

LAND NORTH OF CAMP ROAD, HEYFORD PARK

CLOSING STATEMENT ON BEHALF OF LPA

1. Introduction

There is no need to repeat the Opening, but this Closing should be read along side it. The Appellant's have simultaneously accepted that limited weight can be attached to the emerging local plan.¹ yet still placed reliance on the inclusion of the site within an emerging process as a 'direction of travel'² - there is a more significant direction of travel to now bear in mind.

2. This is the strengthening of the status of the development plan³ and more particularly the making of a decision in accordance with it. This relates to the adopted development plan not what it might be at point so materially prior to its adoption.

3. Confidence in plan led approach is no idle point in this appeal as the Inquiry has heard from one of the leaders of the Neighbourhood Planning process which has engaged positively with the re-use of the former Airbase and the balances inherent in accepting the development in accordance with the plan.

¹ Reconfirmed by DB in xx.

² Whilst ignoring the clear point in that draft that any extension in this broad area should sequentially follow on from the development of the present settlement allocation area comprised of and bound by Policy PV 5.

³ As alluded to by AB in 5.15 of his rebuttal evidence in relation to the confidence of the community in plan led planning. The introduction of "strongly outweighed by material considerations" instead of "outweighed by material considerations" in s38(6) of the 2004 Act. CD ID 24

4. I repeat and emphasise that the reason for the need to attach little weight to an emerging plan at this point in the emerging local plan process is uncertainty⁴ not only about where strategic development should go, but on what basis⁵ in terms of a more localised response covering matters which will include the sequence of development of an area, balance of uses or the provision of infrastructure alongside it to give a few salient examples.
5. Stripped to the raw essentials a component of the Appellant's case seeks to rely on the engagement of a tilted balance by means of land supply policies specifically `and separately addressed to meeting Oxford's unmet need within a separate DPD - when this site is not suitably or sustainably located to meet that need. Hopping on or off multiple forms of public transport to a genuinely high order settlement accommodating the best University in the World does not change the simple fact that it is too far away.⁶ That is why there are separate strategies and endorsed as such.
6. This is a fundamental point of context which plainly effects the extent to which weight should be attached to the location of these proposals insofar as development plan policies and specifically those to meet those Oxford needs can properly be deemed to be out of date. As AB emphasised there are reasons why policies to meet the needs of Oxford in a plan led way should continue to have significant weight attached to them in the context of the present appeal scheme. ⁷ In reality, the Appellants simply want to use this as an unwarranted route for dramatically reducing the weight of supply policies that do apply. This is not consistent with the thread of decision taking set in the Deddington DL. The

⁴ DB agreed in xx the relevance of uncertainty in terms of the level of weight to the draft emerging plan.

⁶ 21 km AB §5.16 – 12 more km than Woodstock which lies 9 km from the north of Oxford.

⁷ See the rebuttal of AB paras 5.14 – 5.15 [One years delay through legal challenge to the plan].

evidence of JG in the roundtable is relied upon as will be his contribution to the written comments document permitted by you in relation to the DL.⁸ The planning point (sustainable development [in accordance with local policy]) to meet Oxford’ unmet needs is not a new one and the LPA has provided written planning evidence upon it⁹ and I ask you to contrast this with the entire absence of consideration of this issue at all within the written evidence of DB. The muted rear-guard defence of this point in xx was wholly unconvincing. The evidence in this appeal does not provide a good reason for departing from the consistent policy approach.

Issue 1 : whether the appeal site forms a suitable location for development having regard to national and local planning policies

7. This question cannot be seen separately from the extent of the development proposed as shown and illustrated. Whilst the application is in outline only - it is an application for “up to 230 dwellings”. It is well established, and DB accepted that up to in this sense entails an assessment at or about that level. As DB agreed no reserved matter submission for that number could be rejected because 230 was too many. This is major development of significant scale.

8. Presently to the west (the DWH site) within parcel 15 of the planned strategic new settlement there is no development. There is no development to the east beyond Chilgrove Drive to the east. To the north parcel 23 contains those elements of interest in

⁸ See CD M18.

⁹ See AB POE §6.56, 6.56, AB rebuttal §5.4-5.16.

terms of the setting of the conservation area. To the south there is no development on the opposing side of Camp Road. The site is in open countryside in policy terms and will remain so in policy terms as the new settlement allocation is built over the remainder of the plan period.

9. Local policies do not identify open countryside as a suitable location for development of new housing quite the reverse. The conflict could not be clearer. Moreover, the Mid Cherwell NP maintains this status within a more recent part of the development plan.¹⁰
10. RFR 1 is factually correct in describing the appeal site as being located on green field land, outside the PV 5 allocation within an area of open countryside. As matters stand the appeal site is also separate from the built up area of Heyford Park. This will change over time upon the development of surrounding areas to expand the built up area.
11. DB really struggled to deal with questions addressed to identification of a single policy which establishes a favourable principle for this site to be considered as being in accordance with the development plan. The contrary case is clear and easily understood. You are invited to agree with that case.
12. DB did not appear to accept the clear and obvious point that the scheme depended upon material considerations to justify permission. Those material considerations do include

¹⁰ See CD G 4 NP - para 3.2.3. and Figure 5 pp24/25.

the proximity to the PV 5 allocation and the extent to which development management principles applicable within PV5 are met outside of PV 5.

13. The case for the Appellant rested upon a notion of meeting the spatial strategy of the plan. That spatial strategy is given effect to by the individual policies. Here the locational justification arises from PV5. The simple point in RX of AB showed that he was being xx on an inapplicable basis. The location for growth excludes the appeal site. The location for growth is at the former RAF Upper Herford base.¹¹
14. This location is not a location for “Most of the growth” , this is not a Main Town. This location is a single location . That single location is the base itself. The strategy for the main towns directs to locations “immediately adjoining” (Banbury and Bicester) but this is not so for the single location ¹² of the base.
15. The plan does need to be read as a whole and the structure of the plan understood. Section C starts with main towns, makes allocations for those main towns. The plan then turns to the settlement of Kidlington¹³ where the proximity to Oxford is noted as is B95 referred to by DB in answer to a question in **RX**.¹⁴ The plan then deals with “Our Villages and Rural Areas “. Within this chapter only Kidlington is noted in respect

¹¹ See p/29 of G1.

¹² As DB accepted in xx there is no reference to adjoining land within the relevant on p/29. The wording reads “*Away from the two towns, the major single location for growth will be at the former RAF Upper Heyford base which will deliver 2,361 homes.*” DC G1.

¹³ See G1 at C224 (p236)

¹⁴ B95 was referred to within the question asked of DB. There is no corresponding reference to B95 in respect of PV 5 or the location around it. See C/224 (CD G1 p/235). B95 is to be found at p/59 . This notes options for meeting the unmet needs of Oxford had to emerge from a process to “ establish how and where any unmet need might best be accommodated within the Oxfordshire Housing Market Area” – requiring an integrated approach and requiring a separate DPD for that part to be accommodated in the Cherwell District and a sustainable approach to meeting unmet need.

of providing for overflow needs from Oxford. Under the heading “ Meeting the Challenge of Ensuring Sustainable Development in our Villages and Rural areas the rationale for the allocation being by reference to the legacy challenges of redevelopment of the base¹⁵ .

16. The development area of 520 ha is an identified site. The planned for future quantum of that site over the period to 2031 is approximately 1,600. Whilst I accept that AB accepted in xx that the proposals derived support from the 268 shortfall(to 2031) based on the most recent AMR, his evidence does also show that permissions continue to be granted at the base and within the strategic allocation which he anticipates being developed over the period to 2040. ¹⁶ The 268 shortfall taken from analysis within the latest AMR does not make the appeal site a suitable location under the relevant policies of the plan, nor does adjacency of the location to the allocation site. The answers of AB in xx on the figures – then directed to tables in the supplementary proof provided by BP were answered on the basis put. However, the 268 figure needs to be understood. The concession was derived within xx first derived from the bullet from G1 p/29 A11 – as rx showed this does not apply outside the base. The 2361 is not a figure separately identified in BSC 1 although where it lies within those figures can be traced elsewhere within the plan explanatory text. The figure of 2361 is not a target identified in local policy. Explanatory text cannot make it a target as a matter of law. Insofar as any policy sets a separate target that can only be within BSC 1 itself and it does not do so and certainly not one of 2361. In terms of distribution and the spatial approach to growth BSC1 still has weight attached to it by the LPA as AB acknowledged in xx. The

¹⁵ C244 p/243 ev of AB including in chief.

¹⁶ See AB rebuttal 1.17

permissions are factual at 1,760. Within this the 1760 is shown within explanatory text showing a substantial supply from rural areas as at 31/3/14.¹⁷ The 2,350 figure is an “Allocations” figure for the Rest of District. Whilst allocations is arguably a misnomer the agglomeration of the 750 + 1600 is what needs to be assessed if anything at all. 750 is expressed as “a total of”. The progress of this is already well beyond that under PV 2. Already built or under construction there are 892 dwellings. Future further supply beyond that exists for the remaining plan period. Thus, there is no basis for the view that the 2350 will not be met over the plan period and Mr Bateson is right in his evidence to consider that the conflict with the housing strategy is significant adverse.

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17. The policies of the emerging plan adopt a sequential approach to bringing forward a further stage to development within this broad location including the appeal site and are of limited weight.

18. National planning policy rendering adopted policies out of date may mean that less weight should be attached to a policy of restriction. However, the weight to any relevant¹⁹ undersupply policy is for the decision maker to determine according to the context. In this location DB accepted that the boundary of PV 5 (which excludes the appeal site) was up to date.²⁰The rationale for the ongoing development of PV5 is the very basis for this appeal site being promoted for permission as an extension to it. The justification for this location is the progress of PV 5 not it's failure.

¹⁷ See CD G1 p/249 within the RX of DB.

¹⁸ POE §6.77

¹⁹ Within a duly conducted [5]year land supply calculation or assessment of evidence of likely underperformance of a policy in a plan [here PV5] in the period beyond.

²⁰ Express concession in xx of DB by PTKC.

19. However, this proposal neither supports the rationale for redevelopment of the base - of which it forms no part, nor is the redevelopment of the base in any way dependent upon it. The contrary position is shown by the strongly maintained objections of the principal promoter of the redevelopment of the base.
20. The proposal is not in accordance with PV 5 it conflicts with it. PV 2 enables growth in the rural area (in which the base is located) and distributes growth that expressly enables planning applications to consider sites ([then] yet unascertained and consider them against several criteria. This is not necessary at PV 5 as the site has been identified as has the spatial extent of it.
21. AB explained his view that the appeal scheme did not accord with the “proxy” assessment of PV 5 place shaping principles in respect of the setting of the conservation area. It was suggested that the co-incidental consideration of this within ESD 15 meant that any breach would be overlapping. ESD 15 does enable those matters to be properly considered in any event but the non-compliance within the proxy exercise is in my submission highly material. This is precisely because the site lies outside the allocation and the issue relates to the heritage interest of the base. The redevelopment of the base (the single location) is the rationale for the allocation.
22. The proposal is not in accordance with PSD 1, ESD 1,²¹ ESD 15, Policy Villages 5 and there is clear and significant conflict with each of these policies. This is because the policies map and the development area are precise and clear and in this area the most

²¹ The proposal is not in any of “the most sustainable locations **as defined in this Local Plan**” .

sustainable location defined is the single location of the base. Other material considerations do not justify taking a different view for all the reasons explored in the evidence including the making of acceptable connections to that most sustainable location and the facilities that it offers. PD 4 of the neighbourhood plan is conflicted with for overlapping reasons. H18 is also conflicted with as DB acknowledges.

23. If there is the required [5] years land supply [including buffer] then there is no reason to give other than full weight to the development plan policies and material considerations do not justify permission.
24. The planning balance remains against the suitability of the site even if the tilted balance applies.

Issue 2: The effect of the proposal on the landscape and local character, with regard to the form and character of Heyford Park

25. In respect of the landscape character and visual effects in a **landscape** sense which WL²² went to great lengths to explain are distinct it is accepted that the position on the evidence shows an acceptance that the proposal can reach a point of negligible harm at year 15 subject to mature mitigation. Intervening harm and the level of residual harm do not of themselves amount to a reason for refusal in respect of conflict with ESD 13.²³The

²² Who gave evidence within the landscape roundtable only.

²³ Under xx AB accepted this position – his policy evidence drew from his own conclusions set out within the landscape roundtable and recorded in the landscape statement of common ground.

conflict with ESD 15 “Character of the Built and Historic Environment “ remains and this is a character point I deal with under issue 3 but inevitably does feed into issue 2.

Issue 3: The effect of the proposed development on heritage assets.

26. These matters were dealt with within the heritage roundtable. I invite you to prefer the evidence of Dr Doggett and arrive at the judgment that there is harm to the significance of the setting of the Former RAF Upper Heyford Conservation Area (and within that context the non-designated heritage assets²⁴) for the reasons he set out in his written evidence and explained in detail to you.
27. This will clearly be informed by going onto both the appeal site and the conservation area itself within your site visit and this is not an issue that requires detailed submissions.
28. Dr Doggett clearly showed that he entirely understood the context he was examining, the fact that it would change with the implementation of the VP 5 settlement allocation and nonetheless identified that the appeal proposals would inevitably cause harm which he placed at moderate to low harm within the spectrum of less than substantial. It is not difficult to understand why placing 230 new dwellings on the appeal site – an estate of housing – would hem in²⁵ “the base” and the specifically identified nda within it. He

²⁴ The 7 hardened air craft shelters dispersed on the base and able to shield USAF planes which then could be launched in an eastward direction within a matter of minutes. Also the southern bomb stores [AB §6.47]

²⁵ A phrase used by ND during his explanation within the heritage roundtable.

really was unconvinced that the scope for mitigation was anything more than negligible²⁶ within the details of reserved matters. As his evidence put it:-

*“I remain firmly of the view that the proposed fundamental change of the appeal site from agricultural fields that have never previously been built upon into a housing estate can only cause irrevocable harm to what is significant about the setting of the RAF Upper Heyford Conservation Area.”*²⁷

29. There is no disagreement between the main parties that certain consequences flow from that being the position in terms of the approach to the decision as a matter of law, national and local policy.

30. In terms of ESD 15 this cross refers to NPPF at bullet 5. The wording of this bullet is as follows: -

- *“**Conserve, sustain and enhance**, designated and non designated ‘heritage assets’ (as defined in the NPPF) including buildings, features, archaeology, **conservation areas** and their **setting**, and ensure **new development is sensitively sited** and integrated in accordance with the advice in the NPPF and NPPG. Proposals for development that **affect non-designated assets** will be considered taking account of the scale of the harm or loss and the significance of the heritage assets as set out I the NPPF and NPPG. **Regeneration proposals** that make sensitive use of heritage assets particularly where these bring redundant or under used buildings or areas, especially any on English Heritage’s at Risk Register, into appropriate use will be **encouraged**. “[bold for emphasis]*

31. There is a clear distinction between the PV 5 site and the justification for it and the appeal site beyond. PV5 is addressed to reusing the base, the appeal site seeks to bolt on to that

²⁶ Your question to him in the roundtable – and supplementing the view of AB at 6.47 such that the scope for such a reduction is accordingly limited.

²⁷ POE ND §4.11

happening but does not gain from the reason for it. The effect on the setting is accordingly quite different to the carefully constructed checks and balances leading to the making of PV 5. In that sense AB's identified harm under the proxy PV 5 exercise are of themselves noteworthy. Bullet 4 under these place shaping principles does not allow release of greenfield land **within** the allocated site Villages 5 will not be allowed to compromise ...conservation of heritage interest of the wider area. These proposals **outside** do precisely that on the evidence of Dr Doggett as shown and as set out in AB's evidence at POE §6.4.²⁸ ESD 15 is not out of date it refers to and identifies NPPF. The harm under issue 3 does weigh heavily against this proposal as AB has stated. There is clear conflict with policies that are up to date. ESD 15 is up to date and restrictive, DB acknowledges that the boundary of VP 5 which the appeal site adjoins is up to date and policies beyond it are restrictive and ESD 15 applies to this setting beyond that boundary.

32. ESD 15 states that the siting of new development should complement and enhance the character of its context and under bullet 4 contribute positively to an area's character and identity²⁹ in particular within the setting of conservation areas. AB has explained why under ESD 15 these proposals will not do that. A conclusion that must follow from the evidence of Dr Doggett.

Issue 4: Whether the development makes appropriate provision for infrastructure and transport mitigation to ensure a sustainable development and make development acceptable in planning terms

²⁸ See 4th criterion plus 2nd and 23rd.

²⁹ See A B POE §6.44.

33. On one hand the Appellant does not consider it necessary to bring forward a proposal through engagement with DL and properly and truly integrating into an agreed joint approach to the extension of an allocation governed by a single Masterplan and on the other hand the A seek to argue that they effectively they comply with VP 5.
34. For the reasons explained by AB they plainly do not comply with VP 5 - this much is obvious.
35. However, to not wholly engage with the comprehensive approach under a single Masterplan is inexplicable other than on the basis of an unwillingness to wait to promote the site through the emerging planning process.
36. **If** this site were to come forward with a plan led approach it should be regarded as follow on development to VP 5 within that process and form part of a comprehensive approach.
37. VP 5 is being used as a proxy because this appeal forces the issue to be determined outside a comprehensive approach.
38. VP 5 could not be used as a basis for refusal in terms of place shaping principles because they do not apply. The reason under rfr 1 correctly is locational (not simply “a sustainable location “ in terms of accessibility to services of an urban area]) and a matter of principle but could not seek all that is sought under VP5 within reason for refusal 2.

39. Reason for refusal 2 is overcome by the combined effect of the agreed 106 upon execution and the proposed conditions but overcoming this reason does not render the development a sustainable development as considered under rfr 1. Reason for refusal 2 addresses infrastructure and transport mitigation alone and this is agreed to be overcome.
40. Thus, there is no contradiction between AB answering your question about maximising links in the negative whilst accepting the point now reached in terms of adequacy of the position now reached for the purposes of reason for refusal 2. The actual strategic allocation is governed by policies more ambitious than that - as it should be.

Issue 5: Whether a five-year supply of deliverable housing land can be demonstrated.

41. The LPA rely upon and invite you to accept the evidence of JG on five year supply and that:-
- 41.1 the five year calculation of relevance to this appeal sets a requirement from LHN which does not add a further figure in respect of Oxford's unmet need which is not an LHN figure.
- 41.2 this is correct as a matter of law for the reasons set out in Opening.
- 41.3 this is the approach taken and accepted :-
- 41.3.1 within the Finmere appeal decision [CD I7];
- 41.3.2 within the Deddington DL in resolving a contentious issue [CD M16]
- 41.4 you are invited to accept that the evidence in this case shows no good reason to depart from the reasoning in those decisions as a matter of consistency on what is ultimately a matter of interpretation of §74 and proper consideration of NPPG.

41.5 the supply of sites discloses a five year supply based upon the correct requirement.

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42. The supply of sites and the approach to it is a matter of judgment and I do not propose to rehearse sites in closing.
43. The LPA invite you to prefer the evidence of JG on [5] years supply for the reasons he has explained in writing and verbally explained in the round table and lead to his updated figures within the revised draft Statement of Common Ground – which is only dealing with 5 year supply of housing land as opposed to that of BP who provided a supplemental that goes well beyond.
44. JG has explained that BP’s earlier views take a pessimistic stance to the delivery that is subsequently shown and why the performance of the LPA is encouraging and the approach to claiming supply conservative. There is no policy prescription on how clear evidence or how firm progress is shown but the delivery of supply is continuing, permissions are being granted and the housing delivery test is being consistently met.
45. You are invited to conclude that a 5 years supply of housing land including a buffer can be shown in accordance with current national planning policy.

Issue 6: The overall planning balance

46. The proposals do not accord with the development plan as a whole and there are no material considerations that justify taking a decision other than in accordance with the development plan.
47. Given the existence of a five year supply weight can be applied to policies which restrict supply as set out in AB's assessment with one exception. I accept that the concession made on landscape means that significant adverse weight cannot be given to that element of landscape character. The scale of development in that respect also falls away as a landscape point. However, it remains and informs the assessment under heritage harm and in that respect - remains significant adverse. The harm to the housing spatial strategy properly understood as a matter of policy interpretation ³¹remains significant
48. The weight to provision of affordable housing is high. I accept that AB conceded this was so although I tried and did not find a prefix to the scale point in xx within my notes- I will need to rely on your note Madam. The basis of measuring progress is not 407 homes per annum – this is not a policy target but a raw 2014 figure to inform a policy response which is contained in BSC 3 in terms of seeking 35% affordable homes “elsewhere” subject to viability and negotiation. This figure is not a target just as the later lesser figures in the text prior to BSC 3 are not targets. The AMR monitors progress against 190 per annum.

³¹ This is not a technical interpretation. It reads the words used. Technical here infers inconsequential. This the very opposite it goes to what sustainable development means in the plan. It is not a narrow transportation point.

49. When one is considering an “overarching” approach – it is all the competing considerations that should be considered in the planning balance does not focus upon one component part of it such as whether the appeal site is in “a sustainable location” from the perspective of access. That is but one part of the true overarching principle drawing threads together as AB does at §6.77. For these reasons and as adjusted above I submit that either on a flat or tilted balance refusal should follow.
50. In relation to the effect of the proposals on the setting of the conservation area the great weight that DB accords and significant weight by AB under §202 NPPF is not outweighed by public benefits of these speculative proposals which do not accord with the development plan. Those benefits are considered and are set out in evidence and returned to above and are matters of judgment. You are invited to dismiss this appeal.

G.A.GRANT

KINGS CHAMBERS

MANCHESTER-LEEDS-BIRMINGHAM

15th December 2023