

Planning and Development

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Our Refs: **21/04289/OUT & 23/00089/REF**

12th January 2024

F.a.o. Inspector Helen Hockenhull c/o Alison Bell, PINS

Dear Madam,

**Land Adjoining & West of Chilgrove Drive and Adjoining & north of Camp Road, Heyford Park
Request for Comments on the Revised National Planning Policy Framework (NPPF, Dec. 2023)**

Appeal Ref. No.: APP/C3105/W/23/3326761

Appellant's Name: Richborough Estates / Lone Start Land Ltd

Proposal: Outline planning proposal for the erection of up to 230 dwellings, creation of new vehicular access from Camp Road and all associated works, with all matters reserved apart from access.

Location: Chilgrove Drive / Camp Road, Heyford Park, Bicester, OX25 5HD

Parish(es): Heyford Park

I write in response to your email of 20th December 2023 concerning publication of the revised National Planning Policy Framework (NPPF) on 19th December 2023 and the Inspector's request for written comments from each of the parties as to its implications for this appeal.

Notable alterations (underlined for emphasis) to the NPPF between the September and December 2023 versions that are relevant to this appeal are, in the Council's opinion:

Para.11 d) & Footnote 8 – The footnote concerning out of date policies has been amended to read: “*This includes, for applications involving the provision of housing, situations where: (a) the LPA cannot demonstrate a five year supply (or a four year supply, if applicable, as set out in paragraph 226) of deliverable housing sites (with a buffer, if applicable, as set out in paragraph 77) and does not benefit from the provisions of paragraph 76; or (b) where the Housing Delivery Test indicates that the delivery of housing was below 75% of the housing requirement over the previous three years.*”

CDC comment: In respect to point (a) in Footnote 8 – Cherwell District Council has published a Reg.18 Local Plan review, which includes draft policies and proposals for both the continued allocation of existing Development Plan housing allocations and suggested new housing allocations with accompanying maps identifying those allocations, as referenced in new Para.226 of the Framework concerning 4-year supply requirements.

CDC comment: In respect to point (b) to footnote 8 – housing delivery in Cherwell over the last 3 years has been considerably above the 75% Housing Delivery Test requirement.

Para.14 – Has been amended to read: *“In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impacts of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided the following apply: a) the neighbourhood plan became part of the development plan five years or less before the date on which the decision is made; and b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement (see paragraphs 67-68), where that requirement has been identified within five years or less of the date on which the decision is made.”*

CDC comment: In respect to the change from three to five years – the consequence of this change is that full rather than any reduced weight should be afforded to the policies and proposals in the Made Mid Cherwell Neighbourhood Plan.

Para.20 – Has been amended at the start to read: *“Strategic policies should set out an overall strategy for the pattern, scale and design quality of places (to ensure outcomes support beauty and placemaking), and make sufficient provision for...”*

CDC comment: This change represents a clear strengthening in design considerations to determine if proposals represent sustainable development.

Para.61 – Amended to read: *“To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard methods in national planning guidance. The outcome of the standard method is an advisory starting-point for establishing a housing requirement for the area (See paragraph 77 below). There may be exceptional circumstances including relating to the particular demographic characteristics of an area which justify an alternative approach to assessing housing need; in which case the alternative approach should also reflect current and future demographic trends and market signals...”*

CDC comment: The Council’s approach to establishing its housing requirement as referenced at this appeal has been entirely consistent with this amended guidance.

Para.67 – Amended to read: *“Strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period. The requirement may be higher than the identified housing need if, for example, it includes provision for neighbouring areas, or reflects growth ambitions linked to economic development or infrastructure investment. Within this overall requirement, strategic policies should also set out a housing requirement for designated neighbourhood areas which reflects the overall strategy for the pattern and scale of development and any relevant allocations. Once the strategic policies have been adopted, these figures should not need re- testing at the neighbourhood plan examination, unless there has been a significant change in circumstances that affects the requirement.”*

CDC comments: The Council notes the contention first raised in the Appellant’s comments on the Milcombe Decision Letter that the abovementioned revisions necessitate a singular figure for the requirement to assess supply. The Council disagrees. The Council’s approach to dealing with a contribution towards part of the unmet housing needs of Oxford city as set out in separate adopted strategic policies distinct from its own District needs is fully supported by this additional text to paragraph 67 of the Framework. It also reflects the conclusions reached by the Examining Inspector at the Local Plan Partial Review Inquiry.

The additional wording incorporated into national policy in the new Framework is a reflection of existing Planning Practice Guidance at 2a-010-20201216 for circumstances where housing need may exceed the result of the standard method.

In relation to plan-making, including previous outcomes under the Duty to Cooperate, the provisions of the revised NPPF do not reflect any fundamental change in approach for how strategic policies may be prepared and have no bearing upon the application of existing adopted strategic policies that are less than five years old for the purposes of assessing housing land supply. The outcome of adopted policies is

distinct from the plan-making process, which may continue to be approached in different ways. This is consistent with the Council's case throughout the Inquiry that the Appellant's contention for a fundamental change in circumstances between the earlier NPPF 2012 and the previous version of the NPPF Sept. 2023 is incorrect.

If the Appellant's contention reading this paragraph as a whole was correct this would mean that despite the carefully considered spatial strategy within the Partial Review to make specific provision for part of Oxford's unmet needs in the most sustainable locations, national policy would dictate that instead the overall requirement (including unmet needs) would be relevant for redistribution as part of considering housing requirements for designated neighbourhood areas. This is patently not the case and having regard to *'the overall strategy for the pattern and scale of development and any relevant allocations'* as specified in paragraph 67, it is the separate adopted strategic policies of the Partial Review to treat the requirement for part of Oxford's unmet needs separately that ensure that need and supply are not conflated.

Para 75 – As a result of the intervening paragraph 76 that follows, paragraph 75 now contains amendments that include a final sentence indicating its provisions relate more generally to the assessment of deliverable supply against the development plan. An additional sentence reads: *"Local planning authorities should monitor their deliverable land supply against their housing requirement, as set out **in adopted strategic policies**"* (plural, Council emphasis)

CDC Comment: The combined changes between paragraphs 75 and 77 support the Council's case that regard may need to be had to more than one strategic policy and more than one adopted Local Plan.

The new provision within Paragraph 75 applies irrespective of the assessment of five-year supply. This is additional to the references to adopted strategic policies (plural) that is retained in paragraph 77 (formerly paragraph 74) relating to five-year supply. This makes clear that the housing requirement may be contained across more than one policy.

Para.76 – Amended to read: *"Local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if the following criteria are met: a) their adopted plan is less than five years old; and that adopted plan identified at least a five year supply of specific, deliverable sites at the time that its examination concluded."*

CDC comments: In respect to the Council's Partial Review Plan for accommodating Oxford's unmet housing needs that could not be accommodated within its city boundaries, which is a plan less than five years old, the revised wording to this Framework paragraph does not support the Appellant's contention advanced at the Inquiry that the District Council should be identifying additional land to address shortfalls resulting from delayed starts to development on the allocated PR sites as a singular requirement against which to assess supply.

It is also relevant that the language of paragraph 76 is specific to 'Local Plan'. Therefore, it is different to the requirement in adopted strategic policies. This indicates an intention on the Government's part to expressly limit the provisions to plans less than five years old. The Government cannot ensure that the NPPF covers all circumstances, and nowhere does it say policies cannot be contained in more than one plan.

The sensible interpretation of paragraph 76(a) is that it applies only to/where the local plan that contains the relevant strategic policies is less than five years old. This plainly makes sense because these provisions cannot be engaged where the local plan is more than five years old (thus an incentive to adopting plans), which is different to assessing the requirements against which supply should be assessed for the purposes of NPPF(Dec)2023. This includes where adopted strategic policies may continue to be applied where these have been reviewed and found not to require updating (for paragraph 77 purposes). If the Government thought that should also engage paragraph 76, it would surely have said so.

In the circumstances for Cherwell, irrespective of the separate adopted strategic policies of the Cherwell Local Plan Part 1 Partial Review being less than five years old paragraph 76 would not apply that a housing land supply does not need to be demonstrated in Cherwell excluding the Partial Review sites. This provides consistency to prevent the conflation of need and supply under the Council's case that supply from this site is not counted towards the requirement against which supply is to be assessed based on local housing need.

The Council's case therefore falls squarely under NPPF(Dec)2023 for the purposes of this Appeal and therefore Footnotes 42 (and 80) to use the standard method apply exactly as they did in the previous version of the Framework. The Council's case for the requirement against which supply is to be assessed using local housing need is therefore unchanged.

New Para.77 & Footnotes 40-43 & 79 – “In all other circumstances, local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years' worth of housing, or a minimum of four years' worth of housing if the provisions in paragraph 226 apply. The supply should be demonstrated against either the housing requirement set out in adopted strategic policies, or against the local housing need where the strategic policies are more than five years old. Where there has been significant under delivery of housing over the previous three years, the supply of specific deliverable sites should in addition include a buffer of 20% (moved forward from later in the plan period).”

CDC comment: In this regard, the Council does publish an Annual Monitoring Report of its supply of deliverable housing sites, the latest of which was the 31st March 2023 supply position, published on 4th December 2023, so is consistent with this guidance. Whilst the Appellant disagrees with the supply figures suggested for some of the sites referenced, overall, the Council's 2023 AMR suggests a supply equating to 5.5-years. In the latest published appeal decisions (the Deddington and Milcombe decisions – ID.23) Inspectors concluded either a 5.03 or a 4.82-year supply (based on the previous 2022 AMR) and in the Council's draft SoCG on Housing Land Supply (ID.17), CDC provided its up-to-date position on housing land supply. Even if the Inspector were to conclude that the District does not currently have a deliverable 5-year supply of housing land, it is plainly the case that the District can demonstrate significantly more than a 4-year supply of its own needs, as cross-referenced in accompanying new paragraph 226 to the Framework.

Para.78 – Amended to read: “Where the criteria in paragraph 76 are not met a local planning authority may confirm the existence of a five-year supply of deliverable housing sites (with a 20% buffer if applicable) through an annual position statement which...”

CDC comment: In this respect, it is agreed between all parties that an additional 20% buffer is not appropriate in Cherwell District. The removal of the previous 5% buffer requirement serves only to improve the Council's supply figure and lessens the need for any additional housing land to be provided.

Paras.79 & 80

CDC Comment: The changes made at Framework paragraphs 79 and 80 are irrelevant to this case because it is agreed between all parties that housing delivery in Cherwell District has not fallen below 95% or 85% or 75% in the last three years when measured against the Housing Delivery Test.

Paras.138 & 140 – Insertion of new second sentence to paragraph 138 and new first sentence to paragraph 140: “The primary means of doing so should be through the preparation and use of local design codes, in line with the National Model Design Code. For assessing proposals there is a range of tools including...”

CDC Comment: The insertion of the new second sentence at paragraph 138 and the justification referenced at the revised start of paragraph 140 is relevant to this appeal in circumstances if and when the appeal is allowed, and outline planning permission is granted. In such circumstances, it would be appropriate to include a condition to the effect that no reserved matters should be approved prior to approval of a Design Code for the proposed development.

Para.226 & Footnote 80 – This new paragraph reads: “From the date of publication of this revision of the Framework, for decision-making purposes only, certain local planning authorities will only be required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years' worth of housing (with a buffer, if applicable, as set out in paragraph 77) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old, instead of a minimum of five years as set out in paragraph 77 of this Framework. This policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country

Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need. This provision does not apply to authorities who are not required to demonstrate a housing land supply, as set out in paragraph 76. These arrangements will apply for a period of two years from the publication date of this revision of the Framework.”

CDC Comments: The LPA has an emerging Local Plan that has reached the Reg.18 stage (Core Document H.1). The draft review plan includes proposed housing allocations including more than 4,600 suggested new allocations, which will contribute towards meeting housing needs arising in the District between 2020 and 2040. The review plan includes policies maps through a Key Diagram and a series of strategic policy maps and plans (specified as a draft requirement in emerging Core Policy 34) as summarised in Table 7 and addressed in relevant emerging potential policies in area strategies that follow, that identify the geographic location and extent of the allocations, including at Heyford Park (see pages 250 and 270) and how those relate to other policy designations. The Consultation Draft (at Appendix 2) contains Indicative Site Development Templates for the sites identified in emerging Core Policies 25 and 34 and thus satisfies the requirement for inclusion of a policies map. Appendix 1 (retained policies list) indicates where the proposals in Appendix 2 will replace those illustrated within the current development plan and thus policies map. While separate to the illustration of sites proposed towards meeting identified needs in Core Policy 34 under Appendix 2, Appendices 4 to 11 of the Consultation Draft also indicate visually proposed policies relevant to managing land use.

Whilst the interpretation of the precise wording of this paragraph in the new Framework may ultimately be needed to be reviewed through the Courts, the apparent consequence of the revisions is that Cherwell District would only need to identify a minimum deliverable housing supply equivalent to four years against the Local Housing Need.

For the avoidance of doubt, the Council does not consider that the revisions to the Framework, including the provisions of paragraph 226, result in any change to the period over which forecast deliverable sites should be assessed. Deliverability remains to be considered over five years.

There are no provisions within the revised Framework or anticipated changes to National Planning Practice Guidance to indicate that forecast delivery should be assessed across less than a five year period, even where the provisions of paragraph 226 and a requirement to demonstrate a minimum four years' worth of housing applies. Neither paragraph 77 nor 226 contain any references to distinguish between these circumstances in terms of the period that should be considered. There have been no changes to the definition of 'deliverable', the purposes of which is to identify sites for housing with a **“realistic prospect that housing will be delivered on the site within five years”** (Council emphasis).

Paragraphs 76, 77, 78 and related provisions for plan-making at paragraph 69 all retain references to the assessment of deliverable sites where the definition requires forecast delivery to be considered for the purposes of five years. This is consistent with the PPG, where the purpose of the calculation is summarised: a enabling consideration of the deliverable supply of homes over the next 5 years (PPG ID: 68-001-20190722).

The requirement against which minimum supply is to be assessed is therefore an annualised figure to be measured against forecast delivery over a five-year period irrespective of the extent of deliverable supply which is to be demonstrated i.e., a provision of four years' supply in the circumstances for Cherwell.

That interpretation of the new guidance is reflected in the latest '*Planning Resource*' publication, which lists Cherwell District Council as one of 93 LPAs across England where only a 4-year housing land supply need be demonstrated and where the latest apparent confirmed agreed supply equates to 4.82-years (against a 2022 base date). If the LPA is able to demonstrate a minimum 4-year housing land supply, as this Council maintains, then the most important policies would not be out of date for reasons related to housing land supply and the 'tilted balance' under paragraph 11 d) of the Framework would not be engaged.

Footnote 80 indicates that where the extent of deliverable supply is assessed against a minimum 4 years' worth of housing the standard method must be used where relevant strategic policies are more than five years old (consistent with the wording of Footnote 42 and with no reference to any provision for unmet needs from neighbouring authorities).

If the Inspector agrees with the conclusions reached by Inspectors at the recent appeal decisions at Deddington and Milcombe (ID.17) and concludes that the unmet needs of Oxford do not form part of the housing land supply calculation for Cherwell, then the Appellants own evidence (as referenced in the Supplementary Housing Proof of Mr Pycroft – ID.15 at Table 10.2) suggests that (at worst) the supply equates to 3.83-years with a 5% buffer. However, as the 5% buffer is no longer a requirement, then the Appellant's (worst case) supply position equates to a 4.02-year supply, which is consistent with paragraph 226 guidance in the new Framework. That position may improve further, depending upon the Inspector's own conclusions on the disputed sites at the agreed 1st April 2023 base date.

CDC's overall Conclusions:

It is effectively indisputable that the LPA can demonstrate at least a minimum 4-year's supply of housing land sufficient to meet its own housing needs and the most important policies for determining this appeal are not out of date for reasons relating to housing land supply or for any other material reason. The appeal ought therefore to be determined according to the flat 'unweighted' balance. In such circumstances, where a proposal conflicts with an up-to-date Development Plan, as is the case here, then according to Framework paragraph 12, planning permission should not normally be granted.

I trust that the Inspector finds these comments helpful. If you have any queries, please contact me on the above telephone number.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Andy Bateson'.

Andy Bateson, Development Management Team Leader