

## **CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANTS**

### **Introduction**

1. The fortunes of the District Council and in particular their planning policies for housing have undergone a sea change in recent months in terms of their ability to demonstrate that they have an approach which is compliant with national planning policy. That is hardly surprising in the context of an authority that has not had an adopted local element of the Development Plan which is up to date for the past 11 years. At some point the failure of the forward planning process in the district was bound to lead to this situation arising. However, they have gone from bravely asserting that they had in excess of five years of housing land supply at the time when this application was refused to a position of having a 2.8-year land supply (or 1.7 years in the Rest of District area) at the time of this Inquiry. They have been driven to try to take emergency measures which of themselves bespeak the necessity for sites to be brought forward to assist in addressing meeting five-year housing land requirements.
2. It is of course trite to observe that the failure to have a five-year land supply does not mean that housing applications in any location or of whatever scale should be granted consent. It is not a case, as Mr Crofts observed, of “any site goes”. It is, however, necessary for favourable consideration to be given to housing proposal. That was a favourable consideration which the Council

did not give this site when they assessed the merits of the application. It is unclear whether the Council have indeed ever formally considered the merits of this development applying that favourable consideration.

3. The effect of paragraph 71 of PPS3 is that the favourable consideration needs to be assessed in an examination of whether or not the requirements of paragraph 69 of PPS3 are satisfied. The issues between the Appellant and the Council in that regard are narrow, and on analysis the Council's position is unsustainable.
4. I propose to address the main issues which were set out at the outset of the Inquiry directly in these closing submissions. I shall, however, address the first main issue firstly in terms of the planning policy issues associated with the built envelope, and secondly by examining five-year land supply.
5. Finally by way of introduction, it is now accepted that the necessary Section 106 obligation and conditions are available to ensure that, if development is permitted, all of the necessary requirements and mitigation will be provided to ensure that the development is sustainable and appropriate.

**Whether development beyond the built envelope of the settlement is justified by the absence of a five-year supply of housing land.**

6. The analysis in relation to this issue has to stem from seeking to solve the equation set by Section 38(6) of the 2004 Act. It is necessary to examine the relationship of the proposal to the relevant policies in the Development Plan and alongside that the weight which can properly be attached to the Development Plan policies, and thereafter the weight which can be attached

to the relevant material considerations outwith the Development Plan, in order to strike the overall planning balance. It is appropriate in examining that question to start with the policies of the Development Plan.

7. So far as the Local Plan policies are concerned, it is beyond argument that the countryside policies that seek to protect a built envelope to the settlements are out of date and no longer fit for purpose. This can be examined and proved in a number of ways. Firstly, the Local Plan had an end date of 2001 and its development requirements are long since superseded. They stem from Structure Plan policies which have not been saved and are no longer part of the Development Plan. The way in which the countryside policies framed the built envelope of settlements (and thereby defined the amount of land which would be potentially available for development) is not therefore fit for purpose or designed to meet up-to-date development requirements.

8. That this is an appropriate conclusion is borne out by the judgement of the Inspector in the recent appeal decision at Talisman Road, Bicester, who concluded at paragraph 10 of the decision that:

“The Cherwell local plan was adopted in 1996 and has an end date of 2001. As it preceded the SEP by many years it is unable to provide the statutory framework for how the identified housing needs are to be met locally.”

9. The fact that the Local Plan is no longer a suitable and appropriate vehicle to provide for development needs is further demonstrated by the fact that the Council themselves sought to produce its replacement on the basis, presumably, that it was no longer fit for purpose. The Non-Statutory

Cherwell Local Plan was intended as a replacement for the Local Plan but never made it to an Inquiry. This again demonstrates that since the Local Plan there has been a need to review its development boundaries of settlements, albeit that that has never taken place. The limits to development up until 2001 are no longer a tenable basis for meeting current needs.

10. Whilst the Council have in the reason for refusal sought to rely upon the Non-Statutory Local Plan, again the Inspector at the Talisman Road appeal made it plain in paragraph 12 of her decision that the Non-Statutory Local Plan “has limited weight as a material consideration and has little to add of pertinence to this appeal.” This conclusion is, again, not gainsaid by the Council, nor is there any basis for doing so. The end date of the Non-Statutory Local Plan has also passed and, even if it had ever been adopted in the form proposed, it would now be time-expired and out of date. In short the same considerations in relation to the Local Plan in respect of being out of date apply equally to the Non-Statutory Local Plan.
11. All of this, of course, points to the fact that, when the task being set is the need to identify suitable and appropriate sites for housing for current development needs, little weight can be attached to generic countryside policies from a Local Plan of such considerable antiquity. When approaching the equation set out above, therefore, it is inappropriate for any significant weight to attach to the Local Plan’s policies. The same applies to the Non-Statutory Local Plan.
12. Against this background the key conclusion is that little significance attaches in determining this appeal to the fact that the proposals are in conflict with the countryside policies of the Local Plan or the Non-Statutory

Local Plan. They are policies which are moribund and redundant as a tool to resist settlement expansion designed to meet current development requirements on suitable sites.

13. The Council have not sought to rely in the reason for refusal on any element of the SEP. There is no issue but that the Council are committed to meeting the SEP housing requirement, which is the basis for gauging whether they have an adequate supply of land for housing. These are the current development needs which underline the unsuitability of the earlier elements of planning policies which could not and did not seek to accommodate them.
14. So far as the settlement hierarchy is concerned, whilst it is correct to note that there is an urban focus to that settlement hierarchy, it is not at the expense or to the exclusion of the need for land to be brought forward in the rural area. The settlement policies of the SEP reflect the need for rural needs to be met. Thus, it is wrong to suggest that there is any conflict with the SEP through proposing a development at a sustainable rural settlement. This conclusion is borne out by the conclusion of the Council's policy officer responsible for these issues Mrs Smart whose observations will be returned to below.
15. Moving to the other considerations which are material to the decision the Appellant's case is further reinforced.
16. Additional support for the contention that the settlement boundaries contained within the Local Plan can no longer carry any significant weight is to be found in the Council's proposals in relation to their Core Strategy.

The draft Core Strategy at policy RA2 proposed an allocation of 350 dwellings to the four principal and most sustainable villages in the “Rest of District” area. Whilst this overall allocation was not disaggregated as between the individual villages, the Explanatory Text made plain that the number of dwellings was to be “divided broadly equally between villages”. It is thus inconceivable that a significant proportion of the 350 dwellings would not be allocated to Bodicote. This again reinforces the fact that simply relying on the long since superseded policy framework of the Local Plan proposals map is no longer a sensible or coherent response to proposals which are being brought forward to meet current housing requirements. The Council’s own proposed policy recognises this.

17. It follows that, wherever one looks in relation to contemporary policy, whether in the SEP or in the emerging Core Strategy, the message is clear. The Local Plan is a spent force in relation to preserve in aspic the settlement boundaries which it settled well over 10 years ago. The Non-Statutory Local Plan is a document of little weight. It is necessary to adopt an approach which no longer slavishly adheres to the expired and outdated policies of the past.
18. These are all contentions which arise before one takes account of the need for favourable consideration of the proposals as a result of the Council failing to have a five-year land supply and paragraph 71 of PPS3 being in point. That favourable consideration obviously reinforces the necessity for less weight to attach to the countryside policies of the Local Plan insofar as they fix settlement boundaries.

19. As set out in the Council's opening, the absence of a five-year supply is obvious and beyond argument. It is, however, not a marginal shortfall or a matter which it is going to be simple or straightforward to address. The shortfall which has emerged as a result of the detailed scrutiny of the Talisman Road Inquiry, followed by the Council undertaking a comprehensive and robust analysis of their sites, is that there is a significant shortfall and no positive or definitive solution which has been identified in order to meet it.
20. The Council have been forced to fundamentally re-evaluate their approach to housing land supply and take emergency measures by producing the Housing Land Supply Position Statement. This document has to be examined, firstly, as to its weight and, secondly as to whether or not it provides any adequate answer or solution for the housing land crisis that the Council now find themselves in.
21. The answer to the question of appropriate weight is simple and straightforward. This is a document which was published by the Council a couple of weeks ago. It has not been the subject of any consultation, nor has it been the subject of any public scrutiny. Indeed, this Inquiry is perhaps the first process in which that document has been subjected to any critical thinking. The sincerity of the Council and the Council making itself busy is, as Mr Crofts rightly pointed out, a necessary but far from a sufficient condition for successful replenishment of the five-year land supply. Fine words butter no parsnips in this respect. The track record of sites such as Bankside do not stand the Council in good stead in seeking to suggest that discussions with developers or fine intentions are actually going to lead to any houses being built.

22. The acid test for that exercise is the one set by paragraph 54 of PPS3. Turning to the substance of the HLSPS, the document and the work underpinning it has not identified a single additional plot for housing development. The sites which are set out in paragraph 15–17 are all known, and none of them are any more deliverable or any further through the process required by paragraph 54 prior to them being identified as being a part of the Council's housing land supply than they were prior to publication of the HLSPS.
23. The scale of the shortfall is massive. The requirement to identify no less than 1,560 dwellings in the next five years will not be met by reliance upon other very large sites which will have long lead-in times and relatively slow programmes of delivery. That scale of housing requirement requires sites that can be simply and easily delivered within the short to medium term of the kind represented by the appeal site. Earnest discussions with developers on large sites the suitability of which have yet to be established, and to which the Council have no commitment, is no substitute for granting consents for real proposals which can swiftly deliver housing as they are in the hands of a willing and able developer.
24. Moreover, when examined, the HLSPS has no coherent proposals for addressing the five-year supply crisis. Nowhere in the document has the Council undertaken any assessment of when and how many units will be delivered off any of the sites suggested. No alternative trajectory exists. Little weight can attach to a document which fails to actively engage with identifying a solution for the problem it is seeking to address.



25. The “Active Approach to Managing Supply” is unlikely to facilitate any significant change to the housing land supply situation. As identified in cross-examination with Mrs Griffiths, four out of the five suggested sources of new housing supply amount to no more than peddling the same policies that have failed to deliver a five-year land supply at present. Insofar as the fifth element is the creation of extensions to the built-up areas of Banbury and Bicester demonstrably in accordance with or complementary to the emerging Core Strategy, the incoherence of the policy is that such proposals will instantaneously run up against the difficulty of paragraph 34 of the HLSPS, where the Council reaffirm the primacy of the Statutory Development Plan in determining whether or not proposals are acceptable. That smacks of the same reliance on outdated Local Plan policies which the Council have sought to rely upon in the present case. That is not a solution but in fact a reiteration of the problem.
26. In short the HLSPS is an aspirational and speculative gesture of no pedigree. It does nothing in the context of this appeal to detract from the favourable consideration which this scheme commands in accordance with national planning policy for housing.
27. The crisis in the five-year land supply for housing is, of course, significantly aggravated by the failure to address the affordable housing requirements which it in effect compounds. By their own admission, the requirement for affordable housing in the district is “huge”. It will be apparent from the failure in the five-year housing land supply and the manifest shortcomings of the HLSPS that the Council have no meaningful solution to addressing this problem.

28. The extent of the shortfall in affordable homes in the district is extremely worrying. As notified to the Inquiry, there are no less than 4,013 households that are on the housing waiting list and living in unsatisfactory circumstances. The position is very troubling and amounts to the equivalent of 5 settlements the size of Bodicote.
29. This site provides the opportunity to meet some of that need. Because of the location of Bodicote (to which I shall return below), the creation of affordable housing on this site will be suitable not only for residents of Bodicote in housing need but also for those in Banbury. The extent of the need for affordable housing is a very significant factor telling in support of these proposals. The proposals provide 40% affordable housing, which exceeds the Council's policy requirement, again a factor to which significant weight should be attached. As Mrs Griffiths accepted, no less weight should be attached to the provision of affordable housing in this location than as part of the proposal at Bankside. That is an advantage of these proposals that could not be prayed in aid by any of the other villages in Bodicote's category.
30. It follows from what has been set out above that the case in support of development beyond and adjacent to settlements to meet the five-year land supply requirement and the overwhelming need for affordable housing is obvious and irrefutable.

### **Is the site suitable?**

31. I propose to answer this question in two respects: firstly, to consider whether or not the site is in a sustainable location for the scale of

development proposed; secondly, I propose to address the detailed issues of site suitability which have been raised by the Council.

32. So far as the location of Bodicote is concerned, it is beyond argument that it is sustainable. That is the conclusion of the Council in settling the settlement hierarchy which they have, which was set out in the draft Core Strategy and to which I have alluded above. The settlement has within it good public transport links to Banbury, local shopping facilities, schools, public houses and community facilities such as places of worship.
33. The absence of higher-order facilities such as supermarkets or cinemas is unsurprising, firstly given the scale of the settlement, but perhaps more significantly given its proximity to Banbury itself. Indeed, it has the clear advantage of being closely related to Banbury and having, therefore, in sustainability terms, the advantages of the services and facilities that are on offer within that larger urban area.
34. The sustainability of this location can be incontrovertibly established by the recognition, as Mrs Griffiths accepted in cross-examination, that its relationship to higher-order services and facilities is similar to that of the allocation at Bankside, which, of course, the Council regard as being in a highly sustainable location. Crossing the Oxford Road does not make the difference between a site being sustainable or unsustainable. This is a sustainable location.
35. Furthermore and critically, that was the independent view of the Council's officer responsible for examining the policy principles in relation to these questions, Mrs Smart. In her consultation response Mrs Smart made plain

that not only was Bodicote one of the most sustainable villages available to the district but also that it was a suitable candidate for additional development.

36. Not only was a suitable candidate for additional development but it was suitable for the scale of development which was being proposed in the application. She said in terms that the approval of the development would not in any way prejudice the emerging Core Strategy because it would reflect the intention of the Core Strategy in terms of the scale of development to be provided at Bodicote. Thus, the contentions made both by Mrs Griffiths in her evidence and in the Council's opening that "this appeal scheme flies in the face of the spatial vision for the area" itself flies in the face of the Council's own policy officer's stated position as to the consonance of this proposal with the spatial vision of the emerging Core Strategy.
37. Turning, then, to the site-specific issues in relation to the appeal site, as set out in opening they are exceedingly limited. No issue is taken in relation to any infrastructure requirement or any of the environmental matters which were resolved through the provision of technical work which met with the approval of the relevant consultees. Mrs Griffiths confirmed that the Council do not have a landscape objection, but an issue is taken in relation to visual impact. In fact, on analysis, again, the area of dispute was within an almost vanishingly narrow compass.
38. Mr Ellis has performed a Blue Book landscape assessment which demonstrates that the proposals are acceptable. Mrs Griffiths took no issue

with the landscape effects and the absence of concern in that regard when cross-examined.

39. So far as the visual effect is concerned, the only points of difference relate to viewpoint 2 and viewpoint 9. So far as viewpoint 2 is concerned, it is clear that there will be an exceedingly limited change in the view which would be available after development has occurred. Certainly, there would be no difference in relation to the character of the view, given that it already includes as significant ingredients within it the existing settlement edge of Bodicote. So far as viewpoint 9 is concerned, that issue related to the suggestion that cyclists or pedestrians should be included within the assessment but, as Mr Ellis pointed out, when they are, it makes an immaterial change to the assessment of the environmental effect.
40. It follows that, once the landscape assessment is done rigorously and in accordance with a proper, professional methodology, it becomes plain that the impact of the development would in both landscape and visual terms be entirely acceptable. The landscape policy (Local Plan policy C13) is based on an outdated approach which is no longer respectable in the light of paragraph 25 of PPS7. In the absence of a landscape objection reliance on this policy to refuse consent does not amount to a sensible approach.
41. The other issues raised by Mrs Griffiths in her proof are of little substance. The requirement for a travel plan can be secured by way of condition and, as has been set out above, there is already good access to sustainable modes of travel to the wider area. Furthermore, as can be seen from Mr Crofts' census statistics, the average distance travelled to work from Bodicote is significantly shorter than the other villages in a similar category. There is no

substance in the contentions raised in respect of higher-order facilities, for the reasons which have been set out above. Indeed, Bodicote is far better placed in relation to access to those higher-order facilities than the other villages in a similar category.

42. It is clear that there would be no impact on secondary education as a result of the proposals. So far as the impact on primary education is concerned, it is clear from the admissions strategy of the primary school and the experience of the most recent intake from that school that the school will benefit from the admission of local pupils in accordance with its admissions criteria. Whilst there will be a bedding-in period, the length of that in terms of the lifetime of the development is inconsequential. It is little different, in reality, from any other development where pupil admission from the local area will occur over the course of time. The suggestion made in relation to the first occupants of the development and their primary school age children overlooks the fact that in many cases those children may already be in existing schools from which parents will not wish to relocate them. Thus, there is no substance in the suggestion that either the school does not have capacity over the course of time to absorb these locally generated pupils, or that there would be any unsustainable travel patterns generated as a result of the developing occurring.

43. As set out above, the absence of a five-year land supply does not mean that every site promoted for planning permission will automatically be granted consent. The policy mechanism is that once paragraph 71 is satisfied then proposals need to be scrutinised under paragraph 69. In this case, such scrutiny demonstrates that a high-quality and appropriate mix of housing will be delivered as a result of the development proposals. Furthermore, the

suitability of the site has, for the reasons which have been set out above, been established. The proposals represent an effective and efficient use of land, and nothing to the contrary has been suggested.

44. Lastly, as set out above, the spatial vision contained in the emerging Core Strategy is appropriately reflected in these proposals. That is not simply the Appellants' view but it is the view of the Council officer responsible for adjudicating on these issues, Mrs Smart. This is therefore an appropriate candidate for meeting the Council's five-year land supply shortfall.

## **Conclusions**

45. It is a fundamental requirement of national government advice that local authorities can demonstrate a five-year land supply for housing. The purpose of that is multi-faceted. It provides, obviously, the ability to ensure that the objectively identified needs of household growth can be met. Moreover, it ensures that those who cannot afford to meet their requirements for a house are not socially excluded but can have a decent home which meets their needs. The timely delivery of housing has broader economic consequences as well. The Council is manifestly failing in addressing these fundamental requirements.
46. Correcting this issue will not be undertaken by fine words or good intentions. It requires the grant of planning consents to sites that are in suitable locations and are readily developable to address the vast and gaping hole in the Council's housing land supply. This site is a site which is fully equipped to assist in that task. Moreover, it is a site which is promoted on the basis that it would provide an element of affordable housing which exceeds the simply policy prescription. In those circumstances, there is no

sensible reason for reliance on outdated policies which are no longer fit for purpose. The development control process needs to look to the future and to addressing the undisputed requirement for more housing to be developed by allowing the appeal and permitting this development to make an appropriate contribution.

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