

# Statement of Case

Land east of Warwick Road, Banbury

Appeal by Vistry Homes Ltd

Against the decision by Cherwell District Council to refuse planning for:

“Outline application for up to 170 dwellings (Use Class C3) with associated open space and vehicular access off Warwick Road, Banbury; All matters reserved except for access”

LPA application reference: 23/00853/OUT

February 2024

# Contents

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1.	Introduction	1
2.	The Appeal Site and its Surroundings	5
3.	The Development Proposals	7
4.	The Appellant's Case	12
5.	The Planning Balance	22
6.	Planning Obligations / Conditions	23
7.	Conclusions	25

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**Appendix 1:** Site Location Plan

**Appendix 2:** Decision Notice

**Appendix 3:** Planning Policy Context

**Appendix 4:** Historic England correspondence

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**Client**

Vistry Homes Ltd

**Our reference**

BOVS3002

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# 1. Introduction

1.1 This Statement of Case has been prepared by Turley on behalf of Vistry Homes Ltd (the 'Appellant') to support an appeal against Cherwell District Council's (the 'Council') decision to refuse an outline planning application (ref: 23/00853/OUT) for residential development on Land to the east of Warwick Road, Banbury (the 'Appeal Site').

1.2 A site location plan is enclosed at **Appendix 1**.

1.3 The description of development is as follows:

*"Outline application for up to 170 dwellings (Use Class C3) with associated open space and vehicular access off Warwick Road, Banbury; All matters reserved except for access."*

## **Vistry Homes Ltd**

1.4 Vistry Homes Ltd is the UK's leading provider of affordable mixed tenure homes. Vistry's purpose as a responsible developer is to work in partnership to deliver sustainable homes, communities, and social value, leaving a lasting legacy of places people love. Vistry are a young and dynamic business with a Partnerships-led approach delivered through our Countryside Partnerships division, and an exciting timber-frame manufacturing operation called Vistry Works, running three factories and supporting our drive towards net zero.

1.5 Delivering thousands of homes every year for the private and affordable market places, Vistry Homes Ltd has an unmatched portfolio of retail brands, each with a rich history and strong reputation: Linden Homes, Bovis Homes and Countryside Homes. Vistry Homes Ltd are a multi award-winning housebuilder and the Group has again been awarded the 5 Star Rating by the Home Builders Federation following the latest industry's Customer Satisfaction Survey.

## **Statement of Common Ground**

1.6 A draft Statement of Common Ground ('SoCG') is submitted with this appeal. It is expected that a signed SoCG will be available prior to the inquiry commencing, in accordance with normal procedure.

1.7 Further statements of common ground on technical matters may be produced should this be necessary to assist the Inspector in highlighting any areas of agreement or disagreement between the parties.

## **The Application Decision**

1.8 The planning application forming the subject of this appeal was validated by the LPA on 29<sup>th</sup> March 2023 and given the reference 23/00853/OUT (herein referred to as 'the application').

1.9 An extension of the determination period for the application was agreed with the LPA to the 11<sup>th</sup> August 2023, and as explained in the Statement of Common Ground, additional information was submitted through the application determination.

1.10 The application was recommended for refusal by Officers to Planning Committee and refused by Members on 10<sup>th</sup> August 2023. The decision notice refusing the application was subsequently issued on 11<sup>th</sup> August 2023 stating the following reasons for refusal (herein referred to as RfR):

*“1. Cherwell District Council is able to demonstrate a 5-year housing land supply meaning that the relevant development plan policies are up to date. The application site is located within open countryside and is not allocated for development. The proposed development by virtue of its visually prominent position, is such that it would breach Banbury’s contained environmental setting, giving rise to a direct risk of coalescence between Banbury and Hanwell, causing undue visual intrusion into the open countryside, fundamentally changing the undeveloped characteristics of these parcels of open arable land, creating a prominent urban built form, inconsistent with the local character, to the detriment of the rural landscape and the identity and individuality of Hanwell village, contrary to Policies PSD1 and BSC1 of the CLP 2031 Part 1, saved Policies C8 and H18 of the CLP 1996 and Government guidance within the National Planning Policy Framework.*

*2. The proposed development is considered to erode the open arable landscape which provides clear separation between Banbury and Hanwell and forms part of the surroundings within which the setting of Hanwell Conservation Area, St Peter’s Church (Listed Building Grade I) and Hanwell Castle (Listed Building Grade II\*) are experienced, to the detriment of and causing harm (less than substantial) to the setting of these designated heritage assets, contrary to policy ESD15 of the CLP 2031 Part 1 and Government guidance within the National Planning Policy Framework.*

*3. No evidence base has been provided to attempt to demonstrate whether the loss of this ‘very good’ and ‘good’ quality parcels of agricultural land could be avoided. The proposals thereby fail to satisfy the prescribed criteria under Policy Villages 2 of the CLP 2031 Part 1 and the requirements of para. 174 of the NPPF.*

*4. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement, the Local Planning Authority is not satisfied that the proposed development provides for appropriate infrastructure contributions required as a result of the development, and necessary to make the impacts of the development acceptable in planning terms. As such, the proposal is contrary to Policy INF1 of the Cherwell Local Plan 2011-2031, CDC’s Developer Contributions SPD 2018 and Government guidance within the National Planning Policy Framework.”*

1.11 A copy of the Decision Notice can be found at **Appendix 2**. This Statement of Case sets out the Appellant’s case in response to the reasons for refusal and other material considerations.

1.12 The Appeal Site is not subject to any landscape, ecological or other environmental designations that would constrain development.

## **Appeal Procedure and Witnesses**

- 1.13 With reference to the online “Procedural Guide: Planning appeals – England (5 October 2023)” and the relating “Criteria for determining the procedure for planning, enforcement, advertisement and discontinuance notice appeals (Published 21 April 2022)” the Appellants consider that a public inquiry is the appropriate method to determine this appeal. The issues raised by the appeal, and the stated reasons for refusal, include complex matters which require testing through cross-examination. The Appellant’s case is likely to require submissions of law relating to the interpretation of the Council’s planning policies. In addition, the planning application generated substantial local interest.
- 1.14 For these reasons a public inquiry is considered essential to ensure a thorough consideration of the issues raised, as per our appeal pre-notification letter issued to both CDC and PINS on 7<sup>th</sup> December 2023.
- 1.15 At this stage (and bearing in mind the matters raised during the determination of the application by consultees) the Appellant considers that it will be necessary for evidence to be presented in respect of the following matters:
- Planning, compliance with the Development Plan and overall planning balance;
  - Housing Land Supply;
  - Affordable Housing;
  - Landscape and Visual Impact; and
  - Heritage.
- 1.16 The Appellant will consider the need for evidence on any other matters in light of the position taken by the LPA and any other parties.
- 1.17 There was significant local interest in the scheme and a large number of representations (491) were submitted to the Council as part of its consultation on the application proposals.
- 1.18 It may be necessary to respond and address matters beyond those set out in the reasons for refusal through evidence.
- 1.19 Should Third Parties produce further evidence, or a ‘Rule 6 Party’ be formed and associated evidence submitted, it may be necessary to examine this evidence through formal questioning on technical matters raised.
- 1.20 It considered that to address all matters, up to 6 sitting days will be required to address the reason(s) for refusal.

## **Documentation**

- 1.21 In addition to those documents referred to above, the following documents are considered to be of relevance to the determination of the Appeal. The Appellant will

seek to agree a Core Document numbered list with the Council in the SOCG, including the following:

- Planning Application Documentation;
- Other Documentation in Relation to the Planning Application;
- Appeal Documentation;
- Relevant Planning Policy Documentation (other than produced by the Council);
- Local Planning Policy and Guidance;
- Relevant technical research and design guidance.

## 2. The Appeal Site and its Surroundings

- 2.1 The Appellant has set out a description of the Appeal Site and its surroundings within the draft SoCG with the Council. This matter is also set out in the material submitted during the course of the determination period (for example the Planning Statement and Design and Access Statement).

### **The Appeal Site**

- 2.2 The site is located at along the eastern side of Warwick Road (A4100) and to the north of Dukes Meadow Drive and extends to approximately 12.63 hectares.
- 2.3 The site is split into two parcels by the old farm track referred to as 'Gullicotte Lane' and comprises two agricultural fields ('Parcel A' and 'Parcel B', referred to collectively as the 'site'). Parcel A is bound by Warwick Road to the west, with Parcel B located on the eastern side of Gullicotte Lane. Both parcels are currently in use for arable farming. There is currently no vehicular access onto the site from Warwick Road. There is farm access to the site via Gullicote Lane.
- 2.4 The site boundaries are defined by existing hedgerows. There are two public footpaths and one bridleway crossing the site at various points that lead from Banbury to Hanwell village, to the north.
- 2.5 The topography of Parcel A is relatively flat. The topography of Parcel B falls away to the east. Beyond the application site to the east, the landform further slopes down into the Cherwell and Hanwell Brook valleys.

### **Surrounding Area**

- 2.6 The site is bounded by agricultural land to the north and east of the site there is further agricultural land. To the south of the site there is a boundary defined by existing trees as part of the recent residential Persimmon development (land north of Dukes Meadow Drive) located beyond. This currently forms the northern edge of Banbury. To the west the site is bound by Warwick Road, beyond which is agricultural field land and existing residential development. To the south west of the site is the approved residential development 'Drayton Lodge' which has permission for 320 homes and a retail store (Sainsburys Local) which is currently under construction.
- 2.7 In the wider area, the village of Hanwell lies to the north east of the site, separated by a field parcel.
- 2.8 Banbury Railway Station is located within a 20-minute cycle of the site. There is a bus stop located approximately 0.4miles<sup>1</sup> from the site (circa 7-minute walk) and provides links into Banbury town centre. There is a second bus stop close to the site (approximately 0.2 miles).

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<sup>1</sup> Googlemaps

- 2.9 There are a number of local amenities close to the site that could serve the residents of the new development. These include a 'Sainsburys Local' (approximately 0.4 miles) Arden and Hardwick primary school (approximately 1.4 miles), North Oxfordshire Academy (approximately 1.2 miles) and the Barley Mow public house (approximately 1 mile).

#### **Planning History of the Site**

- 2.10 The Council's online planning application register does not identify any relevant planning applications in relation to the site prior to the submission of 23/00853/OUT.
- 2.11 This appeal is made against that refusal to grant planning permission.

#### **Environmental Impact Assessment (EIA) Screening and Scoping**

- 2.12 The proposal falls within Schedule 2 to the 2017 EIA Regulations, and exceeds the thresholds for screening of 150 dwellings and above 5ha in size.
- 2.13 A request for an EIA Screening Opinion was submitted to the Council on 9<sup>th</sup> August 2022. A response was received on 23<sup>rd</sup> August 2022 confirming an EIA was required. A subsequent Scoping request was submitted to the Council on 2<sup>nd</sup> November 2022. A response was received from the Council on 7<sup>th</sup> December 2022.
- 2.14 Consequently, an Environmental Statement was prepared to accompany the planning application.



## 3. The Development Proposals

- 3.1 The full description of the proposed development set out on the Decision Notice is as follows:

*“Outline application for up to 170 dwellings (Use Class C3) with associated open space and vehicular access off Warwick Road, Banbury; All matters reserved except for access.”*

### **The Proposal**

- 3.2 The proposed residential development comprises the following:

- Up to 170 new homes with a mix of market and affordable homes;
- Increased provision of affordable housing to 40% thereby exceeding policy requirements, totalling up to 68 affordable homes;
- New vehicular and pedestrian access from the western boundary of the site from Warwick Road;
- A 3m footpath and cycleway along the eastern edge of Warwick Road, to connect the site to the existing footpath to the south;
- Over 5ha (53%) of the site retained as open space creating new habitats for nature;
- Biodiversity net gain of 38% for habitats and 10% for hedgerows;
- Play and recreational provision; and
- Associated highways improvements and sustainable drainage systems.

### **Housing Provision**

- 3.3 The application proposes up to 170 dwellings, 40% of which will be affordable (in line with the NPPF's definition of such).
- 3.4 The exact dwelling mix for the site will be addressed at subsequent reserved matters stages. It is anticipated that the mix will comprise 1-4 bedrooms homes. Maximum building height of 2.5 storeys, coming down to 1.5 storeys in sensitive parts of the site.

### **Access**

- 3.5 Vehicular and pedestrian access will be achieved from Warwick Road on the western boundary of the site.
- 3.6 A 3m wide shared footpath and cycleway is proposed to connect the site access on the eastern side of Warwick Road to the residential development to the south. It is also

proposed to improve connections along the Public Rights of Way across the site and connect to Dukes Meadow Drive.

### Development Areas

3.7 Design parameters for the development including access point and land use extent are shown on the Land Use Amount and Access Parameter Plan (extracted below).



- 3.8 Development is focussed on the central part of the western field, to better relate built form to the existing settlement to the south and in order to retain the established vegetation boundaries and provide landscape buffers. Development is not proposed on the eastern parcel due to the topography of the land.
- 3.9 A public square is proposed at the entrance of the development to create a sense of place. Play space and an informal kick-about space are proposed on the north western side and south eastern side of the development respectively. Elements of green infrastructure are embedded within the masterplan to ensure a landscape-led scheme, soften the proposed built form and create a visually attractive development.
- 3.10 The site's existing vegetation has been retained where possible, along with the Public Right of Way which has been integrated into the green corridor proposed on the masterplan.

### **Flood Risk and Drainage**

- 3.11 The site lies fully in Flood Zone 1. No watercourses are identified within the site boundaries. The nearest watercourse to the site is approximately 800m to the west. A small area of the site on the southern boundary is at low risk of surface water flooding. The local public foul and surface water sewer networks are owned and operated by Thames Water.
- 3.12 A new foul water drainage network is required to serve the development. Thames Water have confirmed the existing sewer network which runs within Warwick Road has sufficient capacity to accommodate the development. The proposed point of connection is 325m to the south of the site.

### **Open Space and Biodiversity**

- 3.13 53% of the site is to be retained as green open space, totalling 5.3ha.
- 3.14 The site is subject to no ecological designations, nor are there any within the zone of influence of the site. The on-site habitats are predominantly managed arable fields, locally valuable hedgerows, mature trees and woodland.
- 3.15 Initial calculations based on the parameters plan and illustrative masterplan indicate the site could achieve approximately 39.9% net gain in habitat units and 10.83% net gain in hedgerow units.
- 3.16 The eastern-most field parcel shown within the blue line land on the Site Boundary Plan (Dwg. No. edp3253\_d045b) is available to provide mitigation for the Skylark population.

### **Landscape**

- 3.17 The landscape details associated with the proposed development are to be subject to a future reserved matters application, however an Illustrative Landscape Strategy is provided to demonstrate how the proposals have considered the setting of the site and

retain the majority of existing vegetation. The proposals will be well-contained within the site.

- 3.18 The assessment of the site and surrounding landscapes has inputted into the early stages of masterplan design to ensure it is landscape led. The designed and embedded mitigation include:
- Strengthening of vegetation along the northern and western boundaries through new planting.
  - 53% of the site retained as green open space.
  - Proposed development kept within the western parcel as far away from the northern boundary as possible in order to retain a feeling of separation between the settlement of Hanwell.
  - Further public open space in the eastern parcel.
  - Retained existing Public Right of Way network through and alongside the site's boundaries.

### **Heritage and Archaeology**

- 3.19 The site does not contain any heritage assets. Hanwell Conservation Area lies to the north east of the site, however does not adjoin the site. Hanwell contains several designated and non-designated heritage assets.
- 3.20 An Archaeological Evaluation Report, following a geophysical survey, confirms archaeological remains were found in 13 of the 79 evaluation trenches. These were dated as Late Iron Age and indicated that the site was located on the agricultural fringe of that settlement. The recorded features do not preclude development coming forward on the site. Suitable mitigation will be secured via planning condition on any permission granted.

### **Agricultural Land Quality**

- 3.21 The western half of the site is grade 2 (very good quality agricultural land), and the eastern half is subgrade 3a (good quality land).
- 3.22 The proposals will result in the loss of best and most versatile land, however this amounts to only 12.63ha and is therefore not significant.

### **Sustainability**

- 3.23 Through a combination of fabric efficiency measures and renewable energy, the development will achieve site wide CO2 emission reductions of greater than 31% over Part L of Building Regulations standards, exceeding policy requirements.
- 3.24 A fabric first approach to sustainable construction will be taken. Solar PV systems are recommended to be used on site. All buildings will be built to be resilient through

construction specification and managing overheating risk in consideration of the longer-term impacts of a changing climate. Measures have been identified to reduce both construction and household waste.

- 3.25 Water usage will be reduced using flow restrictors and low use appliances where applicable, in accordance with Part G of Building Regulations and Policy ESD 3 of the Local Plan.

## 4. The Appellant's Case

- 4.1 The relevant planning policy context for the appeal site is enclosed at **Appendix 3** of this Statement of Case. A description of relevant planning policies and guidance is included within the draft SOCG.
- 4.2 Section 70(2) of the Town and Country Planning Act 1990 provides that, in dealing with an application for planning permission, regard is to be had to the development plan so far as material to the application, local finance considerations and other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the development plan unless material considerations indicate otherwise.

### The Development Plan

- 4.3 The adopted Development Plan comprises the following documents:
- Cherwell Local Plan 2011 - 2031 Part 1 (adopted July 2015)
  - Cherwell Local Plan 2011-2031 (Part 1) Partial Review – Oxford's Unmet Housing Need (adopted September 2020)
  - Minerals and Waste Core Strategy (adopted September 2017)
  - 'Made' Neighbourhood Plans in Cherwell District (although this Appeal Site is not within a designated 'Neighbourhood Area')
  - Saved, retained policies of the Adopted Cherwell Local Plan 1996
  - Saved policies from Oxfordshire County Council's Minerals and Waste Local Plan 1996.
- 4.4 In this case the Appellant will produce evidence to demonstrate that material considerations exist which limit the weight that can be afforded to parts of the development plan, and that the appeal should be allowed.
- 4.5 The Appellant's case, to be set out in more detail in Proofs to follow, is that applying NPPF paragraph 11(d), the most important policies in the development plan for the determination of the appeal proposals are out-of-date.
- 4.6 Firstly, this is because the Council is not able to demonstrate a sufficient housing land supply, as will be demonstrated through further evidence. This triggers the "*tilted balance*" in NPPF paragraph 11(d). We will submit evidence to demonstrate that CDC are required to demonstrate a five year supply, along with further evidence to demonstrate that CDC cannot meet this five year supply.
- 4.7 In this case, we therefore submit that NPPF para 11(d) of the presumption in favour of sustainable development is engaged, whereby planning permission should be granted unless any adverse impacts of granting permission would significantly and

demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

- 4.8 The Appellant will demonstrate that the proposals will lead to economic, social and environmental benefits, including through the direct provision of market and affordable homes. The Appellant will demonstrate that there are no adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
- 4.9 It is recognised that the application of the 'tilted balance' does not replace development plan as the starting point for the determination of this appeal. The Appellant will explain why reduced weight should be afforded to policies contained within the development plan within their evidence in accordance with material considerations such as the NPPF.
- 4.10 In the event that the appeal scheme is found to conflict with the development plan, the tilted balance applies and there are no adverse impacts arising from the proposed that would significantly and demonstrably outweigh the benefits.
- 4.11 The Appellant's evidence will demonstrate that any harm, if there is any, is extremely localised and that the scheme will contribute towards meeting minimum housing requirements, in a sustainable location.
- 4.12 The Appellant's evidence will also refer to the material benefits derived from the proposals which include, amongst others the delivery of market and affordable housing as well as other socio-economic and environmental benefits.
- 4.13 It will be demonstrated that the appeal proposals are considered to be compliant with all other relevant development plan policies that are considered to be up-to-date.
- 4.14 In this context we turn to set out the Appellant's case in the context of the Council's four reasons for refusal.

#### **Reason for Refusal 1**

##### *5 year housing land supply*

- 4.15 The Appellant will present evidence on housing delivery to date in Cherwell District and on the Council's ability to demonstrate a sufficient housing land supply, as required by paragraph 77 of the NPPF.
- 4.16 In this respect, the Appellant will present evidence to show that:
  - i. There has been a significant under-delivery to date against the Council's Local Plan requirement;
  - ii. There has been an even greater under-delivery to date when compared to the Council's Local Plan trajectory; and
  - iii. There are expected to be significant levels of under-delivery of homes at the end of the plan period.

- 4.17 These factual matters alone demonstrate the need to grant planning permission on additional sites to deliver more homes.
- 4.18 The Appellant will present evidence to show that it is relevant to consider Cherwell's part of Oxford's unmet needs as part of its overall District wide housing land supply calculation and, on that basis, the Council will also not be able to demonstrate a sufficient (district as a whole) housing land supply (even on its own claimed deliverable supply). The Appellant will submit that the unmet housing need's of Oxford City are an important material consideration in the determination of this appeal.
- 4.19 Against any of the potential approaches to the calculation of housing land supply, the Appellant will demonstrate that shortfalls in supply exists and that, consequently, sites that can deliverable more homes need to come forward and the delivery of homes from the appeal site should be afforded significant weight.

### ***Affordable Housing***

- 4.20 The appeal proposals seek outline permission for up to 170 dwellings, of which 40% are proposed as affordable which equates to a total of up to 68 affordable homes.
- 4.21 The proposed development complies with the requirements of Policy BSC3 of the adopted Cherwell District Council Local Plan 2011-2031 Part 1 (2015) which seeks 30% on site affordable housing provision from qualifying developments in Banbury and Bicester.
- 4.22 The tenure split of the affordable housing offer is expected to comprise 70% affordable/social rented dwellings and 30% as other forms of intermediate affordable which will be secured through a Section 106 agreement ("S106").
- 4.23 The Appellant will present evidence to look at the corporate priorities of the Council, including the following documents:
- Cherwell Local Plan 2011-2031 Part 1 (2015);
  - Cherwell Local Plan 2011-2031 Part 1 Partial Review (2020) - Oxford's Unmet Housing Need;
  - Saved Policies of the Cherwell Local Plan (1996);
  - Developer Contributions Supplementary Planning Document (2018);
  - Emerging Local Plan Review 2040;
  - Housing Strategy 2019-2024; and
  - Homelessness and Rough Sleeping Strategy 2021-2026.
- 4.24 Evidence on the annual ongoing need for affordable housing need will be presented, considering the evidence contained in:
- Oxfordshire Strategic Housing Market Assessment (2014); and



- Cherwell District and Oxford City Councils Housing and Economic Needs Assessment (December 2022).
- 4.25 Evidence will also be presented on past market and affordable housing delivery and comparisons will be made with the identified affordable housing needs against delivery performance.
- 4.26 The Appellant will consider a number of affordability indicators; for example, the number of households on the Cherwell District Council Housing Register, which totalled c.1,900 households on 31 March 2023. Other indicators include:
- House Prices;
  - Annual Earnings;
  - Affordability Ratios; and
  - Private Rents.
- 4.27 Evidence will be presented looking at other material considerations such as Secretary of State and Inspectors decisions.
- 4.28 The Appellant will present evidence that there is an acute need for more affordable housing and the benefit of 40% affordable housing weighs heavily in favour of the appeal.
- 4.29 The Appellant reserves the right to expand upon the above information following receipt of the Council's Statement of Case.

***Landscape impact***

- 4.30 A Landscape and Visual Appraisal (LVA) accompanied the planning application, forming an appendix to Chapter 7 of the Environmental Impact Assessment (EIA). The LVA has been undertaken in accordance with the principles embodied in 'Guidelines for Landscape and Visual Impact Assessment - Third Edition (LI/IEMA, 2013)' (GLVIA3) and other best practice guidance.
- 4.31 The LVA identified that *"the Site itself is divided into two character areas by the old farm track of Gullicote Lane; Parcel A to the west and Parcel B to the east. Both Parcels, and their associated features are undesignated, however, they both contain features which are characteristic of the local area. In the case of Parcel A, these representative features (predominantly the hedgerows and associated tree cover) are focused at the boundaries, providing containment to the Site in turn alongside its position atop the local ridgeline and contributing to the vegetated appearance of the landscape between Banbury and Hanwell."* In terms of visual receptors, the LVA identified 15 viewpoints within the immediate and wider setting of the site, and these formed the basis of the visual assessment within the LVA.
- 4.32 The findings of the LVA informed the design development of the proposed scheme, to ensure that a sympathetic, landscape-led approach was adopted from the outset, and manage potential adverse effects upon the receiving landscape and visual receptors.

This, and in response to comments received within the EIA Scoping Opinion (received on 7th December 2022), has resulted in the Proposed development being 'pulled' south within Parcel A as far away from the northern boundary as possible in order to retain a separation between new development edge and the settlement of Hanwell. Furthermore, land to the east of Gullicote Lane has been retained as green space with informal development features (attenuation basin and natural play facilities (NEAP/LEAP)) to retain the open, green rolling character of the landscape to the east.

- 4.33 The key principles of the landscape strategy are to retain existing characteristic features where possible and provide a level of screening to the proposed development to soften its visual effects on nearby residential development and the surrounding countryside. The focus of residential built form within a single field parcel (Parcel A) ensures that minimal loss of boundary vegetation would occur, with only a small section of boundary hedgerow alongside Warwick Road required for removal in order to facilitate access into the site. This loss of hedgerow would be aptly compensated for across the development proposal through the addition of new tree and shrub planting within areas of POS and reinforcement of other boundary vegetation around the site's extents.
- 4.34 There were no objections to the proposed development raised by the Council's Landscape Officer during the application. In response, the Council appointed an independent advisor to undertake a review; this was completed by MCA Landscape Architects on 19th July 2023. With regards to the assessment of the existing site, the MCA review identified that (MCALA para 2.2) *"Parcel A is located on the east side of Warwick Road (B4100) and, because of its proximity to the road, could be considered to be of reduced 'landscape sensitivity' in that its seclusion and setting are compromised by the presence of the road. Parcel A is also visually contained in varying degrees by established trees and hedgerows around the field boundaries. The smaller Parcel B is exposed in views from the east by generally lower eastern boundary vegetation and falling topography."*
- 4.35 The MCA review (para 8.1) concluded that the LVA and ES Chapter 7 *"offers a very thorough and methodical assessment of the likely significant environmental effects arising from the proposed scheme in relation to landscape character and visual amenity. It is based, correctly, on 'Guidelines for Landscape and Visual Impact Assessment - 3rd Addition' published jointly by Landscape Institute and Institute of Environmental Management & Assessment. The LVA represents a good application of GLVIA-3; the guidelines remain the benchmark for landscape and visual assessment, but they require diligence and experience to apply correctly."* The MCA review referenced the "issues relating to the sites relationship with Hanwell and its relationship with the edge of Banbury to the immediate south", though also concluded that "The development proposals for the site have demonstrably been influenced by the LVA".
- 4.36 In terms of relevant policies, the site is not identified as forming part of, or in proximity to, a designated landscape at any level and, therefore, Paragraph 176 and paragraph 174(a) of the NPPF are not engaged.
- 4.37 The Appellant will demonstrate that while the proposed development would constitute a general change to the land use of the Appeal Site, any material adverse effects in

relation to both visual amenity and landscape character are localised, generally being limited to receptors within 350m of the site's boundary, as a result of the landscape led approach to scheme design and the focusing of residential built form within Parcel A only. The proposed development would not be inconsistent with the local landscape character. While it would be prominent from certain close-range viewpoint locations, it is generally considered to be visually contained, having limited effect on the surrounding landscape context.

- 4.38 Successful development proposals are those which look to retain the most sensitive parts of the landscape and enhance others where it is possible to do so. If that can be done in line with published landscape character assessments and the development guidelines therein - as is the case for the Appeal Site and proposals - then this in many ways brings benefits to overall landscape character. The Appellant will provide landscape evidence as part of the Inquiry to demonstrate that the adverse effects of the appeal proposals are localised and that there is no basis on which to refuse planning permission on landscape-related grounds.

#### **Reason for refusal 2 – heritage impact**

- 4.39 RfR2 focuses on the potential impact of the Appeal proposals on built heritage, including three designated heritage assets; namely Hanwell Conservation Area, St Peter's Church (Listed Building Grade I) and Hanwell Castle (Listed Building Grade II\*).
- 4.40 It is the Appellant's position that the effects of the Appeal proposals on the historic environment do not conflict with either national policy governing the conservation of the historic environment set out in Chapter 16 of the NPPF or the relevant policies of the Development Plan.
- 4.41 The proposals will result in a low level of less than substantial harm to Hanwell Conservation Area as a consequence of change to the wider setting of the conservation area. The harm would arise from the introduction of new built form across a single field, which would erode an element of the wider agricultural setting to the south of the Conservation Area.
- 4.42 In respect of the Grade I Listed St Peter's Church and Grade II\* Listed Hanwell Castle located within Hanwell Conservation Area to the northeast of the Appeal Site, it is the Appellant's position that the Appeal proposals would preserve the settings of these listed buildings. The implementation of the Appeal proposals would not result in any loss of significance to these listed buildings nor diminish the contribution that the listed buildings' setting presently makes to their significance; i.e. there would be no harm to the Grade I Listed St Peter's Church and Grade II\* Listed Hanwell Castle. This will be demonstrated in the Appellant's evidence addressing heritage matters.
- 4.43 The Appellant will demonstrate that the appeal proposals therefore respond positively in terms of S66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, national policy governing the conservation of the historic environment set out in Chapter 16 of the NPPF and the Development Plan.
- 4.44 In the absence of a consultation response from Historic England, the Appellant has written to Historic England (correspondence attached at **Appendix 4**, dated 30th

October 2023) to obtain advice regarding the heritage impacts of the proposals. Historic England's responses dated 20th December 2023 and 24th January 2024 are also included in **Appendix 4**.

- 4.45 Having regard to paragraph 208 of the NPPF, it is the Appellant's view the appeal proposals lead to a low level of less than substantial harm to a single designated heritage asset (Hanwell Conservation Area). It will be for the decision-taker to weigh up the balance of planning benefits against this low level of less than substantial harm. It is the Appellant's view the public benefits of the appeal proposals would clearly outweigh this low level of less than substantial harm.

### **Reason for refusal 3 – loss of agricultural land**

- 4.46 Paragraph 9.56 of the Officer's report to Committee states:

*"...no evidence base has been provided to attempt to demonstrate whether the loss of this 'very good' and 'good' quality parcels of agricultural land could be avoided. The proposals thereby fail to satisfy the prescribed criteria under Policy Villages 2 of the CLP 2031 Part 1 and the requirements of para. 174 of the NPPF..." (with para 9.56 going to say "and must be weighted accordingly in the decision making process").*

- 4.47 Paragraph 174 of the NPPF is quoted in the reason for refusal. At the time of the decision, the 2021 NPPF applied. The updated paragraph number in the current December 2023 NPPF is 180. There are no changes to the text in the paragraph.
- 4.48 Paragraph 180 does not preclude the development of the best and most versatile (BMV) land but indicates that the decision taker should take into account the economic and other benefits associated with the presence of BMV land. In most cases, these relate primarily to food production from the land. Similarly, the NPPF does not require any form of 'sequential assessment' regarding the availability of lower quality land.
- 4.49 Policy Villages 2 also does not preclude the development of BMV land but indicates that in selecting housing sites in rural areas, one criterion to be applied is whether BMV land could be avoided.
- 4.50 A significant amount of all agricultural land surrounding Banbury and west of the M40 has been surveyed in detail by the former Ministry of Agriculture, Fisheries and Food (MAFF). The survey results are shown in Figure 4.1 overleaf.
- 4.51 These surveys cover 828ha of agricultural land around Banbury, of which 614ha is BMV land in Grades 1, 2 and 3a. This represents 74% of the land around the town and is a far higher proportion than the national average of 42% (Natural England's TIN 049).
- 4.52 Very good quality Grade 2 land is the most prevalent grade within the BMV category around Banbury.
- 4.53 This demonstrates that in general terms the use of BMV land around Banbury is unavoidable to deliver necessary growth and development to the most sustainable town in the District. The area to the north of the town, including the appeal site, is mostly BMV land, with 73% of agricultural land in Grades 2 and 3a (mostly in Subgrade

3a). There are areas of moderate quality land in Subgrade 3b but these are interspersed with areas of Grades 2 and 3a in a complex pattern throughout the northern fringe of the town, such that it is not possible to avoid the use of BMV land altogether for necessary development in a coherent fashion.

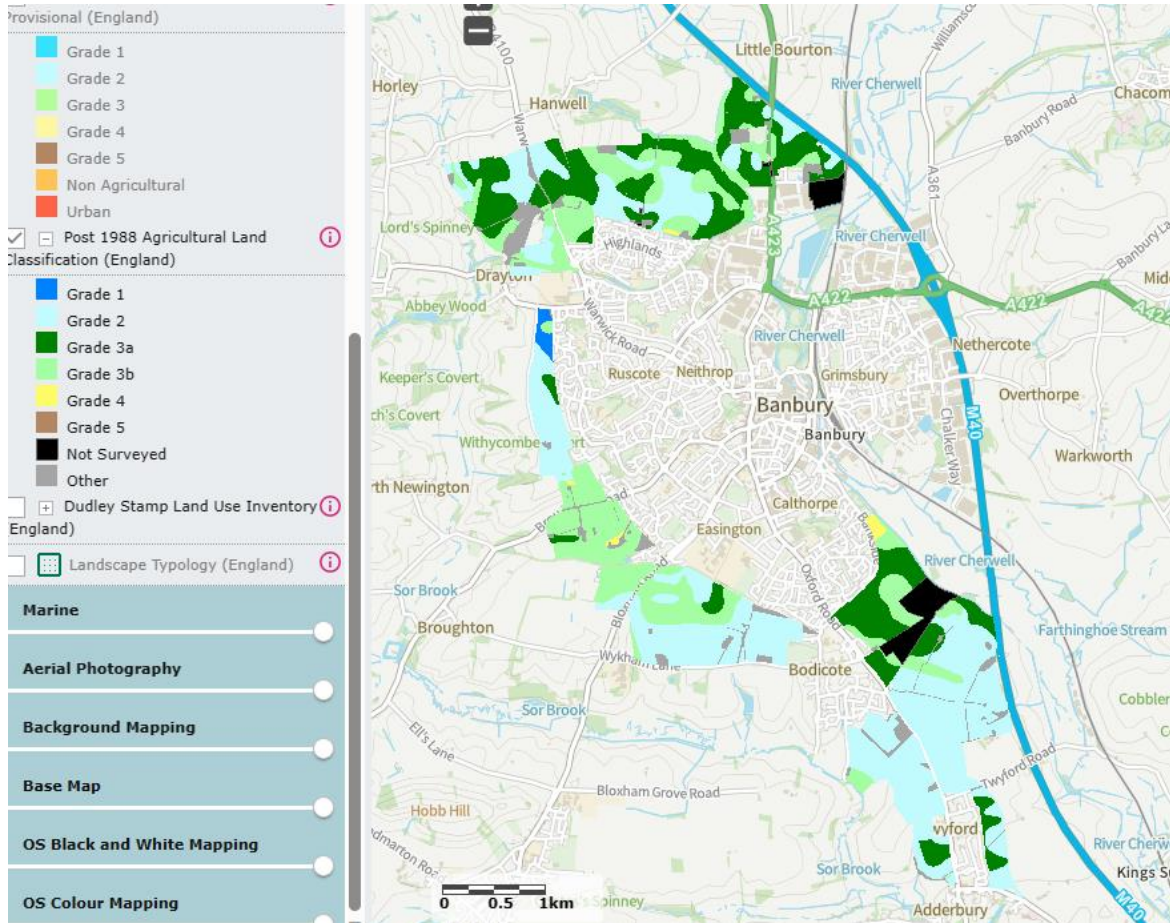


Figure 4.1 MAFF survey results

4.54 The Appellant therefore considers the loss of 12.63ha of BMV in this location is not in conflict with Local or National Planning Policy, and therefore should not weigh into the planning balance.

**Reason for refusal 4 – absence of a completed Section 106 legal agreement to secure appropriate infrastructure contributions**

4.55 The Officers Report to Committee sets out the following obligations to be secured as part of any permission granted:

CDC obligations:

- 30% affordable housing to NDSS and CDC requirements and standards; [N.B. this will increase to 40% noting the increased offer];
- £194,365.42 towards improvements/enhancements at Hanwell Fields Community Centre and / or other community facility in the locality;

- £17,463.35 towards the costs of employing a community development worker;
- £342,895.10 towards the provision of a 3G football pitch in Banbury;
- £141,940.96 towards the provision of an Indoor Tennis Centre in Banbury or improvements to other indoor sports facilities in the locality;
- £38,080.00 towards public artwork to be created in the vicinity of the site.

OCC obligations:

- TBC towards Strategic Highways works 1;
- £170,000 towards Strategic Highways works 2;
- £275,060 towards Public Transport Services;
- £3120 towards a Traffic Regulation Order;
- £1890 towards Travel Plan Monitoring;
- £65,000 towards PROW;
- £1,598,085 towards secondary and special school education;
- £15,973 towards Expansion and Efficiency of household waste recycling centres.

4.56 The applicant will engage with the Council to prepare a S106. We therefore expect this reason for refusal can be resolved ahead of the inquiry.

### **Third Party responses**

4.57 The PINS Procedural Guide on Planning Appeals requires that a Statement of Case should take due account of any representations received by the Local Planning Authority at the application stage.

4.58 Letters were received raising objections to the application based on the following matters. We have briefly summarised where we consider these matters are adequately summarised in the application or appeal submission:

- Lack of infrastructure capacity – to be addressed in paragraph 4.60 above and through S106;
- Loss of Hanwell Chase/Hanwell Village Gap – to be addressed in Appeal evidence;
- Loss of green space/countryside - to be addressed in Appeal evidence;
- Increase in traffic – addressed in application Transport Assessment;

- Loss of wildlife – addressed in application Ecological Appraisal;
- No bus connections – addressed in application Transport Assessment and to be addressed through S106 (as referenced in paragraph 4.15 above);
- Requires new facilities for new residents - to be addressed in paragraph 4.15 above and through S106; and
- Disruption as a result of the construction phase – addressed in application documents – Noise Impact Assessment; Air Quality Assessment; Lighting Report and to be controlled through a condition attached to any permission granted requiring a Construction Management Plan.

4.59 The Appellant does not consider that there are any additional matters raised in representations on the application which significantly and demonstrably outweigh the benefits that will be demonstrated through evidence.

4.60 The Appellant will cover the above matters in evidence for the appeal and reserve the right to submit evidence on issues raised by third parties raised during the Appeal process.

## 5. The Planning Balance

- 5.1 The key considerations weighing in favour of the appeal scheme are as follows:
- A key Government planning priority is to ‘significantly boost’ the delivery of new housing;
  - The Appellant’s evidence will demonstrate that the Council’s assumptions regarding housing delivery are overstated and there is a supply shortfall;
  - The Site is a sustainable location for development in the District, adjacent to the main town of Banbury;
  - The proposals will provide for an appropriate housing mix, including the provision of market and affordable housing;
  - Increased affordable housing provision to 40%, providing up to 68 affordable homes which will contribute to addressing the need identified on the Council’s housing waiting list;
  - Land for ecological enhancements, resulting in a biodiversity net gain of 38% for habitats and 10% for hedgerows; and
  - There are no known site-specific constraints to development.
- 5.2 The Appellant maintains that the Council is unable to demonstrate a sufficient supply of deliverable housing sites and the policies relating to the supply of housing should be considered out of date. Therefore, the approach set out in paragraph 11(d) NPPF (December 2023) (the presumption in favour of sustainable development) is engaged.
- 5.3 Local Plan Policy PSD 1 reaffirms the presumption in favour of sustainable development.
- 5.4 The Appellant will demonstrate that the proposals will lead to economic, social and environmental benefits, including through the direct provision of market/affordable homes.
- 5.5 The Appellant will demonstrate that there are no adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
- 5.6 Consequently, national and local planning policy indicates that the ‘presumption in favour of sustainable development’ (i.e. the ‘tilted balance’) as set out in paragraph 11(d)(ii) should be applied in this case and that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF as a whole.



## 6. Planning Obligations / Conditions

### Obligations

- 6.1 A Section 106 Agreement will be submitted ahead of any inquiry.
- 6.2 The Appellant will seek to enter discussions with the Council in order to identify the expected planning obligations. The following have been identified through the Planning Officer's Report to Committee:

#### CDC obligations:

- 30% affordable housing to NDSS and CDC requirements and standards; [N.B. this will increase to 40% noting the increased offer];
- £194,365.42 towards improvements/enhancements at Hanwell Fields Community Centre and / or other community facility in the locality;
- £17,463.35 towards the costs of employing a community development worker;
- £342,895.10 towards the provision of a 3G football pitch in Banbury;
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  - £1890 towards Travel Plan Monitoring;
  - £65,000 towards PROW;
  - £1,598,085 towards secondary and special school education; and
  - £15,973 towards Expansion and Efficiency of household waste recycling centres.
- 6.3 In any event, the Appellant reserves the opportunity to submit evidence which addresses the obligations and the extent to which they would accord with Regulation 122(2) of the Community Infrastructure Levy Regulations.
- 6.4 The Appellant expects that discussions will be held with the Council to identify any conditions which should be applied in the event that this appeal is allowed.

## **Conditions**

- 6.5 The Appellant expects that discussions will be held with the Council to identify any conditions which should be applied in the event that this appeal is allowed.

## 7. Conclusions

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application to be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 For the reasons given above, the Appellant will demonstrate that the appeal site represents a suitable and sustainable location for the proposed development.
- 7.3 It is the Appellant's position that the application should be granted permission in accordance with the presumption of sustainable development because the Council is unable to demonstrate a sufficient housing land supply. The site is not subject to any of the designations listed with Footnote 7 of paragraph 11 of the NPPF. As such it will also be shown that, for reasons given above, the policies for determining the application relating to housing distribution are considered out of date, and there is a presumption in favour of sustainable development.
- 7.4 In accordance with paragraph 11(d) of the NPPF, it will be demonstrated that there are no material adverse impacts arising from the Appeal proposal that would significantly and demonstrably outweigh the benefits that the development will deliver.
- 7.5 Where conflict is alleged with the specific policies of the development plan which seek to guide the location of development, the Appellant will demonstrate that those policies are out of date due to the presumption being engaged.
- 7.6 As will be set out in evidence, there are significant environmental, social and economic benefits associated with the proposed development. The Appellant will demonstrate that the benefits associated with the proposed development outweigh any alleged harms and that permission should be granted when having regard to other material considerations, as well as the level of support provided for the proposed development against the development plan and the NPPF when taken as a whole.
- 7.7 In summary, the Appellant considers the following matters to be central to this Appeal:
- (a) The Government's top planning priority is to increase the delivery of new housing - and this is reflected by the clear thrust and emphasis of the NPPF;
  - (b) Notwithstanding the above, the local planning authority is not able to demonstrate a sufficient housing land supply;
  - (c) There is an outstanding need for market and affordable housing in the District;
  - (d) Banbury is a sustainable location for housing growth, being one of the largest settlements in the District, which is not constrained by landscape designations. This is a settlement where growth should be located;
  - (e) The proposed development is of a high quality and the submitted plans and drawings show how the scheme could be comprehensively developed for residential use in a manner appropriate to the edge of settlement location;

(f) The proposed development represents the culmination of extensive technical, design and consultative work prior to submission, which has demonstrated that there are no technical or environmental constraints to development;

(g) The proposed development have been subject to very limited objection from statutory consultees; and

(h) Overall, the proposed development represents sustainable development in the context of the NPPF including the three 'dimensions' set out at paragraph 8, and when considering the level of support provided by the development plan as a whole. Even if it is found that there is conflict with existing development plan policies, this is very clearly outweighed by other material considerations, especially if the tilted balance is found to apply.

7.8 The Appellant's assessment of the planning balance overall therefore is that permission should be granted and a robust case in favour of allowing the Appeal will be made to the Inspector at an Inquiry.

7.9 As such, for the reasons set out in the Statement of Case, which will be expanded on through the submission of evidence to the inquiry, the Inspector will be respectfully requested to conclude that the reasons for refusal are not justified, and accordingly allow the appeal and grant planning permission for residential development on the Appeal Site.

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