



Appeal Decision

Hearing held on 14 November 2023

Site visits made on 20 October 2023 and 14 November 2023

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2023

Appeal Ref: APP/C3105/W/23/3324704

Hempton Road, part of OS parcel 8752 east of Combe Cottage and south of St Johns Way, Deddington, Oxfordshire OX15 0QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Rainier Developments Limited against the decision of Cherwell District Council.
 - The application Ref 22/03802/OUT, dated 19 December 2022, was refused by notice dated 9 June 2023.
 - The development proposed is Outline planning application for the erection of up to 9 dwellings and creation of associated vehicular and pedestrian access onto Hempton Road, highway improvements, parking, landscaping, drainage features, open space, and associated infrastructure, with all matters to be reserved except new vehicular access into the site from Hempton Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. When reviewing the evidence, I concluded that not all of the main issues required interrogation at a hearing. I set out my proposals for a blended event in pre-hearing notes, suggesting that the main issues of location, and character and appearance, could be dealt with by written correspondence and this was agreed with the main parties.
3. This is an outline application with all matters reserved except access. The appellant has submitted an illustrative masterplan, but I have taken this to be indicative only.
4. The Deddington Neighbourhood Plan (NP) has been submitted for examination. It is not yet adopted and carries less than full weight. Nonetheless, I note that this is the second plan that has been prepared, as the first document was rejected at examination. This plan has been prepared in conjunction with government sponsored advisors. As such, I have taken the view that the document is likely to be fairly robust in its conclusions and in the content of its proposed policies.

Main Issues

5. The main issues are:
 - Whether the development would accord with local policies and national guidance with regard to location and accessibility;

- The effect of the development on the character and appearance of the area; and,
- Whether the development would accord with local policies and national guidance, with regard to the effective use of land and housing density.

Reasons

Location

6. The appeal site is part of an agricultural field with a long boundary abutting Hempton Road, just beyond the built-up area of Hempton. Hempton is situated in a pleasant and gently rolling arable landscape with intermittent tree cover provided by hedgerow trees and small blocks of woodland.
7. Policy Villages 1 of the Local Plan 2011 – 2031 (LP) sets out that Hempton is a satellite village, where residential development is to take the form of minor development, infilling or conversions. This is reinforced by Saved Policy H18 which restricts new dwellings in the countryside. However, Saved Policy H18 predates the National Planning Policy Framework (the Framework) and is more restrictive in this regard. As such, this policy carries less than full weight.
8. The explanatory text to LP Villages 1 sets out that villages which may not have many services and facilities of their own, may be geographically close to villages which do have services and facilities. These villages can be considered to form a functional cluster. This is supported by Paragraph 79 of the Framework which notes that where there are groups of smaller settlements, development in one village may support services in another.
9. Hempton has a church and church hall which are not, in my view, essential amenities. The hamlet is just over 2 kilometres from Deddington, identified as a service centre in the local development plan, and Deddington could provide necessary services for future occupiers. However, the draft NP examined a number of potential housing sites during its preparation, and concluded that Hempton should be excluded from any further consideration as a consequence of its lack of amenities. I recognise that the NP is yet to be examined and carries less than full weight. Nonetheless, it reflects the position that there may be more suitable sites for development, which are closer to essential services.
10. There is a footpath along Hempton Road that leads to Deddington, some 2 kilometres to the east. Although this would accommodate a mobility scooter or two people walking abreast, there is nothing before me to indicate that it would meet current best practice with regard to shared cycle and footways. It seems to me that people on mobility scooters, pedestrians or cyclists meeting opposing traffic would have to step off the tarmac surface and onto the rough grass verge. I conclude that the path is not sufficiently wide to be considered as a shared multi-user surface as stated in the appellant's transport statement¹.
11. In any case, the footway is unlit and would not be attractive in the dark or in bad weather. Moreover, in advancing the argument that the site would contain two dwellings designated for retired or elderly people, the appeal and transport statements fail to recognise that these people may have health and/or mobility issues which would limit their ability to use the footway to access Deddington.

¹ Jubb Technical Note 02v5

12. The transport statement refers to guidance² to support the argument that a distance of 2 kilometres is an acceptable distance for future occupiers to walk. This guidance states that acceptable walking distances will vary between individuals and circumstances, and also sets out that the *preferred maximum* for commuting and school journeys is 2 kilometres. However, it also gives *desirable* and *acceptable* distances which are considerably less than 2 kilometres. Distances for journeys other than commuting or school journeys are further reduced. As such, I give limited weight to the argument that the footway would necessarily provide a reasonable transport option for future occupiers.
13. It also seems unlikely that very many future residents would walk the 2 kilometres from the site to the bus stops in Deddington on a regular basis. It seems unreasonable to describe these bus stops as being in 'close proximity' to the site, as set out in the transport statement.
14. There was no-one using the footway at either of my visits which were undertaken in mid to late afternoon, at a time when the schools were closing and when the weather was dry and sunny. Although I acknowledge that the footway would be used, perhaps occasionally and/or for recreation, it would not provide a realistic or regular transport option for future residents, particularly those of advanced years who may be less able-bodied. As such, there would be a reliance on private vehicles for access to almost all services and amenities.
15. It is proposed to include electric charging points in the development, but it cannot be presumed that future occupiers would own or lease such cars.
16. Moreover, whilst I acknowledge that there are some facilities on the western edge of Deddington, the main shops are in the centre of Deddington which is beyond the 2 kilometre isochrone.
17. The highway authority³ confirms that the development would not be in a highly sustainable location. However, it does not raise an objection on the basis of potential vehicle trips, and also because the development would include contributions to the highway authority for junction improvements and traffic calming beyond the site boundary. The highway authority also refers to local appeal decisions as weighing in favour of this appeal, but has not stated which they are. As I am unable to see how these decisions are comparable to what is before me, I give this element of its argument no weight.
18. A previous appeal decision⁴ for one dwelling concluded that the footway would provide a sustainable option, which weighed in favour of that appeal. However, this appeal is for nine dwellings, including accommodation for elderly occupiers. That appeal is not entirely comparable to what is before me. In any case, my concern with regard to the footway is that it would not provide a suitable, regular or all-weather option for all future occupiers.
19. In the light of the above, I conclude that although Hempton and Deddington could be considered to form a functional cluster, this does not alter the fact that future residents would be largely reliant on non-sustainable transport options. The development would fail to accord with local policies and national guidance with regard to location. It would therefore be contrary to LP Policies

² Guidelines for providing journeys on foot, The Institution of Highways and Transportation, 2000

³ Oxford County Council, 1 March 2023

⁴ APP/C3105/W/21/3285306

ESD1 and Villages 2 which taken together set out to deliver development that seeks to reduce the need to travel, and to be well located in relation to services and facilities, and LP Villages 1 which allows minor development, but within built up limits.

20. Although these policies predate the Framework, they are reinforced by Paragraph 105 which requires the planning system to manage patterns of growth in support of the promotion of sustainable transport. I acknowledge that Paragraph 105 goes on to state that opportunities to maximise sustainable transport options will vary between urban and rural areas. Moreover, LP Villages 1 acknowledges in that Hempton is considered to be appropriate for minor development because of the benefits of access to a service centre within a village cluster.
21. Nonetheless, given that all essential services are more than 2 kilometres away, and my concerns in relation to the geometry of the footway and its lack of illumination, this does not alter my reasoning.
22. There would also be conflict with Saved Policy H18, as set out above, although this conflict carries lesser weight. LP Policy BSC1 has also been cited in the Council's refusal notice. This is concerned with housing allocation across the district but is based on housing need information which is now of some age. LP Policy ESD15 has also been cited but this does not appear to be concerned specifically with sustainable travel options. These policies weigh neither for nor against the appeal with regard to location.

Character and appearance

23. The development would replace a portion of open field, and the built form and associated traffic calming would add a degree of urbanisation to the eastern approach to Hempton. There would be a loss of openness and rural character, as well as a degree of visual intrusion.
24. However, the site is more or less at grade with the road, and is screened to the west and the south by hedgerows and hedgerow trees. There is also a further degree of screening from the road as a consequence of existing mature trees in the highway verge. When approaching from the east, the development would be seen against a backdrop of the western hedge and the existing development and given its size, position and existing screening I conclude that the site is not particularly prominent in the wider landscape.
25. St John's Way is a small 20th century development of two and single storey dwellings accessed from a junction opposite the site. Notwithstanding that the layout plan is indicative, the proposed layout and density of the proposed dwellings does not appear particularly incongruous when compared with the underlying building pattern. Moreover, although the site is outside the built-up area of Hempton, the Framework does not safeguard open countryside or landscape for its intrinsic value. Furthermore, nine dwellings across the appeal site would not overwhelm the existing settlement in visual terms, and in any case, matters of appearance, landscape, scale and layout would be under the Council's control at detailed design stage.
26. LP Policy ESD15 requires new development to complement and enhance its context through siting, layout and high quality design, and to reinforce local distinctiveness amongst other considerations. These aims are reinforced by

Policy ESD13 which requires development to respect and enhance local landscape character and to secure appropriate mitigation where damage to landscape character cannot be avoided.

27. The development would have an adverse impact on the character and appearance of the area, leading to conflict with ESD Policies ESD13 and 15, as a consequence of replacing an open field with housing. There would also be conflict with LP Villages 1 which allows minor development only within built-up limits. However, for the reasons set out above, I am satisfied that this conflict carries only moderate weight.

Housing Density

28. The development would be built on land that is categorised as Grade 2 according to the soil and agricultural land report⁵. This falls into the definition of best and most versatile (BMV) land for planning purposes according to the Framework.
29. LP Policy BSC2 sets out that housing development will be expected to make effective and efficient use of land, and achieve a density on net developable areas of at least 30 dwellings per hectare (dph). The policy does not define net developable area but I have presumed that it is the same as Net Development Area (NDA), which I understand to be the area taken up by buildings and ancillary space. LP Villages 2 gives weight in decision making to the avoidance of BMV land. This is supported by Paragraph 174 of the Framework which requires decision makers to contribute to and enhance the natural and local environment by recognising the benefits arising from BMV land.
30. The appeal site is 1.22 hectares. If the play area and the large area of open space within which it sits are deducted from the site area, the density amounts to around 8–9 dph, which accords with the officer's report.
31. The appellant argues that all land such as verges, remnant open space and the sustainable drainage area should also be deducted from the calculation leaving only 0.5 hectares as the NDA. However, as the area to accommodate sustainable drainage is essential and ancillary to the development, I conclude that this should be included in the NDA. In any case, even if I agree with the appellant's figure of 17 dph, this would be considerably less than 30 dph.
32. In principle, lower densities would reflect Hempton's loose development pattern and rural character, which is also noted as an objective in LP Policy BSC2's explanatory text. Reference is made by the appellant to the development's congruity with the St John's Way building pattern. However, the footprint of the proposed dwellings and the parked cars shown on the indicative plan appears to be somewhat underscaled, particularly in comparison with St John's Way, which is a development of what appear in overall massing and scale, to be reasonably modest homes. I acknowledge that this is an indicative plan but nonetheless, it raises a concern that it may not truly reflect the practicalities of providing nine dwellings and ancillary space, and the associated balance of open space and built form, should the application progress to reserved matters.
33. The appeal statement sets out that because of the small scale of the loss, at 1.22 hectares, this should be afforded very limited weight. Whilst I accept that

⁵ Land Research Associates, July 2023

the area of BMV land lost would be relatively small, this does nonetheless weigh against the appeal.

34. I also note that the development would leave a strip of field which would be awkward to cultivate effectively, which reinforces my reasoning with regard to the effective and efficient use of land. As such, the development would not accord with local policies and national guidance with regard to the effective use of land and housing density, contrary to LP Policy BSC2, and Paragraph 174 of the Framework.

Housing Land Requirement and Supply

35. There is a dispute between the parties as to whether the Council has sufficient housing supply land. Although it is not disputed by the appellant that there would be some policy conflict arising from the development, in the event that the Council is unable to demonstrate sufficient housing land supply, Footnote 8 of Paragraph 11 of the Framework would be engaged. This sets out that where the policies which are most important for determining the application are out-of-date, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
36. The parties are agreed that the five year housing requirement against which supply should be measured, should be calculated using the standard method set out in Planning Practice Guidance (PPG).
37. Step 1, as set out in PPG, states that projected average annual household growth should be ten consecutive years, using the current year as the starting point. The appellant advances the argument that 2022 should be the starting point as this would align with the Council's latest housing position statement. However, there is nothing in PPG to justify that approach. Whilst I appreciate the appellant's logic in this regard, this approach has not been tested in the courts. Consequently, I conclude that there is nothing before me to suggest that the current year, that is 2023, should not be used as the starting point.
38. As the subsequent calculations appear to be derived from the baseline, I conclude that local housing need (LHN) should be 3728 dwellings, excluding Oxford's unmet housing need.
39. The parties provided me with a list of disputed housing supply sites. The Framework states that to be deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered within five years. For major development, that is sites with ten or more dwellings, or a site area of more than 0.5 hectares, deliverability requires clear evidence that housing completions will be delivered within five years.

South of Salt Way – East (Banbury 17)

40. The developers for Phase 2 of this development have yet to submit an application for the remaining dwellings. This is a major allocated site, with other developers already on site. Whilst I agree that it may be optimistic to expect all the proposed 113 dwellings to be delivered, it seems reasonable to anticipate that some of the outstanding 113 homes will be built. I have allowed for 50 dwellings to be delivered.

North-west Bicester Phase 2

41. This site has outline permission for mixed use development including 1700 homes, and applications are currently being submitted for the discharge of reserved matters. Although I recognise that there may be delays, I see no reason to disagree with the Council's assessment that 20 dwellings would be built within the delivery period.

South-west Bicester Phase 2

42. An outline application was submitted a few days before the hearing for 82 affordable apartments. As this site does not yet have any permissions, full or outline, I agree with the appellant that this site cannot be considered to be deliverable.

Bicester Gateway

43. There is an outline consent for 80 dwellings and the Council is having pre-application discussions with a developer. I agree with the appellant that this is unlikely to be delivered within the appropriate timescale.

Upper Heyford, Villages 5, 31

44. An outline application for 31 dwellings was submitted in 2021 but has yet to be decided. I agree with the appellant that it seems unlikely that these dwellings will be completed before the end of the five year period.

Drayton Lodge Farm

45. The appellant considers that the projected delivery rate is unrealistic, as raised mortgage rates have dampened the housing market and contractors will only build homes if they are going to sell them. However, this is anecdotal evidence and even if I gave it weight, there is nothing before me to indicate that those conditions apply to the housing market in Cherwell. As such, I give this argument no weight.

Graven Hill self-build

46. The Council has reduced its initial figures from 265 to 205 homes. The difference between the parties is 5 homes only. I have split the difference as on the basis of what is before me, I am unable to give one view any more weight than the other.

Heyford Village Phase 9

47. The site has detailed consent and is under construction. The appellant has raised the issue of delayed completions due to prevailing market conditions but as set out above, I give this argument no weight.

Heyford Village 5

The Council has stated that these dwellings are built and occupied. It seems unlikely that the Council would be mistaken in this regard and the appellant has not provided compelling evidence to the contrary.

Wretchwick Green

48. There is outline permission for a mixed use development, but no reserved matters applications in place. I acknowledge that it seems unlikely that 50 dwellings would be built within the relevant period. However, as infrastructure has been constructed the site is clearly progressing. I have allowed 15 dwellings.

Minor development and windfalls

49. The appellant suggests a lapse rate of 10 per cent to be applied to the Council's projections but there is no requirement under the Framework or PPG to apply a lapse rate. In any case I would expect councils to anticipate some delays when preparing their reports. Moreover, the Framework states that minor development sites should be considered deliverable until the permission expires unless there are clear indications that homes will not be delivered in five years. Applying a uniform lapse rate does not fall into that category.

Oxford's Unmet need

50. The Council has set out in its Partial Review the arrangements for maintaining housing land supply to meet Oxford's unmet housing need. There is nothing before me to indicate that this arrangement is contrary to guidance in the Framework or PPG. Moreover, even if I agreed that the Council's housing land supply figures should take account of Oxford's unmet need, the appeal site is some 19 miles from Oxford and for reasons of distance from Oxford, would not be a suitable site.
51. I have concluded that there is no need to include Oxford's unmet need and that the Council's housing need figures have been calculated according to PPG. Table HLS SOCG5 in the Statement of Common Ground indicates that given those presumptions, there are 721 dwellings in dispute. Although I have considered the appellant's representations with regard to deliverability, and taken a precautionary approach, I have nonetheless concluded that a further 450 (rounded) dwellings should be added to the appellant's list. This more than offsets the appellant's proposed undersupply. As such I conclude that the Council has a five year housing supply and Paragraph 11 of the Framework is not engaged for the purposes of my reasoning.

Planning Balance

52. The appeal statement states that a number of benefits would arise from the development which would outweigh the conflict with the local development plan.

Biodiversity Net Gain

53. There are protected species, namely birds, bats, reptiles and great crested newts recorded in the vicinity of the site. The ecological appraisal notes that bats were recorded foraging and commuting across the site, the hedgerows could support small numbers of protected bird species, and that there are suitable habitats for reptiles.
54. Interested parties have raised concerns in relation to the effects of the development on local biodiversity. The hedge along the site's northern boundary has been heavily flailed, and the ecological survey concludes that

with only four species, it is species poor. I would not necessarily describe a hedge with four species to be species poor, and in any case, I identified two further species, *Rosa sp.* and Walnut at my visit. These are both listed as woodland species contributing to the importance of a hedgerow as set out in Schedule II, Part I of the Hedgerow Regulations 1997 (the Regulations).

55. The ecological survey also notes that there were significant gaps along the hedge's length. However, although the individual plants are widely spaced along much of the hedge's length, I found it to be more or less continuous between the western site boundary and the field gate to the east.
56. On the basis of my brief visit I do not disagree that the northern hedge does not qualify for consideration as an important hedgerow under the Regulations. Nonetheless, taking into the number of species present, as well as features such as the ditch, the absence of gaps and its connection with other hedgerows, it does not fall very far short of the criteria listed in Regulation 7 of the Regulations.
57. It was confirmed at the hearing that this hedge would be retained, even though this is not entirely clear in the documents. It is unclear why severe flailing was needed, and this appears to have been undertaken just before the surveys. Nonetheless, the Biodiversity Net Gain (BNG) calculation appears to presume that the northern hedge would be retained, with sections removed only to accommodate site access. Moreover, as far as I can ascertain from the metric, its current condition does not appear to have adversely influenced the overall BNG calculation.
58. The proposed habitat plan is based on the indicative masterplan. However, this is an outline application and the layout may change at reserved matters. Moreover, as noted above the footprints of the proposed dwellings, and what appear to be vehicles, all seem slightly underscaled. This raises a concern that a more realistic plan would increase the proportion of land taken up by buildings and roads on the site which would alter the BNG calculation.
59. I do not dispute that new planting could, in principle, contribute to local biodiversity. However, in my experience there is generally an expectation that new planting near dwellings will be maintained in a rather formal and orderly manner. This could limit its contribution to local biodiversity, even if native species were planted.
60. Furthermore, public realm space associated with the drainage and the play area would be likely to be used for recreation and exercising dogs, which in addition to the noise and disturbance associated with domestic living, would also be likely to have an adverse effect on colonisation by local wildlife. Moreover, the introduction of lighting over an area of formerly arable land will be likely to disturb the foraging and commuting patterns of bats which can lead to species fragmentation. On balance, whilst I do not dispute the BNG figures, which are above the current required minimum contribution to biodiversity, I give this benefit only minor to moderate weight.

Affordable housing

61. The Deddington Neighbourhood Plan Housing Needs Assessment⁶ (HNA) concludes that Deddington should provide affordable rented housing as a

⁶ AECOM, July 2021

priority, particularly in the early NP Plan period. The HNA states that roughly 50% of Affordable Housing should take the form of rented tenures, with the remaining 50% as affordable routes to home ownership and allowing for some shared ownership or other tenures to widen choice.

62. The draft NP states that where Affordable Housing is required by development plan policy the mix of homes shall be 50 per cent affordable or social rent, 25 per cent First Homes at a 50 per cent discount, and 25 per cent other forms of intermediate affordable housing for sale.
63. Two discount market units would be provided for sale. At the hearing the appellant noted that this provision is supported by the draft NP. However, this does not appear to be the case as both dwellings would be for sale. Moreover, the discounted rate would be 80 per cent of the open market value which would be considerably more than the 50 per cent discount set out in the draft NP.
64. Any discounted dwellings, whether for sale or rent would provide some public benefit. However, given that there would only be two dwellings, even if they did conform to the recommendations of the HNA and the draft NP, this carries minor weight in favour of the appeal.

Elder Housing

65. The HNA identifies that Deddington has an older population profile than Cherwell and England, and that this is likely to increase.
66. The HNA recommends the building of smaller homes to encourage downsizing and to provide starter homes. The draft NP supports an increase in dwellings suitable for older persons. However, whilst the development would provide two such dwellings, I have set out above my concerns in relation to location. Whilst some older people may select rural living, I am unable to attribute any benefit in relation to this appeal for reasons of distance from public transport and essential services.

Traffic calming

67. The highway authority is satisfied that based on the projected traffic generation, the development would be unlikely to cause severe congestion. I note however that the TRICS data is of some age, and uses surveys undertaken between 2015 and 2018. As such, it may not reflect current or future journeys arising from the development.
68. The works would include footway improvements around the St John's Way junction, and an uncontrolled pedestrian crossing across Hempton Road. I acknowledge that crossing St Johns Way and Hempton Road would be slightly easier. However, the transport statement does not include accident history and although there is anecdotal evidence from local people regarding collisions, it is unclear to what degree the proposed footway improvements and uncontrolled pedestrian crossing would address known road safety issues. Moreover, the issues of congestion near the proposed site entrance that I noticed at my visits were related to lack of visibility at the nearby bend and although I raised this at the hearing, I am unable to conclude that the proposed highway works would address that particular issue.

69. I acknowledge that the parish council and the highway authority have indicated that measures to reduce speed would have a beneficial impact on road safety and congestion at the bend as average speeds along Hempton Road would be likely to be reduced. Nonetheless, poor visibility would remain. These works carry minor weight in favour of the appeal.

Play Area

70. It is proposed to include a Local Equipped Area for Play within the development to serve the village. However, neither the draft NP nor the local development plan indicate that there is an unmet demand for a play area in Hempton. In any case there is a larger and recently upgraded play area on the western edge of Deddington, which is within the 2 kilometre ischrone from Hempton. There is nothing before me to indicate that a development of nine dwellings requires a play area to make it acceptable in planning terms. Although I recognise that if adopted and publicly available there would be some local benefit, it carries very little weight in favour of the appeal.

Charging points

71. It is also proposed to install electric charging points for public use. This could be of some benefit to local people. However, there is no indication of the location of existing charging points in the area which could indicate the degree of unmet need.

Contribution to community facilities

72. The development would contribute £10,000 to community facilities but although I acknowledge that this would be welcomed, it carries very little weight in relation to this appeal.

Planning obligation

73. A completed Unilateral Undertaking (UU) has been provided which sets out how the commitment to affordable housing, the highway improvements, community contribution and elder housing would be enforced. The Council has not been involved in the preparation of the UU, and it is agreed between the parties that the commitments and contributions set out in the UU are not required to make the development acceptable in planning terms.

74. However, as I found harm in relation to the main issues, which is not outweighed by the benefits included in the UU, it is not necessary for me to consider this further.

Conclusion

75. The cumulative weight of the various benefits arising from the development would not be sufficient to outweigh the harm identified above in relation to the main issues. As such the proposals would be contrary to the local development plan taken as a whole, as well as national guidance, and there are no material considerations of such weight to lead me to conclude otherwise. The appeal is dismissed.

A Edgington

INSPECTOR

APPEARANCES

Appellant

Mr Killian Garvey	Counsel, Kings Chambers
Mr Jeff Richards	Turley
Mr Will Gardner	EDP
Ms Kylie Wesson	Shakespeare Martineau

Council

Mr Nathanael Stock	Cherwell District Council
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Mr John Goodall	DLP Planning

Interested Parties

Mr John Dovey
Mr Nick Gilham
Ms Cara Hedges
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