitute an appropriate form of development with particular regard to the provisions of local and national policy in respect of the location of the development and the effect of the proposal on the character and appearance of the surrounding area;
- Whether the proposed development is in a suitable location for housing with particular reference to the accessibility of services and facilities; and,
- Whether the proposed development makes adequate provision for any additional need for infrastructure, services and facilities arising from the development.

## **Reasons**

### *Principle of development*

8. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise. In this instance, the development plan comprises the Cherwell Local Plan 2011-2031 Part 1<sup>1</sup> (the CLPP1) and the saved policies of the Cherwell Local Plan (1996) (the CLP).
9. Policy Villages 1 of the CLPP1 confirms that Weston-on-the-Green is a Category A village. Whilst I acknowledge the Council's comments regarding the variety of sizes and populations for Category A villages within the District, in the context of the development plan, Category A villages are considered to be the most sustainable rural settlements in the district.
10. Policy Villages 2 of the CLPP1 concerns the distribution of growth across rural areas within the district and provides that "a total of 750 homes will be delivered at Category A villages", in addition to rural allowance for small site windfalls and planning permissions for ten or more dwellings as at 31 March 2014. This policy further confirms that sites will be identified through the preparation of the Local Plan Part 2, through the preparation of Neighbourhood Plans where applicable and through the determination of planning permission applications.

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<sup>1</sup> Adopted July 2015

11. It is agreed between the main parties that the 750 homes figure provided under Policy Villages 2 of the CLPP1, is not a cap or ceiling and therefore does not represent a maximum number of homes to be delivered. It has been put to me by the Council that, as of the date of the Hearing, planning permission for a total of 750 homes have been granted since April 2014 under the provisions of Policy Villages 2 of the CLPP1 and that approximately 271 homes have been completed.
12. As such, the Council contends that if planning permission were to be granted then the 750 homes figure for dwellings at Category A Villages would be exceeded well in advance of the end of the plan period. The Council maintains that by exceeding this figure, the proposed development would undermine the District's aim to focus growth at the larger settlements of Banbury and Bicester, and would make it more difficult for other Category A Villages within the District to meet their potential housing needs later on during the plan period.
13. The main parties have cited a number of previous appeal decisions in support of their submissions, which include a previous appeal decision which relates to this appeal site<sup>2</sup> (the previous appeal decision). In this regard, several of the referenced appeal decisions concerned development proposals where the 750 homes figure had not been exceeded. However, the recent decision in relation to a site located at Ambrosden<sup>3</sup> (the Ambrosden Appeal) concerned development where, as in this present case, it was shown that the number of homes delivered during the relevant period, in combination with planning permissions that had been granted, had reached the 750 homes figure.
14. In this regard, whilst I acknowledge the Council's submissions in relation to this proposal, I concur with the Inspector's findings in the Ambrosden Appeal in that such proposals will not harm the strategy of concentrating development in Bicester and Banbury and, furthermore, that development at Category A Villages which exceeds the 750 homes figure need not place any undue constraint on other villages to meet any specific or identified housing needs, as other policies contained within the development plan, for example Policy Villages 1 and Policy Villages 3 of the CLPP1, would be relevant considerations to cater for any such needs.
15. Indeed, as noted above, the WNP is at an advanced stage and recognises that additional housing, and specifically affordable housing, is needed in Weston-on-the-Green. Whilst there is disagreement between the main parties regarding the total number of houses that will now be required to meet the aims and objectives of the WNP and further disagreement regarding the availability of alternative suitable sites within the village to meet any such needs, it is clear that in order to meet these objectives it will necessitate exceeding the already reached goal of providing 750 homes in Category A Villages within the District.
16. In summary of the above, I consider the proposed scheme would not necessarily undermine the District's housing strategy nor place any undue constraint on other villages to meet any specific or identified housing needs during the relevant plan period. Furthermore, I acknowledge that the scheme

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<sup>2</sup> Appeal Reference: APP/C3105/W/16/3158925

<sup>3</sup> Appeal Reference: APP/C3105/W/19/3228169

would provide some affordable housing units which would assist in meeting the objectives of the WNP.

17. However, I accept that notwithstanding the above finding, other forms of harm may arise for example in respect of the effect of the scheme on the character and appearance of the surrounding area or in respect of the location of the site with regards to access to services and facilities. These are matters which I shall now turn to as below.

*Character and appearance*

18. The appeal site comprises part of a substantial and relatively flat parcel of open land which has been divided into a number of separate paddocks. The site is located outside of the village and adjacent to land which has been granted permission for a scheme of up to twenty dwellings<sup>4</sup>.
19. I acknowledge that existing hedgerows and vegetation would partially screen the site from views from the surrounding locality and, consistent with the findings of the Inspector in the previous appeal decision, I acknowledge the conclusions of the Landscape and Visual Impact Appraisal that the effect on the wider landscape would be limited.
20. However, and notwithstanding the above, whilst the proposed scheme would reduce the total number of dwellings to be provided at this site when compared to the scheme considered under the previous appeal decision, the appeal proposal would still alter the agricultural appearance of the site to that of a domestic residential one and, consequently, would have an urbanising effect on this countryside location. As stated by the Appellant, the proposal would create a new settlement edge and, consequently, the scheme would appear as an encroachment into the open countryside. In my view, this would represent an undue visual intrusion into the open countryside and would thereby detract from the rural character of the surrounding area.
21. Further to the above, the proposed scheme would appear as a modern estate which would not reflect the mixture of older and newer housing that can be found throughout Weston-on-the-Green and, consequently, the proposed scheme would be harmful to the character and setting of this village.
22. For the above reasons, the proposed development would conflict with Policies Villages 2, ESD13 and ESD15 of the CLPP1 which, amongst other matters, seek to ensure that development contributes positively to the character of the area and does not cause an undue visual intrusion into the open countryside. Furthermore, the proposal would not accord with those parts of the National Planning Policy Framework (the NPPF) which seek to protect the countryside from inappropriate development. Saved Policy C28 of the CLP concerns layout, design and external appearance and as the planning application is in outline with all matters reserved, no assessment of the proposal in light of this policy is required.

*Access to services and facilities*

23. As highlighted by the Inspector in relation to the previous appeal decision, Weston-on-the-Green contains a basic core of services which includes access to

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<sup>4</sup> Council Reference: 13/01796/OUT

- a Post Office, a general store, public houses, a church and village hall. The appeal site would be within reasonable walking distance of these facilities for most people and, whilst I acknowledge the concerns of interested parties with regards to the safety of pedestrians entering the centre of the village along the B340 road, I am satisfied that the provision of the proposed footpath would be sufficient to allow for safe access to the village.
24. However, as noted by the Inspector in the previous appeal decision at this site, while there would be access to some basic core services and facilities within Weston-on-the-Green, these services are limited and consequently potential future residents would have to travel further afield to access facilities which are likely to be required on a day to day basis, for example schooling, healthcare, shopping and leisure.
25. The Appellant has put it to me that access to a wider range of services could be achieved other than by means of private motor vehicle. In this regard, the Appellant maintains that children would have access to free transport to the nearest available schools and that there are alternative community services, such as the Oxfordshire Comet bookable transport service, which would provide choice for future residents.
26. However, I would again concur with the findings of the Inspector in the previous appeal decision, in that as residents would have no real choice of transport other than by private vehicle or community transport this would bring into question the sustainability of the village and the proposed development itself. This position would not be changed by the introduction of additional train services from Oxford Parkway station into Oxford.
27. Furthermore, whilst I acknowledge the proposed contribution towards new bus services and acknowledge the Appellant's submissions regarding the need to provide housing in order to maintain a suitable level of local employees with respect to employment opportunities within Weston-on-the-Green, the evidence before me indicates that the financial contribution would be insufficient to secure the long term viability of any new bus service. Additionally, there is no evidence before me which demonstrates that there are insufficient potential employees currently residing within the village to meet the needs of local businesses.
28. In my view, it is therefore likely that future occupants of the proposed scheme would be reliant on private motor vehicles in order to access day to day services such as schools, medical facilities or wider transport links. Whilst dependence on private vehicles may be expected in rural locations, the proposal would only exacerbate this level of reliance. It would contribute to a pattern of development that would be likely to cause environmental harm as a result of increased car journeys and hence carbon emissions.
29. For the above reasons, the proposed development would conflict with Policies Villages 2, ESD1 and SLE4 of the CLPP1 and would not accord with those provisions of the NPPF which, amongst other things, requires that development should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling.

*Planning Obligations*

30. At the Hearing, the Appellant confirmed that it was their intention to provide deeds pursuant to Section 106 of the Town and Country Planning Act 1990 which would secure any planning obligations that were necessary to make the appeal proposal acceptable in planning terms. It was put to me that the details of such obligations had been agreed in principle with the Council and that the relevant deeds were in the process of being executed. Consequently, it was agreed that further time would be provided in order that the said obligations could be completed. However, at the date upon which this appeal has been determined, no such completed obligations have been provided.
31. Paragraph 56 of the NPPF explains that planning obligations must only be sought where they meet all of the following tests as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations (CIL Regs) 2010, as amended: a) necessary to make the development acceptable in planning terms; b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.
32. Policies BSC10 and BSC11 of the CLPP1 require the provision of open space to support new housing growth in accordance with Table 7: Local Standards of Provision. Policy BSC3 of the CLPP1 requires the provision of 35% Affordable Housing as part of the proposed development. The Developer Contributions SPD (2018) requires financial contributions towards provision of refuse/recycling bins for the development, as well as contributions towards improvements to off-site sports facilities and new community facilities or the improvement of any such existing facilities.
33. Policy INF1 of the CLPP1 provides that development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities. The evidence before me indicates and confirms that financial contributions towards education provision, specifically in relation to the expansion of Chesterton Primary School are required in respect of the appeal scheme.
34. On the basis of the evidence submitted in relation to this appeal, I am satisfied that it has been demonstrated that the above contributions are reasonable and necessary. As noted above, no legal agreement has been submitted as part of this appeal and, consequently, in the absence of any legal agreements which secure the above requirements, the proposal would conflict with Policies BSC3, BSC10, BSC11 and INF1 of the CLPP1. Furthermore, the appeal scheme would not accord with the provisions of the NPPF.

**Other Matters**

35. Interested parties raise several additional objections to the proposal including the effect of the proposal on highway safety, residential amenity, ecology and, as noted above, in relation to its effect on drainage and flood risk. These are important matters and I have considered all the evidence before me. However, given my findings in relation to the main issues, these are not matters which have been critical to my decision and consequently require no further consideration or assessment in relation to this appeal.



## Planning Balance

36. The NPPF provides that the concept of sustainable development comprises three mutually dependent dimensions – being the economic, social and environmental elements of the proposal. Paragraph 11 of the NPPF confirms that proposed development that accords with an up to date development plan should be approved without delay. In this respect, the evidence before me indicates that the development plan is up to date and it is agreed that the Council can currently demonstrate a five year supply of deliverable housing sites.
37. However, the proposal would provide social benefits in terms of contribution towards housing supply, comprising a mixture of housing types including affordable housing. I acknowledge that the provision of such housing may result in the improvement of living conditions for those, especially children, who currently reside in unsatisfactory housing and consequently I attach substantial weight to these benefits in the determination of this appeal.
38. The appeal scheme would further provide economic benefits in terms of employment opportunities during the construction phase and I accept that housing at this location may help maintain the vitality of Weston-on-the-Green and other nearby settlements. I attach moderate weight to these considerations in the determination of this appeal.
39. It has been further put to me by the Appellant that the appeal scheme would provide benefits in terms of financial contributions towards a new bus service. However, for the reasons given above, there is doubt as to whether the level of financial contribution towards a new bus service would be sufficient to ensure its long term viability and, consequently, I attached very limited weight to this consideration in the determination of this appeal.
40. In terms of environmental benefits, I accept that additional planting and landscaping may result in biodiversity enhancement, but I attach only limited weight to this consideration in the determination of this appeal by reason of the scale of the development.
41. Set against the potential benefits of the appeal scheme as described above, the development plan conflict in relation to the effect of the proposal on the character and appearance of the area and the setting of Weston-on-the-Green, and the conflict in relation to the appeal site's location with regards to access to services and facilities by means other than by private motor vehicle, weighs significantly against the proposal. Furthermore, I recognise that the WNP provides that twenty additional houses are sufficient at present, and that as the proposal would be for housing in excess of this, the appeal scheme would not accord with the aims and objectives of the WNP.
42. Whilst I acknowledge the suggestion by the Appellant that the Planning Obligation could be secured by means of a Grampian condition, most of the contributions secured by such documents would carry neutral weight in the planning balance as they are designed to make the development acceptable. The proposal would secure affordable housing which would have positive weight. However, this would still not be of sufficient weight to outweigh the harm identified above. Accordingly, I find that, in the event that planning obligations were secured, this would not alter the outcome of this decision in the overall planning balance.



43. In summary of the above, the proposal's conflict with the development plan when taken as a whole, and the environmental harm that would arise due to the likely reliance of future residents on use of private vehicles, weighs significantly against the appeal scheme. For the reasons given, I conclude that the potential benefits described above, either individually or in combination, would not outweigh the harm identified in relation to the development plan conflict. Consequently, the appeal scheme would not accord with the aims and objectives of the NPPF with regards to sustainable development.

**Conclusion**

44. For the reasons given above, I conclude that the appeal should be dismissed.

*A Spencer-Peet*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT**

A Crean	Greystoke Land Limited
D Hutchison	Pegasus Planning Group Limited

### **FOR THE LOCAL AUTHORITY**

N Stock	Cherwell District Council
M Chadwick	Cherwell District Council
T Plant	Cherwell District Council
C Cherry	Cherwell District Council

### **INTERESTED PERSONS**

1. D Bohm
2. E Bohm
3. R Oliver
4. L Ricketts

### **DOCUMENTS SUBMITTED AT HEARING**

1. Letters of Notification dated 8 October 2019.
2. Draft Statement of Common Ground with Appendices dated 18 October 2019.
3. Local Planning Authority's Revised Suggested Draft Conditions Document.
4. Appellant's Draft Conditions Document
5. Copy of Planning Inspectorate Appeal Decision Reference: APP/C3105/W/19/3228169.
6. Report of the Examination into the Weston-on-the-Green Neighbourhood Plan 2018-2031 with copy Cherwell District Council Executive Consideration of the Examiner's Report for the Weston-on-the-Green Neighbourhood Plan.





## Appeal Decision

Site visit made on 25 September 2019

by **Stephen Wilkinson BA BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 December 2019

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**Appeal Ref: APP/C3105/W/19/3229631**

**OS Parcel 4300 North of Shortlands and South of High Rock, Hook Norton Road, Sibford Ferris, Oxfordshire OX15 5QW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Land and Partners against the decision of Cherwell District Council.
  - The application Ref 18/1894/OUT, dated 29 October 2018, was refused by notice dated 30 April 2019.
  - The development proposed is outline planning permission with all matters reserved for up to 25 dwellings, associated open space, parking and sustainable drainage.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 5 November 2019.

### Decision

1. The appeal is allowed and outline planning permission with all matters reserved for up to 25 dwellings, associated open space and sustainable drainage is granted at OS Parcel 4300 north of Shortlands and south of High Rock, Hook Norton Road, Sibford Ferris, Oxfordshire, OX15 5QW in accordance with the terms of the application, Ref 18/1894/OUT, dated 29 October 2018, subject to the conditions included in the schedule attached to this letter.

### Procedural Matters

2. The application has been submitted in outline with all matters reserved and this is the basis on which I considered this appeal. At the start of the Hearing I sought clarification over the proposed 'parameter plan' as two different revisions had been included for my consideration. I accepted the revised plan no. 6426/ASP3/PP Rev D which included a typographical change to the legend and my decision has been made on this basis.
3. A draft agreement made under Section 106 of the Town and Country Planning Act 1990, as amended, agreed by all parties was presented to me during the Hearing. This has been completed and informs my conclusion on the third main issue identified below.
4. In the week following the Hearing the Government issued a National Design Guide. I wrote to the parties seeking their views on whether this Guidance had any bearing on their cases and my findings have taken on board their views.

## **Main Issues**

5. There are three main issues in this Appeal which I define as follows:
- Whether the proposals comply with the housing policies of the development plan
  - The effect of the proposals on the character and appearance of the settlement of Sibford Ferris and the surrounding area, and
  - Whether the proposals include adequate provision for the necessary infrastructure directly required by this development.

## **The appeal site**

6. The appeal site forms part of an arable field, classified as Grade 2, with a site area of about 3.7ha located on the southern edge of Sibford Ferris on the western side of Hook Norton Road. The site slopes down by approximately 10m to Woodway Road, a single track road which forms its western boundary. The site affords good views to the west of the Cotswolds Area of Outstanding Natural Beauty which lies approximately 1.5km away. The appeal site has hedges along each boundary apart from its southern side which is open to the remainder of the arable field.
7. Sibford Ferris is separated from its nearest settlements of Sibford Gower and Burdrop by approximately half a mile across the steep valley of the River Sib. For this appeal I will refer to these settlements, collectively, as the 'Sibfords'. Together they have a population of approximately 1,000 residents. The valley sides are characterised by small wooded copses and paddocks laced with footpaths. The Sibfords have a range of services which include, doctors surgery, primary school, public house, food shop and post office. Sibford School, a private school lies opposite the site on Hook Norton Road. Limited bus services connect the Sibfords to Banbury and Stratford.

## **Reasons**

### *Policy background*

8. The development plan comprises the Cherwell Local Plan 2011-31, Part 1 (2015) (CLPP1) and 'saved' policies Cherwell Local Plan (1996). The Policies cascade from principles of sustainable development included in Policy ESD1 in line with the National Planning Policy Framework (2019) and seek to distribute growth to the most sustainable locations to ensure that amongst other matters, dependence on private transport is reduced.
9. Accordingly, the CLPP1 requires that the district wide housing target of 22,840 is delivered in the main centres of Bicester and Banbury. Outside these two centres the plan allocates 2,350 houses with 1,600 houses proposed for the former RAF base at Upper Heyford. The plan recognises the importance of sustaining rural villages and through Policy Villages 1 (PV1) defines categories of village by criteria which include their population, services/facilities, and accessibility. The focus of this policy is to 'manage' small scale development proposals which come forward within the built up limits of each village through minor development, infilling or conversions.
10. Policy Villages 2 (PV2) provides a rural allocation of sites of 10 or more dwellings at the Category A villages. This policy identifies that 750 houses will

be delivered at Category A villages; this would be in addition to the 'rural allowance' of small site windfalls and planning permissions that existed at 31<sup>st</sup> March 2014. Underpinning this policy is a recognition of the need to deliver housing growth evenly across the whole District at the larger villages. A range of criteria to guide new development in Category A villages is identified in policy PV2 covering matters such as the environmental qualities of sites, agricultural value, access to services and landscape impacts.

11. At the time of adoption of the CLPP1 the Council anticipated that it would prepare a CLP Part 2 which would have identified housing sites which would have informed policy PV2. This part of the Plan has not progressed because of the inception of the 'growth deal' for Oxfordshire.

*Whether the proposal would be in accordance with the housing policies of the development plan*

12. There are two issues underpinning the application of adopted policy to this site with the first concerning the total of 750 homes to be delivered at the Category A villages and the second on whether the proposed scheme accords with other housing policies.
13. The Council acknowledges that the 750 housing figure is not a target. A point reinforced by my colleague Inspectors in recent appeal decisions. However, it should be regarded as a benchmark to govern future decisions on applications for housing development otherwise the integrity of the plan would be undermined. The Council can identify 5.2 years housing land supply in excess of the requirement for just 3 years required for the Oxfordshire Districts. Furthermore, it can demonstrate that 168 houses have been delivered against the PV2 target of 750 houses despite the Plan being only 4 years through its 16 years 'life'. The Council's statement identifies that across the District 7,455 houses were completed of which 2,765 are in the rest of the District and a further 6,715 houses are committed of which 1,129 are in the rest of the District.
14. The Council identifies that by 31<sup>st</sup> March 2019 planning permissions had been granted for over 750 houses on 18 large sites and to date 271 units had been built out on these sites in line with policy PV2. However, none of these have been permitted within the Sibfords. Evidence provided through the Annual Monitoring Report (AMR) acknowledges the accelerating rate of delivery since 2015 and the Council anticipate that the 750 homes will be built out by 2028.
15. During the Hearing both parties made references to a large number of appeal decisions involving similar housing schemes throughout the District. Underpinning many of these decisions is the issue of 'material exceedance', a term used to describe the extent to which decisions to allow development above the figure of 750 houses for the Category A villages would erode the basis of the CLPP1. Whilst I do not have all the evidence before me regarding each of these appeal decisions there was discussion during the Hearing of a recent appeal decision<sup>1</sup>, which had been allowed for an additional 84 dwellings at Ambrosden, another Category A village within the District albeit with a much larger population and containing a broader range of services. Again the issue of 'material exceedance' had informed the decision to allow the Appeal.

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<sup>1</sup> APP/C3105/W/19/3228169

16. I do not consider 'material exceedance' to be an issue for this appeal given the modest number of units proposed and the categorisation and size of the Sibfords. The Category A status of the village in the plan warrants further investment in housing. Although the plan period is only 4 years old I do not consider that a decision to allow this appeal would undermine the essential thrust of policy PV2 and by extension the local plan.
17. The second issue is the extent to which the proposals are acceptable against other housing policies included in the CHPP1.
18. The principles of sustainable development, identified in the National Planning Policy Framework (2019) (the Framework), underpin policy PSD1 at several levels within the CLPP1. At a strategic level the policy seeks to ensure that development will be concentrated in the main centres, then outside those there is an allowance for development within the rural areas but concentrated within the Category A villages which are defined by their range of services and being located throughout the District would support a balanced pattern of growth. Finally, at another level within each village specific sites have to be 'sustainable' in how they function in their local context with regard to a range of criteria.
19. The Sibfords are identified as a Category A village because of several factors including its population and range of services. These services are spread across each of the 3 settlements. I acknowledge that local connectivity between them via walking and cycling is restricted by the steep sided Sib valley but these services do exist within reasonable proximity of the appeal site. Given the spread of services across each settlement it is unlikely that the development of any site around the Sibfords would readily enable access by sustainable transport modes. This is an argument against the inclusion of the Sibfords as a Category A village but is not a matter before me in this Appeal.
20. Policy PV2 identifies a broad range of criteria which would have informed the CHLPP2 allocations, not all of which are relevant to the issues concerning this appeal. However whilst the site does not comply with several of these I consider that the principle of some form of development on at least part of this site has been accepted. In addition, I accord moderate weight to the inclusion of the part of the appeal site in the Council's Housing and Economic Land Availability (HELAA 2018) for up to 10 houses.
21. The scheme would provide for 35% affordable housing in line with policy. I understand that one of the reasons for the Council's decision resolving to grant permission for a scheme in 2014 was the inclusion of 6 affordable homes to meet local housing need following the Housing Needs Survey in 2010 and the Register of Interest in 2013.
22. Part of the case presented by the Sibford Action Group (SAG) referred to the poor level of service provision in the Sibfords substantiating why further development should not occur. Whilst it is difficult to determine the exact impact that 25 new households would have on local services such as the local shop, it is a fair assumption that this is likely to be positive in supporting it.
23. For the above reasons on this main issue I conclude that the proposals would be in line with adopted housing policies and in line with the Framework. The proposals are in line with policies PSD1, PSV1 and PSV2 of the CHPP1. They are not in conflict with 'saved' policy H18 given the status of the village defined by

PSV1 and PSV2. The scheme would not amount to a material exceedance in breach of policy PV2 and would deliver housing in line with other policies of the Plan.

*Character and Appearance*

24. Sibford Ferris is a linear village extending northwards along Hook Norton Road before turning east above the Sib valley. The village's linear character means that its rural landscape prevails with the village being a subservient element. For example, the well treed Sib valley restricts views between the Sibfords reducing the impacts of the settlement pattern on landscape. Over the last 20 years new housing has been integrated into the existing settlement pattern in a sensitive way.
25. The appeal site's boundaries are formed by hedges on each side apart from the southern edge which is open to the remainder of the arable field. The site sits on top of a broad ridge above the Sib valley and further away, to the south the Stour valley. When viewed from the south and west across both valleys the appeal site appears as an extension to arable fields. The line of trees on the western edge of the Sibford School is a critical boundary to the edge of the settlement. The site has no statutory or non statutory landscape designations.
26. The adopted policies ESD 13 and ESD15 included in the CLPP1 seek to both protect landscapes and to ensure that new development responds positively to an area's character through creating or reinforcing local distinctiveness. These policies are underpinned by the 'saved' policy C28 of the Cherwell Local Plan (1996) designed to ensure that new development is sympathetic to its rural context and high value landscapes.
27. Where adherence to these policies is not possible proposals will not be permitted if they cause undue visual intrusion into the countryside, impact on its natural landscape and topography and be inconsistent with local character. These policies are consistent with several of the criteria included in policy PV2 which seek amongst other matters, to avoid adverse landscape impacts of new development and to avoid development on the best and most versatile agricultural land.
28. Although the site lies outside the Cotswolds Area of Outstanding Natural Beauty (AONB) its landscape context is shaped by this. Furthermore, the site lies in Character Area 13 of the Oxfordshire Wildlife and Landscape Study defined as an area of 'Rolling Village Pastures' and close to another landscape type, 'Wooded Pasture Valleys and Slopes'. The nature of this rolling landscape interspersed with hedgerows and copses means that views into the site from its immediate boundaries are limited compared to those from further away. For example, the proposed area of housing would be difficult to see from Woodway Road due to the slope the land and height of the hedge.
29. The appeal site would create a new pattern of development as an extension to the southern edge of the village. The indicative drawings identify that development would be set in the north east corner of the site with housing of 2.5 storeys which steps down towards the middle of the site to 1.5 storeys. Within the appeal site the extent of development would be limited and when set against existing development at Margaret Lane House (part of the Sibford School), it would extend the village envelope by only a small area. The



suggested height parameters are important in reducing the visual impacts of the scheme from surrounding receptor points.

30. Whilst there are differences in approach to their respective landscape studies both the Appellants and the SAG identify a range of receptor points from which to gauge the impact of the scheme on landscape and visual character. However neither study include montages of the proposed development or images of what the site could look like after 1 and 15 years – critical points in the ‘life’ of a development.
31. Having visited several of the receptor points and considered the views included in both reports in detail I conclude that potentially the two most sensitive receptor points are from the west from the Cotswolds AONB and from the south. From the former I consider that the integrity of the landscape would not be compromised by this development. This is in part because within the appeal site the dwellings would be set close to existing housing and only marginally extend the pattern of development to just south of Margaret Lane House which forms part of the Sibford School. Furthermore, the line of trees along the boundary of the Sibford School along Hook Norton Road would still be the dominant landscape feature when the site is viewed from the west. For these reasons I consider that the proposals would not have an ‘urbanising effect’ on the site and its surroundings as the Council have stated.
32. From my own observations I find that the appeal site is most prominent when viewed at just over 1km away from the south along D’Arcy Dalton Way. This is particularly important given that at this point the appeal site would not have a natural edge to its southern boundary. However, the scheme does include mitigation along this edge in the form of tree planting. The Appellants Landscape and Visual Appraisal recognises that the proposed scheme would be contained within the existing landscape. The concentration of development at the north east corner of the site and its relative low density would reduce its intrusiveness.
33. The National Design Guide 2019 builds on Chapter 12 of the National Planning Policy Framework (NPPF) 2019 which requires, amongst other matters, that new development reflects its landscape context and setting. Having viewed the site from a number of receptor points I consider that its low density combined with the extent of proposed planting belts would ensure that the proposal could be ‘accommodated’ within its context.
34. On this issue I conclude that the proposals would not cause unacceptable harm to the landscape setting of the Cotswolds AONB and the setting of Sibford Ferris. For these reasons I consider that the proposed scheme would not be in conflict with saved policies C28 of the Cherwell Local Plan (1996) and ESD 13, ESD 15 and PV1 and PV2 of the CHPP1.

### **Infrastructure provision**

35. The completed section 106 agreement includes a range of provisions. These cover the requirement that 35% of the dwellings are ‘affordable’, provision of and commuted payments for local play area and public amenity space within the scheme, maintenance arrangements for onsite trees and boundary hedgerows, and a sustainable drainage system. Other provisions include a contribution to the provision of waste management facilities and community hall facilities and contributions to the local secondary school and the Sibford

School for indoor and outdoor recreation opportunities. The agreement includes provisions made under section 278 for a new pedestrian footway, crossing and access into the site, bus shelter, local play and provisions for a traffic regulation order to ensure lower speed on Hook Norton Road as drivers approach from the south.

36. Overall, the obligations included in the agreement are related to the requirements of development plan policies and are necessary, directly related and fairly and reasonably related in scale and kind to the proposed scheme, in line with paragraphs 56-57 of the National Planning Policy Framework 2019.

### **Other Matters**

37. Interested parties raised issues regarding matters which I address in turn below.

#### *Unsustainability of the Sibfords to take more development*

38. The Sibfords are a Category A settlement included in the local plan. Although the Inspector at the local plan inquiry did consider that the hierarchy of settlement types was not set in stone this is a matter for a review of the local plan and not one for me to determine in this appeal. This categorisation of village types was based on the range of factors including local service provision. Whilst I acknowledge that journey times between the Sibfords would be hindered by the quality of the local highway network and the Sib valley, potentially leading to more private transport use than would be normally expected, a range of services consistent with Category A settlements does still operate in the Sibfords for the benefit of residents of the appeal scheme.
39. Many of the decisions of my inspector colleagues to dismiss appeals in other villages within the District can be distinguished from this case for several reasons. In some cases the scale of development was large compared to the size of the original village. For example, in Finmere, the appeal<sup>2</sup> was dismissed for 47 houses but the range of services was limited as the village had no shop or post office. The Sibfords do have a shop and other services. In other cases the appeal proposals would add to further development given extant permissions as in the cases<sup>3</sup> of both Weston on the Green and Chesterton. The Sibfords have not experienced new development since the adoption of the Local Plan.
40. In other appeals other factors such as substantial harm to heritage assets prevailed. For example, in Kirtlington and Cropredy the impact of proposals on the setting of listed buildings and the character and appearance of a conservation area was cited respectively as reasons for dismissal<sup>4</sup>. These are not matters relevant to this appeal.

#### *Traffic generation and congestion*

41. The amount of traffic generation arising from the appeal scheme was not identified in the Council's reasons for refusal. Whilst representations from interested parties focused on the extent of additional traffic generation arising from the appeal proposal, I did not receive other evidence to dispute the

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<sup>2</sup> APP/C3105/WW/17/3169168

<sup>3</sup> APP/C3105/W/16/3158925 and APP/C3105/W/15/3130576

<sup>4</sup> APP/C3105/W/14/3001612 and APP3105/WW/17/3187461

Appellants traffic survey which indicated that during the critical morning and evening peaks the amount of traffic generation would be between 10 and 12 vehicles generated an hour by the proposals.

42. I acknowledge the CRAILTUS survey completed in 2009 and its conclusions on the use of private transport in the Sibfords but this matter was considered as part of the local plan which designated the village as a Category A village. Furthermore, although representations from SAG addressed concerns over the levels of congestion in the village caused by the amount of traffic passing through the narrow village roads, compounded by the 'school run' to the Sibford school I saw only limited examples of this during this critical time when I visited the village. Furthermore, during two visits to the village I observed that the amount of traffic on local roads was low. Although I acknowledge that bus services to the village have been reduced since the local plan's adoption in 2015 I still consider that the inclusion of new housing could go some way to sustaining the existing level of service provision.
43. Although the proposals would involve the loss of Grade 2 agricultural, land this has to be balanced against the benefits which the proposals could make to the provision of additional housing.
44. Finally, a further objection referred to concerns over flooding. The site lies in the Flood Zone 1 and a Flood Risk Assessment submitted with the appeal identified that the risk of flooding was low. Furthermore, the scheme does include sustainable urban drainage.

### **Planning balance and conclusions**

45. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (2019) places considerable emphasis on sustainable development and highlights the delivery of new housing as a national priority.
46. The appeal proposals are consistent with the essential thrust of the housing policies included in the adopted CHLPP1. In particular, they are consistent with ESD1 and in line with policies PV1 and PV2. Set against this is the number of dwellings included in extant permissions in the Category A villages across the District which exceeds the 750 dwellings included in policy PV2. However, I do not consider that the appeal proposals represent a material exceedance to this figure given its modest size and they would not undermine policy PV2 and the basis of the local plan. Furthermore, the scheme includes a quantum of affordable units compliant with policy.
47. In addition, the scheme includes other features including a path across the site improving permeability, allotments and local play facilities. These key into some concerns identified in the non-statutory Sibford Action Plan (2012) and are consistent with adopted policies in the CHPP1. I have already identified the obligations included in the completed section 106 agreement which through contributions would improve local highways, restrict speeds into the village along Hook Norton Road and support active lifestyles through contributions to the facilities of the local secondary school and the Sibford School. In addition, 25 new households would go some way to support local services.

48. Whilst the proposed schemes location on the edge of the village does form a limited extension to its current settlement pattern this must be seen in the context of this site set close to Margaret Lane House. The integrity of the landscape character is not compromised by the scheme. The character of the landscape means that the scheme's visual impacts are reduced. Its most sensitive southern boundary can be adequately mitigated through landscaping. The details of this can be determined at reserved matters stage.
49. Taking into account all these matters I conclude that the appeal is allowed and outline planning permission is granted subject to the conditions included in the attached schedule.

### **Conditions**

50. During the Hearing there was a discussion between the main parties on the draft conditions. Having considered these further, I am making a series of small amendments to ensure full compliance with Planning Practice Guidance. I have imposed a condition specifying the timeframes for the commencement of development and for the submission of outstanding reserved matters as required by Sections 91 and 92 of the Town and Country Planning Act 1990, as amended. A condition is required to ensure that the development is carried out in accordance with the plans and documents submitted with the application to ensure adherence to the principle of the proposed development hereby approved. Other conditions require a Construction Traffic Management Plan and Construction Environmental Management Plan to ensure that the operational works to complete the scheme do not adversely impact on the living conditions of surrounding residential occupiers, avoid potential conflict with highway users and protect the environment and biodiversity.
51. A condition requiring a Landscape and Ecology Management Plan is required to identify the habitats to be created in the scheme including the requirement for bat and bird boxes in line with both local and national policy. A condition requiring an energy statement is required to ensure that the energy consumption is minimised during construction and on completion to deliver a low carbon development in line with both local and national policy. A condition is required to ensure archaeological investigations are completed in advance of works proceeding following advice received from the County Council.
52. Other conditions include a need for detailed drawings of the proposed access from Hook Norton Road to ensure highway safety. A condition is required to address contamination if this is found on site. Finally, a condition is required for a starter pack for new homes advising on sustainable modes of travel to ensure that the use of private transport is reduced.

*Stephen Wilkinson*

Inspector

### **Schedule of Conditions**

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved and submitted plans and documents: Site Location Plan 1; 2500 scale (Promap), Concept Schematic 6426/ASP3/PP – Rev D Parameter Plan and 6426/ASP4/LSP-Rev A-Landscape Strategy Plan, Design and Access Statement; Flood Risk Assessment; Arboricultural Impact Assessment; Ecological Impact Assessment; Archaeological Desk Based Assessment; Flood Risk Assessment and Drainage Strategy report and drawings labelled 3361.101.
- 5) Prior to commencement of the development hereby approved, full details of the means of access between the land and the highway shall be submitted to and approved in writing, by the Local Planning Authority. The access shall be broadly in accordance with the positioning indicated on the approved plan 3361.101-Concept Schematic, 6426/ASP3/PP and include detail of layout and vision splays. Thereafter and prior to the first occupation of any of the development the means of access shall be constructed and retained in accordance with the approved details.
- 6) Prior to the first occupation of the development hereby approved a travel information pack shall be submitted to and approved by the Local Planning Authority. Thereafter and upon occupation the first residents of each dwelling shall be provided with a copy of the approved information pack.
- 7) Prior to commencement of the development hereby approved a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the local planning authority. Thereafter, the approved CTMP shall be implemented and operated in accordance with the approved details.
- 8) Prior to commencement of the development hereby approved, full details of a surface water drainage scheme for the site detailing all on and off site drainage works required in relation to the development which shall

be broadly in accordance with the drainage proposals set out in the submitted flood risk assessment produced by JNP Group Consulting Engineers and which shall include a sewer modelling assessment shall be submitted to and approved in writing by the local planning authority. The development shall not be carried out other than in accordance with the approved scheme, until such time no discharge of foul or surface water from the site shall be accepted from the site into the public system. The scheme shall also include:

- Discharge rates
  - Discharge volumes
  - SUDS (permeable paving, soakaways, infiltration devices, attenuation pond, swales)
  - Maintenance and management of SUDS features to include a SUDS management and maintenance plan
  - Sizing of features – attenuation volume
  - Infiltration in accordance with BRE 365 (to include comprehensive infiltration testing and annual monitoring recording of ground water levels across the site).
  - Detailed drainage layout with pipe numbers
  - Network drainage calculations
  - Phasing
  - Flood flow routing in exceedance conditions (to include provision of a flood exceedance route plan).
- 9) Prior to the commencement of the development hereby approved, a landscape and ecology management plan (LEMP) showing how all habitats will be created managed and funded and to include details of a bat and birdbox scheme shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall not be carried out other than in strict accordance with the approved LEMP.
- 10) Prior to the commencement of the development hereby approved, including any site clearance, a Construction Environmental Management Plan (CEMP), which shall include details of the measures taken to ensure that construction works do not adversely affect biodiversity, shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall not be carried out other than in strict accordance with the approved CEMP.
- 11) If during development, contamination not previously identified is found at the site, no further development shall be carried out until full details of a remediation strategy detailing how the contamination shall be dealt with has been submitted to and approved by the Local Planning Authority. Thereafter, the remediation strategy shall be carried out in accordance with the approved details.
- 12) Prior to or as part of the first reserved matters submission, an Energy Statement shall be submitted to and approved in writing by the Local Planning Authority. The Energy Statement should:



- Be structured in accordance with the energy hierarchy in ESD2 of the Cherwell Local Plan 2011-31 Part 1 with information provided on each element of the hierarchy
- Inform and be reflected in the reserved matters
- Include a description of the development, number and type of residential units,
- Demonstrate sustainable construction methods as per Policy ESD3 of the Cherwell Local Plan Part 1 2011-31, and
- Consider the use of renewable energy to supply the development.

Thereafter, the development shall be carried out in strict accordance with the recommendations and measures contained in the approved Energy Statement.

- 13) Prior to or as part of the submission of the first reserved matter a Written Scheme of Archaeological Investigation shall be submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions:
- i) the programme and methodology of site investigation and recording;
  - ii) the programme for post investigation assessment;
  - iii) the provision to be made for analysis of the site investigation and recording;
  - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
  - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

## **APPEARANCES**

### **FOR THE APPELLANT:**

Jonathan Harbottle	Director, Land and Partners
Alex Dalton	Project Planner, Land and Partners
Tom Hutchison	Projects, Land and Partners
Dan Skinner	Land and Partners
Ben Wright	Director, Aspect Landscape Planning Ltd

### **FOR THE LOCAL PLANNING AUTHORITY:**

Nathanael Stock	Team Leader, Cherwell District Council
Matthew Barratt	Solicitor

### **INTERESTED PERSONS:**

Duncan Chadwick	Partner, David Lock Associates
David Newman	Quartet Design
Ginny Bennett	Parish Councillor, Sibford Ferris
Roger Mallows	Parish Councillor, Sibford Gower
Robin Grimston	Local Resident
John Perriss	Sibford Action Group







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## Appeal Decisions

Site visit made on 28 July 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19<sup>th</sup> October 2020

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### Appeal A Ref: APP/C3105/W/19/3242236

#### Land South of Clifton Road, Deddington OX15 OTP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Rob Dickson of Harcourt (Deddington) Limited against the decision of Cherwell District Council.
  - The application Ref 19/00831/OUT, dated 3 May 2019, was refused by notice dated 16 August 2019.
  - The development proposed is outline planning permission for the residential development of up to 15 dwellings with all matters save for the means of access reserved for subsequent approval.
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### Appeal B Ref: APP/C3105/W/20/3247698

#### Land South of Clifton Road, Deddington OX15 OTP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Rob Dickson of Harcourt (Deddington) Limited against the decision of Cherwell District Council.
  - The application Ref 19/02444/OUT, dated 31 October 2019, was refused by notice dated 14 February 2020.
  - The development proposed is outline planning permission for the residential development of up to 14 dwellings with all matters save for the means of access reserved for subsequent approval.
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### Decision

1. Appeal A is allowed and outline planning permission is granted for the residential development of up to 15 dwellings with all matters save for the means of access reserved for subsequent approval at land south of Clifton Road, Deddington OX15 OTP in accordance with the terms of the application, Ref 19/00831/OUT, dated 3 May 2019, and the plans submitted with it, subject to conditions in the attached Schedule.
2. Appeal B is allowed and outline planning permission is granted for the residential development of up to 14 dwellings with all matters save for the means of access reserved for subsequent approval at land south of Clifton Road, Deddington OX15 OTP in accordance with the terms of the application, Ref 19/02444/OUT, dated 31 October 2019, and the plans submitted with it, subject to conditions in the attached Schedule.

### **Application for Costs**

3. In the case of Appeal A, an application for costs was made by Mr Rob Dickson of Harcourt (Deddington) Limited against Cherwell District Council. This application is the subject of a separate Decision.

### **Procedural Matters**

4. Clerical errors in the drafting of the application forms associated with Appeal B included the company name Harcourt Rugby Limited. The appeal has been made under Harcourt (Deddington) Limited, which has been confirmed as the correct company name. The named person, Mr Rob Dickson was consistent across the application and the appeal and is otherwise correct. These details are reflected in the banner heading and the appeal has proceeded accordingly.
5. The applications under Appeal A and Appeal B were submitted in outline form with only access being assessed at this time. All matters of appearance, landscaping, layout and scale are reserved for future approval(s). From the descriptions of development, it is clear that the quantum of development being sought in each case is up to 15 and 14 dwellings respectively. The appeals are determined on this basis, treating the submitted site plans as illustrative only, in so far as they indicate the point of access and a possible layout up to the maximum stated quantum.
6. The supporting evidence submitted with the application under Appeal B is more recent compared to the supporting evidence submitted with the application under Appeal A. In this context, the Council has made clear that the evidence under Appeal B has now overcome many of the reasons of refusal originally attached to the decision under Appeal A and will not be contested further. Consequently, each appeal now has the same contested reasons for refusal, are on the same site and comprise almost identical forms of development. The potential effects of each development and the main contentious issues are therefore largely the same and although I have considered each appeal on its individual merits, to avoid duplication I have dealt with the evidence together.
7. The appellant questioned the choice of appeal procedure, particularly in their final comments. It was also argued that the Council had failed to take proper account of other appeal decisions nearby and that these matters should be explored at a hearing. I have before me extensive written evidence on these matters including the reports prepared on behalf of the appellant, the Council and other interested party representations. I consider that the written evidence, together with my observations of the site and its surroundings are sufficient to form my own conclusions on these matters. I have therefore concluded that the written procedure remains appropriate for this appeal.

### **Main Issues**

8. The main issues in both appeals are:
  - (a) the effect of development on the character and appearance of the area, including Deddington Castle and the Deddington Conservation Area; and
  - (b) whether a satisfactory and executed planning obligation exists to deliver infrastructure necessary to support the development.

## Reasons

### *Character and Appearance*

9. The site comprises field pasture located off Clifton Road to the east of Deddington village. There is a large commercial operation directly opposite the site to the north and a smaller commercial operation neighbouring the site to the east. There are also several residential dwellings in the immediate vicinity of the site. Some are located to the east and are further away from Deddington compared to the site itself.
10. The site's depth is similar to that of its neighbours and its southern boundary does not extend beyond the southern boundaries of the residential dwellings to the west, nor the commercial operation to the east. Together, the uses surrounding the site form a cluster of development peripheral to Deddington's central village core.
11. Clifton Road has substantial mature vegetation along its frontage. When travelling towards Deddington along this road, and at longer distances, the vegetation obscures aforementioned development from view within the landscape. However, when approaching Deddington, and at shorter distances, gaps in the vegetation become apparent and the development comes into view.
12. This signalled to me that the landscape was changing, and that I was moving from open countryside into the village's peripheral development and towards its core. The site is positioned directly amongst and surrounded by other built form. Consequently, I consider the site is well related to its neighbours and firmly within the village's peripheral development cluster and not detached or in an isolated rural context.
13. Deddington Conservation Area delineates most of the village core. Consequently, the site falls outside of the conservation area, but still inform its setting, which is a low density pattern of development peripheral to the high density core, where the built form is compact, traditional and possesses historic identity from the Middle Ages. Deddington Castle is a scheduled monument and is included within the limits of the conservation area and shares the same setting. It is one of around 600 motte and bailey castles nationally and comprises earthwork remains located to the south and south west of the site.
14. On my site visit, these remains were imperceptible when viewed from the site, due to the prevailing mature boundary features to the south and south west that enclose the castle. Accordingly, parties acknowledge that the castle is unlikely to be appreciated from this viewpoint, even in winter. Irrespective of season I accept limited views of the site may be available from the castle itself when looking north or north east, but it seems likely that such views would still be taken in the context of the peripheral cluster of development as a whole, which includes a substantial commercial operation directly to the north.
15. Only when looking south or east from the castle, and away from the site, would views take on the appearance of a truly rural character associated with the open countryside. The site may also be visible from the public right of way of Chapmans Lane, but again it is likely any views would be in the context of the peripheral cluster of development as a whole.

16. The Council contend that the site is outside of the continuous and main built form of Deddington, detached from the core of the village. Whether this is the case or not, it is sufficiently related to the peripheral development cluster, which although lower density and located away from the core of the village is still part of its wider pattern of development and identity, acting as a functional visual cue of a changing landscape. In principle, development in this cluster would therefore avoid harmful effects on the open countryside, that might otherwise occur if development was brought forward in a truly isolated location.
17. Reaffirming this point, Policy Villages 2 of the Cherwell Local Plan Part 1 2015 (CLP1), does not include a limiting spatial dimension and development can be delivered at category A villages (such as Deddington) both within and outside of built-up limits. So long as development has at least some relationship with the village and its pattern of development, it would be permitted in principle subject to the criteria set out within the policy.
18. The Council places emphasis on the existence of undeveloped field parcels within the peripheral cluster. It contends their presence differentiates the village core from this area of Deddington, and that this differentiation is sufficient to determine that the site's location is inappropriate by reason of detachment and remoteness. However, the differentiation merely communicates that this area of Deddington is peripheral to the village core and it does not communicate that it is completely divorced from the village, or that it is within a detached or remote open countryside location.
19. The visual differentiation is important to preserve, and the high density nature of the village core should not be allowed to sprawl outward to lower density locations such as the peripheral cluster. It is my view that in utilising the flexibility afforded by an outline planning application and subsequent reserved matters, a quantum of development up to the maximum amount applied for could be scaled to achieve a layout and landscaping solution that preserves the fundamentally peripheral nature of the site's location. This could be achieved through a layout which preserved gaps and views through the site, and landscaping which balances the built form in the natural environment.
20. I note the Council's concerns over the access design and that access can inform the fundamental configuration of a development. However, even though details of access are sought in this case, layout is still a reserved matter and the means in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development is yet to be determined. Consequently, there will remain flexibility under future reserved matters to pursue an appropriate layout.
21. Offsite access works would deliver a degree of formality to existing highways infrastructure, and even if the extent of works along Earls Lane would be entirely new, the degree of change would be minimal. A paved surface would still remain open and this would not cause any obstruction or loss of the key views over the meadow towards the church. Arguably, a safer route for pedestrians would embolden them in taking in the heritage significance of the conservation area, without the need to worry as much about traffic. In any event, the works would not only serve the site but also neighbouring development in the cluster and clear improvements to highways safety should outweigh any potential concerns.

22. The prevalence of other field parcels that would remain interspersed amongst development along Clifton Road would guard against ribbon development, and even with the loss of the site to the development the proportion of unbuilt vs built form would remain low density. Coupled with potential future landscaping and layout options available at reserved matters, this would maintain the peripheral nature of the development cluster as a whole. Consequently, this area of Clifton Road could maintain its low density and peripheral nature (through a combination of layout and landscaping approaches and the preservation of other field parcels) and still be easily discernible from the relatively high density nature of the village core.
23. The development should not be considered to form a precedent, there are sufficient numbers of remaining field parcels that preserve the peripheral feel of the area and any future development proposals would need to account for the subsequent and cumulative loss of any field parcels and any consequential effects.
24. In preserving this pattern of development, it is also considered that the settings of both Deddington Conservation Area and Deddington Castle would also be preserved. I note that Historic England raised concerns about the loss of the field parcel in and of itself, but in my view the setting of the castle should be taken as a whole, not in isolation, and by this measure it would be preserved. Accordingly, I have not found that there would be less than substantial harm and consequently a finding on overriding public benefits is not required.
25. I note the Council's reference to another appeal<sup>1</sup> nearby, but this relates to a proposal on land described as being open and isolated. This is a different context to what I have found in this case, where the site is very much framed by other development, and not in an open or isolated location. Even though the site was included within the village limits of Deddington Neighbourhood Plan, it has been withdrawn. In the absence of other evidence elaborating on why the site may have been included, such arguments surrounding its inclusion now hold limited weight. However, this does not change my existing assessment of the site's relationship with Deddington village.
26. Overall, the development proposed by each appeal, would preserve the character and appearance of the area, including the setting of Deddington Castle and the Deddington Conservation Area. There would be accordance with Policies ESD13, ESD15 and Villages 2 of the CLP1, and saved Policies C28 and C33 of the Cherwell Local Plan 1996 (CLP), Cherwell Residential Design Guide SPD 2018 and Section 16 of the National Planning Policy Framework (the Framework). Among other things, these seek to secure appropriate residential development in rural areas and villages and conserve the historic environment.

#### *Planning Obligation*

27. At the time the Council made their decisions the appellant had not provided planning obligations in relation to the provision of open space and contributions in support of developing the site. However, the appellant has as part of their appeal submitted an obligation pursuant to Section 106 of the Act. All parties have signed it and consequently agree on its content. The executed obligation has been considered accordingly.

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<sup>1</sup> APP/C3105/A/14/2228558

28. The provisions of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and Paragraph 56 of the Framework states that planning obligations must only be sought where they meet all of the following tests: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. These are considered below.
29. Affordable housing: the provision of affordable housing is a necessary component of the development because it contributes to the social dimension of sustainability, meeting a range of housing needs. On site provision as part of larger developments is the most significant way in which homes can be provided and 35% of all dwellings on the site in this case will be provided as such. This provision is in accordance with Policy PSD1, BSC3 and INF1 of the CLP1 which among other things seek to secure affordable housing where development is for 11 or more dwellings.
30. Local area of play and open space: the introduction of additional residential development in the area will increase the demands on existing open space and local areas of play. It has been demonstrated that the Deddington Ward is experiencing a shortfall in such provision and therefore a contribution to expand these facilities and ensure their maintenance is necessary. This is in accordance with Policy PSD1, BSC10, BSC11 and INF1 of the CLP1 which among other things seek to ensure proposals for new development contribute to open space, sport and recreation provision commensurate to the need generated.
31. Indoor and outdoor sports facilities: Among other things, such facilities help create healthy inclusive communities. Residential development will generate additional demands on Windmill Sports Ground and Spiceball Leisure Centre and accordingly contributions are necessary to ensure they have sufficient capacity and can be suitably maintained. This is in accordance with Policy PSD1, BSC10, BSC11, BSC12 and INF1 of the CLP1 which among other things seek to ensure proposals for new development contribute to open space, sport and recreation provision commensurate to the need generated.
32. Community hall facilities: villages and other smaller communities have a particular reliance on community hall facilities, which play a role in facilitating social interaction and creating health and inclusive communities. The development is expected to create additional demand on Windmill Community Centre and a contribution is necessary to ensure it is appropriately maintained. This is in accordance with Policy PSD1, BSC12 and INF1 of the CLP1 which among other things seeks to encourage the provision of community facilities to enhance the sustainability of communities.
33. Refuse facilities: Each additional dwelling part of the development will need to be served with adequate refuse containers to ensure the adequate storage of waste and recyclable material. Each additional dwelling will also need to be served by refuse collection services, and therefore a contribution to refuse facilities is necessary. This is in accordance with Policy PSD1 and INF1 of the CLP1 which seeks adequate facilities to meet the needs of communities.
34. Education: the introduction of additional residential development in the area will increase the demands on local early years, primary and secondary school education capacity. It has been demonstrated that existing capacity of nearby facilities is nearing saturation.



35. In order to fund their expansion, a projection of additional pupils likely to be generated by the development has informed a contribution that is necessary and proportionate to the likely impact of the development. This provision is in accordance with Policy PSD1 and BSC7 of the CLP1 which among other things seeks to ensure the adequate provision of education facilities and seek contributions from new development accordingly.
36. Highways infrastructure: the existing site access is to an agricultural field and therefore this needs improvement in order to be suitable for residential development. The pedestrian links towards the village core are substandard width or length and similarly require improvement to achieve safe linkages with the development. Resultant from this is the increased pedestrian usage of footways along the highway and crossings nearer the village core, which justifies speed limit mitigation at points along the highway. Given the distance to some schools in the catchment, additional bus service provision is also required to improve sustainable transport modes for future residents. This is in accordance with Policy PSD1 and SLE4 of the CLP1, which among other things states new development in the district will be required to provide contributions to mitigate the transport impacts of development.
37. Libraries: the existing village library is deemed to be under-sized in relation to its catchment population and this development will therefore place additional demand on the library service. To meet this additional demand, it is anticipated that capacity at the library will be increased by internal works and a book stock increase of 2 volumes per resident. This is in accordance with Policy PSD1 and BSC7 of the CLP1 which seeks to provide sufficient community learning facilities, such as libraries.
38. In addition to being necessary to meet the identified policy requirements of the CLP1, the planning obligations within the completed Section 106 Agreement conform with the Council's Developer Contributions Supplementary Planning Document (SPD) 2018, which sets out developer contributions that relate fairly and reasonably in scale and kind to the size of development (by using proportionate formulae) in order to mitigate the likely additional demands the development would generate on local community infrastructure. Overall, the planning obligations meet the provisions of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) and Paragraph 56 of the Framework and the tests set out therein.

### **Other Matters**

39. The Council raised matters of whether the site was previously developed land or best and most versatile agricultural land. These matters were raised briefly at the end of its statement of case, did not underpin its reasons for refusal and have not been elaborated on to any extent. Under the wording of Policy Villages 2, although it is encouraged that regard should be given to these matters, there is no absolute requirement to do so. There is no cogent evidence establishing the Council's concerns on these matters are substantive and they have not weighed against my consideration of the main issues.
40. Although the Council is no longer contesting all of its reasons for refusal, other interested parties have maintained their objections on certain matters, and these are dealt with in turn below.



41. The number of vehicles using the development will be proportionate to the final layout, determined at reserved matters. Furthermore, planning obligations securing highway related improvements necessary to support the stated development quantum's and mitigate associated impacts have been submitted and are deemed to meet the statutory tests.
42. With an appropriate design and layout for up to 14 or 15 dwellings, to be assessed at the future reserved matters stage, there is no reason why there would be an unacceptable level of noise and disturbance associated with the proposal. This is particularly against the backdrop of existing commercial operations in the vicinity, which are already likely to generate more activity compared to the residential development at the site.
43. The Arboricultural Impact Assessment 2019 provides sufficient detail on trees and their root protection areas, for the purposes of informing details of layout and landscaping to be determined at reserved matters.
44. The Drainage Strategy 2019 and Infiltration Test Report 2019 demonstrate that the scale of development would have minimal impact on foul drainage and that a suitable pumped connection to the sewerage system is achievable. It also demonstrates a concept of adequate surface water drainage through permeable paving and storage areas (among other things) is possible on site. Consequently, it is reasonable to conclude that there is a technological solution to water management.
45. The Ecological Survey 2019 demonstrates that the site is not subject to any statutory or non-statutory designations. Furthermore, it demonstrates that there are no significant protected species and that mitigation measures can avoid disturbance to mammals, reptiles and birds. It is considered sufficient flexibility inherent in each outline application whereby layout and landscaping details submitted at reserved matters could achieve biodiversity net gains as required by Paragraph 170 of the Framework.
46. The Archaeological Desk Based Assessment 2019 and Archaeological Evaluation Report 2019 demonstrate that limited archaeological remains were found on site and they would not be a significant constraint to development.
47. Requests for extra planning obligations, such as contributions to Holly Tree Club, over and above what has already been secured within the Section 106 Agreement have not been demonstrated as additionally necessary and therefore would fail the statutory tests.

### **Conditions**

48. The Council suggested 22 conditions for both Appeal A and Appeal B. The intention is that the suggested conditions are applicable to both appeals. Given that the appeals are linked and that they relied on the same evidence base (albeit submitted at different moments in time) I find that this is a logical approach. The Council's suggested conditions followed the appellant's suggested conditions submitted under their Draft Statement of Common Ground and are similar in scope and content. The appellant was given an opportunity to comment and did not suggest any revisions. Given the similarities with the appellant's previously suggested conditions, and in the absence of comments relating to revisions, I have principally used the Council's suggested conditions moving forward as they appear comprehensive.

49. These have been considered in relation to the Framework and Planning Practice Guidance (PPG). The plans condition has been amended to refer to the plans submitted in respect of each appeal in order to differentiate the quantum of development in each case.
50. All conditions attached are deemed necessary to make the development acceptable. The standard conditions setting out the time limits, reserved matters and securing compliance with the approved plans, are necessary to provide certainty. Conditions controlling the finished floor levels are necessary to secure an acceptable standard of development that safeguards the visual amenities of the area and the living conditions of existing and future occupiers. Conditions controlling further activities relating to contamination are necessary to identify harmful contamination and secure the safety of the development. Conditions controlling construction activities are necessary to ensure construction comes forward in an acceptable manner and does not harm the living conditions of neighbouring occupiers or generate a deterioration in highway safety through the uncontrolled movement of heavy vehicles. Conditions controlling drainage are necessary to ensure sufficient capacity is made available to accommodate the new development and in order to avoid adverse environmental impact that might arise from overloading the existing drainage system or from uncontrolled surface water runoff. Conditions securing further details on access visibility and the timing of internal highway arrangements are necessary to ensure highway safety upon beneficial occupation. Conditions requiring travel information is necessary to promote sustainable travel options and reduce private car dependencies. Conditions relating to vehicle charging, energy and water efficiency are necessary pursuant to reducing carbon emissions and protecting the environment from climate change and sustainable use of water resources. Conditions requiring landscape and lighting management are necessary to ensure biodiversity net gain and protect habitats of importance to biodiversity conservation from any loss or damage.
51. The PPG is clear that pre-commencement conditions should only be used where clearly justified, likely meaning requirements of the condition are fundamental to the development permitted and it would otherwise be necessary to refuse permission. The nature of an outline application requires further details before development is commencement and therefore such conditions are considered necessary and reasonable.
52. The procedural requirements set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 (as amended) have been followed and the appellant provided a substantive response, confirming that they were happy with the pre-commencement conditions suggested.

### **Conclusion**

53. For the reasons given both Appeal A and Appeal B are allowed, and planning permission is granted subject to conditions in the attached Schedule and in accordance with planning obligations within the submitted Section 106 Agreement.

*Liam Page*

INSPECTOR

## **Schedule of Conditions for Appeal A and Appeal B**

- 1) No development shall commence until full details of the layout (including the layout of the internal access roads and footpaths), scale, appearance, and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.
- 2) In the case of the reserved matters, the final application for approval shall be made not later than the expiration of three years beginning with the date of this permission.
- 3) The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.
- 4) Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out in accordance with the following plans and documents:
  - a. Appeal A; Application Form, Site Location Plan and drawing number 192-CRD-01 Rev B (access only); and
  - b. Appeal B; Application form, Site Location Plan and drawing numbers HDL 3113 PA 001 Rev D (access only) and OX5018-2PD-003
- 5) No development shall take place until details of all finished floor levels in relation to existing and proposed site levels and to the adjacent buildings have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out strictly in accordance with the approved levels.
- 6) Prior to the commencement of development a desk study and site walk over to identify all potential contaminative uses on site and to inform the conceptual site model shall be carried out by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and shall have been submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.
- 7) If a potential risk from contamination is identified as a result of the work carried out under Condition 6, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

- 8) If contamination is found by undertaking the work carried out under Condition 7, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.
- 9) If remedial works have been identified in Condition 8, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under Condition 8. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.
- 10) Prior to the commencement of the development, a Construction Environment Management Plan (CEMP), which shall include details of the measures to be taken to ensure construction works do not adversely affect residential properties on, adjacent to or surrounding the site together with details of the consultation and communication to be carried out with local residents shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with approved CEMP.
- 11) No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority. The Detailed Design to be submitted should be based on the Outline Design as submitted:
  - Clifton Road, Deddington Drainage Strategy December 2019
  - Sketch Layout: hdl 3113 pa 001 d
  - Discharge to ditch to be restricted to 2.7l/s. Headwall detail required.
  - Micro Drainage calculations to be re-run using the previously advised Cv values.
  - Full detailed and numbered pipe network to be submitted to enable technical assessment against Micro Drainage calculation files.
  - Ingress/Egress to be demonstrated in the event of failure of any part of the system.
  - Post development flow paths to be demonstrated on plan.
  - Evidence of temporary sacrificial shallow water ponding on site, to be demonstrated on plan in times of exceedance.
  - Evidence to be demonstrated of design against blockage.
  - List of all SuDS features utilised on site to be provided.
  - Proof of source control to be clearly identified.
  - Evidence of treatment and management train to be demonstrated.
  - Full long and cross sectional drawings of all drainage features employed on site to be provided for assessment.

- 12) No building shall be occupied, or the use commenced until the sustainable drainage scheme for this site has been completed in accordance with the submitted details (approved under Condition 11). The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan. A full management and maintenance document is to be submitted in perpetuity for the development, identifying the contractor who will be responsible for management and maintenance of the scheme.
- 13) Prior to the commencement of the development hereby approved, full details of the means of access between the land and the highway including position, layout, and vision splays shall be submitted to and approved in writing by the Local Planning Authority. The means of access shall be constructed in accordance with the approved details prior to the first occupation of any of the development and shall be retained as such thereafter. Agreed vision splays shall be kept clear of obstructions higher than 0.6m at all times.
- 14) Prior to the first occupation of any of the dwellings hereby approved, all of the estate roads and footpaths (except for the final surfacing thereof) shall be laid out, constructed, lit and drained in accordance with Oxfordshire County Council's Conditions and Specifications for the Construction of Roads" and its subsequent amendments.
- 15) Prior to the first occupation of the development hereby approved, a Travel Information Pack shall be produced, submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved Travel Information Pack shall be implemented and operated in accordance with the approved details.
- 16) Prior to commencement of the development hereby approved, a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved CTMP.
- 17) Prior to the commencement of any works associated with the construction of a dwelling, details of the means by which all dwellings will be designed and constructed to achieve an energy performance standard equivalent to a 19% improvement in carbon reductions on 2013 Part L of the Building Regulations (unless a different standard is agreed with the Local Planning Authority) shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and no dwelling shall be occupied until it has been constructed in accordance with the approved energy performance measures.
- 18) As part of any reserved matters for layout and landscaping, a method statement and scheme for enhancing biodiversity on site such that an overall net gain for biodiversity is achieved, to include details of enhancement features and habitats both within green spaces and integrated within the built environment, shall be submitted to and approved in writing by the Local Planning Authority. This shall also include a timetable for provision. Thereafter, the biodiversity enhancement measures shall be carried out and retained in accordance with the approved details.

- 19) Prior to the commencement of the development hereby approved, a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved LEMP and shall be managed in accordance with the approved document.
- 20) Prior to the installation of any external lighting a full lighting strategy to include illustration of proposed light spill shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved document.
- 21) No dwelling shall be occupied until it has been constructed to ensure that it achieves a water efficiency limit of 110 litres person/day and shall continue to accord with such a limit thereafter.
- 22) Each dwelling shall be provided with ducting to allow for the future installation of electrical vehicle charging infrastructure to serve that dwelling prior to its first occupation.

**End of Schedule**







# Appeal Decision

Hearing held on 22 June 2021

Site Visit made on 23 June 2021

**by William Cooper BA (Hons) MA CMLI**

an Inspector appointed by the Secretary of State

Decision date: 10 September 2021

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**Appeal Ref: APP/C3105/W/20/3255419**

**Land off Berry Hill Road, Adderbury, OX17 3HF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant outline planning permission.
  - The appeal is made by Hollins Strategic Land LLP against the decision of Cherwell District Council.
  - The application Ref: 19/00963/OUT, dated 24 May 2019, was refused by notice dated 20 January 2020.
  - The development proposed is described as resubmission of application 17/02394/OUT - outline application for permission for up to 40 dwellings with associated landscaping, open space and vehicular access off Berry Hill Road (all matters reserved other than access).
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## Decision

1. The appeal is allowed and outline planning permission is granted for up to 40 dwellings with associated landscaping, open space and vehicular access off Berry Hill Road (all matters reserved other than access) at Land off Berry Hill Road, Adderbury, OX17 3HF in accordance with the terms of the application, Ref: 19/00963/OUT, dated 24 May 2019, and the plans submitted with it, subject to the conditions set out in the attached Schedule A.

## Applications for costs

2. An application for an award of costs was made by Hollins Strategic Land LLP against Cherwell District Council. This application is the subject of a separate decision.

## Preliminary Matters

3. The address above, which is taken from the appeal site notice and the Council's appeal questionnaire in the interests of precision, was confirmed at the hearing as being accurate.
4. The planning application was submitted in outline with all matters of detail reserved for future consideration save for the access. I have assessed the proposal on this basis and treated the illustrative drawings as simply being an illustration of how the proposal could ultimately be configured.
5. A draft agreement made under Section 106 of the Town and Country Planning Act 1990 as amended, agreed by all parties, was presented at the hearing. This covers provision of affordable housing, highways works and construction apprenticeships and financial contributions in respect of open space and sustainable urban drainage scheme (SUDS) maintenance, and community hall,



healthcare, off-site sports refuse bin, education, public rights of way and transport provision. This section 106 planning agreement has been completed and informs my conclusion on the third main issue identified below.

6. Since the Council's decision, a new version of the National Planning Policy Framework (the Framework) was published in July 2021. The parties have had opportunity to comment on the engagement of the latest version of the Framework in relation to the appeal, and so will not be disadvantaged by my having regard to it in reaching my decision.

### **Main Issues**

7. The main issues in this case are:

- Whether the location of the proposed development is suitable, with particular reference to the spatial strategy for the area and reliance on the private car;
- The effect of the proposed development on the character and appearance of the area; and
- Whether the proposed development would make adequate provision for local infrastructure, highway safety, affordable housing and future on site future maintenance arrangements.

### **Reasons**

*Whether a suitable location*

8. The appeal site is adjacent to the south-eastern end of the built-up area of the village of Adderbury. While an access track, sand paddock and stable building occupy some of the eastern part of the appeal site, it is a field with established hedgerow perimeters, which mainly comprises grass paddocks.
9. Policy Villages 2 (PV2) of the Cherwell Local Plan (2011-2031) Part 1 (2015) (LP) specifies a total of 750 homes to be delivered at Category A villages, of which Adderbury is one. This is in addition to the rural allowance for small site 'windfalls' set out in Policy BSC1 of the LP. In addition, saved Policy H18 of the Cherwell Local Plan (1996) (CLP) seeks to restrict development beyond settlements' built-up limits to a limited number of exceptional scenarios.
10. Policy ESD1 of the LP seeks to mitigate and adapt to climate change, in part through 'delivering development that seeks to reduce the need to travel and which encourages sustainable travel options including walking, cycling and public transport to reduce dependence on private cars'.
11. This approach is echoed in the requirement of Policy SLE4 of the LP that 'all development where reasonable to do so, should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling. Encouragement will be given to solutions which support reductions in greenhouse gas emissions and reduce congestion'. Supporting paragraph B.70 indicates that the strategy is to propose 'more sustainable locations for housing and employment growth, whilst recognising the importance of the car in a rural District. The strategy seeks to avoid increasing the function of the towns as dormitory centres by strengthening their employment base and transport connection to those sites'. A criterion for consideration under PV2

that is relevant to this matter is whether the site is well located to services and facilities.

12. In the first reason for refusal (RFR1), the Council described the proposal as 'unnecessary, undesirable and unsustainable development', 'by reason of its scale and siting beyond the built up limits of the village, in open countryside and taking into account the number of dwellings already permitted in Adderbury, with no further development identified through the Adderbury Neighbourhood Plan'. RFR1 also described the proposal as being in an 'unsustainable location on the edge of the village, distant from local services and facilities', such as to result in high reliance by future occupiers on the private car for day to day needs.
13. Subsequent to the Council's decision, they have revised their position to no longer contesting RFR1<sup>1</sup>. The Council sets out that this is in the light of the change in housing land supply requirement in Oxfordshire from three to five years, as per the Ministerial Land Supply Update Statement (LSUS) on 25 March 2021, and to be consistent with Council Planning Officers' emergent views on housing proposals elsewhere in the district, for example at Deddington and Hook Norton<sup>2</sup>.
14. Also, the Merton Road (Ambrosden) and North of Shortlands (Sibford Ferris) appeal decisions<sup>3</sup> point to the possibility of housing at a Category A village in the district not impeding the essential thrust of the rebalancing strategy of an urban focus on new development in Banbury and Bicester.
15. The Council confirmed at the hearing that their in-principle objection no longer stands in relation to the greenfield extension aspect of the appeal proposal, until such time as the 750 headline homes figure in PV2 is delivered. I see no reason to take a different view on this point.
16. While the Council maintains some concern about the 'relative' remoteness of the appeal site, the site has some accessibility by bicycle and on foot to the centre of Adderbury Category A Service Village<sup>4</sup>. Also, bus service provision to Banbury and Oxford is fairly accessible from the appeal site, albeit via some stretches of unsurfaced grass verge in the village. The above accessibility would be enhanced by the highway improvement works to Berry Hill Road and Oxford Road<sup>5</sup>, which include the pending traffic calming scheme.
17. As such, the proposal is likely to result in a combination of a) a realistic prospect of some additional patronage of and profile for non-car modes of transport in and around the village by more 'green' minded occupants of the proposed development, and b) substantial reliance on the private car by future occupiers to access employment, bulk shopping, leisure, and health care facilities further afield.
18. I therefore conclude that the proposal would incur some private car dependency with associated environmental harm, albeit tempered by localised greener transport opportunities and a recognition of the importance of the car in the rural district. Thus, the proposal would not be entirely suitably located,

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<sup>1</sup> As per paragraph 1.1G of the appeal Statement of Common Ground (SoCG).

<sup>2</sup> Planning Application Refs: 20/02083/OUT (the Deddington application) 21/00500/OUT (the Hook Norton Application).

<sup>3</sup> Appeal Refs: APP/C3105/W/19/3228169, September 2019 and APP/C3105/W/19/3229631, December 2019.

<sup>4</sup> Village Categorisation as per Policy Villages 1 of the LP.

<sup>5</sup> As illustrated on Proposed Highway Improvement Plan drawing no. 1899-F03.

with particular reference to the spatial strategy for the area and reliance on the private car. As such, the proposal would not fully accord with the focus in Policies ESD1 and SLE4 of the LP on facilitating the use of sustainable modes of transport, and the focus in Policy PV2 of the LP on locating development 'well' in relation to services and facilities. This would result in moderate harm in terms of locational suitability.

19. Since their decision, the Council has changed their position in relation to RFR1<sup>6</sup>, to the point where a) it has no in-principle objections to the appeal proposals with regard to saved Policy H18 of the CLP, Policies BSC1 or PV2 of the LP, save for the consideration of landscape matters, b) it considers the appeal site to be locationally sustainable and c) it considers that the proposal would comply with policies ESD1 and SLE4 of the LP. I accept that the proposal would not impede the delivery of the numerical vision for housing in Policies BSC1 and PV2 of the LP. However, community concern remains about the suitability of the location. I am not persuaded that the exceptions in Policy H18 of the CLP are met. Furthermore, the Council's change in position does not alter the above specifics in this case, and my consequent findings in respect of the identified conflict with aspects of Policies ESD1, PV2 and SLE4 of the LP.

#### *Character and appearance*

20. Berry Hill Road leads out of the south-eastern end of the village of Adderbury. Along this road, a relatively spacious, hybrid semi-rural and semi-suburban village character, within and leading to a verdant countryside setting, is apparent. The traffic calming scheme which is due to take place on Berry Hill Road, including chicane detailing, is set to further evolve the hybrid character towards this end of the village.
21. Judging by its illustrative layout, the appeal proposal would reduce the openness and verdancy of a field within an 'arrowhead' shaped area of countryside on the north-eastern side of Berry Hill Road. Also, it would depart from the ribbon pattern of housing on the north-eastern side of the road, and is likely to introduce a meandering cul-de-sac type layout to the southern part of the site.
22. That said, judging by the illustrative layout and what I saw during my site visit, the following combination of factors would go some way towards preserving the sense of an evolved, hybrid semi-rural and semi-suburban village character, in a verdant countryside setting, at the south-eastern end of the village. Established vegetation in the landscape, including perimeter hedging and trees along the appeal site's Berry Hill Road frontage and other boundaries, would substantially screen the development. The envisaged siting of housing towards the southern end of the site would allow for substantial, naturalistic soft landscape buffer zones along the site's front boundary onto Berry Hill Road and its eastern boundary alongside a public footpath.
23. Moreover, the envisaged absence of houses and roads from the northern half of the site would go some way towards tying the proposal in with the meandering line of building extent, on the north-eastern side of Berry Hill Road. Extensive open and verdant countryside would remain beyond much of the appeal site's perimeter. The verdancy of the site's frontage onto Berry Hill Road and its perimeter zones adjoining open countryside would be retained and enhanced.

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<sup>6</sup> As set out in section 1.1D to 1.1G of the SoCG.

Together, these landscape factors would help soften the transition from development to countryside.

24. Consequently, the perception of the hybrid, semi-rural and semi-suburban village character in a verdant countryside setting, of the south-eastern end of the village would endure to a large extent, viewed from the A4260 Oxford Road and much of the public footpath network along the eastern and northern boundaries of the site. Such is the bulk and density of the established boundary vegetation, and envisaged scope for further soft landscaped buffer areas, that the visibility of developed character would be limited to within the site, down the site access and glimpsed views from outside the site through perimeter vegetation.
25. Moreover, footway enhancements along Berry Hill Road and a safer link across Oxford Road to the public rights of way network beyond<sup>7</sup>, together with the envisaged views of the spire of the grade I listed Church of St Mary across the development, would increase opportunities for appreciation of the local landscape.
26. Furthermore, through its scale on the approximately parallelogram shaped site, located towards the south-eastern end of the village, the proposal would have the spatial personality and presence to 'hold its own' as a new 'end stop' to the south-eastern end of the built-up area of the village, without detracting from the evolved architectural character of the village's more recent residential areas, and the historic character of the village's historic core within the Adderbury Conservation Area (CA) located some distance to the north. Given this, and the separation between the appeal site and the CA, the proposal would have a neutral effect on the setting of the CA. The Council and appellant express the shared view that no harm would arise to the listed Church of St Mary or its setting, or to any other heritage asset or its setting<sup>8</sup>. I agree on this point.
27. Drawing the strands together, I find that through reduction of the verdancy and spaciousness of the appeal site, and the increase in developed character towards the south-eastern end of the village, the proposal would reduce the rural character of the village's setting. This would result in a localised adverse impact on the area's character and appearance, tempered by the assimilating factors identified.
28. Therefore, in conclusion the proposal would, overall, moderately harm the character and appearance of the area. As such, it would conflict with Policies ESD13, ESD15 and PV2 of the LP, and saved Policies C8, C27, C28 and C33 of the CLP, which together seek to ensure that development complements, protects and enhances local character. Furthermore, through being development outside the Adderbury settlement boundary, which would harm local landscape character, the proposal would conflict with Policy AD1 of the Adderbury Neighbourhood Plan 2014-2031 (NP).

#### *Infrastructure provision*

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<sup>7</sup> As illustrated on Proposed Highway Improvement Plan drawing no. 1899-F03.

<sup>8</sup> As stated in paragraphs 5.8 and 5.10 of the SoCG.

29. The SoCG<sup>9</sup> indicates that once the Section 106 planning agreement is completed and signed by all parties, the Council can withdraw the third reason for refusal. This agreement has been completed and signed by all parties.
30. Given the provision in the agreement for affordable housing, highways works and construction apprenticeships and financial contributions in respect of open space and SUDS maintenance, and community hall, healthcare, off-site sports refuse bin, education, public rights of way and transport provision, this main issue is satisfactorily addressed.
31. In conclusion, the proposed development would make acceptable provision for local infrastructure, highway safety, affordable housing and future on site future maintenance arrangements. As such, the proposal would not conflict with Policies INF1, PSD1 BSC2, BSC9, BSC11 and ESD7 of the LP, which together seek to ensure that local infrastructure requirements are met.
32. Policy BSC 2 of the LP does not cover infrastructure and so is not engaged in respect of this main issue.

### **Other Matters**

33. Concerns have been expressed by some local residents about the proposal's effect on road congestion and highway safety, which go beyond the reasons for refusal.
34. The Highway Authority has not objected to the proposal on these grounds. The proposed highway improvement plan includes new footway on Berry Hill Road, and pedestrian refuges on Oxford Road, which would improve pedestrian safety in the locality. Also, the pending traffic calming scheme on Berry Hill Road is likely to have a positive effect on highways safety in the vicinity of the site's access. Furthermore, the Appeal Note on Transport and Highways Matters by the appellant's transport planning consultant indicates that the traffic from the up to to 40 additional homes towards the south-eastern end of the village would not be of a volume to harm the safety or capacity of the road network, including the Oxford Road/Berry Hill Road junction. In the light of the above, I find that, subject to conditions regarding the site access and parking areas, the proposal would not harm the safety and capacity of the local road network.

### **Conditions**

35. The conditions suggested by the Council have been considered against the tests of the Framework and advice provided by Planning Practice Guidance. I have found them to be broadly reasonable and necessary in the circumstances of this case. I have made some minor drafting changes to suggested conditions in the interests of precision.
36. Conditions relating to approved plans, the submission and implementation of reserved matters and associated time limits are necessary to provide certainty. I attach conditions relating to the site access and parking areas in the interests of highway safety. Conditions regarding a travel plan, information pack and electric vehicle charging infrastructure are required in the interests of sustainable transport. A condition relating to affordable housing and Lifetime Homes provision is necessary to provide an inclusive mix of housing. Conditions regarding drainage and surface water mitigation are necessary to ensure

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<sup>9</sup> Paragraph 1.1J.

sustainable water management. Conditions relating to ecology, arboricultural protection and landscape are required to safeguard biodiversity and the character and appearance of the area. I attach conditions relating to construction management and contaminated land to safeguard residents' living conditions. A condition is also attached to safeguard archaeological assets.

### **Planning Balance and Conclusion**

37. In the light of the LSUS, the Council confirms that it cannot demonstrate a five year supply of deliverable housing sites. On the evidence before me, I consider the shortfall to be in the region of 0.3 to 0.5 years for the purposes of this decision.
38. The proposal would provide the following benefits. It would contribute up to 40 dwellings in the area, within the above context of housing land shortfall. The dwellings would include up to 14 affordable units and up to two units built to Lifetime Homes standards, to help meet local community housing needs. The proposal would provide potential for enhancing the area's green infrastructure network through additional publicly accessible, naturalistic green space with views of the grade I listed church spire, and proposed highway improvements. Furthermore, associated socio-economic benefits during and after construction would include patronage of local facilities, businesses and services in the village, which would contribute to their sustenance. The above together amounts to a substantial combination of benefits.
39. The harm arising in terms of locational suitability and the area's character and appearance would be moderate, and the resultant conflict with the development plan as a whole carries moderate weight.
40. As a result of the housing land supply shortfall, the policies referred to earlier in this decision, which are those most important for determining the appeal, are out of date. Consequently the tilted balance, under the terms of paragraph 11 of the Framework, is engaged. This tells us that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.
41. While the proposal would conflict with Policy AD1 of the NP, it is more than three years since the NP became part of the development plan. With reference to paragraph 14 of the Framework, this limits the weight which the conflict with NP Policy AD1 carries.
42. The adverse impacts of the proposal would be moderate in terms of locational suitability and the impact on the area's character and appearance. These moderately adverse impacts would not significantly and demonstrably outweigh the substantial totality of planning benefits, when assessed against the policies in the Framework taken as a whole.
43. As such, the proposal benefits from the presumption in favour of sustainable development. I find that this consideration is of sufficient weight to indicate that planning permission should be granted, notwithstanding the conflict with the development plan. I therefore conclude that the appeal succeeds.

*William Cooper* INSPECTOR



### **Schedule A) Conditions**

- 1) No development shall commence until details of the appearance, landscaping, layout, and scale (hereinafter called 'the reserved matters') shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 18 months from the date of this permission.
- 3) The development hereby permitted shall commence not later than one year from the date of approval of the last of the reserved matters to be approved.
- 4) The development shall be carried out in accordance with the following approved drawings: Location Plan; 1899-F01 Rev J Proposed Highway Improvement Plan; 1899-F03 Proposed Highway Improvement Plan.
- 5) No development shall commence until have been submitted to and approved in writing by the local planning authority details for the construction of the site access arrangement. These shall be in accordance with the Proposed Highway Improvement Plan drawing Ref: 1899-F01 Rev J. The works shall be carried out as approved, in accordance with the Oxfordshire County Council Residential Road Design Guide, prior to the first occupation of the first dwelling, and retained thereafter.
- 6) No structure exceeding 1m in height, measured from carriageway level shall be placed within the visibility splays of the site access.
- 7) Prior to the first occupation of each dwelling hereby permitted, the parking areas shall be constructed, laid out, surfaced, drained and completed in accordance with specification details to be submitted to and approved in writing by the local planning authority. The works shall be carried out as approved and retained thereafter.
- 8) Prior to first occupation of the development hereby permitted, there shall have been submitted to and approved in writing by the local planning authority a Travel Plan. The Travel Plan shall be prepared to the format shown in Appendix 4 of the Oxfordshire County Council guidance Transport for New Developments: Transport Assessments and Travel Plans (March 2014). The works shall be carried out as approved and retained thereafter.
- 9) Prior to first occupation of the development hereby permitted, there shall have been submitted to and approved in writing by the local planning authority a Residential Travel Information Pack (RTIP), which, as approved, shall be distributed to each dwelling at the point of their first occupation.
- 10) The total number of dwellings on the site shall not exceed 40, and shall include 35% affordable dwellings and 5% Lifetime Living Homes.
- 11) No development shall commence until have been submitted to and approved in writing by the local planning authority a detailed scheme for the

surface water and foul sewage drainage of the development. The surface water drainage scheme as approved shall be carried out prior to commencement of any building works on the site. The approved foul sewage drainage scheme shall be implemented prior to the first occupation of each building to which the scheme relates. The drainage works shall be laid out and constructed in accordance with current edition of the Water UK Sewers for Adoption Design and Construction Guide for Developers.

- 12) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority full details of the construction of the surface water mitigation proposals, including any balancing pond if required, and implementation schedule. The works shall be carried out as approved and retained thereafter.
- 13) No site clearance or development works shall take place until there shall have been submitted to and approved in writing by the local planning authority an ecological enhancement scheme, which shall include implementation timing. The scheme shall be carried out as approved.
- 14) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority full details of an arboricultural protection scheme. The scheme shall be appropriate to the scale and duration of the development works and include the following: a) contact details for the supervising project arboriculturalist; b) relevant persons/contractors to be briefed by the project arboriculturalist on on-site tree related matters; c) the timing and methodology of scheduled site monitoring visits to be undertaken by the project arboriculturalist; d) procedures for notifying and communicating with the local planning authority when dealing with any unforeseen variations to the agreed tree works and arboricultural incidents; e) details of appropriate supervision for the installation of load-bearing 'structural cell' planting pits and/or associated features such as irrigation systems, root barriers and surface requirements (for example reduced dig systems, arboresin or tree grilles).
- 15) All approved tree works shall be carried out in accordance with the current revision of British Standard 3998: Recommendations for Tree Works, by suitably qualified and insured arboricultural contractors.
- 16) No removal of mature trees shall take place until such time as they have been checked for bats by a suitably qualified ecologist prior to removal. Should bats be found to be present in any tree due for removal, a bat mitigation scheme must be submitted to and approved in writing by the local planning authority prior to the removal of the trees concerned. The bat mitigation scheme shall be carried out as approved.
- 17) As part of the reserved matters, a landscaping scheme shall be submitted to and approved in writing by the local planning authority. The scheme for landscaping the site shall include: a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas; b) details of the existing trees and hedgerows to be retained as well as any to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any



excavation; and c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps.

- 18) As part of the reserved matters, a landscape management plan, to include the timing of the implementation of the plan, long term design objectives, management responsibilities, maintenance schedules and procedures for the replacement of failed planting for all landscape areas, other than for privately owned, domestic gardens, shall be submitted to and approved in writing by the local planning authority. Thereafter the landscape management plan shall be carried out as approved.
- 19) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a construction environment management plan (CEMP). The CEMP shall include details of measures to be taken to ensure that construction works do not adversely affect residential properties on, adjacent to or surrounding the site, together with details of the consultation and communication to be carried out with local residents. The CEMP shall be carried out as approved.
- 20) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a detailed assessment of the impact of the development on local air quality. This shall have regard to the Cherwell District Council Air Quality Action Plan. The assessment shall include future air quality monitoring provision.
- 21) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority an archaeological written scheme of investigation for the development site prepared by a professional archaeological organisation. The scheme shall include a staged programme of archaeological evaluation and mitigation by the commissioned archaeological organisation, including all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication.
- 22) Each dwelling, prior to its first occupation, shall be provided with ducting to allow for the future installation of electrical vehicle charging infrastructure to serve the dwelling.
- 23) No development shall commence until an investigation and risk assessment has been completed to assess the nature and extent of any contamination on the site and a written report of the findings submitted to and approved in writing by the local planning authority. The investigation and risk assessment must be undertaken by competent persons and include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments; (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with the Environment Agency's Land Contamination: Risk Management (LCRM) guidance (available on [www.GOV.UK](http://www.GOV.UK)). Remedial works shall be carried out as approved.

## **APPEARANCES**

### FOR THE APPELLANT:

Nigel Evers	Viridian Landscape Planning
Sarah Reid	Kings Chambers
Kathryn Sather	Kathryn Sather & Associates
Matthew Symons	Hollins Strategic Land
Phil Wooliscroft	Croft Transport Solutions

### FOR THE LOCAL PLANNING AUTHORITY:

Andy Bateson	Cherwell District Council
Max Askew	Askew Nelson

### INTERESTED PARTIES:

Mr Rashid Bbosa	Oxfordshire County Council
Mr Richard Oliver	Oxfordshire County Council

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

1. Extract from Sustainability Appraisal for the Adderbury Neighbourhood Plan, received 22 June 2021.
2. Planning Obligation by Deed of Agreement, dated 22 June 2021, received 24 June 2021.