

Planning and Development

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Your Ref: **APP/C3105/W/23/3331122**

12 March 2024

Dear Sir/ Madam

TOWN AND COUNTRY PLANNING ACT 1990

Appeal Ref.: APP/C3105/W/23/3331122

LPA Ref: 23/00173/OUT

Appellant's Name: Wates Developments Ltd

Proposal: Outline planning application for up to 147 homes, public open space, flexible recreational playing field area and sports pitches with associated car parking, alongside landscaping, ecological enhancements, SuDs, green/blue and hard infrastructure, with vehicular and pedestrian/cycle accesses, and all associated works (all matters reserved except for means of access)

Location: Land South of Green Lane, Chesterton

This response has been prepared in accordance with the request of the Inspector to submit written representations in respect of the appeal reference APP/C3105/W/23/3326761 at OS Parcel 1570 Adjoining And West Of Chilgrove Drive And Adjoining And North Of Camp Road, Heyford Park (known as the Heyford Inquiry).

We agree that the decision issued by the Inspectorate in the above Heyford Park case is a potential material consideration to the Chesterton appeal.

However, the LPA is currently reviewing its position in relation to a potential legal challenge to the conclusions reached by the Inspector in that case (and the basis for the decision making) and has six weeks to consider this. We are taking KC advice and, as you will appreciate, we are not in a position to advise on the likely timescale should an application for review by the Courts be submitted.

We have significant concerns that the Heyford Park decision does not sufficiently consider all material considerations and therefore could be unsound.

On that basis, we consider that placing reliance on that decision and upon the housing land supply considerations and conclusions could place subsequent and dependent decisions also at risk.

For that reason, and noting that substantive evidence and testing was undertaken at the Chesterton Inquiry, we consider that the two cases should be kept entirely separate.

We are not in a position to provide a complete response to the Heyford Park decision at this point because to do so could limit or prejudice the case that the LPA may wish to present to the Courts. We consider that how the Heyford Park decision was reached is a matter best reserved for the Courts.

Nevertheless, to assist your understanding and given the limited timescale for responding we set out below a summary of our concerns without prejudice to our future position.

Single housing land supply

Notwithstanding the above, it should be noted that Paragraph 67 of NPPF 2023 states.

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

Highlighted in red is the new wording to the NPPF in comparison to the previous 2019 version of the NPPF. At Paragraph 71 of the Decision sets out the first sentence of Paragraph 67 but does not outline the remainder of the Paragraph, which should be read as whole. This includes the reference to strategic policies (indicating that there may be more than one policy on housing land supply). This is a significant omission.

At Paragraph 72 of the Decision the Inspector notes a limited reference to the Practice Guidance. This is set out in full below:

“The criteria for housing land supply requirements for decision-making purposes are set out in paragraphs 76, 77 and 226 of the National Planning Policy Framework.

Paragraph 76 sets out the criteria under which an authority is not required to annually demonstrate a housing land supply for decision making. If an authority does not meet the criteria in paragraph 76, paragraph 77 sets out the housing land supply of specific deliverable sites that authorities should demonstrate for decision-making against either their requirement figure or LHN as appropriate.

Paragraph 226 sets out criteria where, for a period of two years from the date of publication of the National Planning Policy Framework published on 19 December, an authority only needs, for the purposes of decision-making, to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of four years' worth of housing (with a buffer, if applicable) against either its housing requirement figure or LHN as appropriate.

The glossary of the National Planning Policy Framework defines what can be counted as a deliverable site for these purposes - those that are available now, offer a suitable location for development now, and those that will be achievable with a realistic prospect that housing will be delivered on the site within five years. Both the 5 year housing land supply and the 4 year housing land supply that authorities should demonstrate for decision making

should consist of deliverable housing sites demonstrated against the authority's five year housing land supply requirement, including the appropriate buffer"

Further at paragraph 73 of the Decision the Inspector highlights that:

"These changes are significant and indicate that the expectation is for one single housing requirement which includes the unmet need from a neighbouring authority."

However, as highlighted above, Paragraph 67 has not significantly changed and the Inspector does not grapple with Paragraph 77 of the NPPF 2023 (discussed below). Therefore, the conclusions of Paragraphs 73 and 75 of the Decision are, the view of the LPA, factually an error in law and in the interpretation or fair reading of the NPPF 2023. It would appear that the Heyford Inspector has been misdirected herself in the interpretation of policy.

Further, whilst a material planning consideration, applications and appeals must be determined in accordance with the Development Plan, with the NPPF and Practice Guidance being national guidance. There have been no significant or material changes to national policy in the NPPF 2023 that should mean that the existing Adopted Development Plan, in particular the Partial Review, should be disregarded within 5 years of its adoption which is the effect of the Heyford Inquiry decision.

Paragraph 77 of the NPPF 2023

The application of paragraph 77 of the NPPF 2023 is relevant for decision-taking and identification of the requirement against which supply is to be assessed. Both the Appellant's case, and any acceptance of the conclusions of the Heyford Park Decision Letter, relies upon a change in the interpretation of paragraph 77 of the NPPF 2023. Within that context:

- a. Paragraph 77 of the NPPF is unchanged following the publication of the revisions in December 2023
- b. The Appellant's case (and Paragraph 71 of the Heyford Park DL) relies upon changes to Paragraph 67 of the Framework, which relates to plan-making. In practice this imports wording already extant in the PPG at 2a-010 and, read as a whole, paragraph 67 outlines the role of adopted strategic policies (plural) to determine the requirement(s) to assess supply.
- c. The change in circumstances relied upon at Paragraph 72 of the Heyford Park DL and the resultant introduction of PPG ID: 68-055-20240205 stems from a separate issue over the period over which supply is to be assessed in some circumstances from December 2023.

It is the LPA's view that had the Government sought to fundamentally change and restrict the scope of national policy to prescribe how the requirement against which supply is to be assessed using a singular figure, for an individual authority, it would have addressed this through changes to Paragraph 77 of the NPPF 2023. Any changes to the PPG would have been clear in the role to address this point. The LPA's view is that the Government would not seek to import such a fundamental point while clarifying a separate dispute relating to the period over which supply is to be assessed following changes to paragraph 226 of the NPPF 2023.

It is therefore also relevant to note:

- a. The Heyford Park Decision Letter provides no reasons to indicate that the Council's position was incorrect with respect to the requirement against which supply was to be assessed before December 2023.
- b. The Heyford Park Decision Letter does not indicate that the LPA's approach to preparation of its adopted strategic policies was not a permissive one. There is no conflict identified with how these specific adopted strategic policies are intended to operate on the Council's case, including with respect to paragraph 11(d) and footnote 8 of the NPPF 2023. This is important because the Council's case still relies on a position tested at Examination (via the policies of the Partial Review). The conclusions of the Heyford Park

DL (while not actually specifying what requirement is used to assess supply) cannot be stated to be an approach tested as part of plan-making.

c. The change in circumstances relied upon for the conclusion of the Heyford Park DL draws no support from the Housing Delivery Test.

d. Paragraph 70 of the Heyford Park DL represents a suggestion that circumstances had already changed following adoption of the Partial Review under the NPPF 2012 Framework. This is not relied upon for the actual conclusions based on the NPPF 2023 and, moreover, if it were correct it would equally have applied to the Deddington and Milcombe Decisions that the Inspector distances herself from in paragraph 74. Specifically, the change in circumstances relied upon is the publication of the Revised Framework and associated PPG.

As such, the Heyford Inquiry Decision cannot be relied upon and its failure to deal with Paragraph 77 is significant and the conclusions of Paragraphs 73 and 75 of the Decision are, in the view of the LPA, factually is an error in law and interpretation or fair reading of the NPPF. It would appear that the Heyford Inspector has been misdirected in the interpretation of policy.

Oxford's Unmet Housing Need

The Inspector in her decision makes no reference to Policies PR1 or PR12 of the Partial Review Development Plan or indeed its adoption. Furthermore, the Inspector makes no reference to the age since adoption or the reasons for allocation. The Inspector at Heyford is incorrect that the Partial Review was assessed or adopted under the context of NPPF 2012. The Partial Review did include assessment under NPPF 2019, this is a factual error and the Inspector has not read or assessed the Partial Review in an appropriate and fair manner.

As examined at the Inquiry, the original allocation of the PR sites (as set out in the sustainability appraisal of the Partial Review) was to provide new residential development that included:

1. Proximity to Oxford, the existing availability of public transport and the opportunity to maximise the use of sustainable and affordable transport in accessing Oxford's key employment areas and services and facilities.
2. Opportunity to achieve an overall, proportionate reduction in reliance on the private motor vehicle in accessing Oxford's key employment areas and services and facilities and to achieve further investment in sustainable transport infrastructure.
3. Deliverability of sustainable transport improvements in comparison to other Areas of Search.
4. Relationship of existing communities to Oxford.
5. Existing economic relationship between the Areas of Search and Oxford
6. Opportunity to provide affordable homes to meet Oxford's identified need close to the source of that need.

The Inspector at the Heyford appeal makes no assessment of this matter in the decision to amalgamate housing land supply or the exceptional circumstances that were required as part of the Development Plan preparation.

In this respect, the Heyford Inspector fundamentally and significantly undermines the Development Plan and the reasons for its adoption and the exceptional circumstances demonstrated.

The Partial Review is less than 5 years old. This matter is also not discussed by the Heyford Inspector or the implications of this in terms of the NPPF.

In respect of the Partial Review becoming more than five-years old Para 74 of the NPPF states –

“The supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns...”

As set out in Regulations, for dwellings, a largescale major development is one where the number of residential units to be constructed is 200 or more. In this context:

PR6a – 690*

PR6b – 670*

PR7a – 466 (by the resolution to grant) – Allocation 430

PR7b – 123 (by the resolution to grant) – Allocation 120*.

PR8 – 2100 (in the application submissions) – Allocation 1,950

PR9 – 540 (both the application submission and allocation)

*The allocations of PR6a and PR6b together with PR7a and PR7b are considered to have intimate relationships to each other and fall under the same heading and policy justification.

Further it should be noted that the Partial Review Sites are geographically in and around Kidlington which has a population of c.13723 (2011 Census) so 4,400 houses would be a significant extension to Kidlington as shown on the Adopted Policies Map (Appendix 1 of the Partial Review).

Further Appendix 4 outlines the level of infrastructure expected to be delivered and how it will be secured (funding and s106s). This complies with Para 74 - Working with the support of their communities, and with other authorities if appropriate, strategic policy-making authorities should identify suitable locations for such development where this can help to meet identified needs in a sustainable way. In doing so, they should:

a) consider the opportunities presented by existing or planned investment in infrastructure, the area’s economic potential and the scope for net environmental gains.....

The Partial Review was subject to Challenge (reference: Cherwell Development Watch Alliance vs Cherwell District Council [2021] EWHC 2190 (Admin) (**Appendix 1**) which was a challenge to the exceptional circumstances being demonstrated, and the County Council also required a review the Transport Model and therefore did not remove a highways objection until mid-2023, so the resolutions to grant and progress has been made in a quick and efficient manner. These matters are also not discussed by the Heyford Inspector.

Further, it is noted that Footnote 39 follows *“The delivery of large scale developments may need to extend beyond an individual plan period, and the associated infrastructure requirements may not be capable of being identified fully at the outset. Anticipated rates of delivery and infrastructure requirements should, therefore, be kept under review and reflected as policies are updated”*

Preparation of plans or policies and decision making are common phrases in a number of paras of the NPPF. The NPPF and Government is therefore setting out the expectation of where large-scale developments should be re-assessed.

Therefore, if the issue of the non-delivery of the PR Sites is an issue, then this would be dealt with through the Local Plan Review and Reg 19 stage for more certainty. Similarly urban extensions to Bicester (NW Bicester, Graven Hill and other strategic allocations) are also urban extensions.

The NPPF is explicit in that it is not a matter for any s78 appeal to address this assessment.

Overall, in assessing the Council as having one Housing Need the LPA contend there are a number of errors in the Heyford Inquiry Decision.

There is no grappling at all with paragraph 77 or what the housing requirement actually is or how it is calculated when LHN applies.

The Heyford Inquiry decision does not consider how unmet needs are addressed as part of plan-making. Further the lack of reference at all to LHN or the specific adopted strategic policies in the Partial Review in particular (specially PR1 and PR12a) suggests that the Heyford Inspector has erred in her decision making.

The Council, therefore, rejects the conclusion of the Heyford Inquiry on its Housing Land Supply Position and considers that there are significant and fundamental errors which the Council is contemplating preparing a case towards. Due to the limited time given, this note may not represent the whole or full case presented.

Challenge to the Partial Review Local Plan

In respect of the Challenge to the Partial Review, the claim was brought by the Cherwell Development Watch Alliance, a consortium of local residents' groups, on two grounds of challenge: one based on housing need, and one based on whether a proposed replacement golf course would be "equivalent or better provision" when compared to the existing one.

By 2018, the Claimant held that the underlying figures for housing need in Oxford had fallen. However, as part of the Oxford Local Plan examination process, the Inspectors there had found that the housing need figure of 1400 dpa remained. Unlike in 2014, this would potentially meet affordable housing need in full.

The claimants in this challenge asserted that the Inspector had failed to consider the reduction in underlying figures when assessing whether there were exceptional circumstances justifying amending the Green Belt.

Thornton J considered that the Inspector had considered the underlying figures but agreed with the conclusion of the Oxford inspectors, and that the Inspector had considered need, amongst other reasons, amounted to exceptional circumstances to justify the alteration of the Green Belt boundaries.

Of potential wider significance, Thornton J saw "force" in the submission that there is a policy distinction between the objectively assessed need (OAN) which is referred to in the NPPF and data that feeds into that figure. The latter may be material only so far that it would be irrational not to have considered it (paragraph 90).

In this respect therefore the Heyford decision undermines and disregards the Exceptional Circumstances demonstrated as part of the Partial Review and the consideration of Thornton J in dismissing the Challenge to the Partial Review Local Plan.

Paragraph 226

The Heyford Inspector does not grapple with or assess the requirements of Paragraph 226 or the definition of the Policies Map. This matter requires attention and consideration that the Heyford Inquiry did not resolve.

Heyford vs Chesterton

Heyford is a strategic direction for growth with an Adopted Policy under Policy Villages 5 for approximately 1600 homes with associated employment, retail and other development.

It therefore fundamentally differs from Chesterton which forms part of a Policy Villages 2 and is planned for growth in accordance with the principles of Policy Villages 2 for a total of 750 dwellings across 23 villages. The facilities and services available as a direction for growth are fundamental and significant differences to the case under this appeal.

Policy Villages 2

The Heyford Inquiry did not require the application of Policy Villages 2 of the Local Plan. As stated above the decision related to Policy Villages 5 of the Local Plan.

However, it is noted that at Paragraph 29 the Inspector noted the supply of housing more generally around Policy Villages 2 (PV2) and how the LPA is delivering its housing needs and the overall strategy. Paragraph 29 states:

The figures in Policy BSC1 anticipate delivery of 2350 dwellings in the 'Rest of the District', excluding Banbury and Bicester. This figure derives from 1600 homes at Heyford Park and 750 from allocations under Policy PV2. The AMR shows that 1195 dwellings have been built and consented against the 750 figure of Policy PV2, that represents an excess of 445 dwellings. There is still of course 8 years of the plan left to go, so that delivery in the 'Rest of the District' is likely to exceed the plan requirement. Any shortfall at Heyford Park is likely therefore to be outweighed. In this context, further development in this part of the District, away from the identified sustainable locations for growth, could undermine the Plan's strategic distribution of housing.

While the Council does not accept the conclusions of the Heyford Inquiry it notes as a discrete point that paragraph 29 is inconsistent with the Inspector's conclusions that the requirement to assess supply is a single figure inclusive of Oxford's unmet needs.

Under the Inspector's reasoning the Appeal site at Heyford Park would be taken as contributing towards those needs. This is not specified in paragraph 29, and those needs are dealt with separately in the spatial strategy outside of the totals in BSC1 through the separate provision for major development and strategic infrastructure investment under the Partial Review.

By the Inspector's own reasoning in para 29 it follows that development in other areas would also undermine that part of the strategy set out in the Partial Review. It is the Council's case that the harm caused by undermining that strategy reflects a greater degree of magnitude than referring to BSC1 only and is not correct nor consistent with other Inspectors' conclusions on HLS.

This matter above also highlights that the overall development strategy (i.e. delivering towards Banbury and Bicester) under Policy BSC1 is up to date. The Inspector also highlights that building significantly in excess of the 750 dwelling total would undermine the Plan's strategic distribution of housing.

Conclusion

Overall, the further submission and the requirements to provide further responses requires significant additional work to be undertaken when the LPA and Appellant have already given full submissions as part of the Public Inquiry.

Further, the decision would undermine and disregard the basic principle that decisions should be made in accordance with Adopted Development Plan, in particular having regard to the Partial Review. Whilst the NPPF and Guidance is a material consideration there have been no significant or material changes to National Policy (December 2023) to suggest that the up to date and Adopted Development Plan which has been through consultation, examination, found to be sound in accordance with largely unaltered national policy should be disregarded within 5 years of its adoption or to the wording of plan making.

The decision of the Heyford Inquiry contains a number of significant and fundamental errors and should not be relied upon in decision making and there is a lack of reasoning, consistency and adequacy in reasoning in this matter in respect of the Council's Housing Need and supply.

We therefore submit that this appeal decision is not significant to the determination of the Chesterton Appeal and the LPA continue to submit that the LPA's case and evidence presented is sound and the Inspector is respectfully requested to dismiss the appeal.

Yours sincerely



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