

Appeal by Vistry Homes Ltd
Land East of Warwick Road, Banbury
Appeal ref. APP/C3105/W/24/3338211
LPA Ref. 23/000853/OUT

Proof of Evidence – Planning Matters

David Murray-Cox (BA (Hons) MPlan MRTPI)

May 2024

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Client

Vistry Homes Ltd

Our reference

BOVS3002

May 2024

1. Introduction

- 1.1 My name is David Murray-Cox and I am a Director at Turley. I am instructed to present planning evidence at this Inquiry by Vistry Homes Ltd, herein referred to as ‘the Appellant’.
- 1.2 This Appeal follows Cherwell District Council’s (‘CDC’ / ‘the Council’) refusal of an outline planning application for 170 dwellings on Land East of Warwick Road, Banbury.

Qualifications

- 1.3 I hold the degrees of Bachelor of Arts with Honours in Town and Country Planning (First Class) (2005) and a Masters, also in Town and Country Planning (MPlan) (2006) both from the University of the West of England, Bristol.
- 1.4 I am a member of the Royal Town Planning Institute with 17 years post-qualification experience.
- 1.5 I joined Turley in March 2016 as an Associate Director and have been a Director since 2019. Previously I was an Associate in the Reading office of Barton Willmore, having joined the company as a Graduate Planner in 2006.
- 1.6 I have consequently given professional advice on a wide range of planning projects, including Section 78 Appeals heard by way of written representation, informal hearings and public inquiries for a range of private sector clients and landowners. I have also appeared at Core Strategy/Local Plan Examinations in Public.
- 1.7 I have acted on behalf of various clients including A2Dominion, Lifestory, the University of Reading, Hallam Land Management Ltd, Bellway, David Wilson Homes, Taylor Wimpey, Inspired Villages, Sovereign Housing, the Vistry Group and Redrow Homes as well as a number of private landowners, promoters and other developers.
- 1.8 I am familiar with the Appeal Site and the surrounding area and have made myself aware of the planning policy background and relevant issues to this appeal.

Statements of Common Ground

- 1.9 The Appellant has sought to agree Statements of Common Ground on various matters with the LPA, but this process has not been completed at the time of my evidence being submitted.

Main issues

- 1.10 In advance of the Case Management Conference (“CMC”), the Inspector helpfully set out the following main issues to be addressed during the Inquiry, which were agreed at the CMC:
- Housing land supply;

- The degree of landscape and visual harm to the local area;
- Whether the proposals would result in harm to the setting of nearby heritage assets; and
- Whether the proposals would conflict with national policy in respect of agricultural land.

Scope of Evidence

- 1.11 I consider the appeal proposals against the requirements of the Development Plan and in the context of the policies of the National Planning Policy Framework (“the Framework”) and consider the proposals in relation to the ‘planning balance’.
- 1.12 My evidence comprises this Proof of Evidence and an accompanying volume of Appendices.
- 1.13 My evidence should be read alongside the following Proofs of Evidence:
- Mr Ben Connolley of EDP on landscape and visual matters;
 - Mr Edmund Stratford of EDP on heritage matters;
 - Mr Michael Carr of Pegasus on design matters;
 - Ms Annie Gingell of Tetlow King on affordable housing; and
 - Mr Jeff Richards of Turley in relation to housing land supply.
- 1.14 The evidence which I have prepared and provide for this Appeal (PINS Reference No. APP/C3105/W/24/3338211) is true and has been prepared in accordance with the guidance of my professional institution. I confirm that the opinions expressed are true and professional opinions.

2. Banbury – A Sustainable Settlement

2.1 Banbury is, unquestionably, a sustainable settlement. Alongside Bicester, it is one of the two most sustainable places in the District.

2.2 The Local Plan (Part 1) states:

“Our strategy is to focus housing growth on Bicester and Banbury, to maximise the investment opportunities in our towns, and to ensure that the level of development at our villages respects the character and beauty of our rural areas while meeting local needs.”¹

“The Plan centres on Bicester and Banbury as the most sustainable locations for growth. It is a plan which seeks to strengthen the role of the towns as the centre of the local economy, set within a rural hinterland.”²

“Most of the growth in the District will be directed to locations within or immediately adjoining the main towns of Banbury and Bicester ... Banbury will continue to grow, albeit to a lesser extent than Bicester, in accordance with its status as a market town with a rural hinterland.”³

2.3 Banbury has a town centre, significant areas of employment land and retail areas and is located beside the M40 and the strategic links that provides to the north and south. Significantly, Banbury is on the mainline railway network, with services from Banbury proving access to the north (towards Birmingham and beyond) and to the south, including Oxford.

2.4 As the Transport Assessment (‘TA’) which accompanied the planning application explains (in section 4.6), the nearest bus stop to the Site is on Dukes Meadow Drive, known as ‘Hardwick, Warwick Road’. This bus stop lies within 650m from the proposed site access junction, which equates to an 8-minute walk. The ‘Winter Gardens School’ bus stop is located within 600m to the east of the Site and it is accessed from Dukes Meadow Drive from the PRoW located to the east of the site (and with a walking journey time of 7 minutes). As the TA explains, there is a network of existing and proposed bus stops within the area to the south of the Site.

2.5 Table 4.2 of the TA sets out the nature of the services available from these stops. These services provide access to a myriad of destinations, notably to Banbury town centre and the railway station.

2.6 These services provide clear opportunities to access work, leisure and school facilities.

¹ Local Plan 2011 – 2031, Foreword

² Local Plan 2011 – 2031, paragraph 1.9

³ Local Plan 2011 – 2031, paragraph A11

2.7 The TA sets out that approximate travel time of bus journey from the development site to the key destinations is as follows:

- Banbury Town Centre: 12 minutes
- Banbury Bus Station: 12 minutes
- Banbury Railway Station: 12 minutes
- Beaumont Industrial Estate: 6 minutes.

2.8 Banbury Railway Station around 5km south east of the site and accessible using a short bus journey. Banbury Railway Station is served by regular services to Oxford, Bicester and Leamington Spa. As the TA sets out, these are provided on services that reach London (on a frequency of 3 services per hour) and Birmingham (on a frequency of 2 trains per hour). These services provide access to the main destinations and associated journey times:

- Oxford: 18 minutes
- Reading: 45 minutes
- Birmingham (incl. Snow Hill, Moor Street, International & New Street): c 1 hour
- London Marylebone: c. 1 hour

2.9 It is clearly reasonable to assume that this Appeal Site is located such that it provides opportunities for residents to access employment opportunities in Banbury and further afield. It is entirely plausible that residents of this scheme could travel by bus from the Site to Banbury railway station, and from there reach their place of work in Oxford or Reading for example. I consider that these accessibility credentials weigh **significantly** in favour of the proposal (consistent with the weight given to the spatial approach by the Heyford Park Inspector⁴), especially in the situation where the Council's commitments to address the unmet housing needs of Oxford City are so woefully behind schedule.

2.10 The Appeal Site is located in close proximity to sites allocated through the adopted Development Plan. Namely, the land to the south of the Appeal Site is allocated under Policy Banbury 5 (North of Hanwell Fields) for approximately 544 dwellings and associated infrastructure. To the south-west of the Appeal Site, land is allocated under Policy Banbury 18 (Land at Drayton Lodge Farm) for approximately 250 dwellings including associated infrastructure, with the policy specifying "Community – onsite provision for community and/or local retail facilities".

⁴ **CD10.1** - APP/C3105/W/23/3326761

- 2.11 The Drayton Lodge application (18/01882/OUT) was granted planning permission in January 2020 for the following scheme:

“OUTLINE: Residential development, comprising the erection of up to 320 dwellings including affordable housing, together with a local centre of 0.5ha (providing retail and community facilities), landscaping, public open space, playing fields, allotments, access and associated infrastructure.”

- 2.12 The Drayton Lodge scheme itself will introduce new facilities, including retail and community facilities in the vicinity of the Appeal Site.
- 2.13 The TA submitted in support of the application which is subject to this appeal explains⁵ that new bus stops are being proposed on Warwick Road just south of the junction with Nickling Road. This bus stop would be located within 400m to the south of the proposed site access, with a walking journey estimated of 4 minutes. Access to the bus stop would be facilitated by the provision of a Toucan crossing as part of the consented Drayton Lodge Farmhouse development.

⁵ Transport Assessment, paragraph 4.6.3, Jubb, 2022

3. The Planning Policy Context

- 3.1 This section of my evidence identifies the applicable policies from the Development Plan that are referenced in the reasons for refusal and the broader planning policy context. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out a requirement that planning applications are to be determined in accordance with the development plan unless other material considerations indicate otherwise.
- 3.2 In addition, this section of my evidence also addresses the relevant policy context set out in the National Planning Policy Framework (NPPF) and the Planning Guidance.
- 3.3 I have focused on those policies which are particularly relevant to the Inspector's consideration of this appeal, namely the policies referred to in the Decision Notice or the topics in dispute.
- 3.4 On the basis that the documents appear in the Core Documents library, or in the case of the NPPF, will be familiar to the Inspector, I have not repeated the content of relevant planning policy documents unless it is necessary to do so.
- 3.5 The statutory starting point is whether the application is 'in accordance with the plan', which is a phrase that has been the subject of debate in the High Court in the context of Section 54A of the Town and Country Planning Act 1990. In his judgment of 31 July 2000 (*R. v. Rochdale Metropolitan Borough Council ex parte Milne*), Mr. Justice Sullivan concluded as follows:

"...I regard as untenable the proposition that if there is a breach of any one Policy in a development plan a proposed development cannot be said to be "in accordance with the plan" ... For the purposes of Section 54A, it is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein".

- 3.6 The Rochdale Judgment is applicable to the interpretation of Section 38(6) of the 2004 Act such that the decision maker must reach a decision as to whether the proposal is in accordance with the Development Plan when it is considered as a whole. Such matters (the tensions between development plan policies) have more recently been considered in *Corbett v Cornwall County Council* [2020] EWCA Civ 508. This Judgment reaffirms the position that it is enough that the proposal accords with the development plan considered as a whole, such that a proposal does not have to accord with each and every policy therein in order to be compliant with the Development Plan.

Cherwell District Council Planning Context

- 3.7 The relevant parts of the statutory development plan comprises the following:
- Adopted Cherwell Local Plan 2011 - 2031 Part 1 (July 2015) (the 'Local Plan');
 - Adopted Cherwell Local Plan 2011-2031 (Part 1) Partial Review – Oxford's Unmet Housing Need (September 2020) (the 'Partial Review'); and

- Saved, retained policies of the Adopted Cherwell Local Plan 1996.

3.8 The Appeal Site is not within a designated Neighbourhood Plan Area.

The Local Plan 2011 - 2031 Part 1

3.9 There are various references within the Local Plan 2011 – 2031 Part 1 to more detailed policies being set out within ‘the Local Plan Part 2’. That Part 2 document was never progressed by the LPA which has since confirmed that it will not be progressed.

3.10 At the outset, I note that the Local Plan Part 1 does not contain any ‘settlement boundary’ policies for example, and nor does the adopted Policies Map define any such designations.

3.11 Accordingly, when the Inspector comes to consider the Local Plan Part 1, the only conclusion which should be reached is that the appeal proposals do not conflict with any policies in this document which restrict development as a matter of ‘principle’. The only scope for conflict arises with policies relating to the ‘impact’ of development.

3.12 The following policies are referred to in the reasons for refusal:

- Policy PSD1 (Presumption in Favour of Sustainable Development);
- Policy BSC1 (District Wide Housing Distribution);
- Policy ESD15 (The Character of the Built and Historic Environment);
- Policy Villages 2 (Distributing Growth across the Rural Areas); and
- Policy INF1 (Infrastructure).

3.13 I note that other parties (such as the statement from KHVRAG) also refer to the following;

- Policy ESD13 (Local Landscape Protection and Enhancement)⁶; and
- Policy ESD17 (Green Infrastructure).

Local Plan 2011-2031 (Part 1) Partial Review – Oxford’s Unmet Housing Need (September 2020) (the ‘Partial Review’)

3.14 The Local Plan Part 1 Partial Review is the consequence of the fact that the Oxfordshire authorities had agreed to accommodate unmet housing needs arising from Oxford City and was adopted in September 2020.

3.15 The Partial Review provides for allocations and a range of associated development management policies in relation to the 4,400 dwellings of Oxford City’s unmet housing needs which were apportioned to Cherwell District.

⁶ This Policy is not referenced in the LPA’s reasons for refusal, but it is referred to at paragraph 3.16 of the LPA’s Statement of Case (although I expect that is in error given the reasons for refusal)

- 3.16 The reasons for refusal do not allege any conflict with the policies in the Partial Review.
- 3.17 Elsewhere in my evidence, I reflect on the importance of the levels of growth being planned for through the Local Plans across the County, and in addressing unmet housing needs. Mr Richards considers the extent to which the sites allocated through the Local Plan are delivering.
- 3.18 The Partial Review does not state that it only applies to a certain geographic part of the District.

Policy PR12 (Delivering Sites and Maintaining Housing Supply)

- 3.19 The only policy of note from the Partial Review that I refer to is Policy PR12 which sets out that the Council will manage the supply of housing land for the purpose of constructing 4,400 homes to meet Oxford's needs and that a separate five year housing land supply will be maintained for meeting Oxford's needs. Mr Richards' evidence considers housing land supply matters in detail.
- 3.20 The Policy explains that at least 1,700 homes will be delivered for Oxford for the period 2021 – 2026, and states that *"for which a five year land supply shall be maintained on a continuous basis from 1 April 2021."*

Adopted Cherwell Local Plan 1996

- 3.21 The saved policies to the Cherwell Local Plan 1996 are listed at Appendix 7 of the Adopted Cherwell Local Plan 2011-2031 (Part 1).
- 3.22 The Local Plan 1996 was prepared in a very different planning context to that which is in place now, well before the first NPPF being published and in the context of the Structure Plan in place at the time, and the expectations of delivery between 1986 and 2001.
- 3.23 I recognise that the Local Plan 1996 does include restrictive policies, namely Policies C8 (but only by applying the approach of the Heyford Park Inspector) and H18.
- 3.24 The following policies are referred to in the reasons for refusal:
- Policy C8; and
 - Policy H18.
- 3.25 I note that other parties (such as the statement from KHVRAG) also refer to the following:
- Policy C15; and
 - Policy C33.

The Emerging Development Plan

- 3.26 The District Council is preparing a new Local Plan to cover the period to 2040, with a Regulation 18 draft having been published for consultation in September 2023.
- 3.27 The Council's latest 'Local Development Scheme' (LDS) was also published in September 2023 and anticipates the Plan being adopted in December 2025. It is, of course, impossible to predict whether that timetable will be achieved.
- 3.28 Core Policy 34 ('District Wide Housing Distribution') explains how 25,860 dwellings will be provided in the District between 2020 to 2040, 5,950 of which would be at Banbury.
- 3.29 Having regard to the LPA's reasons for refusal, I note the following draft policies:
- Core Policy 43 (Protection and Enhancement of the Landscape);
 - Core Policy 45 (Settlement Gaps) (although I note these are described in the Glossary as being areas that 'have been defined');
 - Core Policy 46 (Achieving Well Designed Places); and
 - Development Policy 8 (New Dwellings in the Countryside).
- 3.30 The effect of these policies presents a similar planning policy context when compared to the provisions in the adopted Development Plan.
- 3.31 The Regulation 18 consultation draft includes a Key Diagram, identifying Banbury as a Main Town. This Key Diagram does not include any depictions of the environmental policies proposed through the consultation draft (although it does depict saved and preferred allocations).
- 3.32 At no point does the Local Plan include any mapping (or policy wording) which suggests that the status of the Appeal Site would change from being within the countryside to forming any part of a landscape designation (or a defined Settlement Gap) for example.
- 3.33 Given the stage that the draft Local Plan has reached and the fact that it has not been subject to the scrutiny of an Examination, it should be afforded very limited weight. That conclusion is consistent with paragraph 25 of the Inspector's decision in the Heyford Park appeal⁷ and I see no reason to take a different approach.

Supplementary Planning Documents

- 3.34 The Council has adopted a number of SPDs, although only those listed below could be relevant to this appeal:
- Cherwell Residential Design Guide Supplementary Planning Document (SPD) (July 2018);
 - Developer Contributions Supplementary Planning Document (SPD) (February 2018); and

⁷ **CD10.1** - APP/C3105/W/23/3326761

- Banbury Vision and Masterplan Supplementary Planning Document (SPD) (December 2016).

National Planning Policy Context

The National Planning Policy Framework (December 2023)

- 3.35 The NPPF was recently updated in December 2023. On the basis that the Inspector will be familiar with the NPPF and the Statements of Common Ground can identify relevant paragraphs, I have not provided a detailed summary of its contents.

4. Response to the Reasons for Refusal

- 4.1 In this section of my evidence, I address the reasons for refusal as set out in the LPA's decision notice, having regard to the relevant planning policy context set out therein.

Reason for Refusal 1

- 4.2 The evidence of Mr Richards addresses the first component of this reason for refusal, namely whether the LPA is able to demonstrate a five-year supply of deliverable housing sites.
- 4.3 The remainder of the first reason for refusal includes several components:
- That the site is located within the open countryside and is not allocated for development; and
 - Matters associated with landscape impact and character.
- 4.4 The first of those components is a matter of 'principle' only and does not contain any matters pertaining to the 'impact' of the development. I do not dispute that the Site is within the countryside (notwithstanding the lack of defined settlements), is not allocated for development and is not for a form of housing for which Policy H18 makes exceptions. I do not consider the proposal to represent sporadic development.
- 4.5 Mr Connelley's evidence explains how then considers whether the proposed development would result in a 'direct risk of coalescence between Banbury and Hanwell'. I note that Mr Connelley concludes that the proposals would be perceived as an addition to Banbury rather than Hanwell and that there would remain an open character to the north of Banbury and an identifiable separation (both physically and visually) with Hanwell.
- 4.6 Mr Connelley accepts that there will inevitably be some harm to openness and rural character wherever a settlement extends onto open (agricultural) land but he also explains how the landscape and visual effects of these proposals are extremely limited.
- 4.7 I have had regard to the conclusions set out by Mr Connelley and Mr Carr on reason for refusal 1 when undertaking the planning balance elsewhere in my evidence.

Reason for Refusal 2

- 4.8 Reason for refusal 2 also contains several components:
- The proposed development is considered to erode the open arable landscape which provides clear separation between Banbury and Hanwell; and
 - The impact on the setting of Hanwell Conservation Area, St Peter's Church (Listed Building Grade I) and Hanwell Castle (Listed Building Grade II*) (less than substantial).

- 4.9 The first of those aspects is addressed by Mr Connolley's evidence and I note again his conclusions that there would remain an open character to the north of Banbury and an identifiable separation with Hanwell.
- 4.10 Mr Stratford of EDP addresses the second of those two components. He accepts that the proposals will cause less than substantial harm to the Hanwell Conservation Area which he described as a very limited adverse impact. Mr Stratford explains his conclusion that there would be no harm to the significance of either the Grade I listed Church of St Peter, or the Grade II* listed Hanwell Castle.
- 4.11 I have had regard to the conclusions set out by Mr Stratford, Mr Connolley and Mr Carr on reason for refusal 2 when undertaking the planning balance elsewhere in my evidence.

Reason for Refusal 3

- 4.12 There is no dispute that the appeal site represents Best and Most Versatile (BMV) agricultural land so I have addressed this matter elsewhere in my evidence as part of the planning balance. The western half of the site is grade 2 and the eastern half is sub-grade 3a.

Reason for Refusal 4

- 4.13 On the basis that the S106 Legal Agreement provides for the necessary obligations and infrastructure contributions required as a result of the proposed development, then the proposal would comply with Policy INF1 of the Cherwell Local Plan 2011-2031, CDC's Developer Contributions SPD 2018 and the National Planning Policy Framework (insofar as it is relevant in this regard).

5. Compliance with the Development Plan

- 5.1 This section of my evidence considers whether or not, without regard to any other material considerations, the appeal proposals accord with the policies in the Development Plan, focusing on the LPA's reasons for refusal and the Inspector's main issues.
- 5.2 In addition, this Section of my evidence (as well as the evidence presented by others for the Appellant) has regard to other policies of the Development Plan as appropriate, including those referred to in the appeal statement submitted by KHVRAG.

Local Plan Part 1

Policy PSD1

- 5.3 This Policy embeds the NPPF presumption in favour of sustainable development (as it was when the Local Plan Part 1 was adopted) into the Development Plan. Where a proposal accords with the Development Plan, or where the presumption in favour of sustainable development is engaged for other reasons (such as the most important policies being out-of-date), that Policy can be satisfied. Since this Policy is a matter associated with the planning balance, I address it elsewhere in my evidence.

Policy BSC1

- 5.4 Although the Policy indicates how housing is to be distributed (and in that sense is a useful reminder of the importance of Banbury in the District), the Policy does not contain any commentary which relate to matters of principle, or which require consideration from a development management perspective.
- 5.5 That approach is consistent with paragraph 26 of the Heyford Park appeal decision⁸ which states:
- "Whilst the figures in Policy BSC1 may be out of date, the spatial approach to growth and the distribution of development is still relevant and should attract significant weight."* My emphasis
- 5.6 For this reason, the appeal scheme does not conflict with Policy BSC1, but accords with the spatial approach to growth (by delivering new homes at Banbury).

Policy ESD13

- 5.7 The LPA's reasons for refusal do not allege conflict with Policy ESD13 although it is referred to in the Statement submitted by KHVRAG. Nevertheless, this Policy is considered through the evidence of Mr Connolley who sets out a range of conclusions against the six bullet points of the Policy which demonstrate that there is no conflict arising in this regard.

⁸ CD10.1- APP/C3105/W/23/3326761

Policy ESD15

- 5.8 This Policy is referred to in the second reason for refusal, but it does also contain matters which relate to the first reason for refusal.
- 5.9 On landscape matters in the first reason for refusal, Mr Connolley's conclusions are that the proposals do *"Contribute positively to an area's character and identity by creating or reinforcing local distinctiveness and respecting local topography and landscape features"*. Mr Connolley also explains that although there is a level of inevitable harm to the landscape character and visual amenity of the Appeal Site, the addition of landscape fabric enhancement and the provision of new tree planting, the appeal proposals provide mitigation that is appropriate within this context.
- 5.10 On heritage matters in the second reason for refusal, I note Mr Stratford's conclusion that the appeal proposals would result in a very limited adverse impact on the Hanwell Conservation Area, with that arising from a reduction in the positive contribution made by an element of the wider setting of that asset.
- 5.11 Although the reason for refusal does not allege any specific issues relating to design Mr Carr of Pegasus explains this proposal can deliver a design through a future reserved matters submission which responds to Policy ESD1, ESD15, the LPA's Residential Design Guide SPD and the relevant design-related provisions of the NPPF.
- 5.12 Based on the conclusions of Mr Connolley, Mr Stratford and Mr Carr there is no conflict arising with Policy ESD15.

Policy ESD17

- 5.13 The LPA's reasons for refusal do not allege conflict with Policy ESD17 although it is referred to in the Statement submitted by KHVRAG.
- 5.14 Policy ESD17 is concerned with Green Infrastructure and covers several aspects including existing sites and new proposals. This appeal does not concern an existing green infrastructure site and nor will it have any impact on the ability to access the wider countryside. Insofar as it is relevant to this appeal, the reserved matters process is an appropriate vehicle to demonstrate the nature of the green infrastructure proposed within the site.

Policy Villages 1

- 5.15 As for Policy Villages 1 (Village Categorisation), again I note that the LPA's reasons for refusal do not allege conflict in this regard although it is referred to in the Statement submitted by KHVRAG. This scheme represents an extension to Banbury, rather than to Hanwell.
- 5.16 The image below (Figure 5.1) is extracted from the 'interactive Policies Map' which is accessible through the Council's website. It shows the village of Hanwell to the north (the hatching representing the Conservation Area) and the land north of Hanwell Fields (allocated via Policy Banbury 5) to the south. The Appeal Site is adjacent to the Banbury 5 allocation, rather than Hanwell.
- 5.17 Accordingly, Policy Villages 1 is not relevant to this appeal.

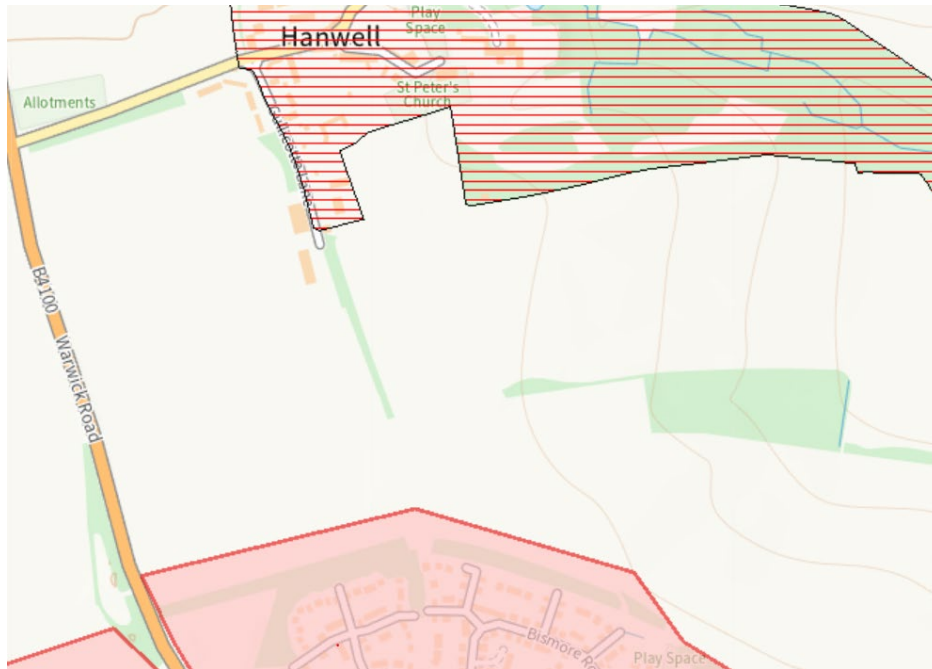


Figure 5.1: Extract from CDC's Interactive Policies Map

Policy Villages 2

- 5.18 The LPA only alleges conflict with this Policy due to the loss of Best and Most Versatile Agricultural Land.
- 5.19 At the time of the LPA determining the application, it referred to paragraph 174 of the NPPF. The relevant paragraph is now 180⁹ but no changes were made to that text in comparison with the version of the NPPF in place at the time of the decision.
- 5.20 Paragraph 174 of the NPPF (now paragraph 180 of the 2023 NPPF) 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.
- 5.21 There is no requirement in paragraph 180 in respect of individual decision-taking to consider whether the development represents the significant development of agricultural land, whether that development is necessary, whether areas of poorer quality agricultural land are available, and whether that land is available for food production. These are all matters raised by paragraph 181 in respect of plan making. Furthermore, there is no requirement in paragraph 180 that requires an Applicant undertake any form of 'sequential assessment'.
- 5.22 The development of BMV land does not 'conflict' with paragraph 180 of the NPPF, nor does the lack of any such sequential assessment.

⁹ As recognised in para 3.27 of the LPA's SoC and para 4.47 of the Appellant's SoC

- 5.23 Just as with the NPPF, Policy Villages 2 does not preclude the loss of BMV land as a matter of principle. Equally, there is nothing within the Policy to suggest that an Applicant must undertake any form of sequential assessment.
- 5.24 If the LPA does claim that the Policy requires an applicant to undertake a quasi-sequential test to identify and consider the potential availability of lower quality agricultural land, then that approach would render the Policy inconsistent with the NPPF.
- 5.25 I am advised by Reading Agricultural Consultants that:
- The economic benefits associated with BMV agricultural land at the Appeal Site comprise the production of arable crops. The site would normally be expected to yield approximately 110 tonnes of milling wheat or 80 tonnes of malting barley. These would generate a gross margin (output less variable costs such as seed and fertiliser) of approximately £9,000 to £13,000 per annum.
 - Clearly, the economic benefits associated with the presence of BMV land at the Appeal Site are small and set within the context that the UK is largely self-sufficient in grains, which are also grown for export, with estimates of the 2023 harvest in England being 12.8 million tonnes of wheat and 4.8 million tonnes of barley.
- 5.26 Furthermore, I am also advised by Reading Agricultural Consultants that:
- 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 the Appellant's Statement of Case.
 - 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).
 - Very good quality Grade 2 land is the most prevalent grade within the BMV category around Banbury.
 - This demonstrates that in general terms it is difficult to avoid the use of BMV land around the town for necessary development. The area to the north of the town, including the appeal site, is also 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.
- 5.27 Banbury is a highly sustainable location (in the context of this District, at the top of the settlement hierarchy alongside Bicester). It is entirely reasonable to assume that, in a scenario where new homes are to be delivered, that it should be focused at the most sustainable settlements.

- 5.28 The mapping presented in the Appellant's Statement of Case demonstrates that the land around Banbury is comprised of a patchwork of agricultural land quality. It is also worth reflecting that the growth of Banbury (on areas shown coloured on the mapping in the SoC) has already occurred on areas comprising BMV land (for example north of Banbury, around Bodicote, north of Wykham Lane and to the west of Banbury as well).

Policy INF1

- 5.29 Subject to an appropriate S106 planning obligation, this Policy would be satisfied.

Local Plan 1996

Policy C8

- 5.30 Policy C8 was debated in the recent 'Heyford Park' appeal decision¹⁰, with the Inspector finding (at paragraphs 21 – 23) that:

23. Policies C8 and H18 pre-date the Framework. They are inconsistent with it as the Framework promotes the development of housing where it will enhance or maintain the vitality of rural communities, rather than promoting a blanket protection of the countryside for its own sake. As a result, I give the conflict with these policies limited weight." My emphasis

- 5.31 Notwithstanding the comments by the Heyford Park Inspector, I do not consider that the scheme would result in sporadic development, which is what the Policy seeks to resist.

Policy C15

- 5.32 The LPA's reasons for refusal do not allege conflict with Policy C15 although it is referred to in the Statement submitted by KHVRAG.
- 5.33 Policy C15 is concerned with the 'Prevention of coalescence of settlements' and is a matter addressed by Mr Connolley.
- 5.34 In this case, I note Mr Connolley's comment that, although the Council does seek to rely on Policy C15 in circumstances where it considers that there are substantive reasons for concluding that open land provides a separation role in the landscape, it has not done so in relation to this appeal.
- 5.35 Mr Connolley explains, with regard to Policy C15 that the appeal proposals would not conflict with local policy with regard to coalescence and that there would remain a sense of separation between Banbury and Hanwell.
- 5.36 Accordingly, there is no conflict with Policy C15.

¹⁰ **CD10.1** - APP/C3105/W/23/3326761

Policy C33

- 5.37 The LPA's reasons for refusal do not allege conflict with Policy C33 although it is referred to in the Statement submitted by KHVRAG.
- 5.38 Policy C33 is concerned with 'Protection of important gaps of undeveloped land' and is a matter addressed by Mr Connolley who explains that appeal proposals would not be in conflict with Saved Policy C33, as the appeal site does not comprise land that is *"important in preserving the character of a loose-knit settlement structure"*.
- 5.39 Accordingly, there is no conflict with Policy C33.

Policy H18

- 5.40 The appeal proposal is not for a form of housing for which Policy H18 makes exceptions. I agree that the proposal is in conflict with this Policy.
- 5.41 Policy H18 was also debated in the Heyford Park appeal¹¹ (again at paragraphs 21 – 23) and, again, the Inspector found that this policy was inconsistent with the Framework and reduced the weight to it, for reasons other than housing land supply. In that appeal, the Inspector gave the conflict with Policy H18 limited weight.

Summary

- 5.42 There are no policies in the Local Plan Part 1 which the proposals conflict with as a matter of 'principle'. The only scope for conflict with the Local Plan Part 1 is with those policies which relate to the impact of development. In that regard, the LPA relies on Policy ESD15, with ESD13 referred to by others, namely, KHRVAG. However, the analysis undertaken by Mr Stratford, Mr Connolley and Mr Carr demonstrates that the appeal proposals are consistent with those policies. The Council refers to Policy BSC1, but rather than counting against the appeal, I conclude that this supports the proposal through the spatial approach it sets out.
- 5.43 I do not consider that there is any conflict with Policy Villages 2 in relation to the loss of BMV land.
- 5.44 When the Inspector comes to consider whether or not the proposal complies with the Development Plan as a whole, it is necessary to have regard to the provisions of Policy PSD1. It is evident (as explained below) that the presumption in favour of sustainable development should be engaged in this case.
- 5.45 Of the Local Plan 1996, the LPA relies on Policies C8 and H18.
- 5.46 Policy C8 restricts sporadic development (which this proposal does not lead to), although I recognise that the Heyford Park Inspector found conflict in that regard. Both of those policies have been found to be inconsistent with the NPPF. The LPA's reasons for refusal do not allege conflict with any other 'impact-based' policies in the Local Plan 1996 and although others, namely KHVRAG do refer to others, Mr Connolley

¹¹ **CD10.1** - APP/C3105/W/23/3326761

and Mr Stratford provide an explanation as to why the appeal proposals do not cause conflict in that regard.

- 5.47 It is necessary to consider then, whether or not the appeal proposals conflict with the Development Plan, taken as a whole, and whether that conflict with policies which are nearly 30 years old is sufficient. I do not consider that it is. The Local Plan Part 1 sets out a clear, and effusive, explanation that Banbury, alongside Bicester, is to be the focus of development in the District to 2031. The appeal scheme will deliver housing in line with that spatial strategy.
- 5.48 For these reasons, I consider that the appeal proposals do accord with the Development Plan, taken as a whole.

6. Planning Propositions

- 6.1 This section of my evidence discusses a number of planning propositions which are relevant to the determination of this appeal.

Housing

- 6.2 There is a national housing crisis, and the NPPF establishes the Government's objective of significantly boosting the supply of new homes. For the reasons set out below, **significant weight** should be given to the delivery of housing (both market and affordable) proposed as part of this development.
- 6.3 As the correspondence at **Appendix DMC1** demonstrates, the Appellant has a track record of delivering high-quality schemes in the local area.

Context

- 6.4 The Oxfordshire Strategic Housing Market Assessment (SHMA) (**CD6.7**) was published in April 2014. The SHMA found that¹² *"across Oxfordshire, there is an identified need for provision of between 4,678 – 5,328 homes a year over the 2011-31 period"*. Within Cherwell District, the need for housing was found to be between 1090-1190 dwellings per annum, with a 'mid-point' figure of 1,140 dwellings per annum¹³ over the period 2011 – 2031. Collectively, the 'mid-point' represented a total objectively assessed need of around 100,000 homes over the 20-year period across Oxfordshire as a whole.
- 6.5 Paragraph 9.57 of the SHMA concluded that:
- "The midpoint of the identified range would see housing provision of around 5,000 homes a year across Oxfordshire. This represents a significant 17% uplift on the level of housing provision identified as necessary to support Committed Economic Growth. This upwards adjustment is principally to the assessed need for Oxford and reflects the particular affordability pressures and acute need for affordable housing within the City. It reflects the need to deliver a substantial scale of increase in housing provision to support an improvement in housing affordability in the City and the wider housing market area over the longer-term."*
- 6.6 For Cherwell itself, the SHMA concluded that:
- "For Cherwell District the evidence indicates a need for 1,142 dwellings per annum (2011-31) to support the Strategic Economic Plan. This is based on supporting Committed Economic Growth. The range set out represents +/- 50 homes per annum either side of this."*
- 6.7 There has long been a recognition that Oxford City Council is unable to accommodate all of its development needs within its administrative boundaries, with the 'working assumption' that there would be an unmet need against the SHMA midpoint for the City of 15,000 dwellings to 2031. The Oxfordshire Growth Board (now the Future

¹² Oxfordshire SHMA, para 9.52

¹³ Oxfordshire SHMA, table 90

Oxfordshire Partnership) (a joint committee of the six councils of Oxfordshire together with key strategic partners) undertook work to 'apportion' this unmet need to the other Oxfordshire authorities.

- 6.8 The Cherwell Local Plan 2011-2031 (Part 1) was adopted on the premise that it would address the mid-point of the objectively assessed need for housing in the District, but in the context that a future review of the Plan would be undertaken to address the needs of Oxford City. Paragraph B.95 of the Cherwell Local Plan 2011-2031 (Part 1) states:

"... Joint work will need to comprehensively consider how spatial options could be supported by necessary infrastructure to ensure an integrated approach to the delivery of housing, jobs and services. Full public consultation will be central to a 'sound' process and outcome. If this joint work reveals that Cherwell and other Districts need to meet additional need for Oxford, this will trigger a partial review of the Local Plan, to be completed within two years of adoption, and taking the form of the preparation of a separate Development Plan Document for that part of the unmet need to be accommodated in the Cherwell District. The Council will engage in joint working on supporting technical work such as countywide Sustainability Appraisal as required to support the identification of a sustainable approach to meeting agreed, unmet needs."

- 6.9 Through the Growth Board, 4,400 dwellings were apportioned to Cherwell District to address the unmet needs of Oxford City. These were allocated through the Partial Review process.
- 6.10 In November 2017 the Government announced the Oxfordshire Housing & Growth Deal, via which up to £215 million of new funding would be made available to support the ambition to plan for and support the delivery of 100,000 homes by 2031, alongside a commitment to adopt an Oxfordshire-wide statutory joint plan (covering the period to 2050) by 2021. The 'Delivery Plan' prepared as part of the Deal states *"The Oxfordshire authorities are committed to planning to meet the 100,000 housing requirement for Oxfordshire set out by the Oxfordshire Strategic Housing Market Assessment (SHMA) by 2031."*
- 6.11 As part of the Deal, to which Cherwell District Council was a signatory, the Authorities would receive a series of planning flexibilities, including:
- A three-year housing land supply requirement up to the point of the statutory joint plan (assumed to be in 2021).
 - A bespoke Housing Delivery Test (to be applied upon adoption of the statutory joint plan for a period of three years), with the details of the bespoke Test to be subject to further consultation.
- 6.12 The three-year housing land supply requirement came into effect in 2018, but was withdrawn, following the abandonment of the statutory joint plan (by the Oxfordshire Authorities) in 2021.
- 6.13 So far as I am aware, Cherwell District Council remains a signatory to, and has not sought to withdraw itself from, the Oxfordshire Housing & Growth Deal.

- 6.14 Notwithstanding the revised Regulation 10A Review undertaken in February 2023, the Council's position, alongside the other Oxfordshire authorities, therefore appears to be that it remains committed to planning for the delivery of 100,000 homes by 2031.
- 6.15 I explain below that the District's contribution to the 100,000 homes equates to a total of 27,240 dwellings (for CDC and the apportioned unmet needs from Oxford City) between 2011 – 2031. The Development Plan is predicated upon the delivery of 1,142 dwellings per annum between 2011 – 21 and 1,482 between 2021 -2031 (accounting for the uplift for the City).
- 6.16 Between 2011 – 2023, 12,312 dwellings were delivered in the District. Mr Richards highlights that there is already an accrued shortfall to 2023 of 2,072 dwellings.
- 6.17 If the expectations of the Housing & Growth Deal and the adopted Development Plan are to be achieved in the District, then 14,928 dwellings still need to be delivered (from 1st April 2023 to 21st March 2031)¹⁴. In the eight years which remain of the Plan-period, the accrued shortfall means that **1,866 dwellings** would need to be delivered on average each year in the District. In essence, to achieve those aspirations, the level of housebuilding in the District now needs to exceed, consistently, the annual rates upon which it was predicated and which have been delivered so far during the Plan-period¹⁵ by some margin.

Regulation 10A Reviews of the Cherwell Local Plan 2011-2031 (Part 1)

- 6.18 In 2020, the Council undertook its first review of the Cherwell Local Plan 2011-2031 (Part 1) under Regulation 10A Town and Country (Local Planning) (England) Regulations 2012 (as amended). At that time, the Council's assessment (**CD6.11**) found that the Local Plan policies did not need updating. That Review was approved by the Council's Executive on 4th January 2021.
- 6.19 In relation to the housing requirement in Policy BSC1, the original Regulation 10A Review found (on pages 8 – 10) that:

“The housing requirement figure in the Local Plan derives from the Oxfordshire Strategic Housing Market Assessment 2014. This assessment remains the latest cooperative assessment of housing need across the housing market area. It underpins not only the Local Plan, but also the Cherwell Local Plan Part 1 Partial Review, which was found sound by the Inspector in his report as recently as August 2020. A number of other Inspectors have reached the same conclusion in respect of Local Plans adopted across Oxfordshire. It is considered that the 1,142-housing requirement therefore remains appropriate and supported by relevant evidence.

Other circumstances relevant to this include:

- *The Oxfordshire Housing and Growth Deal 2018*
- *Oxfordshire Growth Board's agreement (26.09.16) sets out the latest cooperatively produced agreement about the apportionment of Oxford's unmet*

¹⁴ Deducting the 12,312 figure in Table JRT1 of Mr Richards' evidence from the figure of 27,240

¹⁵ See Table JRT1 of Mr Richard's evidence

housing need for 2011 to 2031, reflected in adopted and emerging Local Plans in Oxfordshire.

- *Oxfordshire Infrastructure Strategy (OxIS) which identifies, maps and ranks Oxfordshire's strategic infrastructure requirements to 2040 and beyond.*

In conclusion, policy BSC1 is currently delivering the District's housing requirements. Moreover, it exceeds the starting point established by LHN as a minimum. It is consistent with the NPPF objective of significantly boosting housing supply and NPPF paragraph 60. It is also generally consistent with emerging changes to national policy outlined in the recent document 'Changes to the Current Planning System' and other emerging reforms to the planning system."

- 6.20 On 6th February 2023, Cherwell District Council's Executive approved the 2022 Regulation 10A Review (**CD6.12**) of the Local Plan 2011-2031 Part 1. Apart from Policy BSC 1: Districtwide Housing Distribution, the revised Regulation 10A Review found that the policies were generally consistent with the NPPF. In relation to Policy BSC1, the Review found that *"In conclusion, policy BSC1 which sets the housing requirement for the district requires updating."*

- 6.21 The revised Review found (in relation to Policy BSC1) that:

"New evidence in the form of the Housing and Employment Needs Assessment (HENA) 2022 is up to date evidence of housing need, which provides an assessment materially different to that in the 2014 SHMA. It indicates that the 2014 SHMA is now out of date. In light of this, it is judged appropriate and in accordance with national policy to move to the standard method for the purposes of calculating housing land supply.

This means that for monitoring and housing land supply purposes Cherwell's minimum housing requirement is 742 dwellings per year as calculated using the standard method and in accordance with paragraph 74 of the NPPF.

The housing requirement needs updating. This is currently being undertaken through the emerging Local Plan Review 2040 which will consider the requirement and distribution of housing across the District to 2040."

- 6.22 Notwithstanding the outcome of the Council's revised Regulation 10A Review, that process does not change what the Development Plan says, or the quantum of growth which the Development Plan seeks to deliver.
- 6.23 In line with the commentary set out above, CDC is therefore still committed to planning for the delivery of 100,000 homes to 2031 by virtue of both its ongoing participation in the Housing & Growth Deal, and through the Development Plan.

The Adopted Development Plan Context

Cherwell District Council's Housing Needs

- 6.24 Irrespective of the Council's revised 2022 Regulation 10A Review, the Local Plan 2011 – 2031 is based on the delivery of 22,840 additional dwellings between 1 April 2011 and 31 March 2031. That figure is based on the SHMA 2014 'mid-point' figure of 1,142 dwellings per annum.
- 6.25 The Council (alongside the other Oxfordshire authorities) was, and remains, party to the Oxfordshire Housing & Growth Deal, through which it committed to plan for the delivery of 100,000 homes to 2031. Cherwell District's 'contribution' to that level of growth includes that set out in Policy BSC1, as well as its commitment, through the subsequent Partial Review (and agreements made through the Growth Board) to addressing the unmet housing needs of Oxford City (a further 4,400 dwellings to 2031).

Oxford City Council's Housing Needs

- 6.26 The Council has committed to delivering 4,400 dwellings to address unmet housing needs from Oxford City.
- 6.27 The LPA's SoC (paragraph 2.16) claims that the Heyford Park Inspector "*set aside Development Plan strategy and implicitly seeks to meet Oxford's housing need deficit at Heyford, with no explanation of why and no consideration of its implications.*" I also recognise that the Partial Review Inspector did accept exceptional circumstances had been demonstrated to release land within the Green Belt, informed, in part, by the logic of addressing the City's needs as close to it as possible.
- 6.28 I accept that this Appeal Site is not 'at Oxford' and do not dispute, in a Plan-making context, the logic of accommodating needs close to where they arise. However, the simple fact is that there has been a fundamental failure in Cherwell District to address the needs from the City in the manner intended which exists in addition to the shortfall against the needs of Cherwell District. In the context of that failure, it is entirely reasonable to take opportunities on the edge of one of the most sustainable settlements in the County which is capable of providing sustainable travel links to the City.

Policy PR12 of the Partial Review sets provisions relating to the delivery of sites and maintaining a housing supply (which must itself be capable of leading to policy consequences) to address the unmet needs of the City and, in part b provides criteria for other sites not allocated through the Partial Review, but the effect of that aspect of the Policy is to restrict the delivery of other sites unless various criteria have been satisfied. The first of those criteria is that "*Cherwell District Council has taken a formal decision that additional land beyond that allocated in the Partial Review is required to ensure the requisite housing supply*". Despite the Council's own position (supply) regarding meeting the needs of the City it has not, as far as I am aware, made such a formal decision.

- 6.29 Moreover, Oxford is surrounded by Green Belt which, by my calculations, extends around 6km into Cherwell District (to the north western edge of the 'London Oxford Airport' which broadly lies to the north west of the City), and further still into the District to the north and north east of the City.

- 6.30 That raises the question as to how, in a Development Management context, the needs of Oxford can be addressed when the Development Plan is failing in the manner it is here. To maintain the 'spatial strategy' upon which the Partial Review is based would be required (aside from the measures in Policy PR12b), applications on land within the Green Belt and very special circumstances to be demonstrated. I am not aware that any such applications have been submitted in any of the Oxfordshire authorities in recent years on that basis. The alternative, as I explain above, is to take the opportunities presented on the edge of one of the most sustainable settlements in the County (Banbury).
- 6.31 The reality, without that alternative approach, is that there is no remedy which appears particularly likely to deliver the necessary housing and the contribution which the District makes to addressing this key strategic issue will continue to be diminished despite the very clear position of the Deal and the Development Plan.

The Emerging Development Plan Context

- 6.32 It is telling to note that the Council's Regulation 18 draft Local Plan refers to evidence (which it jointly commissioned with the City Council through joint-working on Plan-making) which *"points to an overall scale of housing need above the minimum level of need arising from the Standard Method". It states that the Standard Method underestimates housing need by not capturing demographic data post 2014, and not allowing for sufficient housing to match the level of job creation expected to 2040.*¹⁶
- 6.33 In essence, the draft Local Plan tells the reader what is wrong with the outcome of the Standard Method in Cherwell District, and why greater levels of housing, not that dissimilar to the figure in the adopted Local Plan need to be provided for.
- 6.34 The draft Local Plan Regulation 18 also states:¹⁷

"Our current assumption is that Cherwell has need for some 1,009 homes per annum to meet its own projected needs. We also assume that Oxford has a need for some 1,322 homes per annum.

Oxford City Council published its own consultation paper on housing need in from February to March 2023. In that paper, it considered that Oxford had capacity to accommodate 457 homes per annum having regard to its administrative boundaries and constraints. This may change. But on that basis, Oxford could have an unmet need of some 865 homes per annum.

Were that unmet need to be distributed to the other districts to the same percentages as previously occurred in 2014, Cherwell would accommodate approximately 33% of the unmet need."

- 6.35 That is taken from Table 2 of the draft Local Plan, repeated below for ease.

¹⁶ Cherwell Local Plan Review 2040 Consultation Draft (Regulation 18) September 2023, paragraph 3.166

¹⁷ Cherwell Local Plan Review 2040 Consultation Draft (Regulation 18) September 2023, paragraphs 3.170 – 3.172

Table 6.1: Table DMC5.1: Levels of growth set out in table 2 of the draft Local Plan, September 2023

Projected Housing Need	Number of Dwellings
Cherwell's housing need	1,009 per annum
Oxford's housing need	1,322 per annum
Oxford's current housing capacity	457 per annum
Oxford's current unmet need	865 per annum
Indicative % of unmet need to Cherwell	32.8%
Unmet need potentially distributed to Cherwell	284 per annum
Housing need to be met in Cherwell	1,293 per annum
Housing need to be met in Cherwell 2020-2040	25,860

6.36 The Council's 2022 Regulation 10A Review was taken as an opportunity to reduce the requirement against which it calculated its housing land supply (using the Standard Method in lieu of the Local Plan figure). It is notable that the Council now tells us, via the September 2023 draft Local Plan, that the levels of growth to be delivered to 2040 are not dissimilar to those under the current Development Plan, and certainly in excess of the Standard Method.

6.37 The adopted and emerging Local Plans provide for comparable levels of growth, yet the LPA's position before this Inquiry, is that fewer homes are required (due to its second Regulation 10A Review). I take the contrary view. The Council's position is counterproductive to achieving the expectations of the Housing & Growth Deal, fails to support the levels of growth planned through the Development Plan, and is counterintuitive considering its own publicised position and recognition of the local issues associated with the Standard Method.

Housing Land Supply

6.38 Mr Richards sets out a range of considerations relating to housing supply matters such as:

- To March 2023, there is an accrued shortfall for Cherwell's own housing needs and the provisions for those of the City which he categorises that situation as a **serious and significant level of under-delivery**.
- That situation is even worse when compared to the Local Plan housing trajectory (i.e. what the Council expected to deliver).
- These shortfalls are predicted to worsen to 2031 (the end of the Plan-period)

- On the basis of a single housing requirement, as per the Heyford Park decision, the Council would have a housing land supply position of **2.12 years (a shortfall of 3,641 dwellings)**
- On the basis of a calculation using the Local Housing Need figure, the Council would have a housing land supply position of **3.78 years (a shortfall of 865 dwellings)**
- On the basis of a calculation against Oxford City's unmet needs, the Council would have a housing land supply position (for the needs of Oxford City) of **0.01 years (a shortfall of 2,776 dwellings)**

Affordable Housing

- 6.39 Ms Gingell of Tetlow King sets out evidence on affordable housing matters on behalf of the Appellant.
- 6.40 As Ms Gingell explains, the Local Plan policies require 30% of the proposed housing to be provided as 'affordable housing'. The Appellant has proposed a figure of 40% and the proposal exceeds the requirements set through Policy BSC3.
- 6.41 Although I do not repeat Ms Gingell's evidence, I do note the strength of Ms Gingell's comments that market signals indicate a worsening trend in affordability in Cherwell and that by any measure of affordability, this is an authority in the midst of an affordable housing crisis.
- 6.42 For the reasons set out above, **significant weight** should be given to the benefits derived from the affordable housing proposed as part of this development.

Design

- 6.43 Mr Carr of Pegasus presents evidence in relation to urban design matters on behalf of the Appellant. As Mr Carr notes, there are no specific urban design related concerns within the LPA's reasons for refusal or SoC.
- 6.44 In fact, as Mr Carr notes, there are a number of matters which can be resolved at reserved matters stage and/or during the production of a Design Code.
- 6.45 On the basis of the lack of any specific urban design related concerns expressed by the LPA in reasons for refusal or SoC, the nature of the application in outline and the fact that matters can be overcome through future stages, this is clearly a proposal which can deliver a design which responds to Policy ESD1, ESD15, the LPA's Residential Design Guide SPD and the relevant design-related provisions of the NPPF.
- 6.46 I therefore consider that these benefits of the scheme should be given **moderate weight**.

Economic Benefits

- 6.47 The Appeal Scheme represents an opportunity to support private sector investment into the local economy. The scheme will also deliver new homes and create a range of direct, indirect and induced economic impacts in the local area.
- 6.48 In my **Appendix DMC2** I have included an “*Economic Benefits Infographic*” which summarises the notable economic contributions of the Appeal Scheme. Some of the quantifiable economic impacts of the proposed development therefore include:
- During the construction phase:
 - £30.9m in construction investment
 - 80 gross FTE jobs, of which 45 direct FTE jobs will be held by residents in Oxfordshire including 35 in Cherwell, plus 20 indirect/induced jobs
 - £9.2m towards GVA economic output
 - During the ‘operational phase’
 - 195 working-age employed residents
 - £6.1m in gross annual income amongst employed residents
 - £400,000 towards Council Tax revenue per annum
 - £930,000 ‘first occupation expenditure’
 - £1.6m in annual leisure expenditure
 - £2.8m in annual retail expenditure
 - 35 retail and leisure jobs supported per annum
- 6.49 The economic benefits of the scheme should be given **significant weight**.

Environmental Considerations

- 6.50 The Appellant’s Statement of Case (and the application material) demonstrates that the scheme will provide for a Biodiversity Net Gain of 38% for habitats and 10% for hedgerows. That is despite the fact that the scheme is not subject to the requirements of the Environment Act 2023.
- 6.51 **Moderate weight** should be given to the Biodiversity Net Gain which would be achieved as part of this development.
- 6.52 Separately, the proposal will also provide an area of publicly accessible open space which will serve residents of the scheme, as well as existing residents in the area. I consider that this should be afforded **moderate weight**.

6.53 As for any ‘environmental harms’ associated with the landscape and heritage considerations:

- There will be a change to appeal site there a degree of harm arising as a consequence. However, Mr Connolley explains that the appeal proposals are not harmful to the landscape resource as a whole (as opposed to the Appeal Site in isolation). Consequently, given limited and localised impact of the proposal on landscape considerations as addressed by Mr Connolley, **limited weight** should be afforded in this regard.
- Mr Stratford sets out that the heritage impact of the proposal is **limited** to less than substantial harm to the Hanwell Conservation Area which, and as a result of the various planning propositions I set out, are clearly outweighed by the public benefits¹⁸.
- The weight to be afforded to the loss of BMV land should be **limited**. The scheme will not result in the significant loss of BMV, the economic benefit of the appeal site in relation to the presence of BMV land are limited and as one of the most sustainable settlements in the District, Banbury sits within mosaic of land quality, much of which is BMV land.

¹⁸ The balancing exercise required by paragraph 208 of the NPPF

7. Response to Representations

7.1 This section of my evidence refers to representations made by third parties, including those made by the Keep Hanwell Village Rural Action Group (KHVRAG).

7.2 The matters raised in the representations relate to the following topics:

- The principle of development, including that the site is not allocated for development and is identified as countryside;
- That only 'small infill' development should occur at Hanwell;
- Highways Matters, including the impact of additional vehicle movements, the accessibility of the Site and the access to public transport;
- Housing Matters, including that the quantum of development delivered at Banbury, that the Council is able to demonstrate a 5.4 year housing land supply and that the scheme site does not include social housing;
- Landscape and visual matters, including the alleged coalescence of Banbury and Hanwell, the approach of the Local Plan Inspector to Policy Banbury 5, the loss of important public views, the ability of residents to access open space, the impact on users of the public right of way network;
- Matters relating to the reduction in the rural setting of Hanwell and the identity of the settlement;
- Heritage considerations, including archaeology, listed buildings and the Conservation Area;
- The impact of development on biodiversity and ecological considerations;
- The loss of agricultural land;
- Design considerations;
- An increase in anti-social behaviour;
- The impact on social infrastructure;
- The impact on utility infrastructure;
- The impact on pollution and air quality
- Sustainable design and construction; and
- The impact on construction (due to noise, traffic and dust and debris for example).

- 7.3 A significant number of the matters raised by third party representations are addressed, either through the technical material submitted as part of the application or through the subsequent consideration of the application by statutory consultees. As a consequence, a significant number of these matters have been addressed through the application process, noted by the lack of any reference to them in the LPA's reasons for refusal.
- 7.4 The heritage, landscape and design related considerations are addressed through the evidence submitted by Mr Stratford, Mr Connolley and Mr Carr respectively.
- 7.5 The KHVRAG appeal statement explains that it maintains its objections for four main reasons:
- Conflict with the spatial strategy, which sets limits to growth for Banbury and Hanwell. In the case of Hanwell, there is clear conflict with policy PV1;
 - Harm to character and appearance of the area, including coalescence;
 - Impact on heritage assets; and
 - Loss of best and most versatile agricultural land
- 7.6 Since each of these matters is addressed by the evidence submitted on behalf of the Appellant, I do not consider them in any more detail here.
- 7.7 KHVRAG's appeal statement also alleges that, in addition to the policies referred to in the reasons for refusal, the scheme also conflicts with ESD13 and ESD17 of the Local Plan 2011 – 2031 Part 1 and Policies C15 and C33 of the Local Plan 1996.
- 7.8 I have considered these policies in Section 4 of my evidence (and note that they are addressed by Mr Connolley and Mr Stratford), and do not consider that any conflict arises in that regard.

8. The Planning Balance

8.1 Drawing all of the above together I consider the principal points arising from my assessment of the Development Plan and material considerations of relevance to this evidence, are as follows:

- If the scheme complies with the Development Plan as a whole and there are no material considerations that indicate why permission should not be granted, s.38(6) (and NPPF paragraph 11(c)) require that permission should be granted;
- If the scheme is found to be in conflict with the Development Plan as a whole, and the most important policies are up to date, then it is still necessary to have regard to material considerations; and
- If the most important policies are out of date, the proposals should be judged using the tilted balance.

8.2 The NPPF is clear that the purpose of the planning system is to contribute to sustainable development. Sustainable development is summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs, and should achieve net gains for economic, social and environmental objectives.

8.3 I consider that the economic and social benefits are to be afforded **significant weight** in the planning balance. The proposal does deliver environmental benefits which I consider should be afforded **moderate weight** in the overall planning balance.

8.4 In relation to the adverse environmental impacts, these should be afforded **limited weight**.

The 'Flat Balance' - the Application of s.38(6) of the PCPA 2004

8.5 The starting point for determining this appeal is the Development Plan, as required by section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004.

8.6 As I have set out, my evidence is that the appeal proposals do comply with the Development Plan, taken as a whole.

8.7 Of course, even if the flat balance does apply, and if the proposals do not accord with the Development Plan taken as a whole, that is not the end of the matter and the Inspector should consider whether other material considerations justify the granting of planning permission and in that regard I note:

- The level of conflict with the Development Plan is limited to the location of the site outside the existing settlement (with policies nearing 30 years old). Any conflict in that sense should be afforded limited (as per the Heyford Park decision);

- If there is conflict with Policy Villages 2 (due to the loss of BMV land) then that would be limited in its own right, but should also be seen in the context that such conflict would be inconsistent with the approach in the NPPF and afforded limited weight as a consequence; and
- Each of the propositions positive planning propositions which I have set out continues to apply

8.8 Given the existing and ongoing housing situation in the District, with significant and serious shortfalls and an affordable housing crisis, the opportunity presented by this appeal to accommodate new homes at a highly sustainable place, with only limited and localised harm arising, the material considerations and benefits of granting this appeal would clearly outweigh any limited conflict with the Development Plan.

The 'Tilted' Balance

- 8.9 The circumstances in which policies in the NPPF 'provide clear reason for refusing' a proposed development (such that the presumption does not apply) are confirmed in footnote 7. However, none of those policies apply in this instance.
- 8.10 The 'tilted' balance set out in paragraph 11(d) of the NPPF should be engaged in this case, as a consequence of the housing land supply position set out in Mr Richards' evidence.
- 8.11 The adopted Development Plan is not delivering what it should, with a **serious and significant level of under-delivery** against the needs of Cherwell District and those of Oxford City, which the LPA is committed to plan for, with the of under delivery is forecast, through Mr Richards' evidence, to worsen.
- 8.12 Two of the policies referred to by the LPA (C8 and H18) have been found to be inconsistent with the NPPF, with a recent Inspector's decision finding that conflict with those policies should be limited. Based on the housing situation in the District, the weight afforded to any conflict with these policies should be diminished.
- 8.13 Where the tilted balance is engaged the NPPF does not prescribe what weight should be attached to development plan policies which are deemed 'out of date', albeit one can conclude that such weight is likely to be reduced.
- 8.14 For the reasons set out above I consider that the most important policies (which I take to be those relied upon by the LPA in its reasons for refusal) for the determination of the appeal are out of date and significantly reduced weight should be attributed to them.
- 8.15 Paragraph 11(d) represents a deliberately high bar. The adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. By extension, the proposals satisfy Policy PSD1 (Presumption in Favour of Sustainable Development).

9. Summary and Conclusions

- 9.1 This is a proposal for up to 170 dwellings on land north of Banbury in Cherwell District. Banbury is one of the most sustainable locations in the District (and the county of Oxfordshire) which provides connections further afield, including to Oxford.
- 9.2 The Local Plan Part 1 was produced based on county-wide evidence which indicated a 'mid-point' requirement for around 100,000 homes and joint working between the District Council and the other Oxfordshire authorities resulted in an agreed approach to the apportionment of the unmet housing needs arising from Oxford City.
- 9.3 Given the significance of supporting growth in the county, the authorities collectively agreed a 'Housing & Growth Deal' with Government. In return for planning for 100,000 homes between 2011 and 2031, Government provided various planning flexibilities and more than £200m of funding towards infrastructure and affordable housing.
- 9.4 The Local Plan Part 1 addressed the needs of the District only, but the Council the adopted a Partial Review to deliver its share of the City's needs within the Oxford Green Belt.
- 9.5 The evidence of Mr Richards how there are serious and significant shortfalls of housing delivery and supply in the District.
- 9.6 If, as the Council seeks to do, the housing provisions it has agreed as part of the Development Plan and Housing & Growth Deal are set aside in their entirety, and the unmet needs of Oxford are ignored, and the LHN figure is used, Mr Richards identifies a supply of 3.94 years.
- 9.7 The Council's own draft Local Plan itself sets out the issues of the LHN figure, and the provisions which it expects to make for the City, resulting in an overall level of growth to 2040 which is not dissimilar to the Local Plan Part 1/Partial Review figures.
- 9.8 Ms Gingell's evidence sets out, with force, that market signals indicate a worsening trend in affordability in Cherwell and that by any measure of affordability, this is an authority in the midst of an affordable housing crisis.
- 9.9 The LPA relies on two policies which have any relevance to matters of principle, both dating from 1996, nearly 30 years ago, both of which have been found to be inconsistent with the NPPF. Notwithstanding that inconsistency, the weight to these policies should be diminished as a consequence of the housing situation in the District.
- 9.10 Each of the other policies referred to in the reasons for refusal relates to the impact of proposed developments, rather than principles. Mr Connolley and Mr Stratford set out how the proposals address the requirements of those landscape and heritage-based policies, whilst Mr Carr explains how the proposal can deliver a high-quality scheme which responds to the policies of the Development Plan, the Council's Residential Design Guide SPD and the NPPF.

- 9.11 The Council also resists the development for reasons associated with the loss of Best and Most Versatile agricultural land, taking an approach which is inconsistent with the NPPF. However, the appeal scheme will not result in a significant loss of BMV which only represents a limited economic benefit. It is also worth noting that the land around Banbury is comprised of a patchwork of agricultural land quality, including BMV land which has often been developed during the town's growth.
- 9.12 I explain how the proposals comply with the Development Plan when it is taken as a whole. In that case, the appeal should be allowed and permission granted.
- 9.13 Even if the appeals are found to conflict with the Development Plan taken as a whole, the benefits which the scheme will deliver should be afforded significant weight. In this case, I also conclude that the appeal should be allowed and permission granted. Any such conflict would be limited and the material considerations in favour of the scheme are significant.
- 9.14 Given the housing situation, the presumption in favour of sustainable development (in the NPPF and Local Plan Part 1) should be engaged. The appeal should be allowed unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the NPPF taken as a whole. That is far from the case in this situation given the weighty significant material considerations, particularly in association with the social and economic dimensions of sustainable development. Accordingly, the appeal should be allowed and permission granted.

Appendix 1: Letter from Vistry

Introduction

Vistry Group is the UK's leading provider of affordable mixed tenure homes delivered through our Partnerships-led approach. Our purpose as a responsible developer is to deliver sustainable homes, communities, and social value, leaving a lasting legacy of places people love.

Delivering thousands of homes every year for the affordable and private market places, Vistry Group has an unmatched portfolio of retail brands, each with a rich history and strong reputation: Linden Homes, Bovis Homes and Countryside Homes.

Vistry has a hard-earned reputation for delivering quality new homes across all housing tenures. We work to deliver truly sustainable and mixed communities with partners such as government bodies, local authorities and housing associations. The strength of our partnerships is that they are built upon shared objectives and values, transparency, trust and delivery. We seek ultimately to enrich the communities within which we work and pride ourselves on doing the right thing.

National Context

As is widely reported, housing need and affordability pressures are becoming increasingly visible within our society. We know that as a business building homes, we have a responsibility, through the delivery of affordable housing, to contribute towards helping address the following alarming statistics:

- Almost 1.3 million households are on Local Authority Housing Waiting Lists
- Between July and September 2023, 109,000 households were living in temporary accommodation, up by 10.3% on the same time last year, and the highest number since the government started keeping records 25 years ago.
- Due to affordable housing shortages 310,000 children are forced to share beds with other family members due to severe overcrowding.
- In 2022-23, for every new social home built in England, six households were accepted as homeless by their local council, while more children than ever before are living in temporary accommodation.
- Councils are spending £1.74bn to support households in temporary accommodation in 2022/23
- A quarter of parents in overcrowded homes are regularly forced to sleep in a living room, bathroom, hallway or kitchen because of the lack of space. This affects 180,000 families.
- In just under half (41%) of overcrowded homes, children are sharing a bedroom with their parents. This could affect more than 300,000 families and half a million children, including 142,000 teenagers.
- Parents in more than half (53%) of overcrowded homes worry that their children are too embarrassed to bring friends home. This could affect more than one million children.
- In almost half (48%) of overcrowded homes, children struggle to do their homework because of the lack of space. This could affect 900,000 children.

- Over two thirds (70%) of overcrowded families say they have experienced both poor mental and poor physical health as a direct result of overcrowding. This could affect over half a million families.

**Source: National Housing Federation 'Overcrowding in England' April 2023
Government Statistics – Statutory Homelessness in England – July to September 2023**

Vistry Response – nationally and locally

As a responsible developer – and as compassionate members of society – we must do the right thing. We demonstrate this by, for example, the fact that 65% of the homes we build are for our Registered Provider, Private Rented Sector or Local Authority Partners to help meet affordable housing need.

We aim to build more than 100,000 homes over the next 5 years; of these, at least 65,000 will be affordable mixed tenure homes. Our commitment to this is demonstrated through our recent Partnership with Leaf Living and Sage Homes to deliver 2,915 homes across 70 of our developments to deliver a mixture of affordable rent, shared ownership and PRS homes.

Whilst we have a national presence, we also have a proven track record of delivering affordable housing across **Oxfordshire including Cherwell District**.

We are currently delivering 320 new homes to the west of the appeal site, known as Drayton Lodge. 154 of these will be affordable homes delivered in Partnership with Paradigm and Sage who are both registered providers. In addition to Drayton Lodge, in the last ten years we have delivered c.121 affordable homes on two sites in Banbury and Bicester, working with partners such as Stonewater, Sovereign and Platform.

We are fully committed to the delivery of housing, and in particular desperately needed affordable housing, in Cherwell District. Testament to this is our commitment to deliver an above-policy requirement of 40% affordable housing on the appeal site through the S106 agreement. Should this appeal be allowed, we will work with our delivery partners to increase the overall amount of affordable mixed tenure housing to 65% to contribute towards meeting the District's affordable housing need.

If the appeal is allowed this site will significantly contribute towards Cherwell's housing needs and, importantly, will provide much needed affordable housing for those households living in overcrowded accommodation or that are homeless. As a responsible developer, that can deliver this housing, we strongly (and respectfully) request that the appeal is allowed.

Conclusion

This site would contribute significantly towards Cherwell's housing needs and, crucially, will contribute towards providing affordable housing for those 2,045 households on the Housing Register in Cherwell and who are desperately in need.

As a responsible developer, that can – and wants to – provide these homes, we strongly request that the appeal is allowed.

A handwritten signature in black ink, appearing to read 'Mark Elliot', with a stylized, cursive script.

Mark Elliot
Senior Strategic Planning Manager
Vistry Group

Appendix 2: Economic Benefits Infographic

Economic Benefits Infographic

PROPOSED DEVELOPMENT: Up to 170 residential dwellings¹

SITE: Land east of Warwick Road, Banbury

Construction Phase



£30.9 million²

Construction investment

Estimated during the construction period



80 gross FTE jobs

supported on an annual basis throughout the construction period (estimated 2 years)

Of which, 45 direct FTE jobs

will be held by residents in Oxfordshire, including 35 in Cherwell

**Plus 20 indirect/
induced FTE jobs**

will be held by residents in Oxfordshire, including 10 in Cherwell



£9.2 million

Total GVA³ economic output

over the construction period including £7.2 million local to Cherwell

Operational Phase



170

New homes

Providing high-quality homes for circa 390 residents



195

Working-age employed residents

estimated to live on the new development



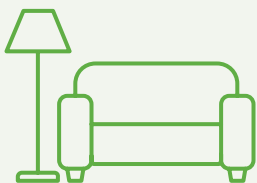
£6.1 million

Gross annual income
amongst employed residents of the new homes



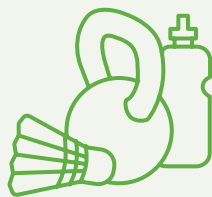
£400,000

Council Tax revenue
uplift per annum for Cherwell District Council



£930,000

First occupation expenditure
to make a 'house feel like a home'



£1.6 million

Annual leisure expenditure
uplift per annum



£2.8 million

Annual retail expenditure
uplift per annum



35

Retail and leisure jobs
supported per annum

¹ All estimates assume delivery of the maximum number of homes for which outline planning permission is sought (i.e. 170).

² Estimated using BCIS for the purpose of estimating the economic benefits of construction only. This relies on information within the proposed outline masterplan and is therefore subject to change.

³ The UK's Office for National Statistics defines GVA as: "Gross Value Added (GVA) is a measure of the increase in the value of the economy due to the production of goods and services". Please note that the GVA estimates presented here are workplace-based, where GVA is allocated to the area in which the economic activity takes place.

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