PINS REF: APP/C3105/W/23/3326761

LPA REF: 21/04289/OUT

APPEAL BY RICHBOROUGH ESTATES, LONE STAR LAND LTD, K AND S HOLFORD, A AND S DEAN, N P GILES AND A L C BROADBERRY

LAND AT OS PARCEL 1570 ADJOINING AND WEST OF CHILGROVE DRIVE AND ADJOINING AND NORTH OF, CAMP ROAD, HEYFORD PARK

CLOSING SUBMISSIONS ON BEHALF OF DORCHESTER LIVING

1. This is the wrong development, in the wrong place, at the wrong time. It would be hard to find a less appropriate location for a strategic land company to promote an opportunist application than close to a nascent new settlement which is well on the road to creating a comprehensive and well integrated community. The basic headlines of the case illustrate the fallacious nature of its supposed merits:

   (i) The appeal scheme is promoted on the basis that it will address a five year supply deficit, despite the fact that most of it will not be delivered within the five year period even on the Appellants' most optimistic case;

   (ii) It is claimed that it will integrate well with the 'existing' settlement even though it presently adjoins two roads and a couple of fields;

   (iii) Whilst not trailed in its planner's evidence an 'important' point is said to be that Heyford Park will under deliver against the expected 1600 units by 2031 expected in 2014; despite the fact that there is no such requirement in policy (only an approximate expectation in PV5), and despite the fact that when the numbers are properly examined on the evidence before this inquiry, then the strategic need is

at Banbury and Bicester and the Rest of District is substantially over-delivering against expectations;

(iv) A site within the open countryside outside any up to date settlement boundary or allocation, which is not supported by any positive policy in the development plan and directly conflicts with the countryside policy, is apparently compliant with the development plan taken as a whole; and

(v) The walk and cycle links are to facilities are on the edge or beyond what is considered by national policy to be walkable neighbourhoods, but such links which don't include an off road cycle link are claimed to have been 'maximised' despite the fact that no contact has been made with landowners who could enable shorter and more direct links to be provided.

2. Worse still, not only will it not contribute to delivering houses where and when they are needed for this Council, it risks disrupting the delivery of plan-led housing in this unique carefully planned new settlement.

3. Dorchester Living, as Mr Silver set out in the highways roundtable, has a proven track record of developing well-planned and vibrant communities on large scale, strategic sites. For Heyford Park this has meant developing a coherent, legible and permeable site for future residents to access services and employment with reduced reliance on the private car, within the careful constraints of PV5.

4. The allegation that DL's motivation is anti-competitive is palpably wrong, but it is telling that such a misguided allegation has been made. Heyford Park to date has involved other developers than simply DL, who have also worked closely with the LPA to ensure carefully designed and well integrated developments, including Bovis and as is well known to the inquiry Pye Homes. No objection has been raised to the principle of the replanning by BDWH on the latter's site by DL subject to ensuring that suitable linkages are provided.

5. The local plan, makes it clear that development within the allocation must sensitively deal with the unique nature of this site[1]. This is not just another appeal for development outside a settlement boundary in circumstances of a disputed 5YS, although that appears to be how the Appellant is putting its case.

6. It is a development that amounts to a bolt on, prejudicing the carefully balanced phasing of a large-scale new settlement that is currently delivering broadly as anticipated – and certainly within the margins of the requirement of approximately 1600 units in PV5. As such it dilutes and undermines the fundaments of the community that is being planned at Heyford Park.

7. The vision for the new settlement is manifest in the requirements of policy PV5 in the adopted Cherwell Local Plan – itself the product of longstanding partnership working with the LPA. Under the section on "*Key site specific design and space shaping principles*", there are five key bullet points that relate to delivering sustainable and permeable development:

- *The settlement should be designed to encourage walking, cycling and use of public transport rather than travel by private car, with the provision of footpaths and cycleways that link to existing networks. Improved access to public transport will be required.*

- *Development should accord with Policy ESD 15 and include layouts that maximise the potential for walkable neighbourhoods with a legible hierarchy of routes.*

- *Layouts should enable a high degree of integration with development areas within the 'Policy Villages 5' allocation, with connectivity between new and existing communities.*

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[1] CD G1, pg 255, para C.285

- *Integration of the new community into the surrounding network of settlements by reopening historic routes and encouraging travel by means other than private car as far as possible.*

- *Demonstration of climate change mitigation and adaptation measures including exemplary demonstration of compliance with the requirements of policies ESD1 – 5.*

8. Mr Parker, in response to a direct question from the Inspector, confirmed that these important principles in PV5 should apply to the appeal development, even if the policy itself wasn't directly engaged. Rightly using PV5 as a yardstick against which to judge the acceptability of a scheme close to Heyford Park has been a point of agreement throughout with the Appellants; notwithstanding that Mr Bainbridge struggled with the blindingly obvious proposition that for the purposes of s.38(6) the policy is not directly engaged, since the site lies within open countryside, subject to H18, and not within the PV5 area.

9. The correct approach in law is that the site is outside PV5, and therefore PV5 does not apply to the site. There is no edge of settlement flexibility as there is for the Category A settlements under PV2 – if your site is outside PV5 you are in the open countryside and the policy framework which is directly engaged is that which relates to development in the countryside[2] However, the principles of PV5 undoubtedly apply to the determination of the appeal on the 'other material considerations' side of the planning balance. Rightly DB accepted that a site on the edge of PV5, but not in it, should not be judged against a lesser standard of land use principles. Non-compliance with the criteria of PV5 therefore should be taken into account and weighed against any benefits. Indeed, DB agreed that where there is non-compliance, as there manifestly is in this case, then that is a powerful argument against the grant of planning permission.

10. Applying PV5, in light of Mr Parker's response to the Inspector, and the agreement from the LPA and LHA, this development must <u>maximise</u> its sustainable cycle and pedestrian links to the other parts of the new settlement or fail one of the fundaments of PV5. The

[2] For an obvious example of why the decision maker needs to be clear what a development plan actually does and what policy is properly engaged and why – see the discussion of Lindblom J in Crane v Secretary of State [2015] EWHC 425 (CD M25) para 36 to 56.

basis of Mr Parker's agreement, in his own words, is to "*enhance the connectivity of the area*". This is the product of maximising connectivity.

11. It is hard to see how the position could be otherwise. It is an unattractive position, and one contrary to NPPF§105 and §110(a), to argue that a scheme should only provide the minimum: i.e. some facilities are on the very edge of what is walkable from a centroid of the site, via the least attractive and direct route (at least for those homes in the north of the scheme and with no direct off-road cycle connectivity). In terms of pedestrian & cycling links to neighbouring development and services, the appeal proposals patently could do better. The word maximise is there for a reason, it cannot be ignored as Ms Reid KC ('SRKC')seemed to do in the re-examination of DB.

12. What does it mean to <u>maximise</u>? Self-evidently, it must mean doing more than the bare minimum to get a scheme over the line of some facilities within 800m ±10%; and it must mean, at the very least, properly exploring what is possible. DF has in its evidence to this inquiry demonstrated that more could be done.

13. The issue for the Inspector then is whether what the Appellant proposes is truly maximising connectivity. SRKC helpfully clarified the Appellant's case at the very end of proceedings yesterday in discussion of the Grampian conditions proposed by the R6 party – it is no part of the Appellant's case that the east-west link from the appeal site is necessary. It is their view that it is enough to provide a cycle and pedestrian link to the western boundary, to the northern boundary – both of which take the user nowhere - and the access onto the new 2m wide pavement along Camp Road.

14. Tellingly the northern and westerly links presently go nowhere, that plan H3 of JP's supplementary evidence (and the s.106) shows the links as pedestrian links alone &, even if BDWH's scheme is consented, the western link won't link to a cycleway – but compacted 'hoggin' surface through the hedge and then onto an 'informal footway' before a trip along a shared driveway. At least the northern link looks like it will one day link to something meaningful, but the western link is a link to another cul-de-sac, linking to nothing other than the estate next door and not the facilitates and residential communities beyond. A cycleway to nowhere.

15. The Appellant argues that the sub-optimal links which it is proposing, which would leave the development without an LTN 1/20 compliant cycle link[3], is sufficient connectivity to make the proposal accessible and therefore acceptable. In fact it is anything but. It would leave all of the pedestrians with an unattractive walk through the site and out onto the busy Camp Road (which the Inspector would have experienced for herself on the site visit), in order to reach local facilities including the school.

16. Mr Parker sought, rather half-heartedly, to say that the proposed walking distances via Camp Road would be acceptable because from the centre of the appeal site the services would be within a 1.6km walking distance. This argument fails for two reasons, perhaps explaining Mr Parker's unenthusiastic promotion of the point:

17. Firstly, and most obviously, the distance from the centre of the site will be of no relevance to those future residents who need to walk from their house in the north of the appeal scheme down to Camp Road and out onto the footpath alongside the busy road. Mr Parker's TN4[4], the distances in which are agreed, show that a future resident in the north of the site, walking via the access to Camp Road, will take around 15mins to walk to the employment land (1.29km), 13mins to walk to the local centre (1.15km) and the school (1.1km).

18. Secondly, whilst DF recognised 1.6km was a threshold within which modal shift could occur, he made it very clear that it was not to be treated as synonymous with the creation of a 'walkable neighbourhood'. The 1.6km walking distance referenced in MfS, quoting from long withdrawn guidance in PPS13 is not posited as an acceptable target for a development required to <u>maximise</u> its sustainable transport links. PV5 requires development to "*maximise the potential for walkable neighbourhoods*". The use of the

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[3] Requirement of a minimum 3m width - CD L2, Table 6-3, page 68, section 6.5.7

[4] ID 20

term walkable neighbourhoods is a direct reference to the defined term[5]. Manual For Streets[6] at §4.4.1 states:

> *Walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes' (up to about 800 m) walking distance of residential areas which residents may access comfortably on foot.*

19. The more recent National Design Guide[7] strongly argues for walkable neighbourhoods, meaning "*Local facilities are within walking distance, generally considered to be **no more than** a 10 minute walk (**800m radius**)*"[8]. All new development should meet the standards of the National Design Guide ('NDG') – NPPF §110(c), it would be an odd outcome of this appeal if this exemplar new settlement was to be judged against a significantly lesser standard.

20. What is clear from both MfS and NDG is that 800m should be taken as the target for a walkable neighbourhood. Therefore, in the context of PV5 which requires development to maximise the potential for a walkable neighbourhood, the 800m becomes an even more significant target, especially since NPPF elevates compliance with the principles of the latter to what is in effect a policy requirement by reason of §110(c).

21. The plan circulated by Mr Frisby, and used by all parties in the Highway RT, then only the school, at 800m from the centre of the site, would be within a walkable distance as defined. That is not a sign of a development that maximises its available links.

22. As stated earlier, maximise must also have some limitations. The obvious one being that one can only maximise through what is deliverable. If a potential link is not deliverable then it cannot be part of a strategy to maximise. As part of the Appellants' due diligence it ought to have been aware of condition 4 of the northern Pye Homes consent which

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5 It is clear that MfS was well known to the authors of the LP – see for example ESD15 where it is referenced in terms. The use of the 'walkable' plainly deliberate

6 CD L1

77 CD F3

8 Emphasis added.

sought to facilitate access through to Larsen Road – for the reasons explained by Mr Bateson, so it was plainly incumbent upon them to explore the realism of its provision.

23. The Appellants appear to have been alive to the need to explore this western link – since the Round Table was told that an agreement had been reached with BDWH for a revised layout to be determined as part of their as yet undetermined application showing a link through to the appeal site from the BDWH site.

24. But what is staggering is that the Appellants have made not then gone on to engage with Dorchester Living or Mr Fletcher, who own land to the West of the BDWH site and who could enable the delivery of the last the element of the link from the appeal site to the services and facilities to the West – see ID4. That disappointment is compounded by the statement from Dorchester Living that they would be willing to negotiate an agreement over Larsen Road. The fact that the Appellant has not actively pursued this with either of the landowners means that it cannot be said that there is no prospect of the delivery of a link onto Larsen Road and therefore the test for a Grampian condition is met[9].

25. But it also means that in policy terms it cannot be seriously said that the Appellant has sought to maximise the sustainable transport links and so the proposal conflicts with the elements of PV5 set out above. This conflict, as agreed with DB, amounts to a powerful argument against the grant of planning permission.

26. What threw the matter into stark relief was Mr Bainbridge's contention in his EIC that the effect of allowing the appeal would be that there would be 'betterment' arising from the provision of a 3m cycleway within the appeal site to the west of its access joining to Chilgrove Drive. With respect that token effort of cycle provision underscores why the Appellants could plainly have done more. One need only ask whether or not a future parent of the appeal site would be content for their child to cycle to Heyford Park School, which for some would be 800m or so away. Such a child will not have a dedicated cycleway from the site but would be expected to cycle part way on the main Camp Road carriageway, perhaps then joining the cycleway on the south side of Camp Road (which starts some distance from the site), before crossing Camp Road to go to school. Equally

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[9] See PPG - Paragraph: 009 Reference ID: 21a-009-20140306

risible is the notion of an East-West cyclist along Camp Road having their journey improved by being able to make 4 turns in order to cycle along a few tens of metres of off-road cycleway. It is only in the parallel world where this comprises a 'betterment' that it could be seriously said that the Appellants have done all that can be expected of them to 'maximise' the accessibility of their site.

27. If the Inspector agrees with Dorchester Living, the LPA[10], the LPA's witness, and the LHA (in part), that the link to the West – through the BDWH site, across Mr Fletcher's land and onto Larsen Road owned by DL – should be meaningful and is necessary to maximise links and thereby create a walkable neighbourhood, then the link could be delivered by the proposed Grampian condition. This is subject to the Appellant actually doing the sensible thing, which one might have expected to already have been done, and speak to the neighbouring landowners necessary to deliver it.

28. The Appellant must consider that proving a link to the Western link is necessary as it has now proposed a condition (condition 24) requiring the cycle and pedestrian link to be delivered to the western boundary at point A. What it has failed to grasp is that such a link doesn't fulfil the requirements of PV5 unless it is meaningful.

29. If the scheme comes forward and seeks to link into the BDWH scheme currently awaiting determination, then the route will be suboptimal. In order to secure a useable and attractive cycle and pedestrian link to the West, it may be that the Appellant may wish to prevail upon the LPA to engage with BDWH to seek amendments to their proposed scheme to improve the proposed route through the site (in the event that the appeal is allowed).

[10] In the context of the Pye Homes northern permission – by the imposition of condition 4 – which his plainly intended to be meaningful and not merely a link to the west and a hope that something that will turn up. The fact that there is no clear enforcement provision to this objective is not a reason for concluding that it is unenforceable since the Courts have made clear that they will give effect to the clear intention of a condition in such circumstances (see Hulme v SOS [2011] EWCA Civ 638 in which a condition in a windfarm scheme had an acoustic condition setting lots of values but no requirement to produce and then adhere to a scheme to achieve those values. As DH made clear DL has made representations to the undetermined BDWH application that a clearer version of condition 4 should be imposed (for all of the reasons that Mr Bateson explained on day one of the inquiry)

30. On the current BDWH site design[11], pedestrians and cyclists would be required to go through the hedge onto the Hoggin path, then across an informal footpath over which cyclists would have no rights and which may be treacherous in winter, then onto land between driveways, before crossing through the BDWH/Pye site on an indirect route and onto another Hoggin path and to the boundary of the site. There the user would need to stop.

31. DB claimed, somewhat implausibly, that linking the appeal site to BDWH and no further would be enough. Residents of the appeal site would only need or want to use the route, such as it is, to visit neighbours in the BDWH scheme. This is, with respect, a total misapplication of PV5. The whole purpose of walkable neighbourhoods is to access facilities[12] not just other residential areas. So in order for the connection to work as it ought, users would need to be able to leave the BDWH/Pye site and onto Larsen Road to access those facilities. It would obviously also have the benefit of enabling connectivity with the existing residential community around Larsen Road (not just the Pye/BDW site).

32. The LPA clearly thought that this was important since it attached condition 4 to the Pye consent[13]. This pre-commencement condition requires "A proposed scheme of access for pedestrians and cyclists to the western edge of the application site boundary to facilitate a scheme of access for pedestrians and cyclists to Larsen Road".

33. Whilst the condition does not contain an express enforcement clause, one can be read into it[14]. This means that the access scheme to facilitate access onto Larsen Road must be delivered, it would not be enough for the developer of the Pye consent not to deliver that link. Clearly, the LPA considered that it was necessary for that condition to be attached for the development within PV5 and closer to the facilities. The Developer must have agreed because it has not challenged the condition. So must the LHA.

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11 E34, page 73

12 See NDG, CD F3, page 20.

13 CD N11

14 *Hulme v SoSCLG* [2011] EWCA Civ 638 (supra)

34. Were such a link to be secured through the imposition of a Grampian condition, then a future resident who lives in the north of the appeal site but who works in, say, the Innovation Centre would have a far better route to walk to work, making modal shift more likely. But more importantly there would be a route for cyclists such as the example of the pupil of Heyford Park School without having to use, turn into or cross Camp Road. In its present iteration – this scheme is patently not good enough to meet the terms or intentions of PV5.

35. Drawing these points together, the LPA[15], the LHA, DL, Pye Homes all considered it necessary to require a link from the BDWH site onto Larsen Road to ensure compliance with PV5.[16] It is only the Appellant who argues that the same link should not be required of their site that is further away from the facilities. This argument flies in the face of DB's agreement that PV5 should be applied with no less rigour to the appeal site than it is to land within the allocation.

36. It also appears to be contrary to the Appellant's own position on the s.106. The Appellant plainly believes that if the link is required in planning policy terms, then it is considered to pass the CIL Reg 122 tests because the s.106 includes a requirement to deliver the route up to their western boundary. Furthermore, the Appellant has proposed its own condition to provide a link to its Western boundary, so it must consider at least that part of the route to be necessary. It is not quite a road to nowhere as it links to another housing estate (assuming it is built out in accordance with a future planning permission that has yet to be granted) – but on the evidence currently available to this inquiry – it is a route to no facilities.

37. The R6 party's primary case, based upon the Appellant's case that no western (or northern) link is necessary, is that the proposal conflicts with PV5, particularly the bullet points set out above. On that case the appeal should be dismissed as conflicting with the intent of PV5. However, if the Inspector were to be minded to grant, then a Grampian condition must be imposed – especially given DB's evidence that there is a prospect that

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15 The Pye Homes Permission condition 4 and Mr Bateson

16 Reason for the condition:- For the avoidance of doubt, to enable the Local Planning Authority to give further consideration to these matters…..to achieve a comprehensive integrated form of development in compliance with Policy Villages 5 of the adopted Cherwell Local Plan and to comply with Government guidance contained within the National Planning Policy Framework.

the link through to Larsen Road could be delivered, and the link is necessary. Indeed, the Appellant has confirmed, through DB, that in those circumstances, they would rather the Grampian condition than a refusal. The R6 party has provided two potential draft conditions[17] to the Inspector – the phasing Grampian, and the link Grampian – that would address this issue.

38. The reason why the point is put conditionally – i.e. '**if**' the inspector were minded to grant is that there just isn't a proper basis to allow a proposal in this location at this time in this location when one properly examines the Appellant's justification for the release of the site, let alone its untenable contention that such a release would accord with the development plan taken as a whole.

39. Thus, in addition to the in principle conflict with PV5 as a material consideration set out above, the development obviously conflicts with the development plan taken as a whole and in particular the up to date designation[18] of the site as 'open countryside' protected in this case through policies H18, C8 of the saved policies of the 1996 Cherwell Local Plan. And the development is simply not required to meet the housing requirement of the local plan, whether on the LPA's case that there is a 5YHLS, but also the 'on the hoof' argument of a strategic need for the scheme which seemed to be based upon part of para A11 of the LP rather than the out of date figures in policy BSC1 (which are set to be exceeded in the Rural Area in any event), or the actual terms of PV5. Turning to each point in turn.

40. The development plan comprises of the Cherwell Local Plan[19] 2011 – 2031 where one finds policies PV5 and BSC1; the saved policies of the 1996 Cherwell Local Plan[20]; and, the Mid Cherwell Neighbourhood Plan[21]. Crucially, DB accepted, without equivocation

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17 The R6 party also provided a third draft Grampian condition to address the circumstance of whether the proposed highway works to Camp Road are within highway land. At the time of drafting that issue had not been resolved.

18 See fig 5, p25 of the NP.

19 CD G1

20 CD G2

21 CD G4

that there is no specific policy in any of those documents that positively supports this form of development in this location.

41. The appeal site is in the designated open countryside – agreed with DB. It is outside the up to date boundary of PV5 and the up to date boundaries set out in the NP – see figure 5 – the most recent element of the development plan.

42. As development in the open countryside it falls to be considered against policies that control development in that location. The NP makes clear that to find those policies one must look elsewhere in the development plan. Indeed, the NP made the decision not to include an open countryside policy as it was addressed elsewhere[22]. The fact that the NP didn't expressly reference H18 or C8 doesn't mean that they don't apply, rather it is, perhaps, testimony to the lower level of scrutiny afforded to the examination of NPs compared to other aspects of the development plan.

43. The open countryside policies are set out in H18 and CS8 of the 1996 plan. They are the corollary of each other – C8 setting out what cannot be built in the open countryside, H18 what can be built. It was fairly accepted by DH that these policies, to the extent that the impose a blanket restriction and no specific balance, are inconsistent with the NPPF. However, that does not mean that the policies should be disregarded or that the weight given to conflict with them set at a particular level. Indeed all of the planning witnesses, except during a somewhat confused part of the XX of Mr Bateson recognised that there is a conceptual difference between the question of whether a policy is conflicted or not, and whether it is out of date or not. The latter is a material considered – the former is a crucial part of the s.38(6) judgment. To confuse the two concepts would be to mis-apply the statutory test.

44. Turning first to C8. It is the Appellant's case that C8 does not apply because the appeal proposal does not constitute 'sporadic' development. Tempting though it is to dive into an etymological deep dive[23] into the origin of sporadic, it is not necessary because all one

[22] The NP, at §3.2.3, makes reference to ESD13 which is a policy of landscape protection. Clearly the development plan must be read as a whole and it is fanciful to suggest, as was put to DB in re-examination, that one must only look to ESD13.

[23] The Concise Oxford Dictionary 10th edition defines the term thus: *"adj. occurring at irregular intervals or only in a few places."*

has to do to understand what the word is intended to convey is to read policies H18 and C8 together with their supporting texts.

45. The wording of C8 'applies' its protection to sporadic development in the open countryside. The supporting text, which aids in the interpretation of policy, states at §9.13 that "*Policy C8 will apply to* ***all new development*** *proposals beyond the built-up limits of settlements*"[24]. All new development is not limited in any way. It is all development beyond the built up limits of settlements. The word sporadic in the plan is plainly meant to be read in this way. It would be odd were the position to be otherwise, and it only applied to 'isolated' development and not development next to settlements, which would not then be caught by C8, despite such locations being in the countryside, and despite everybody agreeing that at the time of the 1996 LP that national policy was to protect all of 'the countryside for its own sake', not just the bits that were away from settlements.

46. But if one wanted any further confirmation from this obvious point, then it is to be found by considering H18, which precludes housing in the countryside, subject to limited exceptions without the term 'sporadic' being deployed in the policy; and yet the paragraph immediately following H18 tells us that the policy is aimed at precluding 'sporadic' development of housing in the countryside.

47. DB rightly agreed in XX that it would be illogical to say that H18 only applied to isolated development in the open countryside, taking his interpretation of sporadic, but not to large schemes of 230 units in a similar location. With respect to the intellectual gymnastics that may be deployed by the Appellants' team in their closing submissions – to interpret 'sporadic' as a synonym for 'isolated' makes a logical nonsense of the supporting text of H18 and would make C8 inconsistent with what was then national policy. If the term means no more than 'unplanned' or even 'occurring at irregular intervals or only in a few places' then the adjective 'sporadic' would not give rise to such an illogical interpretation of the 1996 LP.

48. But, even if sporadic is given a meaning of isolated, that must surely apply to this development in that it is presently separated from the main developed settlement of Heyford Park. There is no guarantee that the appeal scheme would come forward only after the Pye/BDWH scheme to its West, or the development to the North. In those

[24] Emphasis added

circumstances, until other development caught up with it, then this would indeed be an island of development separated from the nascent settlement. Whilst DB steadfastly would not agree that it would be an 'island' of development, his own detailed descriptor was a site with fields to the west and east, the undeveloped site to the north and a road to the west and south. An island of development in description, but not name.

49. Whilst the interpretation of policy is a matter of law, its application is one of judgment[25]. As Mr Hutchison ('DH') set out in XC, and reiterated in XX, one may apply different weight to H18 and C8 as open countryside policies depending upon the location of the development under consideration – an obvious material consideration.

50. For example, it would be legitimate to give less weight to H18 and C8 closer to Bicester and Banbury, the focus of development, that are both seriously under-performing in terms of housing delivery. Conversely, more weight should be given to those policies where the development, as here, is proposed next to an allocated new settlement that is under long term construction, in part of the district which is actually over-performing compared to the strategic distribution of housing.

51. It is for this reason that DH attached significant weight to the conflict with H18 and C8, despite the fact that their blanket protection is acknowledged not to be reflective of up to date national guidance in §174(b) of NPPF.

52. The R6 party has not sought to engage in the HLS debate in part because DH's position is that even if there was no 5YHLS (by whichever of the various convoluted routes advocated by the Appellant), then the appeal should still be dismissed, given its poor integration into the nascent settlement, its disruptive effect upon delivery of the plan led allocation and that the actual strategic need (Oxford's or Cherwell's) is not in the Rest of District in general or HP in particular. However, given the way in which the Appellant's case was put in XX to the LPA's planner (though tellingly not trailed in DB's actual written evidence) it has been necessary to address the issue of whether the proposed development is needed as part of its case.

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[25] See *Gladman v SOSHCLG* [2021] EWCA Civ 104 at [32]

53. These submissions do not extend to the 5YHLS debate however, but focus upon two points:

(i) The relevance (if any) that the LPA consider that HP will undershoot the anticipated figure of 1600 unit delivery at PV5 by 268 units by 2031 ('the A11 fallacy'); and

(ii) The likely delivery of the appeal scheme to the need that it professes to address.

54. Turning first to the A11 fallacy. The genesis of this point arose during the XX of AB where much was made of the third bullet point of para A11 of the LP to suggest that it was an important plank of the strategy of the plan to secure delivery of 2361 units at HP, comprising the 761 already consented and the 1600 which were expected. Based upon the latest AMR that 2361 figure would be undershot by 11% (268 units), and hey presto, the Appeal proposals would come to the rescue to meet that LP deficit. Meeting that 2361 figure was cast as a crucial part of the LP Strategy such that failing to meet it within the plan period would be a critical failure and generating a compelling reason to release this site in its own right.

55. With respect to the confection of the point, and for all that AB was seduced by the shrewd XX of Ms Reid KC into conceding it. The point, is, with respect truly fallacious.

56. The starting point is to ask what the actual targets of the LP are to which one has to consider the housing requirement in policy - i.e. BSC1. The first problem for this house of cards is that it is agreed that the figures in that policy are out of date. The Reg 10A review[26] makes clear that the LPA consider that it needs updating.

57. That is a binary question. In XX of Mr Hutchison – and again in EIC of Mr Bainbridge it was suggested that whilst the figure was out of date it is not knowable what the new figure will be, and that the eLP considers a range of new figures range, one of which actually exceeds the housing requirement of the adopted LP. Whilst true, DH pointed out that the eLP itself provides clear reasons as to why the LPA is not pursuing scenario 4, since it is considered to be based upon overly optimistic assumptions[27], and all of the other 3 figures are lower than the current 1142 pa requirement. So the real range doesn't exceed the

[26] CD G11, page 9
[27] CD H1 paragraph 3.167

requirement and certainly the LPA's preferred figure at this stage is lower. But that too misses the point – since the existing target is not an up to date one – and it would be a very odd decision that gave much weight to a failure to meet an out of date target in a plan that is presently undergoing review, and which is using the LHN for monitoring purposes until the review is complete, and where only limited weight can be given to any emerging target[28]. The point therefore becomes that the proposals might help to meet an out of date target whose replacements figure isn't yet known – hardly compelling.

58. In any event, even if the target was up to date then the point is still a bad one, because it doesn't look at what the LPA actually says into its policies AND it doesn't contextualise para A11 with what is being sought to be achieved.

59. Policy BSC1, along with other parts of the opening sections of the LP sub-divide the district into Banbury, Bicester and the Rest of District. There is no separate column in BSC1 for Heyford Park.

60. The figures in BSC1 anticipated delivery of 2350 homes in the plan period from allocations in the Rest of District. This is agreed to comprise 1600 from PV5 and 750 from PV2. It will of course be remembered that 1600 is an approximate number and 750 is not a ceiling, but the 'target' is an aggregated one. The intention at the time of adopting the plan was that allocations would be made under PV2 in a part 2 plan but what has actually occurred is that the DM process has delivered consents in these locations. Those figures are delivery targets for the plan period.

61. Against that delivery target, the plan is performing well and is on track to exceed the requirement of 2350. In ID10, the AMR at §4.126 a total of 1195 units have been built and consented against the 750 figure of PV2 an excess of 445, and there is still 8 years of the plan to go. On that basis even if the AMR is right that 268 fewer units will be completed at HP by 2031, then that is more than outweighed by consents elsewhere in the rest of district.

62. If one looks at the overall target for the Rest of District of 5392 units, then the position is even more stark[29]:

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28 See CD H1, Table 1

29 At the time of writing we are still awaiting further comment on this from Mr Pycroft.

A	Target for Rural Areas	5392	Policy BSC1
B	Completions	4,032	AMR Table 15
C	Correction to completions (to be applied to Bicester)	-94	Ben Pycroft Supplemetal PoE 6.17 and 6.19
D	Non Strategic sites under construction	100	AMR §4.124 and Table 18
E	Non Strategic Permissions not started	303	AMR §4.125 and Table 18
F	Windfall with Permission	207	AMR Table 18
G	Future Windfall	324	6yrs at BP 100pa (54% to rural as AMR Table 17)
H	Strategic Sites with Permission in Rural Areas	1371	AMR Table 18
I	**Total**	**6,243**	Sum of B to G
J	Predicted Surplus at 2031 vs 5,392 target using March 2023 data*	851	I minus A
K	LPA predicts PV5 to underdeliver by 268 dwellings at 2031		Ben Pycroft Supplemental Table 3.2
L	Rural Areas Completions 3,938 to date = 73% already complete – with 8yrs to go		
M	Bicester = 3770 = 37%		
N	Banbury = 4606 = 63%		
Footnote 1	* Using March 2023 data and not including permissions on large sites issued post March 2023		
Footnote 2	* if all the commitments at 31st March 2023 were delivered by 2031 then the 5,392 figure would be exceeded by 851 dwellings by 2031. However, neither party has assessed what will be delivered on the commitments by 2031. The Council's trajectory in the AMR identifies that 268 of these are not expected to be delivered by 2031.		

63. As at March 2023, there is a planned exceedance of the 5392 requirement by 851 homes (16% in excess) not even counting permissions since March 2023. The spatial strategy does not require the delivery of more homes at the Rest of District level. There is not a need, let alone a compelling need for an extra 268 units in this category.

64. However, what is also very obvious indeed is that where there are issues with delivery it is higher up the spatial strategy at Bicester and Banbury – see AMR Table 15. With 8 years remaining in the plan, Bicester has delivered only 37% of the homes needed within the plan period, and Banbury 63%.

65. It is no surprise therefore, that DB agreed in XX that if the shortfall in housing is to be met, it should logically be at Banbury and Bicester, not that part of the District where the BSC1 expectation is anticipated to be significantly exceeded.

66. Finally, the most obvious reason why the A11 point is fallacious, and why the point should never have been run, is that the text of A11 has to be read together with the words of PV5 which say in terms that what is expected is not a minimum of 2361 units delivered at HP, but "approximately", which DB accepted implied at tolerance of ±%. In XX he readily accepted that ±10% would be reasonable i.e. ±236 units. On that basis the projected under-delivery of the AMR of 268 is barely less than the tolerance anticipated by the actual policy of the LP itself. This point is fallacious and whilst DB intimated that

it was 'important' he couldn't explain why then it didn't get a mention in his evidence. With respect it smacks of no more than forensic kite flying.

67. Similarly it is right up there with the proposition that the scheme would comply with the development plan taken as a whole. That is, with respect difficult to fathom. There is no policy in the plan that positively supports the proposal, but there are policies that the scheme obviously conflicts with, being undeveloped land in the open countryside, and is not within, nor does it gain direct support from, PV5. The fact that the proposal may pass some of the development management policies despite the clear spatial conflict with policy should only have led to the conclusion that the appeal proposals are contrary to the development plan taken as a whole, and it does the Appellants no credit that the contrary proposition is still advanced, however half-heartedly. With respect, there is no plan-led argument that supports this scheme coming forward and there is no **relevant** shortfall in the delivery of houses at this tier of the spatial strategy.

68. On the contrary there are conflicts with the development plan through CS8 and H18, and there are powerful material considerations weighing against the grant of permission through the conflict with the principles of PV5, which comprises a powerful reason to withhold consent as a material consideration. As noted above – even if there is a need in this district – this development is patently in the wrong place and is not needed here, nor now.

69. On the other side of the balance in favour of granting consent, DH gives significant weight to the delivery of affordable housing. Notwithstanding that the Reg 10A conclusion that the Council is delivering above the target for affordable housing[30].

70. However, the only other benefit of any potential significance, the delivery of market housing, must have its weight tempered in the specific circumstances of this case:

    70.1. Most of the scheme, even on DB's best case would not contribute to meeting the 5YHLS, despite rebasing the 5YHLS calculation to 1 April 2023.

[30] CD G11, page 10.

70.2. There is a potential delay in occupation of between 18 months and 3 years to remedy the concern of Thames Water about potable water being provided to the site.

70.3. There is a further delay of a minimum 9 months, and potentially much longer, through the digging up of 2.2km of Camp Road to provide the foul water pumping system – see DH Appendix 1

70.4. As DH explained in EIC it is well established that adding new outlets to large developments causes a reduction in completions for existing outlets such that one must consider the net change over the wider development and not just the contribution from the new outlet.

71. DB said that these factors had been taken into account in his trajectory of delivering by 2026, giving two years of delivery at 40 – 50 dpa. Unfortunately for DB, there was no evidence to support this proposition that might be scrutinised, let alone any convincing explanation – other than the bold assertion without answer to the question 'how'. Indeed it was all but impossible to assess how this might have been factored into DB's trajectory because he has never provided one in his written evidence. At the time of writing his proof, when the 5YHLS was based at 1.4.22 *on DB's best case* 180 to 190 of the units proposed would have come forward after the 5 year period under scrutiny. If DH is right this would still be the case, and if Thames Water's upper range of expectation is right then that would still be the case. It is with respect an odd case to give determinative weight to helping to meet the shortfall in the 5 year period when at the end of DB's evidence between 60% and 80%[31] of the units consented would not contribute to the 5YHLS deficit.

72. In addition, and somewhat ironically if the permission is granted with the necessary Grampian conditions for the delivery of the East-West cycle and pedestrian link, this has the potential to further delay delivery.

73. The stark reality is that there is a real risk that this site will not start to deliver houses until the last year of the five year period at the earliest. Therefore, making little or no

[31] Taking a mid point of 40 to 50 units per annum and assuming 45 dpa.

significant contribution to the 5YS and reducing the weight to be given to the housing to moderate/significant weight.

74. What is more, as Mr Silver explained, there is a further risk that the appeal scheme would cannibalise delivery of allocated houses. He advised the inquiry in the clearest terms that if the permission is granted, DL would have no choice but to consider the future phases of the allocation. Development on the scale of PV5 is a delicate ecosystem where phases of development fund the next phase and the delivery of infrastructure. Unplanned development in that context risks this plan led approach and would lead to an immediate review. Whilst DB gave this little weight because it was said to be asserted without evidence, he accepted that the same could be said for his point about the TW representations being 'factored in'. However, unlike the TW point – PS's observations have the force of logic – developing at the corner of Chilgrove Drive and Camp Road and digging up 2km of Camp Road to bring this development forward – will be obviously disruptive to delivery of other parts of the site. The DL show house is further along Camp Road and worse – the appeal site lies at the gateway to the consented units to the NE of the appeal site as well as the employment and planned new facilities to the NW.

75. PS said that he would need to review the whole approach to delivery if this appeal is allowed. With respect that is compelling. Unless there was an overriding case that this scheme was desperately needed then jeopardising delivery at HP would be actively counter-productive to one of those rarities in the planning system – a new settlement that is coming out of the ground in a sustainable and deliverable manner with no public sector subsidy.

76. Drawing this all together, if the Council is correct and it can demonstrate a 5YS, then the flat balance applies and the conflict with the development plan policies, the non-compliance with the principles of PV5, outweigh the benefits of the scheme.

77. If the Inspector concludes that the tilted balance applies. Then that does not open the gate to bad development, nor does it disapply CS8 and H18 and the conflict with them. The development would still be poorly connected to the surrounding plan led development, it would still be in the open countryside in breach of the development plan. Moreover until the development to the north and west came forward then it would be an odd island of development which would risk unsustainable travel patterns and would be the antithesis

of the objective of PV5. Those factors would significantly and demonstrably outweigh the benefits of the scheme.

78. In either circumstance, the R6 party submits that the appeal should be dismissed. If the Inspector is minded to allow the appeal (which would be profoundly regretted by DL, and obviously the members of the LPA) then it must be for the improved version of the development, to which the Appellant has been dragged kicking and screaming, through the imposition of the Grampian conditions requiring the delivery of the full East-West link contended for by the R6 party, and not the half-baked route to almost nowhere latterly proposed by Mr Parker and apparently incorrectly shown on his plan[32].

PAUL G. TUCKER KC

PHILIP ROBSON

15 December 2023

KINGS CHAMBERS

[32] It shows a pedestrian link on H3 but is now proposed as a cycleway.