

## RE: LAND AT HEYFORD PARK

### ADVICE

1. We are asked to advise as to the new provisions of NPPF23, published in December 2023. Specifically, we are asked to advise as to whether, if paragraph 77 of the revised NPPF applies, Cherwell DC are required to demonstrate a four or five – year housing land supply.
2. We are firmly of the opinion that, pursuant to these provisions, Cherwell DC is required to demonstrate a five – year housing land supply for the reasons set out below.
3. Paragraph 77 applies from the day of publication of the 2023 NPPF. Where it applies, it requires that,  
  
*“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.”*
4. Paragraph 226 provides that the requirement to demonstrate a 4 – year supply,  
  
*“... 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.”* (Emphasis added)
5. Cherwell DC has an emerging Local Plan that has reached Regulation 18 stage and proposes allocations towards meeting housing need. However, this does not include a policies map. Paragraph 226 is clear that “*both*” a policies map “*and*” proposed

allocations towards meeting housing need are required for a LPA to benefit from the requirement to demonstrate a four – year supply. Accordingly, Cherwell DC remains subject to a requirement to demonstrate a five – year housing land supply.

6. The Council’s Regulation 18 consultation does contain a number of plans/maps. However, these do not constitute “*a policies map*” as defined by the relevant legislative provisions.
7. Section 20(3) PCPA 2004<sup>1</sup> and Regulation 22(1)(b) of the Town and Country Planning (Local Planning) (England) Regulations 2012 (“the 2012 Regulations”) together require that where a Local Planning Authority submit a development plan document to the Secretary of State for independent examination, they must “*in addition to the development plan document*”<sup>2</sup> send the Secretary of State, “*a submission policies map if the adoption of the local plan would result in changes to the adopted policies map*”<sup>3</sup> (emphasis added). In defining “*proposed submission documents*” Regulation 17 also distinguishes between “*the local plan which the local planning authority intend to submit to the Secretary of State*” (paragraph (a)) and the “*policies map*”, which is also to be submitted “*if the adoption of the local plan would result in changes to the adopted policies map*” (paragraph (b)).
8. Regulation 5 sets out the documents that are to be prepared as Local Development Documents (“LDDs”). By virtue of Regulation 6, any document listed in Regulation 5 (1) (a) (i) (ii) and (iv) is a “*local plan*”. The policies map is not a document listed in Regulation 5 (1) (a) (i) (ii) or (iv) and is not, therefore, a “*local plan*” (or DPD). Instead, the “*policies map*” is a LDD listed in Regulation 5 (1) (b) and is described as a “*map which accompanies*”<sup>4</sup> one of the documents listed in Regulation 5 (1) (a) “*and which shows how the adopted policies map would be amended by the document if adopted*”.

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<sup>1</sup> Planning & Compulsory Purchase Act 2004.

<sup>2</sup> Section 20 (3) PCPA. Note: Section 20 (3) will be replaced by a new s15LD (inserted by s.97 and Schedule 7 of the Levelling Up and Regeneration Act 2023). However, these provisions will be brought into force by Regulations pursuant to s255(30(b)) and are not yet in force.

<sup>3</sup> Regulation 22 (1) (b) of the 2012 Regulations

<sup>4</sup> Emphasis added

9. Regulation 2 (1) of the 2012 Regulations also defines “*submission policies map*” as follows,
- “*submission policies map*” means a map which accompanies a local plan submitted to the Secretary of State under section 20(1) of the Act and which shows how the adopted policies map would be amended by the accompanying local plan, if it were adopted” (Emphasis added).
10. It is clear from these provisions that the policies map is a distinct single document which is separate from the Local Plan. This was confirmed by the Court in the case of *Jopling v Richmond upon Thames LBC [2019] EWHC 190 (Admin)* (paragraph 14). In *R. (oao Bond) v Vale of White Horse DC [2019] EWHC 3080 (Admin)*, it was also confirmed that the Local Plan does not include the policies map, because whilst the policies map is a LDD, it is not a DPD (see paragraphs 43 and 50).
11. It follows, in our view, that the fact that plans/maps included are included in a Local Plan, or in a Local Plan consultation document, does not mean that there is a policies map within the meaning of the relevant legislative provisions. The policies map is a separate and distinct document as defined above.
12. Whilst Cherwell DC has reached Regulation 18 consultation stage, it has not produced a distinct, separate policies map that shows how the adopted policies map would be amended by its proposals<sup>5</sup>. It does not, therefore, benefit from the provisions of NPPF226, and Cherwell DC remains subject to the requirement to demonstrate a five – year housing land supply.
13. Further and in any event, Regulation 9 (1) of the 2012 Regulations sets out what the policies map must contain:
- “**9.—(1) The adopted policies map must be comprised of, or contain, a map of the local planning authority’s area which must—**
- (a) *be reproduced from, or be based on, an Ordnance Survey map*;
- (b) *include an explanation of any symbol or notation which it uses; and*

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<sup>5</sup> Regulation 2 (1), Regulation 5 (1) (b) and Regulation 17 – above.

*(c) illustrate geographically the application of the policies in the adopted development plan.”*

(Emphasis added)

14. We note that the above requirements are mandatory (use of the words “*must*”). The maps/plans in Cherwell DC’s Regulation 18 consultation document do not meet these mandatory requirements for the following reasons.

15. First, Regulation 9 (1) reiterates that there is a requirement for a single policies map (use of the words “*the*”). It further requires that this policies map must comprise of or contain “*a map of the local planning authority’s area*” that meets the requirement of Regulation 9 (1).

16. The only map of the local planning authority’s area that we can see in the Regulation 18 consultation document is the Key Diagram: Spatial Strategy Map in Chapter 3. However, whilst this notes, in indicative form, the location of various settlements in the settlement hierarchy and the preferred housing and employment allocations consulted on at Regulation 18 stage, it does not illustrate geographically the application of the proposed policies of the Plan. This is because:

(a) The Key Diagram does not show the geographical application of many of the proposed policies in the Regulation 18 consultation, for example those relating to the Green Belt, LGS, heritage/conservation, regeneration areas, town centres/primary shopping frontages, conservation target areas etc.

(b) It is questionable whether the Key Diagram even illustrates geographically the application of policies relating to the proposed settlement hierarchy and proposed allocations, since it is largely thematic/indicative, and it is arguably not possible to ascertain, from this plan, the precise geographical areas to which those policies are proposed to apply.

(c) We note, by analogy, the degree of detail on the policies map that has been produced separately, and sits alongside, the Council’s adopted Plan. The existing

policies map is a good example of a map of the Local Authority's area, that is separate to the DPD, and that illustrates geographically the application of the policies in the Plan (and which meets the other requirements of Regulation 9 (1)). The Key Diagram: Spatial Strategy Map in the Council's Regulation 18 consultation document is not comparable and does not meet the requirements of Regulation 9 (1).

(d) Indeed, The Key Diagram: Spatial Strategy Map in the Regulation 18 consultation document is much more akin to a figure within the Council's adopted local plan than to the adopted policies map - see Partial Review: Figure 10: Spatial Strategy – Key Diagram<sup>6</sup> ("Figure 10"). Figure 10 is distinct from the Council's published policies map and is included within the DPD itself (just as the Key Diagram is included in Chapter 3 of the Consultation proposals itself). We do not consider that it could be reasonably argued that Figure 10 comprises a policies map within the meaning of the relevant legislative provisions. Indeed, we note that the Council itself notes the distinction between the Figure 10 diagram in the adopted Partial Review DPD and the statutory policies map at 5.16 of the Partial Review DPD<sup>7</sup>,

*"Figure 10 illustrates our strategy for accommodating growth for Oxford... Our statutory policies maps provide a more detailed illustration of the specific requirements for each development site"*.

17. We accept that there are several other plans and maps within the Regulation 18 consultation document (for example, Area Strategy plans showing more detail in relation to proposed allocations at Bicester, Banbury, Kiddlington and Heyford Park, and a number of plans within the Appendix to the proposed consultation document). However, none of these maps/plans constitutes "*a map of the local planning authority's area*"<sup>8</sup> - each is an extract relating to a specific part of the local planning authority's area. The requirement for a single, composite map, illustrating the geographical application of relevant policies across the local planning authority's area, is, presumably, to ensure that the public is not required to cast around amongst

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<sup>6</sup> CD G3, hardcopy p.65 or e-copy p.66.

<sup>7</sup> CD G3, para. 5.16 at hardcopy p.66 or e-copy p.67.

<sup>8</sup> Reg 9 (1) 2012 Regulations

various plans / maps / documents for pieces of a jigsaw to understand how the policies apply across the LPA's area. There is no single map of the local planning authority's area within the Regulation 18 consultation document to which the public can turn to understand the same.

18. In any event, even if read together (which we do not accept is permissible, having regard to the requirements of the legislation – above), these maps/plans do not, together, comply with the other mandatory requirements of Regulation 9 (1), such that they could together be described as a policies map. For example:

(a) Appendix 7 of the Regulation 18 consultation, which shows areas of the proposed designation for Local Green Space, is not “*reproduced from, or be based on, an Ordnance Survey map*” (Regulation 9 (1)). It is based on a series of aerial photographs. We cannot see any plan or map within the Regulation 18 consultation document that illustrates geographically the extent of proposed LGS designation within the Local Authority area on an OS base.

(b) We further note that proposed Policy CP56 envisages that sites comprising LGS will be shown “*on the policies map and Appendix 7*”<sup>9</sup> (emphasis added). This clearly illustrates that the LPA envisages that a separate policies map will be produced in addition to Appendix 7. Whilst Appendix 7 forms part of the consultation proposals there is, however, to date, no separate policies map (or, indeed, any other map showing LGS).

(c) Appendix 4 illustrates proposed indicative changes to Green Belt boundaries, but it does not illustrate geographically the application of the proposed policies relating to the Green Belt. This is because it does not show the entirety of the Green Belt boundaries across the Local Planning Authority area to which the proposed policies would relate. It is focused on the proposed boundary changes at Kidlington only. This, and the (in any event) indicative nature of the boundary changes, is reflected in its title: “*Green Belt: Indicative Boundary Changes*”. This contrasts with the adopted policies map, which does show the full extent of the

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<sup>9</sup> See Chapter 3 – Theme 3: Building Healthy and Sustainable communities

Green Belt in Cherwell, and therefore illustrates geographically the application of relevant adopted policies relating to the Green Belt.

19. Finally, it does not appear as if the consultation proposals are sufficiently advanced such that the LPA would be in position to produce a map *illustrating geographically the application of its proposed policies* in any event. This is because, at various places in the Regulation 18 consultation document, the LPA asks whether additional policies that would need to be illustrated on a policies map should be brought forward. It also asks, at various places in the Regulation 18 consultation document, whether the proposed geographical extent of proposals should be taken forward. There are numerous examples throughout the consultation document, but to illustrate the point:

- (a) In relation to LGS (CP56), the LPA asks whether any additional sites should be proposed for designation as LGS<sup>10</sup>.
- (b) In relation to Bicester, the consultation document asks whether additional or alternative sites should be proposed, and whether other areas of land should be safeguarded for transport schemes<sup>11</sup>.
- (c) In relation to the town centres, the consultation document asks whether town centre and primary shopping frontage boundaries should be taken forward<sup>12</sup>.
- (d) In relation to the Green Belt, the boundary changes are said to be “indicative” (above).

## **Conclusion**

20. For all those reasons we are firmly of the view that Cherwell DC does not meet the requirements of NPPF226. The emerging local plan does not include a policies map as required by that paragraph. Cherwell DC therefore remains an Authority that is subject to the requirement to demonstrate a five – year land supply.

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<sup>10</sup> See Chapter 3 – Theme 3: Building Healthy and Sustainable communities: Question 26.

<sup>11</sup> See Chapter 5: Bicester Area Strategy questions 33, 35, 37.

<sup>12</sup> See Chapter 3 – Theme 2: Question 17.

21. We advise accordingly.

11<sup>th</sup> January 2024.

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