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**Upper Heyford by 2031, in addition to that in the existing Local Plan. APPEAL  
REF: APP/C3105/W/23/3331122**

**LAND SOUTH OF GREEN LANE, CHESTERTON  
APPEAL UNDER S.78 TOWN AND COUNTRY PLANNING ACT 1990  
AGAINST A DECISION OF CHERWELL DISTRICT COUNCIL ("THE  
COUNCIL")**

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**CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT**

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**I. INTRODUCTION**

1. Following two weeks of detailed evidence we say the position is clear. Permission should be granted for the appeal scheme.
2. There are, essentially, three routes by which that conclusion can be reached:
  - (i) *First*, the Appellant's primary case is that that the appeal scheme is in accordance with the development plan as a whole.<sup>1</sup> Mr Thompson, on behalf the Council, gave clear evidence in cross-examination ("XX") that, in this particular case, accordance or otherwise with the development plan turns on the application of Policy Villages 2 ("PV2"). He accepted that if

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<sup>1</sup> No one has sought to argue that there are other material considerations applicable such that, if the scheme is in compliance with the development plan, permission should nevertheless be refused.

the appeal scheme is in compliance with PV2, then it is in accordance with the development plan as a whole.<sup>2</sup> We agree. The weight of the evidence before the inquiry supports the conclusion that the appeal scheme is indeed in compliance with PV2. Given that PV2 is expressed to provided for *additional* growth beyond that provided for by Policy Villages 1 (“PV1”), the repeated references in the Council’s closing to PV1 are misconceived and add nothing.

(ii) Secondly, even if (contrary to the above) you were to conclude that the appeal is conflict with Policy PV2 – and by reason of that not in accordance with the development plan as a whole – any such conflict is on any view limited. In that scenario, given (a) the substantial and pressing for further housing in the district (which, as we will explain, remains the case even if the Council can demonstrate a five-year supply) and (b) the many benefits of the scheme, the case for granting planning permission is compelling irrespective of whether the balance is tilted or flat.

(iii) Thirdly, if the conflict with PV2 and the development plan is judged to be significant - a conclusion which we submit is not rationally supported by the evidence. In that scenario, permission should still be granted if – as we say is the case – the tilted balance applies, as the adverse impacts do not significantly and demonstrably outweigh the benefits of the proposal.

3. The structure of our closing submissions is as follows. Given the centrality of Policy Villages 2 we start with this development plan policy, setting it within the broader spatial strategy of the Local Plan (Chapter II); we then consider housing land supply, including five year supply (Chapter III); sustainable location and transport modes (Chapter IV); landscape and townscape impacts, including the question of impact on the separate identifies of Chesterton and Litte Chesterton (Chapter V); before finishing with the Planning Balance, including the benefits of the scheme (Chapter VI).

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<sup>2</sup> XX(AT) CBKC, Day 4

## II. THE DEVELOPMENT PLAN AND POLICY VILLAGES 2

### *The spatial strategy*

4. Providing further housing in Chesterton would be consistent with the spatial strategies of both the existing and emerging local plans.
5. Central to the spatial strategy of the adopted Local Plan is the objective to direct growth “towards the larger and more sustainable villages within the district which offer a wider range of services and are well connected to major urban areas, particular by public transport”<sup>3</sup>. Chesterton fulfils both functions, being a service village, as well as being very well-connected to Bicester.
6. The strategy of the *emerging* Regulation 18 Local Plan is to is also to “direct the development of new housing to the larger and more sustainable villages and more well connected to our urban areas than the smaller villages.” It is therefore unsurprising, and entirely consistent with this strategy, that the Regulation 18 Plan has proposed allocating the appeal site itself, together with an area to the south, for approximately 500 homes.<sup>4</sup>
7. Although Ms Clover’s questioning sometimes suggested otherwise, the Council did not refuse the application on the basis that providing further housing at Chesterton would undermine the spatial strategy of its existing or emerging local plan. Plainly it would not.

### *Policy Villages 2*

8. The spatial strategy of the existing LP finds expression in PV2, which applies to major housing developments at Category A villages. Before turning to its specific criteria, we highlight the following features of the policy.

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<sup>3</sup> LP, p29, para A.11 [CD3.1]

<sup>4</sup> CD3.3.

9. First, PV2 is not a classic restrictive policy, which permits only certain types of development outside of settlement boundaries. To the contrary, it is a permissive policy, which enables housing development to come forward in such locations and outside of settlement boundaries, subject only to the criteria in the policy. Indeed, it is as a result of this flexibility that Mr Ross accepts that, notwithstanding that Policy BSC 1 (“District Wide Housing Distribution”) being out of date, the most important policies (“MIP”) for determining this appeal (including PV2) are not out of date. However, as he explained in his proof and oral evidence in chief, if PV2 was to be applied more strictly this would cause the MIPs to be out of date and engage the tilted balance by analogy with the Soham case (because on that basis BSC1 would be analogous with Policy GROWTH 1 in that case and Policy PV2 would be analogous with Policy GROWTH 2).
10. Secondly, as is clear from the policy wording, and as Mr Thompson agreed, PV2 envisaged sites coming forward by way of planning applications. It is not a policy which is only delivered through further plan-making (and in any event, Cherwell have not brought forward a Part 2 plan, and there are no relevant neighbourhood plans).
11. Thirdly, as is common ground between the parties, the fact that PV2 identifies 750 homes being delivered at Category A villages does not impose a cap on further development coming forwards in these locations.
12. Indeed, it is particularly important that it is not treated as a cap in circumstances where the LP is on course to substantially under deliver against its housing requirements (as we discuss below). Indeed, as the Council’s latest AMR recognises, although more than 750 homes have already been delivered in Category A villages, *“rural sites are likely to continue to be an important source of supply in the district”*<sup>5</sup>.
13. Of course, as Mr Ross accepts, if there was significant deviation from this figure, then this *could* lead to development not according with the overall spatial

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<sup>5</sup> CD3.14, p46, para 4.126. See also OSoCG, para 7.2

strategy. However, as we have noted, such an allegation forms no part of the Council's case. Moreover, in the recent Milcombe appeal (December 2023), the inspector found that there was no evidence that harm had been caused to the locational strategy of the District as a result of more than 750 homes having been delivered in Category A villages. She concluded that, particularly given the accessibility to services and facilities in that case, the site was an appropriate location for development, subject only to the application of specific criteria set out in Policy Villages 2.<sup>6</sup> The same approach to this policy was applied in the Bloxham appeal (January 2024).<sup>7</sup> The Appellant commends that analysis of the policy context to the Inspector, which we say applies equally in this case. The Council's closing completely fails to grapple with this analysis (see eg. para 60, which flies in the face of recent appeal decisions which suggest that the locational strategy has not been skewed by consents granted under PV2 ).

14. Fourthly, nor does PV2 establish a test of proportionate distribution amongst Category A villages. The tests to which regard must be had are those set out in the criteria. As Mr Thompson accepted in cross-examination, if the criteria point in favour of granting permission then PV2 is supportive. There is criterion of proportionality, express or implicit.<sup>8</sup> To treat PV2 as including such a criterion (as the Council's closings do at paras. 49-52) would be a legally erroneous misinterpretation of the policy.

15. Fifthly, PV2 establishes criteria which it requires regard to be had when considering applications. It does not require that all criteria are complied with (although in this case we say they are). It would be perfectly possible under PV2 for a decision-maker to conclude that a particular development was in conflict with one of the criterion, but in compliance with the policy as a whole when all of the criteria are considered in the round.

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<sup>6</sup> CD4.19, para 15, para 5.46

<sup>7</sup> CD4.42, para 12

<sup>8</sup> XX(AT) CBKC, Day 4

16. Turning then to the criteria, in this case there is only serious dispute about three of them<sup>9</sup>: “Whether development would contribute in enhancing the built environment”; “Whether significant adverse landscape and [visual] impacts could be avoided” and “Whether the site is well located to services and facilities”. These matters, which broadly correlate to the main issues in this case, are addressed below.
17. Mr Thompson rightly accepted that PV2, and these criteria, do not establish a “zero harm” requirement. For instance, the landscape-related criterion refers only to *significant* landscape and visual harm. Likewise, the development is only to “contribute” to enhancing the built environment - it does not require overall enhancement.
18. In the context of this appeal at least other relevant policies in the development plan are parasitic to PV2. On the Council’s own case, as clarified at the Inquiry, it is the application of Policy PV2 which is determinative. The remaining policies must also be interpreted in light of PV2. Thus the requirement in ESD 13 to avoid “undue” visual intrusion and “undue” harm to important landscape features must be understood in this context to mean avoiding significant harm. (Note para 74 of the Council’s closings cherry pick the wording from Policy ESD13, creating a misleading impression of the requirements of that policy).

### **III. HOUSING LAND SUPPLY**

#### **Context**

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<sup>9</sup> Although in his proof Mr Topping suggested that the site was not of “lesser environmental value” he accepted that (a) given its context it would be wrong to apply the criteria in a manner which would rule out any greenfield development (not least as “lesser environmental value” is expressed in the *alternative* to “previously developed land”); and (b) that as far as greenfield land goes, this is of “lesser environmental value”. In light of Mr Smith’s evidence on the value of the site and its surrounding landscape, he was right to make this concession. He also accepted that the Council did not object to the loss of BMV, nor argue that it could be avoided. Finally, he accepted that the infrastructure requirements could be addressed by the section 106 agreement.

19. It is a truism that context is crucial. And that is certainly true of the housing land supply position in Cherwell. Before turning to questions of five-year supply, three overarching points are critical:

- (i) First, it is undisputable (and undisputed) that the Council will fail *by a large margin* to meet its adopted housing requirements by the end of the plan period;
- (ii) Secondly, the requirement figure alighted upon by the Council for calculating five-year housing land supply is wholly unreflective of actual housing needs;
- (iii) Thirdly, the evidence to this Inquiry has shown that this is a Council failing to face up to the realities of the housing supply position in their district.

***(1) Projections of failure***

20. The Council claims that it can demonstrate a five-year supply of deliverable housing land. For reasons we will come onto we consider the Council's assessment to be flawed, both in respect of the relevant requirement and the extent of its deliverable supply. However, even if the Council's case on this issue was to be accepted in its entirety, the identification of a five-year deliverable supply would not, in this instance, reflect a District with a healthy supply of housing. Far from it.

21. As the broader context shows there is an urgent need for further market and affordable housing in the district. The Council is failing to deliver an adequate

number of homes and will continue to do so for many years to come. This is evident from the Council's own figures<sup>10</sup> and across a number of metrics.

22. ***First***, the Council will substantially under deliver against the housing requirement established in the **Local Plan**. Policy BSC1 requires that a total of 22,840 dwellings be delivered in the plan period (2011-2031), providing an annual requirement of 1,142 dpa.<sup>11</sup> This housing requirement was established in the LP to meet Cherwell's own needs only (as was assessed in the 2014 Strategic Housing Market Assessment ("**2014 SHMA**")).
23. The latest AMR demonstrates that there is already a large shortfall against that requirement (-1,392 dwellings as at 1 April 2023).<sup>12</sup> Perhaps more significantly, the Council's own projections are for that position to deteriorate substantially by the end of the plan period, with the AMR predicting a shortfall of -3,416 dwellings by 2031.<sup>13</sup>
24. Thus, even before taking account of Oxford's unmet needs, the Council is expecting to fall short of the adopted housing requirement established to meet its own needs by 15%.
25. ***Second***, in addition to its own needs, the Council has recognised that there is a "*pressing need to deliver 4,400 homes to help Oxford meet its housing needs*"<sup>14</sup> and has therefore committed through the Partial Review to provide these homes by 2031. Although derived from Oxford's unmet needs, the 4,400 homes required now forms part of the Council's *own* housing requirement to be delivered by 2031 (in addition to the 22,840 homes under the Local Plan). Reflecting the

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<sup>10</sup> IN XX (Day 3) Mr Goodall did not seek to challenge substantively any of the figures set out in section 3 of Mr Robert's Proof, which is wholly unsurprising because they have been taken from the Council's own publications (most notably its AMRs).

<sup>11</sup> Roberts [CD7.04], para 3.2

<sup>12</sup> Roberts [CD7.04], para 3.4

<sup>13</sup> Roberts [CD7.04], para 3.4

<sup>14</sup> CD3.05, para 5.19



urgency of this need, Policy 12a stipulates that “at least” 1,700 of these homes are to be delivered by 2026.<sup>15</sup>

26. Delivery – both current and projected - against the housing requirement established in the **Partial Review** is woeful:

- (i) As it currently stands, some 6 years the Partial Review was submitted, 5 years after it was examined and 3 ½ years after it was adopted, not a single Partial Review allocation benefits from a grant of planning permission.<sup>16</sup> This is notwithstanding that the inspector examining the PR having identified the “*obvious and pressing need*” as the “*chief*” reason for concluding that there were exceptional circumstances justifying amendment to the district’s Green Belt boundaries.<sup>17</sup>
- (ii) Contrary to the stipulation in Policy 12a, and notwithstanding the urgency of the need, the Council’s figures show that *no* homes will be delivered under the Partial Review by 2026, and only 80 will be delivered by 2028.<sup>18</sup>
- (iii) The Council projects a shortfall of 2,995 dwellings by 2031.<sup>19</sup> In other words, on the Council’s own figures, less than 1/3<sup>rd</sup> of the 4,400 homes required by Policy 12a will be delivered by the end of the plan period.

27. ***Third***, as Mr Roberts demonstrates, on the Council’s own assessment, the amount of deliverable supply has been reducing year-on-year,<sup>20</sup> from circa 9,000 homes in 2015, 2016 and 2017, to well under half of that amount now.<sup>21</sup> These figures

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<sup>15</sup> CD3.05, p150

<sup>16</sup> Roberts [CD7.04], para 3.10

<sup>17</sup> CD3.18, para 46

<sup>18</sup> Roberts [CD7.04], para 3.11

<sup>19</sup> Roberts[CD7.04], para 3.12

<sup>20</sup> Roberts, p16, Table 3.6 and Figure 3.1

<sup>21</sup>The December 2023 AMR claimed that deliverable supply for the period 2023-2028 was 4,121, which has now been reduced to 4,038 at this Inquiry: HSoCG, para 3.1.

illustrate that, even if the Council can now demonstrate a five year deliverable supply, it is not as a result of an improved supply position.

28. *Fourth*, the position in respect of affordable housing is equally, if not more, pressing. As Mr Ross' evidence illustrates, the need for affordable housing in Cherwell is substantial and increasing. The 2014 SHMA, which underpinned the Local Plan, identified a need for 407 affordable homes in the District per annum.<sup>22</sup> The December 2022 Housing and Economic Needs Assessment ("**HENA**"), which represents the latest assessment of housing needs for Cherwell, identifies an affordable housing need of 1,081 affordable homes per annum<sup>23</sup>. In addition, there is plainly a local demand: of the circa 1,600 residents in Cherwell on the housing register, 145 households have a preference for Chesterton.<sup>24</sup>

29. Set against that quantum of need, the Council's record of delivery of affordable housing is very poor. The Council have delivered an average of 270 affordable homes on average over the last eight years (¼ of what is needed). Moreover, there is a downward trend, with only an average of 218 affordable homes being delivered over the last three years.

## *(2) The moving goalposts*

30. The only reason that the Council is even in a position to be able to *claim* that it can demonstrate a five-year supply is not because of any improvement in the supply position - as we have seen the pipeline of deliverable supply has worsened considerably - but because of a change to the requirement figure for calculating five-year supply.

31. Council's case is that the LHN figure of 703 dpa alone is to be used as the housing requirement for the purposes of calculating five-year deliverable supply. We dispute this for reasons which we address below. However, even if

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<sup>22</sup> CD7.01, para 8.12

<sup>23</sup> CD3.15 Tables 9.33 and 9.36

<sup>24</sup> Ross Proof, para 8.19

the Council's approach were to be accepted, it is important to be clear-eyed about what reliance on the unvarnished LHN figure means in practice. It would mean that the five-year housing land supply assessment is based on a requirement which:

- (i) does not reflect the adopted housing requirement in the Local Plan (1,142 dpa) which, as explained, sought to meet Cherwell's own housing needs only;
- (ii) entirely ignores the housing requirement established in the Partial Review (420 dpa) which, although derived from a commitment to meeting part of Oxford's unmet needs, now forms part of Cherwell's own adopted housing requirement; and
- (iii) is substantially lower than the most recent assessment in the 2022 HENA of the District's own housing needs (1,009dpa – excluding any contribution to Oxford's unmet need<sup>25</sup>) *and* the housing requirement figure it is currently promoting for the District in its Regulation 18 Plan (1,293dpa – including a contribution of 284dpa to Oxford's unmet needs<sup>26</sup>)

32. In short, even if it is correct to use the unvarnished LHN figure to calculate five-year supply (which it is not), the resulting assessment would not demonstrate that the District's housing needs are being met.

33. Indeed, there is a particular perversity in the Council's position. In their February 2023 Regulation 10A review, the Council relied on the up-to-date assessment of need in the 2022 HENA as the sole basis for concluding that the housing requirement in Policy BSC1 (1,142dpa) was required updating.<sup>27</sup> It is as a result of this conclusion that the LHN figure (703 dpa on the Council's case) is to be

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<sup>25</sup> CD3.15, p89, Table 7.12 and para 7.6.13

<sup>26</sup> CD3.03, p74, Table 2

<sup>27</sup> CD3.13, para 11 and 12

used for calculating five year supply.<sup>28</sup> Yet, as we have seen, the HENA assessed the Council's needs at substantially higher than the LHN figure (1,009dpa for Cherwell's own needs; 1,293dpa including Oxford's unmet needs). Thus, on the Council's approach, the HENA's up-to-date assessment of housing need, which justified the departure from the adopted Local Plan housing requirement as a basis for calculating five-year supply, is then to be entirely ignored when assessing the Council's housing land supply position.

### *The Council's myopia*

34. Regrettably, the Council is failing to face up to, let alone grapple with, the substantial need for market and affordable housing in their district. Their position in respect of housing land supply has an air of unreality about it. This myopia has manifested itself in its evidence to this inquiry. By way of example:

- (i) in his written evidence Mr Thompson asserted that the *"Annual Monitoring evidence demonstrates that the plan has been successful in meeting housing needs, however they are assessed"*.<sup>29</sup> With respect to Mr Thompson, this statement is pure fantasy. The figures outlined above, which are taken from the Council's latest AMR and are not disputed, demonstrate that the Local Plan and the Partial Review will fail to deliver anywhere near their housing requirements across the plan period. Indeed, in XX Mr Thompson accepted that it was *"common ground"* that the housing requirements of both plans will be *"undershot by a significant [margin]"*<sup>30</sup>
- (ii) both Mr Goodall and Mr Thompson accepted that, even if the Council is able to demonstrate a five-year supply (applying LHN as the requisite requirement), the failure to meet adopted housing

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<sup>28</sup> NPPF, para 77 and fn42

<sup>29</sup> Proof, para 5.12. See also his assertion that the latest AMR *"shows how the Local Plan, as a whole, is continuing to deliver a high level of growth consistent with the overall plan trajectory"*- para 5.13

<sup>30</sup> XX Thompson (CBKC - Day 4)

requirements would still constitute a material consideration.<sup>31</sup> This, of course, must be correct and is entirely consistent with the approach adopted by Inspector Boniface in the *Soham* case.<sup>32</sup> However, notwithstanding the severity of the shortfall, Mr Goodall's refused to accept that the consideration was a substantial one and Mr Thompson's insisted that the position was "nuanced". These responses are telling: they are reflective of the Council's general approach is to downplay the severity of the need.

- (iii) in respect of affordable housing, Mr Thompson's written evidence was that the Council are exceeding the affordable housing "target of 190 per year"<sup>33</sup>. However, his written evidence singularly failed to explain that the supply of affordable housing comes nowhere near to meeting identified needs (407 dpa as recorded in the adopted local plan; and 1,081 dpa as assessed in the 2022 HENA). Moreover, in his oral evidence Mr Thompson was unable to explain how the 190 dpa 'target' had been derived. Despite having had over two weeks to do so, no explanation of this matter has been forthcoming.
- (iv) Perhaps most striking, however, is the Council's approach to Oxford's unmet needs, and its commitment through the Partial Review to meeting those needs. The Council's position is perverse. On Mr Goodall's evidence, outside of sites allocated in the Partial Review, the requirement to provide 4,400 homes towards Oxford's unmet needs has absolutely no part to play in the assessment of the district's five-year supply position. Indeed, on Mr Goodall's approach, once the Partial Review is more than five years old then (assuming that it has not been reviewed and found to be up to date) that requirement would

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<sup>31</sup> XX Goodall (CBKC - Day 3). Following intervention from the Inspector who made it clear that it was important that Mr Goodall clarify whether he considered the failure to meet housing requirements was a material consideration as distinct from the five year housing land supply assessment. XX Thompson (CBKC - Day 4)

<sup>32</sup> CD7.03, Appendix B

<sup>33</sup> Proof, para 5.14

have no bearing whatsoever on the assessment of the district's five year supply position.<sup>34</sup> As we will come onto below we consider that to be a wholly unjustified approach to the assessment of five year supply. But even if it was correct, then on any rational approach the failure to meet the Partial Review housing requirement (and thereby Oxford's unmet needs) would fall to be addressed in the planning balance, where it would have to be treated as a significant material consideration. Oxford's unmet needs – and the Council's commitment to meet them - cannot be made to disappear into the ether. Whether through the five-year assessment or planning balance it is a consideration which must be factored in somewhere. Yet in answer to a question from the Inspector, Mr Thompson's evidence was that Oxford's unmet needs are to be "totally disregarded" *both* in the assessment of five-year supply assessment and the planning balance.<sup>35</sup> This is a wholly untenable position, albeit consistent with the Council's general approach of ignoring their housing needs in the hope that they will go away.

35. In light of that context and *regardless of the conclusions in relation to five-year supply* we invite the Inspector to find that: (a) there is a substantial and pressing need for further market and affordable homes in the district; and (b) instead of acknowledging and grappling with that need, the Council has its (metaphorical) head in the sand.

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<sup>34</sup> XX Goodall (CBKC – Day 3).

<sup>35</sup> XX Thompson (CBKC – Day 4). He appeared to indicate that Oxford's unmet needs would only become a material consideration when the Partial Review was over five years old

## Five Year Housing Land Supply

36. The dispute between the parties concerning five-year housing land supply turns primarily on the following three issues<sup>36</sup>:

- (i) **The Policies Map** - whether, for the purposes of NPPF, para 226, the Council's Regulation 18 Plan is *required* to include a "policies map" and, if it is so required, whether it does. The resolution of this issue determines whether a four-year or five-year requirement is to be applied for the purposes of NPPF, para 77;
- (ii) **One or two Cherwells** - whether the housing requirement in the Partial Review is to be ignored for the purposes of the five-year housing land supply assessment. The Council accepts that, if it is to be factored in, then, at best, they are able to demonstrate a 3.27 year supply of housing.<sup>37</sup>
- (iii) **Deliverable supply** - the extent to which housing on ten sites in dispute is deliverable within the meaning of the NPPF.

37. Each of these issues is addressed in turn.

### *Policies Map*

38. This is a matter which was addressed in submissions attached to the Appellant's opening. Nothing which has been said by the Council during the inquiry causes us to change those submissions. They continued to be relied upon and are not repeated here.

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<sup>36</sup> In addition, there is a dispute between the parties as to whether the calculation of LHN should be based on 2023 figures, such as affordability ratios (on the basis that April 2023 is base date of the five year period in question) or the most recent figures from 2024. However, as the dispute amounts only to 7 dpa per year, we do not address the details of this dispute in closings, the details of which are to be found in Mr Roberts and Mr Goodall's proofs of evidence.

<sup>37</sup> HSoCG, Table 3.5

39. The key point is that the Council in its Regulation 18 Plan has (a) chosen to define what is meant by a policies map (in its Glossary<sup>38</sup>); (b) chosen not to refer to *any* of the maps within the plan or its appendices as a policies map; and (c) used the concept of a “policies map” in contradistinction to the maps which *are* currently found within the plan or its appendices.<sup>39</sup> None of these matters was considered by Douglas Edwards KC in his advice. Furthermore, contrary to Ms Clover’s characterisation<sup>40</sup>, these are not simply ‘labelling’ points. The substantive point is that the Council has treated the maps which it included in the Reg 18 Plan as being *conceptually distinct* from a policies map.
40. In light of these factors the only reasonable interpretation is that the Regulation 18 Plan does not contain a policies map. This conclusion is further supported by the approach the Council has taken when promoting plans which *do* include policies maps. The Regulation 19 versions of both the LP and PR, having defined the meaning of a policies map, then include such a map (explicitly described as such) in their appendices.
41. In an effort to take advantage of the concession offered by NPPF, para 226 – a concession introduced into national policy only after the Regulation 18 Plan was published – the Council now seek to argue that, although they plainly hadn’t intended to do so, the plan has inadvertently included maps which, when taken together, amount to a “policies map”. The futility of this argument was exposed when Mr Goodall was forced to argue that the definition of a policies map found

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<sup>38</sup> CD3.03 P331

<sup>39</sup> By way of example, Core Policy 56, which concerns Local Green Spaces, explains that the proposed designations are “shown on the policies map and Appendix 7”. Appendix 7 contains a series of aerial photos showing the proposed LGSs, but these are plainly treated as being distinct from the policies map, which is not found in or accompanying the Regulation 18 Plan. The same approach is taken to CP32: Town Centre Hierarchy and Retail Uses; CP65: Development in the Vicinity of Banbury Railway Station; CP:66 Green and Blue Infrastructure in the Banbury Area; CP69 Banbury Areas of Change; CP73: Delivery of Green and other Strategic Infrastructure in the Bicester Area; CP74: Bicester Areas of Change; CP77: London Oxford Airport; CP80 Kidlington Green and Blue Infrastructure; CP81: Core Policy 81: Kidlington Areas of Change

<sup>40</sup> XX CR (SC), Day 6



in the glossary within the Regulation 18 Plan was not a definition applicable to the Regulation 18 Plan.

*One or two Cherwells: is the PR housing requirement to be added to LHN?*

42. The Council has been at pains to emphasise that previous inspectors<sup>41</sup> have concluded that the housing requirement in the Partial Review should not be added to the LHN figure for the purposes of calculating five-year supply.
43. We acknowledge those decisions. They are, with respect to those inspectors, wrong in law, at least to the extent that they suggest that this approach applies to calculating five-year supply under the NPPF.
44. The rationale underlying those decisions – and one of the central points advanced by the Council in favour of their position – is that Policy 12a of the PR stipulates that “A separate five year housing land supply will be maintained for meeting Oxford’s needs”.
45. There are (at least) two fundamental flaws in the argument that this stipulation dictates the approach to be taken to the assessment of five-year supply under the NPPF.
46. *First*, and foremost, as a matter of law development plan policy cannot alter national policy. Thus if (as we say is the case) properly interpreted the NPPF requires a single housing requirement to be used for calculating five-year housing supply across the District, then the fact that development plan policy may provide for a different calculation of five-year supply for its own purposes is irrelevant.
47. *Secondly*, it is clear that the requirement in Policy 12a to maintain a five-year supply for Oxford’s unmet needs is intended to operate separate from, and in addition to, any requirement under national policy (consistently with the

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<sup>41</sup> Land to the Rear of No.12 and South of the Dismantled Railway, Heath Close, Milcombe [CD4.19], paras 28 – 29; and, Hempton Road, Deddington [CD 4.18], paras 50 – 51.

approach set out by Inspector Clark in the Newmarket appeal decision<sup>42</sup>). The intention being that the five-year assessments operate at two distinct levels: the assessment under national policy (which operates at a district wide level) dictates *inter alia* whether the tilted balance is to be applied; whereas the assessment under Policy 12a (which applies only to sites coming forward under the PR) provides a monitoring function to ensure that the PR is delivering housing as intended, and that any shortfall is not masked by delivery elsewhere in the district

48. This is evident both from the PR itself, as well as the report of the examining inspector.

49. In terms of the PR, the monitoring function is expressly set out in the supporting text to Policy 12a, which provides that "*it is appropriate and necessary that the monitoring of housing supply for Oxford's needs is undertaken separately from that for Cherwell*"<sup>43</sup> (emphasis added). It is also clear from the structure of the relevant policies. The monitoring function provided by the PR-only five-year supply calculation in Policy 12a is required in order to inform the operation of Policy 12b and Policy 13, under which the Council can take a formal decision that further land is required to meet the housing requirement in the PR.<sup>44</sup>

50. This function was also recognised by the examining inspector. The separate five-year supply requirement under Policy 12a "*would avoid the situation where meeting Oxford's unmet needs could be disregarded because of better than expected performance on the Local Plan 2015 Cherwell commitments, or vice versa.*" In other words, in order to properly monitor the performance of the PR, a five-year supply requirement focused only on the PR sites was necessary in order to avoid the picture being distorted by supply on non-PR sites. It was not intended to displace the *separate* requirement in the NPPF to demonstrate a five-year supply across the District.

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<sup>42</sup> CD 4.36, para 121

<sup>43</sup> CD3.05, para 5.160

<sup>44</sup> As an aside, the fact that no such decision has been made when, on their own case, the Council has a 0.1 year deliverable supply towards the PR sites, and will deliver none of the 1,700 homes required by 2026, is illustrative of the Council's 'head in the sand' approach to housing delivery.

51. In short, when determining what *national policy* requires in terms of a five-year supply assessment the policies of the PR are irrelevant. The critical issue is, instead, the proper interpretation of the NPPF. That is not to “revoke” the development plan, as para. 30 of the Council’s closing submissions mischaracterise the point: it is to recognise that national policy and the development plan each operate in their own parallel spheres. For the purposes of national policy 5YHLS assessment, the requirement figure is a single district wide one; for the purposes of the development plan’s built in monitoring mechanisms, the PR requires its performance to be judged by looking at the PR sites’ delivery on their own.
52. As the Courts have regularly reminded us, planning policy is not statute, and ought not to be construed as if it were. A proper interpretation is one which provides a “*sensible meaning of the policies in question, in their full context, and thus their true effect.*”<sup>45</sup>
53. The “two Cherwells” approach advanced by the Council does not provide a sensible meaning to the requirement of NPPF, para 77, nor reads it in its full context. The following factors are critical:
- (i) First, in terms of the **immediate context**, it is clear from the surrounding policies, that the NPPF envisages there being a single housing requirement for each authority. This is most clearly seen from NPPF, para 67, which states in terms that “*Strategic policy-making authorities should establish a housing requirement for their whole area...The requirement may be higher than the identified housing need if, for example it includes provision for neighbouring areas...*”
  - (ii) Second, in terms of the **wider context**, the planning practice guidance proceeds on the basis that there will be a housing requirement (singular)<sup>46</sup>

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<sup>45</sup> *Canterbury City Council v Secretary of State for Communities and Local Government* [2019] EWCA Civ 669 at [22]

<sup>46</sup> See Roberts Proof, paras 5.33-5.35

- (iii) Third, again in terms of the **wider context**, the approach taken by the government in calculation of the Housing Delivery Test is to amalgamate the local housing need figure *and* any unmet need from neighbouring authorities (at least where it has been tested as examination, as here) to arrive at a single figure.<sup>47</sup>
- (iv) Fourth, and perhaps most significantly, the Council's interpretation does **not advance a sensible meaning** of national policy. On its interpretation, the effect of the Council not being able to demonstrate a five-year supply in respect of the PR site (as it agrees is the case<sup>48</sup>) is that the tilted balance under NPPF, para 11(d) only applies to the sites allocated under the PR. Mr Goodall specifically confirmed that this was the Council's position.<sup>49</sup> But that position is entirely circular. It means that the tilted balance – designed to encourage the delivery of additional housing in underperforming LPA areas – would only take effect in respect of those sites which, due to their undeliverability, have caused the tilted balance to be engaged in the first place. That is perverse. Moreover, the effect of doing so would only be to water down the site-specific requirements in the PR, and would not assist in bring forward these sites any earlier.<sup>50</sup>

54. It is for this reason that we say, when read sensibly and its full context, the NPPF requires there to be one district-wide housing requirement when calculating five year housing land supply for the purposes of national policy. In this instance that requires the local housing need figure for Cherwell (used in place of the housing requirement in the LP) to be combined with the housing requirement from the PR.

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<sup>47</sup> See Roberts Proof, pars 5.42-5.50

<sup>48</sup> Land East of Grove [CD4.22], paras 10 – 16 ? Note in this respect the Council's closing submissions at paras. 38-39 appear to proceed on the basis that the PR is currently up to date on its case which is entirely untenable given the c.0.15YHLS.

<sup>49</sup> XX(JG), CBKC, Day 3

<sup>50</sup> Explained by Mr Roberts, XIC, CBKC, Day 5

55. That approach is consistent with a number of appeal decisions along similar lines.

In particular:

- (i) In the Grove case<sup>51</sup>, the approach of the Vale of White Horse was to combine the local housing need figure for its own area (in place of the housing requirement for its area, which was over 5 years old) with the housing requirement it had adopted in respect of Oxford's unmet needs (which was not over five years old, because they had been reassessed and found to be up to date). Inspector Bore agreed with this approach and took the "two components together" in order to calculate the "total housing requirement for the district...for the purposes of the 5 year housing land supply calculation"<sup>52</sup>
- (ii) Our analysis is also entirely consistent with that of Inspector Clark in the Newmarket case.<sup>53</sup> For the purposes of the NPPF, there is one, district wide, requirement figure; but the Council has also exercised its discretion to also "go on to" (using Inspector Clark's words) assess the 5YHLS of the PR sites for the purposes of monitoring the performance of LPPR under Policies PR12 and PR13.

56. In light of the above, we invite the Inspector to find that "One Cherwell" approach<sup>54</sup> should be adopted for the purposes of calculating five-year housing land supply under the NPPF. If that is accepted then it is determinative of this issue. It is common ground that, whatever conclusions are reached on deliverable supply, the Council cannot demonstrate a four, let alone five, year supply of housing. Accordingly, the tilted balance is engaged.

### ***Deliverable Supply***

57. Deliverable supply was discussed at the roundtable, following which an updated HLS SocG was produced which summarises the parties respective cases. We do

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<sup>51</sup> CD4.22 at paras 10-14. See also Queensbury Lodge, Newbury [CD4.36], para 121

<sup>52</sup> At para 13

<sup>53</sup> CD 4.36, para 121

<sup>54</sup> i.e. combining local housing need and the housing requirement from the PR

not lengthen an already lengthy closing by addressing each site in dispute. We do however highlight that the Council's closings are in error when they suggest that if the Council is right that there are "two Cherwells" for NPPF 5YHLS purposes, so that the PR requirement and sites are excluded for present purposes, then that automatically means the Council can show a 5YHLS. It does not: see Table 5.2 of the signed HLS SOCG.

58. We invite the Inspector to apply the following overarching principles when assessing deliverability:

- (i) **The burden is on the local planning authority to demonstrate deliverability; not on the Appellant to demonstrate undeliverability** – This much is clear from both the NPPF, para 77 (which places on the onus on "Local Planning Authorities" to "identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing") and the Planning Practice Guidance concerning 'Hosing supply and delivery' (which states that "an authority will need to be able to demonstrate a 5 year housing land supply when dealing with applications and appeals"<sup>55</sup>).
- (ii) **The evidence relied upon by the authority must be "robust [and] up to date"**<sup>56</sup>.
- (iii) **The amended definition (introduced by the 2019 NPPF) establishes evidential presumptions.**
- (iv) **In respect of "category B" cases there is an evidential presumption that the site is undeliverable, rebuttal only by "clear evidence" to the contrary.**

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<sup>55</sup> PPG Para 004. See also Para 008.

<sup>56</sup> PPG para 007

- (v) **The vast majority of sites in dispute in this case fall into “category B”.** Mr Goodall treats them all as category B sites. Mr Roberts, charitably, has approached 2 sites on the basis that they may be argued to be category A sites, at least in part.
  
- (vi) **In order to meet the “clear evidence” threshold, the evidence must be cogent, as opposed to mere assertions** – This much was explained by Inspector Stephens in the *Sonning Common* decision.<sup>57</sup>
  
- (vii) **In particular, reliance on emails or pro-formas from a developer alone will not meet the clear evidence threshold** - Again this was explained by Inspector Stephens in the *Sonning Common* decision,<sup>58</sup> who pointed to the incentive on developers to forecast optimistically.

#### **IV. SUSTAINABLE LOCATION**<sup>59</sup>

##### Introduction

59. The weight of evidence before this inquiry is unequivocal: Chesterton is a sustainable location for housing development.

60. This is the conclusion of Mr Bevis, the only specialist who has presented evidence on this topic to the Inquiry. It is the conclusion reached by the inspectors in the recent Great Wolf and Bicester Sports Association appeals. And it is consistent with the Regulation 18 Plan: both the findings within the evidence base which supports the plan, and the Council’s proposal to allocate the wider site for housing development. It is also supported by the fact that

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<sup>57</sup> CD4.34, para 20

<sup>58</sup> CD4.34, para 21

<sup>59</sup> This is short hand for the first part of main issue 1: “whether the location of the development is appropriate having regard to the facilities present in the village and other facilities accessible by sustainable means”. The appropriateness of the location by reference to the “policies of the development plan” is addressed in Section II above.

neither OCC nor NH – both of whom scrutinise the sustainability credentials of planning applications – objected to the scheme.

61. Before we turn to that evidence, we make three preliminary points. First, the NPPF recognises, “opportunities to maximise sustainable transport solutions will vary between urban and rural areas” and this is a factor which should be “taken into account in...decision-making”<sup>60</sup>. This is an important consideration in this case. As Mr Bevis explained, one would not expect the same opportunities for sustainable modes of transport in Cherwell’s villages (including Chesterton) as would be found, say, in the centre of Bicester or Banbury. However, as has been evidenced through this Inquiry, and as we will summarise below, relative to other villages in Cherwell, Chesterton provides good opportunities for sustainable transport solutions. Mr Bevis explained how these opportunities will be taken up by the appeal scheme.

62. Second, whilst understandably the focus when considering the sustainability of a location is ordinarily in terms of the opportunities for accessing services and facilities by foot, bike or the bus, the NPPF recognises that sustainable transport modes are broader than this. They include ultra-low and zero emission vehicles, as well as car sharing.

63. Third, journeys which are reliant, in part, on the private car should not be dismissed as inherently unsustainable. Where the majority of the journey is undertaken by bus or train, and only a short element requires use of the private car, this too may be consistent with maximising transport solutions. This is particularly relevant in Chesterton given the close proximity of the Park and Ride, and train stations in Bicester.

#### Sustainable transport options

64. As Mr Bevis explained, the **village itself** offers a reasonable level of services and facilities **accessible by foot** including a primary school, nursery,

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<sup>60</sup> NPPF, para 109



community centre, a village pub, and numerous leisure and employment opportunities. All of these are within a reasonable walking distance of the site. It is in light of the services and facilities on offer that the Council identified Chesterton as a “Category A Service Village”, which are recognised in the LP to be “the most sustainable villages” in the District.<sup>61</sup> Indeed, as Mr Bevis’ analysis shows, of the 33 Category A villages in Cherwell, Chesterton performs extremely well in terms of opportunities for trips by non-car modes, with only Kidlington outperforming it.<sup>62</sup>

65. An important facet of Chesterton’s sustainability is its close proximity to Bicester. Bicester is one of (if not *the*) most sustainable locations in the District.<sup>63</sup> It offers a substantial range of facilities and services. It also functions as a public transport hub for journeys by bus or train beyond. The facilities, services and public transport options in Bicester are readily accessible from the appeal site, including by sustainable transport modes.

66. The functional relationship with Bicester is promoted by the Parish Council on their website who explain that “*Chesterton is close to Bicester and its amenities. Train travel is convenient using Bicester North and Bicester Village...The S5 bus service runs frequently to Oxford from the Park and Ride off the A41/Vendee Drive roundabout*”.

67. In terms of opportunities for **cycling**, as Mr Bevis explained virtually all of Bicester is within a reasonable cycling distance (5km) of the appeal site. The Park and Ride – from which buses regularly depart for Oxford and central Bicester – is only a 7-minute cycle from the appeal site. Bicester Village Railway Station – which serves both Oxford and London – is a 14-minute cycle from the appeal site. Moreover, the route to Bicester is attractive: direct, flat, and utilising a recognised cycle network (partly on the Oxygen cycle route promoted by OCC and partly on the National Cycle Network route 51). Mr Bevis – who has cycled the route in

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<sup>61</sup> Local Plan [CD3.1 p244, para C.251 and p246 Policy Villages 1]

<sup>62</sup> Bevis Proof, Table 3.5, p24, and para 3.3.9

<sup>63</sup> See e.g. Local Plan, p17, para 1.9 [CD3.1]

day and night – considered that cycling to Bicester from the appeal site would be a realistic option for any reasonably proficient cyclist.<sup>64</sup>

68. The appeal scheme would provide further enhancements to these routes in the form of additional signage and (if considered necessary) route widening. Future occupants of the scheme would also benefit from a £500 bike/ebike voucher which, as Mr Bevis explained, would further improve the propensity to cycle from the appeal site.<sup>65</sup>

69. Mr Bevis’ analysis is consistent with the conclusion of the inspector in the BSA decision (Inspector Aston), who also concluded that the centre and east of Bicester could be reached *“in a short and leisurely 10-15 minutes cycle by a reasonably proficient cyclist on generally flat cycle routes”*<sup>66</sup> The appeal site is, of course, closer to Bicester than the BSA site. His analysis is also consistent with the conclusions of LUC who undertook the Interim SA supporting the Regulation 18 Plan, and who concluded that Chesterton came into consideration for growth due to its good transport connectivity, including a *“good potential to cycle to Bicester”*<sup>67</sup>.

70. The only dissenting voices in this respect are Mr Thompson (at least in his proof of evidence)– who in cross examination accepted that he had not actually cycled the routes and was *“not in a position to contradict”*<sup>68</sup> Mr Bevis’ evidence; Inspector Morgan in the Hale decision<sup>69</sup> - who, unlike Inspector Aston in the BSA decision and unlike the current Inquiry, did not benefit from any specialist transport evidence, and whose decision predated the promotion of the Oxygen cycling route by OCC; and, very belatedly, Mr Hughes of the Bicester Bike Users Group (BBUG) – whose suggestion that there is an inadequate cycle route between Chesterton and Bicester is contrary to OCC’s position (given their promotion of the cycle route and lack of any objection to this scheme), LUC’s

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<sup>64</sup> XIC (Bevis) CBKC, Day 5

<sup>65</sup> *Ibid.*

<sup>66</sup> [CD4.02], para 22

<sup>67</sup> [CD3.06], p34.

<sup>68</sup> XX(AT) CBKC, Day 4

<sup>69</sup> [CD4.03]

conclusion that there is a high quality cycle route into Bicester”<sup>70</sup>, and Mr Bevis’s own observations.

71. In addition, the services and facilities in Bicester would also be **accessible by bus** from the appeal site. The consented Great Wolf Lodge scheme is committed to funding the provision of a public bus directly from Chesterton to Bicester (this is *in addition* to the provision of its own shuttle bus). Works in connection with the Great Wolf scheme have started, and the first (of eight) instalments of the £1.6m index-linked funding towards the public bus has already been paid (and there is no getting out of the remainder – the only triggers are time intervals from the commencement of development, which has already taken place). The appeal scheme would make a further financial contribution to that bus service, as well as funding a new bus stop in Chesterton within easy walking distance of the site.

72. Mr Bevis has undertaken an assessment which shows that, taken together, the funding provided should be sufficient to enable an operator to run an hourly frequent bus service to Bicester for 34 years.<sup>71</sup> Mr Thompson accepted that he did not seek to contradict this evidence, and Mr Bevis was not cross-examined on it.

<sup>72</sup>

73. The appeal scheme would also fund a new bus stop on the Green within Chesterton, around 350m from the appeal site.<sup>73</sup> This would allow easy access to the public bus running to Bicester for future residents of the scheme.

74. It was evident from his cross-examination that Mr Thompson had not given the future bus provision much thought (he hadn’t “looked at the [matter] in detail”), but placed at least some reliance on the representations from Stagecoach (which was the same approach as taken in the officer’s report). However, the concerns raised by Stagecoach at the application stage can be given at most, only very

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<sup>70</sup> [CD3.06], p40 It is noted that caveat this a little by saying “it is somewhat distant from developable part of LPR37”. (p40) Mr Bevis explains that he does not agree that the cycle route is “somewhat distant” from the appeal site ( Proof, para 3.6.7\_– and plainly it is not.

<sup>71</sup> See Bevis Proof, para 3.2.27 [CD7.7] and Appendix B [CD7.9]

<sup>72</sup> XX(AT) CBKC, Day 4

<sup>73</sup> Bevis Proof, para 3.2.21

limited weight. They have not repeated the appeal stage. They have not been subject to testing by cross-examination. They pre-date the commencement of works in connection with the Great Wolf scheme (and the greater confidence this brings about bus delivery). And they did not have the benefit of Mr Bevis' uncontroversial viability analysis. In addition, they contradict the view of OCC who are the statutory consultee appropriately qualified to comment on this matter.

75. Finally, there are also good opportunities to travel from Bicester Village and Bicester North by **train**. Whether one arrives at the station by bike, bus or car, there are currently regular fast services to Oxford, London, Birmingham and beyond. And Bicester Village is on the route of the East West Rail which will link Oxford and Cambridge.<sup>74</sup>

76. It can, and should, be concluded therefore both that Chesterton is a sustainable location for further housing growth (consistent with the objectives of NPPF, para 109), and that the appeal scheme has taken up appropriate opportunities to promote sustainable transport modes (consistent with the requirements of NPPF, para 114(a)). The Council's reliance on the Finmere decision (Council closing paras. 48-49) has been comprehensively debunked by Mr Bevis' evidence<sup>75</sup> – Chesterton's accessibility and its connectivity with Bicester (which the Council's closings conspicuously ignore) places it in a fundamentally different position to Finmere in terms of its ability sustainably to accommodate growth.

### Connectivity to Oxford

77. The Council recognises that *“Bicester and the surrounding area”* has *“strong public transport connections with [Oxford] City, including a railway line and bus routes.”*<sup>76</sup>

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<sup>74</sup> Bevis Proof, para 3.2.30-3.2.40

<sup>75</sup> See eg sEction 3.4 and Figure JCB2.

<sup>76</sup> LPPR Sustainability Appraisal, p63, para 7.35 [CD3.21]

This is particularly true of Chesterton given its close proximity to the Bicester's Park and Ride, and train station.

78. Mr Bevis' explained how well the appeal scheme is connected to Oxford. In doing so, he demonstrated that commuting from the appeal site to Oxford by car and train would take only 31 minutes; by bike and train only 35 minutes; and by bike and bus would take only 10 minutes longer.<sup>77</sup> As it currently stands, even without the improved bus provision, a reasonably high proportion (1/3<sup>rd</sup>) of people who live in Chesterton travel to work in Oxford.<sup>78</sup> None of this evidence was disputed by the Council, either in the evidence of Mr Thompson or during cross-examination
79. Chesterton is, therefore, not only a sustainable location to meet Cherwell's own needs, but also to meet the needs of Oxford City. Given the substantial shortfall towards meeting Oxford's unmet needs in the PR, this is a highly significant material consideration.
80. This is consistent with the approach of the SA/SEA underpinning the PR which, contrary to what was suggested by the Council during the inquiry, did **not** rule out the Bicester area on the basis it was incapable of sustainably meeting Oxford's unmet needs. The appeal site, as explained by Mr Ross in his evidence in chief, lies within Area E in the SA (CD 3.22, internal p.25 PDF p.39 and Table 1.4.) Footnote 1 of the Council's closing is factually wrong in asserting that the site is in Area C - a point which in any event should have been put to Mr Ross in XX and was not.<sup>79</sup> In any event, it makes no difference to the analysis in the SA (both C and E were judged to be *capable* of sustainably providing for Oxford's unmet needs (see the green "+" / "++" scores in the table) and were judged to be among those areas which *"score the least significant negative effects in relation to meeting*

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<sup>77</sup> James Bevis Proof, p29, Table 3.7 [CD7.7]. The commute would be shorter if a car was driven to the trains station or Park and Ride, albeit not substantially so. Of course, in that case the majority of the commute would be using sustainable modes of transport (and the entire route if the car was electric, or a car club was used).

<sup>78</sup> Bevis Proof, Table 3.8

<sup>79</sup> If you Zoom in on the plan at CD 3.22 pdf p.37 you can actually see the word "Chesterton" within Area E

*Oxford's needs*" (para 1.1.03). As Mr Ross explained, a key factor in ruling out the Bicester area for the PR was concerns about absorption rates – i.e. the risk that doing so could cannibalise the market for the redevelopment of RAF Heyford for housing and thereby slow down the delivery of that development (see bullet 6 of para 1.105 at pdf p.42: *"It is likely that significant additional development could not be built at Bicester, Banbury and RAF Upper Heyford by 2031, in addition to that in the existing Local Plan."*). This is a point that was reiterated in the PR itself at para. 1.4:

*"1.4 The Partial Review provides a vision, objectives and specific policies for delivering additional development to help meet Oxford's housing needs. It seeks to do this in a way that will best serve Oxford's needs and provide benefits for existing communities in Cherwell and adjoining areas. The Partial Review is a positively prepared Plan. **It avoids undermining the existing Local Plan's development strategy for meeting Cherwell's needs and detracting from the delivery of growth at Bicester, Banbury and former RAF Upper Heyford...**"*

## V. EFFECT ON CHARACTER AND APPEARANCE OF THE VILLAGE AND SURROUNDING LANDSCAPE, INCLUDING GAP TO LITTLE CHESTERTON<sup>80</sup>

### **Introduction: credibility of the respective cases**

81. The Appellant's case is supported specialist and detailed evidence in respect of both the landscape and visual effects (Mr Smith), and the impact on settlement character (Mr Burton). On any view that evidence is robust and compelling. It applies recognised guidance and methodology (GLVIA v.3, NDG, Cherwell Residential Design Guide etc); is supported by transparent and clearly evidenced

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<sup>80</sup> This is shorthand for main issue 2: *"the effect of the proposed development on the character and appearance of the village and the surrounding landscape, including whether the additional housing would constitute a disproportionate extension to the village and whether any alleged adverse effects are capable of being mitigated"* and main issue 3 *whether the cumulative effects of the appeal proposal and other developments in and around the village would lead to the loss of its identity by closing the gap between Chesterton and Little Chesterton"*

reasoning; and arrives at measured and fully justifiable conclusions. Conclusions which were not seriously challenged during cross-examination.

82. In contrast, the Council's evidence on these matters – provided by Mr Topping – is simply not credible. We do not say this lightly. But this charge is fully justified in circumstances where:

(i) **Mr Topping accepted instructions to defend the Council's case without having first visited the site or surroundings.**<sup>81</sup> At the very least this revelation calls into question the rigour of Mr Topping's analysis. It is quite incredible that a landscape witness would accept a brief without first seeing the site.

(ii) **His evidence is not supported by a landscape and visual impact assessment of the scheme.** As GLVIA v.3 explains, judgements on landscape and visual effects must be "*based on clear and transparent methods so that the reasoning applied can be traced and examined by others*"<sup>82</sup>. The lack of any LVIA - whether GLVIA v.3 compliant or otherwise – is a significant lacuna in Mr Topping's evidence. For instance, it is impossible to discern what Mr Topping says about the sensitivity of the site in landscape terms (save that it is not within a valued landscape); the magnitude of change that would be brought about by the appeal proposals; or the overall landscape effects. Nor is it possible to properly understand which, if any viewpoints, Mr Topping has concern about, and why his assessment may differ from that of Mr Smith. Mr Smith explained that in his evidence the lack of any such assessment was "unprecedented in [his] experience" and stressed how hard it was to "grapple with evidence that has no assessment within in it".<sup>83</sup>

(iii) **the allegation of harm to the separate identities of Chesterton and Little Chesterton is mere assertion, unsupported by any analysis.** The

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<sup>81</sup> XX (CBKC) – Day 2.

<sup>82</sup> GLVIA3 CD2.24 (page 21)

<sup>83</sup> XIC (CBKC), Day 5

assessment of this issue in Mr Topping's proof of evidence is brief in the extreme, amounting to little more than a fleeting reference. It was not augmented to any significant degree in his oral evidence. And despite agreeing in the LSoCG that the Eastleigh criteria was an appropriate prism through which to assess this issue<sup>84</sup>, he fails to apply this *or any* recognised guidance when asserting that the separate identities of these villages would be harmed.

- (iv) **Likewise, despite purporting to give evidence on settlement character, Mr Topping fails to undertake *any* assessment whatsoever of the existing character of Chesterton.** We are told, tantalisingly, that Mr Topping "*review[ed]... the local character of the village*" during a site visit. However, this represents the totality of his evidence on the existing settlement character of Chesterton. Mr Topping's failure to undertake an assessment of the existing baseline, and consider how the appeal scheme does nor does not relate to this baseline, fundamentally undermines the (very brief) assertions he makes in relation to settlement character. As Mr Burton explained<sup>85</sup>, it led Mr Topping to make unjustified assumptions about the existing character of the settlement and the appropriateness of the design response.
- (v) **Mr Topping provided his evidence on settlement character without having regard to the National Design Guide, the National Model Design Code or Cherwell Residential Design Guide<sup>86</sup>** – these are the guidance documents which provide the key principles of good settlement design at both a national and local level. In a case where the Council was alleging harm to the settlement character, it is astounding that Mr Topping's assessment of the scheme's design (such that is) was not informed by any of these guidance documents.

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<sup>84</sup> LSoCG, para 28

<sup>85</sup> XIC (RW), Day 6

<sup>86</sup> XX (CBKC) – Day 2.



83. The Inspector will, of course, come to his own judgement on the effect of the proposal on the character of the village and surrounding landscape, as well as the impact on the gap between Chesterton and Little Chesterton. However, that judgement must be informed by the expert evidence before this Inquiry. Given that Mr Topping's evidence is so obviously flawed, where there are differences of judgment between the witnesses on a particular issue, we say that the evidence of Mr Smith and Mr Burton is plainly to be preferred.

84. The lack of any robust evidence base also caused difficulties for Ms Clover. It left her with little, if anything, to work with in cross-examination. As a result she was driven to advance points which form no part of the Council's case and which - unsurprisingly as it was not founded on any expert evidence - have no evidential basis. The following propositions advanced by Ms Clover are by way of example only:

(i) 'the recreational open space proposed in the appeal scheme is *more* harmful than the built development'<sup>87</sup> - on any account this an absurd proposition. It is to turn conventional understanding, as well as common sense, on its head. And it forms no part of the case advanced by the Council witnesses. Indeed, in answer to Mr Banner, Mr Topping agreed that the recreational areas proposed would be less harmful than the housing.<sup>88</sup> The fact that the Cherwell Landscape Sensitivity Assessment ("CLSA")<sup>89</sup> concludes that landscape parcel LS BIC7 is slightly more sensitive to formal recreation (moderate) than residential (low-moderate), does not mean that the provision of recreational open space is harmful.

(ii) 'there is a tension between the amount of open space provided and the objective in landscape terms to enclose the site'<sup>90</sup> - As Mr Smith explained in response, there is no tension. It is perfectly possible to

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<sup>87</sup> Put in cross examination to both Mr Smith and Mr Burton

<sup>88</sup> XX (CBKC) - Day 2.

<sup>89</sup> [CD3.07], Part B, p245(pdf71)

<sup>90</sup> Put in cross examination to both Mr Smith

provide open space which is enclosed (from the wider landscape) by treebelts and hedgerows. As can be seen from the illustrative landscape plan<sup>91</sup>, this is precisely what the appeal scheme achieves. Again, this was not a point raised by Mr Topping.

- (iii) 'There is *too* much open space on the appeal scheme'<sup>92</sup> - Both Mr Smith and Mr Burton fundamentally disagreed with what might, charitably, be called a 'novel' proposition. Mr Smith explained how the extent of open space provided (66% of the appeal scheme) is entirely appropriate for the edge of settlement location. Mr Burton considered it to be "one of the best features of the scheme". He explained how the recreational space proposed is reflective of an existing characteristic of the village.<sup>93</sup> And he explained how the use of the open space the appeal scheme is consistent with the objectives of the Cherwell Residential Design Guide ("CRDG")<sup>94</sup>, including being multi-functional, and offering a range of benefits, including habitat, drainage, sports and informal recreation.<sup>95</sup>
- (iv) 'the density of the appeal scheme is inappropriate, representing an inefficient use of land and not being reflective of the character of Chesterton'<sup>96</sup> - there are two fundamental problems with this proposition. *First*, it forms no part of the Council's case. The Council agrees that the net density of the development is 30dph<sup>97</sup>; does not contend that the policy concerning densities in the Local Plan (Policy BSC2) is breached;<sup>98</sup> and does not even contend that Policy BSC 2 is relevant for the determination of this appeal.<sup>99</sup> Furthermore, Mr

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<sup>91</sup> CD1.14

<sup>92</sup> Put in cross examination of Mr Smith and Mr Burton.

<sup>93</sup> XIC (RW) Day 6

<sup>94</sup> CD3.04, p51

<sup>95</sup> XX(SC), Day 6

<sup>96</sup> Put in cross examination of Mr Burton

<sup>97</sup> OSoCG [CD6.04], para 3.1

<sup>98</sup> See Decision Notice [CD2.03];

<sup>99</sup> OSoCG [CD6.04], para 6.4 'relevant policies'

Topping makes not one reference to the concept of density (nor Policy BSC 2) in his proof. The *second* fundamental problem with Ms Clover's point is that, as the CRDG explains, "[d]ensity is not in itself a reliable indicator of character"<sup>100</sup>. Similar guidance is provided in the NDG.<sup>101</sup> Mr Burton explained at some length in his evidence why considerations of settlement pattern and form; movement (including street pattern); building heights; landscaping ; and materials all combine to give rise to a settlement's character. Density cannot be used as a proxy for a detailed, rounded consideration of those factors.

- (v) 'the appeal scheme "stands-alone" from the village'<sup>102</sup> - Ms Clover was, with respect, really grasping at straws here. It forms no part of the Council's case that the appeal scheme would be isolated or divorced from the village of Chesterton. And Ms Clover's point was based on a complete misreading of Mr Burton's evidence.<sup>103</sup> As Mr Burton explained in response to Ms Clover, "*it is impossible, based on my evidence, to conclude that I am saying that the appeal site is independent from Chesterton. I am saying the complete opposite. It is a logical extension to the village.*"<sup>104</sup> Indeed, we do not understand how Ms Clover could have understood this to have been Mr Burton's evidence given the references in his proof to the appeal scheme being "*contiguous with the urban area and...kint[ing] into the settlement form*"<sup>105</sup> , "*perceived as a logical new housing extension along th[e] principal street through the village*"<sup>106</sup> and that, following development, "*the point of arrival into the village [will be]*

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<sup>100</sup> CD3.04, p54

<sup>101</sup> The NDG [CD5.05], para 66 provides that "*The appropriate density will result from the context, accessibility, the proposed building types, form and character of the development.*"

<sup>102</sup> Put in cross examination of Mr Burton

<sup>103</sup> Proof, para 6.3.5

<sup>104</sup> XX(SC) Burton, Day 6

<sup>105</sup> Burton Proof, para 5.7.2

<sup>106</sup> Burton Proof, p40

*before the vehicular entrance into the appeal site*"<sup>107</sup> to take three examples only.

85. Having cleared the decks, this part of the closing now addresses the impact of the proposal on (a) landscape character; (b) visual amenity; (c) settlement character; and (d) the gap between Chesterton and Little Chesterton. In doing so, it seeks to summarise the key points made by Mr Smith and Mr Burton, but it cannot hope to fully cover the detailed, nuanced assessments that both have undertaken. We invite the Inspector to refer to, and rely on, their assessments in full.

## **Landscape Effects**

### ***Landscape Character Area***

86. As is best practice, Mr Smith reviewed existing character areas at a regional level (national character area 108) and at a local level (the Clay Vale landscape type within the OWLS LCA), drawing on existing character assessments. As he explained<sup>108</sup>, however, his assessment has focused on a smaller character area so as not to unfairly dilute the landscape effects.

87. The landscape character area which Mr Smith has used for his assessment broadly aligns with the visual envelope as identified in the ZTV.<sup>109</sup> It is similar to, although slightly small than, the area LS BIC7 within the CLSA<sup>110</sup> (which, as Mr Smith explained<sup>111</sup>, and contrary to another of Ms Clover's unevicenced assertions<sup>112</sup>, is itself "*in character terms...a very small area*").

### ***Sensitivity of landscape***

88. Sensitivity is a function of value and susceptibility.

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<sup>107</sup> Burton, p42

<sup>108</sup> XIC(CBKC), Day 5

<sup>109</sup> [FIND REF]

<sup>110</sup> [CD3.07], Part B, p241 (pdf67)

<sup>111</sup> XX (Smith) Day 5

<sup>112</sup> XX (Smith) Day 5 - "*A very high level assessment over a large area.*"

89. This is plainly a landscape of **low value**. It has no relevant designations. It is agreed not to be a valued landscape for the purposes of national policy.<sup>113</sup> The CLSA concludes that the area is of low value.<sup>114</sup> Mr Smith has applied the TGN02/21 factors (of which he was one of the authors) and concludes that it is at most of “community value”<sup>115</sup>, which, as he explained is consistent with the assessment in the CLSA.
90. In terms of susceptibility to this type of development, Mr Smith concludes that the landscape area has a medium susceptibility to this type of development. This is primarily as a result of the existence of strong man-made influences such as built form, movement, noise and light.<sup>116</sup>
91. This equates, on Mr Smith’s assessment, to the landscape area in which the site is located having an overall **medium/low sensitivity**.<sup>117</sup> Mr Smith’s conclusion is consistent with that of the CLSA, which also identifies the landscape as being of medium-low sensitivity to residential development. Indeed, of the 55 parcels of land assessed in the CLSA, not one had a lower sensitivity rating.<sup>118</sup>
92. Mr Topping offers no evidence whatsoever on the question of value (save for agreeing that the landscape is not valued), susceptibility or sensitivity.

### *Magnitude of Change*

93. Having had regard to the size and scale of effect, the geographical extent and its duration, Mr Smith concludes that there would be a slight, albeit permanent magnitude of change on the landscape character area in question.<sup>119</sup>
94. Mr Topping provides no evidence concerning the magnitude of change.

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<sup>113</sup> LSoCG, para 12

<sup>114</sup> [CD3.07], Part B, p244 (pdf70)

<sup>115</sup> Smith, Appendix D. Table D1. See also Table D2 in respect of “Wooded Estatelands east of the M40 and south of the B4030” which represents the landscape character area in question and is also assessed as having community level value

<sup>116</sup> Smith Appendix D. Table D2

<sup>117</sup> Smith Appendix D. Table D2

<sup>118</sup> JS Proof, para 4.36 [CD7.10]

<sup>119</sup> Smith Appendix D. Table D3

### *Significance of Effect*

95. Mr Smith concludes that the appeal scheme would cause a **moderate/minor**, negative overall effect to the landscape character area in question.<sup>120</sup> He confirmed that this was not a significant effect in landscape terms.<sup>121</sup>
96. Mr Smith explained that the landscape effects to the site itself would, of course, be greater- in particular there would be a loss of the arable fields – however, this is necessarily the case in respect of any greenfield development on the edge of a village. Indeed, this is common ground between the landscape witnesses.<sup>122</sup>
97. Mr Topping provided no analysis of the significance of the landscape effects on the appeal proposal (at least in any recognisable GLVIA v.3 form). Nor was Mr Smith challenged on any of his methodology or conclusions in this regard.

### **Visual Effects**

98. The starting point in respect of visual effects is the common ground between the parties that (a) the visual (as well as landscape) effects of the proposal would be predominantly focused on the appeal site and its immediate context<sup>123</sup>, and (b) that views of the proposed houses on the appeal site from points further than 50m away would be limited to glimpses only.<sup>124</sup>
99. The relevant viewpoints were agreed by the original landscape officer and Mr Topping as being appropriate to assess the visual effects of the proposals.<sup>125</sup> It is therefore instructive of the weakness of the Council's case on this point that in her cross examination of Mr Smith, Ms Clover resorted to complaints that a visualisation had not been produced from immediately outside the site entrance

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<sup>120</sup> Smith Appendix D. Table D4

<sup>121</sup> XIC(CBKC), Day 5

<sup>122</sup> See Overarching SoCG, para 7.9

<sup>123</sup> LSoCG, para 23

<sup>124</sup> LSoCG, para 25

<sup>125</sup> LSoCG, para 26. See also Topping Proof, para 2.1.2 *"I agree with the Council's Landscape Officer in their report dated 27th April 2023 that the viewpoint location are proportionate and appropriately located."*

off Green Lane (the reason why this was not considered necessary is self-evident – it is not a particularly sensitive viewpoint).

100. On Mr Smith’s analysis, of the twelve viewpoints analysed only one – viewpoint 4 from unmade lane – would experience anything greater than moderate effects and then only in the short term.<sup>126</sup> By year 10 to 15, after the generous vegetation is allowed to grow, those effects will reduce to at most moderate/minor.<sup>127</sup> As is conventionally accepted, such effects are not significant or, as Mr Smith termed it, they are not an important planning consideration.<sup>128</sup>

101. No such methodological analysis of visual impacts was undertaken by Mr Topping in his evidence. And again, Mr Smith was not challenged on his methodology or conclusions in this regard.

102. Instead, the Council’s case (as advanced through their witnesses, as opposed to Ms Clover taking her own points) on visual impact appears to have boiled down to essentially three points. First, that existing planting on the boundary could not be relied upon where it fell outside the redline. Second, that planting near the pumping station – in the vicinity of viewpoint 4 – would be restricted. And third, that the “enclosure of the landscape [with additional boundary planting] is not appropriate.” The first two points were made in Mr Topping’s proof<sup>129</sup>, the third made by Mr Topping during his cross examination.<sup>130</sup>

103. None have any merit.

104. In terms of the boundary planting, Mr Smith explained<sup>131</sup> that, to the extent that it falls outside the red line area, there was no reason to think that it would

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<sup>126</sup> Smith Appendix E. Table E3

<sup>127</sup> Smith Appendix E. Table E3

<sup>128</sup> XIC(CBKC), Day 5

<sup>129</sup> [REF]

<sup>130</sup> XX(CBKC) Day 2

<sup>131</sup> XIC(CBKC), Day 5

be removed; in his view<sup>132</sup> the highway works already undertaken to construct the footpath on Green Lane has not caused any significant damage to the vegetation; and, in any event, critically, there is ample space within the site to introduce new planting behind the existing planting if that were necessary.

105. The pumping station was a case of the barking dog that did not bite. In his proof of evidence Mr Topping had assumed that receptors at viewpoint 4 would have “full and open views” of the pumping station.<sup>133</sup> This was based on two assumptions: (i) that the pumping station is an above ground structure and (ii) that hedgerow planting could not be planted due the easement associated with the pumping station. Both assumptions are incorrect. The vast majority of the built development associated with the pumping station is likely to be underground, as is the case on the neighbouring site. And as Mr Smith confirmed, drawing on his and his colleagues experience of preparing detailed planting schemes, the pumping station does not pose a material constraint to planting (even in respect of sewers the relevant guidance only advises a 3m buffer). Despite the prominence it took on in Mr Topping’s proof and evidence in chief, it is telling that Mr Smith’s evidence on this topic was not challenged in cross-examination.

106. Finally, Mr Topping’s contention that enclosure of the landscape is not appropriate is simply wrong. As Mr Smith pointed out<sup>134</sup>, the CLSA records that enclosure of medium scale fields by hedgerows and mature trees is a characteristic of the locality<sup>135</sup>, and the management guidance is that field patterns should be strengthened by “planting up gappy hedges”<sup>136</sup>.

107. In short the visual impact of this scheme will be localised and will not give rise to any significant harms.

### **Settlement Character**

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<sup>132</sup> Mr Smith acknowledged that he is not an arboriculturist, although he does have significant experience in respect of planting schemes. Mr Topping is not an arboriculturist.

<sup>133</sup> Topping Proof, 3.1.22

<sup>134</sup> XIC (CBKC) Day 4

<sup>135</sup> Smith Proof, para 4.31

<sup>136</sup> Smith Proof, para 4.23



108. As set out in his proof of evidence, and explained in his oral evidence, Mr Burton has undertaken an independent assessment of the design of the scheme which draws upon relevant national and local design guides. In particular, he explained how his assessment applied the “ten characteristics of well-designed places” from the National Design Guide<sup>137</sup> (“NDG”), as well as the principles outlined in the Cherwell Residential Design Guide SPD (“CRDG”).<sup>138</sup> Both documents provide an important framework for assessing the design quality of a scheme.
109. At a more granular level, Mr Burton undertook a baseline assessment of the settlement character of Chesterton which identified the positive placemaking features of the village<sup>139</sup>. He then used this baseline assessment to analyse the extent to which the proposal would complement and enhance those features.<sup>140</sup>
110. In his evidence in chief, Mr Burton drew out two key points from his assessment by reference to the helpful figures in his appendices. First, that the proposal represents a continuation of the natural pattern of growth of the village to the west of the historic core (Figs 3.9 & 3.10). Second, how the proposal reflects the village character in terms of the disposition of built development (fig 5.1); building height (fig 5.2); street pattern (fig 5.3); and landscaping (fig 5.4).
111. It was as a result of this methodological assessment of townscape that Mr Burton is able, rightly, to conclude that the appeal scheme is “capable of delivering a high quality and fully sympathetic new neighbourhood...[which] respond[s] positively to the village context, reflecting the unique characteristics of Chesterton”<sup>141</sup>. Indeed, as Mr Burton explained in cross-examination<sup>142</sup>, the new neighbourhood would enhance the character of the village in a number of respects. This includes, but is not limited to, providing a more appropriate, sympathetic settlement edge, which

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<sup>137</sup> Burton Proof, Section 5 and Appendix C

<sup>138</sup> Burton Proof, paras. 6.2.9-6.2.12

<sup>139</sup> Burton, Proof, p20, Table 3.1

<sup>140</sup> Burton, Proof, p39, Table 5.1

<sup>141</sup> Burton Proof, para 6.3.1

<sup>142</sup> XX(SC) Day 6

would represent a significant improvement on the harsh, abrupt edge currently experienced at Vespasian Way.

112. NPPF para. 139 directs that “significant weight” must be given to development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Mr Burton’s evidence demonstrates that the appeal scheme fully reflects the design objectives set out in the NDG and CRDG. It follows that significant weight must be given to the design of the appeal scheme.

113. In contrast to Mr Burton’s careful, detailed and transparent evidence, Mr Topping’s evidence concerning urban design is meagre in the extreme. He does not refer to national or local design guides. And he has not undertaken a baseline assessment. As Mr Burton explained in his oral evidence, in reality, Mr Topping has simply not undertaken any meaningful assessment of the proposal’s impact on settlement character.

### **Gap between Chesterton and Little Chesterton**

114. The Council have, in effect, advanced no case on this issue. That is because there is no case to be advanced.

115. Mr Topping confirmed that the Eastleigh criteria is appropriate to apply when examining the question of separation of settlements.<sup>143</sup> He also confirmed that he had not applied this, or any equivalent criteria, in his proof of evidence.<sup>144</sup> . In reality, he has undertaken no analysis of this issue at all.

116. In cross-examination, Ms Clover examined Mr Smith in relation to a gap. But the questions concerned the gap between Chesterton and Bicester, which on any view this proposal does not affect. Her questions of Mr Smith in respect of the gap between Chesterton and Little Chesterton were restricted to the contention

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<sup>143</sup> XX(CBKC), Day 2. See also LSoCG, para 28

<sup>144</sup> XX(CBKC), Day 2

that the Inspector is able to form his own view, applying the Eastleigh criteria.<sup>145</sup> As Mr Smith explained in response, this is true, but that judgment must be based on evidence – and the Council has not provided any.

117. Thankfully, Mr Smith has undertaken a detailed analysis of the potential effects of the proposed development on the separate identities of Chesterton and Little Chesterton, by reference to Eastleigh criteria. His firm conclusion is that, even taking the worst-case scenario (with all developments occurring at the same time and assuming no mitigation planting), the sense of separation between, and hence separate identities of, the two settlements would be retained.<sup>146</sup> There is no sound basis for concluding otherwise.

## VI. MATERIAL CONSIDERATIONS, PLANNING BALANCE AND CONCLUSIONS

### **Material Considerations**

#### *Benefits*

118. The primary benefit of the scheme is the **contribution it would make to market and affordable housing needs in the district**. There can be no dispute that the contribution to affordable needs should be given substantial weight, with the market housing being given significant.
119. However, the merits of this proposal extend far beyond simply contributing to market and housing needs. The appeal scheme has many attributes, chief amongst them being:

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<sup>145</sup> XX(SC), Day 5

<sup>146</sup> Smith Proof, pp47-61, paras 5.1-5.73

- (i) the extent of **open space** provided, with two-thirds of the site (9.8ha) being dedicated to green infrastructure and recreational space. As well as enabling the provision of a low-density development appropriate at the settlement edge, and allowing for the creation of a soft green edge to the village<sup>147</sup>, it will provide a large area of multifunctional recreational space for the residents of Chesterton, extending and complimenting the well-used sports pitches at the adjacent community centre.<sup>148</sup> The sports facilities provided should be given significant weight, and the open space more generally moderate weight.
- (ii) the **significant environmental benefits** which would be delivered.<sup>149</sup> Most notably, the dwellings would achieve a net-zero carbon standard, through a combination of fabric-first design measures and utilisation of renewable energy. This substantially exceeds the energy standards required by Building Regulations<sup>150</sup>, and goes well beyond the Council's own objectives for new dwellings as set out in its emerging Local Plan.<sup>151</sup> This should be given significant weight. In addition, the proposal would result in substantial biodiversity net gain, again well above the proposed minimum requirement in the Council's emerging Local Plan, which should be given at least moderate weight<sup>152</sup>

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<sup>147</sup> The gross development density of the appeal scheme- taking account of the entire area - is just 9.8dph. This is consistent with recognition in the Local Plan that the *"density of housing development will be expected to reflect the character and appearance of individual localities and development principles that are appropriate to the individual circumstances of sites"* [CD3.1, p61, para B.102]. The net development density - taking account of developable areas - is 30dph. This too is consistent with Local Plan policy, which provides *"New housing should be provided on net developable areas at a density of at least 30 dwellings per hectare"* (Policy BSC 2) [CD3.1, p62]

<sup>148</sup> Furthering an objective in the Regulation 18 Local Plan to *"maximise opportunities to incorporate new publicly accessible, high quality and multi-functional open space"* [CD3.3, p124, Core Policy 55]

<sup>149</sup> As is common ground. See OR, para 10.4 [CD2.1]

<sup>150</sup> See the Energy Statement (24<sup>th</sup> April 2023). The proposal would result in a 101% reduction in carbon emissions as compared to the baseline emission rate set by Building Regulations Part L 2021;

<sup>151</sup> Core Policy 4 will require that new dwellings achieve a 63% reduction in carbon emissions as compared to the baseline emission rate set by Building Regulations Part L 2021 [CD3.3, p23]

<sup>152</sup> Cope Policy 12 will require that new developments demonstrate a minimum of 10% net gain in biodiversity [CD3.3, p37]. The appeal proposals are capable of achieving significantly higher levels of net gain, both in respect of hedgerows (54.84%) and habitat units (20.68%).

(iii) the **high-quality design** of the scheme. While the proposal is in outline, as for the reasons set out above, it is very well-designed. It responds positively to its context, reflecting the important characteristics of the village, and will be perceived as an integrated and sympathetic new neighbourhood of Chesterton. The outcomes to which NPPF para. 139 directs “significant weight” to be given will be enabled.

(iv) the **sustainable transport enhancements**. The appeal proposals would further improve the sustainability of the village by providing a range of enhancements, which would benefit both existing and future residents of Chesterton. This includes improving local pedestrian and cycle facilities and contributing to the provision of a new bus service. These too are benefits which weight should be ascribed, albeit the weight is perhaps more limited than other considerations.

(v) The **economic benefits**. Both the short term direct and indirect benefits from construction of the development, which would include supporting 70 jobs during the four years of build out. And the long benefits derived from the new residents of the appeal site maintaining and enhancing the vitality and viability of Chesterton. These benefits should be given **significant weight**.

#### *Harms*

120. Set against these wide-ranging and weighty benefits, the harms caused by the development are minimal. The loss of BMV is acknowledged, albeit the extent of loss is not significant. Only moderate weight can be ascribed to this matter. There would be limited landscape and visual harm, albeit this is to be offset by the enhancement to settlement character that would be brought about by the high-quality design of the scheme. Only limited weight can be given to this harm.

121. Through her cross-examination Ms Clover appeared to be attempting to develop a quasi-prematurity case on the basis that the grant of permission would limit the opportunities for bring forward the overall allocation. This is not a factor

that can rationally weigh against the development (and is in any event outside the scope of the reasons for refusal and therefore not a point the Council can legitimately advance). All relevant witnesses, for the Appellant and Council, have agreed that the grant of planning permission would not prejudice the delivery of the wider allocation. Indeed, Mr Burton explained how the scheme's design was consistent with the broad principles established for the allocation in the Regulation 18 Plan. The latest representations of University College are of a very different in tone to the original response to the application and do not raise any substantial concern about the delivery of the allocation should outline permission for this scheme be granted. Further, neither University College nor their consultants Bidwells have attended the inquiry so as to enable their representations to be tested in cross-examination and therefore their representations can only carry limited weight in any event.

#### Planning Balance

122. We return then to where we started: Policy Villages 2. The evidence has overwhelming shown that the criteria in dispute will be met. The appeal scheme will contribute to settlement character and therefore will enhance the built environment; it is well located to services and facilities; and there will be no significant adverse landscape or visual ham. It follows that there is compliance with PV2 and the development plan as a whole.

123. In accordance with national policy<sup>153</sup>, we therefore respectfully request that the proposal be approved without delay.

**CHARLES BANNER K.C.**

**Keating Chambers**

**ROBERT WILLIAMS**

**Cornerstone Barristers**

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<sup>153</sup> NPPF, para 11(c)

**1<sup>st</sup> March 2024**