

**CHERWELL DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990
RULE 6 STATEMENT**

Appeal by Banner Homes Limited against the decision of Cherwell District Council to refuse outline planning permission for residential development for 82 no. dwellings.

1. SITE LOCATION AND PROPOSAL

1.1 The appeal site comprises 3.77 hectares of agricultural land used for arable purposes. It lies on the southern side of Bodicote between the existing settlement and the Cotefield Farm complex to the south-east. The appeal site is bounded by Blackwood Place on the northern boundary, Keyser Road on the western boundary, an open agricultural field to the south and the existing garden centre to the east. The access would be taken from the existing access off Oxford Road to enter the site on the south-western corner of the garden centre. In the north-western corner of the appeal site is an agricultural access onto Molyneux Drive. It is intended that this would be used for pedestrian access into Bodicote village. The appeal site rises in height from the south to a ridge that runs on a north-east to south-west alignment. It is elevated in comparison with the buildings that make up the Cotefield Farm complex, but it sits either level with or lower than the adjacent houses which bound the site. There are no buildings on the appeal site.

1.2 The application has been submitted in outline form with all matters, with the exception of the access, reserved for future consideration. The application was not accompanied by an Environmental Statement but does include indicative elevations, Planning Supporting Statement, Design and Access Statement, Transport Statement, Landscape Assessment, Phase 1 Habitat Survey, Flood Risk Assessment, Phase 1 Environmental Risk Assessment, Affordable Housing Statement, a Tree Survey and Hedgerow Evaluation and an archaeological evaluation. The proposal seeks consent for the erection of 82 dwellings and flats, 40% of which are proposed to be affordable units. The proposed density of the development is 30 dwellings per hectare. Outside of the appeal site boundary there is an existing tree planting belt along the south western boundary and the indicative scheme shows a new tree belt planting along the southern boundary.

2. RELEVANT PLANNING HISTORY

2.1 The following previous applications should be noted. Application **05/02180/OUT** was an outline application for residential development. It was refused for the following reasons:

1. *The proposed development would be contrary to Policies H13 and H18 of the adopted Cherwell Local Plan, Policies H15 and H19 of the Non-Statutory Cherwell Local Plan 2011 and Policies G1, G2, G5 and H1 of the Oxfordshire Structure Plan 2016 which seek to guide residential development to allocated sites or sites within the existing built-up limits of settlements. In this case the site is not allocated for development in either the adopted or Non-Statutory Local Plan but lies outside the existing built-up limits of the settlement. It is therefore classed as countryside where its development would constitute an unjustified and undesirable intrusion into the countryside surrounding the village of Bodicote, which would be contrary to the policies intended to protect the character and appearance of the countryside.*

Furthermore, it is considered that the release of this large rural, greenfield site against Council policy would prejudice future assessments and decisions on the Council's Core Strategy and Banbury and North Cherwell Site Allocations Development Plan Document, as part of the Local Development Framework, about the most sustainable means of meeting the Council's housing requirements, as set out in the Oxfordshire Structure Plan 2016.

2. The proposed development would be contrary to Policy C13 of the adopted Cherwell Local Plan, Policy EN34 of the Non-Statutory Cherwell Local Plan 2011 and Policy EN1 of the Oxfordshire Structure Plan 2016. The site is situated within an Area of High Landscape Value and the location and scale of the proposed development would have an adverse visual impact upon the rural character and landscape value of this locality, increasing the outward spread of the village and intruding into the unspoilt countryside surrounding the settlement.
3. In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority is not convinced that the infrastructure directly required to service or serve the proposed development, including affordable housing, open space/play space, off-site playing pitches, off-site indoor sports facilities, education facilities, library facilities, fire infrastructure and transport measures will be provided, which would be contrary to Policy G3 of the Oxfordshire Structure Plan 2016, Policies H5, TR1 and R12 of the adopted Cherwell Local Plan and Policies H7, TR4, R8, R9 and R10A of the Non-Statutory Cherwell Local Plan 2011.
4. In the absence of a satisfactory archaeological field evaluation, the Local Planning Authority is not convinced that the proposed development can be undertaken without resulting in the loss of archaeological deposits which would be contrary to Policy C26 of the adopted Cherwell Local Plan, Policy EN47 of the Non-Statutory Cherwell Local Plan 2011 and Policy EN6 of the Oxfordshire Structure Plan 2016.
5. In the absence of an accompanying Transport Assessment, the suitability of the site in terms of a sustainable impact on the adjacent highway network and the adequacy of the site access cannot be assessed. The Local Planning Authority therefore is not convinced that the proposed development can be undertaken without detriment to highway safety, which would be contrary to Policies TR2 and TR3 of the adopted Cherwell Local Plan, Policies TR2, TR3 and TR5 of the Non-Statutory Cherwell Local Plan 2011 and Policies T1 and T8 of the Oxfordshire Structure Plan 2016. An appeal was submitted but subsequently withdrawn.

An appeal was submitted in relation to application no. 05/02180/F but was subsequently withdrawn.

- 2.2 Application **10/00588/OUT** sought outline consent for residential development of 86 no. dwellings. This was withdrawn prior to determination and following the publication of the Committee agenda in which it was recommended for refusal for the reasons set out below:

1. The proposal represents development beyond the built up limits of the settlement and will cause harm to the character and appearance of the countryside. Notwithstanding the Council's short term inability to demonstrate that it has the 5 year supply of housing land required by PPS 3 Housing, the development of this site cannot be justified on the basis of a temporary land supply deficiency alone, a development of this scale is inappropriate at this time given the existing lack of provision of village facilities and because of the landscape impact of the proposal. As such the proposed development is contrary to the saved policies H13, H18, C7 and C13 of the adopted Cherwell Local Plan, policy EN34 of the Non-Statutory Cherwell Local Plan, policy BE1 of the South east Plan and Planning Policy Statement 3 Housing.
2. The Transport Statement does not sufficiently demonstrate that the access to the

A4260 is adequate to serve the development without causing harm to highway safety, contrary to guidance contained in PPG13.

3. *In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority cannot guarantee that the infrastructure directly required to service or serve the proposed development, including affordable housing, open space/play space, off-site playing pitches,, education facilities, library facilities, and transport measures will be provided, which would be contrary to Policy CC7 of the South East Plan, Policies H5, TR1 and R12 of the adopted Cherwell Local Plan and Policies H7, TR4, R8, R9 and R10A of the Non-Statutory Cherwell Local Plan 2011.*
4. *In the absence of a satisfactory archaeological field evaluation, the Local Planning Authority is not convinced that the proposed development can be undertaken without resulting in the loss of archaeological deposits which would be contrary to Policy EN47 of the Non-Statutory Cherwell Local Plan 2011 and Policy BE6 of the South East Plan 2009 and guidance contained within PPS5.*

3 POLICY CONSIDERATIONS

3.1 Central Government Policy

PPS1: Delivering Sustainable Communities
PPS3: Housing
PPS5: Planning for the Historic Environment
PPS7: Sustainable Development in Rural Area
PPS9: Biodiversity and Geological Conservation
PPG13: Transport
PPG16: Archaeology
PPS25: Development and Flood Risk

- 3.2 The **South East Plan 2009** was adopted in May 2009. The following policies are relevant to the consideration of the proposed development:

Policy SP3 requires urban areas to be the prime focus for development in order to foster accessibility to employment, housing, retail and other services and to avoid unnecessary travel.

Policies CC1 and CC2 seek to achieve sustainable development.

Policy CC7 requires that where new development creates a need for additional infrastructure a programme of delivery is required.

Policy H1 sets out regional housing provision for the period 2006-2026 in relation to sub regions and districts.

Policy H2 requires that LPAs work in partnership to allocate and manage a land supply to deliver both the district housing provision and the sub-regional/regional provision.

Policy H3 requires the delivery of a substantial increase in the amount of affordable housing

Policy H4 requires that LPAs identify the full range of existing and future housing needs required in their areas and encourage a range of housing types to be provided.

Policy H5 deals with housing design and encourages a regional target of 40 dwellings per hectare.

Policy T1 encourages development that is sustainable in terms of public transport and the need to travel.

Policy NRM5 seeks conservation and biodiversity improvements.

Policy C4 seeks positive and high quality management of the region's open countryside.

Policy BE1 encourages local authorities to ensure that new development helps provide significant improvements to the built environment.

Policy BE5 encourages positive planning to meet the defined local needs of rural communities for small scale affordable housing, business and services. In addition it seeks to ensure that the distinctive character of the village is not harmed.

Policy S3 encourages LPAs to ensure adequate provision of pre-school, school and community learning facilities.

The Localism Act 2011 gives the Secretary of State the power to make Orders to revoke the whole or part of regional strategies. The Secretary of State wrote to planning authorities in 2010 indicating his intention to abolish regional strategies, but to date he has not exercised the recently provided powers. His intention to do so is a material consideration

- 3.3 The **Adopted Cherwell Local Plan** (adopted November 1996) remains the current adopted Local Plan as the later Cherwell Local Plan 2011 could not meet the adoption timetable prior to the Government's introduction of the Local Development Framework system. It contains relevant saved policies H5, H12, H13, H18, TR1, R12, C2, C7, C8, C13, C27, C28 and C30 (attached at Appendix 1 if not included in the Council's Appeal Questionnaire).
- 3.4 The **Non-Statutory Cherwell Local Plan 2011** was adopted by the Council in December 2004 for development control purposes following the Council's decision to proceed with the Local Development Framework. It contains relevant housing policies H1, H2, H3, H4, H7, H15, H19 and relevant transport policies TR1, TR3, TR4, TR5, TR9 and TR11. The relevant urban design policies are D2, D3, D5. Environmental policies EN23, EN24, EN25, EN30, EN34, EN36, EN47 and other policies including R8, R9 are also relevant. (attached at Appendix 2 if not included in the Council's Appeal Questionnaire). It is acknowledged that this document carries little weight
- 3.5 The **Draft Core Strategy February 2010** does not currently carry the weight of an adopted document and it is to be the subject of further consultation. Policy H1 (Housing distribution), H2 (Sustainable Housing Delivery), H3 (Efficient use of Land), H4 (Affordable Housing Target), H5 (Affordable Housing Requirements), RA1 (Village Categorisation) and RA2 (Distribution of housing in the rural areas) are relevant policies. Copies of these policies are attached at Appendix 3.
- 3.6 Planning Obligations Interim Planning Guidance April 2007
Planning Obligations SPD July 2011

4 THE COUNCIL'S CASE

- 4.1 Application 11/00617/OUT was submitted to the Council and validated on 13 April 2011. It was publicised under the Council's normal procedures for a major application and as a departure from the provisions of the development plan. The Planning Committee of Cherwell District Council resolved to refuse planning permission at the meeting of the 11 August 2011 for the following reasons, having taken into account the appellant's case, consultation responses, current planning policies and Government guidance:

1. *The proposed development would be contrary to Policies H13 and H18 of the adopted Cherwell Local Plan, Policies H15 and H19 of the Non-Statutory*

Cherwell Local Plan 2011 which seek to guide residential development to allocated sites or sites within the existing built-up limits of settlements. In this case the site is not allocated for development in either the adopted or Non-Statutory Local Plan but lies outside the existing built-up limits of the settlement. It is therefore classed as countryside where its development would constitute an unjustified and undesirable intrusion into the countryside surrounding the village of Bodicote, which would be contrary to the policies intended to protect the character and appearance of the countryside. Furthermore the development would increase the outward spread of the village intruding into the unspoilt countryside surrounding the village, neither preserving nor enhancing the Area of High Landscape Value, contrary to Policy C13 of the adopted Cherwell Local Plan and Policy EN34 of the Non-Statutory Cherwell Local Plan.

2. *In the absence of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement the Local Planning Authority is not convinced that the infrastructure directly required to service or serve the proposed development, including affordable housing, open space/play space, off-site playing pitches, education facilities, library facilities, fire infrastructure and transport measures will be provided, which would be contrary to Policies H5, TR1 and R12 of the adopted Cherwell Local Plan and Policies H7, TR4, R8, R9 and R10A of the Non-Statutory Cherwell Local Plan 2011.*

4.2 The Council's evidence will relate to the reasons set out above and will expand on the following matters to demonstrate that the proposed development is not in accordance with the development plan and government guidance.

4.3 **Principle of housing development**

4.3.1 The site of the proposed housing development is on an undeveloped area of open countryside which is considered an inappropriate location for housing development. The adopted Cherwell Local Plan, the Non-Statutory Cherwell Local Plan and the emerging Draft Core Strategy do not contain any policies which seek to allocate the appeal site for residential development. Sites other than those allocated fall to be considered under Policy H12 of the adopted Local Plan which seeks development within the built-up limits of the settlement in accordance with policies H13, H14 and H15. Policy H13 is relevant to the village of Bodicote and states that within the village of Bodicote (and other specified villages) residential development will be restricted to infilling, minor development comprising small groups of dwellings on sites within the built-up area of the settlement or the conversion of non-residential buildings. The proposal is for 82 dwellings in an area of 3.77ha to the south of the village and as such does not constitute infilling or a small development within the built-up limits. It follows that the proposal is clearly contrary to Policy H13.

4.3.2 As the site is considered to be in the countryside, Policy H18 is also relevant. Policy H18 seeks to ensure that dwellings beyond the built-up limits of settlements are only approved where it can be demonstrated that they are being essential for agriculture or other existing undertakings. The proposal does not do this therefore Policy H18 is not complied with.

4.3.3 By virtue of the encroachment into the open countryside, the development would also neither preserve nor enhance the Area of High Landscape Value, which is contrary to what Policy C13 seeks to achieve.

4.4 **S106/Unilateral Undertaking**

The lack of a satisfactory unilateral undertaking or S106 to cover infrastructure contributions formed the basis of the second refusal reason. It is necessary to have such an obligation to help to mitigate the likely impact of the increase in population on services such as transport, schools, libraries and others. In the appellant's Grounds of Appeal they express a willingness to enter into early discussions and negotiations with regard to the scope and content of the S106 agreement. Therefore it is hoped that the Statement of Common Ground will address this and that a S106 agreement or unilateral undertaking can be presented to the Inspector at the time of the Inquiry.

4.5 **Housing Land Supply**

Whilst neither the refusal reasons nor the appellant's grounds of appeal make specific reference to issues relating to housing land supply, the appellant's original application referred to it, and it was considered by the Council when it assessed the proposal. It is therefore expected that it will be a consideration in the determination of the appeal. When the Planning Committee considered the proposal, the Council was satisfied that it could demonstrate that it had a rolling five year housing land supply. Before the application was determined, there had been two appeal decisions that had supported this position. However, since the Council issued its decision, there has been a further appeal decision concluding that the Council did not have a five year housing land supply. The Council is currently producing its Annual Monitoring Report which is expected to be presented to the Executive Committee on 6 December 2011. Depending on the findings of the Annual Monitoring Report it may be that an agreed position relating to housing land supply can be reached through the production of the Statement of Common Ground. The proposed development of 82 dwellings, if allowed, would contribute to the Council's five year housing land supply but it is not considered that this matter alone is determinative.

4.6 **Statement of Common Ground**

It is hoped that, in addition to the issues raised above, the Statement of Common Ground will address the following: suggested conditions, access and highway safety, design and impact on neighbouring amenities, ecology and landscaping, archaeology, open space and recreation, drainage and flooding, sustainability.

5 **CONCLUSION**

5.1 For these reasons, the Council will be asking for the appeal to be dismissed.

6 **LIST OF DOCUMENTS TO WHICH THE COUNCIL MAY REFER**

1. The decision notice
2. Report to Planning Committee, written updates and minutes of the Planning Committee dated 11 August 2011
3. Site location plan showing appeal site and surroundings
4. Indicative site layout drawing no. PL.01 Rev. F and all other application documents
5. South East Plan 2009, adopted Cherwell Local plan 1996. Non-Statutory Cherwell Local Plan 2011 and Draft Core Strategy Policies referred to in Section 3
6. Central Government Policy referred to in Section 3
7. Suggested Schedule of conditions
8. Appeal decisions – App/C3105/A/10/2132662 (South of Milton Road,

Adderbury), App/C3105/A/10/2134007 (The Green, Chesterton) and App/C3105/A/11/214212 (London Road, Bicester)

9. Ministerial Statement date 23 March 2011
10. Letter from DCLG's Chief Planner dated 31 March 2011
11. Draft National Planning Policy Framework

As far as can be foreseen, the documents that the Council intends to rely on during the course of the inquiry have been referred to in this statement. However, the Council reserves the right to refer to any other documents that become relevant during the appeal proceedings.