

APPEAL STATEMENT

APPEAL REF. **APP/C3105/W/24/3338211**

This report outlines the Appeal Statement of local residents¹ in respect of the appeal against refusal of the proposal to build 170 dwellings between Banbury and Hanwell (on land to the East of Warwick Road). **PLANNING APPLICATION 23/00853/OUT.**

1 INTRODUCTION

- 1.1 This Appeal Statement by is made in respect of an appeal against the refusal of outline planning application ref 23/00853/OUT by Vistry Homes 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*” at Land to the East of Warwick Road, Banbury. Appeal Reference APP/C3105/W/24/3338211.
- 1.2 This Appeal Statement should be read in association with:
- Original Objection Report (May 2023) – attached.²
 - Committee report by Cherwell District Council³
 - Notice of Decision ⁴
- 1.3 The original grounds for objection to the proposed development remain relevant to determining the appeal, since the proposal is:
- a) development of a site not allocated in the current Cherwell Local Plan, contravening the spatial strategy for the Cherwell District;
 - b) unacceptable coalescence between Banbury and Hanwell (in conflict with planning policies and previous consideration of the site and coalescence by the Planning Inspector);
 - c) inappropriate level of development adjacent to Hanwell (Category C village) resulting in significant harm to the village;
 - d) causing significant harm to the landscape and character of the area;
 - e) unacceptable impact on heritage assets, including the historic parkland of Hanwell Castle; and
 - f) numerous further areas of non-compliance with the planning framework, including: loss of high-quality agricultural land; impact on biodiversity; impact on rights of way; impact on green infrastructure; highway safety and vehicular access; disregard for existing defined boundary of Banbury; and cumulative impact of proposed development north of Banbury.

¹ The author of this report is Tom Sadler, resident of Hanwell village.

²

<https://planningregister.cherwell.gov.uk/Document/Download?module=PLA&recordNumber=155248&planId=2015936&imageId=536&isPlan=False&fileName=HANWELL%20RESIDENT%20OBJECTION%20TO%20APPLICATION%2023.00853.OUT.pdf>

³

<https://planningregister.cherwell.gov.uk/Document/Download?module=PLA&recordNumber=155248&planId=2046516&imageId=695&isPlan=False&fileName=23-00853-OUT%20Committee%20Report.pdf>

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https://planningregister.cherwell.gov.uk/Document/Download?module=PLA&recordNumber=155248&planId=2046520&imageId=694&isPlan=False&fileName=Decision%20Notice_2300853OUT.pdf

2 COMMENTARY ON CHERWELL DISTRICT COUNCIL'S CASE

- 2.1 Whilst the Committee Report and Notice of Decision provide indisputable grounds for refusal of the planning application, there are also further matters where the proposal conflicts with further relevant policies in the Local Plan – as set out in the Objection Report linked above.
- 2.2 It is a material consideration to the appeal that **the Planning Inspector previously considered the site proposed for development, when assessing the green buffer policy as part of reviewing the Regulation 19 draft of the current Cherwell Local Plan** was published in June 2015⁵. The Planning Inspector clearly accepted the importance of the protection of strategic gaps between settlements to preserve local landscape character (para 103 on p.22); and to prevent coalescence between settlements.
- 2.3 Through the judgement on Regulation 19 draft of the current Cherwell Local Plan, the Planning Inspector has confirmed the importance of protecting vulnerable gaps between settlements, such as the Banbury-Hanwell green buffer, from inappropriate development and the avoidance of coalescence. **This is central to why the Vistry proposal must be refused.** Such previous judgements by the Planning Inspector must be a material consideration to the current appeal.
- 2.4 The rest of this Appeal Statement focusses on the appellant's Statement of Case ('SoC').

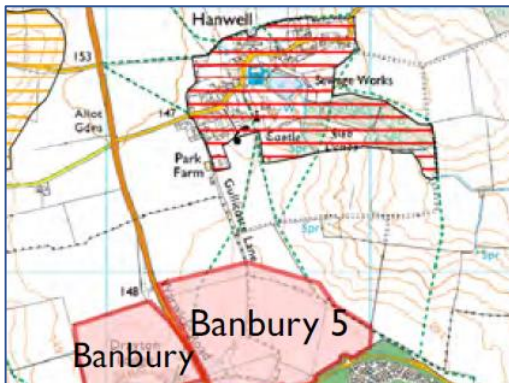
3 HOUSING LAND SUPPLY

- 3.1 The Appellant's SoC in relation to Cherwell's housing land supply, provides an assessment of CDC's 5YHLS position. The Appellant's contention that deliverable supply at 1st April 2023 is less than that stated by CDC is debatable.
- 3.2 The SoC indicates deficiency in housing completions in the remaining plan period based on predictions which are clearly subjective. The Inspector must see these predictions for what they are. The following examples, indicate the bias in the Appellant's case.
- 3.3 Example 1: Sites identified as "Severely At Risk" (para 8.60) of non-delivery includes significant housing developments the vicinity of Hanwell. For the example of Land Opposite Hanwell Fields Recreation, Adj To Dukes Meadow Drive, Banbury (78 houses), outline planning permission has been granted, with only the S.106 to be signed. For the Appellant to say that there is no planning permission and that these should be excluded from 5YHLS calculations is absurd. The developer has a very clear incentive to agree the S.106. It is clearly within the developer's power to deliver this housing that has outline approval, and the developer withholding delivery to produce 5YHLS calculations more favourable to future planning applications is simply gaming the system.
- 3.4 Example 2: The Appellant's claim that delivery of Drayton Lodge Housing (para 8.62) is less than quantified by the Council is again subjective and also inaccurate. This site is very close to the Appeal site. Hanwell residents can see the rate of development and have first hand knowledge from the building site. The developer is Vistry Homes, who are also developing the Appeal site. They have a clear incentive to understate the rate of delivery of housing agreed in the planning application – in order to manipulate the 5YHLS position. Once again, this is clear evidence of developers gaming the system.
- 3.5 The appellant's case entirely depends upon the NPPF11d "tilted balance". If there is sufficient housing land supply, the refusal must be upheld at appeal. Even in the scenario of lower housing land supply, the refusal must still be upheld at appeal having considered the unjustified level of planning harms that would result from the proposal. Applying a tilted balance does not automatically result in approval of any speculative development proposal.

⁵ <https://www.cherwell.gov.uk/download/downloads/id/3256/1cherwell-local-plan-inspectors-report-with-main-modifications-2015.pdf>

4 CHARACTER AND APPEARANCE

- 4.1 The SoC is inadequate in addressing the coalescence resulting from the proposal. The impact of the proposal on coalescence of Banbury and Hanwell is clearly explained in detail in the Objection Report linked above.
- 4.2 It is a material consideration to the appeal that **the Planning Inspector previously considered the impact of further development north of Banbury.** The Inspector considered the impact of development north of Banbury when assessing the **Policy Banbury 5** as part of examining the Regulation 19 submission for the current Cherwell Local Plan.
- 4.2.1 The following map shows the proximity of Banbury 5 to the Hanwell Conservation Area, separated by undeveloped land that the Vistry proposal would develop. This is open countryside and not allocated for development in the Cherwell Local Plan.



- 4.3 The Planning Inspector's assessment of the Regulation 19 Cherwell Local Plan (May 2015) assessed the soundness of policies to provide new housing to 2031. This included an assessment of the **Policy Banbury 5**, which is relevant to assessing the impact of the proposal by Vistry. The Inspectors Report sets the conditions for the Planning Inspector assessing the Banbury 5 policy as sound.
- 4.4 The Planning Inspector concluded that Banbury 5 could only be adopted as an allocated site for housing development on the basis that it was **“retaining a sufficient distance of about 500m from the village of Hanwell to the north (and about 400m from the southern boundary of its CA) to ensure that the setting of its CA is preserved, coalescence does not occur and that Hanwell would retain its separate identity.”**
- 4.5 The Planning Inspector clearly confirms what represents sufficient distance to ensure preservation of the setting of Hanwell Conservation Area, prevention of coalescence and retention of the separate identify of Hanwell.
- 4.6 The current Cherwell Local Plan, inclusive of Banbury 5 site, represents what is acceptable to the Planning Inspector in relation to the extent of northward growth of Banbury. The plan was approved on the basis that the Banbury 5 site represented the full extent of the acceptable northward growth of Banbury. As such, **the Vistry proposal clearly contravenes the legally enforceable policies within the current Cherwell Local Plan.**
- 4.7 The following extract is from the Inspector's Report on the Cherwell District Council Local Plan (May 2015)⁶.

⁶ <https://www.cherwell.gov.uk/download/downloads/id/3278/cherwell-local-plan-inspectors-report-with-main-modifications-2015.pdf>

Banbury Housing Sites

Policy Banbury 5 – North of Hanwell Fields

172. 26 ha of land on the north western edge of the town is identified for new housing, with 544 new units currently expected to be provided following a Council resolution to approve part, together with necessary infrastructure, that in this case includes green links beyond the site. The location involves extending the town into presently open countryside to the north of Dukes Meadow Drive, a recently built development spine road running east/west, albeit **retaining a sufficient distance of about 500m from the village of Hanwell to the north (and about 400m from the southern boundary of its CA) to ensure that the setting of its CA is preserved, coalescence does not occur and that Hanwell would retain its separate identity.**

173. Nevertheless, this relationship means that particular care is needed in the design and layout of the scheme, as well as in respect of peripheral landscaping and new planting, including regarding the heights of new buildings and outdoor lighting, as required in policy Ban 5. With the addition of references to flood risks, landscape/visual and heritage impact assessments, as well as the clarification of numbers (MMs 102/103), the proposals are reasonable and realistic and the policy sound.

- 4.8 The above extract clearly sets the conditions on which the Banbury 5 policy was approved – confirming that the northern boundary of the previous site would be a ‘hard’ edge of the town of Banbury.

5 PRECEDENTS FOR ASSESSING LANDSCAPE IMPACT AND COALESCENCE

- 5.1 It is a material consideration to the appeal that **the Planning Inspector has previously examined what constitutes coalescence between settlements.**
- 5.2 The Planning Inspector has examined at appeal what constitutes coalescence on many previous occasions. Reference to past Planning Inquiries informs what constitutes coalescence, which is directly relevant to the proposal to develop open countryside between Banbury and Hanwell.
- 5.3 The Planning Inspector considered two appeals⁷ against refusal by Stratford on Avon District Council, relating to planning applications 14/02766/OUT (outline application for up to 100 dwellings on land at Knights Lane, Tiddington) and 15/00920/OUT (outline application for up to 60 dwellings on land east of Knights Lane, Tiddington).
- 5.4 **Applications considered at appeal:** The application refusals that were appealed related to development of a site that would have extended Tiddington village south towards the outskirts of Stratford on Avon. These followed a previously approved development that extended the urban edge of Stratford-on-Avon eastwards on both sides of Loxley Road to the junction with Knights Lane and northwards towards Tiddington. The Inspector confirmed that the earlier development, whilst diminishing the physical gap between Stratford-on-Avon and Tiddington, retained a clear appreciation of the two settlements. This was with a retained gap of approximately 230 metres between the settlements (being the length of open fields being retained either side of Knight’s Lane). This previously approved development did not represent coalescence. However, the applications (for which refusals were appealed) were judged to have represented unacceptable coalescence.
- 5.5 **Outcome of appeal:** Both appeals against refusal were dismissed. The applications where refusal was upheld related to extension of Tiddington village south towards the outskirts of Stratford on Avon. Whilst the proposal covered the fields alongside Knight’s Lane between the two settlements, the positioning of houses only extended the built limits of Tiddington by approx. 130 metres. This would have left landscaping of “Natural Open Space” with a width of some 170m between the settlements. The Planning Inspector

⁷ <https://www.richbroughstates.co.uk/wp-content/uploads/2019/07/1025a.pdf>

considered this distance when concluding that the original applications would lead to the unacceptable coalescence of Tiddington and Stratford-on-Avon.

- 5.6 It is significant that the Inspector noted that “physical separation is only part of the equation in assessing the impact on coalescence” and considered what represented a ‘sense’ of coalescence. The Inspector reported “I conclude that through a significant loss of openness that either of the proposed housing schemes would result in the material and unacceptable coalescence of Stratford-on-Avon and Tiddington.”
- 5.7 It is also significant that **these appeals were dismissed despite the Inspector concluding that the Local Planning Authority could not demonstrate a 5-year HLS as required by NPPF**. This indicates the significant weighting attributed to the harms arising from coalescence.
- 5.8 **Relevance of Planning Inspector assessment of coalescence:** The above precedent of Planning Inspector decisions at appeal must inform consideration of the Vistry Homes application between Hanwell and Banbury. It is highly likely that the Planning Inspector would conclude that the open land and sense of separation between Banbury and Hanwell are features that contribute to the distinctiveness of the local area. The current strategic gap is physically and visually significant. There is a clear sense that Hanwell and Banbury are two distinct settlements. The sense of separation experienced by those entering or leaving Hanwell/Banbury on foot is just as important as the degree of physical separation.
- 5.9 The proposal would reduce the gap between Hanwell and Banbury to 85 metres (between the proposed development site and Hanwell Conservation Area), which is less than the 170m gap in the Tiddington applications which was deemed to have been insufficient to prevent coalescence. It follows that the proposed housing scheme between Banbury and Hanwell would result in the material and unacceptable coalescence.

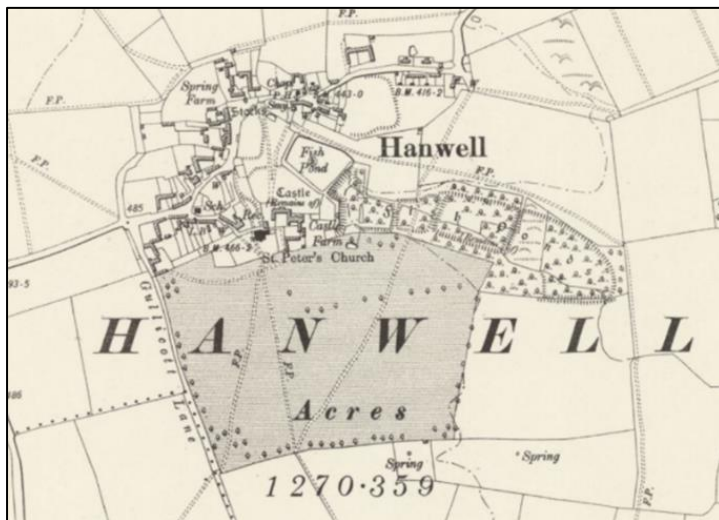
6 HERITAGE IMPACT

- 6.1 The SoC provides zero evidence to support the appellant’s case that harm to the setting of the Conservation Area *in itself* is at a “Low level of less than substantial harm”. There is significant evidence, as submitted to the original planning application, that harm would be at the higher end of the scale. This is clearly evidenced in the original Objection Report as linked above.
- 6.2 Development of the proposal site would very clearly urbanise the setting of heritage assets of significant value. For example, **St Peters Church can be clearly seen from the proposal site**: Views of the church from the south include those looking through the proposal site (and not just from the edge of the proposal site). Development of the proposal site would obstruct views of St Peters Church and would harm appreciation of the significance of the church in its rural setting.



PHOTO: View of St Peters Church from Gullicote Lane (within the proposal site) looking northwards.

- 6.3 The grounds for refusal of the original proposal do not fully reference the impact on heritage assets. *NPPF Glossary (at Annex 2, p.67) defines “Heritage asset: A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It **includes designated heritage assets and assets identified by the local planning authority** (including local listing).”*
- 6.4 This definition confirms that the historic Hanwell Castle Parkland (adjacent to the proposal site, on the other side of Gullicote Lane), which is identified by Cherwell District Council, represents a heritage asset within the scope of NPPF and so meriting consideration in determining this planning application.
- 6.5 The Hanwell Castle estate included the historic late-medieval park (including the whole of the big 50-acre field running along the southern boundary of the village). This is noted in the shaded area on the 1799 estate map. This parkland is a heritage asset. The Vistry proposal would urbanise adjacent land which itself is the setting of this heritage asset.



- 6.6 The following photograph illustrates just how close the proposal site is to the heritage asset of Hanwell Conservation Area. It shows the view south from the edge of the Conservation Area (looking along Gullicote Lane). This shows that the proposed site (field beyond barn) in the centre of the photograph, would bring the edge of Banbury right to the edge of Hanwell Conservation Area (approx. 85m away), and to within 15 metres of the gardens of a residence on the edge of the village.



7 LOSS OF BEST AND MOST VERSATILE AGRICULTURAL LAND

- 7.1 As noted in the Decision Notice the proposed development would conflict with NPPF paragraph 174⁸, because of the loss of best and most versatile land and the applicant has not demonstrated that development of this higher quality agricultural land is appropriate due to a lack of lower quality agricultural land elsewhere on the urban fringe that could be developed instead.
- 7.2 There are more appropriate places for housing development to occur in and around Bnabury. In particular, the brownfields sites within the centre of Banbury are severely in need of improvement. This will not take place unless the democratically developed Local Plan policies are adhered to, and the laissez faire approach of housing developers is constrained.

8 CONCLUSION

- 8.1 This conclusion reflects the summary provided in the original Objection Report (linked above) and remains applicable to confirming that the CDC refusal of the application must be upheld at appeal.
- 8.2 The proposal site is not suitable for the proposed development. This has been confirmed by the HELAA 2018 assessment by CDC, current Cherwell Local Plan evidence base documents from independent experts, and the Planning Inspector's examination of the land between Banbury and Hanwell.
- 8.3 During examination of the current Cherwell Local Plan (inclusive of the Banbury 5 development that is now Hanwell Chase) the Planning Inspector confirmed that the land between Banbury and Hanwell warrants protection from development, to avoid material harm to Hanwell from expansion of Banbury.
- 8.4 The proposal would develop a site not allocated in the current Cherwell Local Plan. It is also not allocated in the draft emerging Local Plan to 2040. As Cherwell can now demonstrate a five-year housing land supply, based on the current Cherwell Local Plan policies, there is no reasonable justification for development not in accordance with the current Cherwell Local Plan. The proposal is counter to numerous policies in the current Cherwell Local Plan and should not be permitted. Unlike previous applicants for yet more housing north of Banbury, this applicant cannot rely on the NPPF 'tilted balance' to ride roughshod over the open countryside and spatial policies of the adopted Cherwell Local Plan.
- 8.5 The proposal conflicts with current planning policies and would result in material and unacceptable coalescence. This is also confirmed by comparison to precedents from Planning Inspector appeal decisions. The Inspector has dismissed other appeals against refusal on the grounds of coalescence even when they would have left a gap between settlements larger than the gap that would be left between Banbury and Hanwell if the Vistry proposal were approved. This indicates that the approval of the Vistry proposal would be open to legal challenge.
- 8.6 There are no clearly demonstrated substantial public benefits of the proposal, that can justify the level of harms to the landscape and character of this area, or harm to the setting of heritage assets. The allocation of sites for housing development in the Cherwell Local Plan provides the framework for the growth of Banbury. These do not include development of the land between Banbury and Hanwell. Considered alongside other Cherwell Local Plan policies breached by the proposal, there are clearly more appropriate sites that CDC could approve for housing developments, that would not result in the harms of this planning application from Vistry.
- 8.7 The maximum extent to which Banbury can expand northwards has already been reached. The remaining strategic gap between Banbury and Hanwell must be protected. This has been confirmed by previous judgements of Cherwell District Council and the Planning Inspector in preparation of the Cherwell Local Plan.

⁸ Now NPPF para 180b