

LAND EAST OF WARWICK ROAD, BANBURY

OPENING SUBMISSIONS
ON BEHALF OF THE COUNCIL

1. The general need for housing, both market and affordable, is not in dispute. The reason the planning system exists, however, is to ensure that that need is met in a sustainable rather than unsustainable way. In other words, to ensure that the present does not meet its needs at the expense of the future. That is precisely why the development presently proposed has been refused permission by the Council, and why the Council will in due course invite the Inspector to refuse permission also.

Whether the Council can demonstrate a sufficient supply of housing land?

2. The parties are far apart in their assessment on the supply of deliverable housing sites. The Appellant's criticisms of individual sites will be dealt with in the context of the roundtable session. However those matters are resolved, it seems likely that a key consideration will be the assessment of the housing requirement.
3. In terms of the requirement that must be met, three questions divide the parties:
 - a. Whether requirement is for 5 or 4 years' supply of deliverable sites;
 - b. Whether to assess supply against a combined requirement figure or against Local Housing Need and, separately, a figure from the LP Partial Review;
 - c. In calculating Local Housing Need, whether to use the latest standard method figure or the figure current at the time of the December 2023 Housing Land Supply Statement.

4. The answer to the first question turns on the correct meaning and application of NPPF226. This policy was brought into force with the purpose of “rewarding local authorities at an advanced stage of plan making”.¹
5. The Council is such an LPA. It’s local plan review reached regulation 18 (i.e. consultation) stage as long ago as September 2023. The draft plan consulted on contains clear allocations to meet housing (and other) needs, which are shown on a series of maps. There is no reason, then, why Council should be denied the ‘reward’ of greater flexibility intended by the Government. The Appellant’s legalistic arguments to the contrary are legally, and practically, unsound.
6. The answer to the second question follows from a straightforward application of national and local policy. National policy expects housing requirements to be dealt with in local policy, and is not prescriptive as to how that is to be done. Alternatively, it requires reference to local housing need. In this case, up to date local policy, in the LP Partial Review, very clearly dictates, through its separate adopted strategic policies, that contributions towards part of Oxford’s unmet needs form a separate housing requirement. There is simply no policy basis for any other approach.
7. The Inspector in the Heyford Park inquiry,² unassisted by oral argument on this point, unfortunately erred in her approach to national policy; and her decision is accordingly subject to challenge. But even if she were correct that national policy now insists on a single requirement figure, such a figure can only be arrived at through a plan-making process. The LP Partial Review cannot be taken apart and reassembled in the context of this s78 appeal.
8. The third question is somewhat less consequential than the other two, but insofar as it matters the Council’s position is preferable. It makes sense to use the most up-to-date information in reaching a decision, and there is no inconsistency in doing so within the year.

¹ Ministerial Statement, 19 Dec 2023; quoted at CD13.25 p6.

² CD10.1.

9. On the Council's case, therefore, it can demonstrate a sufficient supply of housing land, and there is no need to apply the NPPF tilted balance to the overall decision.
10. More broadly, the Council has shown in the past that it is prepared to make adequate provision for Oxford's unmet needs through the correct channel: namely the local plan process. It is doing so again in the emerging local plan. That plan should be given the time to mature so that the need for housing and the need for sustainable patterns of development can be appropriately reconciled. At present, the plan is at too early a stage to carry any significant weight and national policy at NPPF77 is clear that emerging policy should not and cannot inform the requirement against which supply is to be assessed for this Appeal.
11. It is particularly important to follow a plan-led approach when the proposed development would cause clear and obvious harm, as set out in relation to the following key issues. Whatever the outcome on the first issue, therefore, the Council will contend that the appeal should be dismissed, and permission refused.

The degree to which the proposed development would result in landscape and visual harm to the local area.

12. Since before the time of the 1996 Local Plan, it has been recognised in every relevant assessment that the site is in a location that is very sensitive to the risk of coalescence, actual or perceived, between Banbury and Hanwell. On that basis, it has also generally been assessed as an inherently unsuitable place to put housing development.
13. The only exception to this trend was the Cherwell Landscape Sensitivity Assessment 2022, on which the Appellant heavily relies. Even the authors of that document, however, recognised "The sense of settlement separation between Banbury and Hanwell" and "Rural setting to Hanwell Conservation Area"³ as the "key sensitivities" of Parcel A and the field to the north. For reasons substantially unexplained, however, those key sensitivities were given very little assessment.
14. The Council's assessment, by contrast, stands in line with the majority of the higher level professional assessments conducted. When the importance of maintaining

³ CD6.3 p130.

settlement separation is given appropriate weight, it is apparent that residential development of the last undisturbed field between Hanwell and Banbury is inherently harmful.

15. The Appellant's long response to this fairly obvious objection focusses on two themes: first, that the site is ordinary; second, that the proposed design is a good one. The first argument misses or significantly undervalues the importance of the site's context between Banbury and Hanwell. The second is somewhat beside the point at this outline stage.
16. The Council will therefore invite the Inspector to conclude that the proposed development would result in a significant degree of landscape harm (and a series of direct and indirect policy conflicts).
17. That landscape harm will be perceptible from various viewpoints, and significantly from the main pedestrian and vehicular routes between Banbury and Hanwell, occasioning visual harm which the Inspector will be best able to assess for himself on site.

Whether the proposed development would harm the setting of nearby heritage assets (Hanwell Conservation Area, St Peter's Church and Hanwell Castle).

18. The "picturesque small village" (Pevsner) of Hanwell is protected by a conservation area designation. The two most important historic buildings in any village are usually the church and the manor house; and here those are both listed at grades (I and II*) which indicate their exceptionally special nature. There is much of value to be protected here.
19. As a parcel of good quality arable land the site is an important component of the historic context within which the village, and its most significant buildings, have developed. There is both a visual relationship and a historic connection between the site and the heritage assets in question. The site clearly forms part of their settings.
20. Residential development would introduce an alien, suburban element into those settings. Historic England recognises this, as can be seen from the unusually forceful

objection to development it has set out and maintained in correspondence. Even the Appellant recognises the logic of this position, as it admits a degree of harm to the setting of the conservation area.

21. The Appellant, however, again plays down the degree of harm (and claims it is eliminated altogether in respect of the listed buildings) by reference to visual screening. Such an approach is even less appropriate in the context of this key issue that it was in the last. It is clearly recognised in guidance that the kinetic experience (i.e. the experience of someone moving towards or away from the heritage asset) is relevant when it comes to assessing impacts on setting. No amount of screening can address the impact the development would have on such an experience of these assets.
22. The Council's assessment of harm at the mid-level of less than substantial harm is therefore to be preferred; and this harm falls to be given great weight in the balance against the proposals.

Whether the proposed development would conflict with national policy regarding Best and Most Versatile agricultural land.

23. In the words of the PPG, the soil of the site represents an "essential natural capital asset".⁴ The value it provides falls to be, at least, 'recognised' in the planning decision and, arguably, 'protected and enhanced'. There is a clear planning objection based on local and national policy to development of the site, although (as with all planning objections) not an absolute prohibition.
24. The Appellant's response to this objection is primarily to say that the site is small compared to the total sum of agricultural land in the country as a whole. That is an argument that could be made in respect of any but the most gigantic of new developments; and effectively amounts to a disagreement with the terms of national and local policy.
25. Further, the Appellant asserts that best and most versatile land will have to be developed on the outskirts of Banbury, so it might as well be the site. That argument lacks the

⁴ ID: 8-002.

proper evidence to support it; unsurprisingly, because the claims it makes could only really be made good through the local plan process.

26. The Council does maintain, therefore, that there is a further substantial objection to the development proposals.

27. If further housing sites do need to be approved in Cherwell District now, the appeal site is simply not one of them. It would not meet Oxford's unmet needs in the sustainable way that is required, and in exchange for a small short term increase in the supply of housing it would generate a large degree of irreparable harm to the landscape, heritage and land of Cherwell. The Council will respectfully invite the Inspector to refuse the appeal.

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4 JUNE 2024