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## Appeal Decisions

Inquiry held on 5 and 6 July 2011

Site visit made on 6 July 2011

**by Christina Downes Bsc DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 18 August 2011**

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### **Appeal A Ref: APP/C3105/A/11/2147212** **Land at London Road, Bicester, Oxfordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Leda Properties Ltd against the decision of Cherwell District Council.
  - The application Ref 09/01592/OUT, dated 28 October 2009, was refused by notice dated 8 February 2011.
  - The development proposed is 140 residential units with associated parking, access and public open space.
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### **Appeal B Ref: APP/C3105/A/11/2147204** **Land at Langford Park Farm, Bicester, Oxfordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Leda Properties Ltd against the decision of Cherwell District Council.
  - The application Ref 10/01316/F, dated 24 August 2010, was refused by notice dated 8 February 2011.
  - The development proposed is engineering works comprising lowering of land to allow 1 in 100 year plus climate change flooding.
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### **Decision**

1. Appeal A is allowed and outline planning permission is granted for 140 residential units with associated parking, access and public open space on Land at London Road, Bicester in accordance with the terms of the application, Ref 09/01592/OUT, dated 28 October 2009, subject to the conditions in Annex C.
2. Appeal B is allowed and planning permission is granted for engineering works comprising lowering of land to allow 1 in 100 year plus climate change flooding on Land at Langford Park Farm, Bicester in accordance with the terms of the application, Ref 10/01316/F, dated 24 August 2010, subject to the conditions in Annex D.

### **Procedural Matters**

3. The application in Appeal A was made in outline form with all matters reserved for future consideration. It was accompanied by supporting material, including an illustrative Masterplan.

4. At the Inquiry it was discovered that in Appeal A the incorrect certificates had been completed as the Appellant is not the owner of the site. However it is clear that the landowner, who is a Director and majority shareholder of the Appellant company, was cognisant of both the planning application and the appeal. The correct certificates have now been served and I am satisfied that no prejudice has been caused to the Council or any other party and that the procedural irregularity had been satisfactorily remedied.
5. Planning Obligations by Unilateral Undertaking and Agreement were submitted. Whilst these were both fully executed an error was noticed on the Unilateral Undertaking whereby the landowner was incorrectly excluded from the obligation in the Seventh Schedule relating to affordable housing. Furthermore I had some concern about the deliverability of that housing. In addition the Agreement had the word "draft" on the front cover. In the circumstances the parties were given two weeks in which to deal with the above matters.
6. On 25 July 2011 the National Planning Policy Framework was published as a consultation draft. The views of the Council and the Appellant were sought and their responses have been taken into account.

### **Main Issue**

7. The main issue in Appeal A is whether the proposed residential development is necessary in order to meet the requirement for housing in the district. The main issue in Appeal B is the effect of the proposal on the character and appearance of the countryside. There is no dispute that the residential development in Appeal A would only be acceptable provided the flood alleviation measures in Appeal B had first been implemented.

### **Appeal A**

#### **Reasons**

8. Planning Policy Statement 3: *Housing* (PPS 3) requires local planning authorities to identify sufficient land to provide a deliverable 5 year supply of housing. The Council's housing requirement is provided by the South East Plan (SEP). Whilst the Government is committed to abolishing regional strategies the Localism Bill is presently passing through parliament and Strategic Environmental Assessment is being undertaken. In the circumstances the Government's intention is afforded only limited weight as a material consideration. Although the housing figures are likely to be reconsidered in the Core Strategy (CS) this document is not yet at submission stage and has little weight. Furthermore the CS is unlikely to have anything to say about a site such as this which would be too small to qualify as a strategic allocation. Any site specific guidance would thus probably be addressed by a subsequent Development Plan Document. In the circumstances an objection on the grounds of prematurity could not be sustained and although such was referred to in the Council's reason for refusal it was not pursued at the Inquiry.
9. Policy H1 in the SEP sets out the housing requirement for Cherwell District between 2006 and 2026. Cherwell District is also included within the Central Oxfordshire Sub-Region which is one of the areas where the spatial strategy seeks to focus growth and regeneration. This part of the district, which includes the appeal site, has its own housing requirement under Policy CO3. Furthermore, Bicester is one of the main locations for development in the sub-region where a significant proportion of the housing requirement is expected to

be provided. On the basis of the SEP requirements it is the Council's case that for the period 2011 to 2016 there is a 5.2 year housing land supply in the district as a whole and a 5.8 year supply in the sub-regional part of the district. Policy CO3 does not specifically refer to a housing target for Bicester although the supporting text gives an indication of the expected scale of housing growth.

10. 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. Saved Policy H1 indicates sites where development will be allowed but it is based on an old Structure Plan housing target. The appeal site is not included but the policy is permissive in its wording and does not say that development on sites in other locations will not be allowed. In the LP the district is divided into four policy areas of which Bicester is one. There is no settlement boundary for the town but saved Policy H18, which relates to new dwellings in the countryside, refers to the "built-up limits of settlements". The appeal site is an agricultural field between London Road and the A41. Immediately to the north is the Talisman Business Park and beyond that, Bicester Village. On the eastern side of London Road and extending to the by-pass is the residential area of Langford Village.
11. Any rural ambience that the appeal site may possess is attributable to its undeveloped nature and the dense mature hedgerows that enclose it. This is however downgraded by the very apparent road noise which arises from the proximity of the London Road and the A41, which is on an embankment at this point. There are parts of Langford Village where green open spaces are enclosed by tall hedgerows and this gives a similar perception of being away from the urban area. There is a perimeter road system that effectively encircles the town and to the west of the appeal site the A41 dual carriageway provides a readily apparent and defensible boundary to the settlement edge. It is difficult to understand how development of the site could result in urban sprawl or extend the town into the countryside in any material way. It is noteworthy that the Council raises no objections in terms of the effect of development on the character and appearance of the area. Whilst the appeal site is not presently within the urban area it is, in my judgement, within the built-up limits of Bicester. In the circumstances the proposal does not offend the relevant policies in the LP, including saved Policies H12 and H18.
12. The Non-Statutory Cherwell Local Plan was intended as a replacement to the LP but was never adopted due to the change in the development plan regime. It has been approved by the Council for use as interim planning policy but it has an end date of 2011 and like the LP preceded the SEP. It therefore has limited weight as a material consideration and has little to add of pertinence to this appeal. The evidence suggests that the Council has been pro-active in its monitoring of housing land across the district and has sought to maintain a rolling 5 year supply of deliverable sites. When the supply dipped below the 5 year level in 2009 several housing developments were approved, including some beyond the built-up limits of settlements.
13. There is at present no Strategic Housing Land Availability Assessment although it is understood that one is being prepared as part of the evidence base to the CS. Reliance is therefore placed on the 2010 Annual Monitoring Report (AMR) which is a relatively comprehensive and up-to-date piece of work which includes a Housing Delivery Monitor. Nevertheless this was revisited by the

Council prior to the Inquiry as a result of new information about site delivery and to take account of two appeal decisions at Chesterton and Adderbury where the district's housing land supply was scrutinised. In addition the appeal site, which is included in the Housing Delivery Monitor, was removed. Even so, the 5.2 year assessment of supply by the Council differs significantly from the 3.9 years proffered by the Appellant. The difference is mainly attributable to the deliverability of two major sites (South West Bicester and Bankside, Banbury) plus the contribution from a number of small sites. In relation to the latter the Appellant considers that 96 dwellings are unlikely to come forward due to current market conditions. However taking account of the generally small scale of these developments it is not unreasonable to surmise that building will proceed as the economy recovers even if that is not until a year or two's time.

14. Although Bicester is identified as an area for growth there has not been much new housing built since 2004/05 when the last urban extension was completed. Indeed in 2009/10 the AMR indicates that just 8 new homes were constructed. Nevertheless Bicester is expected to become a focus for investment in the future with improvements to its town centre and employment provision as well as being the location for an Eco-Town project. The Council is hopeful that there will be a pent up demand for housing in view of the paucity of supply over the last few years as market conditions improve. One of its major sites is the South West Bicester urban extension where 1,196 dwellings are forecast to be built over the next 5 years. The infrastructure works are now well advanced and the developer is selling serviced parcels to individual housebuilders. However I was told that one of the three housebuilders presently involved is unlikely to complete the acquisition until September 2011. Although a few houses have been erected it is understood that pre-commencement conditions are still outstanding.
15. Furthermore this is a site which is being developed by several housebuilders at the same time. The Appellant's expert evidence is that the rate of delivery on such a multiple outlet site is about 25% lower than if only a single housebuilder were involved. This seems a reasonable proposition because each is in competition for the same pool of available purchasers and it would not make good business sense to build houses and have them stand empty. Furthermore I was told that it is unusual to find more than 3 or 4 housebuilders on-site at any one time. Although the Council has had discussions with those involved in the development and is confident that the expected delivery can be achieved the evidence suggest that the figures are unrealistically high. This was also a conclusion reached by the Inspector in the Chesterton and Adderbury appeals.
16. Bankside is a large greenfield site outside Banbury where an urban extension to the town is proposed. There is an outline planning permission but an application for the site-wide infrastructure has yet to be submitted and the Council was unable to indicate when this was likely to be received. Also it was revealed that the Design Codes have yet to be discharged. Like South West Bicester this would be a multiple outlet site where the developer will seek to sell serviced plots following the installation of the main infrastructure. It will then be up to the individual housebuilders to apply for the relevant reserved matter approvals. Even though there is a small part of the site that may go ahead before the rest the present state of progress make it very unlikely that the anticipated 52 homes in 2011/12 and 110 homes in 2012/13 will fully materialise. Indeed even the Council conceded at the Inquiry that a year's

slippage was a possibility. Although Bankside is considered to be in a desirable location within easy reach of Oxford and there is little competition from other major sites that does not mean that delivery will necessarily be accelerated. The market saturation point is still relevant because several housebuilders would be in competition with each other and thus anxious not to flood the market. I was told that the CS will identify a second phase but there is no evidence to support the Council's optimism that this will influence the speed of delivery of the first phase of the development.

17. From the evidence my conclusion is that the supply of deliverable housing sites is likely to be well below the 5.2 years advanced by the Council although probably not quite so low as the 3.9 years proffered by the Appellant. Whilst there is likely to be some contribution from windfalls this is an uncertain and unknown source of supply and should not be relied upon as PPS 3 makes clear. The part of Cherwell district within the South Oxfordshire Sub-Region includes South West Bicester and on the basis of my conclusions on the delivery of that site the supply would be about 4.8 years as opposed to the 5.8 years anticipated by the Council. For completeness the Council also considered delivery at Bicester itself. Whilst the 6.3 year supply put forward is considered to be over optimistic for the reasons given above it seems likely that there would be sufficient land over the next 5 years to satisfy the indicative growth identified in the SEP. Whilst this is clearly good news Policy CO3 itself does not contain a specific target for Bicester. For this reason the concerns that have been raised about both the district-wide supply and that of this part of the sub-region remain outstanding.
18. When looking at the housing trajectory it can be seen that from 2007 to date actual performance within this part of the district has consistently fallen below the range considered acceptable in Paragraph 64 of PPS 3. Even if future performance were to achieve the rates set out in the trajectories the guidance advises that management action would be required in order to deal with the historic problem. The Council has indicated that the under supply will be addressed by spreading it over the remaining period up to 2026. However if action is needed now the appeal site would provide an additional source of housing on a site which appears from the evidence to be clearly deliverable within the next 5 years.
19. I am aware that the conclusion I have reached on housing land supply does not concur with that of the Inspector who determined the Chesterton and Adderbury appeals and issued her decisions in June 2011. However since that time the Council itself has made adjustments to its housing land supply figures as explained above. Those appeal decisions have no less weight because they were determined through the written representations procedure but I do not know the full extent of the information put before that Inspector. It is only proper that I should determine the present appeal on the basis of the evidence that I have been given and that evidence is strengthened having been tested through cross-examination. This explains why, in this case, I have reached a different view to that of my colleague.
20. In the absence of a 5 year housing land supply Paragraphs 71 and 69 of PPS 3 are engaged. The appeal scheme is in outline form and there is no dispute that it could achieve a high quality housing development with a good mix of housing. The offer of 40% affordable housing would be a considerable benefit within a district where need for such provision is considerable. Although this is

a greenfield site the SEP makes clear that the housing requirements will not all be able to be met on previously developed land. Indeed the urban extension at South West Bicester and Bankside are both on sites that are presently farmland. The appeal site is in an accessible location being close to Bicester town centre, a railway station and bus routes. Whilst it is on land that is liable to flood the Environment Agency has agreed that the harm can be mitigated by the flood compensation measures proposed in Appeal B. The scheme would make effective and efficient use of the appeal site being built at an average density of some 38 dwellings per hectare according to the Design and Access Statement. There is no conflict with the spatial vision for the area because the LP does not include provision for the SEP housing requirement and the site is in any event within the built-up limits of Bicester. The proposal is in accordance with policies in the development plan. For all of these reasons I conclude that the appeal development is necessary in order to meet the requirement for housing in the district.

21. Notwithstanding the above conclusions about the district's housing land supply it is relevant to note that the housing requirement in the SEP is not a ceiling. Even if it were the LP and indeed the more recent Non-Statutory Cherwell Local Plan are unable to provide any guidance on how it should be locally addressed. The emerging CS is insufficiently advanced to assist. This is a relatively small site within the built up limits of Bicester and it is difficult to see what harm would arise from its development. Conversely there are a number of points in its favour. I have already mentioned the much needed contribution to affordable housing. Furthermore there is no dispute that the scheme would comply with sustainable development principles and that it is in an accessible location. Indeed this is the type of proposal that is encouraged in the recent Ministerial Statement: *Planning for Growth*, which is a further factor of significant weight in support of the appeal.
22. The presumption in favour of sustainable development is an underlying principle of the draft *National Planning Policy Framework* (NPPF) and there is no dispute that the appeal scheme would comply with this requirement. The key housing objective is to increase the supply of new homes and the need for a rolling 5 year supply of deliverable sites is enhanced by a requirement to identify an additional allowance of 20% to ensure choice and competition in the market for land. In the present case the district does not have a 5 year housing land supply and so the additional requirement is somewhat academic. The draft NPPF is at an early stage and as it may be subject to change it has little weight as a material consideration. Nevertheless the appeal scheme would be in accordance with its objectives insofar as they encourage the expeditious supply and choice of housing in a sustainable manner.

### **Other Matters**

23. The appeal site is crossed by two streams and following detailed modelling it has been agreed with the Environment Agency that it lies mainly within Flood Zone 2 with a small section in Flood Zone 3a. A site-specific hydraulic model was run to identify the areas that would be affected by the 1 in 100 year flood event allowing for climate change. The scheme effectively raises ground levels within this area to take the site out of the floodplain. A flood compensation scheme would accommodate the displaced volume of floodwater at Langford Park Farm on the southern side of the A41. The necessary works are included in the Appeal B proposal and their prior implementation would be assured by

the Unilateral Undertaking. Subject to the above and the provisions of the Flood Risk Assessment (FRA) being complied with, the Environment Agency does not object to the development on flooding grounds.

24. Although there were local objections in terms of traffic generation and highway safety Oxfordshire County Council as Highway Authority has not raised specific concerns on these grounds. A Transportation Assessment has been submitted to demonstrate that the development can be satisfactorily accommodated by the highway network. Access is a reserved matter and will include the detailed design and position of the site entrance along the London Road frontage.

### ***Planning Obligations***

25. The general context for seeking to ensure that new development makes satisfactory provision for the services and facilities required to meet its needs is provided by policies in both the SEP and the LP. The Council also has Interim Planning Guidance on Planning Obligations although this is not an adopted Supplementary Planning Document and so has limited weight. Nevertheless at the Inquiry the basis for the contributions were explained and also information was provided as to how the money would be spent locally in order to mitigate the adverse impacts arising from the scheme. There is sufficient evidence to conclude that the payments are justified and that the Planning Obligations meet the requirements of Paragraph 122 of the Community Infrastructure Levy Regulations (2010) and can therefore be taken into account in the decision.
26. The Planning Obligation by Agreement is between the landowner and Oxfordshire County Council. The Appellant company at present has no interest in the land and so is not a signatory but the covenants are binding on any successors in title. The County Council has confirmed that the word "draft" on the front cover does not affect the enforceability of the document. Included are financial contributions towards social, education, healthcare and waste recycling facilities. The payments would be made to the County Council in instalments and as public monies would have to be committed at an early stage there is provision for a Bond. The Planning Obligation also includes a sum of money to mitigate the transport impacts and encourage sustainable travel. This aligns with the objectives in Planning Policy Guidance Note 13: *Transport* and the objectives of the Local Transport Plan.
27. The Planning Obligation by Unilateral Undertaking includes contributions towards public art, community facilities, sports facilities, refuse bins and the provision and future maintenance of amenity and recreational areas. It also covenants to construct the dwellings to Code Level 3 of the Code for Sustainable Homes. There is also a provision to carry out the relevant flood compensation works in Appeal B in advance of the housing development and this is required for the reasons already given. The Unilateral Undertaking makes provision for 40% affordable housing and now correctly includes the landowner in the covenant. The Planning Obligation requires that the affordable housing be constructed prior to the occupation of 60% of the market housing and this would ensure deliverability. The document also makes clear that the precise locations and types of the affordable element would be identified in reserved matters applications. The affordable housing provisions would contribute to the high level of housing need within the district and would accord with Policy CO3 of the SEP which sets out the expectations for affordable housing within the Central Oxfordshire Sub-Region.

## **Conditions**

28. I have considered the suggested conditions following discussion at the Inquiry. Where necessary the wording has been changed in the interests of relevance, precision and enforceability in accordance with advice in Circular 11/95: *The Use of Conditions in Planning Permissions*.
29. The development is required to contribute to the shortfall in short term housing supply. The Council would like the period for submission of reserved matters shortened to a year. However there are not only a considerable number of pre-commencement conditions to satisfy but also the flood compensation works to be undertaken and the drainage issue to be resolved. In the circumstances shortening the overall timescale for implementation would be unreasonable. Conditions relating to access and landscaping, including the reinforcement and retention of hedgerows, are unnecessary because these are matters reserved for consideration at a later stage. The application is specifically for 140 dwellings and includes an illustrative Masterplan and supporting details so specification of the number of dwellings is not necessary. Whilst the development is dependant on the implementation and retention of the flood compensation measures at Langford Park Farm this is provided for by the Unilateral Undertaking and a condition is therefore not required.
30. An Archaeological desk based assessment and subsequent evaluation has been undertaken and confirms that there are archaeological remains on the site. A condition requiring a programme of work is therefore reasonable. The evidence shows that the majority of the site is within Noise Exposure Category (NEC) B with a small section adjoining London Road in NEC C. A condition requiring dwellings to be insulated to accord with World Health Organisation standards is reasonable. Furthermore, taking account of advice in Planning Policy Guidance Note 24: *Planning and Noise*, houses or gardens should not be placed in the NEC C zone. A clause giving the Council discretion to vary this informally is inappropriate and not in accordance with Circular 11/95. There is no specific evidence that the site is contaminated notwithstanding the presence of potentially polluting uses nearby. However there may be some risk through past use of herbicides or pesticides in connection with the agricultural use. In the circumstances more focused and proportionate conditions are justified including provision for unexpected contamination if found at a later stage.
31. The Ecological Assessment identifies the two watercourses that run through the site and the perimeter hedgerows as providing wildlife corridors. Buffer zones are recommended accordingly. In addition the presence of grass snakes has been detected and the Ecological Assessment recommends measures to ensure that their habitat is protected. Conditions to cover these matters are necessary in accordance with development plan policies and Planning Policy Statement 9: *Biodiversity and Geological Conservation*. The suggested wording has been changed to be more precise and relevant. A condition relating to impact on nesting birds is unnecessary in view of other legislative controls.
32. Thames Water has identified an insufficiency in the existing sewerage system and water supply infrastructure to accommodate the needs of the development. Whilst Thames Water will clearly have to provide increased supply capacity at some time there is no means of knowing how quickly this will be. There is no evidence to suggest that the problem is incapable of resolution and indeed Thames Water has not suggested that planning permission should be refused on these grounds. Nevertheless, it is necessary



to ensure that the matter is resolved before the development takes place. Clearly it would be most unsatisfactory if the scheme were to be built out but could not be occupied because the necessary supply services were unable to be provided. The reference to "Impact Studies" in the suggested condition is vague and imprecise and so the condition regarding water supply has been reworded. Thames Water has indicated that there are public sewers crossing the site. In order to ensure these are accessible no built development should take place within a 3 metre range.

33. The Environment Agency is satisfied that the FRA along with additional supporting information deals satisfactorily with flooding issues. Conditions are necessary to ensure that the measures in the FRA are properly implemented and also that surface water drainage is based on sustainable drainage principles. The Environment Agency has also suggested a condition covering landscape and ecological issues and protection of watercourses. Insofar as the matters raised are relevant at outline stage they are covered satisfactorily by other conditions that have been imposed.
34. Oxfordshire County Council has suggested that a pedestrian crossing should be provided on London Road to provide easier access to the school and other facilities at Langford Village. Although this is a busy route into the town there are dropped kerbs and a pedestrian refuge close to the roundabout. The Transport Assessment has not identified another crossing point as a necessary requirement and there seems insufficient evidence to require that one should be provided. The Unilateral Undertaking includes an obligation that all homes will be constructed to Code Level 3. Whilst the Council would like the development to be built to Code Level 4 there is no policy, either adopted or emerging, that requires such a standard to be applied at the present time. Such a requirement would therefore be unreasonable. The Council has suggested the provision of acoustic fencing along the northern boundary to protect new residents from noise emanating from the service yard to the bakery at the Talisman Business Park. The premises are some distance away and there is an intervening hedge which can be retained and reinforced as part of the landscaping scheme. There is no evidence that unacceptable disturbance is likely to ensue to occupiers of the new housing.

## **Appeal B**

### ***Reasons***

35. The appeal site is on the southern side of the A41 and is presently grassland adjacent to the access track leading to Langford Park Farm. The proposal is intended to provide the flood compensation measures to support the residential development in Appeal A. In terms of physical change the intention is to excavate to a depth of between one and one and a half metres and then reseed with grass and return the land to agricultural use. There are three mature trees to the west of the site which are worthy of retention. During engineering operations it is important to protect them from damage caused by the storage of soil or materials, for example. This could be controlled by condition.
36. Although the topography would change and the ground would contain a large hollow at this point the surrounding area also contains undulations. There is no reason why the finished land levels should give rise to an unnatural or man made appearance. The scheme would therefore result in no unacceptable

harm to the character and amenities of the rural area or conflict with the relevant countryside policies in the development plan.

### **Conditions**

37. The suggested conditions were discussed at the Inquiry and I have considered them in a similar way to those relating to Appeal A taking account of the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*.
38. The standard implementation condition has been imposed and also a condition specifying the approved plans for the avoidance of doubt and in the interests of proper planning. The Environment Agency is satisfied with the flood risk mitigation set out in the FRA for this site and a condition requiring compliance with its terms is necessary. Although the Environment Agency also refers to protection measures for water voles and otters the Ecological Appraisal does not find any evidence of such species within or adjacent to this part of Langford Brook which runs to the north of the site. There is however some evidence of reptiles, including grass snakes, and it is reasonable to impose a condition to secure the suggested mitigation measures. The discretionary clause has been removed to accord with the circular advice. For the reasons given in relation to Appeal A the suggested condition about nesting birds is unnecessary.
39. It was agreed at the Inquiry that no further details are required in terms of the scheme itself. It is unlikely that the works would be undertaken unless the Appeal A proposals are also implemented. However in the absence of any identified harm there is no justification for imposing a condition on Appeal B that links it to the residential development in Appeal A. This does not of course apply to Appeal A where the works in Appeal B are a necessary pre-requisite to development taking place. It is however necessary to ensure that the flood compensation area continues to perform its function and that its effectiveness is not compromised by built development, enclosure or other deposited materials either within the site or around its perimeters. It is reasonable to require details of how the soil and other materials will be removed during the course of the development. Supporting information suggests that the site has some archaeological interest and a condition to ensure that appropriate investigation takes place is therefore necessary. It is considered that this can be adequately covered by the model condition in Circular 11/95.
40. The need to protect the mature trees close to the site has been mentioned above and a condition would be appropriate as the relevant land is controlled by the Appellant. However taking account of the nature of the scheme the condition suggested is disproportionate in its requirements and not particularly relevant in terms of its provisions. A shorter and more focused condition which deals directly with the potential impact has therefore been imposed.

### **Overall Conclusions**

41. I have taken account of all other matters raised in the representations and at the Inquiry. However I have found nothing to alter my conclusions that both appeals should succeed for the reasons given and subject to the conditions annexed hereto.

*Christina Downes*

INSPECTOR

## **ANNEX A: APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Jack Smyth of Counsel	Instructed by Mr N Bell, Solicitor to Cherwell District Council
<i>He called</i>	
Mr D Peckford MTP MRTPI	Senior Planning Officer (Planning Policy) at Cherwell District Council
Mrs E Shaw BA(Hons) MA MRTPI	Senior Planning Officer (Development Control and Major Developments) at Cherwell District Council
Mrs L Griffiths BA(Hons) MRTPI	Senior Planning Officer at Cherwell District Council (Planning obligations and conditions round table session only)

### **FOR THE APPELLANT:**

Mr Neil Cameron of Queen's Counsel	Instructed by Studio Real
<i>He called</i>	
Mr J Regent MA(Oxon) MSc MRICS	Deputy Managing Director of Persimmon Thames Valley
Miss A Banks BA(Hons) DipUD MRTPI	Director of Planning and Urban Design at Studio Real
Mr S Sensecall BA(Hons) Dip TP MRTPI	Partner of Kemp and Kemp Property Consultants

### **INTERESTED PERSON:**

Mr E Briscoe	Development Funding Officer at Oxfordshire County Council
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## **ANNEX B: DOCUMENTS AND PLANS**

### **DOCUMENTS**

- 1 Addendum to Mr Peckford's Proof of Evidence and Attachments
- 2 Addendum to Mr Sensecall's Proof of Evidence and Attachment
- 3/1 Extracts from the South East Plan
- 3/2 Cherwell Local Plan and Proposals Maps
- 3/3 Extracts from the Non-Statutory Cherwell Local Plan and Proposals Maps for Bicester and Banbury
- 3/4 Extracts from the consultation draft Core Strategy
- 4 Statement of Common Ground between the Council and Appellant
- 4A List of plans prepared by Miss Banks
- 5 Planning Obligation by Agreement between Oxfordshire County Council and the Landowner dated 5 July 2011
- 6 Supporting Statement by Oxfordshire County Council concerning the contributions in the Planning Obligation by Agreement
- 7 Planning Obligation by Unilateral Undertaking submitted at the

- Inquiry and subsequently superseded
- 8 Supporting Statement by Cherwell District Council concerning the contributions in the Planning Obligation by Unilateral Undertaking
- 9 Cherwell District Council Interim Planning Guidance: *Planning Obligations* (2007)
- 10 E-mail dated 29 June 2011 concerning the purchase of land parcels at SW Bicester (Kingsmere) by David Wilson Homes
- 11 Land Registry extract relating to the title on the land in Appeal A
- 12 Information on land ownership and Certificates relating to the planning application and appeal in Appeal A
- 13 Housing land supply tables submitted by Mr Sensecall
- 14 Further information provided in connection with the appeal on land west and south of The Green, Chesterton
- 15 Justification from Thames Water in respect of its proposed drainage infrastructure condition
- 16 Opening submissions by Mr Cameron
- 17 Closing submissions by Mr Cameron including relevant Caselaw
- 18 Closing submissions by Mr Smyth
- 19 Planning Obligation by Unilateral Undertaking dated 20 July 2011
- 20/1 Planning Obligation by Unilateral Undertaking including track changes to show the amendments between the version dated 5 July 2011 and the final version dated 20 July 2011
- 20/2 Letter from Charles Russell LLP dated 22 July 2011 to the Council concerning the Unilateral Undertaking
- 20/3 E-mails from the Council and Miss Banks relating to the Unilateral Undertaking
- 20/4 E-mail from Oxfordshire County Council to Leda Properties Ltd dated 14 July 2011 concerning the Planning Obligation by Agreement
- 20/5 Letter dated 20 July from Leda Properties Ltd concerning the Planning Obligations
- 21/1 Post-Inquiry correspondence from the Council dated 28 July 2011 concerning the draft National Planning Policy Framework
- 21/2 Post-Inquiry correspondence from the Appellant dated 29 July 2011 concerning the draft National Planning Policy Framework

## **PLANS**

- A Application Plans – Appeal A
- B Application Plans – Appeal B

## **ANNEX C: SCHEDULE OF CONDITIONS (APP/C3105/A/11/2147212)**

1. Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.

3. The development hereby permitted shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.
4. No development shall take place within the site until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.
5. All dwellings that are to be provided on land falling within Noise Exposure Category (NEC) B as defined in Planning Policy Guidance Note 24: *Planning and Noise* (PPG 24) shall be insulated such that noise levels do not exceed those specified in current World Health Organisation Guidance on noise levels for habitable rooms. Details of the insulation to be provided shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. The approved scheme shall be carried out in accordance with the approved details for each of the affected dwellings prior to its first occupation and the insulation measures shall thereafter be retained.
6. No dwelling or its garden shall be built on any part of the site falling within NEC C as defined in PPG 24.
7. No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. The remediation programme shall include a validation protocol and the validation report shall be forwarded to the local planning authority before any dwelling is occupied.
8. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
9. No development shall take place within 8 metres of either side of the watercourses and within 5 metres of the retained hedgerows along the boundary with London Road.
10. The strategy detailed in Section 7.24 of the Ecological Assessment dated 28 September 2009 concerning the protection of reptiles shall be carried out prior to the commencement of development.
11. No development shall take place until a drainage strategy detailing the drainage works necessary to satisfactorily accommodate the waste water arising from the development has been submitted to and approved in writing by the local planning authority. No discharge of foul water from the site shall be accepted into the public system until the approved drainage strategy has been completed.
12. No development shall take place until arrangements have been made for the supply of water to serve the development in accordance with a scheme to be

submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out before any dwelling is first occupied.

13. No building shall be erected within 3 metres of any public foul sewer that crosses the site.
14. The development shall only be carried out in accordance with the Flood Risk Assessment (FRA) by Evans Rivers and Coastal Ltd dated November 2010, Ref 1018/RE/08-10/01 Revision A and the addendum letter (AL) from Mr R Evans dated 20 December 2010 with enclosed surface water drainage calculations and the following mitigation measures detailed in the FRA:
  - a. Open surface water attenuation ponds/ swales and pervious surfaces shall be included in the surface water attenuation drainage scheme as detailed in Section 8.3 and Appendix E of the FRA and SuDS strategy drawing 1018/RE/01.
  - b. Surface water attenuation storage shall be provided for storm events up to and including the 1 in 100 year event with an allowance for climate change in accordance with Section 8.3 of the FRA.
  - c. Surface water discharge rates from drainage network 1 shall not exceed those detailed in the calculations which accompanied the AL.
  - d. Surface water discharge rates from drainage network 1 shall not exceed those detailed in Appendix E of the FRA.
  - e. An 8m buffer zone from the top of the bank of the Langford Brook and Pingle Stream main rivers shall remain undeveloped in accordance with Section 6.3 of the FRA.
  - f. Ground levels on the site (except for the 8m buffer zones) shall be raised to 65.89 AOD in accordance with Section 7.1.3 of the FRA.
  - g. Compensatory fluvial flood water storage shall be provided in accordance with Section 6 and Appendix C of the FRA.
  - h. A section of the access track at Langford Park Farm, approximately 30m in length, shall be lowered to 65.36 AOD to allow flood water to flow into the compensation area in accordance with Section 7.3.2 of the FRA.
  - i. An alternative route of pedestrian access and egress shall be provided for the occupants of Langford Park Farm as detailed in Section 7.3.6 of the FRA.
  - j. Finished floor levels shall be set no lower than 65.89 AOD in accordance with Section 7.1.2 of the FRA.
15. No development shall take place until a surface water drainage scheme for the site, based on SuDS principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall include details of how storm events up to and including the 1 in 30 and 1 in 100 year storm events with an allowance for climate change can be safely contained on the site and how the scheme will be maintained during the lifetime of the development. The development shall be carried out in accordance with the approved scheme and adhere to a timetable to be first agreed with the local planning authority.

## **ANNEX D: SCHEDULE OF CONDITIONS (APP/C3105/A/11/2147204)**

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development shall only be carried out in accordance with the Flood Risk Assessment (FRA) by Evans Rivers and Coastal Ltd dated November 2010, Ref 1018/RE/09-10/02 Revision A and the following mitigation measures detailed in the FRA:
  - a. A length of about 30m of the Langford Park Farm access track shall be lowered to 65.36m AOD in accordance with Sections 6.1 and 6.2 and Appendix B of the FRA.
  - b. An alternative pedestrian route of access and egress shall be provided above the 1 in 100 year flood level with an allowance for climate change in accordance with Section 6.8 and Figure 2 of the FRA.
3. The development hereby permitted shall be carried out in accordance with the following approved plans: 23961/001/003 and 23961/001/002.
4. No development shall take place until a scheme for the protection of the oak, sycamore and horse chestnut trees to the north west of the flood compensation area during the construction period has been submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out and the protection measures adhered to until the flood compensation works have been completed.
5. No built development or raising of ground levels shall take place and no spoil or materials shall be deposited or stored within the area of land liable to flood.
6. Any walls or fencing constructed in or around the site shall be designed to be permeable to flood water.
7. No development shall take place until details of the removal of the soil, spoil and materials from the site have been submitted to and approved in writing by the local planning authority. Development shall be in accordance with the approved details and adhere to a timetable to be first agreed with the local planning authority.
8. No development shall take place within the site until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.
9. The development shall be carried out in accordance with the recommendations set out in the Ecological Appraisal and Mitigation Measures produced by SLR Consulting (August 2010 and November 2010).

*End of Conditions*