APPEAL REF: APP/C3105/W/24/3338211

LAND EAST OF WARWICK ROAD, BANBURY

CLOSING SUBMISSIONS
ON BEHALF OF THE COUNCIL

INTRODUCTION

1. This development proposed in this appeal would conflict with the development plan in principle, and by reason of the specific harms that it would cause. Those harms to the landscape, heritage and soil of the district will be irreversible. Granted that the scheme will bring benefits, even considerable benefits, they do not justify permitting the proposals.

2. The district has a very good track record in the delivery of housing, and particularly in delivering housing at Banbury. The primary need is for housing to meet Oxford's unmet needs, in respect of which Banbury and the site in particular would be a profoundly unsustainable location.

3. The main issues are addressed in turn to make these arguments good; finally the planning balance is addressed. Whether or not the NPPF 'tilted balance' is engaged, the Council does say that the appeal should be refused. The small short term boost to housing numbers it would deliver is far outweighed by the irreparable damage that would be done from developing a site that has a particular sensitivity due to its location at the narrowest point between Banbury and Hanwell.

WHETHER THE COUNCIL CAN DEMONSTRATE A SUFFICIENT SUPPLY OF HOUSING LAND?

Update: the Heyford Park challenge

4. The Appellant's case under this issue was heavily dependent on the so-called 'Heyford Park route'. In other words, the Inspector was invited to follow the reasoning and conclusions of the Heyford Park decision. Since the inquiry sat, the Council's

challenge to that decision has been granted permission to proceed on the papers by Mould J (a very experienced planning practitioner).

5. Given that the High Court considers that the Heyford Park's decision was arguably wrong in law, it would be rash to base the current decision on its reasoning. The sensible option, if the Inspector is attracted by the reasoning from Heyford Park, would be to wait until the High Court has decided whether that reasoning is legally flawed or not. Clearly, if the challenge is upheld, the legally flawed reasoning of the Heyford Park Inspector cannot be followed.

6. If the challenge is dismissed, on the other hand, that will not necessarily show that the Heyford Park inspector was 'right' – just that her decision was not legally flawed and therefore was open to her as a matter of planning judgment. In that circumstance the Inspector here would be entitled to reach a different decision on the basis of the arguments before him. The implication of this is that if the Inspector is minded to **disagree** with the Heyford Park inspector (as the Council invites him to do), he need not await the outcome of the Heyford Park challenge before issuing a decision.

Whether a requirement for 4 or 5 years' supply?

7. The first substantive issue between the parties is as to the extent of the supply that must be demonstrated.

8. The answer to the first question turns on the correct meaning and application of NPPF226:

> This policy applies to those authorities which have an emerging local plan that has either been submitted for examination or has reached Regulation 18 or Regulation 19 (Town and Country Planning (Local Planning) (England) Regulations 2012) stage, including both a policies map and proposed allocations towards meeting housing need.

9. This policy was brought into force with the purpose of "rewarding local authorities at an advanced stage of plan making".[1] This intention is important when it comes to interpreting the text of NPPF226. Insofar as there are two possible readings of it, the one which better serves the purpose of Government should be preferred.

10. Clearly, the Council has a plan at reg 18 stage. The two questions to be resolved are – first, whether the proviso ("including both a policies map and proposed allocations towards meeting housing need") applies to such a plan; second, whether, if it applies, it is satisfied.

11. The Council's position on these two issues follows from the advice it has obtained from Douglas Edwards KC, in a series of opinions. Also included in the core documents is a series of opinions from Sarah Reid KC, which Mr Edwards has considered and responded to.[2] His interpretation is to be preferred for the reasons he has given there, which are not repeated.

12. A few supplementary remarks are included here in the light of the evidence and arguments that this inquiry has heard.

13. The proviso should not be applied to a reg 18 plan. To do so would put the requirements of NPPF226 at odds with the requirements of the relevant regulations. An authority, such as the Council in this case, preparing its plan before NPPF226 was implemented, would have had no way of knowing that it had to meet the requirements of the proviso in order to benefit from NPPF226. As such, it could be arbitrarily deprived of the reward intended by government despite making progress with its emerging plan in accordance with the relevant regulations. The Council's interpretation here is thus more consistent with the underlying purpose of the policy than the Appellant's interpretation.

14. If the proviso is applied to a reg 18 plan, it should be found to be satisfied here. It is accepted to be satisfied in part, i.e. as to the inclusion of "proposed allocations". The

[1] Ministerial Statement, 19 Dec 2023; quoted at CD13.25 p6.
[2] The whole series is at CD13.23-CD13.27.

argument from Mr Richards was simply directed at the claimed absence of a "policies map". Furthermore, his complaint was about the *format* of the information contained in the plan, not about the *substance* of the information. He accepted in XX that the emerging plan contained in substance all of the information that was required,[3] but said NPPF226 should not apply because that information was not displayed on one "policies map".

15. Furthermore, Mr Richards accepted that in terms of the *form* of the information, his only complaint was that it was presented on *more than one* map, as opposed to a single map.[4] If the policy were read as saying 'policies map or maps' his sole criticism would be addressed. It should be read in that way as:

    a. That would be the normal reading of a legislative provision. The Interpretation Act 1978 provides by s6 that "In any Act, unless the contrary intention appears… (c) words in the singular include the plural and words in the plural include the singular". That should also be the starting point for reading a policy made in respect of the statutory planning regime;
    b. There is no reason to read NPPF226 more restrictively. The only justification advanced for wanting a single map was to avoid members of the public from having to undertake what was called a "paper chasing exercise" to obtain information. That argument may justify having a single policies map with the adopted plan. At the stage of the emerging plan, however, a series of maps actually provide a much clearer and more easily comprehensible picture as to what the new plan proposes to *change* (e.g. in terms of new allocations). If the information were all on one map, that would be obscured;
    c. The LPA's reading accords with the purpose of NPPF226. The policies may change between reg 18 stage and adoption. Therefore it is premature to draw up a single full policies map at reg 18 stage. Significantly, as Mr Richards

[3] He qualified this by reference to the settlement gaps policy, in respect of which he thought (but was not sure) there might need to be some further information provided. As was evident from the exploration of this issue in XX of Mr Murray-Cox, emerging policy CP45 does not propose to define any specific gaps: CD5.6 p99. The generic text in the glossary (CD5.6 p333) cannot be read so as to overrule the policy in this respect.

[4] The requirement for an OS base applies in regulations only to an "adopted" policies map; and that clearly cannot be provided with a reg 18 plan. Furthermore, Mr Richards also fairly and sensibly conceded that it is no obstacle to the application of NPPF226 that the map is within the plan or an appendix to the plan rather than standing as a separate document.

accepted, the Council would be no further advanced with its plan making process if it had compiled a single map in addition to the information already included in the emerging local plan (indeed, it may have wasted plan-making resources on preparing a map that was not then required). The aim of NPPF226 is to reward LPAs at an advanced stage of plan-making. As a single policies map would not have advanced the plan-making process any further than it is already, it does not make sense that such a single map should be required.

16. For these reasons and those given by Mr Edwards KC in his opinions, the Inspector is invited to find that a 4 year supply is all that is required by policy.

Whether to use a combined requirement figure of LHN plus Partial Review?

17. The essential problem with the Appellant's position is that there is no mandate in either national or local policy for the use of a 'combined' housing requirement figure (LHN plus Partial Review) in a s78 appeal. Any support for a single unified requirement (and that support is somewhat questionable) is for the use of such a figure in the plan-making process.

18. As to national policy, NPPF35 (on examining plans) sets the context, cross-referring in a footnote to NPPF61. This is where the method of assessing housing OAN in a plan making context is set out. The clear indication here is that NPPF61 relates to the plan making process. That is confirmed by the text of NPPF61 itself, which begins and ends with reference to "strategic policies" and what should "inform" them. There is no direction here as to how the HLS position should be considered at a s78 inquiry.

19. NPPF61 cross refers to NPPF67. Likewise, this is addressed to "strategic policy-making authorities" (which the Inspector on a s78 inquiry clearly is not). It explains how such authorities should "establish a housing requirement figure for their whole area". This may be "higher than the identified housing need" where it includes allowance for unmet need of neighbouring authority. That is again in the context of the plan making process. As Mr Richards' own evidence makes clear: "It is for plan making and the Local Plan Review to determine what the appropriate figure is for the

next Local Plan period".[5] Significantly, that statement refers to NPPF61 and 67, as they clearly relate to the plan-making process.

20. Policy on assessing HLS in a decision-making process is set out in NPPF77. This sets out a binary choice, an 'either/or': *either* the requirement from strategic policies *or* LHN calculated (per the footnote) by reference to the standard method. There is no mandate here to increase the results of the second calculation by reference to the unmet needs of other areas.

21. That is sensible and appropriate as NPPF77 is evidently aiming to give clarity as to whether an LPA has a sufficient HLS, or not. That clarity is to be provided either by reference to strategic policies, or, if not, by reference to the standard method. It is in fact designed to avoid lengthy arguments of the sort addressed to this inquiry. The unmet needs of other authorities are a matter to be addressed at the *plan making* stage; decision making is then to follow the adopted plans or use LHN.

22. Looking then to local policy, there is also clearly no mandate there for a combined requirement figure. The Part 1 Plan itself is over 5 years old and in need of updating. In any event, there is no policy there that requires a combined calculation of HLS against LHN plus some other figure. The Partial Review is even stronger. Its whole strategy and approach is predicated on a separate, Oxford-specific housing requirement.[6]

23. One is therefore left wondering what policy the Appellant is actually relying on to support its approach. It cannot point to any provision in the NPPF which directs a combined approach. Mr Richards was only prepared to say that NPPF77 "does not preclude" such an approach. That is wrong in the light of the clear dichotomy offered by NPPF77. But even if it is not wrong, it is far from saying that NPPF77 supports or requires a combined approach. Local policy is firmly opposed to a combined approach, as the Appellant acknowledges[7].

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[5] Richards 4.4.
[6] In this respect it is different to e.g. the VOWH Plan Part 2 which specifically provided for a combined housing requirement by adding on an allowance for Oxford's unmet needs to the district's needs: CD5.11 p46; CD5.12 p26 refer. As such, there is support in VOWH from up-to-date strategic policies for such an approach.
[7] Richards 6.13.

24. One option for the Appellant would have been to argue that:

    a. The NPPF directs the setting of a single housing requirement at plan making stage;
    b. The Partial Review does not do this;
    c. The Partial Review is therefore inconsistent with the NPPF and out-of-date.

25. That argument would be tenuous (because it is clearly possible for plans to deviate from the NPPF's suggested approach to housing requirement without becoming inconsistent with it). It would however have at least some policy support. It would also undermine the Appellant's position. The Appellant is wholly reliant on the figures in the Partial Review to generate its housing requirement; if that is found out-of-date there is no source on which the Appellant can rely for that requirement. Hence why Mr Richards asserted in XX that the Partial Review as "fully consistent" with the NPPF as it stands now in terms of how it looked to meet Oxford's unmet need.

26. That being so, the Inspector is respectfully invited to follow the approach required by adopted local policy, and consistent with the NPPF, of not combining LHN and the Partial Review housing requirement.

Other points

27. There was a small skirmish around whether to use the most uptodate outturn of the standard method, or not. It is correct to do so:

    a. On first principles;
    b. As an application of NPPF77 (which simply requires reference to "the" LHN, not LHN at some past or fixed point); and
    c. In line with the weight of decision letters.[8]

28. No inconsistency arises by reference to the base date for assessing supply, as the two are independent of each other.

[8] The Council's approach is taken, or supported, in CD10.22, CD10.23, CD10.26, CD10.30, CD10.31, CD10.33, CD10.34. The Appellant's is taken in CD10.37.

29. More significantly, there were disputes over various of the sites in the supply; it is not possible to address these meaningfully in closing submissions without simply reiterating the arguments well-canvassed in the relevant roundtable session. The Council's position and evidence as advanced in that session are commended to the Inspector.

30. If the Council's supply, or a figure similar to it, is adopted, then a four-year supply against LHN is easily demonstrated.

Is the Council 'failing'?

31. The Appellant's case as presented in opening was heavily dependent on a narrative of failure. Namely, that the Council has failed and will continue to fail in its response to the housing crisis. As such, and whatever the formal policy position, development of the appeal site was in some sense needed to "help the Council achieve its strategy" (as it was put to Mr Goodall in XX).

32. This narrative of failure has not survived the detailed testing of the evidence, however. Of course, the Council like any LPA is not perfect and has to operate in the real world of conflicting pressures and demands. Judged fairly and by the relevant criteria, however, it is not failing but succeeding.

33. The starting point for judging the Council's performance should be the tests set by national policy. They are carefully prescribed and calibrated and, as Mr Goodall explained, if national policy were complied with by each LPA, the 300,000 dwellings per year often referenced in public debate would be delivered.

34. The prime measure of performance in national policy, and the one with the clearest policy consequences, is of course the test of five (or four) year housing land supply. For the reasons already given, the Council has such a supply (or very nearly does). If the Inspector agrees, that is probably as far as one needs to go in assessing the Council's performance in terms of housing delivery.

35. If a broader look at delivery is thought to be helpful, then national policy again offers a mechanism for judging that: the housing delivery test. It is common ground that that

is passed, and by a significant margin at 143%.[9] Importantly, this metric also includes reference to the needs of neighbouring authorities. So the Council is seen to be succeeding in terms of housing delivery even taking into account Oxford's unmet needs.

36. In the face of the Council's success against the metrics set by national policy, the Appellant has devised its own metrics for assessment. These relate to current and future projected 'shortfalls' against the requirements set in the local plan. Although the figures referred to by the Appellant are mathematically correct, they are neither significant nor particularly meaningful in the context of this appeal.

37. The Appellant looks first to delivery against BSC1 over the period from 2011-12 to 2022-23.[10] Delivery has been less than the cumulative annual requirement over that time, by a figure of 1,392. That is not a meaningful measure of the success of the local plan in meeting Cherwell's needs, however. It ignores the following important facts:

    a. BSC1 is acknowledged to be out of date. It sets an annual housing requirement at 1,142 which is far higher than the current assessments of Local Housing Need. It was a positive and growth based strategy;
    b. The Local Plan Part 1 was only adopted on 20 July 2015; it could not rewrite history. From 2015-16 the strategy in the plan has delivered housing over and above the requirement that it set both cumulatively and in every individual year but one.
    c. The Appellant sought to overcome this obvious point by reference to the housing trajectory included with the plan; but that was indicative only and did not amount to a target or requirement that the Council needed to meet. As it turns out the trajectory was overly optimistic, but not so as to prevent the Council from meeting the adopted annual housing requirement figure as set out above;
    d. More broadly, Cherwell is ranked 17 out of 324 authorities in terms of its record of housing delivery per thousand houses, i.e. it is in the top 5%. As Mr Goodall

[9] HLS SOCG 1.20.
[10] HLS SOCG 2.9 first bullet.

explained, it is "punching above its weight" in terms of housing delivery. It is apparent from the preceding two bullet points that this exceptionally strong record of housing delivery has been achieved as a product of the plan led system and the strategy of the local plan, not despite them.

38. The Appellant next looks to delivery on sites allocated in the Local Plan Partial Review, i.e. those sites designed to meet Oxford's unmet needs. Over the period 2021-22 to 2022-23 the calculation shows under-delivery of 680 homes. Once again, that is not a meaningful measure of progress when it is understood that:
    a. The Partial Review pursued a strategy of releasing distinct sites to meet Oxford's needs from the Green Belt. As such, and as the Inspector considering its soundness acknowledged, it had a standing start. There was no pipeline of existing sites to deliver in the early years of the plan, and (given that they formed part of the Green Belt) little prospect of the sites in the plan coming forward unless and until they had been removed from the Green Belt through the local plan process;
    b. The Partial Review, although initially adopted in 2020, was then subject to a legal challenge, and a holding objection from Oxfordshire County Council up until 2023. The strategy of the plan has therefore not in reality had any time to deliver.

39. Cherwell is in fact to be commended for its decision, unique among the Oxfordshire authorities, to adopt a specific plan with sites specifically identified to meet Oxford's unmet needs in a sustainable way. It did not simply make amorphous provision for an increased housing requirement which, as Mr Goodall observed, would make Oxford's unmet needs 'disappear' when (after 5 years) that requirement became out of date. These are not the actions of an authority that is in "denial".

40. Finally, the Appellant looks to predictions of future shortfalls by 2031, i.e. the end of the current plan periods. Although these numbers are the largest, and therefore capable of being significant, they again do not hold much meaning for decision making purposes.

41. Essentially, because they are projections of future shortfalls, they are very likely to change in the future. This change is likely to come from two sources.

42. First, from a re-assessment of the likely performance of sites in terms of delivery once they are moved from the 'developable' into the 'deliverable' category. Mr Goodall explained that Cherwell's approach to its developable sites is a broadly conservative one so there is reason to expect that there will be more delivery than currently projected.

43. Second, and even more significantly, by 2031 the Council will not be working to the supply and requirement set by the current local plan, the main part of which is already acknowledged to be out of date. It will inevitably have adopted a new local plan with a new requirement and new provision for supply, insofar as that is required to maintain a 5YHLS.

44. The Appellant's case here amounts to an allegation that the Council is "failing" because, on current projections, and if nothing changes by 2031, the existing local plan will not have delivered all it set out to deliver. The Council recognises that and that is precisely why it is moving forwards with a new local plan now. The Appellant's criticism lacks reality, and is fundamentally unfair. A fair, and realistic, appraisal of the Council's record on housing delivery shows that it is performing well.

45. There is then no reason to depart from or give less weight to the position suggested by the application of policy on HLS.

THE DEGREE TO WHICH THE PROPOSED DEVELOPMENT WOULD RESULT IN LANDSCAPE AND VISUAL HARM TO THE LOCAL AREA

46. Following the testing of evidence, it is clear where the fault-lines between the parties lie. They relate primarily to the assessment of the role played by parcel A in its existing state.

47. Were it not for the presence Hanwell, then the experts were agreed that there is nothing particularly special about the site that would make it unsuitable for development. The main disagreement, between the parties and their experts, related to the degree to which

the site is recognised as playing an important role in the separation of Hanwell and Banbury.

48. To inform the consideration of this question, it is instructive to begin with an analysis of the site in context, and then move on to the published assessments. Particular weight should be given to those assessments which are contained in adopted development plans – both because they have been the subject of testing and also because of the statutory presumption in favour of the development plan.

The site in context

49. "Banbury lies in a topographic 'bowl' in the landscape".[11] The site, that is parcel A, forms part of a local ridgeline which broadly speaking slopes down towards Banbury. Parcel A is relatively flat and sits as it were on the lip of the bowl containing Banbury. Mr Cooper recognised this; somewhat surprisingly, given the content of the reasons for refusal, Mr Connolley had not himself considered the topography of the site.

50. Parcel A adjoins the urban edge of Banbury but is separated from it by an unusually thick buffer of woodland planting (on which, more below). It represents the last remaining field free of built development between Banbury and Hanwell (as Mr Connolley acknowledged); the field to the north contains residential development, at its north east corner, and barns.

51. The barns to the north of parcel A represent the southern extent of the village of Hanwell (not the residential buildings of Park Farm as the LVA has it at 4.33). Physically, they are very close to the main envelope of residential development which undisputably represents Hanwell. Functionally, their original purpose as agricultural buildings links them clearly to the rural settlement of Hanwell. It is not unusual for such a settlement to include working farms and their buildings. Furthermore, the inquiry heard from local residents that the barns are also used by residents of Hanwell for community events.

[11] CD6.3 p31.

52. In any event, whether the barns are considered part of Hanwell or not, they are clearly closely associated with it and do not represent anything that could be described as maintaining a separation between Banbury and Hanwell. That burden falls on the field comprising parcel A. As an intact agricultural field with strong vegetated boundaries it presents a clear countryside character, distinct from the settlements directly to the north and south of it.

53. The contribution parcel A makes in this way is perceptible both from the right of way running through it and also from the adjoining Warwick Road, and other rights of way in the vicinity.

54. Parcel B is different in that it forms part of a wider tract of more open and expansive countryside falling away to the east. It again contributes to the sense that there is recognisable countryside between Hanwell and Banbury, although the gap at this point is not so narrow.

55. These submission have focussed on parcel A because that is proposed for built development. The Appellant place great reliance on the differences between parcels A and B, as support for its design configuration. The Council has no objection to that configuration, if 170 dwellings have to be put on the site somewhere. But that begs the question as to whether those dwellings should be on this site at all. Putting it another way, the fact that the Appellant does not propose built development on parcel B is welcome; but it is also no reason at all to permit built development on parcel A.

The site in published assessments

56. The Part 1 Plan in 1996 specifically referred to the gap between Banbury and Hanwell as a "more vulnerable" one which particularly needed the protection of policy C15. Since that time, the gap has only shrunk and become more vulnerable to erosion – by the addition of the Hanwell Fields development, Dukes Meadow Drive, and finally the Hanwell Chase development.

57. It is plain from the way this development was assessed, and constructed, that it was intended to represent the definitive edge of Banbury in this location.

58. The Banbury Landscape Sensitivity and Capacity Assessment[12] assessed Site J (to the south of the appeal site. The assessment of this site (p76) clearly envisaged it as being acceptable for development *only* in a context in which it was the last such development approved. It proposed a density of 30dph, and lower to the northern edge.[13] It set guidelines for the retention and enhancement of the woodland buffer to the north, so as to protect the setting of Hanwell Conservation Area. It required screening of development as far as possible from Warwick Road – to prevent a sense of development extending out from Banbury along the Warwick Road (as Mr Connolley accepted).

59. There can accordingly be no doubt that Hanwell Fields was regarded as acceptable only on the condition that it was the last such development to be constructed in this location. Consistent with this picture is the Green Buffer Report of 2013,[14] which clearly and in terms identifies that further development beyond the edge or Hanwell Chase would be harmful from the point of view of the setting of Hanwell, preventing coalescence, and containing Banbury within its topographical limits (pp18-19).

60. The Green Buffer policy was not taken forward – not because of any objection to this assessment – but because the Local Plan Inspector considered that its aims could be secured by the application of the existing policy in C15.[15] The clear expectation being, that a proposal such as the instant one would fall to be refused because of its clear conflict with C15.

61. Unsurprisingly, given these matters, the Local Plan Part 1 itself clearly identifies Hanwell Chase as the edge of Banbury; the site by implication forming part of a green buffer beyond. The origin and purpose of the woodland screen to the south of the appeal site is clearly explained: "The improvement of woodland to the north [of Hanwell Chase] would help permanently establish a green buffer between the site and Hanwell" (C.149, p199). Similarly, the "establishment of a green buffer between the

[12] CD6.1.
[13] Although as it turns out, it appears from the now agreed density figures that this intention did not carry through into the detailed design.
[14] CD6.2.
[15] CD6.12 at p22 [101]-[105].

site [of Hanwell Chase] and Hanwell village" is listed as a policy objective (Banbury 5, p201).

62. That conclusion is significant because (unlike the 2022 assessment work on which the Appellants heavily rely) it is the result of testing and scrutiny through the local plan process. It should not lightly be interfered with by permitting further development in a location that the Local Plan Inspector, and Local Plan, specifically regarded as comprising a green buffer separating Banbury and Hanwell.

63. The Cherwell Landscape Sensitivity Assessment 2022[16] shares with the previous work an acknowledgement that the key sensitivities of the site are the sense of settlement separation between Banbury and Hanwell, and the rural setting to the Hanwell CA (p130). However, the importance of the site for preserving settlement separation has been given surprisingly little weight in the assessment of the site. It appears to indicate that the whole of parcel A *and* the field to the north are potentially suitable for development; which is a conclusion from which even Mr Connolley demurred.

64. It fails to analyse or explain *how* residential development of the site could be consistent with the site's function in preserving the already delicate sense of separation between Banbury and Hanwell. And it surprisingly fails to account for key views across the site identified in the CAA. No doubt these points and others will be taken up by local residents when this document comes to be considered in the context of the emerging local plan. The 2022 document should accordingly be given little weight until it has been subject to examination and results in a sound plan.

Design

65. Before addressing the competing assessments of harm before the inquiry, it is necessary to touch briefly on design. The Appellant relied heavily on the proposed design of the scheme in order to mitigate any harm that would arise, including to the sense of separation between Hanwell and Banbury.

[16] CD6.3.

66. At this outline stage, design is of course not for determination.[17] And any objection to the design that was capable of being rectified later on could not amount to an objection to the grant of outline permission sought. It is only the principle of development that is for consideration at this stage, albeit that the illustrative material indicates how that could be achieved.

67. If the principle of development were conceded, Mr Cooper did not dispute the appropriateness of the design – indeed, he was complementary about it. The Inspector can therefore have confidence that his assessment of harm had fully acknowledged any benefits of the design in mitigating the harm that might arise.

68. The issues with the design that do fall to be considered at this stage are where there are inevitable problems with the design because of the principle of development in this location. In that respect, the following points are relevant:
    a. As the site sits beyond what has been designed as a "permanent" edge to Banbury (see above), it follows that, as Mr Cooper said, it would read "as a satellite and not a natural extension of the residential areas to the south". This is a consequence of developing in an area with "no spatial connection" to the areas beyond the hedge to the south. Although the site, if developed, would clearly form part of Banbury, it would not be a well-connected or related part;
    b. New planting is proposed to the boundaries of parcel A, and in particular to the north. This would not "strengthen" the current structure in any meaningful way; because the presence of substantial amounts of built development in parcel A would mean that the boundaries would no longer be 'field boundaries' at all. As Mr Connolley accepted, the new planting would in fact be associated with the new development and would be perceived as associated with settlement rather than the countryside. The boundaries of parcel A would accordingly be remnants of an agricultural landscape now absorbed into an urban form of development (rather like the woodland belt to the south of the site apparently started life as an ancient trackway bounded by vegetation). There is thus an inherent limitation to what planting can do to maintain a sense of separation;

[17] It follows that "whether the masterplan is well-conceived and appropriate to its context" is a non-issue, not a main issue as Mr Connolley had it: Connolley 4.7.

c. A similar point can be made about the treatment proposed for parcel B. It would again be functionally linked (by the requirements of SUDS, inclusion of play space etc) to the urban area, not the countryside, and would be perceived as such. Even the purely landscape related treatment of this area would inevitably conflict with the recommendations of OWLS[18] to "[c]onserve the open spacious character of the landscape by… [locating] new planting in dips and folds of the landscape";

d. Mr Connolley was critical of the woodland screen to the south, and at times the argument seemed to be made that the new edge would be an "improvement" on the old. Whatever may be the merits of the proposed design, they cannot make up for the fact that the new edge of Banbury (built development and associated landscaping) would be adjoining or virtually adjoining the edge of Hanwell.

69. It is implicit in the Appellant's design that the maintenance of a certain degree of physical separation between Banbury and Hanwell is necessary; hence Mr Connolley's statement that "the Appeal Proposals have been pulled south in order to maintain a sense of separation".[19] In other words, there is a point beyond which physical proximity cannot be 'designed away'. A key difference between the experts was in respect of their judgment as to when that point is reached, and, more particularly, whether it has been reached already.

Assessments of harm

70. The difference in assessments of harm before the inquiry essentially related to a difference in view as to the importance of the site in maintaining settlement separation.

71. Mr Cooper clearly recognised the contribution of the site in this respect. The characterisation of him as a witness "looking for trouble", by reference to a long XX on his earlier assessment of the scheme, was patently unfair. Both because he gave his evidence in a transparently fair and open way, making concessions where they were justified. And also because the "fundamental source of objection" he saw to the development (namely in its impact on settlement separation) was expressed in the same terms in his earlier assessment and in his proof (p21).

[18] Summarised at p18-19 of the LVA.
[19] Connolley 4.12.

72. Mr Connolley, by contrast, had started his analysis from the position that the site functions "***only*** as agricultural land adjacent to the settlement boundary" (emphasis added) and that there was "***nothing*** that would indicate to me any particularly elevated value in landscape terms" (emphasis added).[20] In short, he had not recognised the function and value of the site in providing settlement separation. He referred in XX to his later assessment of value (p22) – but as he agreed, there was also no mention in that more detailed analysis of the site's function in terms of settlement separation.

73. Starting from this position, it is unsurprising that Mr Connolley's assessment of harm was depressed. The Inspector is invited to prefer Mr Cooper's assessment accordingly.

Visibility

74. There was a broad measure of agreement as to the impact of the development at different viewpoints, which the Inspector will anyhow have assessed on site in the normal way. The following points flow from that agreed position:
    a. The point is made by the Appellant that the site has a relatively limited zone of primary visibility. It should be noted, however, that the zone within which it is possible to see that Banbury and Hanwell are separate settlements is also limited. There is a large overlap between the two zones. It follows that the site is disproportionately important when it comes to appreciating the separation between the two settlements;
    b. The greatest visual impacts occur on the main direct routes (on foot and by vehicle) between Hanwell and Banbury. That is evidently the context within which those travelling would be most prone to notice the relationship between the two settlements. The impact would, in that sense, be magnified.

75. For all these reasons, the Inspector is invited to prefer the Council's assessment of the degree of landscape and visual harm the proposals will do. It is significant and represents a clear and specific objection to development in this location, that would not apply to most sites adjacent to Banbury.

[20] Connolley 2.5-2.6.

WHETHER THE PROPOSED DEVELOPMENT WOULD HARM THE SETTING OF NEARBY HERITAGE ASSETS

76. It is in fact common ground in respect of this issue that there would be harm to the setting of the CA; the issue is how serious the harm would be within the bracket of 'less than substantial harm'. There is then the question of whether there would be harm to the LBs and if so how serious it would be. In that respect, it is agreed that the site is within the setting of the church,[21] but not the castle.

The CA

77. As in respect of the landscape issue, the key difference of view here relates to the assessment of the contribution that the site makes to the setting of the CA in its existing state. Dr Doggett, HE and the CAA rate that contribution highly; Mr Stratford rates it less highly. Hence the divergence in view as to the extent of the harm.

78. In order to understand the contribution that the site makes to the setting of the CA, it is necessary to understand the history and development of Hanwell, the settlement of which the CA makes up the main part, and the historic core. Hanwell was originally an Anglo-Saxon village based around a spring.[22] In the medieval period, development was focussed around the spring itself, near Spring Farm.[23]

79. The church and castle are to the south/south east of that location. The castle previously had much more extensive parkland associated with it, extending up to the boundary of the appeal site up until 1887 at least.[24] Development therefore did not extend from the village to the south and west, to where the site is, but went north and east.

80. In terms of the economy of Hanwell, arable farming has played a large role. Before enclosure the castle was home of the lord of the manor; his commoners were mainly arable farmers. Enclosure came in around 1768 and arable farming continued to be the mainstay of the village economy after that. The church was built in the 1300s, the castle in 1498, and the farmhouses of prosperous yeoman farmers from 1600 onwards (as explained in the CAA p4, p10). Thus throughout the main period of the

[21] Stratford 3.103.
[22] CD5.9 p4.
[23] Dogget 2.5.
[24] Stratford p80.

development of buildings of heritage significance in the village, arable farming was the mainstay of the economy. The majority of families were engaged in agriculture even as late as 1811 (CAA p11), by which time the buildings of historic interest were largely complete.

81. The site forms a continuing part of the setting of arable farmland that has been so important to the development of the village functionally and economically. Although parcel A was not within the parish of Hanwell it has been farmed from Hanwell since the late 19th century, and probably long before that, as Mr Stratford agreed, given its proximity and location to the east of Warwick Road. As Mr Stratford put it, the site has a "historical functional and economic association with Hanwell village".[25]

82. The countryside around Hanwell contains a network of historic rights of way (CAA p8), linking the village to other settlements – to the south, that means Banbury. The experience of leaving the village for Banbury would in the past have been one of crossing a distinct tract of arable countryside, associated with the village's agricultural economy, before then crossing into the town of Banbury. That historic experience has been diminished by the outwards expansion of Banbury (which has been rapid even since 1996), but, in the location of the appeal site, not yet lost altogether.

83. The unifying feature tying together all the above features of Hanwell and its setting is that it has developed as a village, a rural community that is separate and largely self-sufficient, with its own agricultural hinterland. It is not and never has been a suburb of Banbury.

84. The site makes a particularly important contribution to this setting. In general terms, it is agricultural land of the sort that has always surrounded the village, and "[s]ettings of heritage assets which closely resemble the setting at the time the asset was constructed or formed are likely to contribute particularly strongly to significance".[26]

[25] Stratford 3.75.
[26] He Guidance CD13.4 p4.

85. As Mr Stratford rightly observed, there is a lot of agricultural land around the village (although his figure of 203ha within a 500m radius was somewhat arbitrary). Clearly, all of that land is not of equal importance. What matters is that the CA as a whole retains a distinct agricultural setting. In most parts of the setting, building on one arable field adjacent to the village will not affect that; because beyond that field is another arable field.

86. That logic does not apply to the appeal site. Beyond it is not another arable field, but Banbury. Furthermore it plays host to several parts of the ancient network of rights of way. Coalescence or perceived coalescence with Banbury, such as would be occasioned by the proposed development, would puncture the ring of agricultural land that currently preserves some sense of the historic setting of Hanwell as a whole.

87. This threat to the CA's setting was well understood by the authors of the CAA; indeed, it was the very reason for the CAA itself. Even in 2007, when it was written, the "proximity of Banbury" was seen to have "affected the village character" leading to the need for an updated CAA (p4). As detailed above, Banbury has come a lot closer since then (roughly 500m closer, and to within one field of the CA boundary). The threat to the village character, and setting of the CA, is proportionately greater. The site, of course, represents the point of greatest "proximity" between Banbury and the village.

88. In this context, the CAA contains a clear and specific warning against *any* further development in the pinch point between Banbury and the CA. It specifically identifies urban expansions as one of the most important threats to the CA (p26). And in terms of a response to that threat, it is clear that existing open areas of land around the CA which are important for its setting should simply not be developed at all (para 13, p28). That is a wise counsel. No amount of good design can make up for the alteration of a key part of the setting from its original arable agricultural character into an urban extension.

89. Dr Doggett, along with HE, recognised this and made their assessments of harm accordingly. Mr Stratford's assessment of harm is the outlier, and does not respond to the key sensitivity of the southern part of the setting in general, and the site (as the

closest gap between the two settlements) in particular. It also relies on an over emphasis on intervisibility, which is addressed in more detail in relation to the LBs, below.

The LBs

90. The CAA (at p26), Dr Doggett and HE have again treated the setting of the LBs as being similar to that of the CA in the location of the appeal site. That is not to blur assets together or fail in the task of individual assessment. It is to avoid a lot of unnecessary verbiage so as to reach a pithy and helpful assessment of harm, as Dr Doggett explained. HE's guidance famously prefers quality (and simplicity) over quantity.[27]

91. It is clear, and largely common ground, that the church and castle are important to the village: a very significant feature of the historic village, as Mr Stratford accepted in XX. The church in particular serves as a focal point and an advertisement of the village; it in turn is closely linked to the castle. The two form a classic manor/church group at the heart of the settlement.[28]

92. Likewise, it is clear (although not in this case common ground) that both LBs derive an important part of their significance, as far as setting is concerned, from the fact that they are set in the village of Hanwell. The church, as the village church, i.e. the religious and communal focus of the parish, and village, of Hanwell for over 700 years.[29] The castle, as an expression of control and status as between different classes of inhabitants of the village. These buildings originated in a village context, functioned in a village context and make sense historically only in a village context.

93. It follows that any threat to the identity of Hanwell as a separate village, distinct from Banbury, is a threat also to the setting of the LBs.

94. The case to the contrary was based on a very restrictive argument as to the role of views in assessing the extent of setting. The argument appeared to be that unless one

[27] CD13.4, p8: "a clearly expressed and non-technical narrative argument that sets out 'what matters and why'".
[28] Doggett 2.8.
[29] Stratford 3.94.

could identify a static view (or series of such views) in which the setting and assert were both visible at the same time, there could be no impact on setting. That argument is not justified.

95. It is not justified by law. The case of *Catesby Estates v Steer*[30] is no authority for the proposition that setting can only exist where there is intervisibility.

96. The High Court had ruled that the Inspector had erred by looking only for a visual connection: [21] of the Court of Appeal judgment. This decision was overturned by the Court of Appeal – not because it was *correct* only to look for a visual connection, but because it was held that the Inspector had indeed looked at matters other than the visual: [31].

97. The Inspector's search for "more of a physical or visual connection" than the site in that case had with the Keddleston Hall, was found to be an exercise of planning judgment, not a statement of general principle: [36]-[37]. The Inspector:

> was not saying that land could only fall within the setting of Kedleston Hall if there was a "physical or visual connection" between them. He was simply saying that in this instance the extent of the setting of the listed building could not be determined by the fact of the "historical, social and economic connection" to which he referred. There had to be something more than this connection alone if the appeal site were to be regarded as falling within the setting of the Hall.

98. It is not justified by policy. Policy identifies that setting is the surroundings within which the asset is experienced. The "experience" of the LBs (and the CA) does not begin suddenly when they first come into view. Those views are only likely to be "experienced" by a viewer who also experiences the immediately preceding parts of the journey. It is artificial and contrary to policy to confine the assessment of the 'experience' of the asset to those views within which they are directly visible.

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[30] CD11.2.

99. It is not justified by guidance. HE's guidance does not state that the existence of views is a prerequisite to find that a site is within the setting of an asset. When it is discussing views, it clearly refers to the concept of "static or dynamic" views (CD13.4 p6). Mr Stratford read this reference to 'dynamic' views narrowly, as a reference to a moving view *within which the asset always remains visible*. That interpretation is evidently not one shared by HE itself. It does not sit well with the huge variety of different types of views ("of, from, across, or including") discussed in the guidance.

100. It makes far more sense, and accords better with policy, to include in this case an assessment of the dynamic views obtained by the user of one of the ancient rights of way leading up to Hanwell and its LBs.

101. Such an assessment will reveal that immediately before crossing Gullicote Lane, for example, the experience will currently be one of agricultural land with some intimations of the presence of Hanwell to the north. On crossing Gullicote Lane one will then see the church spire and wooded castle grounds. If the development is permitted, the experience before crossing Gullicote Lane would be a continuous one of the presence of Banbury, which would continue until Gullicote Lane is crossed. There would also be an experience of the presence of Hanwell to the north. Those experiences would shape the context within which the LBs were then seen on crossing Gullicote Lane and thereafter. They would shape that experience negatively by undermining the historic context within which the LBs have been set and from which they derive significance.

102. It follows that the assessment of harm offered by HE and Dr Doggett is again to be preferred.

WHETHER THE PROPOSED DEVELOPMENT WOULD CONFLICT WITH NATIONAL POLICY REGARDING BMV LAND

103. Following the round table session, it appears to be accepted that development of the site would indeed conflict with national policy regarding BMV land. That policy, as Mr Wyke explained, without any serious disagreement from Mr Murray-Cox, NPPF180 requires that the "soils" of the BMV land be 'protected and enhanced'; and that the decision should 'recognise' the economic and other benefits of the BMV land

(in the same way that it should recognise the intrinsic character and beauty of the countryside).

104. Evidently, developing the site for housing would do neither of those things. Hence, the conflict.

105. It is true that these paragraphs do not present an absolute bar to development. However, there is a further negative impact here to weigh in the balance. Mr Murray-Cox helpfully explained that the factor has been given a range of weights from "limited" to "modest" in other decisions.

106. The specific arguments why the weight here should be limited do not justify that conclusion:

    c. In terms of the economic benefits brought by the land, they are not limited to the production of a grain crop worth £13,000, as was claimed. Local residents have explained that the land is also used for research purposes;
    d. The argument that the district has a lot of agricultural land is a generic one that could be repeated in respect of all but the most gigantic developments. It does not advance the analysis;
    e. The argument that some BMV land will have to be developed on the outskirts of Banbury, even if correct, does not justify the development of this site now. It should be left for the plan making process to balance up the respective advantages and disadvantages of different sites in a way that it simply not possible in this forum.

107. The conflict with national policy therefore remains one that can be weighed in the overall balance together with the more substantial landscape and heritage harm. It is to that balance I now turn.

THE PLANNING BALANCE

108. The statutory presumption in favour of the development plan applies here. That development plan is very clearly opposed to development on unallocated sites beyond settlement boundaries. There was some debate about whether the proposals represent 'sporadic' development or not pursuant to C8. That is an arid debate because in

substance it is clear from the text at 9.13 that "all" proposals "beyond the built-up limits of settlements" are to be resisted; and because the Appellant acknowledges a conflict with the corresponding policy H18. There is a clear, in principle objection to development on this site.

109. Furthermore, there is a conflict with C15 on settlement separation. Although this is a saved policy, it has a continuing relevance. This inquiry is a test of whether this policy will do the job the Local Plan inspector thought it would do, of protecting necessary green buffers around Banbury. Furthermore, its provisions will be carried forward into the emerging plan in policy CP45. Quite apart from the more elaborate analysis above which demonstrates harm in terms of coalescence etc., Mr Murray-Cox accepted that *if* the site is found to be important in distinguishing Banbury and Hanwell, there would be a conflict with C15. Plainly, the site is important in that connection and a further policy conflict follows.

110. Further policy conflicts accrue (chiefly with ESD13) if landscape and heritage harm of the sort alleged by the council are found to exist. With or without this conflict, however, it is plain that a straightforward application of the development plan would suggest refusal.

111. Are there material considerations which can outweigh this conflict? The loss of BMV land is one acknowledged further harm that reinforces the conflict with the DP and also points to a refusal of permission.

112. Chief among those material considerations relied on by the Appellant is the 'tilted balance' in the NPPF. On the LPA's case this does not arise, because there is a sufficient housing supply for the district.

113. There is, of course, even on the LPA's case no 5YHLS in respect of the Partial Review's housing requirement. It would however make a nonsense of the Partial Review to apply the tilted balance to this site because the Partial Review sites have not yet started coming forward (for the reasons explained above). Banbury was very clearly considered to be an unsustainable location for development to meet Oxford's needs in the plan (CD5.2 p25-30 refer). The Appellant has produced no substantive evidence

to contradict that assessment, beyond vague and frankly unrealistic evidence from Mr Murray-Cox about journey times by public transport (which were hotly contested by those who would have direct experience of trying to get to Oxford by public transport from the vicinity of the site). A presumption in favour of development of the site, in order to meet Oxford's unmet needs, would be a presumption in favour of unsustainable development.

114. That cannot be the policy intention here – and significantly, *none* of the copious decision letters in CD10 have applied such an approach to decision making.

115. If the presumption were to be applied here, because there is a shortage of sites to meet Oxford's needs, then further policy conflicts would also arise. As discussed above, the Appellant settled on a position of saying that the Partial Review is consistent with the NPPF. That is therefore common ground. If the site is assessed against its policies (which can still be given weight even within the tilted balance), it would be found to be non-compliant – for example, in respect of its provision of affordable housing. These further policy conflicts against policies consistent with the NPPF would then have to be weighed in the balance, effectively negating any advantage to the Appellant from the application of the tilted balance.

116. The Appellant cannot therefore, on the Council's case, gain support from the tilted balance. That would leave it reliant on the various benefits of the scheme. These are of course considerable, but entirely generic. If they were accepted as sufficient to overcome conflict with the development plan, that would be equivalent to saying that the plan was a dead letter insofar as housing development is concerned. Such a conclusion (in a context where the tilted balance is not engaged) would be flatly contrary to the statutory presumption in favour of the development plan, and cannot be right.

117. It is true that the development would (if assessed against the policies for the district, rather than for Oxford's unmet needs) provide somewhat more affordable housing than is strictly required. That is a benefit to which both sides have given the same amount of weight. There is no denying the pressing need for affordable housing. However, planning policy does not require councils to permit housing at a rate that would meet

those needs; there is no requirement for a '5 year affordable housing land supply'. Policy sees delivery of market housing as the main key to unlocking the housing crisis, and Cherwell is punching above its weight in that respect.

118. If the tilted balance is not engaged, therefore, the decision is a fairly straightforward one, whatever the judgment about the degree of harm.

119. If, on the other hand, the tilted balance is engaged, the Council would still invite the Inspector to refuse the development – because the clear and particular harms to landscape and heritage assets, together with the loss of BMV, significantly and demonstrably outweigh the benefits.

120. The emerging plan is the correct place to determine which further greenfield sites should be released in order to meet any shortfall in supply that may exist. The site is not included in that emerging plan. It is presumably only because the Appellant is not confident that it can secure the inclusion of its site that we find ourselves in this appeal. That process should be allowed to run its course, rather than now permit a single, relatively modest, housing development which may bring irreversible harm to a sensitive and historic landscape.

121. For all these reasons, the Inspector is respectfully invited to dismiss the appeal.

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