

Draft Statement of Common Ground

Land east of Warwick Road, Banbury

Appeal by Vistry Homes Ltd

Against the refusal by Cherwell District Council 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”

Council application reference 23/00853/OUT

PINS ref. APP/C3105/W/24/3338211

June 2024

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Appendix 1 Site Location Plan

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Client

Vistry Homes Ltd

Our reference

BOVS3002

June 2024

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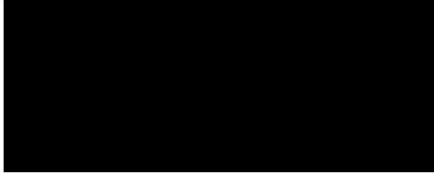
1. Introduction

- 1.1 This Statement of Common Ground 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 The planning application forming the subject of this appeal was validated by the Council on 29th March 2023 and given the application reference 23/00853/OUT (herein referred to as 'the Application'). The Appeal relates to a full application 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."*
- 1.3 A site location plan is enclosed at **Appendix 1**.
- 1.4 The application was refused on 11th August 2023.
- 1.5 The purpose of this statement is to confirm matters of fact and matters of agreement between the Appellant and the Council. It also confirms the key areas of dispute.
- 1.6 The following sections of this statement are set out under the following headings:
- Section 2:** Site and Surrounding Area;
- Section 3:** List of plans to be determined and application process
- Section 4:** The Proposal;
- Section 5:** Planning Policy;
- Section 6:** Matters of Agreement;
- Section 7:** Matters of Dispute; and
- Section 8:** Conditions and Obligations

1.7 The Appellant expects that it will assist the Inspector and the parties to the appeal for separate Statement of Common Ground to be prepared in relation to: housing land supply, affordable housing, landscape and heritage.

1.8 This SoCG is prepared jointly and agreed by:

Signed:

A large black rectangular redaction box covering the signature of David Murray-Cox.

Date: 28.05.24

David Murray-Cox, Turley (on behalf of Vistry Homes Ltd)

And

Signed:

A black rectangular redaction box covering the signature of Nick Wyke.

Date:

03/06/2024

Nick Wyke (Cherwell District Council)

2. The Appeal Site and its Surroundings

The Appeal Site

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 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

- 2.5 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) is currently under construction.
- 2.6 The village of Hanwell lies to the north east of the site.

Sustainability

- 2.7 The site is located on the northern edge of Banbury which offers a wide range of services and facilities. The development site is sustainably located in relation to the local community and facilities.
- 2.8 The table overleaf shows the facilities and services within the immediate locality of the site and the relative distance via footways.

Facility	Distance from the Site
Banbury Railway Station	20-minute cycle from the site. This offers links to London, Oxford, Reading and Bournemouth to the south, and Birmingham and Manchester to the north.
Bus stop	0.4miles ¹ 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).
'Sainsburys Local'	Approximately 0.4 miles
Arden and Hardwick primary school	Approximately 1.4 miles
North Oxfordshire Academy	Approximately 1.2 miles
Barley Mow public house	Approximately 1 mile

2.9 The table below shows the facilities and services within Banbury. It should be noted that this is not an exhaustive list of the services and facilities in offer in Banbury town, which is accessible to the site via public transport.

- Restaurants and public houses
- Supermarkets/convenience stores/butchers
- Doctors
- Dentists
- Opticians
- Cinema and leisure complex (bowling, shuffleboard, arcade, darts etc)
- Hotels and Bed and Breakfasts
- Castle Quay shopping centre with an array of retail properties
- Lock 29 – food hall complex
- Nurseries, Primary and Secondary Schools and Sixth Form colleges
- Train Station
- Bus Station
- Places of Worship

¹ Googlemaps

- 2.10 In addition, Banbury Gateway is an out-of-town shopping centre just off the M40 junction that provides an additional array of shopping and eating experiences.

Planning History

- 2.11 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.
- 2.12 This appeal is made against that refusal to grant planning permission.

Environmental Impact Assessment (EIA) Screening and Scoping

- 2.13 The site falls within Schedule 2 to the 2017 EIA Regulations, and exceeds the thresholds for screening of 150 dwellings and above 5ha in size.
- 2.14 A Screening Opinion was submitted to the Council on 9th August 2022. A response was received on 23rd August 2022 confirming an EIA was required. A subsequent Scoping request was submitted to the Council on 2nd November 2022. A response was received from the Council on 7th December 2022.
- 2.15 Consequently, an Environmental Statement was prepared to accompany the planning application. The Environmental Statement comprised the following scoped in topics:
- Built Heritage and Archaeology
 - Landscape and Visual

3. The Development Proposals

Description of development

3.1 The description of development (as shown on the decision notice) was 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.”

3.2 The proposed residential development comprises the following:

- Up to 170 new homes with a mix of market and 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;
- 5.3ha (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;
- Associated highways improvements and sustainable drainage systems.

3.3 40% of the homes will be affordable (in line with the NPPF’s definition of such). The exact dwelling mix for the site will be addressed at subsequent reserved matters stages.

4. List of documents to be determined and the application process

4.1 The planning application was submitted on 24th March 2023 and included the following drawings, reports and technical assessments:

Table 3.1 List of all plans, drawings and documents submitted with the application to the LPA on 24th March 2023

Plan / Document	Reference
Application form	Dated 24 th March 2023
CIL Form	Dated 24 th March 2023
Covering Letter	Dated 24 th March 2023
Planning Statement including Affordable Housing statement; public rights of way statement and draft Heads of Terms	Dated March 2023
ES and appendices	Dated March 2023
Location Plan	edp3253_d007e
Illustrative Masterplan	edp3253_d038d
Land Use Amount and Access Parameter Plan	edp3253_d031d
Design & Access Statement	Prepared by EDP, dated October 2022
Flood risk assessment and Drainage Strategy	Prepared by Jubb, ref. 17279-FRA&DS-01 v4
Ecological Appraisal	Prepared by EDP, ref. edp3253_r006c
Archaeological and Heritage statement (within the ES)	Prepared by EDP, ref. edp3253_r010a
Landscape and Visual Impact Assessment (within the ES)	Prepared by EDP, ref. edp3253_r007c
Illustrative Landscape Strategy	Prepared by EDP, ref. edp3253_d033c (Included in LVIA)
Statement of community involvement	Prepared by Turley, dated July 2022
Transport assessment	Prepared by Jubb, ref. 17279-TA-01
Framework Travel Plan	Prepared by Jubb, ref. 17279-TP-01
Arboricultural Impact Assessment (within the ES)	Prepared by EDP, ref. edp3253_r009b
Phase 1 Geotechnical report	Prepared by SLR, ref. 17279-DTS-04

Air Quality Assessment	Prepared by SLR, ref. 410.V06713.00005
Noise Assessment	Prepared by SLR, ref. 410.06713.00006
Energy and Sustainability Statement	Prepared by AES, dated July 2022
Agricultural Land Quality	Prepared by Reading Agricultural Consultants, dated. September 2022
Lighting Report	Prepared by MEC, ref. 27617-LIGH-0401
Utilities Assessment	Prepared by Jubb, ref. 17279-UTIL-01_v2

4.2 Through the determination of the application, updated plans and documentation was submitted (various dates), which included:

Table 3.2: Application documents submitted during determination

Amended Plans and documents submitted 09 May 2023

Plan/Document	Reference
Updated Archaeological Evaluation report	Prepared by MOLA, ref. BLA0014-03c

Amended Plans and documents submitted 20 July 2023

Plan/Document	Reference
Highways Technical Note and appendices listed separately below	Prepared by Jubb, ref. 17279 rev. 03 dated July 2023
Appendix A – minutes of the meeting with County Highways	
Appendix B - Proposed Vehicular Access - Dimensions	17279 005 P1
Appendix C – Refuse vehicle – swept path analysis at proposed site access	17279 006 P1
Appendix D – PIC Collision Data from OCC	
Appendix E – Traffic Count Survey Data	

Amended Plans and documents submitted 26 July 2023

Plan/Document	Reference
Site Boundary Plan	Edp3253_d045b

4.3 Table 3.3 below sets out a consolidated list of the application documents to be considered by the Inspector:

Table 3.3: Consolidated application documents for appeal determination

Plan / Document	Reference
Application form	As submitted
CIL Form	As submitted
Covering Letter	Prepared by Turley
Planning Statement including Affordable Housing statement; public rights of way statement and draft Heads of Terms	Prepared by Turley
ES and appendices	Prepared by Turley
Location Plan	edp3253_d007e
Site Boundary Plan	Edp3253_d045b
Concept Plan	edp3253_d038
Design & Access Statement	Prepared by EDP
Flood risk assessment and Drainage Strategy	Prepared by Jubb
Biodiversity survey and report	Prepared by EDP
Heritage and archaeological statement	Prepared by EDP
Updated Archaeological Evaluation report	Prepared by MOLA, ref. BLA0014-03 Rev. C
Landscape and Visual Impact Assessment	Prepared by EDP
Illustrative Landscape Strategy	(included in LVIA, prepared by EDP)
Statement of community involvement	Prepared by Turley
Transport assessment	Prepared by Jubb
Highways Technical Note	Prepared by Jubb, ref. 17279 Rev. 03
Proposed Vehicular Access - Dimensions	17279 005 Rev. P1
Refuse vehicle – swept path analysis at proposed site access	17279 006 Rev. P1
Travel Plan	Prepared by Jubb
Tree survey	Prepared by EDP
Arboricultural Impact Assessment	Prepared by EDP
Phase 1 Geotechnical report	Prepared by SLR
Air Quality Assessment	Prepared by SLR

Noise Assessment	Prepared by SLR
Sustainability Report	Prepared by AES

Consultation Responses

4.4 There are no outstanding objections from the following statutory consultees, subject to the imposition of appropriate conditions and the agreement of s106/278 agreements:

- Oxfordshire County Council Highways
- Oxfordshire County Council Local Lead Flood Authority (LLFA)
- Oxfordshire County Council Education
- Oxfordshire County Council Archaeology
- Oxfordshire County Council Waste Management
- Oxfordshire County Council Rights of Way
- Building Control
- Environmental Health
- Ecology
- Recreation and Leisure
- Thames Water
- NHS Integrated Care Board
- Thames Valley Police

Application decision

4.5 The application was recommended for refusal by Officers, and was subsequently refused by Planning Committee Members on 10th August 2023. The decision notice was issued on 11th August 2023.

4.6 The reasons for refusal (RoR) are as follows:

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.

5. Relevant Planning Policy Context

5.1 This chapter summaries the relevant national and local planning policy the Appellant considered to be relevant to this Appeal.

Adopted Development Plan

5.2 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.

5.3 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the Development Plan unless material considerations indicate otherwise.

5.4 At the time the decision was made, the Development Plan, so far as material to the application, comprised:

- Adopted Cherwell Local Plan 2011 - 2031 Part 1 (adopted July 2015)
- Adopted 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
- Saved, retained policies of the Adopted Cherwell Local Plan 1996
- Saved policies from Oxfordshire County Council's Minerals and Waste Local Plan 1996.

5.5 Other material planning policy considerations include the National Planning Policy Framework (the 'NPPF'). At the time of refusing the application the 2021 version of the NPPF applied.

5.6 The Council’s decision notice references conflict with the following policies:

Adopted Cherwell Local Plan 2011 - 2031 Part 1 (adopted July 2015)

- **Policy PSD1** (Presumption in Favour of Sustainable Development) states the Council will take a proactive approach to reflect the presumption in favour of sustainable development contained within the National Planning Policy Framework. Planning applications that accord with the policies in this Local Plan (or other part of the statutory Development Plan) will be approved without delay unless material considerations indicate otherwise.
- **Policy BSC1** (District Wide Housing Distribution) states that Cherwell will deliver 22,840 additional dwellings between 1 April 2011 and 31 March 2031.

- **Policy ESD15** (The Character of the Built and Historic Environment) states New development will be expected to complement and enhance the character of its context through sensitive siting, layout and high quality design.
- **Policy Villages 2** (Distributing Growth across the Rural Areas) states a total of 750 homes will be delivered at Category A villages. In identifying and considering sites regard will be given to the listed criteria, including whether best and most versatile agricultural land could be avoided.
- **Policy INF1** (Infrastructure) states the Council will identify infrastructure required to meet the District's growth. Development proposals will be required to demonstrate that infrastructure requirements can be met.

Saved, retained policies of the Adopted Cherwell Local Plan 1996

- **Policy C8** states sporadic development in the open countryside including developments in the vicinity of motorway or major road junctions will generally be resisted.
- **Policy H18** states planning permission will only be granted for the construction of new dwellings beyond the built-up limits of settlements other than those identified under policy h1 when: (i) it is essential for agriculture or other existing undertakings, or (ii) the proposal meets the criteria set out in policy h6; and (iii) the proposal would not conflict with other policies in this plan.

In addition, the following policies are also considered relevant to the determination of this appeal.

Adopted Cherwell Local Plan 2011 - 2031 Part 1 (adopted July 2015)

- Policy BSC 1: District Wide Housing Distribution.
- Policy BSC 3: Affordable Housing
- Policy BSC 4: Housing Mix
- Policy BSC 10: Open Space, Outdoor Sport and Recreation Provision
- Policy BSC 11: Local Standards of Provision - Outdoor Recreation
- Policy BSC 12: Indoor Sport, Recreation and Community Facilities
- Policy ESD 1: Mitigating and Adapting to Climate Change
- Policy ESD 2: Energy Hierarchy and Allowable Solutions
- Policy ESD 3: Sustainable Construction
- Policy ESD 4: Decentralised Energy Systems
- Policy ESD 5: Renewable Energy

- Policy ESD 7: Sustainable Drainage Systems (SuDS)
- Policy ESD 10: Protection and Enhancement of Biodiversity and the Natural Environment
- Policy ESD13: Local Landscape Protection and Enhancement (added after the decision notice was issued)
- Policy ESD 15: The character of the built and historic environment.
- Policy ESD 17: Green Infrastructure
- Policy Villages 2: Distributing growth across the rural areas.
- PSD 1: Presumption in Favour of Sustainable Development.

Saved, retained policies of the Adopted Cherwell Local Plan 1996

- Policy H18 – New Dwellings in the Countryside
- Policy C8 – Sporadic Development in the Open Countryside
- Policy C15 – Prevention of coalescence (added after the decision notice was issued)
- Policy C28 – Layout, design and external appearance of new development
- Policy C30 – Design of New Residential Development
- Policy C33 – Sporadic Development in the Open Countryside (added after the decision notice was issued)

Oxford Partial Review Development Plan – Oxford’s Unmet Housing Need

- Policy PR1 – Achieving Sustainable Development for Oxford’s unmet needs
- Policy PR12A – Delivering Sites and Maintaining Housing Supply
- Policy PR12B – Sites not allocated in the Partial Review

Other material considerations

National Planning Policy Framework

5.7 The decision notice references conflict with the NPPF, paragraph 174 specifically (it is noted in the current December 2023 version of the Framework this is now paragraph 180). **Paragraph 180** states planning policies and decisions should contribute to and enhance the natural and local environment.

5.8 The following paragraphs are a relevant consideration.

5.9 **Paragraph 7** of the Framework sets out that the purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes and supporting infrastructure in a sustainable manner.

5.10 **Paragraph 8** of the Framework reiterates that the planning system has three overarching objectives:

- **an economic objective** – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth
- **a social objective** – to support strong, vibrant and healthy communities by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and
- **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment, including making effective use of land.

Paragraph 9 requires the objectives of sustainable development to be *delivered through the preparation of and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.*

5.11 **Paragraph 10** states that at the heart of the framework is a presumption in favour of sustainable development.

5.12 **Paragraph 11** sets out that, for decision-taking, this means:

- approving development proposals that accord with an up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - (ii) Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

5.13 **Paragraph 38** states that local planning authorities should *“approach decisions on proposed development in a positive and creative way... and work proactively with*

applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible”.

5.14 **Paragraph 47** of the Framework reiterates that *“planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing”.*

5.15 **Paragraph 48** states that Local Planning Authorities may give weight to relevant policies in emerging plans according to:

- The stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- The degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

5.16 **Paragraph 49** deals with prematurity and explains that in the context of the Framework (and in particular the presumption in favour of sustainable development), arguments that an application is premature are unlikely to justify a refusal other than in limited circumstances.

Delivering a sufficient supply of homes

- **Paragraph 60** of the Framework emphasises the need to support the *“Government’s objective of significantly boosting the supply of homes.”* By making sure that *“a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet as much of an area’s identified housing need as possible, including with an appropriate mix of housing types for the local community.”*
- Paragraph 67 of the Framework states that *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 allocations³³. 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 affect the requirement.*

- Paragraph 74. Planning for larger scale development requires the supply of large number of new homes to be *best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities (including a genuine choice of transport modes).*
- Part D of paragraph 74 of the NPPF requires strategic policy making authorities to identify suitable locations for such development where this can help meet identified needs in a sustainable way. In doing so, they should: *make a realistic assessment of likely rates of delivery, given the lead-in times for large scale sites, and identify opportunities for supporting rapid implementation (such as through joint ventures or locally-led development corporations).*
- Paragraph 75 of the Framework states *Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should monitor their deliverable land supply against their housing requirement, as set out in adopted strategic policies.*
- Paragraph 76 states *Local planning authorities are not required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing for decision making purposes if the following criteria are met:*
 - a) their adopted plan is less than five years old; and
 - b) that adopted plan identified at least a five year supply of specific, deliverable sites at the time that its examination concluded.
- Paragraph 77 requires local planning authorities to *identify and update annually a supply of specific deliverable sites sufficient to provide either a minimum of five years worth of housing or a minimum of five years' worth of housing⁴¹, or a minimum of four years' worth of housing if the provisions in paragraph 226 apply. The supply should be demonstrated against either the housing requirement set out in adopted strategic policies, or against the local housing need where the strategic policies are more than five years old⁴². Where there has been significant under delivery of housing over the previous three years⁴³, the supply of specific deliverable sites should in addition include a buffer of 20% (moved forward from later in the plan period).*

Promoting healthy and safe communities

- **Chapter 8** of the Framework outlines how planning policies and decisions should aim to achieve healthy, inclusive and safe places.
- **Paragraph 96** of the Framework states that planning decisions should aim to achieve healthy, inclusion and safe places which *“are safe and accessible, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion – for example through the use of beautiful, well-designed, clear and legible pedestrian and cycle routes, and high-quality public space, which encourage the active and continual use of public areas.”*

Promote Sustainable Transport

- 5.17 **Chapter 9** of the Framework guides the important role transport plays in achieving sustainable development, seeking to maximise sustainable transport solutions.
- 5.18 **Paragraph 109** states that *“the planning system should actively manage patterns of growth in support of these objectives. Significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.”*
- 5.19 **Paragraph 115** states *“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*

Making effective use of land

- **Paragraph 123** of the Framework states that planning decisions *“should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.”*
- **Paragraph 124** of the Framework states that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes.
- **Paragraph 128** states that planning decisions should support development that makes efficient use of land taking into account:
 - *The identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;*
 - *Local market conditions and viability;*
 - *The availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;*
 - *The desirability of maintaining an area’s prevailing character and setting (including residential gardens), or of promoting regeneration and change; and*
 - *The importance of securing well-designed, beautiful and healthy places.*

Achieving Well-Designed Places

- **Chapter 12** sets out the importance of the design within the built environment.
- **Paragraph 131** state that *“The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”*

- **Paragraph 135** states that planning decisions should ensure developments:
 - *Will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
 - *Are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*
 - *Are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*
 - *Establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*
 - *Optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and*
 - *Create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.*

Meeting the challenge of climate change, flooding and coastal change

- **Chapter 14** of the NPPF focusses on the delivery of renewable and low carbon energy and associated infrastructure through new development. Opportunities relate to the landform, layout, building orientation, massing and landscaping of proposed development.
- **Paragraph 157** of the Framework sets out that the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change.

Conserving and enhancing the natural environment

- Paragraph 180 requires Planning Policies and decisions should contribute to and enhance the natural and local environment by:
 - a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*
 - b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;*

- Paragraph 181 requires Plans to: *distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework*
- **Paragraph 186** sets out that when determining applications, local planning authorities should apply the following principles:
 - If significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; and
 - Development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.
- Paragraph 201 of Framework requires Local Planning Authorities to *identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.*
- Paragraph 206 *Considering Potential Impacts* requires any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:
 - a) *grade II listed buildings, or grade II registered parks or gardens, should be exceptional;*
 - b) *assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.*
- Paragraph 208 of the NPPF considers proposals that will lead to less than substantial harm to the significance of a designated heritage asset. It states:

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
- Paragraph 226 of the NPPF states *From the date of publication of this revision of the Framework, for decision-making purposes only, certain local planning*

authorities will only be required 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, as set out in paragraph 77) against the housing requirement set out in adopted strategic policies, or against local housing need where the strategic policies are more than five years old, instead of a minimum of five years as set out in paragraph 77 of this Framework. This policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need. This provision does not apply to authorities who are not required to demonstrate a housing land supply, as set out in paragraph 76. These arrangements will apply for a period of two years from the publication date of this revision of the Framework.

- Footnote 80 which forms part of paragraph 226 of the Framework states As an exception to this, the policy contained in paragraph 76 and the related reference in footnote 8 of this Framework should only be taken into account as a material consideration when dealing with applications made on or after the date of publication of this version of the Framework.

Planning Practice Guidance Including:

- **Housing Supply and Delivery**
- **Housing Needs of Different Groups**
- **Natural Environment**
- **Historic Environment.**

Hanwell Conservation Area Appraisal

Cherwell District Council Housing and Economic Land Availability Assessment

Cherwell Housing Strategy

Cherwell District Council Banbury Landscape Sensitivity and Capacity Assessment

Historic England's The Setting of Heritage Assets Guidance Note (GPA3).

Planning (Listed Buildings and Conservation Areas) Act 1990

Emerging Policy Context

- 5.20 The Council's latest Local Development Scheme ('LDS') was adopted in September 2023). The document sets out the timeline for the Local Plan Review with the following timescales:

- Consultation on Proposed Submission Plan (Regulation 19): September-October 2024
- Submission (Regulation 22): January 2025
- Examination (Regulation 24): January 2025 (hearings estimated April & May 2025)
- Receipt and Publication of the Inspector’s Report (Regulation 25): September 2025
- Adoption (Regulation 26): December 2025 (subject to examination)

5.21 It is agreed that the emerging Local Plan cannot be afforded any weight in the decision-making process.

Supplementary Planning Documents

5.22 In addition, there are also a number of Supplementary Planning Documents (‘SPDs’) that are considered to be of relevance to the application. These are listed below:

- Cherwell Residential Design Guide Supplementary Planning Document (SPD) (July 2018);
- Developer Contributions Supplementary Planning Document (SPD) (February 2018); and
- Banbury Vision and Masterplan Supplementary Planning Document (SPD) (December 2016).

6. Matters not in dispute

6.1 This section sets out those matters that the Appellant and LPA are in agreement on.

Relevant Development Plan Documents

6.2 Both parties agree that the policies listed in Section 5 of this statement are the relevant Development Plan policies for the determination of this appeal.

Technical Considerations: Matters of Agreement

6.3 It is common ground between the parties that based on the consultation responses received on the application, there are no reasons for refusal or matters for dispute on the following grounds:

Highways

6.4 The Appellant understands that there is no objection to the proposals on highways grounds, subject to planning conditions and S106 contributions.

Drainage

6.5 The Appellant understands that there is no objection relating to the impact of the proposals on drainage at the site, subject to planning conditions.

Archaeology

6.6 The Appellant understands that there is no objection relating to the impact of the proposals on archaeological grounds, subject to planning conditions.

Rights of Way

6.7 The Appellant understands that there is no objection relating to the impact of the proposals on public rights of way, subject to planning conditions and S106 contributions.

Environmental Health

6.8 The Appellant understands that there is no objection relating to the impact of the proposals on noise, contaminated land, air quality, odour and light, subject to planning conditions.

Ecology

6.9 The Appellant understands that there is no objection relating to the impact of the proposals on ecological grounds, subject to planning conditions.

Education

- 6.10 The Appellant understands that there is no objection relating to the impact of the proposals on education provision, subject to S106 contributions.

Waste Management

- 6.11 The Appellant understands that there is no objection relating to the impact of the proposals on waste management, subject to S106 contributions.

Recreation and Leisure

- 6.12 The Appellant understands that there is no objection relating to the impact of the proposals on recreation and leisure infrastructure, subject to S106 contributions.

Healthcare

- 6.13 The Appellant understands that there is no objection relating to the impact of the proposals on healthcare provision, subject to S106 contributions.

Crime prevention

- 6.14 The Appellant understands that there is no objection relating to the impact of the proposals on crime, subject to S106 contributions.

Building Control

- 6.15 The Appellant understands that there is no objection relating to Building Control regulations.

- 6.16 The following matters are also agreed:

Affordable housing

- 6.17 Policy BSC3 of the adopted Cherwell District Council Local Plan 2011-2031 Part 1 (2015) requires qualifying developments (i.e., 11 or more gross dwellings) in Banbury and Bicester to provide at least 30% on site affordable housing whilst qualifying developments at Kidlington and elsewhere will be required to provide at least 35% on site affordable housing.
- 6.18 The policy expects all qualifying developments to provide 70% of the affordable housing as affordable/social rented dwellings and 30% as other forms of intermediate affordable homes.
- 6.19 The proposed development complies with the above requirements of Policy BSC3 of the adopted Cherwell District Council Local Plan 2011-2031 Part 1 (2015).
- 6.20 A Section 106 Agreement can be entered into to secure the delivery of 40% affordable housing.

Landscape matters

- 6.21 The Appeal Site is a settlement edge site, located to the north of Banbury. The Appeal Site comprises two arable fields on the northern edge of Banbury, alongside the new build Persimmon development of Hanwell Fields to the south. Both are regular in shape and bound by a mixture of tree belt and hedgerow. The site is split in two by the old farm track of Gullicotte Lane.
- 6.22 The site is not subject to any local or national landscape designations, nor is it proposed to have such status. Paragraph 182 of the National Planning Policy Framework (NPPF, 2023) is not engaged by the proposals.
- 6.23 The Appeal Site and its context is not within a valued landscape for the purposes of NPPF 180(a). It is not challenged that the 'Landscape Designations Plan' (Figure 7.2 of the LVA) provides an accurate representation of the principal landscape, and landscape related, designations within the area where it is likely that landscape and visual effects from the proposed development might arise.
- 6.24 The scope of the LVA and its methodology, set out in Appendix EDP 2 of the LVA, is consistent with the appropriate guidelines: Guidelines for Landscape and Visual Impact Assessment (3rd Edition, Landscape Institute and IEMA, 2013). At no point during the application process was the methodology within the Landscape and Visual Appraisal challenged by the Council. The Council challenges the judgments reached by the assessment.
- 6.25 It is not challenged that the location of the viewpoint selection presented in the LVA represents a reasonable range of locations from which the Inspector can assess the potential landscape and visual effects of the appeal proposals. However, additional viewpoints may be submitted for consideration by the Inspector by either party.
- 6.26 The Oxfordshire Wildlife and Landscape Study (OWLS), produced in 2004, is the Council's adopted Landscape Character Assessment. Within the OWLS, the Appeal Site is identified as being within the Farmland Plateau Landscape Type.
- 6.27 The Cherwell Landscape Sensitivity Assessment (CLSA) was produced by The Environment Partnership Ltd for the Council in 2022 and forms part of the evidence base to inform the Local Plan Review. The CLSA provides a comparative assessment of the landscape sensitivity of 'assessment parcels' of land to the principle of built development, woodland planting and recreation/open space. The CLSA identifies the Parcel A of the Appeal Site as part of a wider assessment parcel LS BIAN13: Land East of Warwick Road and defines a low-moderate sensitivity to residential development.
- 6.28 The parties intend to agree a separate Landscaping Statement of Common Ground.

Heritage matters

- 6.29 The following heritage matters are agreed:
- The parties agree that the identified archaeological deposits within the Appeal Site are not a constraint to the proposed development of the site and a

programme of post-determination archaeological mitigation works could be secured by condition to enable the identified archaeological deposits and features to be recorded in advance of development commencing.

- The heritage assets of relevance for consideration in this Appeal are:
 - The Hanwell Conservation Area;
 - The Grade I Listed Church of St Peter at Hanwell; and
 - The Grade II* Listed Hanwell Castle.
- Aside from the three designated heritage assets identified above, the Council do not allege that any further designated heritage assets would be affected by the Appeal Proposals.
- As the Appeal Site is wholly outside the Hanwell Conservation Area, the only aspect of this asset that development may potentially impact is its setting.
- As the Grade I Listed Church of St Peter and Grade II* Listed Hanwell Castle are each located wholly outside the Appeal Site, the only aspect of these assets that development may potentially impact is their setting.
- The Officer Report to Planning Committee was not informed by a consultation response from the CDC Conservation Team.
- The Officer Report to Planning Committee was not informed by a consultation response from Historic England.
- The NPPF (2023) defines setting as ‘the surroundings in which a heritage asset is experienced’. The most up to date guidance on the methodology for assessing setting is set out in Historic England (2017) The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3 (GPA3 Second Edition);
- It is agreed that the application of the GPA3 guidance in determining the effects on relevant heritage assets is a matter of professional opinion;

6.30 The Council agrees with the Appellant’s finding of less than substantial harm, to the Hanwell Conservation Area. The Appellant will continue to engage with the Council, with a view to preparing a Heritage Statement of Common Ground which accurately reflects the positions of both parties.

Agricultural land

6.31 The Site comprises Best and Most Versatile agricultural land.

Housing supply

6.32 The parties intend to agree a separate Housing Supply Statement of Common Ground.

7. Matters in Dispute

- 7.1 The matters of dispute between the Appellant and the LPA are those set out within the Council's decision notice dated 11th August 2023.

Reason for Refusal 1

- 7.2 The Council considers they are able to demonstrate a sufficient housing land supply. This is not agreed by the Appellant.
- 7.3 The Council considers the proposal would cause undue visual intrusion into the open countryside. The parties have reached different judgments on the degree of landscape harm effects of the proposed development on the character and appearance of the area.
- 7.4 The Council's case with regard to Landscape and Visual matters is set out at Paragraphs 3.6 to 3.16 of their Statement of Case. The Appellant does not agree with the statements put forward by the Council.

Reason for Refusal 2

- 7.5 The Council considers the proposals will cause detriment and harm to the setting of designated heritage assets (Hanwell Conservation Area, St Peter's Church and Hanwell Castle. This is not agreed by the Appellant.

Reason for Refusal 3

- 7.6 The Council considers that no evidence base has been provided to demonstrate whether the loss of agricultural land could be avoided.
- 7.7 The Appellant disagrees that it is necessary to provide the evidence base as stated by the Council in the determination of the appeal.

8. Conditions and Obligations

Planning Conditions

- 8.1 The draft list of planning conditions at attached at Appendix 1. These are to be agreed between the parties, discussions of which are on-going.

Planning Obligations

- 8.2 The following Heads of Teams are agreed, and it is agreed that both parties are working positively to ensure the Section 106 agreement can be agreed ahead of the appeal start:

- Affordable Housing Provision – 40% of the homes
- Highways alterations:
 - Strategic highways works upgrading pedestrian and cycleways
 - Public transport services
 - Traffic Regulation Order
 - Public rights of way improvements
- Public Rights of Way
- NHS primary care
- Community Hall Facilities
- Community Development
- Outdoor Sport Provision
- Indoor Sport Provision
- Travel Plan and monitoring
- Education
- Waste

- 8.3 All necessary planning obligations can be secured by a S106 Agreement and will accord with the tests of section 122 of the Community Infrastructure Levy Regulations 2010 (as amended). The S106 Agreement will overcome Reason 4 of the Decision Notice.

- 8.4 A final draft Section 106 Agreement will be submitted ahead of the inquiry in line with the Planning Inspectorate's Procedural Guidance (Section 18.2.3).

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