

Response to Inspector Hockenhill's request for post-Inquiry comments from the LPA on the recent Heath Close, Milcombe appeal decision

Friday 22nd December 2023

During the Heyford Park Inquiry, Sarah Reid KC on behalf of the Appellant advised the Inspector that the Appellants had not had sufficient time to digest and assess the Milcombe decision, and thus requested that it was dealt with post-Inquiry. The Inspector granted the request and asked for written comments (preferably a joint comment agreed between parties, or, if agreement could not be reached, then separate comments) from both the Appellant and LPA by Friday 22nd December.

After closing submissions, Sarah Reid KC sought to downplay the relevance of both the recent Milcombe and Deddington decisions, arguing that those two decisions related to round table Hearings, had different base dates (31 March 2022 rather than 31 March 2023 following publication of a new AMR), the change in terms of LHN and the evidence hadn't been tested in such detail as at the Heyford Inquiry, so, in her opinion, the conclusions reached by those Inspectors were not particularly relevant.

However, in the opinion of the LPA, it was essentially the same housing evidence being delivered and debated by the same two expert witnesses (i.e., Jon Goodall on behalf of the LPA and Ben Pycroft on behalf of the Appellants) and the housing land requirements and supply issues were discussed and debated in a similar way at both Deddington and then again at Milcombe to the round table discussions held most recently at the Heyford Inquiry.

In both instances, the Inspector's reached conclusions that were well considered.

As requested by the Inspector, since the close of the Inquiry, the LPA's housing and planning witnesses have sought positively to engage with the Appellant's housing and planning witnesses with the intention of producing an agreed statement as to the relevance of the Milcombe appeal decision in respect to this appeal. Unfortunately, the Appellant's housing witness did not respond to two separate suggested draft statements until late yesterday evening, when Mr Pycroft replied indicating that he agreed only with the "*factual points*" numbered 1) – 6) and the first part of 12) (i.e., a 4.82-year supply) as referenced below. Nothing further was agreed with the Appellant's witness, and he concluded that: "*given the extent of the disagreement between us and that only the factual points are agreed, we maintain that separate notes on this appeal decision should be submitted.*"

Insofar as the Milcombe Inspector's decision letter is concerned, the LPA's comments are as follows:

- 1) The assessment of deliverable sites and the requirement against which supply should be assessed formed one of three identified main issues (DL, para.8); [**Agreed with Appellant**]
- 2) Both requirement and deliverable supply were dealt with by way of round table; [**Agreed with Appellant**]
- 3) The appearances (DL page 11) confirms that Mr Goodall and Mr Pycroft acted for the Council and for the Appellant, respectively; [**Agreed with Appellant**]
- 4) The Inspector was provided a Topic SoCG on requirement and supply that followed the format proposed by the LPA for the Heyford Park Inquiry (a copy of the signed Housing SoCG for Milcombe is attached as an Appendix to this note); [**Agreed with Appellant**]
- 5) Evidence was prepared and heard against the requirements of the NPPF (September 2023 version) as it was in force until 19th December 2023; [**Agreed with Appellant**]

- 6) The base date was 1st April 2022, with a five-year period ending 31st March 2027;
[Agreed with Appellant]
- 7) The DL (para.25) deals with the adopted development plan, and (para.26) summarises the parties' respective positions on the requirement. DL (para.27) specifies the age of adopted strategic policies under the language of NPPF Sept. 2023 paragraph 74;
- 8) DL (para.27) confirms that local housing need applies for the purposes of the requirement to assess supply. DL (paras.28 and 29) have regard to national policy, the outcomes and adopted strategic policies of the Partial Review and the relevance of emerging policy in support of the Council's case that contributions towards meeting part of Oxford's unmet needs do not form part of the requirement to assess supply in respect to Milcombe;
- 9) While no longer relevant to the dispute between parties for this Heyford Inquiry, DL (para.30) confirms use of the 'current year' for the calculation of LHN and DL (para.31) confirms that the HDT has exceeded delivery expectations over the past 3 years and the HDT is therefore passed;
- 10) It is agreed that the Council's starting point for the assessment of deliverable supply was 4,008 units as at 1st April 2022 (DL para.33) and that the deductions specified by the Inspector (in DL paras.35 – 42) equate to -353 units;
- 11) It is agreed that the conclusions of the Inspector on the extent of deliverable supply (in DL para.44) reflect a mathematical error and suggest the removal of -413 units (3,595 units);
- 12) It is noted that the calculation of supply using the Inspector's figure (3,595 units) equates to **4.82 years' supply** (DL para.44) [**this part Agreed with Appellant**] but reflecting the mathematical error the removal of -353 units (3,655 units' supply) generates a figure equating to **4.90 years**. Irrespective of any mathematical correction, the tilted balance was correctly applied for the purposes of decision-taking (DL para.44);
- 13) Regarding the Inspector's conclusions on the assessment of deliverable supply from the 1st April 2022 base-date, it is agreed these are of limited relevance following publication of the December 2023 AMR, but the parties nevertheless agree:
 - a. Sites Bicester 12 (SE Bicester DL para.37 -50 units) and Bicester 10 (Bicester Gateway DL paras.38-39 -80 units) concluded as undeliverable by the Inspector, are not contested for the purposes of this Heyford Inquiry;
 - b. Sites Former RAF Heyford ('Pye Homes') (DL para.42 -30 units) and Bicester 3 (DL para.36 -60 units) were concluded as undeliverable by the Inspector and are not contested although were accepted as deliverable by the Appellant for this Inquiry. The Council notes that if conclusions on the deliverability of these sites was applied at 1st April 2022 (+90 units) the extent of supply would equate to 5.02 years;
 - c. Site Bicester 1 (NW Bicester) (DL para.35 -20 units) was concluded as undeliverable as at 1st April 2022 and remains in dispute between the parties at 1st April 2023; and
 - d. Site Land at Salt Way East (DL paras.40-41) remains in dispute in respect of build-out rates and forecast supply beyond the current total with Reserved Matters permission (237 units on Parcels 1 & 3) and with 70 currently under construction on Parcel 1. 237 units were accepted as deliverable by the Inspector for the period 2022-2027. The Appellant accepts the same total for the new period 2023-2028 whereas the LPA forecasts a total of 350 units (+123), with the inclusion of a second developer – Charles Church bringing forward units on Parcel 2. Details of Charles Church's acquisition of Parcel 2 was not available at the time to the Inspector at Milcombe, so were deducted from the supply by that Inspector.