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# Appeal Decision

Inquiry held between 4-7 and 11-13 June 2024

Site visits made on 3 and 5 June

**by D M Young JP BSc (Hons) MA MRTPI MIHE**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> July 2024**

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## **Appeal Ref: APP/C3105/W/24/3338211**

### **Land east of Warwick Road, Banbury, OX16 1HD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Vistry Homes Ltd against the decision of Cherwell District Council.
  - The application Ref is 23/00853/OUT.
  - The development proposed is an outline application for up to 170 dwellings (Use Class C3) with associated open space and vehicular access off Warwick Road, Banbury. All matters reserved except for access.
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### **Decision**

1. The appeal is allowed, and outline planning permission is granted for the erection of up to 170 dwellings (Use Class C3) with associated open space and vehicular access at land east of Warwick Road, Banbury, OX16 1HD in accordance with the terms of the application, Ref 23/00853/OUT, subject to the conditions in the attached schedule.

### **Preliminary Matters**

2. The application is made in outline with only 'access' to be determined at this stage. I have dealt with the appeal on that basis.
3. A pre-Inquiry Case Management Conference was held on 22 March 2024 to discuss the arrangements for the Inquiry. A summary of the conference was subsequently sent to the main parties.
4. Statements of Common Ground (SoCG) covering heritage<sup>1</sup>, landscaping<sup>2</sup>, housing land supply<sup>3</sup> and planning matters<sup>4</sup> were submitted prior to the Inquiry and I have had regard to these in reaching my decision.
5. The application was accompanied by a substantial body of supporting evidence. A full list of the submitted plans and supporting technical evidence is contained at section 4 of the Planning SoCG. This material is broadly accepted by technical consultees and demonstrates that most matters are capable of being dealt with either by condition or planning obligation.
6. A signed and dated agreement under s106 of the Town and Country Planning Act was submitted after the close of the Inquiry. Amongst other things this

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<sup>1</sup> CD8.4

<sup>2</sup> CD8.5

<sup>3</sup> CD8.6

<sup>4</sup> CD8.3

contains provisions in respect of affordable housing, open space, sports facilities, transport and education. A draft version of the document was discussed at the Inquiry. All the proposed contributions would need to be assessed against the statutory Community Infrastructure Levy (CIL) tests, a matter I return to later in my report.

7. The emerging Cherwell Local Plan<sup>5</sup> (eLP) has been the subject of consultation at Regulation 18 stage. The appeal site does not form a draft allocation in the eLP but was considered in the landscape evidence base. Given the eLP is not at an advanced stage, the parties agree that it cannot be given any weight at this stage<sup>6</sup>.

## **Main Issues**

8. The main issues are:
  - 1) Whether the principle of development in the countryside is acceptable;
  - 2) The degree to which the proposed development would result in landscape and visual harm;
  - 3) Whether the proposed development would harm the setting of nearby heritage assets (Hanwell Conservation Area (HCA), St Peter's Church and Hanwell Castle), and
  - 4) Whether the proposed development would conflict with national policy regarding Best and Most Versatile agricultural (BMV) land.

## **Reasons**

### *Principle of Development*

9. Section 38(6) of the Planning and Compulsory Purchase Act (the Act) 2004 requires that these applications be determined in accordance with the development plan unless material considerations indicate otherwise. One such material consideration is the National Planning Policy Framework<sup>7</sup> (the Framework), which can override development plan policy if it is not consistent with the Framework's provisions. I therefore summarise the national planning policy context first, before turning to relevant development plan policies.
10. Paragraph 7 of the Framework explains that the purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes, commercial development, and supporting infrastructure in a sustainable manner. Of particular relevance to the appeal scheme is paragraph 60 which states that to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. Paragraph 67, which was the subject of intense debate at the Inquiry, states:

*"Strategic policy-making authorities should establish a housing requirement figure for their whole area, which shows the extent to which their identified*

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<sup>5</sup> CD5.6

<sup>6</sup> Paragraph 5.21 Planning SoCG CD8.3

<sup>7</sup> CD7.10

*housing need (and any needs that cannot be met within neighbouring areas) can be met over the plan period. The requirement may be higher than the identified housing need if, for example, it includes provision for neighbouring areas, or reflects growth ambitions linked to economic development or infrastructure investment”.*

11. On any fair reading of the above, it is difficult to see how there can be any ambiguity regarding the requirements of paragraph 67, which clearly states that authorities should establish a housing requirement figure for the ‘*whole of their area*’. While I accept the point that paragraph 67 needs to be read in conjunction with other parts of the Framework, it is notable that the Council has adopted a single housing requirement in its emerging eLP. Like the Inspector in the Heyford Park case<sup>8</sup>, I consider that a single requirement is appropriate in Cherwell and in accordance with the Framework. On that basis the Council accepts it cannot demonstrate a 5-year supply of housing.
12. The development plan for the area comprises a combination of the Cherwell Local Plan 2011-2031<sup>9</sup> (the LP), saved policies from the Cherwell Local Plan 1996<sup>10</sup> (the sCLP) and the Cherwell Local Plan 2011-2031 (Part 1) Partial Review 2020<sup>11</sup> (the PR). The LP provides the strategic planning policy framework for the district and sets a target of 22,840 additional homes between 2011 and 2031. Paragraph A.11 sets out the spatial strategy and directs most growth to locations within or immediately adjoining the main towns of Banbury and Bicester.
13. The PR seeks to meet Oxfords unmet need and makes provision for 4,400 homes in areas immediately north of Oxford with good connections to the city such as Kidlington, Yarnton and Begbroke along the A44 corridor. In so doing the PR aims to avoid undermining the strategy of the LP to promote growth at Bicester and Banbury.
14. The Council’s first reason for refusal cites conflict with LP Policies PSD1 and BSC1 and sCLP Policies C8 and H18. Policy PSD1 is a generic policy that merely adopts the presumption in favour of sustainable development contained in the Framework and does not assist greatly. Compliance with PSD1 will depend on the outcome of the planning balance carried out later in this decision. Policy BSC1 sets out how housing is to be distributed and as previously mentioned seeks to direct growth to Banbury and Bicester. Although the housing requirement contained in the policy is out-of-date, I consider the scheme accords with Policy BSC1 insofar as it seeks to direct growth to Banbury.
15. Although not cited in the reason for refusal, the Council’s Statement of Case alleges conflict with LP Policy ESD 13. This seeks to secure the enhancement of the character and appearance of the landscape, particularly in urban fringe locations and to secure *“appropriate mitigation where damage to local landscape character cannot be avoided”* (my emphasis).
16. Saved Policy C8 seeks to avoid sporadic development in the open countryside. The proximity of the appeal site to the northern edge of Banbury means that the development would be a logical northern extension to Banbury.

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<sup>8</sup> CD:10.1 The decision is currently the subject of a High Court challenge.

<sup>9</sup> CD5.1

<sup>10</sup> CD5.3

<sup>11</sup> CD5.2

Accordingly, I do not consider it could reasonably be described as 'sporadic' which implies something unplanned, scattered or isolated.

17. Policy H18 says that planning permission will only be granted for new dwellings beyond the built-up limits of settlements in certain specified instances, none of which are met in this case. Consequently, of those policies cited in the first reason for refusal, only Policy H18 would be breached by the proposed development.
18. Paragraph 225 of the Framework explains that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. The closer the policies in the plan are to the policies in the Framework, the greater the weight that may be given. Policies H18 and C8 are nearly 30 years old and seek the protection of the countryside for its own sake. This is more restrictive than the balanced, cost/benefit approach set out in the Framework. I therefore find that these policies are out-of-date due to their inconsistency with the Framework, and this reduces the weight that can be attributed to it in the overall balance.
19. Notwithstanding the Council's view that it does have a 5-year supply of deliverable housing sites<sup>12</sup>, the appeal proposal should therefore be assessed using the approach set out in paragraph 11 d) ii) of the Framework. This states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This balancing exercise will be returned to later in the decision.

#### *Character and appearance*

20. The appeal site falls within National Character Area (NCA) 95 'Northamptonshire Uplands', and forms part of, and contributes to, the attractive rolling landscape to the north of Banbury. However, it does not lie within any local or national landscape designations and is not a 'valued' landscape as set out in paragraph 180a) of the Framework.
21. In summary, the appeal site comprises two distinct parcels of arable farmland either side of a farm track known as Gullicotte Lane on the northern outskirts of Banbury. The site is approximately 12.63 hectares in size and is bounded to the west by Warwick Road (A4100) and to the south by existing Hanwell Chase estate which is arranged around Dukes Meadow Drive.
22. To the north there are other arable fields which separate the appeal site from the village of Hanwell. Public Right of Way (PRoW) 191/6/30 cuts across the southern eastern portion of Parcel A. This forms part of a well-used network of PRoWs and permissive routes between the Hanwell Chase development and Hanwell village.
23. The application was accompanied by a detailed Landscape and Visual Appraisal<sup>13</sup> (LVA) which provides a detailed description of the existing baseline and assesses the likely landscape and visual effects of the development. The Council accepts that the LVA "*offers a very thorough and methodical assessment of the likely significant environmental effects arising from the*

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<sup>12</sup> See CD8.6 & Goodhall PoE CD9.8

<sup>13</sup> CD:1.4 Appendix 7.1

*proposed scheme in relation to landscape character and visual amenity*". I see no reason to take a contrary view.

24. The most up-to-date and fine-grained assessment to consider the appeal site is the Cherwell Landscape Sensitivity Assessment (CLSA)<sup>14</sup> which forms part of the evidence base for the eLP. In respect of unit LS BAN13 which contains Parcel A and the field immediately north which abuts Main Street in Hanwell, the CLSA found it had a low-moderate sensitivity. It went on to conclude that the unit had few of the key characteristics and qualities of the landscape that are sensitive to change and had the potential to accommodate a development scenario that incorporated 3-storey dwellings at a density of no less than 30 dwellings per hectare.
25. In respect of the unit that contained Parcel B, the CLSA found that it was a landscape which is valued by local residents and is crossed by a number of public footpaths with some permissive paths. Moreover, it benefits from panoramic views across the wider landscape. The unit was thus considered to have a moderate-high sensitivity to residential development.
26. Whilst I have had regard to the LVA and the local landscape character assessments, my findings are ultimately informed by my observations on site visits undertaken before and during the Inquiry, the latter with the benefit of having heard the evidence of the relevant expert witnesses.
27. It is clear from the written and oral evidence that the site is valued locally on account of the fact that it forms part of a larger tract of open land providing separation between Banbury and Hanwell. In my view, there is a clear distinction that can be drawn between the two parcels which comprise the appeal site as reflected in the CLSA. Parcel A has a closer relationship to Warwick Road and is more visually contained than Parcel B due to established hedgerows and mature landscaping in the form of woodland buffers on its boundaries. I find nothing in the landscape assessments or my own observations to elevate Parcel A above the oft-used description of 'ordinary attractive countryside'.
28. Parcel B is undeniably more open and does not benefit from the same level of containment. It is therefore more visible in sensitive views from Hanwell from where it is seen, albeit at some distance, as part of the wider expanse of attractive countryside between the B4100 and A423 as well as the northern edge of Banbury. PRoW 239/7/20 runs adjacent, but outside, the eastern boundary of Parcel B. In light of the above, I concur with the Appellant's landscape witness that Parcel B has a higher landscape sensitivity than Parcel A.
29. Because of these sensitivities, the scheme seeks to retain the openness of Parcel B by establishing a publicly accessible wildflower meadow and oak parkland. The dwellings would be confined to Parcel A with a band of open space and woodland planting to those areas closest to Gullicote Lane and the southern extent of Hanwell.
30. Putting their in-principle objections to the scheme to one side, the Council and objectors accepted that the proposed layout shown on the illustrative

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<sup>14</sup> CD:6.3

masterplan was appropriate and there was no suggestion that the layout could be improved.

31. The proposed landscape buffers would keep the most sensitive parts of Parcel A site free from built development. Although the developable area shown on the illustrative plan would still come fairly close to the agricultural barns at Home Farm, these along with the farmhouse are themselves part of an isolated finger of built development that extends southwards along Gullicotte Lane. Accordingly, they are somewhat separated from the main body of Hanwell which is arranged predominantly along and around Main Street. Parcel B which makes a much more important contribution to the area of separation between Hanwell and Banbury would essentially remain as open countryside.
32. Notwithstanding that the layout has been carefully designed to minimise landscape and visual harm, the proposed development would undeniably erode elements of the functioning space between Hanwell and Banbury. In doing so, it would increase the size of Banbury and extend its northern edge further towards Hanwell. However, the appeal site does not itself adjoin the settlement boundary of Hanwell and as such, the appeal scheme would not physically unify the two settlements. Aided by the proposals for Parcel B, the wider area of intervening land between the two settlements would continue to exist and would protect their separate identities such that they would remain clear and distinguishable from one another.
33. The extent to which the proposed dwellings would be visible beyond the site would of course depend on details which have been reserved for future determination. Nonetheless, there can be no dispute that the scheme whatever its final form would impose a considerable extent of built development on the land which would have a significant visual effect within the site boundaries including from PRow 191/6/30. However, there was no suggestion that the density or general arrangement or design quality of the houses would be significantly different to the other recently consented schemes on the northern edge of Banbury<sup>15</sup>.
34. The wireframe images appended to the LVA demonstrate that views of the development from receptors in the local area would be limited to glimpses through the site access or through the trees from the northern edge of the Hanwell Chase development. Given the height and depth of the landscaping lining Gullicotte Lane, as well as the supplementary landscaping proposed as part of the appeal scheme, I simply do not accept that the dwellings would be visible, even in winter, in southern facing views from Hanwell. There may be some fleeting glimpses of Parcel B from the southern edge of the village, however, this area would not contain built development and so any landscape or visual harm here would be limited.
35. While there would be harm arising from the loss of Parcel A's open character and the reduction in the amount of separation between Hanwell and Banbury, that would be the inevitable consequence of any new development on greenfield land around Banbury. It is not as a matter of principle a reason to dismiss the appeal scheme out of hand. Having regard to the site's relationship to the existing edge of Banbury, its level of visual containment and the proposed landscape mitigation, the level of harm would be moderate rather

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<sup>15</sup> See ID16

than significant. This would nonetheless bring the scheme into conflict with LP Policy H8 insofar as it seeks to avoid new dwellings in the countryside.

36. There is no suggestion that the landscape mitigation proposed would not be appropriate. Therefore, and given that CLP Policy ESD13 envisages that damage to local landscape character will sometimes be unavoidable, I do not consider the proposal would conflict with this policy.
37. The Council also alleged conflict with Policy ESD17. However, this relates to publicly accessible green spaces and access routes. Beyond PRow 191/6/30, the wider appeal site cannot reasonably be considered as green infrastructure as it is private land. Policy ESD17 is therefore only relevant insofar as it seeks to maintain and enhance a network of publicly accessible routes. The existing PRow would be maintained on its existing alignment and enhanced as part of the scheme. Moreover, the development, notably in relation to Parcel B would create a network of pedestrian routes and publicly accessible spaces. The development thus complies with Policy ESD17.

#### *Heritage assets*

38. The nearest assets to the appeal site are the HCA, St Peter's Church (Grade I) and Hanwell Castle (Grade II\*). No listed building would be altered nor is any development proposed within the HCA. The areas of disagreement relate solely to the impact of the appeal scheme on the setting of these assets, that is the surroundings in which they are experienced. The Appellant's evidence contains a detailed review of the significance and setting of each asset<sup>16</sup> and this is not repeated here.
39. It is common ground that the setting of St Peter's Church and Hanwell Castle should not be conflated with that of the HCA because the latter comprises an extensive asset, while the listed buildings are discrete assets within the conservation area. Both the Appellant's EDP Heritage Assessment and the TDR Heritage Impact Assessment submitted on behalf of the Keep Hanwell Village Rural Action Group, concluded there would be no harm to the listed buildings. Historic England<sup>17</sup> (HE) allege harm to the listed buildings through noise and lighting effects. However, there is nothing in HE's response to substantiate these arguments or to demonstrate it engaged with the relevant technical evidence in this regard<sup>18</sup>.
40. In my opinion, the agricultural land immediately south of Hanwell forms part of the setting of both listed buildings. However, the intervening distance and lack of intervisibility together with the absence of evidence demonstrating a socio-economic link between the buildings and the appeal site means that the latter makes no meaningful contribution to their significance, nor does it form part of the surroundings in which the buildings are experienced and enjoyed by the public at large. For these reasons and notwithstanding the undoubted magnificence of both buildings, I concur with the EDP and TDR assessments that the proposed development would not harm the setting of St Peter's Church or Hanwell Castle.

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<sup>16</sup> Section 3, Edmund Stratford PoE CD9.5

<sup>17</sup> CD13.6 & 13.28

<sup>18</sup> The Noise and Lighting Impact Assessments (CD1.16 & CD1.19) concluded there would be material change to noise and light levels beyond the appeal site.

41. Turning to the HCA, it is agreed that the level of harm falls within the 'less than substantial' bracket<sup>19</sup>. The TDR report identifies that the scheme would result in "*less than substantial harm to the setting of the Conservation Area*" and that "*harm is at the higher end of the scale*". HE goes further contending that there would be "*a high level of harm to the significance of the conservation area*".
42. The Appellant's heritage witness argued that HE's finding of a high level of harm was incompatible with the guidance set out in the Framework and Planning Practice Guidance<sup>20</sup> (PPG). The Appellant's own assessment puts the harm at the lowest end of the 'less than substantial' scale, since the main contributors to the character and appearance of the HCA would remain unchanged.
43. From my observations on two separate site visits, I consider that the majority of the HCA's significance is contained in the special architectural and historic interest of the notable buildings and spaces arranged along Main Street. These attributes result in picture postcard views along Main Street which are of the very highest order. While the arable fields surrounding the village clearly contribute to the understanding of Hanwell's agricultural origins and its subsequent development, there is a danger that the contribution of a surrounding landscape to a heritage asset can be overstated especially in cases where there is no direct visual relationship between the two as is the case here.
44. Given my findings elsewhere in this decision regarding the visual relationship between Hanwell and the appeal site, I do not consider Parcel A, makes a material contribution to the HCA's significance. That argument might have more credibility if the site immediately abutted the HCA or encroached into important views to/from the village, but that is not the case.
45. Not only would the site be distant and visually isolated from the historic core of the HCA there is also no evidence of a historical association between the two. In terms of the rural setting, the Appellant's analysis demonstrates the appeal site represents just 6.2% of the agricultural land that falls within a 50m buffer surrounding the HCA. The agricultural setting of the HCA and the way it is experienced from the surrounding countryside would thus remain intact.
46. I acknowledge that the HCA Appraisal<sup>21</sup> states that "*there are existing areas of open land around the Conservation Area that should be protected from any future development that would adversely affect the character of the villages*". However, in the absence of a plan identifying what land should be protected, I do not consider paragraph 13 should be interpreted as meaning all land around the HCA.
47. Based on the foregoing, I consider the level of harm to the significance of the HCA would be towards the bottom of the 'less than substantial' range given any changes would be perceptual rather than actual. Given my findings, paragraph 208 of the Framework states that I should weigh the harm against the public benefits of the proposal, an exercise I undertake in the Planning Balance below.

### *Best and Most Versatile agricultural land*

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<sup>19</sup> Section 4, CD8.4

<sup>20</sup> CD7.4

<sup>21</sup> CD5.9



48. Collectively the appeal site comprises around 12.63 hectares of Grade 2 and 3a agricultural land. The Framework requires decision-makers to recognise the economic and other benefits of BMV land. There is however no requirement to consider whether the development represents the significant development of agricultural land, whether that development is necessary, whether areas of poorer quality agricultural land are available, or whether that land is available for food. These requirements relate to plan making.
49. Although LP Policy Villages 2 seeks to avoid the development of BMV agricultural land, this is more restrictive than paragraph 180(b) of the Framework, which requires the economic and other benefits of BMV agricultural land to be recognised.
50. According to the Appellant, the appeal site is used for the production of arable crops and would normally yield in the order of 110 tonnes of milling wheat or 80 tonnes of malting barley. These yields equate to a gross margin of approximately £9,000-£13,000 per annum. The Appellant argues that these economic benefits are small and should be seen in the context of the UK being largely self-sufficient in grains. Moreover, the majority of agricultural land around Banbury (74%) is BMV which is significantly higher than the national average. In other words, BMV land is not scarce in this area.
51. Nonetheless, I conclude that the proposal would have an adverse effect on the provision of agricultural land in the district and would conflict with Policy Villages 2. However, given the site's limited contribution and the availability of BMV land in the area and I consider the harm to be attached to the loss of BMV land to be limited.

### **Conditions**

52. The parties have suggested a number of planning conditions which I have considered against the advice in the PPG. In some instances, I have amended the conditions in the interests of brevity, to avoid repetition or to ensure compliance with the PPG.
53. To provide certainty, I have imposed standard conditions for outline permissions covering time limits, the reserved matters and the approved plans [Conditions 1-4]. A Construction Environmental Management Plan (CEMP) is necessary to ensure all aspects of the construction adhere to best practice and do not adversely affect the amenity of local residents [5]. I have however simplified and/or omitted some of the requirements where these are covered by other conditions or legislation.
54. Drainage conditions are necessary to ensure satisfactory drainage and future maintenance of the site in the interests of flood prevention [6-7]. I have omitted the suggested borehole condition, as I consider these matters are covered by either Health and Safety legislation or via the CEMP. An Arboricultural Method Statement is necessary to protect trees on and near the appeal site [8]. An archaeology condition is necessary to protect any archaeological assets that may be present [9].
55. Ecology conditions are necessary to ensure the development delivers a net-gain for biodiversity [10-11]. Conditions covering, travel plans, renewable energy measures and high-speed broadband are all necessary to ensure compliance with the Council's sustainability objectives in these areas [12-14].

56. I am not persuaded lighting or Secured by Design conditions are necessary to make the development acceptable. These matters would be covered by other legislation and/or the details submitted at the Reserved Matters stage. A noise condition is necessary to protect the amenity of future residents [15]. Land contamination conditions are necessary to ensure the land is suitable for a residential use [16-19]. Housing mix is a matter that would also be covered under the Reserved Matters and as such, the suggested condition is unnecessary.
57. Conditions 5, 6, 8, 9, 10 and as 16 are 'pre-commencement' form conditions and require certain actions before the commencement of development. In all cases the conditions were agreed between the main parties and address matters that are of an importance or effect and need to be resolved before construction begins.

### **Planning Obligations**

58. The Framework sets out policy tests for planning obligations which must be 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. The Appellant provided a summary of the obligations contained in the s106 Agreement which are agreed between the parties. Nonetheless, the agreement provides that if my decision letter concludes that any provision in the agreement is incompatible with any one of the tests then the relevant obligation shall cease to have effect.

#### *Oxfordshire County Council Obligations*

59. Schedules 1 and 3 cover contributions to Oxfordshire County Council (OCC) in respect of bus services, cycle infrastructure and PRoWs. These were discussed at the round-table with representatives of OCC.
60. The £275,000 bus service contribution would fund the continuation of the B9 service which routes through the Hanwell Chase development to the south of the appeal site for a further 20 months from 2027. Officers from OCC advised that there are currently no commercially viable bus services in Banbury and the B9 services is dependent on developer contributions which have been secured from other recent developments. While the principle behind the contribution is laudable, there is a notably scarcity of information before me in relation to the B9 service. To reach an informed assessment against the tests, I would need to see some information about levels of patronage particularly from the Hanwell Chase development as well as forecasts trips from the appeal scheme to give me some assurance that the service has a fighting chance of standing on its own feet once the developer subsidies expire which must be the ultimate goal. Without this information, I do not consider the contributions meets the necessary tests.
61. The cycle infrastructure contribution of £170,000 would be spent on an improvement scheme on Warwick Road to the south of the development. There is currently no approved scheme or costings. I do not therefore know whether the contribution would deliver the scheme in its entirety or whether it would be dependent on other, yet unidentified, funding sources. More concerningly, the location of the scheme is distant from the site and therefore while the encouragement of sustainable forms of transport is a legitimate planning objective, I cannot come to an informed view on whether the contribution

- would be fairly and reasonably related in scale and kind. Ideally, forecasts of the numbers of cyclists from the proposed development that would benefit from the scheme and details of why the existing arrangements are considered deficient would have been submitted. For the reasons set out above, the cycling infrastructure contribution does not meet the statutory tests for planning obligations.
62. According to OCC's Compliance Statement, the £65,000 PRoW contribution would be spent on improvements to the PRoW network within 1km of the appeal site to account of the likely increase in use by residents of the development. No specific measures or costings have been provided. While it was suggested that the money could be spent on some surfacing improvements to make the network more resilience to wet weather, it is likely that this would require third party landowner consent. There is no evidence of any engagement with local landowners before me. Based on the foregoing, I am not persuaded the contribution meets the relevant tests.
63. The education obligations to OCC comprise a secondary education contribution of £1,362,717, a secondary education land contribution of £126,116 and a Special Education Needs and Disability (SEND) contribution of £98,715. All three contributions have been calculated via a standard formula. OCC identify that secondary school places in Banbury are under strain and there would be insufficient capacity to accommodate the expected pupil generation from the proposed development. To remedy this, a new 600-place secondary school is proposed in the Policy 12 area which I understand is to the south of the town and some distance away from the appeal site.
64. The information provided by OCC is generic to Banbury rather than the appeal site. For example, there is nothing before me which demonstrates that the North Oxfordshire Academy, the nearest secondary school to the site is, or will be, oversubscribed. Even if there was, an explanation as to why capacity could not be increased at this location to meet the needs arising from this development should have been provided.
65. OCC officers accepted that few, if any, children from the appeal scheme would use the new school. By any measure, that puts the contribution on very shaky ground. Nonetheless, I acknowledge the argument that there is a general capacity issue across Banbury something which the new school would help to address. Analysis of the likely knock-on effects of the new school on the North Oxfordshire Academy would have helped justify the contribution. Despite these omissions, I have decided to give the contribution the benefit of the doubt. However, OCC should take note of these comments and ensure that any future planning obligations relating to the new school are robustly justified.
66. In the absence of an identified site and a confirmed purchase price, it is not clear how the figure of £378,000 per hectare has been calculated. Consequently, I cannot be sure the secondary education land contribution meets the necessary tests.
67. OCC's SEND Sufficiency Delivery Strategy demonstrates that there is already a deficiency of special school provision. While that maybe so, there is no specific information before me in relation to special or mainstream schools proximate to the appeal site. Despite that and noting that the contribution is calculated in accordance with OCC's Developer Contributions guidance, I have again decided

to give OCC the benefit of the doubt in relation to the SEND contribution. Accordingly, I find the contribution meets the relevant tests.

68. I am further satisfied the Strategic Waste Management, travel plan monitoring and Traffic Regulation Order contributions meet the relevant tests.

*Cherwell District Council Obligations*

69. The affordable housing obligations are contained in Schedule 2 which secures 40% affordable housing in line with a mix agreed with the Council. I am satisfied this obligation meets the relevant tests.
70. The Council requests £194,365.42 which it says is necessary to improve Hanwell Fields Community Centre by creating additional capacity to meet the demand created by the proposed development and thereby positively contributing to improving the health and wellbeing of the local community. While I appreciate the contribution is based on a standard formula, at paragraph 3.2 the Council's SPD clearly states that obligations will only be sought for infrastructure which is required to mitigate the direct impact of a development.
71. While additional information was forthcoming after the Inquiry, there has been no meaningful analysis done of the centre's existing capacity or facilities and no evidence to suggest a deficiency in either area. Beyond calculating the number of additional residents resulting from the proposed development, no analysis has been done to understand the specific impact of the development on the centre. The suggestion that all 423 people from the development would be present in the main hall at the same time as 350 existing residents, is simply not credible. Finally, there are no details before in relation to timescales of when the works identified by the Council might be brought forward nor evidence of any engagement with the operators of the centre. Based on these shortcomings, I cannot be sure that the contribution is necessary to mitigate the impact of the development.
72. I am similarly not persuaded that the contribution to fund a Community Development Worker whose principal role would be to engage with residents of the development and provide links to local services and social networks. In my view, there would be more convenient and cost-effective ways for future residents to receive information relating to local services and social networks such as, welcome and travel packs and/or through social media platforms and the internet. For these reasons, I do not consider the Community Development Worker contribution is necessary to make the development acceptable.
73. The Council has identified a deficit in outdoor sport pitch provision in the local area and seeks a contribution of £342,895.10 to remedy the situation by providing a new facility at the North Oxfordshire Academy which is proximate to the appeal site. The contribution has been calculated via a standard formula in the Developer Contributions SPD and is supported by LP Policies BSC10 and BSC11. I am thus satisfied that the sport pitch contribution meets the relevant tests for planning obligations
74. A contribution of £141,940.96 is sought towards indoor sport hall provision. The amount has again been calculated via a standard formula in the Developer Contributions SPD and is supported by LP Policies BSC10 and BSC11. According to the Council, the sport hall contribution would be spent on capacity

improvement works at the closest indoor sports facility (the Spiceball Leisure Centre). However as with other contributions, there is a lack of information on what exactly the money would be spent on and when. Without this, it is difficult for me to be sure that the contribution would mitigate the impacts of this particular development rather than general population growth around Banbury. Despite these shortcomings, and as with the education obligations, I have decided to give the benefit of the doubt to the Council. Accordingly, I consider the sport hall contribution meets the necessary tests.

75. A figure of £146,880 is sought from the NHS Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board on the basis that the nearest surgery to the appeal site (the Banbury Cross Health Centre) is experiencing significant capacity issues with *'insufficient Consulting rooms to cope with increased population growth as a direct result of the increase in dwellings'*. However, the information provided by the Board does not suggest that the Banbury Cross Health Centre nor other surgeries in the area are unable to accommodate new patients, or that existing or projected appointment wait times would be unacceptably long. It is also not suggested that the Banbury Cross Health Centre or others in the area are no longer accepting new patients.
76. The contribution has been calculated via a standard formula which assumes an increased patient population of 408 (2.4 persons per dwelling). However, that approach assumes that all future residents of the appeal site would be new to the area, something I find extremely unlikely. In terms of how the money would be spent, the Board's response is notably vague. It suggests funding is required to *'support local plans to surgery alterations or capital projects to support patient services'* and investment into other capital projects which directly benefit the *'location and the practices within it if a specific project in the area is not forthcoming'*. There is nothing in the response to suggest the delivery of a specific programme at the Banbury Cross Health Centre within a timeframe that would meet the additional demand generated by the proposed development.
77. For these reasons I have serious concerns about the justification for the contribution. Nonetheless having heard first-hand from local residents about the problems of getting a GP appointment, I have decided to exercise some discretion in the matter and have given the contribution the benefit of the doubt. However, the Board should take note of these comments and ensure that any future contributions are robustly justified with site specific information.

### **Planning Balance**

78. In accordance with guidance contained in the Framework, there are two separate balancing exercises which need to be undertaken in this case, both of which have to take account of benefits which would arise from the appeal proposal. The first is the balance relating to paragraph 208 of the Framework, which requires any 'less than substantial' harm to the significance of a designated asset to be weighed against the public benefits of the proposal.
79. I undertake this balance in the context of the guidance in paragraph 205 of the Framework, which makes it clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. I have already concluded that the harm to the significance of the HCA would be towards the lower end of

the 'less than substantial' range. That harm must nonetheless be given "considerable importance and weight".

80. To be set against this harm, would be the public benefits arising from the appeal scheme which are not generally disputed and comprise the following:
- 1) The provision of housing (170 dwellings) to contribute to housing needs in an authority that is unable to demonstrate a five-year supply of housing. Even in the alternative, there is still a demonstrable demand for housing in this area.
  - 2) The provision of affordable housing (68 dwellings/40%) significantly in excess of policy requirements<sup>22</sup> in an authority that has consistently failed to deliver a sufficient amount of affordable homes for its residents.
  - 3) Public access to the appeal site including significant areas of public open space including a network of grass trails, an informal kick about space, wildflower meadow and oak parkland and a natural play space.
  - 4) Biodiversity Net Gain of 38% for habitats and 10% for hedgerows.
  - 5) A host of economic benefits during the construction phase of the development including £30.9m in construction investment and 80 full-time jobs. Support of existing local services and facilities post-occupation including £400,000 towards Council Tax revenue per annum and £930,000 in 'first occupation expenditure'<sup>23</sup>.
81. In my view the delivery of 170 dwellings, 68 of which would be affordable, in the context of a national housing crisis and in an area that has staggering levels of unaffordability, is the weightiest consideration in the planning balance. I attach substantial weight to these benefits.
82. The opening up of large parts of the site for public access and outdoor recreation attract significant weight. I also attach significant weight to the biodiversity net-gain which exceeds policy requirements. Finally, I attach significant weight to the economic benefits.
83. Overall, the collective public benefits attract substantial weight sufficient to outweigh the harm I have identified to the HCA. Consequently, the proposal passes the "paragraph 208" test.
84. I now turn to the second balancing exercise which needs to be undertaken. In view of my earlier conclusions that the most important development plan policies are out-of-date and should carry less than full weight because of inconsistencies with the Framework, this is the tilted balance set out in paragraph 11 d). The effect of this is that the planning balance shifts in favour of the grant of consent. Only if the Council can demonstrate harm which "significantly and demonstrably" outweighs the benefits of the development should consent be refused.
85. I have found the proposal would result in moderate landscape harm and conflict with saved Policy H18 in that regard. There would also be limited conflict with Policy Villages 2 in respect of a loss of BMV agricultural land and 'less than substantial harm with regard to the HCA. However, the largely

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<sup>22</sup> I consider the site is 'at' Banbury and therefore the relevant policy requirement is 30% affordable housing.

<sup>23</sup> See Appendix DMC2 to Mr Murray Cox's PoE.

undisputed social, economic and environmental benefits are of such magnitude that they clearly outweigh the identified harms. Even if I had considered the appeal scheme against the 'flat balance' under section 38(6) of the Act, the benefits, or materials considerations, would clearly outweigh the harm and policy conflicts I have identified.

**Conclusion**

86. For the reasons given above the appeal should be allowed.

*D M Young*

INSPECTOR

## **APPEARANCES**

### Cherwell District Council

Cain Ormandroyd of Counsel, he called:

Jon Goodall	DLP Consultants
Mark Cooper	MC Landscape
Nicholas Doggett	Asset Heritage
Nicholas Wyke	Cherwell District Council

### *Planning obligations roundtable*

Rebecca Wise	Cherwell District Council
Joy White	Oxfordshire County Council
Richard Oliver	Oxfordshire County Council

### Appellant

Hashi Mohammed, he called:

David Murray-Cox	Turley
Jeff Richards	Turley
Ben Connolley	EDP
Edmund Stratford	EDP
Annie Gingell	Tetlow King
Michael Carr	Pegasus

### Interested Parties

Cllr Chris Brant	Local resident & Ward Councillor for Hanwell
Tom Sadler	Local Resident & Keep Hanwell Village Green Action Group
Catriona Reid	Hanwell Parish Council
Nina Musgrove	Drayton Parish Council
Sue Upton	Bourton Parish Council
Val Ingram	Shotteswell Parish Council
Kate Wythe	Horley Parish Council



## **INQUIRY DOCUMENTS**

ID1 - Appellant openings

ID2 - LPA openings

ID3 - Appellant List of Appearances

ID4 - LPA List of Appearances

ID5 - CDC Details of Affordable Housing dated 4th June 2024

ID6 - Hanwell Parish Council speech transcript

ID7 - Bourtons Parish Council speech transcript

ID8 - Horley Parish Council Landscape Document

ID9 - Drayton Parish Council speech transcript

ID10 - Hanwell Chase Site Plan

ID11 - LPA Ref: 95/01117/OUT (Land North of Harwick Estate) Site Plan

ID12 - Interim Sustainability Appraisal (August 2023)

ID13 - Oxfordshire Housing Deal Delivery Plan

ID14 - Summary of obligations contained in the draft Section 106

ID15 - SEND Sufficiency Strategy

ID16 - Surrounding sites densities comparison

## **SCHEDULE OF CONDITIONS**

- 1) No development shall commence until full details of the layout (including the layout of the internal access roads and footpaths), scale, appearance, and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.
- 2) In the case of the reserved matters, the final application for approval shall be made not later than the expiration of three years beginning with the date of this permission.
- 3) Application for approval of all the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.
- 4) Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out in accordance with the following plans and documents: Site Boundary Plan. Drawing No. EDP 3253\_D045 Rev B, Land Use Amount And Access Parameter Plan. EDP3253 D031 Rev D, Proposed Vehicular Access – Dimensions. Drawing No. 17279 005 Rev P1, Refuse vehicle – swept path analysis at proposed site access. Drawing No. 17279 006 Rev P1 and Proposed Vehicle Access. 17279\_T\_003 P3
- 5) Prior to the commencement of the development, a Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. It will include details of:
  - a) A site walkover survey by a suitably qualified Ecologist and any updated surveys including mitigation;
  - b) Risk assessment of potentially damaging construction activities and identification of any licences required;
  - c) Details of measures necessary to protect biodiversity features;
  - e) The measures to be taken to ensure construction works reduce the impact on neighbouring and nearby residents through detail of temporary fencing, lighting and construction compounds and management of activity through the construction of development;
  - h) Details of the consultation and communication to be carried out with local residents shall be submitted to and approved in writing by the Local Planning Authority;
  - i) Details of traffic routing and temporary access arrangements;
  - k) Delivery, demolition and construction working hours;Thereafter the development shall be carried out in accordance with the approved CEMP.

- 6) No development shall commence until a detailed surface water drainage scheme for the site, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is first occupied. The scheme shall include:
- a) A compliance report to demonstrate how the scheme complies with the "*Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire*";
  - b) Full drainage calculations for all events up to and including the 1 in 100 year plus 40% climate change;
  - c) A Flood Exceedance Conveyance Plan;
  - d) Comprehensive infiltration testing across the site to BRE DG 365 (if applicable);
  - e) Detailed design drainage layout drawings of the SuDS proposals including cross-section details;
  - f) Detailed maintenance management plan in accordance with Section 32 of CIRIA C753 including maintenance schedules for each drainage element;
  - g) Details of how water quality and quantity will be managed during construction and post development in perpetuity;
  - h) Confirmation of any outfall details; and
  - i) Consent for any connections into third party drainage systems.
- Thereafter the development shall be carried out in accordance with the approved surface water drainage scheme.
- 7) Prior to first occupation, a record of the installed SuDS and site wide drainage scheme including as built plans and details of the management company, shall be submitted to and approved in writing by the Local Planning Authority.
- 8) Prior to the commencement of the development hereby approved, an Arboricultural Method Statement (AMS), undertaken in accordance with BS:5837:2012 and all subsequent amendments and revisions shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, all works on site shall be carried out in accordance with the approved AMS.
- 9) No development shall take place until the applicant (or their agents or successors in title) has submitted to and had approved in writing by the local planning authority a programme of archaeological work consisting of a written scheme of investigation evaluation and mitigation and a timetable for the work. The development shall thereafter proceed in accordance with the approved written scheme of investigation and timetable. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority within two years of the completion of the archaeological fieldwork.

- 10) No development shall commence unless and until a Landscape and Ecology Management Plan (LEMP), has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall include 'integrated provisions for biodiversity within the built environment'. Thereafter, the development shall not be carried out or managed other than in accordance with the approved LEMP.
- 11) No development above ground level shall take place until details of the measures for habitat creation/enhancement and ongoing management and maintenance for at least 30 years to ensure that the target habitat quality and condition is met post development, along with a full monitoring scheme has been submitted to and approved by the Local Planning Authority. The approved details shall be implemented prior to first occupation of the building.
- 12) As part of any submission for reserved matters, full details of a renewable energy strategy for the site in accordance with Policy ESD5 of the Cherwell Local Plan, shall be submitted and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details prior to the first occupation of any dwelling the renewable energy serves.
- 13) Prior to first occupation on site an updated residential Travel Plan and residential travel information pack is required to be submitted to and approved by the local planning authority. Thereafter the Travel Plan shall be delivered in accordance with the approved details', or similar. This plan should be produced in accordance with the Oxfordshire County Council guidance document Transport for New Developments, Transport Assessments and Travel Plans (March 2014).
- 14) Prior to first occupation each property shall be provided with high-speed broadband.
- 15) The development shall be carried out in accordance with the mitigation measures identified in the document titled Noise Impact Assessment dated July 2022 prepared by SLR (ref: 410.06713.00006). Once a final glazing and ventilation strategy has been finalised this should be provided to and approved by the Local Planning Authority prior to the installation of the glazing including an overheating report where alternative means of ventilation have been provided.
- 16) Prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's "Land Contamination Risk Management (LCRM)" and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.
- 17) If contamination is found by undertaking the work carried out under condition [16], prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person

and in accordance with DEFRA and the Environment Agency's "Land Contamination Risk Management (LCRM)" and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

- 18) If remedial works have been identified in condition [17], the development shall not be occupied until the works have been carried out in accordance with the approved scheme. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.
- 19) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development is resumed or continued.