



Cherwell

DISTRICT COUNCIL
NORTH OXFORDSHIRE

**PLANNING SUPPLEMENTARY REBUTTAL PROOF OF EVIDENCE ON BEHALF OF THE LOCAL
PLANNING AUTHORITY**

LPA References: 23/00853/OUT (Appeal Reference: 24/00004/REF)

PINS Reference: APP/C3105/W/24/3338211

Date: 20th May 2024

Appeal by Vistry Homes Ltd against the decision by Cherwell District Council to refuse planning permission 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'* on *'Land east of Warwick Road, Banbury, Oxfordshire'*.

- 1.1 Since the appeal in question (APP/C3105/W/24/3338211) was refused planning permission at Planning Committee in August 2023 the case officer (Richard Greig) has left employment at Cherwell District Council.
- 1.2 Andy Bateson, the Development Team Leader for Major Developments at Cherwell District Council who prepared and submitted the Statement of Case for this appeal and who has overseen this appeal since it was submitted as an outline planning application is currently on long term leave.
- 1.3 I joined Cherwell District Council on the 15th April 2024 shortly before Andy went on long term leave. In preparing my Proof of Evidence [C.D 9.7] for submission on 7 May I focussed my consideration of the development plan on the policies referenced in the reasons for refusal. Neither Policy C15 or C33 are referenced in the Officers Planning Committee Report prepared by Richard Grieg or the Statement of Case on behalf of Cherwell District Council prepared by Andy Bateson. It is for that reason that neither of these policies were referenced in my Proof of Evidence.
- 1.4 Paragraph 9.10 of the Affordable Housing Proof of Evidence [CD.9.2] refers to Policy BSC3 of the Cherwell Local Plan [CD.5.1] being the primary policy for affordable housing, requiring *30% on site affordable housing in Banbury*. Paragraph 9.67 of the Officer's Planning Committee Report refers to 30% of the housing from the scheme being affordable housing as required by Policy BSC3. Whilst this was the view of the case officer at the time, I consider that as per the wording of Policy BSC3, the requirement for at least 30% of the housing to be affordable on schemes of 11 or more dwellings only applies to schemes at Banbury and Bicester. I consider the site the subject of this appeal is outside of Banbury. The requirement for at least 35% of all dwellings being affordable is therefore applicable as per the wording of Policy BSC3.
- 1.4 Paragraph 3.14 of the Appellants Landscape Proof of Evidence [CD 9.4] that has been prepared by Mr Connolly acknowledges that Policy C15 of the Cherwell Local Plan continues to apply in order to provide protection where necessary to *"prevent coalescence between settlement"*. Mr Connolly goes on to state that *Notably, the Council does continue to rely on this policy in circumstances where it considers that there are substantive reasons for concluding that open land provides a separation role in the landscape. However, here, C15 is not identified within the Council's SoC, nor within the RfRs.*
- 1.5 I consider that the proposal in question conflicts with the objective of Policy C15 which seeks to *prevent the coalescence of settlements through resisting development in areas of open land which are important in distinguishing them*. The sub text to policy C15 as contained in paragraph 9.30 of the 1996 Local Plan states that *each town or village may have its own separate identity and it is important that development on areas of open land between them is restricted to prevent their coalescence*. Paragraph 9.30 specifically references the gap between Banbury and Hanwell as being *vulnerable to coalescence where development should be resisted*.
- 1.6 In evaluating Policy C15, the Regulation 10 Review of the Cherwell Local Plan [CD5.2] concluded that:
- The policy is generally consistent with the NPPF and local circumstances do not indicate that the policy needs updating at this time. The emerging Local Plan will consider policies to manage development to 2040.*

1.7 My view is that Policy C15 is an up to date policy which is compliant with the NPPF in so far as paragraph 135 of the NPPF requires *planning policies and decisions to ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.*

1.8 I consider that the proposals in question would result in the coalescence of Banbury and Hanwell thereby removing the identity of the separate settlements. The fact the Local Plan identifies and makes specific reference to the gap between Banbury and Hanwell as being vulnerable to coalescence further illustrates the importance that this open land holds. On this basis I do not consider that the development of land that separates Banbury from Hanwell accords with Policy C15.

Policy C33.

1.9 In paragraph 5.15 of Mr Connolly's Landscape Proof of Evidence, Mr Connolly states that he does not consider the Appeal proposals would be in conflict with Saved Policy C33 as he does not consider the Appeal site to comprise land that is important in preserving the character of a loose-knit settlement structure.

1.10 In evaluating Policy C33, the Regulation 10 Review of the Cherwell Local Plan [CD6.11] concluded that:

The policy is generally consistent with the NPPF and local circumstances do not indicate that the policy needs updating at this time. The emerging Local Plan will consider policies to manage development to 2040.

1.11 My view is that Policy C33 is an up to date policy which is compliant with the NPPF in so far as paragraph 135 of the NPPF requires *planning policies and decisions to ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change*

1.12 Policy C33 clearly states that the *Council will seek to retain any undeveloped gap of land which is important in preserving the character of a loose-knit settlement structure or in maintaining the proper setting for a listed building or in preserving a view or in maintaining the proper setting for a listed building or in preserving a view or feature of recognised amenity or historic value.*

1.13 Paragraph 9.30 of the 1996 Local Plan has identified the site in question as an undeveloped gap that preserves the character of Hanwell through separating it from Banbury. Policy C33 refers to *any undeveloped gap or land*. Through making specific reference to the undeveloped nature of the site that separates Banbury from Hanwell, the 1996 Cherwell Local Plan clearly considers the site to be *'important'* in the context of Policy C33. I do not consider that the proposals forming the basis of this appeal will retain this important and undeveloped gap that separates Hanwell from Banbury and would therefore be contrary to policy C33.

1.14 The subtext to Policy C33 as contained in Paragraph 9.78 states that proposals that would *close or interrupt an important vista across open countryside will also be resisted* under this

policy. Similarly, the subtext contained in paragraph 9.77 states the proposal that would *close or interrupt an important view of a historic building e.g. a church or other structure of historical significance* will be resisted under this policy.

- 1.15 I also consider that if allowed the proposals would interrupt the important views that extend across what is currently open countryside from St Peter's Church and Hanwell Castle. These important views are identified in figure 9 of the Hanwell Conservation Area Statement [CD.5.9]
- 1.16 Dr Doggett's Proof of Evidence on behalf Cherwell District Council [CD.9.5] has assessed the impact of the proposals on St Peters Church and Hanwell Castle and considers that these are *prominent buildings in the conservation area, the former in particular being clearly visible in views from the south outside the designed area.*
- 1.17 Bringing new development closer to the setting of the Grade I Listed Church and the Grade II* Listed Hanwell Castle would in my opinion damage its setting when viewed from the important views that are identified in figure 9 of the Hanwell Conservation Area Statement. I consider that by allowing development on a site that has been identified in the adopted Local Plan as being important in preserving the character of Hanwell through separating it from Banbury would also be contrary to Policy C33 of the adopted Local Plan.
- 1.18 Based on the above I consider that Policies C15 and C33 are relevant to the determination of this application. Both policies have been found to be consistent with the NPPF by the Regulation 10 Review of the Cherwell Local Plan [CD6.11]. In assessing the appeal against policies C15 and C33 I consider that the proposals would not accord with either of these policies for the reasons set out above. I further consider that the requirement for affordable housing should be at least 35% rather than at least 30% as per Policy BSC3.
- 1.19 I do not know why policies C15 and C33 were not previously referred to in the reasons for refusal or in the Council's Statement of Case. However, the substance of the Council's objection to the development proposed as articulated in the reasons for refusal very clearly referenced the importance of the "open arable landscape" in providing "*clear separation between Banbury and Hanwell*"; and alleged that the development would give "*rise to a direct risk of coalescence between Banbury and Hanwell, causing undue intrusion into the open countryside*". It also clearly alleged that the site was important as part of the setting of two listed buildings. I therefore do not think that reliance on these policies introduces any new element to the council's case to which the Appellant has not had a chance to respond (and indeed, I note that the Appellant's witnesses have already commented on these policies).
- 1.20 Nonetheless, and mindful that these policies are not expressly referred to in the reasons for refusal or the Council's Statement of Case I have sought and obtained approval under delegated authority from Paul Seckington, Head of Development Management to include allegations of conflict with policies C15 and C33. Thus whilst it is my own clear professional opinion that the proposals conflict with policy C15 and C33, it is also the position of the Council that there is such a conflict.