



## Appeal Decision

Inquiry Held on 27-29 February and 5-6 March 2024

Accompanied Site visit made on 6 March 2024

**by David Troy BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3<sup>rd</sup> May 2024

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**Appeal Ref: APP/D3125/W/23/3332089**

**Land West of London Lane, Ascott under Wychwood, Oxfordshire**

- 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 Obsidian Strategic Asset Management Ltd against the decision of West Oxfordshire District Council.
  - The application Ref 23/01504/OUT, dated 26 May 2023, was refused by notice dated 31 August 2023.
  - The development proposed is outline planning application with all matters reserved (except for access) for the development of up to 40 residential dwellings (C3 use), including 50% affordable housing, with vehicular access from London Lane. Provision of associated public open space, alongside landscaping, drainage infrastructure, and associated works.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application was made in outline with all matters other than access reserved for future consideration. I have determined the appeal on this basis, treating the submitted plans and details provided as illustrative, insofar as they relate to matters other than access.
3. The National Planning Policy Framework (the Framework) was revised on 19 December 2023. The main parties have been provided with the opportunity to consider the relevance of the revised Framework to this appeal and I have had regard to any comments made during the Inquiry.
4. The Council confirmed during the Inquiry that the third reason for the refusal of planning permission relating the flood risk and drainage had been resolved and would not be pursued by the Local Planning Authority, subject to appropriate planning conditions. I will return to this matter later.
5. I closed the Inquiry in writing on 21 March 2024 following the receipt of a signed and completed legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990. The Council confirmed that the submission of the Section 106 Agreement addresses the Council's fourth reason for refusal relating to the absence of a legal agreement to provide affordable housing and contributions towards infrastructure provision for the appeal proposal. I return to this matter in more detail later in this decision.

6. The inquiry sat for 5 days, with an accompanied site visit on the final day. I also carried out unaccompanied site visits before the inquiry opened, and at other times outside the inquiry sitting period.

### **Main Issues**

7. The main issues in this appeal are:
  - (i) Whether the location of the proposed development is appropriate in principle in terms of the policy approach to housing development in Ascott under Wychwood;
  - (ii) Whether the Council can demonstrate a five year supply of housing land;
  - (iii) The effect of the proposed development on the setting and significance of the designated heritage assets, namely the Grade II\* listed Church of the Holy Trinity, Grade II listed Crown Farmhouse and Grade II listed buildings at Nos. 9 & 11 The Green;
  - (iv) The effect of the proposed development on the character and appearance of the area having particular regard to the effect on the Cotswolds Natural Landscape;
  - (v) Whether there are any exceptional circumstances which justify major development with the Cotswolds Natural Landscape and whether such development would be in the public interest; and
  - (vi) Whether the policies which are most important for determining the application are out of date due to a lack of a five year supply of housing land or any other reason and, if so, would any adverse impacts of the proposed development significantly and demonstrably outweigh the benefits.

### **Reasons**

#### **The Appeal Site and Location of Development**

8. The appeal site is a part brownfield, part greenfield site measuring 3.7ha located on the south-eastern edge of the village of Ascott-under-Wychwood. It comprises of previously developed land consisting of a number of farm buildings with associated hardstanding areas, currently in equestrian use and surrounding open paddock land. The site is bordered by residential development to the north-west and north-east on the edge of the village and open countryside to south-west and the south-east. The appeal site falls within the Cotswolds Natural Landscape (formerly known as the Cotswolds Area of Outstanding Natural Beauty (AONB)). A Public Right of Way (PRoW) (footpath 111/15/10) runs along the south-west boundary of the site, with an extensive network of PRoWs within the immediate vicinity of the site.
9. With regard to local planning policies, Policy OS2 of the West Oxfordshire Local Plan 2031 (September 2018) (WOLP) sets out the overall spatial strategy for the District based on a settlement hierarchy. Ascott-under-Wychwood is classified as a Village within the WOLP. The policy identifies that the villages are suitable for limited development which respects the village character and local distinctiveness and would help to maintain the vitality of these communities, subject to compliance with a list of general principles. Amongst these are the requirements that proposals form a logical complement to the

existing scale and pattern of development and/or character of the area, while in the Cotswolds Natural Landscape, great weight is given to conserving its landscape and scenic beauty. It further states that proposals for residential development will be considered in accordance with Policy H2 of the WOLP.

10. Policy H2 of the WOLP relates to the delivery of new homes. It identifies that new dwellings in the Villages will be permitted on previously developed land within and adjacent to the built-up area and on undeveloped land adjoining the built up area where convincing evidence is presented to demonstrate that it is necessary to meet identified housing needs. Compliance with the general principles of Policy OS2 and any other relevant development plan policies is also required.
11. Policy BC1 addresses development within the Burford-Charlbury sub area, in which Ascott-under-Wychwood is located. It identifies that development outside of the Rural Service Centres will be limited to meeting local housing, community and business needs and will be steered towards the larger villages. Whilst the Council consider there are more sizeable villages within the Burford-Charlbury sub area, with a higher population and range of services, the main parties agreed that Ascott-under-Wychwood should be considered as a 'larger village' and I considered the appeal scheme on this basis.
12. The village benefits from a range of services, including a private primary school, village shop, community building, church, sports facilities and pub. The site would be well-related to the day-to-day services and facilities in the village and is accessible by a range of transport modes, including a bus service and railway station serving the village.
13. On the basis of its location and accessibility to services and facilities, both main parties consider that the village is a suitable location for some new housing development and new housing would help to maintain the village's vitality by supporting its services and facilities<sup>1</sup>. Based on the evidence before me and my observations during my site visits, I concur with this view. I will consider whether the scale of the proposed development is appropriate for the village in more detail later in this decision.

### **Five Year Supply of Housing Land**

14. Policy H1 of the WOLP sets out the amount and distribution of the housing in the district, making provision for at least 15,950 new homes between 2011 and 2031. This includes 2,750 homes towards meeting Oxford City's unmet needs. Policy H2 of the WOLP sets out a stepped approach to the annual housing requirement over the plan period.
15. The strategic policies in the WOLP are now more than five years old. The Council has undertaken a review and found that the strategic housing Policy H1 and the first strand of Policy H2 need to be updated. In accordance with paragraph 77 and footnote 42 of the Framework, the local housing need figure using the standard method is the basis for calculating the five year housing requirement. The latest local housing need figure calculated for West Oxfordshire is 570 homes per annum.

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<sup>1</sup> CD E4 Planning SoCG Paragraph 7.10

16. The Statement of Common Ground (SoCG) between the Council and the appellant on housing land supply confirms a number of matters of agreement<sup>2</sup>. The relevant five year period for the determination of the appeal is agreed as being 1 April 2023 to 31 March 2028. The main parties agree that there is no need to add a requirement for Oxford City's needs and given performance against the housing delivery test, there is no need to add a buffer. The SoCG therefore sets out a five year requirement of 2,850 homes and I consider, in light of the circumstances that exist, that this is a reasonable approach.
17. The Council's position in the SoCG was that there was a supply of 3,111 homes in the five year period (5.46 years supply). The appellant considers that there is a supply of 2,174 homes (3.81 years supply). The disagreement is based on the contribution from five specific sites and a reduction from small sites with planning permission due to application of a lapsed rate. I will now deal with these matters.

### *The disputed sites*

#### West Eynsham Strategic Development Area (EW2)

18. The West Eynsham Strategic Development Area is an allocated site under Policy EW2 of the WOLP. The site has full planning permission for 237 dwellings on part of the site at Thornbury Green, of which 76 dwellings remain to be completed and there is no dispute between the main parties that these can be delivered within the next five years.
19. However, an outline planning application for 180 dwellings was submitted on part of the larger site at Derrymerrye Farm in 2022. An appeal against non-determination was lodged but it was subsequently withdrawn in November 2023 and no further application has been made. Improvements to the A40 are required and this is reliant on Housing Investment Funding. Confirmation of such funding has not yet been received and the Council accepts that an outline planning permission would need to await confirmation of this funding.
20. As such, there is currently no planning application and no clear timetable for one being submitted for the Derrymerrye Farm site. There are significant issues that still need to be resolved before planning applications can be submitted. There is considerable uncertainty over the timescales for development and no clear evidence that completions will begin on the site within five years. In the circumstances the site does not meet the Framework's definition of deliverable. The 180 units should therefore be removed from the supply.

#### Land north of Hill Rise, Woodstock (EW4)

21. The land north of Hill Rise, Woodstock is an allocated site under Policy EW4 of the WOLP. A hybrid planning permission was granted on appeal in October 2023<sup>3</sup>, with full planning permission for 48 dwellings, and outline planning permission granted for 132 dwellings. Reserved matters for the latter have not been submitted to date. The appellant considers that the 132 dwellings do not pass the test of deliverability and should be removed from the supply.
22. There is a single landowner and developer, Blenheim Strategic Partners, involved in the site. The evidence presented indicates that construction is

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<sup>2</sup> CD E5 Housing Land Supply SoCG

<sup>3</sup> CD N7 APP/D3125/W/23/3315391

anticipated to begin with 15 units delivered in early 2025, 60 units in 2025/26, 60 units in 2026/27 and 45 units in 2027/28<sup>4</sup>. Whilst there appears to be some outstanding issues, the evidence at the Inquiry demonstrates the developer is clearly keen to progress the development and there is no evidence that these matters would be insurmountable, especially as it is not anticipated to come forward until 2025. The site already has full planning permission for 48 dwellings. In the circumstances, the evidence is sufficient to demonstrate that the site is deliverable and that 180 dwellings should remain in the supply.

#### Land north of Banbury Road, Woodstock (EW5)

23. The land north of Banbury Road, Woodstock is an allocated site under Policy EW5 of the WOLP. An outline application for up to 235 dwellings was granted outline permission in December 2022 subject to the signing of a Section 106 agreement. Whilst the Council confirmed at the Inquiry that the Section 106 agreement had been signed, no decision has been issued.
24. A trajectory was submitted by the developer in September 2022 but there is nothing further in writing from them since then. The developer indicated that after outline permission was granted, they would immediately follow with a reserved matters application but did not expect to be on site for 12-18 months following the granting of outline permission to allow for reserved matters approval and the discharge of planning conditions<sup>5</sup>. This seems very optimistic given that outline permission has not been issued and no reserved matters application has yet been made. In the circumstances the evidence presented is insufficient to support the anticipated delivery of 235 dwellings and the site does not meet the Framework's definition of deliverable. The 235 units should therefore be removed from the supply.

#### REEMA North and Central site, Carterton (CA1)

25. The REEMA North and Central site is allocated under Policy CA1 of the WOLP and has outline planning permission. The central part of the site has been developed and a reserved matters application for the northern part was approved for 200 dwellings in 2013. The Council maintain that this permission has commenced and is extant, however this has not progressed.
26. The Ministry of Defence and the Defence Infrastructure Organisation are the landowners and have confirmed they are working with Taylor Wimpey to bring forward an alternative new full application for a higher number of units. The Council's evidence indicates that this alternative scheme will be pursued instead of the previous approved 2013 reserved matters application. However, no detailed alternative full application has been submitted to date and the appellant considers that, as no firm progress has been made, the 200 dwellings do not pass the test of deliverability and should be removed from the supply.
27. From the evidence presented, including a recent submission from Taylor Wimpey in January 2024, it shows that the developer is keen to progress the development. The developer's detailed timetable for bringing forward the site indicates that construction will begin with 15 units delivered in 2025, 90 units in 2026, 90 units in 2027 and 22 units up to March 2028 (at the end of the Council's relevant five year period). A further 54 units are anticipated at the

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<sup>4</sup> CD E17 Appendix 5b

<sup>5</sup> CD E17 Appendix 5b – Appendix B2

end of 2028 to complete the development<sup>6</sup>. It seems to me very unlikely that the outstanding matters will not be resolved before then, especially as a major housebuilder such as Taylor Wimpey has considerable expert and technical resources to hand. I therefore consider the evidence is sufficient to demonstrate that the site is deliverable and that the development will begin within the next five year period.

28. However, whilst the site is cleared, as no full application has been submitted to date, the anticipated start date and completion of 15 units in 2025 does not appear to be realistic. Even if an application is submitted, as anticipated by Taylor Wimpey in March 2024, it is likely to take considerably longer for the application to be determined. In my view, first completions are likely to be in 2026, pushing back the timetable a year, with a contribution of 127 dwellings, rather than 200, by March 2028.
29. I acknowledge the Inspectors different views on whether or not the REEMA north site should be included in a five year supply<sup>7</sup>, but I note these inquiries were completed in 2023. The more up to date evidence that I have been given from the developer was not therefore available. For the reasons given, 127 dwellings should remain in the supply, which is considered more realistic in the circumstances.

#### Land North of Witney Road, Long Hanborough

30. The site at land North of Witney Road, Long Hanborough has outline planning permission granted for up to 150 homes in February 2023. One of the pre-commencement conditions on the outline permission has been discharged but a number remain to be discharged. A reserved matters application has not been submitted to date and the appellant considers that the 150 dwellings do not pass the test of deliverability and should be removed from the supply.
31. Whilst the Council referred to on going pre-application discussions, there is no written evidence as to the intended timescale for submitting a reserved matters application or developing the site. Whilst I note the standard time limit requiring the submission of a reserved matters application within two years reflected the expected early delivery but, as set out above, there is little actual evidence of progress. Furthermore, whilst I note that the local developer, Blenheim Strategic Partners are involved and has a good track record of delivery in the area, this does not in itself provide a convincing argument on deliverability in this particular case. In the circumstances the evidence presented is insufficient to support the anticipated delivery of 150 dwellings and the site does not meet the Framework's definition of deliverable. The 150 units should therefore be removed from the supply.

#### *Small sites lapses rate*

32. The SoCG on housing land supply between the Council and the appellant indicates that there is a total of 395 homes with planning permission on small sites. There is, however, a dispute on whether a lapse rate should be applied. The appellant argues that a 10% discount should be applied to the overall supply from small sites with planning permission, to reflect the likelihood that

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<sup>6</sup> CD E17 Appendix 5b - Appendix B3

<sup>7</sup> CD N2 - APP/D3125/W/22/3297487 and CD N5 - APP/D3125/W/22/3301202

some permissions will lapse, drawing my attention to the Ducklington appeal<sup>8</sup>, where the Inspector agreed that a 10% discount should be applied.

33. Whilst I acknowledge that it is likely that some of those permissions will lapse and development will not take place, the appellant's position does not point to evidence on specific sites where permission has actually lapsed. It simply seeks to apply an assumption that 10% of homes with permission will not be delivered and should be removed from the supply.
34. The definition of "deliverable" in the Framework refers to "sites which do not involve major development and have planning permission... should be considered deliverable until the permission expires, unless there is clear evidence that homes will not be delivered within five years...". There is no reference in the Framework or the Planning Practice Guidance to the application of a generic percentage reduction. Whilst the Inspector in the Burford appeal<sup>9</sup> agreed with the appellant in that case that a reduction to the supply from small sites should be made, this appears to be based on evidence on specific sites where permission had actually lapsed, rather than a generic assumption to apply a percentage lapse rate. In this case there is no clear evidence that specific small sites with permission will not deliver within five years.
35. Therefore, there is no basis to apply a 10% discount and the supply from small sites with planning permission of 395 should remain in the supply.

#### *Conclusion on five year supply of housing*

36. Making the above adjustments, there would be some 2,473 deliverable dwellings over the five year assessment period. The five year requirement is 2,850 homes based on the local housing need figure using the standard methodology. The Council can therefore demonstrate a deliverable housing land supply of some 4.34 years, which amounts to a deficit of around 377 dwellings. The Council therefore cannot demonstrate a five year supply of housing land.
37. As there is no five year supply of deliverable housing land, in accordance with the Framework<sup>10</sup>, it follows that the restrictive elements of the strategic locational policies for housing that are most important for the determination of this appeal, namely Policies OS2, H2 and BC1 of the WOLP that were agreed by the main parties during the course of the Inquiry, are out-of-date. Those parts of the policies that provide a limitation for housing development are considered to be out of date because they are constraining the ability of the Local Planning Authority, to meet its minimum housing requirements. I will consider this further in the planning balance.

#### **The Effect on the Setting and Significance of Heritage Assets**

38. On this main issue there is some common ground between the Council and the appellant<sup>11</sup>. No heritage assets would be directly physically affected by the proposed development, such that for many of the heritage assets the main issue relates to their setting<sup>12</sup> only. With the exception of the Grade II\* listed Church of the Holy Trinity, the main parties do not dispute that harm to the

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<sup>8</sup> CD N2 - APP/D3125/W/22/3297487

<sup>9</sup> CD N4 APP/D3125/W/22/3293656

<sup>10</sup> Paragraph 11(d) and Footnote 8 of the Framework

<sup>11</sup> CD E8 Heritage SoCG

<sup>12</sup> Applying the definition of 'setting of a heritage asset' at Annex 2 of the Framework

significance of heritage assets would arise as a consequence of the appeal proposal. Furthermore, with the exception of the listed Church, there is common ground that in respect of the heritage significance of each asset the harm would be less than substantial. In these cases, it is the degree of any less than substantial harm, which is the matter in dispute.

39. As a precursor to dealing with this main issue, there is some fluidity in the heritage evidence as to the character of the appeal site in terms of the direct impact on the setting of the heritage assets. The heritage evidence before me variably describes the appeal location as either rural, semi-rural or peri-urban. I deal with character and appearance in more detail below as a separate main issue, but for purposes of heritage significance the appeal site is manifestly rural in character. Despite the proximity of development on London Lane, The Green, Heritage Lane and to the north-west and north-east at Shipton Road and High Street, the prevailing character of the appeal site is rural, being pastoral countryside and farm buildings at the edge of the village.
40. To the north-west of the appeal site is a group of buildings clustered around the church. The reason for refusal specifies the designated heritage assets at this location that need to be considered are the Grade II\* listed Church of the Holy Trinity, Grade II listed Crown Farmhouse and Grade II listed buildings at Nos. 9 & 11 The Green. These are part of a group of buildings, where some of the earliest buildings in Ascott-under-Wychwood are located.

#### Grade II\* listed Church of the Holy Trinity

41. The Grade II\* listed Church of the Holy Trinity, comprising a late 12<sup>th</sup> Norman Church and tower, that was altered and extended in the 14<sup>th</sup>/15<sup>th</sup> Century and renovated and restored in the mid-19<sup>th</sup> Century by the renowned architect, George Edmund Street. It is a strong example of medieval ecclesiastical architecture constructed prior to other buildings in the centre of the village as the mid-way between the two Norman motte and Bailey castles at Ascott Earl to the west and Ascott d'Oyley to the east<sup>13</sup>. The church and graveyard occupy slightly higher land above the surrounding historical streets along The Green and Church View in the core of the village. Consequently, it seems to me that the church was to some extent intended to be experienced in the wider rural landscape as a notable locator in the core of this historic settlement.
42. Whilst the majority of the heritage significance is embodied in the architectural (aesthetic), historic, archaeological and spiritual value of the building and this would remain unaffected, setting is an important aspect of its significance for the reasons set out in the preceding paragraphs. I share the assessment by the appellant and the Council heritage experts that the immediate churchyard environs, historic streets and the buildings in the immediate vicinity of the church are the more sensitive part of the setting and this would remain unaffected.
43. Whilst there is limited direct intervisibility to the appeal site from the church and from the immediate churchyard, there remains a sense of rural openness beyond the properties along The Green when approaching the Church along the path into the churchyard from Church View, along Church View from the north-west and along The Green from the north-east. The church and graveyard in

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<sup>13</sup> CD E13A Paragraphs 3.22 and 3.2.8



this location are positioned at a higher level to the road and properties opposite along the Green, giving a higher vantage point looking towards the appeal site.

44. Whilst development from the post-medieval period and 17<sup>th</sup> Century onwards<sup>14</sup> has enveloped the Church to the north-east, north-west and south-west, the appeal site, despite the intervening presence of the properties along The Green, survives to the south-east as the closest discernible trace of countryside to the church. In various views from within Ascott-under-Wychwood, the church is now mainly experienced in the context of intervening development, with little sense of its origins and long-held position since the medieval period as a relatively isolated rural church. As such I consider the surviving rurality of the appeal site makes a notable contribution to the wider setting of the church. This aspect of setting would be moderately harmed by the perceptible infilling of the appeal land when approaching the church along the path into the churchyard from Church View, along Church View and along The Green, through the gaps between the properties, particularly between Nos 9 and 11 The Green.
45. Public footpath 111/15/10 that approaches the village from the south-east and extends along the south-west boundary of the appeal site provides limited views towards the upper part of the church tower. In these limited views its prominence and status as an important parish church, in a rural context, is revealed. The views from the public footpath were, due to the intervening buildings and vegetation on the edge of the village, limited to glimpses of the tower from broadly at the location of viewpoint 8 in Mr Hyde's' evidence<sup>15</sup>. Whilst the current farm buildings at the appeal site already impinge on the views of the church tower, they form part of the rurality in this setting.
46. Whilst the proposed landscape buffer on the south-western part of the appeal site, as shown on the indicative Concept Master Plan for the proposed development, would help preserve the views of the church tower from viewpoint 8, the tower of the church would still be experienced in the context of a more dominant residential built-up foreground with the sense of rurality diminished. In these views the appeal proposal would have a harmful effect, albeit to a limited degree, on the setting of the church by diminishing the views of the church tower in its rural setting. In the case of the appeal site, this has particular significance in being the closest meaningful area of countryside near to the church and its survival as an edge to clearly demarcate the edge of the historic settlement.
47. Overall, I find there would be less than substantial harm to the setting of the church and this would be at the low end of any range of such harm. I am mindful, however, that this harm would be to a particularly fine Grade II\* heritage asset and greater weight that should be afforded to the asset's conservation in accordance with paragraph 205 of the Framework. Accordingly, even a low level of less than substantial harm must weigh heavily against the proposal.

#### *Grade II listed Crown Farmhouse*

48. Crown Farmhouse is a Grade II listed building of mid-17<sup>th</sup> Century origin. The two storey Crown Farmhouse has various associated outbuildings, some are

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<sup>14</sup> CD A9 Paragraphs 3.4.10 and 3.4.11

<sup>15</sup> CD E13 B

historic barns and some are modern portal framed farm buildings. The listed farmhouse and historic barns (including Crown Barn) are located outside of the appeal site, whilst the modern farm buildings together with the stone boundary walls within the surrounding paddocks are located within the appeal site. It was agreed by the main parties during the Inquiry that the historic barns and stone boundary walls are curtilage listed structures of Crown Farmhouse and should be assessed as a whole.

49. The heritage significance is derived from the architectural, historic and archaeological value of the farmhouse and associated curtilage listed structures. Whilst the curtilage listed structures and paddock originally formed part of the Crown Farm, they are now in different and separate ownerships and uses to the main listed farmhouse. Whilst the modern farm/equestrian buildings are functional and do not contribute to the significances of the listed structures, the design and layout of the curtilage listed structures are a legible part of the underlying agricultural historic character and the immediate setting of Crown Farmhouse. The experience of this part of the immediate setting contribute strongly to the significance of Crown Farmhouse as a result of its character and historic association. The paddocks form part of the wider setting and contribute to the significance of the Crown Farmhouse and curtilage listed structures as a result of its open rural character and historic association.
50. Whilst there is no direct intervisibility to the appeal site from the Crown Farmhouse and the removal of the modern farm buildings would have a beneficial impact on the setting of the Crown Farmhouse and curtilage listed structures, the proposed development would physically cut through the historic curtilage of the farm. The construction of the appeal proposal on the paddocks would, in my view, have a negative urbanising impact on the wider setting and clear sense of rurality that can be experienced in this location. This sense of rurality would be tangibly reduced by the proposed development illustrated on the submitted Concept Master Plan, even allowing for the proposed areas of open space and landscaping. Overall, the harm identified to the setting of Crown Farmhouse and curtilage listed structures would be less than substantial and towards the mid-point of such harm.

#### *No. 9 The Green*

51. No. 9 The Green is a Grade II listed two storey residential building of early-19<sup>th</sup> Century origin. Its heritage significance mainly comprises its architectural quality, including the durability of materials used and the quality and detail of its openings; and its historical value reflecting its past function as the old school. The historical buildings along The Green, including the church and its contained garden to the south-east form are part of the immediate setting.
52. I do, however, for similar reasons as set out above for the church, consider that the current openness and rurality of the appeal site a short distance to the south-east of No. 9 The Green is a spatial aspect of its wider setting. Additionally for No. 9 The Green there would be some direct visibility of the appeal proposal from the first floor windows of the property. The appeal proposal would result in the loss to the current openness of the appeal site and a reduced sense of rurality as result of the proposed development illustrated on the submitted Concept Master Plan, even allowing for the proposed areas of open space and landscaping. This less than substantial harm in terms of impact on its setting would be towards the low end of any range of such harm.

*No. 11 The Green*

53. No. 11 The Green is a Grade II listed two storey residential building of late-18<sup>th</sup> Century origin. Its heritage significance mainly comprises its architectural quality and its historical value reflecting its past function as part of the farming connection with Crown Farm. In terms of setting as part of its significance there are some parallels to No. 9 The Green in terms of being towards the historic core of the village around the church and the proximity of the appeal site to the south-east in terms of the current openness and rurality provided to the wider setting.
54. In respect of No. 11 The Green, I consider the contribution of the appeal site to the setting to be slightly less because of the presence of Crown Barn and intervening structures immediately to the rear of the listed building. Additionally for No. 11 The Green there would be more limited direct visibility of the appeal proposal from the first floor windows of the property. As such I consider the aspect of setting provided by the appeal site is not as significant to the heritage significance of No. 11 The Green as it is for No. 9 The Green and as such it would be reasonable to conclude that the scale of less than substantial harm would be minimal.

*Overall conclusion on heritage*

55. For the reasons set out above, there would be less than substantial harm to the significance of various heritage assets. The harm to the setting of the Grade II listed Crown Farmhouse and curtilage listed structures would be at the mid-point of less than substantial harm. The harm to the setting of the Grade II\* listed Church of the Holy Trinity and Grade II listed building at No. 9 The Green would be at the low end of less than substantial harm. The less than substantial harm to the setting of No. 11 The Green would be slightly lower than those above. Given these include the Grade II\* listed church that degree of harm, to one of the most nationally important heritage assets, is not to be regarded lightly.
56. Heritage assets are an irreplaceable resource, and the last vestiges of the area's rural qualities, providing an important demarcation between the medieval core and the historic edge of the settlement of Ascott-under-Wychwood, contributing to the heritage significance in terms of the setting of the listed buildings, would be irrevocably eroded to an unacceptable degree through the appeal proposal.
57. Importantly, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special regard to the desirability of preserving a listed building or its setting. This is a stern test and as such it is incumbent that I attach considerable importance and weight to the harm that has been identified.
58. The proposal would therefore conflict with Policies EH9, EH11 and EH13 of the WOLP which seek to protect the historic environment and in particular ensure development proposal preserve or enhance the historic interest and setting of the heritage assets and respect and build on pre-existing historic character in respect of landscape and townscapes.
59. Paragraph 195 of the Framework states that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to

their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. The Framework states at paragraph 205 that great weight should be given to an asset's conservation (and the more important the asset, the greater the weight should be). Paragraph 205 goes on to say that this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 206 states that any harm either directly or from development within its setting, should require clear and convincing justification.

60. In this appeal, the harm to all heritage assets would be less than substantial, and so paragraph 208 of the Framework states that such harm should be weighed against the public benefits associated with the proposal. I will consider this further in my overall heritage and planning balance.

### **Effect on the character and appearance of the area including the Cotswolds Natural Landscape**

#### *Appeal site and Policy context*

61. The appeal site on the settlement edge lies on the south-eastern valley slope of the River Evenlode valley. It comprises a number of large farm buildings of different ages, with associated hardstanding areas, currently in equestrian use and surrounding open paddocks used for grazing of horses. The open grassland paddocks are subdivided by a mix of post and rail and electric tape fencing, with a stone wall separating the farmyard and buildings from the paddocks beyond. To the north-west and north-east are the long rear gardens of existing residential properties at The Green and London Lane bordered by a mix of stone walls and timber post and rail fencing, including a recently completed development of four dwellings at Foresters Court. The paddocks slope gently up from the edge of the village providing an open and spacious rural character to the area, which is further enhanced by the presence of mature landscaping and established trees within the surrounding gardens, open countryside and Cotswolds Natural Landscape.
62. Details of layout, appearance and scale have been reserved at this stage, although I have been presented with an indicative layout of what could be built at the site. It was indicated in the evidence presented to the Inquiry, that the proposed dwellings would likely be two storeys in height, to appear in keeping with the existing buildings and village setting. The submitted layout also shows a public open space and landscape areas proposed to the south-west, south-east and north-east of the site. Indicative details of the species composition and arrangements of the public open space and landscaped areas have also been provided. The access to the site would be via a narrow strip of land between No. 12 London Lane and the Foresters Court development.
63. Paragraph 182 of the Framework states that great weight should be given to conserving and enhancing landscape and scenic beauty in, amongst other areas, AONB's which have the highest status of protection in relation to landscape and scenic beauty. Paragraph 183 of the Framework goes on to state that planning permission should be refused for major development in these designated areas other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest.
64. The WOLP addresses development in the Cotswolds Natural Landscape through Policy EH1. This policy identifies that the Cotswolds Conservation Board's

Management Plan and Guidance documents are material considerations in decision making relevant to the Cotswolds Natural Landscape. It further states that major development will not be permitted within the AONB other than in exceptional circumstances, as required by national policy and guidance. The policy is supportive of development proposals that support the economy and social wellbeing of communities located in the AONB, including affordable housing schemes, provided they are consistent with the great weight that must be given to conserving and enhancing the landscape and natural scenic beauty of the area.

65. WOLP Policies EH2 (Landscape Character), EH13 (Historic Landscape Character) and OS4 (High Quality Design) are also referred to in the Council's reasons for the refusal of planning permission. These policies are similar in their approach to the design of development and its impact on the landscape. Of particular relevance to this appeal is that these policies, amongst other things, require that new development should conserve and, where possible, enhance the intrinsic character, quality and distinctive of the surrounding, local landscape and historic landscape character.
66. The Council's West Oxfordshire Design Guide 2016, which has classified the village of Ascott-under-Wychwood as falling within the Limestone Wolds Architectural Character Area where distinctive features include creamy limestone, limestone slates, long fronts, narrow gables and steep pitched roofs. It also describes the village as having a linear form and an enclosed setting following the line of the River Evenlode and that it is comprised of two former hamlets<sup>16</sup>.

#### *Settlement Pattern*

67. The majority of the appeal site is outside the existing confine of the village. However, the Council accepted during the Inquiry that the previously developed land part of the site may be regarded as being within the village, but it is of a very different character to the rest of the village. I concur with this view. The farm buildings associated with Crown Farm have been in this location for a long time<sup>17</sup> and clearly reads as part of the surrounding agricultural landscape rather than as part of the housing. The incursion of the built form of the farm buildings into the open countryside is historic, alongwith the open gap provided by the paddocks to the rear of the residential development along The Green and London Lane.
68. There is some variation in settlement pattern across the village. The houses to the east of the village in Ascott d'Oyley are arranged in a coherent linear pattern, predominantly with a street frontage. In Ascott Earl to the west, there is a mixture of linear pattern of development and some instances of development at depth, including some designed estates along Shipton Road and small cul-de-sac development at Orchard Close. However, the existing houses at The Green and London Lane immediately adjacent to the appeal site follow the historic linear street pattern around the historic medieval core of the village and are arranged in a coherent linear pattern, predominantly with a street frontage adjacent to a grass verge or footpath. Due to its spatial distinction from the linear frontage character evident immediately adjacent to

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<sup>16</sup> CD G3 Pages 6 and 13

<sup>17</sup> CD A9 Figure 4 1771 map of village and Figure 2 Extract from 1840 Parish Tithe Map

the site, the proposal would stand alone and be arranged to some noticeable depth as a backland form of development and I consider this below.

### *Landscape assessments*

69. The appeal site and the surrounding area are subject to several sub-regional and local landscape character assessments. The Cotswolds AONB Landscape Character Assessment 2002 identifies the appeal site as being located within Lower Evenlode Valley Landscape Character Area (LCA 16b) of the wider 'Broad Floodplain Valley' landscape character type (LT 16)<sup>18</sup>. Key relevant characteristics define the character type as a broad area of gently sloping valley form with a strong sense of enclosure with a distinct pastoral, intimate and riparian character along the valley floor and a string of settlements along the valley sides, including Ascott-under-Wychwood.
70. At a more local level, the West Oxfordshire Landscape Assessment 1998 (WOLA) provides more localised landscape character assessment at the district level. The evidence presented at the Inquiry indicates that the existing developed part of the site with the large agricultural buildings and hardstanding area associated with Crown Farm were excluded from the WOLA classification. Although there was some disagreement as to the extent of the south-western paddock that lies within the LCA or settlement, much of the remainder of the paddocks on the appeal site lies within the Lower Evenlode Valley LCA as identified in the WOLA which, amongst other things, sets out key characteristics as large scale smoothly rolling farmland very open and exposed character and having high intervisibility along the valley sides<sup>19</sup>.
71. The WOLA notes that the area has a highly attractive and unspoilt character but with some localised variations in quality. It also notes that there are a number of factors that can potentially threaten landscape quality. Expansion and 'suburbanisation' of rural settlements and roads are identified as examples of such threats<sup>20</sup>.

### *Effect on landscape*

72. There is no dispute between the parties that the proposal constitutes major development for the purposes of paragraph 182 of the Framework. The landscape and visual impact of proposed development on the site have been considered in the appellant's Landscape and Visual Impact Assessment (LVIA), as well as by the Council and the Cotswolds Landscape National Broad (CLNB). Whilst there is a degree of commonality in aspects of these LVIA's, there are variances in the assessment of the magnitude of change and the significance of the impact of development. This is not uncommon in considering a subjective analysis of landscape and visual impact and I have taken all of these relevant LVIA's into account in reaching my views below.
73. Overall, the site has been assessed by the appellant as having a medium/high landscape value, applying the objective criteria set out in accordance with the Landscape Institute Guidance for Landscape and Visual Impact Assessment Third Edition (GLVIA3) and medium/high susceptibility to change<sup>21</sup>. In light of my own assessment I have no reason to disagree. Similarly, I do not dispute

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<sup>18</sup> CD E6 - Landscape and Visual SoCG (February 2024) Paragraphs 4.2 and 4.3

<sup>19</sup> CD E6 Paragraphs 4.4 and 4.5

<sup>20</sup> CD J1 Page 45

<sup>21</sup> CD A17 Pages 14-18

the appellant's LVIA view that the landscape sensitivity of the appeal site and its immediate environs is medium/high. In this range, based on the evidence and my observations during my site visits, I consider that the landscape value, susceptibility to change and landscape sensitivity of the area around the previously developed land and farm buildings on the appeal site would fall into the medium category and the open paddock land would fall into the high.

74. Whatever 'value' is attached to the appeal site itself, it still forms part of the overall high value protected landscape of the Cotswolds Natural Landscape and is a localised component of the landscape setting of Ascott-under-Wychwood within the sensitive Lower Evenlode Valley Landscape Area. The site cannot be developed without a total change to the baseline situation.
75. I have considered the visual form of the current edge of the village at the rear of Crown Farm. The proposed development would have a notability different appearance and feel to the existing farm buildings and previously developed hardstanding areas. This like similar structures in the locality, have a functional and utilitarian appearance and form part of the rural landscape. It is bordered by a mix of stone walls, timber post and rail fencing and a stand of tall mature trees which combine with the surrounding open pastureland, form a predominantly rural backdrop around the rear of Crown Farm, particularly when viewed from PRoW 111/15/10 to the south.
76. The indicative layout illustrates new housing positioned further back than the existing modern portal framed farm buildings, on land currently occupied by a number of small paddocks that together with the existing tall mature trees soften the edge of the existing farm buildings and hardstanding areas. By contrast, the proposed development would conspicuously extend the settled village edge of Ascott-under-Wychwood in the landscape.
77. Unlike the development at the Foresters Court, where the Inspector allowed a much smaller scheme for five dwellings fronting directly onto London Lane, I consider that the proposed development, owing to its scale and indicative cul-de-sac nature, would not acceptably visually integrate into its surroundings. It would appear as a backland form development that, owing to its extent and suburban form, would adversely change the character of the village. This would jar with the established grain of linear development along London Lane and The Green, be visually separated from other cul-de-sacs to the west of the village, and blur how the village currently blends more naturally into the surrounding rural landscape of the Cotswolds Natural Landscape.
78. Whilst the proposed development would provide some screening to the rear of The Green and London Lane as part of the proposed Landscape Strategy<sup>22</sup>, I do not consider this to be of such significance to be afforded substantial weight. The proposed open space, landscaping and planting around the periphery of the site would provide some degree of screening and to some extent 'soften' the approach to the village in views from the south and east. However, owing to the local topography, the built development and the landscaping would be at a lower level than the higher ground to the south-east of the site. Consequently, whilst there would be some screening after 15 years, as illustrated in the photomontages provided by the appellant<sup>23</sup>, it is highly likely that views of the built development would still be attainable. Furthermore,

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<sup>22</sup> CD A10 and CD E12 B

<sup>23</sup> CD E12 B

given the two-storey design of the proposed dwellings, the roof tops are likely to be visible above the planting on maturity in views from the higher ground to the south-east.

79. The proposed Landscape Strategy would have a degree of positive benefit on maturity by providing a less abrupt edge to the settlement. However, I am not persuaded that the Landscape Strategy would be effective in the short to medium term and even on maturity it is unlikely to eliminate some views of the development. Overall, I consider that whilst the adverse effects would reduce to some degree there would still be significant harm in the longer term.
80. The provision of the large area of public open space and landscape buffer themselves on the paddocks to the south-western and south-eastern edges of the site would change the open rural character of the area. These areas are proposed to mitigate the harm that would be caused by the built development. However, the proposed public open space and planting itself would introduce further landscape change and would alter the appearance of the existing agrarian landscape. Consequently, the positive attributes of the scheme provided in the Landscape Strategy do not alter my view that the proposed development would represent a highly adverse magnitude of change on the landscape, contrary to Policies OS2, OS4, EH1 and EH2 of the WOLP.

#### *Historic Landscape*

81. The remaining stone walls separating the farmyard and buildings from the paddocks beyond would be retained as part of the proposed built development as illustrated on the Concept Master plan and the proposed Landscaping Strategy. As such this part of the historic landscape would be preserved as part of the development.
82. In addition, the appeal site would be close to the core of the historic village, where I observed during my site visit, the presence of ridge and furrow is readily visible and is clearly identified in the main parties evidence on the paddocks adjacent to the village on undeveloped parts of the appeal site<sup>24</sup>.
83. Whilst not necessarily a rare feature and only visible within and immediately adjacent to the site from the surrounding properties, it is still a physical remnant of medieval and historical farming practices, which makes valuable contribution to the agricultural setting and historical landscape around this part of the village. The proposed built development as illustrated on the Concept Master Plan would result in the permanent loss of the ridge and furrow on the north-eastern part of the appeal site and would fail to preserve the historical qualities of the landscape, contrary to Policy EH13 of the WOLP.

#### *Effect on visual amenity*

84. Turning now to the visual impacts of the proposal. It is clear from the evidence the LVIAs including a number of photomontages represented through a series of viewpoints in the appellant's LVIA and from my observations during my site visits that, given the topography of the site and the immediate surroundings, the appeal site, in visual terms, would not be highly visible in the wider landscape. The long-range viewpoints presented in the appellant's LVIA, show that the appeal site is predominately screened by vegetation or topography. The visual impacts of the proposed development would be experienced on a

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<sup>24</sup> CD A9 paragraph 3.4.17 and Figure 4 Aerial photo 2012 of site and CD E18 A Figures 49-51



more local level from a limited stretch of London Lane by the proposed accessway into the site (Viewpoint 2), along the PRoW 111/15/10 to the south and south-west and in medium views from the areas of higher ground along the B4437 to the south east of the site (Viewpoint 8). It is matter of agreement between the main parties that all these views will be localised<sup>25</sup> and I concur with this assessment.

85. In medium views from the areas of higher ground along the B4437 to the south east of the site (Viewpoint 8), the appeal site is visible, but based on the intervening distance and nature of the topography, I consider that the screening provided by the landscaping strategy after 15 years, it is likely that views for motorists and walkers would have a minimal adverse visual impact in the medium to long term of the built development from this location.
86. However, views of the appeal site become quite apparent along PRoW 111/15/10 travelling north-west approaching the village. At viewpoint 7, approximately 205m to the south of the site<sup>26</sup>, the appellant's LVIA categorise that the proposal would have a moderate adverse level of effect in Year 1 and a negligible adverse effect on the visual amenity in Year 15. Whilst I recognise that the proposed Landscape Strategy provide some visual containment, the degree of visibility will vary according to the seasons. The current open and undeveloped parts of the site, together with the adjoining fields, provides a contribution to the visual quality of and an important contribution to, the rural open landscape setting of the village. Although they would be set down within the local topography, the proposed dwellings cumulatively would result in an increased built form on the site that would compromise the sense of space and openness of the area. Overall, I consider this harm from this viewpoint would have a significant adverse level of visual impact on the area.
87. At Viewpoint 2, immediately adjacent to the proposed accessway into the site, the appellant's LVIA categorises that the proposal would have a moderate/minor adverse level of effect in Year 1 and a negligible adverse effect on the visual amenity in Year 15 over the short section of the road in passing the site. Whilst I recognise that the existing dwellings and structures and the proposed boundary wall provide some visual containment and functional and utilitarian appearance of the modern portal framed farming buildings on the appeal site are visible, they are framed by the existing open paddock in the foreground and the line of tall trees on the edge of the Crown Farm in the background. This provides an open and verdant character and a contribution to the visual quality of and a contribution to, the rural open landscape setting of the village.
88. These shortcomings would be exacerbated by the appeal site's elevated position above the road and the rising topography of the appeal site, where the proposal would be visible over short distances by motorist and walkers, including walkers using the Wychwood Way walking route that passes the site along London Lane. This harm would occur, regardless of whether or not the buildings could be more effectively screened from the road, through the provision of additional landscaping on the appeal site, that would take some time to mature to provide effective screening in this location. Overall, I consider this harm from viewpoint 2 would have a significant adverse level of visual impact on the area.

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<sup>25</sup> CD E6 Landscape Paragraphs 5.4 and 5.5

<sup>26</sup> CD E6 Landscape Paragraph 5.5

89. In coming to this conclusion on viewpoint 2, I have considered the fallback position on the appeal site and the appellant's options to build the dwelling allowed as part of the Foresters Court development on the proposed accessway into the site<sup>27</sup>. Based on the evidence before me, there is a reasonable likelihood that the dwelling would be built if this appeal is dismissed. Be that as it may, in my view, the scale and form of such a development would not be as substantial as the proposal now before me and would have more limited impact on the character and appearance of the area and the open rural setting of the village. I therefore accord this matter moderate weight in making this decision.

*Overall conclusion on character and appearance*

90. For the reasons set out above, I find that the proposed development would cause unacceptable harm in both landscape and visual terms on the character and appearance of the area. The proposed development would be of an inappropriate scale to its context and would not form a logical complement of the existing scale and pattern of development or the character of the area. The proposal would not respect the historic and landscape character of the locality and conserve or enhance the intrinsic character, quality of the area, including Cotswolds Natural Landscape.

91. Importantly, the enactment of the Levelling Up and Regeneration Act 2023 has strengthened the statutory duty of the relevant authorities under Section 85(1) of the Countryside and Rights of Way 2000 to further the purpose of conserving and enhancing the natural beauty of an AONB<sup>28</sup>. I attach considerable importance and great weight to the harm that has been identified.

92. The proposal would therefore conflict the relevant provisions of Policies OS2, OS4, EH1, EH2, EH13 and BC1 of the WOLP and the West Oxfordshire Design Guide 2016. Crucially, the Framework seeks to achieve well-designed and beautiful places as part of the overarching social and environmental objectives of the planning system. Notably, paragraph 135 of the Framework establishes that planning decisions should ensure that developments will add to the overall quality of the area; are sympathetic to local character and history including the surrounding built environment and landscape setting. It is also contrary to paragraph 182 of the Framework and the guidelines provided in the Cotswolds AONB Management Plan.

93. Having identified that there would be harm to the special qualities of the Cotswolds Natural Landscape, it is necessary to consider the tests identified in paragraph 183 of the Framework. In particular, whether there would be any exceptional circumstances that are relevant to the consideration of the overall planning balance and whether it can be demonstrated that the development is in the public interest.

**Whether or not there are Exceptional Circumstances**

94. The development plan, particularly through policies OS2, H2, EH1 and BC1 read in combination, only permits development harmful to the Cotswolds Natural Landscape on previously developed land within and adjacent to the built up area and on undeveloped land adjacent to villages in the Burford-Charlbury sub area in exceptional circumstances and where convincing

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<sup>27</sup> CD N20 Appeal Ref: APP/D3125/W/17/3179654 – Land westt of London Lane, Ascott-Upon-Wychwood

<sup>28</sup> CD ID.7 Council's Closing Statement Paragraph 3

evidence is provided to demonstrate that the development is necessary to meet an identified local housing need. Whilst there are other benefits of the scheme, which I consider later in this decision, the primary benefits identified by the appellant are those relating to the provision of market and affordable housing.

95. There is disagreement between the main parties as to what may constitute 'local housing need' and whether this should be considered at a settlement or sub-area level. The supporting text to Policy H2 of the WOLP identifies in paragraph 5.39 that "Within the Cotswolds AONB, windfall housing proposals on undeveloped land adjoining built up areas will be particularly closely scrutinised and will only be supported where there is convincing evidence of a specific local housing need such as identified through a neighbourhood plan or affordable housing needs specific to a particular settlement, for example through a rural exception site".
96. Policy BC1 identifies that development will be steered to the larger villages and will be limited to meeting local housing needs. The supporting text of Policy BC1, at paragraph 9.6.29, states that it will need to be convincingly demonstrated that a scheme would give rise to benefits to the specific settlement or sub-area (e.g. meeting identified local housing needs) and which would clearly outweigh any likely harms, including heritage and landscape harm. The supporting text then mirrors national policy requirements, as set out in paragraph 183 of the Framework, for major development within the AONB stating that housing proposals which constitute 'major development' will only be permitted in exceptional circumstances and where it can be demonstrated that they are in the public interest.
97. The Council has referred to the Inspectors decisions at Stonesfield<sup>29</sup> and Ascott-under-Wychwood<sup>30</sup>. I can see no reason to depart from the approach taken by the Inspectors in these cases. Therefore, in considering housing need within the context of the policy framework in the development plan, I take the view that local housing need means need of a specific settlement. However, as outlined earlier, as there is no five year housing land supply, those parts of the policies OS2, H2 and BC1 that provide a limitation for housing development are considered to be out of date.
98. In any event, the appellant has provided evidence that there are specific local housing needs on a settlement, sub-area and district wide basis. The SoCG between the main parties on housing land supply demonstrates there has been a substantial shortfall of 1,316 new homes against the WOLP housing trajectory between 2017 and 2023. Further, over the next five years, a substantial shortfall of 3,602 dwellings by 1<sup>st</sup> April 2028 against the WOLP trajectory is anticipated as a result of the under-delivery on the strategic growth location and strategic development areas allocated in the WOLP<sup>31</sup>.
99. The SoCG between the main parties on affordable housing demonstrates an accrued shortfall of 587 affordable homes since April 2013 against the Council's Strategic Housing Market Assessment 2014 estimate of affordable need for the district. The shortfall in affordable housing assessed against the estimated affordable housing needs over the next five years (up to 31<sup>st</sup> March 2028) in

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<sup>29</sup> CD N42 Appeal Ref: APP/D3125/W/18/3209551 – Land north of Woodstock Road, Stonesfield

<sup>30</sup> CD N19 Appeal Ref: APP/D3125/W/21/3285075 – Land East of London Lane, Ascott-Upon-Wychwood

<sup>31</sup> CD E5 Planning SoCG Tables 1.2 and 1.4

the Council's Housing and Economic Needs Assessment 2022 is set to increase further to 519 affordable homes per annum. This is coupled with worsening affordability indicators in West Oxfordshire for any household seeking an affordable home<sup>32</sup>. The Council's housing register shows a substantial level of affordable housing need across the parishes in the Burford-Charlbury sub area and Cotswolds Natural Landscape<sup>33</sup>, with 33 households showing a preference for affordable housing in the Ascott-under-Wychwood at 31<sup>st</sup> March 2023<sup>34</sup>.

100. Although there is disagreement between the main parties on whether or not sufficient information has been provided to meet the local housing needs in the context of this appeal, there are clear benefits as already stated and a need for the type of development proposed which is supported by local and national planning policy. Consideration of the tests identified in paragraph 183 of the Framework on what constitute exceptional circumstance and public interest is matter of planning judgement and the decision maker has a broad discretion<sup>35</sup>.
101. I accept that there is a significant need for the delivery of more market and affordable homes due to the significant unmet need for housing in West Oxfordshire and chronic shortfall of affordable housing in the district. I have also found that there is no five year housing land supply for the district at this time indicating a need for housing generally. Furthermore, there is nothing substantive before me to demonstrate that this need could be met in some other way. Therefore, these factors are significant reasons in the public interest carrying substantial weight for allowing the development.
102. However, this must be weighed against the harm to public interest by virtue of harm to the landscape and scenic beauty of the Cotswold Natural Landscape, as identified in my reasoning above, and which I have found could not be adequately moderated. The Cotswolds Natural Landscape is a finite resource and, as per the Framework, great weight should be given to conserving and enhancing landscape and scenic beauty in the AONBs which have the highest status of protection in relation to these issues. As a further consideration, harm to heritage assets is also not in the public interest, as set out in the Framework, these should be conserved so they can be enjoyed for their contribution to the quality of life of existing and future generations. Again, great weight should be given to the conservation of such assets.
103. On balance, therefore, I do not consider that exceptional circumstances have been demonstrated to justify a development of this scale in the Cotswolds Natural Landscape. Consequently, the proposed development would be contrary to Policies OS2, EH1 and BC1 of the WOLP in relation to development proposals within the Cotswolds Natural Landscape. Again, as per the Framework, this provides a clear reason for refusing the development.
104. I have been directed to various case law and appeal decisions which the appellant advocates support their views on what constitutes exceptional circumstances and public interest for the purposes of paragraph 183 of the Framework. However, whilst I recognise that the list of factors that can form part of the exceptional circumstance and public interest is not a closed list and

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<sup>32</sup> CD E7 Affordable Housing SoCG Paragraphs 7.11-7.14

<sup>33</sup> CD E16 B Appendix AG8 Parishes in the Appellant's Study Area

<sup>34</sup> CD E16 A Figure 8.1

<sup>35</sup> CD N40 Wealden v. SSCLG AND Knight Development Ltd [2017] EWCA Civ 39

the decision maker has a broad discretion as to what can form part of those considerations, each case is considered on its own individual facts. The decision makers in each case weigh differing matters into the balance, each of which are relevant to the developments they concern and do not alter my findings above based upon the particular circumstances of this appeal.

## **Other Matters**

### *Flood risk and Drainage*

105. The majority of the site is located in Flood Zone 1 as defined in the Environment Agency's Flood Mapping for the area, where there is a low probability of fluvial flooding. The risk from groundwater springs is identified as low, with no springs being located within the appeal site<sup>36</sup>. The Environment Agency's mapping also identifies that the majority of the site has a very low risk of surface water flooding. A small proportion of the site has a higher risk of surface water flooding, which coincides with the existing pond in the southern part of the site. The development of the site would inevitably increase the need for appropriate measures to deal with potential flood risk. The appellant has provided a Flood Risk Assessment setting out mitigation measures for the site.
106. These flood risk measures have been updated at the Inquiry and during the course of this appeal through a technical note from the appellant in respect of flood risk and drainage. The Council agree that the evidence provided would resolve its concerns relating to flood risk and drainage and overcomes the third reason for the refusal of planning permission. I am mindful that the Lead Local Flood Authority and the Council's Drainage Engineers raised no objections to the proposal, subject to planning conditions being attached to cover appropriate mitigation measures. These measures include setting minimum finished floor levels and a sustainable surface water drainage system together with future management and maintenance of the drainage proposed. The identified measures represent a moderate benefit of the appeal proposal.

### *Section 106 Agreement and Planning Obligations*

107. Paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
108. The signed and completed Section 106 Agreement provided by the appellant secures the delivery of 20 affordable units of a range of types and tenures as part of the appeal scheme to meet the prioritised needs for affordable housing in the District. This is in accordance with the Council's requirements to provide 50% of the total dwellings as affordable homes as per Policy H3 of the WOLP.
109. The significance of this particular appeal scheme's level of contribution to boosting an appropriate mix of affordable housing in the district is not disputed by the Council and it is agreed that it should be afforded weight as a

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<sup>36</sup> CD E11A Paragraphs 6.8 and 6.9

material consideration<sup>37</sup>. The submitted legal agreement contains planning obligations which are capable of securing the appropriate level and mix of affordable housing, management of the nomination rights and local criteria to support the delivery of the affordable homes for local people in the area. The legal agreement is a mechanism to ensure that the appeal scheme delivers the important housing benefits of the appeal proposal.

110. The Section 106 Agreement between the appellant, West Oxfordshire District Council and Oxfordshire County Council includes obligations relating to financial contributions towards secondary school facilities in Burford, Special Educational Needs Provision and sustainable transport measures to support public transport services serving Ascott Upon Wychwood.
111. The Section 106 Agreement includes various provisions and obligations that cover the Public Rights of Way improvements, household waste recycling improvements, outdoor sports pitches in the vicinity of the site, together with highway works and provision, on-going management and maintenance of the public open space associated the development.
112. The Council agree that the completed and signed Section 106 Agreement would resolve its concerns relating to the pressure on the local infrastructure within the district and overcomes the fourth reason for the refusal of planning permission. There is no substantive other evidence before me which would indicate that the available services and facilities would not have sufficient capacity to accommodate demand arising from the development beyond those that require the provisions of the planning obligations.
113. Having regard to the above, and based on the evidence before me, I am satisfied that the proposed contributions set out above are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with the Framework and CIL Regulations. The contributions in the Section 106 Agreement and how they would be spent are supported by the relevant local plan policies, representations from the Council's consultees, appeal statements, CIL compliance statements and the Statements of Common Ground between the main parties. However, as these contributions towards local infrastructure would be mitigation, they do not constitute material benefits.

### **Overall Heritage and Planning Balance**

114. As set out above there is no five year supply of deliverable housing land and the relevant development plan policies for the supply of housing that are most important for determining the application, namely Policies OS2, H2 and BC1 of the WOLP, are out-of-date. In terms of the application of paragraph 11(d) of the Framework and whether planning permission should be granted (subject to Section 38(6) of the Planning and Compulsory Purchase Act 2004) I turn first to limb (i) of the paragraph.
115. In respect of heritage matters, the less than substantial harm identified, should be weighed against the public benefits of the proposal in accordance with paragraph 208 of the Framework. I have found that the less than substantial harm to the setting of Grade II\* listed Church of the Holy Trinity and Grade II listed buildings at Nos. 9 & 11 The Green would be at the lower

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<sup>37</sup> CD E4 Planning SoCG Paragraph 7.34

end of any spectrum of less than substantial harm. The harm to the significance of the Grade II Crown Farmhouse and curtilage listed structures would be firmly in the middle of any range of less than substantial harm.

116. There are agreed public benefits between the main parties to the appeal scheme<sup>38</sup>. These include the provision of market and affordable housing and ongoing housing supply shortfall and extremely bleak outlook for local affordable housing provision, in the context of a district with no five year housing land supply. There are also associated economic benefits in terms of job creation during construction and local spending, and some modest benefits from additional public open space within the development, any biodiversity net gain, upgrade of the PRowS within the local vicinity and the re-use of the previously developed land on part of the site.
117. Whilst the cumulative benefits of the appeal scheme are considerable and there would be limited heritage benefits from the removal of the modern portal framed farm buildings on the site, I do not find the public benefits would outweigh the identified harm to heritage assets.
118. Consequently, when considering limb (i) of paragraph 11(d) of the Framework I am drawn to footnote 7 as to whether there are policies that provide a clear reason for refusing the development proposed. In this case both Natural Landscape/AONB and heritage assets policies, as referred to in footnote 7, are engaged and provide clear reasons for refusing the appeal proposal. Consequently, the presumption in favour of sustainable development and the tilted balance under paragraph 11d) of the Framework is not engaged in this appeal and with it, potential support from Policy OS1 of the WOLP.
119. I have considered the various benefits put forward by the appellant that the proposal would bring, through making an important contribution to supply and mix of housing in the area, to which I attribute significant weight. The Framework promotes sustainable development in rural areas, and the housing would make a positive contribution to the supply of housing and supporting the vitality of the village and the surrounding rural communities, that weigh in favour of the proposal. Given the level of affordable housing need, this has social benefits carrying substantial weight.
120. The appellant also considers that the proposal would boost the local economy through providing construction jobs, local investment and supporting local services and facilities through new residents are matters to which I attach moderate weight. In environmental terms, the appellant states that the scheme's effective use of previously developed land, open space, landscaping strategy, biodiversity enhancement, sustainable urban drainage and the sustainable transport measures including the upgrade of the PRowS would amount to environmental benefits, to which I attach moderate weight.
121. However, I have found above that taken overall the development would cause significant harm to the character and appearance of the area including the Cotswold Natural Landscape and the setting of the adjacent designated heritage assets. In this case, the scheme would harm the objectives set out in the Framework and the great weight should be given to conserving and enhancing landscape and scenic beauty in Cotswolds Natural Landscape and heritage assets in an appropriate manner. Moreover, the exceptional

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<sup>38</sup> CD E4 Planning SoCG Paragraph 7.42

circumstances case and the public interest test as identified in paragraph 183 of the Framework is not met.

122. In addition, the out-of-datedness of the most important policies, however, does not alter the statutory primacy of the development plan nor indicate they carry no weight. The policies that seek to ensure development protect the character, landscape and historic environment are central to this decision. I attribute full weight to the degree to which the development conflicts with the relevant provisions of Policies OS2, OS4, EH1, EH2, EH9, EH11, EH13 and BC1 of the WOLP, which insofar as they are pursuing good design and development that respect the character and quality of an area and conserve and enhance the built, historic and natural environment including Cotswolds Natural Landscape, hold a considerable degree of conformity with the policies in the Framework.
123. Overall, I consider that the proposal conflicts with the development plan as a whole, taking in account those policies that both oppose and support the proposed development. As required by Section 38(6) of the Planning and Compulsory Purchase Act 2004, determination of this appeal must be made in accordance with the development plan unless material considerations indicate otherwise. The Framework is a material consideration and I have considered all of the policies in the Framework. I have judged the adverse impacts would be sufficient to outweigh the scheme's benefits and, in this case, I have found policies in the Framework that protect designated heritage assets and the Cotswolds Natural Landscape provide clear reasons for refusing the development proposed. In the circumstances of this appeal, I do not find material considerations indicate that my decision should be taken otherwise than in accordance with the development plan.

### **Conclusion**

124. For the reasons given above, I conclude that the appeal should be dismissed.

*David Troy*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT:

Giles Cannock KC	King's Counsel, Kings Chambers
Alan Divall	Director, Walsingham Planning
Ben Pycroft	Director, Emery Planning
Alastair Macquire	Director, ES Landscape Planning Ltd
Henry Ryde	Director, National Head of Built Heritage, Townscape and Archaeology, Savills
Annie Gingell	Associate, Tetlow King Planning
John Birch	Director, Glanville Consultants
Matthew Mainstone	Partner, Wedlake Bell LLP

### FOR THE COUNCIL:

Annabel Graham Paul	Barrister, Francis Taylor Building
Chris Wood	Senior Planner (Appeals), West Oxfordshire District Council
Tara Hayek	Senior Conservation & Design Officer, West Oxfordshire District Council
Geri Beekmeyer	Principal Infrastructure Negotiator, Oxfordshire County Council

### INTERESTED PARTIES:

Brian Leach	Ascott under Wychwood Parish Council
Sarah Russell	Interested Party
Juliet Craig	Interested Party
Laurence Robb	Interested Party

**DOCUMENTS SUBMITTED DURING THE INQUIRY:**

- ID.1 Appellant's Opening Statement
- ID.2 Council's Opening Statement
- ID.3 Ascott under Wychwood Parish Council Statement
- ID.4 High Court Order, Cala Management Limited v Secretary of State for Housing, Communities and Local Government & West Oxfordshire District Council [2019] CO/3061/2019Y
- ID.5 West Oxfordshire District Council CIL Compliance Statement
- ID.6 Appellant's Closing Statement
- ID.7 Council's Closing Statement