



Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

TOWN AND COUNTRY PLANNING ACT 1990

**APPEAL BY ARCHSTONE AMBROSDEN LTD, BELLWAY
HOMES LTD & ROSEMARY MAY**

LAND EAST OF PLOUGHLEY ROAD, AMBROSDEN, OX25 2AD

LOCAL PLANNING AUTHORITY REF NO: 22/02866/OUT

PLANNING INSPECTORATE REF NO: APP/C3105/W/23/3327213

**REBUTTAL PROOF OF EVIDENCE Tom Webster BA (HONS) DIP TP MRTPI ON BEHALF OF
Cherwell District Council The Local Planning Authority**

February 2024

Supplementary Proof of Evidence

Material Considerations

- 1.1 Since the Appeal was postponed on the 15 November 2023, there have been a number of material changes in circumstances. These material changes are:
- 1.2 One, the Council formally published its Annual Monitoring Report 2022 -2023 (AMR) on the 4 December 2023.
- 1.3 Two, a revised NPPF was published on the 19th December 2023
- 1.4 Three, an update to the Planning Policy Guidance (PPG) on Housing Supply and Delivery was published on the 5th of February 2024.
- 1.5 Four, significant progress has been made on the Partial Review (PR) sites.
- 1.6 Five, a number of Appeal decisions have been issued which relate to Category A development applications in the district. Notably, two of the decisions address the relationship between the Council's own Spatial Strategy and the PR sites to help meet Oxford's unmet need.
- 1.7 Six, the Council's published Five-Year Housing Land Supply position has changed.
- 1.8 All of these changes are material to the determination of this application and have meant that I need to supplement my Proof of Evidence and Rebuttal Proof of Evidence, to put the material changes into context.

Annual Monitoring Report 2022/2023 (AMR)

- 1.9 The Council's latest AMR shows that the Council has met the policy yearly target with 1,398 housing completions during 2022/23. In paragraph 5.14 of my Proof of Evidence, I had written that "*The district is experiencing a high level of growth and the policy continues to provide a supply of development land*". The latest AMR figure shows this statement still to be true.
- 1.10 Paragraphs 4.124 to 4.126 of the AMR23 (see **Core Document I.32**) set out the up-to-date figures for permissions, completions, and dwellings under construction in Category A villages. These figures, which are set out below, replace those set out in paragraph 6.20 of my Proof of Evidence:
 - During 2022/23 there were 86 dwellings completed.
 - Between 1 April 2014 and 31 March 2023 there have been a total of 792 completions, with a further 100 dwellings under construction but not completed at 31 March 2023, totalling 892 dwellings.
 - There are an additional 303 dwellings with planning permission on sites with planning permission, but construction has not yet started.
 - Since 1 April 2014 a total of 1,195 dwellings have been identified for meeting the Policy Villages 2 requirement of 750 dwellings, including 792 completions.
- 1.11 A more comprehensive analysis of the AMR23 is set out in Mr. Goodall's Supplementary Proof of Evidence.

National Planning Policy Framework, December 2024

- 1.12 A great number of the alterations to the NPPF between the September 2023 version and the December 2023 versions relate primarily to housing land supply and delivery. Those paragraphs are para.11 footnote 8, and paras 61, 67, 75-77, 78, 79-80 & 266. The precise amendments and how they relate to this appeal development are set out in Mr.Goodall's evidence.
- 1.13 There is also a significant change to the wording of para.20 of the December 2023 NPPF, a development management paragraph. In the interests of clarity, I have underlined the amendments to emphasise the changes and provided comments underneath.
- 1.14 **Para.20** of the revised NPPF has been amended to read as:
- “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...”*
- 1.15 My view is that this amendment fortifies the importance of delivering beautiful, well-conceived developments in sustainable and appropriate locations. It reflects the Council's position that the achievement of a good environment is more important than merely realising statistical guidelines.

Planning Policy Guidance (PPG) on Housing Supply and Delivery

- 1.16 On the 5th February 2023 the PPG on Housing Supply and Delivery was updated to remove uncertainty in the 'planning' sector over how best to interpret the revised National Planning Policy Framework's (NPPF's) new four-year housing land supply requirement.
- 1.17 The update to the PPG makes clear that the reduced housing land supply requirement must demonstrate a four-year supply of deliverable housing sites against a five-year housing requirement.
- 1.18 The updated PPG reflects the Legal opinion of Douglas Edwards KC. Prior to the Government update to the NPPF, the Council had become aware (from LinkedIn/social media and from reading professional commentary) that para.266 of the NPPF had generated multiple perspectives and interpretations; and, for this reason, sought (and submitted to PINS) the formal opinion of Douglas Edwards KC.
- 1.19 In short, Douglas Edwards KC concluded that the Council meets the requirement to demonstrate a four-year supply against five-year housing land requirement in NPPF226. Douglas Edwards KC's advice can be found in **Core Document I.33** and is discussed in Mr.Goodall's Supplementary Proof of Evidence.
- 1.20 Through discussions with Mr.Bainbridge on the 8th February 2024, I learnt that Sarah Reid KC has written a rebuttal (dated 7th February 2024) to Douglas Edwards KC's Legal opinion, and the appellants will formally submit her rebuttal to PINS as a core document for this inquiry. Mr.

Bainbridge kindly sent me a copy on the 8th February 2024. In these circumstances, the Council reserves the right to seek further comments from Douglas Edwards KC.

Five/Four Year Housing Land Supply

- 1.21 As set out in Mr. Goodall's Supplementary Proof of Evidence, the Council's Five-Year Housing Land Supply for the period 2023 -2028 is position of 5.74 years based on 4,038 units' deliverable supply assessed against an annualised local housing need of 703 dwellings per annum.
- 1.22 This represents a surplus of 1,226 units where the extent of supply to be demonstrated is to measured against 4 years' worth of provision, in accordance with paras. 77 and 226 of the NPPF(Dec)2023, for the reasons set out in Mr Goodall's Proof of Evidence. While it is not the Council's case, the assessment of deliverable supply would also represent a surplus of 523 units if the extent of supply to be demonstrated is measured against five years' worth of provision.

Oxford's Unmet Need

- 1.23 As acknowledged in Mr. Goodall's evidence, delivery/construction of development on the Partial Review sites has, during the first three years of the Partial Review plan period, been limited. There were two reasons for this:
- One, a High Court Challenge from the Cherwell Development Watch Alliance (a consortium of local resident groups), who had contested the level of housing need (and whether the exceptional circumstances Green Belt test had been met) and the appropriateness/quality of a replacement golf course; and
 - Two, Oxfordshire County Council sought to carry out remodelling work to better understand the scale and quantum of infrastructure contributions, particularly highways.
- 1.24 Thankfully, those important matters have been resolved: the High Court challenge was dismissed; and OCC concluded their remodelling work in May 2023. This has meant that substantial potential barriers to development on the PR sites have been removed and, accordingly, there has been a significant amount of movement on the determination and submission of planning applications.
- 1.25 In fact, since I wrote paragraph 6.53 of my Proof of Evidence, there has been further movement on the Partial Review (PR) sites:
- a. In December 2023, 96 dwellings received a resolution to grant planning permission under reference 22/03883/F, subject to the completion of a s106 agreement. This relates to the northern part of the PR7a allocation which, when combined with the existing resolution to grant on 22/00747/OUT – Up to 370 dwellings, brings the total to 466 dwellings against the allocation of 430 dwellings.
 - b. Full planning permission has also been granted for 5 dwellings under 22/01756/F and 22/01757/LB which relate to the conversion of the listed farmhouse and its associated farm buildings. These sites are related to allocation PR7b.
 - c. This increases the number of dwellings with a resolution to grant planning permission from 483 to 589 dwellings. Work on the relevant s106 Agreements is being progressed, with applicants and the Council's solicitor's having been instructed. Draft s106s in relation to 22/00747/OUT and 22/01611/OUT have been circulated and it is anticipated that these will be engrossed in March 2024 with planning permission issued.

- d. Moreover, planning applications for the allocation of PR8 (reference: 23/02098/OUT and 23/03307/OUT) have been submitted, totalling c.2,100 dwellings, and are under consultation; and a planning application has been made for the PR6a site (reference 23/01233/OUT) for 800 dwellings. A further parcel to the PR8 allocation (Yarnton Garden and Home) has been through a Screening Opinion (ref: 23/02735/SO), indicating that a submission is being prepared further c.130 dwellings.
 - e. It should also be noted that site allocation reference PR9 is under consideration at a non-determination appeal (reference: 21/03522/OUT and APP/C3105/W/23/3329587). It is expected that the decision for this will be issued in Spring 2024. The Council has been working with the Appellant to agree as much common ground as is possible and, as of the 7th February, the Council and the Appellant have now reached an agreed position on three out of the five reasons for refusal (BNG, Drainage and Viability -see **core document xxx**). The other two putative reasons relate to the s.106 agreement, and it is anticipated that these putative reasons for refusal will be overcome and withdrawn during the inquiry itself, which opens on the 13 February 2024 and concludes on the 15th February 2024.
- 1.26 The increase in dwellings with the resolution to grant planning permission along with the recent submission of two large-scale outline applications for residential development (following productive pre-application discussions) demonstrates that significant progress is being made and that there is a firm commitment towards delivery of the PR site allocations in the Local Plan Partial Review.
- 1.27 Notwithstanding this progress, in the event that the Partial Review Plan finds itself in the position of being more than five years old and that there, perhaps, hasn't been significantly more delivery, then this would be dealt with through the Local Plan Review and Reg 19 stage, for more certainty. The NPPF, specifically para 74 and footnote 39, makes clear that this is the correct way of dealing with that scenario (not through the s78 appeals process).
- 1.28 Para 74 of the NPPF (December 2023) states that – *“The supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities (including a genuine choice of transport modes). Working with the support of their communities, and with other authorities if appropriate, strategic policy-making authorities should identify suitable locations for such development where this can help to meet identified needs in a sustainable way. In doing so, they should: a) consider the opportunities presented by existing or planned investment in infrastructure, the area’s economic potential and the scope for net environmental gains.....”*
- 1.29 Footnote 39 follows *“The delivery of large scale developments may need to extend beyond an individual plan period, and the associated infrastructure requirements may not be capable of being identified fully at the outset. Anticipated rates of delivery and infrastructure requirements should, therefore, be kept under review and reflected as policies are updated”*.
- 1.30 Finally, two Appeal decisions were issued on the 8 December (Deddington) and 12 December 2023, (Milcombe), respectively (See **Core Documents M.59 & M60**). Both appeals related to housing developments outside settlement boundaries and, in both cases, there was a dispute between the Appellants and the Council about whether Oxford’s unmet need should be conflated with Cherwell’s own Spatial Strategy.

- 1.31 It is of relevance that the opposing housing witnesses on each of these Appeals were Mr. Pycroft, on behalf of the Appellants, and Mr. Goodall, on behalf of the Council. They are the two same housing witnesses on this Ambrosden appeal, providing the same evidence.
- 1.32 Whilst the two Inspectors reached different conclusions on Cherwell's Five-Year housing land position (against the September 2023 NPPF), their conclusions on how the spatial strategies relate to each other were clear cut: they each considered the Partial Review to be an entirely separate strategy from Cherwell's own Spatial Strategy.
- 1.33 The Council's view is that the Inspectors were right to reach this conclusion. The adoption of the Partial Review provides a clear distinction between two spatial strategies: one for the Cherwell district and the other for the city of Oxford.

Recent Appeal Decisions

- 1.34 Three residential appeal decisions in Cherwell have been issued since this Inquiry was postponed (two of which are mentioned above). They relate to residential development schemes outside the settlement boundaries of Bloxham, Deddington and Milcombe. All three villages are defined in the Local Plan as being Category A Villages and therefore captured by policy PV2.

- 1.35 In the two appeals which were allowed (Bloxham & Milcombe) both Inspectors concluded that the proposals would not unduly harm the Council's spatial strategy and are in acceptable locations.

- 1.36 Specifically, in paragraph 15 of the Milcombe decision, the Inspector made the following comment:

"Noting the findings of other appeal decisions referred to by the Council in support of their case, there is little evidence before me that there has been a material exceedance in the number of dwellings that has resulted in harm to the locational strategy of the district."

- 1.37 Similarly, the Inspector who determined the Bloxham (see **Core Document M.61**) appeal stated (in para.12 of the decision letter) that:

"I am also satisfied that the number of dwellings involved in the scheme would not harm the Council's housing strategy."

(Emphasis added)

- 1.38 It is important to note that these decisions relate to developments for 30 dwellings at Bloxham, and 35 dwellings at Milcombe and are, therefore, in line with the scale of development that the Council has been approving in some of the Category A villages. By contrast, the scale of this appeal scheme is significantly bigger in numbers and would result in a much greater expanse of urban development in the open countryside than the Bloxham and Milcombe schemes; and it is addition to the high level of development/permissions Ambroseden has already received during the local plan period, (with 7 years still to go).

- 1.39 Indeed, the Bloxham inspector was clear that it is because of the number of dwellings that he was confident that the development would not undermine the Council's spatial strategy. He might have reached a different conclusion, had it been an application for 120 houses.

- 1.40 Moreover, it remains the case that Bicester and Banbury, by virtue of their comparative size and supporting infrastructure, are the main source for housing developments of this scale of development. Allowing a development for 120 houses in a Category A village of Ambroseden's size would break new ground in terms of scale.
- 1.41 The Bloxham and Milcombe appeal schemes are also not in locations as sensitive as this appeal site, from a landscape point of view. The Council's Milcombe decision letter refusing the application made no reference to Landscape and policy ESD13 in the reasons for refusal. The case officer, in recommending the application for approval (which was overturned and refused at Planning Committee on the 15th June 2023), offered the following commentary in para.10.14 of his Committee report:
- "In this instance, it is clear that the site is relatively well screened by mature and semi-mature landscaping along three boundaries and adjoins the rear gardens of existing residential properties on the fourth boundary. As such the development would have limited impact on the wider landscape and views of / into the village and would not be seen as an isolated development in the open countryside. "*
- 1.42 On the Bloxham appeal, the Council's landscape officer (in his consultation response during the application process) raised no objection, stating: *"no objection in respect of landscape and visual impact"*. He went on to add that he *"tends to agree with the submitted LVIA in respect of the evaluation of potential landscape effects"*.
- 1.43 Whilst the case officer held a different view from the landscape officer, the Inspector reached the same conclusion as the Council's landscape officer and the Appellants' Landscape witness¹.
- 1.44 I was also interested to read the recent decision letter for a large-scale (150 units) residential development outside the settlement boundary of Chinnor, in South Oxfordshire (see **Core Document M.62**), a neighbouring authority to Cherwell.
- 1.45 In that instance, the Inspector concluded that the Council had a 3.49 year housing land supply, which meant that the titled balance was engaged. However, the Inspector afforded 'significant' rather than 'substantial' weight to the delivery of housing, afforded 'moderate' rather than 'significant' weight to economic and environmental benefits and afforded 'limited' rather than 'moderate' weight to bio-diversity benefits.
- 1.46 He then afforded significant harm to the conflict with the Development Plan and landscape impacts. On balance, he concluded that the harmful impacts demonstrably and significantly outweighed the benefits and dismissed the appeal on this basis.

Other Matters/Affordable Housing

- 1.47 Appendix 6 of Mr. Bainbridge's Proof of Evidence comprises an affordable housing Appeal Statement by Mr. Jamie Roberts.

¹ The appellants Landscape witness concluded, in para.5.38 of his LVIA, that the proposal would result in a moderate-minor adverse impact on the Local Landscape Character Area. That is a significantly different impact from this Appeal. The Council's landscape expert witness, Mrs. Brown, has concluded that Significant adverse landscape and impacts would arise from this appeal proposal, if allowed.

- 1.48 The main thrust of Mr. Jamie Robert's argument is that the HENA and Oxford Unmet Housing Need should be used to identify the district's affordable housing requirement instead of the Standard Method, which, he suggests, is not an appropriate mechanism to assess the affordable housing need. This is clearly a different view to the NPPF and, whilst, yes, the PR sites will also need to deliver affordable housing, the affordable housing provision on the PR sites is to help Oxford with its shortfall and is in addition to, and therefore, separate to Cherwell's own affordable housing need.
- 1.49 Furthermore, the HENA was commissioned to support the new emerging Cherwell Local Plan Review. The Plan is still at a relatively early stage of preparation (Reg 18) and has not been finalised. The HENA and other evidence will no doubt be challenged and tested at the Examination in Public. The plan will also need to be viability tested, and this will help inform the level of affordable housing required in the new final plan.
- 1.50 Notwithstanding this, it is common ground that there is a pressing need for affordable housing in the district. However, I would add that the benefit of delivering affordable housing as part of any development proposal still must be weighed up against any harm that may be caused by the development. In this instance, the balance of the benefits do not justify the harm: the proposal would introduce a strategic scale development into attractive open countryside, away from the main towns, contrary to the local plan spatial strategy.
- 1.51 Mr.Connolly, in paras. 3.1 to 3.4 of his Rebuttal Landscape Proof of Evidence (received by the Council, on 6 February 2024) has made reference to wording that was proposed, but then removed, prior to adopted for of Local Plan policy ESD 15. My response to that point is that this appeal scheme has been determined against policy ESD 15, as set out in the adopted local plan, a policy that has been tested many times at appeal and accords with the NPPF.
- 1.52 Finally, in para.6.21 of my Proof of Evidence I referenced planning application 22/01976/OUT. I can confirm that since I wrote my Proof, the s.106 agreement has been signed and planning permission was granted, on the 19th December 2023, for 75 dwellings on the eastern edge of Ambrosden. This brings the number of permissions in Ambrosden to 39% of the 750 houses proposed under Policy Villages 2 .

Conclusion

- 1.53 The amount of development already granted in Ambrosden (and other category A villages) during this local plan period shows that housing would be welcomed emphatically but for the harm caused by the scale of development, in this location.
- 1.54 The Council is able to demonstrate at least a minimum of 4-year's supply of housing land sufficient to meet its own housing needs. The relevant policies for determining this appeal are in compliance with the updated NPPF (Dec 23). Therefore, from the Council's perspective, the tilted balance is not engaged, and the proposal should be subject to the full considerations of the Local Plan.
- 1.55 The Council remains of the view that the harm which would result from the proposed development is not outweighed from the benefits it would secure and the proposal conflicts with the development plan as a whole.

Declaration

1.56 The evidence I have prepared and provided for this appeal is true and has been prepared in accordance with the guidance of the appropriate professional institutions. I confirm that the opinions expressed are my true and professional opinions.