

SECTION 78 OF THE TOWN & COUNTRY PLANNING ACT 1990
AN APPEAL IN RESPECT OF LAND EAST OF WARWICK ROAD, BANBURY
AGAINST THE DECISION BY CHERWELL DISTRICT COUNCIL

BEFORE: Inspector Dominic Young

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

APPELLANT’S RESPONSE TO COUNCIL’S CLOSINGS

References to paragraphs should be treated as those in the Closings Submissions of the Council unless otherwise stated

RESPONSE

Heyford Park Challenge update

1. The fact that the *Heyford Park* case was granted permission to appeal does not change the facts of this appeal. In so far as it matters, the Inspector is alerted to the following.
 - i. The judge granted permission having acquiesced to Cherwell’s request to hear about the wider implications of the NPPF Dec 2023 update, supported by the Secretary of State. The granting of permission therefore looks more to do with an efficient grappling with recent national policy changes, and their wider implications, than the merits of the challenge in *Heyford Park*. For this, just read the ‘Observations’ made by the learned judge who has also expedited the hearing. It remains our prediction that, in addition to providing clarity on the matters for the NPPF 2023 as a whole, the specific challenge will almost certainly be dismissed in any event.

- ii. Being granted permission to appeal does not change the merits of a challenge, and the threshold of ‘*arguability*’ is a relatively low bar. Those challenging the decision still have the daunting task of (a) finding a legal error; (b) having to demonstrate that such a legal error infected the decision making (c) even allowing for those two hurdles, that the judge should then exercise his discretion to quash a decision; and (d) it may well be that the overall decision to allow the scheme would still have been the same, *even if* a legal error was identified.
- iii. In any event, for the reasons set out in the closings of the Appellant, the Inspector has multiple routes available for deciding our appeal.
- iv. Finally, and crucially, there will be no need to delay the decision in *Warwick Road* pending the outcome of *Heyford Park*. There is no telling when a date will be set and when a judgment will follow (although expedited). It may also be that a disgruntled Claimant, if having lost the challenge, decides to take the matter to the Court of Appeal. Further delaying such a decision.

Combined Requirement

2. The Council at paragraph 23 states that there is nothing in the NPPF that directs a ‘combined approach’. Except there is in the ordinary meaning and reading of NPPF 67 as recently updated, as well as the NPPG, and this was accepted by the Inspector in *Heyford Park* (see 71-75 of the Decision Letter). It is noteworthy that the Council’s closings on this point fails to grapple with this point in any meaningful way.
3. The rest of the Council’s points are addressed fully in the Appellant’s closings.

History of failure

4. The Council's closings states the following in relation to its shortfall, and what the Claimant states,

“Although the figures referred to by the Appellant are mathematically correct, they are neither significant nor particularly meaningful in the context of this appeal.”

5. This is an odd way to characterise persistent historic failure, current failure and crucially the accepted continued failure into the future. The fact that the Council refuses to acknowledge that this is significant. This is a development that is seeking to assist with this chronic shortfall, and the Council's failure to acknowledge this only further underscores their sense of denial. In short, on the agreed figures alone, as contained in the ScG, is enough to show a history and future of failure.
6. Paragraph 40 of the Council's closings is the perfect summary of their fantasy. And whilst it seeks to work through this fantasy, praying in aid of a 'a new local plan' (44), the people of Cherwell and Oxfordshire will continue to suffer from the lack of housing.

Heritage

7. To characterise Dr Doggett as having done an assessment of any kind would be misleading (i.e. 77 & 88). There is no evidence that HE ever visited the site and indeed it was the Appellant, not the Council, who actually contacted HE for comment. Their points are comprehensively addressed in the POE of ES.

8. At paragraph 77, the Council's closings suggest that the contribution that the site makes to the setting of the CA is rated 'highly' by the CAA. It does no such thing and is wholly silent on the specific matter of contribution of the land in the appeal site to the setting of the HCA.

9. At paragraph 85/86, the Council's closings states,

“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” then *“That logic does not apply to the appeal site. Beyond it is not another arable field, but Banbury.”*

10. This is a warped take/logic on how harm to the CA might arise from development in its setting and it is not supported by any evidence. It has just been introduced in the Council's closings but was not a premise set out in Dr Doggett's or anyone else's evidence, either written or oral.

CONCLUSION

11. It is noteworthy that on more than one occasion the Council's closings refer to the benefits being 'considerable'. We agree. And it is also noteworthy that the Council's case is more occupied with the need to avoid being 'on the hook' for Oxford's unmet needs than addressing what is expected of Cherwell specifically, but also meeting its responsibilities further afield.

12. In any event, for these reasons, and those contained in the submitted closings, the Council's closings do not displace the Appellant's case.

13. Once again, we do not see any reason for this decision to be delayed pending the outcome of *Heyford Park*, for there are multiple routes available to our Inspector here, in the same way that an Inspector in *Chesterton* found his own route.

14. Respectfully, the Inspector is invited to allow the appeal.

HASHI MOHAMED

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