



**APPEAL BY  
CALA HOMES (MIDLANDS) LIMITED**

**RELATING TO THE REFUSAL BY CHERWELL DISTRICT COUNCIL OF AN OUTLINE  
PLANNING APPLICATION FOR UP TO 200 RESIDENTIAL UNITS, ACCESS,  
AMENITY SPACE AND ASSOCIATED WORK INCLUDING NEW VILLAGE SHOP/  
HALL**

**AT LAND AT  
SOUTH LODGE, FRINGFORD ROAD, CAVERSFIELD, BICESTER, OX27 8TH**

**PROOF OF EVIDENCE**

Prepared by:

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Reference: BIR.4382 Date: February 2014

Appeal Ref: APP/C3105/A/13/2208385

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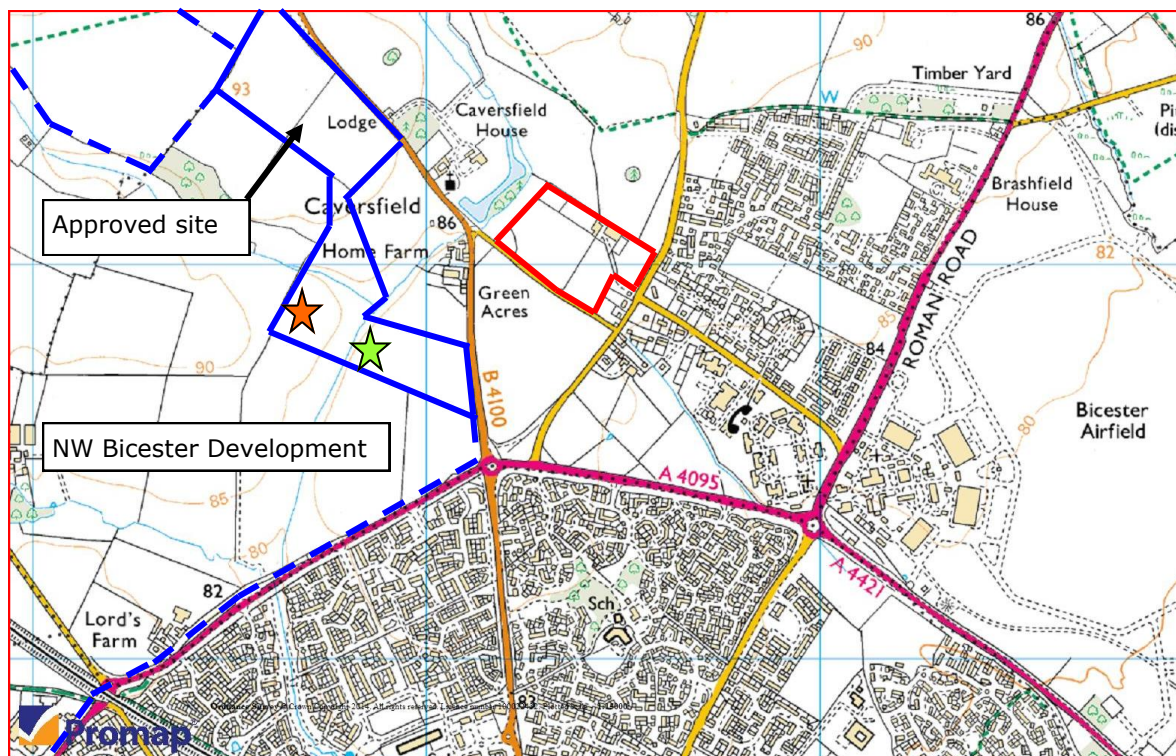
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**1. PERSONAL BACKGROUND AND INTRODUCTION**

- 1.1 My name is Anthony Charles Bateman. I hold a Bachelor of Arts with Honours Degree in Town and Country Planning from the Victoria University of Manchester. I am a Member of the Royal Institution of Chartered Surveyors, within the Planning and Development Division; a Member of the Royal Town Planning Institute; a Member of the Chartered Institute of Management; a Member of the Institute of Directors; and also a Fellow of the Royal Society of Arts. I am currently Managing Director of the Pegasus Group and of the Pegasus Planning division.
- 1.2 Up until October 2003 I was employed by RPS as an Operational Director and had direct responsibility for the Company's Midlands Office. In this position, which I held for over seven years, part of which was as a Partner of Chapman Warren, I advised and still do advise a variety of different companies and organisations, including a number of the country's major developers.
- 1.3 For eleven years I worked for one of the country's major house building and property developers in the position of Chief Planner, being responsible for the management of the Planning Department of the Company. I was also a member of the senior management team giving detailed advice on development appraisal and investment decisions. In addition I was a member of the national planning committee of the House Builders Federation. Prior to this I worked for six years for a national firm of Chartered Surveyors and Planning Consultants, within the Town Planning and Development Department and engaged in all aspects of town planning.
- 1.4 This evidence is written on behalf of CALA Homes (Midlands) Ltd. For the purposes of the rest of this evidence CALA Homes (Midlands) Ltd constitute the appellants. This Proof of Evidence relates to land at South Lodge, Fringford Road, Caversfield.
- 1.5 The evidence contained within this proof of evidence which relates to this appeal is true and given in accordance with the guidance of my professional institutions. I confirm that the opinions expressed are my true and professional opinions.

## 2. SITE DESCRIPTION

2.1 The appeal site is located off Fringford Road, Caversfield which forms part of the Bicester urban area. The total site extends to approximately 7 ha and comprises of a dwelling and associated barns, outbuildings and existing grass fields used for horse grazing. A plan identifying the location of the appeal site is contained within the Plans Document (**Plan 1**). The site is also shown for illustrative purposes on the plan below. Also shown on this plan is the NW Bicester development area and the part of this area that has been granted planning permission.

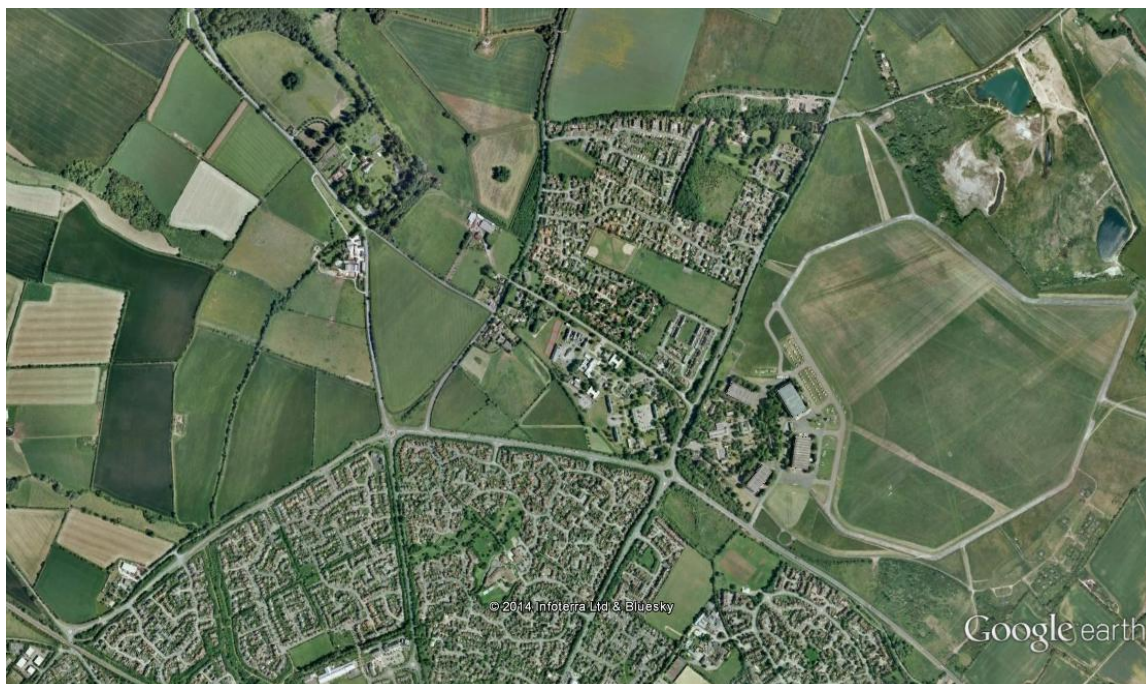


- 2.2 The boundary to the east consists of existing residential development. Along part of the eastern boundary on the opposite side of Fringford Road lies the edge of RAF Bicester Conservation Area. Within the Conservation Area boundary and opposite the eastern boundary exist Officer's Quarters, which are not listed.
- 2.3 The site boundary to the south is an unnamed road, which connects Banbury Road (B4100) with Fringford Road. Beyond the road is a field, which is used for agricultural purposes. The field boundary is mostly hedge and tree lined.
- 2.4 The site is bound to the west by woodland, which forms part of the grounds of Caversfield House. It should be noted that within the grounds of Caversfield House there lies Church of St Lawrence, Caversfield, which is a Grade II\* listed building. Caversfield house itself is not listed. Beyond



Caversfield House and Banbury Road (B4100), there are further fields, which are due to be developed for the North West Bicester development, of which the approved detailed permission totals 393 dwellings.

- 2.5 Directly to the south west of the site, beyond the unnamed road and Banbury Road B4100, lies a cluster of buildings which includes Home Farmhouse, which is a Grade II listed building.
- 2.6 To the north, the site is bound by a strip of woodland and fields, some of which are used for agricultural purposes.
- 2.7 In terms of the topography, the site and surrounding area is relatively level, with little change in undulation within 2km of the site. The land rises gently to the north.
- 2.8 The site is characterised by grazed pasture, made up to a number of small horse paddocks, which are defined by fences. South Lodge sites on the northern edge of the site, and consists of a residential dwelling, riding stables and associated barns and outbuildings. An avenue of trees leads up to these buildings from the lane to the south. There are a number of trees dotted around the farm buildings.



- 2.9 The site is not in a conservation area, has no national landscape designations and does not contain any listed buildings. There are, as noted above, a Grade II\* and Grade II listed buildings to the west and south west of the site. In terms of habitats, these are limited to pastureland, native hedgerows and the mature trees within the site and along the site boundaries.

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- 2.10 The site is located adjacent to the existing urban edge of the Caversfield part of the Bicester urban area and unsurprisingly given the edge of the urban area location is accessible to a range of services and facilities within the surrounding area. Within 1.6km of the site are two primary schools, two local centres (Holm Square and Bure Park), a surgery and a variety of shops and services both planned and existing.
- 2.11 Also of relevance in this respect is the permitted development to the west which forms part of the NW Bicester development area. This has permission for 393 dwellings, an energy centre, nursery, community centre, three retail units (including post office, convenience store and pharmacy), business centre, office accommodation, pub and primary school. Everything but the school (which is shown on the above plan with an orange star) is within the first phase of development and indicated on the above plan and located where the green star is on the above plan. This is less than 1km from the appeal site.
- 2.12 The site is also accessible to Bicester Town Centre to the south, approximately 2.9km away, where there is a large concentration of leisure, employment and retail facilities.
- 2.13 The town centre services are accessible to the site through several frequent bus services which pass in close proximity to the site in addition to journeys through cycling.
- 2.14 **Plan 2** shows the location of the various facilities and services including public transport routes. The location of the site is clearly a sustainable location.



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### **3. BACKGROUND TO THE APPEAL**

3.1 This section of my evidence looks at the planning history relating to the site and application to which this appeal relates.

#### **Planning Applications**

3.2 There have been few applications of relevance to the appeal site. In December 1988 permission was refused (CHS.999/88) for the erection of a dwelling house and a single storey annex for a groom at South Lodge Riding Stables. Subsequently in October 1989 an appeal was allowed for this development (T/APP/C3105/A/89/121228/P8 - **Appendix 1**). In the decision at paragraph 9 the Inspector determines that the development would not constitute sporadic development.

3.3 There have been no other applications on the site of relevance to the appeal site and the proposals that are currently being considered.

3.4 Close to the site, however, and to the west, permission has been granted (10 July 2012) for a part of the NW Bicester Development Area. This detailed permission which is for 393 dwellings, includes an energy centre, nursery, community centre, three retail units (including post office, convenience store and pharmacy), business centre, office accommodation, pub and primary school.

3.5 The Local Authority in their Statement of Case refer also to an appeal decision (APP/A/00/1055336). This relates 4,000sqm of retail and a petrol filling station, to the south east of the appeal site adjoining the A4095. The appellants considers this to be of little relevance to the appeal proposals.

#### **Application 13/0166/OUT**

3.6 The application to which this appeal relates was submitted on the 10<sup>th</sup> July 2013. It was an outline application with the following description of the proposed development – Up to 200 residential units, access, amenity space and associated works, including new village shop/ hall. The site extends to some 7.1ha.

3.7 The application submission included a full set of supporting information comprising Design and Access Statement, Planning Statement, Statement of Community Involvement, Layout Plans and Detailed Elevations, Flood Risk Assessment, Arboricultural Report, Transport Statement, Ecological Assessment, and a Concept Masterplan drawing.

- 3.8 The application (13/01056/OUT) was considered at the Cherwell District Council Planning Committee on 3<sup>rd</sup> October 2013 (**Appendix 2**) with an officer recommendation to refuse the application. It is important to be clear that the Authority stated that they had a five year supply of housing land, this was despite the Secretary of State making it clear on the 23 September 2013 that there "was a serious shortfall in housing land supply with currently no development plan basis on which to deliver such supply" (paragraph 16, Hook Norton appeal, APP/C/3105/A/12/2184094 – **Appendix 3**).
- 3.9 The planning committee noted the recommendation and determined to refuse the application. The four reasons for refusal as set out in the decision notice are as follows:

**1) The proposal represents development beyond the built up limits of Caversfield where there is no proven need for agriculture or other existing undertaking and the application has not been made on the basis that this is a rural exceptions site. As the proposal cannot be justified on the basis of an identified need in an unsustainable location, it represents sporadic development in the countryside which fails to maintain its rural character and appearance which fails to conserve and enhance the environment by introducing an incongruous, prominent, urbanising and discordance built form into this rural setting to the detriment of the visual amenities of the area. The application is, therefore, contrary to Policies H15, H18, C7, C8, C28 and C30 of the adopted Cherwell Local Plan, Policies ESD13, ESD15 & ESD18 and Villages 1 and 2 of the Proposed Submission Local Plan Incorporating Changes March 2013 and Government guidance contained in the National Planning Policy Framework.**

**2) Development of this site would erode an important green buffer gap between the planned expansion of Bicester and the village of Caversfield which would be harmful to the setting and identity of Caversfield itself and also that of the setting of the RAF Bicester Conservation Area as it would fail to preserve or enhance its setting contrary to Policies ESD15 and ESD16 of the Proposed Submission Local Plan Incorporating Changes March 2013 and Government guidance in the National Planning Policy Framework.**

**3) The applicant has failed to demonstrate that the proposed access is adequate in terms of its visibility so close to a junction which already suffers from substandard visibility. Together with the proposed pedestrian layout and general lack of information with regards the parking requirements the proposed development would be detrimental to the safety and convenience of highway users, contrary to Government guidance contained within the National Planning Policy Framework.**

**4) In the absence of a satisfactory planning obligation, the Local Planning Authority is not convinced that the infrastructure directly required to service or serve the proposed development will be provided. This would be contrary to the Policy R12 of the adopted Cherwell Local Plan, Policies OA1, TR4, R8 and R10A of the Non-Statutory Cherwell Local Plan 2011, Policy INF 1 of the Proposed Submission Local Plan Incorporating Changes March 2013 and government guidance contained within the National Planning Policy Framework.**

- 3.10 An appeal against the refusal of the planning application was subsequently submitted. The appeal was given the reference number APP/C3105/A/13/2208385.
- 3.11 As noted above, The Local Authority in refusing this application did so in the light that they considered they had a five year supply. Subsequently they have admitted that actually they do not have a five year supply and the first reason for refusal needs to be considered against this fact. The recent four Secretary of State (**Appendices 3 to 6**) and Adderbury decisions (**Appendix 7**) clearly illustrates this fact. In addition the Authority has also confirmed that they do not now rely on Policy 30 as part of the reasons for refusal.
- 3.12 I deal with the planning aspects related to these reasons for refusal. There are other witnesses who deal in detail with landscape, heritage and highways, although where there is some crossover with planning aspects I also consider these areas. In respect of the fourth reason for refusal this was prior to the provision of a planning obligation. There is currently a draft unilateral undertaking being considered and it is envisaged that this will be signed at the inquiry. On the basis that the Inspector considers the obligation meets the tests set out in the CIL regulations it is therefore considered that the fourth reason for refusal will then be overcome.
- 3.13 In respect of the third reason for refusal this is dealt with in detail by Mr Fuller. There have been subsequent discussions with the Highways Authority and a number of minor amendments have been made to the scheme. These amendments have been fully advertised, to allow all to comment on the revisions. A copy of the letter and attachments is contained at **Appendix 8**. The amendments, such as they are, are all considered to accord with the Wheatcroft principles (*Bernard Wheatcroft Ltd -v- Secretary of State for the Environment (1982) 43 P&CR 233*) and therefore can be considered as part of this appeal. In essence the changes are;
- Provision of a footway / cycle-link to the unnamed road on the southern boundary
  - The provision of a pedestrian refuge island, bus stop and bus shelter on Fringford Road
  - A junction build out at the junction of the unnamed road with Fringford Road
  - Provision of 3m wide footway/cycleway on the eastern side of Fringford Road from the 40mph sign to the A4095
  - The promotion of a speed order to reduce the speed limit on Fringford Road from 40 to 30 mph
- 3.14 It is considered that these changes would be provided under a S278 agreement and could be subject to a Grampian condition.

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### **Subsequent Events**

- 3.15 There is a high court and appeal court judgment to be considered in the light of this appeal.

### **Hunston Properties v Secretary of State [2013] EWHC 2678**

- 3.16 This judgment, dated 5<sup>th</sup> September 2013, in summary states that in the absence of an up to date or adopted Local Plan, the NPPF requires the decision maker to assess housing need and identify the unfulfilled need having regard to the supply of specific deliverable sites. The consideration of need requires, under paragraph 47, the need to boost significantly the supply of housing. Under the first bullet point this cannot be a needs figure that expressly does not and does not purport to identify actual need. A constraint adjusted figure does not meet need and is not consistent with paragraph 47. Once the full objectively assessed figure is identified the decision maker must then consider the impact of other policies in the NPPF.

- 3.17 In respect of this appeal this means an adoption of the emerging RS figures in respect of the housing requirement should not be used because they were dependant on policy at that time. The 2008 and 2011 household projections form the most recent figures reflective of actual unconstrained housing needs and in accordance with the Hunston Judgment are the ones to be utilised.

- 3.18 The judgment has been the result of an appeal - *City and District Council of St Albans v The Queen*. Judgment was handed down on 12 December 2013 (**Appendix 9**). The appeal was dismissed. In paragraph 6 it is stated:

*"There is no doubt that in proceeding their Local Plans, local planning authorities are required to ensure that the "full objectively assessed needs" for housing are to be met, "as far as is consistent with the policies set out in this Framework"*

- 3.19 In paragraph 25 reference is made to the qualification contained in the clause and the judgement states it:

*"...is not qualifying housing needs. It is qualifying the extent to which the local plan should go to meet those needs. The needs assessment, objectively arrived at, is not affected in advance of the production of the local plan, which will then set the requirement figure"*

- 3.20 Paragraph 26 explains it is not for the Inspector to carry out a local plan process as part of determining the appeal, to arrive at a constrained housing requirement figure and that the Inspector was mistaken to use a figure (the RSS figure) for housing requirements below the full

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objectively assessed needs figure until such time as the Local Plan came up with a constrained figure (St Albans was constrained due to Green Belt considerations). Paragraph 32 explains that the Inspector went wrong in using a quantified figure for the five year requirement which departed from the approach in the Framework, especially paragraph 47.

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#### **4. PLANNING POLICY BACKGROUND**

4.1 Before considering the provisions of the Development Plan, I would draw attention to some matters of National Planning Policy that are relevant to this appeal.

##### **National Planning Policy**

4.2 The references that follow are from planning legislation and policy that will be familiar. The references set out draw attention to those particular paragraphs which have relevance to the appeal proposals.

##### **(a) Localism Act 2011**

4.3 The Localism Act was introduced in the House of Commons on 13<sup>th</sup> December 2010. It became law on Tuesday 15 November 2011. The Act covers numerous provisions in relation to Local Government. Reform of the planning system is just one aspect of the Act. Part 5 specifically deals with planning. There are numerous changes to development plans including the provision for the abolition of RSs (Section 109). The Act also sets out that saved policies from structure plans or other development plan policies made under the Town and Country Planning Act 1990 will cease to have effect. The Act (section 143) also amends section 70 of the TCPA 1990 to make financial considerations material considerations in the determination of a planning application. This includes aspects such as the New Homes Bonus. On 28 February 2013 the statutory instrument to partially revoke the South East RS was laid before parliament and the revocation came into force on 25 March 2013. The partial revocation was for all policies except NRM6 which relates to the Thames Basin Heaths Special Protection Area

4.4 In the judgment relating to *Tewkesbury Borough Council v Secretary of State for Communities and Local Government, Comparo Limited, Welbeck Strategic Land LLP*, the relevance of the Localism Act against the need for a five year supply of housing was considered by the Mr Justice Males (see particularly paragraphs 55 to 73). He determined that the Act did not abolish the long standing principles and policies such as a need for a five year housing land supply (paragraph 59) and the need to determine appeals on the basis of land use considerations.

##### **(b) Listed Buildings and Conservation Area Act 1990**

4.5 Section 66 (1) of the LB&CA Act 1990 establishes a general duty in respect of the consideration of listed buildings where they are affected by applications for planning permission. The section states:



**"In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority, or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses"**

- 4.6 In respect of Conservation Areas Section 72 (1) of the LB&CA Act 1990 sets out the general duty in respect of Conservation Areas where they are affected by applications for planning permission. This states:

**"In the exercise, with respect to other buildings or other land in a conservation area, of any [functions under or by virtue of] any of the provisions mentioned in subsection (2) special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."**

**(c) Planning for Growth - Written Ministerial Statement 23 March 2011**

- 4.7 Following the budget which set out "The Plan for Growth" a written Ministerial Statement was produced by Greg Clark dealing with Planning for Growth. This statement is not one of the policy documents that are superseded by the National Planning Policy Framework (NPPF). The statement makes it clear that the planning system should do everything it can to help secure a swift return to economic growth. The government's top priority is to promote economic growth. The expectation is that the answer to development and growth should wherever possible be 'yes' except where this would compromise the key sustainable development principles set out in national policy.
- 4.8 The document notes that the government intends to introduce a strong presumption in favour of sustainable development (now set out within the NPPF). Local authorities are to plan positively for new development, deal promptly and favourably with applications that comply with up to date plans and national planning policies and:

**"wherever possible to approve applications where plans are absent, out of date, silent or indeterminate"**

- 4.9 Authorities are encouraged to press ahead with plan making and be proactive in identifying housing, business and other development needs of their areas.

- 4.10 The Statement says that in considering applications Authorities should support enterprise and facilitate housing, economic and other forms of sustainable development. The statement then lists five points that Authorities should take into account:
- (i) Consider fully the importance of national planning policies aimed at fostering economic growth and employment, given the need to ensure a return to robust growth after the recent recession.
  - (ii) Take into account the need to maintain a flexible and responsive supply of land for key sectors, including housing.
  - (iii) Consider the range of likely economic, environmental and social benefits of proposals; including long term or indirect benefits such as increased consumer choice, more viable communities and more robust local economies (which may, where relevant, include matters such as job creation and business productivity).
  - (iv) Be sensitive to the fact that local economies are subject to change and so take a positive approach to development where new economic data suggest that prior assessments of needs are no longer up-to-date.
  - (v) Ensure that they do not impose unnecessary burdens on development.
- 4.11 In considering applications, Authorities should give appropriate weight to the need to support economic recovery and that applications that secure sustainable growth are treated favourably.
- 4.12 They should also, at developers requests reconsider section 106 agreements that currently render schemes unviable and where possible modify these obligations to allow development to proceed.
- 4.13 Benefits to the economy are an important consideration when other development related constraints are being considered.
- 4.14 Given the elements that form part of this appeal proposal and the benefits that flow from it, this Ministerial Statement should be given significant weight in coming to a decision. Within an appeal in Andover (APP/X3025/A/10/2140962) the Secretary of State referred to this Ministerial Statement in paragraph 19 (**Appendix 10**) and said in paragraph 13:

**"...He has noted the Inspector's view at IR212 that the Ministerial Statement "Planning for Growth" lends significant weight to this proposal, which would provide much needed housing in a sustainable location close to significant employment opportunities, and he agrees that the Ministerial Statement weighs in favour of the proposal"**

**(d) Letter of 31 March 2011**

4.15 Following the Ministerial Statement, Steve Quartermain sent out a further letter on 31 March 2011. The letter refers to the important announcements made in the Budget and the need under the Growth Review to support the sustainable development that we need as the country emerges from recession. The letter specifically refers to the Ministerial Statement and the need for the objectives to inform decisions being taken now, and also gives further information on other aspects including further advice on planning obligations.

**(e) Laying the Foundations (November 2011)**

4.16 This document (**Appendix 11**) underlines the government's approach to house building and the need to provide action to build more houses and also boost economic growth. The view is that getting house building moving again is critical to economic growth (paragraph 11, Executive Summary). The need for more homes is outlined in Chapter 2. The document is clear we have a housing market which is failing to deliver the homes that people need, in the places they wish to live with serious consequences for social mobility jobs and growth (paragraph 17).

4.17 The concerns set out in the document result in a number of actions that the government are proceeding with. One of these being the publication of the NPPF (which is considered below). Of particular note however in the context of the NPPF is the need to ensure that local authorities identify a robust rolling land supply of deliverable sites for the next five years (paragraph 77). In addition, paragraph 76 notes the importance of Authorities having a robust understanding of housing requirements in their areas to meet the needs for their areas and to base this on current and future demographic trends and the needs of different groups in the community.

4.18 In summary, it is clear that the identification of a five year supply is a clear government commitment towards providing much need housing and the need for economic growth.

**(f) National Planning Policy Framework**

4.19 The National Planning Policy Framework (NPPF) was published in March 2012. It sets out that the purpose of the planning system is to contribute to achieving sustainable development. The Ministerial foreword by the Rt Hon Greg Clark MP Minister for Planning is clear that development which is sustainable should go ahead without delay. All policies in all plans are to be considered now in the light of paragraph 215, which explains that weight given to policies will depend on the degree of consistency with the framework.

***The presumption in favour of sustainable development***

- 4.20 At the heart of the NPPF is a presumption in favour of sustainable development. Paragraph 6 explains that paragraphs 18 to 219, taken as a whole constitute what sustainable development is in practice. Paragraph 7 explains that there are three dimensions to sustainable development – economic, social and environmental. Paragraph 8 explains the need for these three to be sought jointly and simultaneously through the planning system. Read as a collective the application package demonstrates that this proposal delivers sustainable development.
- 4.21 In respect of decision making paragraph 197 directs that where a proposal is consistent with the NPPF the presumption in favour of granting permission for the development should apply. Paragraph 14 of the NPPF identifies that the presumption in favour of sustainable development should be seen as a golden thread running through plan making and decision taking. In respect of the latter, this means:

- **“approving development proposals that accord with the development plan without delay; and**
- **where the development plan is absent, silent or relevant policies are out of date granting permission unless:**
  - **any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or**
  - **specific policies in the Framework indicate development should be restricted.”**

- 4.22 It is relevant to note that the footnote to Paragraph 14 sets out that policies which indicate that development should be restricted should be taken into account. The evidence shows that none of these apply to the appeal site.
- 4.23 I deal with relevant development plan policies relating to housing land provision in the local authority area below, but in summary, because of a lack of housing to meet the required five year supply, relevant policies relating to the provision of housing are out of date. In addition there is more recent information available which provides a more up to date context for the consideration of housing provision in the District (the 2008 sub national household projections and the Interim 2011 based sub national household projections) as against the old projections utilised in determining housing requirements in the development plan. Paragraph 14 is therefore engaged in respect of the need to grant permission, subject to the caveats set down.
- 4.24 The sub headings set out below summarise key aspects of the NPPF and how it envisages the delivery of sustainable development. Where a proposal is consistent with the NPPF, as directed by paragraph 197 of the NPPF, the presumption in favour of granting permission for the development should apply.

***Core planning principles***

4.25 The core planning principles set out in Paragraph 17 are to underpin plan making and decision making. Set out below are those which principally relate to the provision and location of housing in an area.

- **“Proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to the wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities.**
- **Always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings**
- **Contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this framework.**
- **Encourage the effective use of land, by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value.**
- **Actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable.”**

4.26 To deliver sustainable development, the Government is committed to building a strong, competitive economy; ensuring the vitality of town centres, promoting sustainable transport; delivering a wide choice of high quality homes; requiring good design; promoting healthy communities; and meeting the challenge of climate change, flooding and coastal change, whilst conserving and enhancing the natural and historic environment.

***Building a strong, competitive economy***

4.27 Paragraph 20 outlines that to help achieve economic growth, local planning authorities should plan proactively to meet development needs of business and support an economy fit for the 21st century. In order to do so Paragraph 21 goes on to set out that planning policies should recognise and seek to address potential barriers to investment, including a poor quality environment or a lack of infrastructure, services or housing.

4.28 As this evidence shows, the proposed development will deliver much needed housing, both market and affordable. Indeed, the need for a significant amount of housing into the future is also clear within this evidence.

***Promoting sustainable transport***

4.29 Paragraph 32 sets out that all developments that generate significant amounts of movement should be supported by a Transport Assessment (TA). As set out in other evidence the application package is supported by both a TA and a Travel Plan. Read together these demonstrate that the application proposal takes up the opportunities for sustainable transport modes, safe and suitable access to the site can be achieved and improvements are capable of being undertaken which limit the significant impacts of the development.

4.30 Paragraph 37 sets out that planning policies should aim for a balance of land uses within their area so that people can be encouraged to minimise journey lengths for employment, shopping, leisure, education and other activities.

***Delivering a wide choice of high quality homes***

4.31 The Government's ambition is to boost significantly the supply of housing (paragraph 47). Paragraph 47 is clear that local planning authorities should:

- **"use their evidence base to ensure their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period".**

4.32 It goes on to require local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional 5% to 20% buffer depending on past performance of delivery. There is also a need to provide a realistic prospect of achieving planned supply and to identify a supply of specific, developable sites or broad locations for growth for years 6-10 and where possible for years 11-15.

4.33 There is also a need to illustrate the delivery of both market and affordable housing in a housing trajectory for the plan period and implementation strategy setting out how a five year supply of housing land to meet the target will be maintained. The approach to housing density is also to be set out.



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- 4.34 In respect of windfall sites, paragraph 48 sets out that an allowance may be made if there is compelling evidence that such sites have become available and it will prove to be a reliable source of supply. Any allowance will have to be realistic, taking account the SHLAA, historic windfall delivery rates and not include residential gardens.
- 4.35 Applications are to be considered in the context of the presumption in favour of sustainable development. Relevant policies relating to supply should not be considered to be up to date if a five year supply of deliverable housing sites cannot be demonstrated (paragraph 49).
- 4.36 Paragraph 50 of the NPPF deals with the need to deliver a wide choice of high quality housing, widen opportunities for home ownership and create sustainable, inclusive and mixed communities. It sets out three specific points. The first is to plan for a mix of housing based on current and future demographic trends and needs of different groups. The second point is for a Local Authority to identify size type and tenure and range of housing required in particular locations reflecting local demand. The last point is where affordable housing is required set policies for meeting that need on site.
- 4.37 Paragraph 53 resists inappropriate development of residential gardens.
- 4.38 In relation to evidence about housing, paragraph 159 is of note. This states that Authorities should have a clear understanding of full housing need in their area. Reference is made to the preparation of Strategic Housing Market Assessments and Strategic Housing Land Availability Assessments. The scale of housing that the local population is likely to need over the plan period is to addressed including: meeting household and population projections, taking account of migration and demographic change, addresses the need for all types of housing, including affordable housing and caters for housing demand and the scale of housing supply necessary to meet this demand. There is also a need to look at realistic assumptions concerning availability, suitability and likely economic viability of land to meet the identified need for housing over the plan period.

***Requiring good design***

- 4.39 It is outlined, in paragraph 56, that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. It is further set out that it is important to plan positively for the achievement of high quality and inclusive design for all development, including individual buildings, public and private spaces and wider area development schemes (paragraph 57).
- 4.40 Paragraph 58 states that planning decisions should aim to ensure that developments will function well and add to the overall quality of the area; establish a strong sense of place, using

streetscapes and buildings to create attractive and comfortable places to live, work and visit; optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses (including incorporation of green and other public space as part of developments) and support local facilities and transport networks; respond to local character and history, and reflect the identity of local surroundings and materials; create safe and accessible environments; and, are visually attractive as a result of good architecture and appropriate landscaping.

### ***Historic Environment***

- 4.41 Section 12 of the NPPF deals with conserving and enhancing the historic environment. Paragraph 128 explains the need with applications, for the significance of any heritage asset to be described, including any contribution made by their setting. Paragraph 129 requires the Local Authority to identify and assess the particular significance of any heritage asset that may be affected by a proposal.
- 4.42 Further guidance on dealing with historic assets and applications is then set out in the following paragraphs. Paragraph 133 deals with the situation where substantial harm arises and paragraph 134 deals with the situation where less than substantial harm arises.

### ***Decision Taking***

- 4.43 Paragraph 186 is clear that local planning authorities "should approach decision taking in a positive way to foster the delivery of sustainable development". Paragraph 187 continues that local planning authorities:

**"should look for solutions rather than problems, and decision takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions for the area".**

- 4.44 In determining planning applications, Paragraph 196 states that the NPPF is a material consideration. Paragraph 197 reiterates that in assessing and determining proposals "**local planning authorities should apply the presumption in favour of sustainable development**".

4.45 In Annex 1, the NPPF sets out information in respect of implementation including setting out what weight should be given to various policies in existing plans.

**(g) Written Ministerial Statement September 2012**

4.46 This Ministerial Statement sets out the concern of the government to provide homes to meet Britain's demographic needs and to help generate local economic growth. It acknowledges that the need for affordable homes remains high and the need to accelerate large housing schemes. It acknowledges the need to reduce planning delays in order to get more homes built. It particularly acknowledges that whilst the Localism Act puts power back into the hands of communities, with power comes responsibility to meet their needs for development and growth and to deal quickly with and effectively with proposals that will deliver homes, jobs and facilities.

**(h) National Planning Policy Guidance**

4.47 This web based resource commenced on 28 August 2013. It is currently in test mode and open to public comment and is of little weight. It does however make the following points.

In respect of current assessments of need these will reflect the consequences of past under or over delivery of housing and should therefore address the question of how to deal with past delivery rates. In addition local planning Authorities should aim to deal with any under supply within the first five years of the plan period where possible (the Sedgefield approach). It is difficult to reference this to the web but the actual quote is set out below:

***How should local planning authorities deal with past under-supply?***

**Local planning authorities should aim to deal with any under-supply within the first five years of the plan period where possible. Where this cannot be met in the first five years, local planning authorities will need to work with neighbouring authorities under the duty to cooperate**

**(i) General Principles of the Planning System**

4.48 General Principles of the Planning System is a document that has not been cancelled by the NPPF. It sets out the hierarchical structure of guidance and plans. It also sets out the advice to be considered in the determination of planning applications.

4.49 The document also deals with prematurity in paragraphs 17 to 19. Of importance are paragraphs 18 and 19. Paragraph 18 sets out that where a DPD is at a consultation stage, with no early prospect of submission for examination, then refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question. Paragraph 19 states that where permission is refused on the grounds of prematurity, the planning authority will need to demonstrate clearly how the grant of permission for the development concerned would prejudice the outcome of the DPD process.

**(j) Community Infrastructure Levy, England and Wales Statutory Instrument 2010  
No 948**

4.50 Circular 05/05 has been replaced by the NPPF. Planning Obligations proposed have to be read now in the light of Part II of the Community Infrastructure Levy (CIL) Regulations which came into force in April 2010.

4.51 Regulations 122 and 123 provide information regarding limitations on the use of planning obligations. Of particular relevance is Regulation 122 which states that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:

- (a) necessary to make the development acceptable in planning terms
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development

**The Development Plan**

4.52 Up until recently the development plan that covered the appeal site was formed by the South East RS and the saved polices of the Cherwell Local Plan. The RS, however, has now been revoked (in so far as it relates to the appeal site) and it is no longer part of the Development Plan. Thus the locational strategy governing the provision of housing and other development that existed in the RS has also now gone. Also of relevance is the work on the review of the Local Development Framework. Notwithstanding the revocation of the RS, paragraph 218 of the NPPF sets out that Local Authorities can continue to draw on evidence that informed the preparation of regional strategies.

4.53 In considering the correct target figure it is also relevant to take account of the recent Hunston judgment. This in summary requires the decision maker to assess housing need and identify the unfulfilled need having regard to the supply of specific deliverable sites. The consideration of need requires under paragraph 47 the need to "boost significantly" the supply of housing. Under

the first bullet point this cannot be a needs figure that expressly does not and does not purport to identify actual need. A constraints adjusted figure does not meet need and is not consistent with paragraph 47. Once the full objectively assessed figure is identified then the decision maker must then consider the impact of other policies in the NPPF. I consider this aspect further later in this evidence.

**(a) South East Plan**

4.54 The South East Regional Strategy, adopted in May 2006, set out levels of housing development for the period of 2006 – 2026. Policy H1 identified that Cherwell was to deliver 13,400 dwellings between 2006 and 2026, which is 670 dwellings per annum. The South East Plan Proposed Changes was launched for consultation in 2008 and incorporated proposed changes from the Secretary of State in response to the plans examination in public and panel report. The South East Plan was subsequently published in 2009. Again this set out a requirement of 13,400 dwellings 2006 – 2026 (670 per annum). The relevant parts of the RS that apply to this appeal have been revoked and in accordance with the Hunston Judgment the figures do not accord with those which meet the full current objectively assessed needs and can no longer be relied upon. In particular, the RS relied upon old projections and was a constrained figure.

**(b) Cherwell Local Plan**

4.55 The Cherwell Local Plan was adopted in 1996 and covered the period to 2001 (relevant extracts - **Appendix 12**). A number of policies have been saved by virtue of the Secretary of State's Direction of November 2007. The Local Plan though is out of date in respect of housing requirements to meet current needs and also in respect of other relevant policies to the supply of housing. This means that there is no up to date development plan housing target against which to measure supply.

4.56 In respect of paragraph 215 of the NPPF, full weight cannot be given to the saved policies and any weight that is given will depend on the degree of consistency with the NPPF. Again in view of the fact the policies relating to housing provision are time expired and are out of date then no weight is to be given to these policies. Any interpretation of policies within the Local Plan which sought to restrict a ready supply of housing and therefore adversely impact on the NPPF requirement to "boost significantly the supply of housing" (47) would clearly conflict with the NPPF.

4.57 The plan seeks to provide a significant number of the required dwellings in the two main settlements of Banbury and Bicester. Policy H15 refers to development in Category 3 settlements and restricts residential development. Policy H18 deals with new dwellings in the countryside. Policy C7 deals with Landscape Conservation and notes that development will not normally be

granted if it would cause demonstrable harm to the topography and character of the landscape. Policy C8 resists sporadic development in the countryside. Policies C28 and C30 deal with design considerations.

- 4.58 Caversfield is not identified as either a Category 1 or a Category 2 village through Policy H13 or H14. Given its location as part of the urban area of Bicester it would appear instead to be covered by policies relating to Bicester

**(c) Non Statutory Cherwell Local Plan**

- 4.59 The Non-Statutory Cherwell Local Plan 2011 of December 2004 was intended to review and update the local plan adopted in 1996 (relevant extracts - **Appendix 13**). This document is not part of the statutory development plan but it had been approved as interim planning policy. The housing provision set out in the Local Plan relates back to the Oxfordshire Structure Plan policies which have now been revoked in so far as they relate to the appeal proposals. These figures are of little weight in the consideration of this appeal.
- 4.60 In respect of housing supply, paragraph 3.3 of the Non-Statutory Local Plan explains that the plan provides, in accordance with the structure plan, 11,250 new dwellings in the District between April 1996 and March 2011 (750 dwellings per annum). The structure plan envisaged about 2,450 dwellings to be built in the rural areas of the district 1996 to 2011. Notwithstanding the fact that the plan is of little weight it is time expired in respect of housing provision policies.
- 4.61 As with the Local Plan, Caversfield is not identified as either a Category 1 or a Category 2 village through Policy H15 or H16. Given its location as part of the urban area of Bicester it would appear instead to be covered by policies relating to Bicester.
- 4.62 The appeal site was not allocated for development in this plan and is shown to be adjacent but beyond the built up limits of the Caversfield part of Bicester.

**(d) Emerging Cherwell Local Plan**

- 4.63 Work has commenced on the Local Development Framework and the preparation of the emerging Cherwell Local Plan. The most recent complete document published was the Submission Draft which was published in January 2013 (relevant extracts - **Appendix 14**). This document was submitted on 31<sup>st</sup> January 2014.



- 4.64 The timetable for the Local Plan has slipped. It had been hoped to hold the EiP in January 2014. There is now proposed pre hearing meeting on 25 March 2014, with the EiP now programmed for later in the year (Summer).
- 4.65 The plan again seeks to focus the bulk of the growth in and around Bicester and Banbury (see page viii). In respect of housing the document proposes in Policy BSC 1 that provision be made for a total of about 16,750 dwellings net in the period 2006 to 2031 at 670 per annum, with 5,954 (238 per annum) in Bicester including a windfall allowance of 383 (15 per annum).
- 4.66 Policy ESD13 deals with Local Landscape Protection and Enhancement, setting out the objective of securing the enhancement of the character and appearance of the landscape, particularly in urban fringe locations. Policy ESD15 deals with Green Boundaries to growth. This deals with the need for development on the edge of the built up area of Bicester needing to be carefully designed and landscaped and it includes the provision of green buffers. Policy ESD18 deals with maintaining and enhancing green infrastructure.
- 4.67 Policy Villages 1 and 2 deal with village categorisation and distributing growth across the rural area. It does not identify Caversfield. This though is not surprising given that it is on the edge of Bicester and would appear therefore to be dealt with by the Bicester polices.
- 4.68 In view of the stage reached the plan is of little weight in the consideration of this appeal as acknowledged by the Secretary of State in his recent decisions on the four appeals.

#### **Other Documents and Relevant Publications**

- 4.69 In respect of other relevant documents to housing supply the following is of importance:

#### ***Bicester Masterplan SPD***

- 4.70 The Consultation Draft Bicester Masterplan SPD document (**Appendix 15**) was published in August 2012. The purpose of the document is to establish the long term vision for the town. The concept masterplan is set out on page 16, which shows the area covered by a green dotted line. It is of note that it excludes all the villages around the town, and separates them with landscaped buffers, but Caversfield is included within the town masterplan area without any landscape buffer. Indeed the proposed Framework Plan indicates that a small wedge of land to the south of Caversfield is suitable for development as a Reserve Site.
- 4.71 The Masterplan clearly indicates significant development on the edge of Bicester and in particular to the west of the appeal site at NW Bicester.

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***Bicester Green Buffer Report – September 2013***

- 4.72 This document was produced in late September 2013 to support the Green Buffer policy set out in the emerging Local Plan. It looked at the criteria for including land and potential boundaries. Relevant extracts are at **Appendix 16**.

***RAF Bicester Conservation Area Appraisal***

- 4.73 This document was produced in October 2008. It sets out detail regarding the Conservation Area, explaining its history, the character, buildings and architectural style together with problems and pressures that it faces. The document is contained at **Appendix 17**.

***2008 Household Projections***

- 4.74 The 2008 sub national household projections postdate the South East RS figures. The projections suggest the need for the provision of 16,003 households over the period 2006 to 2031. This is the equivalent of 640 households per annum. The projections are set out in **Appendix 18**. They are the only recent projections that cover the period to 2031.
- 4.75 The Authority in their Strategic Housing Market Assessment – Review and Update 2012 (**Appendix 19**) acknowledge this growth (16,022 at 641 per annum) but say that this is a very crude measure of the additional homes required and that new supply will not meet the projected increase in the number of households in any simple or straightforward way. The Authority claim that consideration of the household types and ages, or life stages, in the household projections and how they might move through typical ‘housing careers’ suggests that there might be some scope to lower the level of growth by up to 6% if current trends, which are not fully reflected in the projections, continue. This view, I consider, is erroneous and not in accordance with the NPPF.

***2011 Interim Household Projections***

- 4.76 The 2011 based interim household projections are the most recent projections but they only cover the period 2011 to 2021. They do, however, accord reasonably to the 2011 census figure for households in Cherwell (56,700 households). 2011 therefore is a reasonably accurate starting date. The projections indicate in this period that there will be an increase of **6,884 households** (688 per annum). The projections are set out in **Appendix 18**.

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***SHMA Review 2013***

- 4.77 There is a review in place of the SHMA across the Oxfordshire districts. This is yet to report, but it seeks to look at the current housing requirements across Oxfordshire and the interrelationship of need in the districts that make up the area.

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## **5. PRINCIPAL ISSUES**

5.1 Having set down the planning policy background that affects the appeal site, the remainder of this Proof considers the principal issues that relate to the reasons for refusal. In some respects detailed evidence is provided by others, particularly relating to Cultural Heritage and Landscape considerations. In respect of my evidence it is considered that the principal issues are:

1. (i) Does the development accord with the Development Plan, taking account in particular the policy relating to impact on the landscape and historic environment.
- (ii) Is this a sustainable location for housing and does it constitute sustainable development as required by the NPPF.
2. With regard to the housing aspects for the development:
  - (i) In the context of the development plan and national planning policy, what are the correct figures against which to appraise housing land supply?
  - (ii) Is there a five year supply of housing land?
  - (iii) Is there a need to release this site to help meet housing land requirements and what impact would the release of the site have on future housing provision?
  - (iv) Is there any impact on the need to release in respect of affordable housing provision?
3. With regard to infrastructure, is sufficient provision made to meet requirements? Are the contributions required by the Authority reasonable in scale and kind to the proposed development?
4. Are there any other material considerations that are relevant?
5. What is the overall planning balance in this case?

5.2 This proof of evidence addresses these issues.

## **6. THE DEVELOPMENT PLAN AND NATIONAL POLICY**

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:

**"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".**

6.2 With the revocation of the South East Plan, the development plan in respect of the appeal proposal consists of the saved policies of the Cherwell Local Plan (CLP). A description of relevant policies contained within the Development Plan is set out in Section 4 above and it is not my intention to repeat this within this section. It is, however, necessary to analyse the extent to which the appeal proposal is in accordance with the provisions of Section 38(6). This is particularly in light of the local authority's reasons for refusal that specifically refers to the fact that the development is contrary to policies H15, H18, C7, C8, C28, C30 and R12.

6.3 The Authority also refers to policies in the emerging Local Plan and the non statutory Local Plan. As set out previously they are not part of the development plan and are of little weight in this appeal. Nonetheless I do consider the policies raised later in this section.

6.4 It is relevant here to record that the Authority in their Statement of Case have now accepted they cannot demonstrate a five year supply of housing land and that first reason for refusal is to be read subject to this acceptance. They also state they do not now rely on Policy C30.

6.5 In respect of the provisions of Section 38(6) of the Planning and Compulsory Purchase Act 2004, it is necessary to bear in mind the High Court decision *R v Rochdale Metropolitan Borough Council ex parte Milne [2000]*. Mr Justice Sullivan in considering this case specifically looked at the question of accordance with the development plan as a whole. A proposal does not have to accord with each and every policy within it:

**"...In the light of that decision (*City of Edinburgh Council v The Secretary of State for Scotland [1997]*) I regard as untenable the proposition that if there is a breach of any one policy in the development plan the proposed development cannot be said to be 'in accordance with the plan'. Given the numerous conflicting interests that development plans seek to reconcile: the needs for more housing, more employment, more leisure and recreational facilities, for improved transport facilities, the protection of listed buildings and attractive landscapes etc., it would be difficult to find any project of any significance that was wholly in accord with every relevant policy in the development plan. Numerous applications would have to be referred to the Secretary of State as a departure from the Development Plan because one or a few minor policies were infringed, even though the proposal accords with the Development Plan considered as a whole. It does not have to accord with each and every policy therein"**

- 6.6 It is in the light of this test put forward by Mr Justice Sullivan that the appeal proposals need to be considered. The proposal is considered to not be contrary to the saved policies (that are not out of date) of the development plan taken as a whole, allowing for the fact that development plan policies often seek to achieve competing objectives. In respect of the appeal proposals it will be demonstrated below that they are not out of accord with the policies discussed and contained within the development plan.
- 6.7 Prior to dealing with the various policies it is relevant to consider the way in which the matter should now be considered. Firstly the only policies now to be considered are those saved policies in the Cherwell Local Plan. This plan only went to 2001, the plan therefore is out of date. Secondly, as this plan was prepared to meet housing requirements up to 2001, saved housing policies, therefore, cannot be considered to be up-to-date. In that respect therefore, paragraph 14 of the NPPF is engaged. See Tenbury Wells decision, paragraph 6 (**Appendix 20**) and Colman v Secretary of State [2013] EWHC 1138.
- 6.8 In addition, I set out in my evidence that the Authority do not have a five year supply of housing. In that situation the NPPF is clear under paragraph 49 that the relevant policies for dealing with housing supply are therefore to be considered as out of date. In those circumstances reference also needs to be made to paragraph 14 of the NPPF, which requires where relevant policies are out of date that applications are to be permitted unless one of two caveats apply. The situation here is that there is no specific policy which indicates that development should be restricted, so permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (taking account of the three dimensions to sustainable development).
- 6.9 In the Winchcombe decision (**Appendix 21**), the Inspector was clear that the site would cause harm to the SLA landscape and the AONB and there was conflict with development plan policies (paragraph 43). When the balancing exercise was properly carried out, however, in paragraph 46, the need for the development due to the lack of a five year supply of housing outweighed the adverse impacts. A similar decision was reached by the Secretary of State in the Tetbury decision which involved housing development actually in the AONB (**Appendix 22** – paragraph 17).
- 6.10 The Rushwick decision is also of assistance here (APP/J1860/A/12/2187934, 10 June 2013 – **Appendix 24**). In that case the Inspector stated in paragraph 26 that the approach of the Authority in that decision failed to grasp the nature of the reasoning required, and related back to paragraph 49 and 14 of the NPPF and the need to undertake the balancing exercise. Costs were also awarded against the Authority.

6.11 Within this evidence I return to the balancing exercise once I have considered all of the relevant aspects.

### **South East Plan**

6.12 The South East RS has now been revoked apart from one policy dealing with the Thames Basin Heaths Special Protection Area. This means that the strategy underlying the RS has also gone. There is, therefore, now no overarching strategy to determine development locations and numbers in Cherwell and therefore this is now determined, as I set out above, only by reference to policy set out in the NPPF.

6.13 Whilst it is acknowledged that these were the last objectively assessed figures for the area and Paragraph 218 of the NPPF is clear that Authorities can use the evidence base to the RS, this now has to be seen in the light of the recent Hunston judgment. The figures are now of some age being based on old household projections and do not reflect the current actual need in Cherwell.

6.14 The RS sought the provision of 13,400 dwellings net in the period 2006 to 2026.

6.15 Given the fact that the RS figures have gone and were in any event out of date, it is relevant to look, as I have set out above, at the household projection as well. This flows from the Hunston judgment. It was also a matter considered at the Honeybourne appeal (**Appendix 25**) prior to the judgment and the RS being revoked.

**"In my view the target should be guided by the WMRSS Panel report which indicates a figure of 9,500 additional dwellings i.e. 475 dps. This remains a reliable evidence base, consistent with the NPPF. More up to date information is available in the CLG 2008 Household Projections and the 2010 population figures adjusted by using the Chelmer model are now available and relevant. The result of using these three information sources is that it is obvious the Council has a five year supply of below 3 years when the correct approach is adopted."**

6.16 The 2011 interim sub national household projections are now an important consideration, given the concerns of Government to boost the supply of housing land and provide sufficient affordable housing land.

### **Cherwell Local Plan**

6.17 The reason for refusal specifically refers to policies from the Cherwell Local Plan (**Appendix 12**). These are considered in detail below.

6.18 It is of course important to note the plan only seeks to deal with housing provision up to 2011. In addition the direction letter sent in September 2007 from the Government Office for the South East, makes it clear that polices are to be read in context and it is likely that material considerations, and in particular the emergence of new national and regional policy and also new evidence, will be afforded considerable weight in decisions. In particular the Authority had its attention drawn to the importance of reflecting policy in Planning Policy Statement 3 Housing and the Housing Green Paper in relevant decisions. The letter is also clear that polices should be replaced promptly. We are of course now nearly six years from this date and replacement polices are still not adopted as part of the statutory development plan.

6.19 Reference was made to a similar "saving letter" in the Honeybourne decision (**Appendix 25**). The Inspector in paragraph 31 made the point that:

**"...These "material considerations" now include the NPPF, which means that it is simply not good enough to regard saved polices as an opportunity to refuse rather than to grant permission..."**

6.20 The NPPF is of course, the most up to date national policy document dealing with housing and the provision of housing that is currently available.

6.21 In respect of polices that the Authority consider are relevant to this appeal that are contained in the Local Plan that relate to the provision of housing, these are specifically H15 which deals with residential development within the category 3 settlements and H18 which deals with new dwellings in the countryside. Both of these polices serve to restrict housing supply in the context of housing provision to 2011. Polices C7 and C8 also serve to restrict the supply of housing in the same way. All these policies are therefore out of date. It is of relevance that the bulk of development in this plan was directed at the two main towns, Banbury and Bicester.

6.22 In respect of paragraph 215 of the NPPF, full weight cannot be given to the saved policies, and any weight that is given will depend on the degree of consistency with the NPPF. Again in view of the fact the policies relating to housing provision are time expired and are out of date then limited weight is to be given to these policies. Any interpretation of policies within the Local Plan which sought to restrict a ready supply of housing and therefore adversely impact on the NPPF requirement to "boost significantly the supply of housing" (47) would clearly conflict with the NPPF.

6.23 There is, therefore, no up to date housing policy in the Development Plan against which to measure housing supply. In addition this evidence shows that there is not a five year supply of housing available, therefore, paragraph 49 of the NPPF is clear that relevant polices for the supply of housing should not be considered to be up to date. This provides a context in which



paragraph 14 is engaged and, therefore, permission should be granted following a consideration of the planning balance and whether any adverse impacts significantly and demonstrably outweigh the benefits.

- 6.24 This position is confirmed by reference to other appeals, for example in an appeal at Sapcote, paragraph 46 (APP/T2405/A/11/2164413 – **Appendix 26**), also Honeybourne at paragraph 24 (**Appendix 25**).
- 6.25 In the courts Mrs Justice Lang on the 11 October 2013 in the decision *William Davis Ltd, Jelson Ltd v Secretary of State [2013] EWHC 3058 (Admin)* took a contrary view in paragraph 47 of her judgment that such a view was not a correct interpretation of paragraph 49. Subsequently, however, Mr Justice Lewis took the opposite view to Mrs Justice Lang on the 27 November 2013 in paragraph 72 of his judgment (*Cotswold District Council v Secretary of State [2013] EWHC 3719 (Admin)* **Appendix 23**) where he is clear that the Secretary of State did not err in disregarding a policy that restricted housing development in the context of paragraph 49.
- 6.26 In view of the fact that the Local Plan polices are out of date, particularly in respect of housing supply, the only recent figures that are now available for determining requirements in accordance with the NPPF that can be utilised, are the 2011 based interim household projections.
- 6.27 In circumstances where relevant polices are out of date then paragraph 14 of the NPPF becomes the clear and succinct test for determining planning applications. It provides that where the development plan is absent, silent or relevant polices are out of date, planning permission should be granted unless a specific policy of the NPPF indicates that development should be restricted or any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole.
- 6.28 Whichever caveat applies it will require a balancing of the benefits against any harm of the development. I consider housing land supply in more detail later, but given the fact there is not a five year supply, then this is a clear benefit of the scheme. Not only is it a clear benefit but it is also a substantial benefit. As the appeal decisions in my Appendices show, decisions decided by the Inspectorate or the Secretary of State show where the lack of a five year supply the weight given to this aspect is substantial.
- 6.29 I deal with the overall balance later, but I now turn to deal with the reasons for refusal to consider the policies set out and the degree of harm if any in respect of these polices. The harm, if any, of course would also go into the overall balance.

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**Policy H15**

- 6.30 Policy H15 deals with development in Category 3 settlements. Category 3 settlements are defined as hamlets which are so small that they should not be subject to significant growth or villages where infill is undesirable.
- 6.31 It is my view that this policy is out of date for the reasons set out above relating to the restriction of development to requirements to 2011. In addition it is not considered that this policy is the correct policy to apply to Caversfield, which to all intents and purposes is part of the existing Bicester urban area. Inset Map 2 (Bicester) clearly shows this relationship. In addition it clearly shows that the Local Plan was advocating significant employment growth (for Bicester) adjacent to Caversfield, something that would not be countenanced, according to the Local Plan, if it was a Category 3 settlement.
- 6.32 A further point which supports this contention are the sites that were considered as part of the SHLAA of October 2013. Here the appeal site (BI212) is considered as a potential housing site for Bicester not for Caversfield. In addition the emerging Bicester Masterplan shows Caversfield as part of the overall Bicester when considering development on the edge of Bicester. It is also noteworthy that all other villages around the town is excluded and separated by proposed green buffers, unlike the position at Caversfield.
- 6.33 This policy does not, therefore, in my view apply to the appeal site, but even if it did, it is now out of date and cannot be used to given current housing requirements which clearly need the provision of additional greenfield sites outside of existing built up limits.

**Policy H18**

- 6.34 This policy seeks to restrict the provision of new dwellings in the countryside.
- 6.35 Policy H18 notes that development outside of the defined settlement boundaries will not be permitted unless it is essential to the efficient operation of agriculture or forestry.
- 6.36 The Policy relates to a plan that has its end date at 2011. The polices deal with the provision of housing up until that time and the restriction relating to no development outside of settlements related to the allocations for housing that had been made to accommodate the housing requirement up until 2011. There is a continuing need to provide housing in Bicester beyond 2011 and inevitably therefore Policy H18 is now out of date because of the accepted need to provide housing on greenfield sites outside of settlements.
- 6.37 In addition, I show within my evidence that there is not a five year supply of housing land available and in such circumstances Paragraph 49 of the NPPF is clear that relevant polices

relating to the supply of housing are therefore to be considered as being out of date. This includes Policy HN18. The appeal proposals would extend built development beyond the settlement edge resulting in a loss of countryside. This though is not a bar to development in a situation where the development plan polices relating to the supply of housing are out of date. This is confirmed in the Sapcote decision (**Appendix 26**) the Winchcombe decision, paragraph 31 (**Appendix 21**) and the Adderbury decision, paragraph 6 (**Appendix 7**).

- 6.38 As the emerging Local Plan is clear, sites need to be released to provide for current housing requirements and this requires the release of sites which are beyond the boundaries which were meant to govern development needs to 2011. There is also a lack of a five year supply of housing. These are clear material considerations that weigh heavily against Policy H18.
- 6.39 Notwithstanding this point, the reason for refusal alleges that the "proposal cannot be justified on the basis of an identified need in an unsustainable location". As noted above there is a clear and accepted need for housing beyond existing built up areas. The Authority have for example already identified that they wish to bring forward land adjacent to the appeal site to the west at Bicester NW. Indeed permission has been granted for development in this location. The appeal proposals are situated in no different location vis à vis the existing facilities in Bicester to this site and, therefore, it cannot be considered to be an unsustainable location.
- 6.40 It is again relevant to note that the 2013 SHLAA, when it considered this site did not raise the fact that the site is not sustainable as a negative feature of the site, something that the SHLAA has done in respect of other sites.

### **Policy C7**

- 6.41 Policy C7 seeks to restrict development if it would cause demonstrable harm to the topography and character of the landscape. This policy is dealt with in detail by Mr Charsley. He considers the character and topography of the site and its sensitivity to change in depth. He explains that there are no landscape designations of national or regional importance in the vicinity of the appeal site; the well wooded character around the site tends to reduce the sensitivity to residential development; vegetation restricts views of the site and reduces its susceptibility to change; that the landscape setting is heavily influenced by the urban fringe of Bicester; the scenic value is considered ordinary; the landscape is not particularly valued; and, the site has the ability to absorb the potential development. His conclusions lead me to the view that there is no significant harm to landscape character through the development of the site.
- 6.42 In considering this policy against the NPPF, Paragraph 113 notes that local authorities should set criteria based polices which proposals for development on or affecting landscape areas will be judged. Policy C7 is outdated in that it does not adopt such a criteria based approach, it,

therefore, is not consistent with the NPPF as required by paragraph 215 and little weight should, therefore, be given to it.

- 6.43 In addition, the policy seeks to retain and enhance the character of the landscape found in the District. It is permissive, in that it allows development to take place provided it does not cause demonstrable harm to the topography and character of the landscape. In my view this is a policy, which whilst permissive, is also one which could be considered to be relevant to the supply of housing in that it can be used to restrict housing provision, and is to be considered to be out of date, in any event, in respect of paragraph 49.
- 6.44 In respect of paragraph 9.11 the Council requires development to take account of changes in level or slope, not to protrude above prominent ridges or skylines, not detract from important views and not expand out of any valley or depression which confines present development.
- 6.45 The appeal proposals accord with all of these requirements. The site is reasonably flat, it is reasonably well enclosed and has there are few views of the site, other than when in close proximity to it. The site does not detract from important views. Lastly it clearly does not expand out of any valley or depression. There is therefore no demonstrable harm to the landscape or topography.
- 6.46 I consider therefore that the appeal proposals accord with policy C7, in as much as the policy is not to be considered out of date.

### **Policy C8**

- 6.47 Policy C8 seeks to limit sporadic development in the countryside. It is not considered that the appeal proposals constitute sporadic development in the countryside, given the proximity to existing and future development. I have also already shown the need for development to extend beyond existing built up areas if current housing needs are to be met.
- 6.48 In my view this is also a policy which is relevant to the supply of housing in that it restricts housing provision beyond the built up limits of settlements, and is, therefore, to be considered to be out of date, in any event, in respect of paragraph 49.
- 6.49 The refusal reason states that it would be sporadic development in the countryside. This is plainly incorrect because the site is adjacent to the built up area of the Caversfield part of the Bicester urban area and is close to the development area at Bicester NW. The rural character of this area has already or will be changed given the significant development proposals in close proximity to this site and the impact of the urbanising influences of Bicester itself. It is also interesting to note that the proposal, allowed on appeal in 1988, for a dwelling house on the appeal site was not considered to be sporadic development in the countryside (**Appendix 1**, paragraph 9).

6.50 The reason for refusal then goes onto talk about its impact on the visual amenities of the area. This is an aspect again covered by Mr Charsley in detail. I set down here, however, that in my view the development is well located close to the existing Bicester built up area and forms part of the overall expansion of Bicester that is required to meet housing needs in the District. It is in that respect no more incongruous, prominent, urbanising or discordant than the other proposed extensions to Bicester. A point that is I believe shown in plan form by **Plan 3**, which shows that the proposed development would result in the extension east of the residential block form of development with green areas in between already proposed for NW Bicester.

### **Policy C28 and C30**

6.51 These two polices are solely related to control of design. Given that the appeal proposals are in outline, with all matters other than highways reserved for future approval it is difficult to see how the appeal proposals cannot accord with these polices which seek to govern standards of layout, design and external appearance. The Authority have now confirmed they do not rely on Policy C30.

6.52 In my view therefore, on this basis the appeal proposals cannot be held to be in conflict with these polices.

### **Conservation Area Polices**

6.53 The second reason for refusal refers to the development being harmful to the setting and identity of the RAF Bicester Conservation Area. Mr Brown gives detailed evidence of the impact of the development on designated heritage assets. I consider them from a planning policy perspective. There are no polices in the Local Plan which seek to protect the settings of Conservation Areas. Reference is therefore made to the emerging Local Plan and polices ESD15 and ESD16. I deal with these emerging polices later but they are of very little weight in this appeal.

6.54 In addition it is relevant to note that the Non Statutory Local Plan does contain polices that deal with listed buildings and conservation areas, EN39, EN40 and EN44. The Local Authority do not rely on these policies, neither in the reasons for refusal nor in their Statement of Case and as discussed earlier they are of little or no weight to this appeal given the nature of the plan.

6.55 Given the lack of policy reference the appeal proposals cannot therefore be held to be in conflict with the development plan in respect of the alleged point.

6.56 The RAF Bicester Conservation Area relates to the area of land that was essentially developed by 1939, the start of World War II. There was expansion through the war but almost all of this has

been lost to subsequent development. There is also additional residential accommodation that was constructed post 1945, but this is of less historic value and has not been included in the Conservation Area.

- 6.57 An appraisal of the Conservation Area was published in 2008, entitled "*RAF Bicester Conservation Area Appraisal*" (**Appendix 17**). This document sets out the history of the conservation area, the established character of the area, the buildings, types and architectural style, the scale of buildings how they were constructed and the materials used, together with problems that the area faces, the pressures on the area and proposed management.
- 6.58 Clearly of particular interest is the operational area around the airfield itself. This is located on the eastern side of Buckingham Road but also to the west and of this road and south of Skimmingdish Lane. The majority of the listed buildings are all in this area. The appeal site is located well away from the main part of the Conservation Area. The only part of the Conservation Area close to the appeal site constitutes the officers houses that are located on either side of Skimmingdish Lane. These are considered to be buildings that make a positive contribution to the Conservation Area.
- 6.59 Only part of the appeal site is close to the boundary of the Conservation Area and the officers houses. This is the part that adjoins the road opposite the house on the corner of Skimmingdish Lane. It is though separated by existing hedges and trees. The rest of the site is separated from the Conservation Area by the road and the houses along the road.
- 6.60 Given the fact that the officers houses already have residential around them and given the separation that exists between the officers housing and the housing that is likely to take place on the appeal site it is not considered from a planning perspective that there is an adverse impact that will be caused by the development of the appeal site and there is therefore no harm to the setting and identity of the Conservation Area.
- 6.61 Mr Brown deals with the setting point in detail and he concludes that the development would result in any harm to the significance to the Conservation Area. It would therefore preserve the Conservation Area.
- 6.62 The duty on the Council in these cases is of course set out in the Listed Building and Conservation Areas Act 1990 Section 72(1) which requires them in considering whether to grant planning permission for development to pay special attention to the desirability of preserving or enhancing the character or appearance of the area. The courts have held that this can be achieved by development which leaves character and appearance unharmed.
- 6.63 Planning Policy in respect of development and heritage assets is set out in the NPPF. Relevant paragraphs to this appeal are 128 to 134 and particularly 133 and 134 which I consider below. In addition English Heritage have produced guidance in October 2011 (prior to the publication of

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the NPPF) entitled "*The Settings of Heritage Assets*". This is not a policy document; it serves rather to give advice regarding settings. The document notes in its introduction, however, that consideration of setting is "a matter of informed judgement".

6.64 Paragraphs 132 to 134 deal with designated heritage assets. This would include a conservation area. Paragraph 135 relates to undesignated heritage assets. In respect of setting the definition in the NPPF glossary is "the surroundings in which the heritage asset is experienced". It goes on to note that this is not fixed and may change as the asset and its surroundings evolve.

6.65 The NPPF restricts development where it will lead to substantial harm. Where the harm is less than substantial then this is to be weighed against the public benefits of the proposal.

6.66 The starting point from a planning perspective is of course the test set out in section 72(1) of the LB&CA Act 1990. This is essentially, will the proposed development preserve or enhance the character or appearance of the conservation area. Mr Brown deals with this aspect in detail within his evidence, but from a planning perspective I have considered in respect of the setting, if the proposed development is capable of affecting the contribution of the heritage asset's setting to its significance or the appreciation of its significance. If it does, then the proposed development can be considered as falling within the asset's setting. This inevitably means therefore that a consideration needs to be given to the assets physical surroundings.

6.67 I have already explained the relationship of the appeal site to the Conservation Area above. The road and the hedgerow and in part the existing buildings form a stop to the view from and to the conservation area. It is difficult to see the Conservation Area from the site and the hedge has a significant impact on the intervisibility. Indeed as the proposed new vegetation that reinforces the hedge on this boundary grows there will be little intervisibility at all.

6.68 With regard to the experience of the assets, the main view is from the road itself thus the experience of the Conservation Area will predominantly remain the same as it is at present. It also has to be remembered that the buildings in the Conservation Area at this point are normal residential buildings seen amongst other residential buildings. This situation will remain with the development of the appeal site.

6.69 The visual setting of the buildings in the Conservation Area, currently terminates at the road to the west and does not in my view extend into the part of the appeal site that is now proposed to be built upon.

6.70 The policy in the NPPF seeks to ensure new development will not have a significant impact on existing designated heritage assets. In my view given the distance involved, the limited intervisibility between the buildings and the first house and the fact that the landscape will be enhanced to reduce still further the limited intervisibility, there will not be any significant harm to

the settings by the Conservation Area. In addition there will be no impact, once built, in respect of noise, odour, vibration or dust. Lighting will be designed in order to ensure that there will be no adverse light spill, and there will be no change to the way the existing Conservation Area is experienced by the general public. The development therefore would accord with the test in section 72(1), in that the setting will be preserved.

- 6.71 In my view there will also be no harm to the setting of the Conservation Area. Even if there was any harm this could only be at its highest minimal.
- 6.72 Paragraph 134 sets out that where a development proposal leads to less than substantial harm then this should be weighed against the public benefits of the proposal including securing its optimum viable use. In my view if it is considered that harm does exist which I refute, then this is the test to be considered at this appeal.

### **Listed Buildings**

- 6.73 The appeal site is of course close to two existing listed buildings. The Authority, however, do not allege any harm to these heritage assets through the reasons for refusal and they are correct in that respect. The test under section 66 of the LB&CA Act 1990 is met in that the settings are preserved and there also no harm to them. Again Mr Brown deals with this in more detail.

### **Policy R12**

- 6.74 Reference is made to Policy R12 in the fourth reason for refusal in the context of the lack of a legal agreement. Policy R12 deals with the provision of public open space. In the light of a signed unilateral undertaking which deals properly with open space issues it is understood there is no objection to the development in respect of Policy R12. Precise aspects relating to the open space definition can be dealt with at the reserved matters stage.

### **Emerging Cherwell Local Plan**

- 6.75 The current situation relating to the emerging Cherwell Local Plan is that the plan has been submitted and an EiP is due to be held in summer 2014.
- 6.76 The Plan seeks to provide 16,750 dwellings 2006 to 2031 by rolling forward the annual average housing growth of 670 set out by the RS for an additional five years. The proposed changes document March 2013 demonstrates that the Council have not been delivering an average of 670 dwellings per annum 2006 to 2012, rather an average of 483. It again seeks to focus most development in and around Bicester and Banbury.



- 6.77 In accordance with the Hunston judgment and the NPPF, however, there is a need to meet the full objectively assessed needs for market and affordable housing in the area (paragraph 47). Paragraph 179 then explains that there is then a need to work with other authorities to meet development requirements that cannot be met within their own areas. This means that if the authority is not meeting their full objectively assessed needs, the element that cannot provide will have to be provided in adjacent authorities. It is understood there is no such agreement to take dwellings that Cherwell are not providing.
- 6.78 The housing figures contained within the plan will have to undergo proper testing through the EiP and there are already significant objections to the level of housing proposed.
- 6.79 In view of the staged reached the plan is still of little weight at present.
- 6.80 The Authority do though consider that the appeal proposals do not accord with polices of this plan. They refer to the following:

### **ESD13**

- 6.81 This policy deals with local landscape protection and enhancement. The development seeks, particularly in an urban fringe location, which is of course the appeal site, to secure the enhancement of the character and appearance of the landscape. Development will need to respect and enhance the local landscape character. It then sets out 6 criteria where proposals will not be permitted. Mr Charsley deals in detail with this in his evidence but from a planning perspective I consider that the proposals:
- Do not cause undue visual intrusion due to the restricted nature of views into the site
  - Do not cause harm to important landscape features and topography because none exist around the site
  - Are consistent with the current and emerging character and development in the area
  - Are not in a area with a high level of tranquillity
  - Do not harm the setting of settlements, buildings, structures or other landmark features
  - Do not harm the historic value of the landscape
- 6.82 It is of course relevant that the policy as drafted does not accord with the nature of the consideration of development proposals in the NPPF. This explains, in the context of paragraph 14 that unless there are specific polices in the NPPF which serve to restrict development, there is not otherwise an automatic circumstance where development can be restricted. There is a need for all aspects to be properly weighed in the balance, of which landscape is just one. The emerging policy is therefore not consistent with the NPPF.

## **ESD15**

- 6.83 This is a policy which deals with Green Boundaries to growth. It is an intention to provide new green buffers around Bicester. There is no current development plan policy which deals with "Green Buffers" and it remains to be seen if they continue into the emerging plan following testing at the EiP. The policy is of very little or no weight and as with Policy ESD 13 it is a policy that is not consistent with the NPPF, in that it also seeks to restrict development in a manner that does not accord with the approach set out in the NPPF.
- 6.84 Interestingly the policy also does not accord with the emerging Bicester Masterplan (**Appendix 15**). On the Proposals Map of the emerging Local Plan the green buffers are significantly more extensive than those shown on the Masterplan. In the Masterplan they are there to provide some separation between the Bicester built up area and the villages around it. Paragraph 601 states:

**One of the primary aims of the masterplan is to ensure the continued separation of Bicester from the surrounding villages. To achieve this, a strategic landscape buffer is indicated on the masterplan between the edge of new development and the adjacent villages of Launton, Chesterton, Bucknall, Ambrosden and Stratton Audley. These areas are intended to provide a landscaped separation between communities and provide a green edge to Bicester and the villages"**

- 6.85 There is though no suggestion of a need for a buffer in the area around the appeal site, probably because Caversfield is considered to be part of the Banbury built up area. In addition the Masterplan shows an area of land north of the A4095 in the Caversfield area as a reserved area for development which is not shown on the Proposals Map.
- 6.86 Notwithstanding this point the appeal proposals:
- Maintain the setting and identity of Bicester
  - Do not adversely impact on the identity and setting of Caversfield and Bicester in that they are inextricably linked already and treated in the Bicester masterplan as one urban area
  - Do not result in any further coalescence between Bicester and Caversfield
  - Do not adversely impact on the setting if landscape or historic features
  - Do not adversely impact on important views
- 6.87 Indeed as **Plan 3** shows, which puts the appeal site onto the Bicester masterplan – proposed residential plan, the appeal proposals fully accord with the nature of development all the way around the northern and western part of Bicester, being residential blocks separated by green infrastructure areas.

- 6.88 The Local Authority have sought more recently to try and justify the provision of green buffers by getting LDA Design to do a Bicester Green Buffer report, dated September 2013 (**Appendix 16**). Interestingly this document at section 4.1 explains the purpose of the buffers is three fold. The first is to maintain a gap between the former DLO Caversfield site and the planned future edge of Bicester. As my **Plan 3** clearly shows, that gap is maintained by the development of the appeal site.
- 6.89 The second purpose is to protect the setting of the historic setting of Caversfield, which is situated to the west of the appeal site. As I understand it there is no objection to the appeal proposals in this respect, certainly there is no objection raised in respect of the setting of the listed buildings in this hamlet, and the development allows the hamlet to remain in a green area between the residential blocks of Bicester NW and the appeal site.
- 6.90 The third reason is to assist with the protection of the setting of residential area part of the conservation area. As already shown the appeal proposals do not harm that setting so there is no conflict with this purpose.
- 6.91 There is therefore no conflict with any of the purposes of the green buffer set out in this report.
- 6.92 This aspect is considered in more detail from a landscape perspective in Mr Charsley's evidence.

### **ESD18**

- 6.93 This Policy deals with Green Infrastructure seeking to maintain and enhance it. Mr Charsley deals with this aspect in detail and shows that the appeal proposals do not adversely impact on the Green Infrastructure.

### **Villages 1 and 2**

- 6.94 These emerging policies deal with village categorisation and distributing growth across the rural area. As noted above in respect of the existing pan polices it is not considered that the appeal proposals are covered by these polices because to all intents and purposes Caversfield forms part of the Bicester urban area for the purposes of planning policy. This is again illustrated by the Plans proposals for Bicester which are close to and adjoin Caversfield (for example Bicester 8) and the polices in and around the Caversfield part of Bicester as shown on key policy map 5.2 Bicester, together with the Bicester masterplan which clearly shows Caversfield as part of the Bicester area.

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**ESD16**

6.95 This emerging Policy deals with the character of the built and historic environment. It requires high quality design to be delivered. The appeal proposals are perfectly capable of providing high quality design through the reserved matters. In respect of heritage assets I have already considered this above and shown that there is no harm to the Conservation Area and the setting is preserved.

**Summary**

6.96 There are no development plan figures for the full housing requirements to be provided within the area. The relevant sections of the RS and the Structure Plan to this appeal have been revoked, The Local Plan only covered the period and housing provision to 2001 and is out of date. The emerging Local Plan figures are still to be tested through the EiP and are of little weight.

6.97 In these circumstances and taking account of the need in paragraph 47 of the NPPF to boost significantly the supply of housing and the need to provide for the full objectively assessed requirements in an area, the approach to the housing requirement figure that should be adopted is to use the latest household projections. These are the 2011 interim based sub national household projections. This approach accords with the Hunston judgment.

6.98 In respect of the other polices referred to, they are policies which are out of date because the plan expired in 2001, in addition a number are also out of date because they relate to the supply of housing land and they governed development needs to 2011 in the Plan, or they are out of date because they are not consistent with the NPPF. The design polices referred to are policies which are capable of being met by way of the submission of reserved matters.

6.99 Polices mentioned which relate to the emerging plan are of little weight in the determination of this appeal, nevertheless the appeal proposals do not result in the harm that is being alleged by the Local Authority. The harm, such as it, that does arise will need to be balanced by the need for housing arising from the lack of a five year supply which is of course of substantial weight.

6.100 The appeal proposals have in the context of the NPPF and the statutory duty fully considered the impact on the landscape and the heritage assets including the conservation area. There is little or no harm from the appeal proposals and they have been shown to preserve the setting of the Conservation Area. Again such harm as may arise will need to be balanced by the need for housing arising from the lack of a five year supply which is of course of substantial weight

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***The NPPF***

- 6.101 The NPPF sets out in Paragraph 49 that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. As shown in my evidence the Authority cannot provide a five year supply of housing. In addition relevant policies of the plan are time expired. Paragraph 14 also sets out that where relevant policies of a plan are out of date, which would be the situation in respect of this site where a five year supply cannot be demonstrated, then permission should be granted, subject to two caveats.
- 6.102 The second of these relates to a position where specific policies in the framework indicate development should be restricted. This would include the paragraphs I have examined above relating to heritage assets. It is though clear here that the development would not cause substantial harm to a designated heritage asset which cannot be mitigated. In addition it is also clear that there are clear public benefits of the appeal proposals which are of significant weight. This being the provision of housing to meet a shortfall in the five year supply and the provision of much needed affordable housing.
- 6.103 I deal with the planning balance in more detail later in the evidence but in summary in my view the only adverse impacts against development here are any impact on landscape and the minimal harm, if indeed there is any to the setting of conservation area. In all cases I am of the view that the impacts, such as they are, are not substantial and do not result overall in matters which would significantly and demonstrably outweigh the benefits of the proposal.
- 6.104 Before considering further housing land supply issues and paragraph 14 of the NPPF it is relevant to refer to the case of *William Davis Ltd and Jelson Ltd v Secretary of State for Communities and Local Government and North West Leicestershire District Council [2013] EWHC 3058 (Admin)*. Here Lang J considered that paragraph 14 could only be applied to a scheme that had been found to be sustainable development. Leave has been sought to go to the Court of Appeal on this judgment. Nonetheless I have made an assessment firstly below as to whether the development is sustainable.
- 6.105 The NPPF, whilst as a whole being what the government's view of what sustainable development is in practice, sets out the three dimensions of sustainable development. The Authority have already acknowledged that sites in similar locations around Bicester are in sustainable locations, evidenced by the allocations around the town, the closest of these being Bicester NW immediately to the west of the appeal site.
- 6.106 With regard to the three dimensions of sustainability themselves:

- 6.107 The appeal proposals will perform an **economic** role by providing land for aspirational and affordable local needs housing, which expands the quality and choice of housing. The provision of housing is recognised as an important driver of economic growth. The development of the site will provide jobs in construction and the new occupants will provide increased levels of disposable income that will in part be spent locally supporting existing services and facilities. The Local Authority have raised no evidence to date that the development would result in any adverse economic benefits and in respect of this aspect of sustainable development the balance must clearly be in its favour.
- 6.108 The site performs a **social** role by providing market housing as required in Cherwell and in the provision of affordable housing, of which there is an urgent need for in Cherwell as I set out later in this evidence to meet identified needs, and by providing contributions to improve social infrastructure. In particular there are benefits of the proposals in respect of proposals for a shop and community hall on the site. Given the requirement in the NPPF to “boost significantly the supply of housing” the additional dwellings to be provided must carry very substantial weight in the decision on this site (see Inspectors views regarding an appeal at Welland, paragraph 50, dated 20 January 2014 (**Appendix 27**)). Again The Local Authority have raised no evidence to date that the development would result in any adverse social benefits, particularly given that the development has dealt with all reasonable requirements thorough the S106. In respect of this aspect of sustainable development the balance must clearly be in its favour.
- 6.109 Whilst inevitably the site will introduce change by the loss of fields, the development also provides an **environmental** role by providing areas of open space on the site, protecting existing trees, and improving biodiversity and landscape resources.
- 6.110 In respect of ecology, I would refer to the report contained at **Appendix 28** prepared by FPCR. The habitats within the site are of low conservation value and of no more than local level ecological value. There are though a number of the mitigation aspects that will result in benefits. These being the implementation of species rich grassland and long term management of the grassland; the creation and management of native species scrub to the west of the site; the reinforcement of hedgerows; the creation of a wet balancing facility with marginal native species planting; provision of bat roost site; the creation of mosaic habitats to the west of the site; and, the implementation of a series of measures to benefit great crested newts.
- 6.111 Great crested newts have not been found on the site, but a small population have been found at Caversfield House some 250m to the west of the site. The ecological report identifies the effect of the development to be negligible and the loss of habitat to be low. Nevertheless there will be a need to obtain the necessary license from Natural England. In order to obtain the licence there is a need to accord with the Habitat and Species Regulations 2010 and ensure that the derogation tests set out in regulation 53 have been met. From a planning perspective the relevant tests are

53(2)(e) and 53(9)(a). FPCR deal with 53 (9)(b) in their report and show that the development would not be detrimental to the maintenance of the population of the great crested newt.

- 6.112 In respect of the first test, 53(2)(e), the development is required to meet housing requirements in the area, satisfying an important national requirement, there are also benefits in respect of the economy of the country, as I have identified above. There are, therefore significant beneficial consequences of the development taking place. The development therefore is a purpose for which a license may be granted.
- 6.113 In respect of the second test, 53(9)(a), there is no satisfactory alternative to the development of the site given the lack of a five year supply of housing and the need to provide for housing to meet the requirements for the District to 2031, and the need to concentrate development in and around the main towns of Banbury and Bicester. Notwithstanding this point there are actually benefits to the great crested newts population by reason of the proposed mitigation strategy to be adopted. In the professional view of FPCR, there is no reason why a licence should not be forthcoming.
- 6.114 With regard to the impact on the landscape, the use of the site for housing will have an impact in that the site is changed from agricultural land to housing. The issue here is how significant is that impact. I have shown above the need to develop beyond the existing boundaries of existing settlements in Cherwell and particularly Bicester (evidenced indeed by the significant allocations proposed in the emerging Local Plan. The site makes effective use of available land and seeks to retain the hedgerows and provide additional landscaping around the site. The site is also not remote from the existing built up area. In addition the site is not within an area that has been designated nationally or locally as being of particular landscape significance.
- 6.115 With regard to heritage aspects, these again have been fully considered and no objection to the development is raised in respect of the listed buildings to the west. In addition it has been shown that the development preserves the setting of the Conservation Area and results in none, or at the most, minimal harm to designated heritage assets.
- 6.116 Inevitably an assessment regarding sustainability will rarely produce a clear cut answer. There are always elements that argue in favour of the sustainability of a proposal and those that argue against. In terms of the economic and social dimensions of sustainable development there are clear benefits of the proposal. The situation regarding the environmental dimension is not as clear but in my view the balance here between the harm over the benefits shows that this dimension is met as well. In terms of the overall situation, whilst there are adverse impacts the development proposal results in sustainable development.

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## **Summary**

6.117 In summary, it is clear that the development has the ability to accord with those policies in the Development Plan that are not out of date. It is also considered that the development accords with the National Planning Policy Framework.

6.118 The material considerations set out in this evidence which in the planning balance weigh in favour of the appeal proposals are:

- The development constitutes sustainable development
- Paragraph 14 of the NPPF is clear that development proposals that accord with the development plan should be approved without delay
- Paragraph 49 of the NPPF states that where there is a lack of a five year supply of housing land then relevant policies for the supply of housing should not be considered up to date
- Where policies are not up to date then paragraph 14 of the NPPF applies and planning permission should be granted unless the impacts significantly and demonstrably outweigh the benefits or unless there are specific policies in the NPPF which restrict development
- Bicester is a main focus for development in the Authority
- That Caversfield forms part of the Bicester urban area
- There is less than a five year supply of housing available
- There is an identified need for affordable houses
- The encouragement within the March 2011 Ministerial Statement and the NPPF for LA's to grant permission for housing to encourage economic growth
- The need to boost significantly the supply of housing set out in the NPPF
- There is no harm to the RAF Bicester Conservation Area
- There is no, or at the worst minimal harm, to a designated heritage asset as a result of this development, it preserves the setting of the listed buildings
- The capacity of the landscape around the site to accept the proposed development together with the improvements in landscape resources
- There are clear benefits in respect of ecology that arise from the development proposals.
- The lack of any constraint that cannot be accommodated by S106 obligations that would prohibit development now
- The lack of availability for housing on existing brownfield sites that requires the release of greenfield land



## **7. HOUSING LAND AVAILABILITY**

7.1 This part of the evidence considers the current position in respect of housing land availability within Cherwell. Before looking at the actual position regarding supply it is relevant to note that following the two judgments relating to housing supply in the Hunston case, one of which was in the Court of Appeal, there is now a clear understanding of what requirement figure should be utilised in undertaking the five year supply calculation in the light of the requirements of the NPPF.

7.2 In paragraph 26 of the Appeal Court Judgment it was set out that the Inspector was:

**"...mistaken to use a figure for housing requirements below the full objectively assessed needs figure until such time as the Local Plan process came up with a constrained figure".**

7.3 Following on from this judgment being received, Cherwell at an Appeal in Adderbury, at which I gave the housing evidence, confirmed in the light of that judgment that they could not demonstrate a five year supply of housing as required by the NPPF. This appeal, dated 23 January 2014 is at **Appendix 7**.

7.4 The position acknowledged at that appeal remains the same today. The Local Authority still admit that they cannot demonstrate a five year supply.

7.5 In view of the acknowledged position of the Authority in respect of this matter, set out in paragraph 4.3 of their Statement of Case, I do not seek within this proof to set out in detail the case relating to the supply of housing in this Authority, only to provide a summary of the position from the appellants perspective and the effect of the lack of supply of housing.

7.6 Within my Appendix, however, is a detailed paper setting out the position in regard to housing land supply (**Appendix 29**). This can be referred to in the event of points relating to this aspect being required to be considered. What is important though is not just to accept that there is not a five year supply but also to consider at what level that supply is at.

7.7 The Secretary of State and numerous Inspectors have already noted that that where there is a lack of a five year supply the weight to be attached to the delivery of housing is substantial. Indeed I am not aware if any case that has been decided where anything other than substantial weight has been attached to the delivery of housing in a situation where there is a shortfall against the five year supply requirement. This follows on from the fact that the requirement is a minimum requirement and the objective is to boost housing.

7.8 In addition, decisions of the Secretary of State and Inspectors have also found that the level of shortfall is also important. The greater the shortfall, the greater the weight that is to be attached to delivering housing to meet that shortfall, although as noted above the weight is always substantial regardless of the extent of the shortfall.

### **Level of Supply**

7.9 The tables in my Appendix indicate a number of ways of calculating housing supply based on housing requirement figures using policy advice and based on the most up to date information. In respect of the appellants supply figure at 31<sup>st</sup> March 2013, there is between **1.74 to 1.98 years supply** taking account of the 20% buffer required by NPPF.

7.10 Utilising the Local Authority supply figures the years supply situation improves to between **2.59 years and 2.95 years supply** taking account of the 20% buffer. This is compared to the figure set out in the 2013 AMR of 4.7 years.

7.11 In accordance with the proper requirements of the NPPF there is clearly not a five year supply available and the shortfall in supply is significant.

### **Required Course of Action**

7.12 The NPPF is clear on the need to consider housing applications in the context of the presumption in favour of sustainable development (paragraph 49). Paragraph 49 further outlines what should happen where there is less than a five year supply of housing land available.

**"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered to be up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites"**

7.13 The NPPF outlines that the presumption in favour of sustainable development should be seen as a golden thread running through both plan making and decision-taking. Paragraph 14 specifically states that:

**"For decision-taking this means:**

- approving development proposals that accord with the development plan without delay; and**
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:**
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole;**
  - or**
  - specific policies in this Framework indicate development should be restricted".**

7.14 In the above circumstances set out by Paragraph 49 where housing policies are not up to date then the policy set out in paragraph 14 is applicable, that is where the development plan has out of date policies then this means planning permission should be granted unless the proposals do not accord with the two bullet points listed.

7.15 The evidence to this inquiry has shown that development at the appeal site does not result in adverse impacts which demonstrably outweigh the benefits and there are no specific policies of the NPPF which indicate that development should be restricted e.g. Green Belt, AONB etc.

**8. AFFORDABLE HOUSING**

- 8.1 In considering the provision and availability of housing land, as well as looking at the general supply situation it is also relevant to consider the supply of affordable housing within Cherwell. The provision of affordable housing can be a material consideration in respect of any application.
- 8.2 In considering this point it is relevant to go back to the evidence base for affordable housing. The starting point here is the SHMA of June 2009, where the backlog need of 473 per annum was established. The SHMA review was then updated in 2012 and identified a need of between 186 dwellings per year and 831 dwellings per year with a view that the overall need is in the region of 300 per annum (**Appendix 19**, page 7). Whilst I consider there are some specific problems with this figure in that I do not believe it properly deals with actual households in need, I have adopted the figure below when considering it against actual affordable housing provision. It should though be treated as very much a minimum indicator of need in my view.
- 8.3 Turning to look at the supply of affordable dwellings since 2001, these figures are set out in the Annual Monitoring Reports from 2006 and also in Table 8 below, together with the percentage of total dwellings constructed.

**Table 1: Affordable Housing Completions 2006 to 2012**

	<b>2006/ 07</b>	<b>2007/ 08</b>	<b>2008/ 09</b>	<b>2009/ 10</b>	<b>2010/ 11</b>	<b>2011/ 12</b>	<b>Total</b>	<b>Av.</b>
Total Affordable	166	133	87	97	96	205	784	131
% Affordable Provision based on 300 d.p.a.	55.3	44.3	29.0	32.3	32.0	68.3	-	43.6

- 8.4 The table above shows an average of some 131 units being built per annum over the period 2006 to 2012. This has to be seen against the figure of 300 units required per annum.
- 8.5 There is therefore, a significant under provision of affordable housing against the established need figure and an urgent need to provide affordable housing in Cherwell. The appeal site is proposing that approx 35% of total dwellings will be provided as affordable housing. Given the continuing shortfall in affordable housing provision in the district, the provision of this affordable housing is a clear material consideration of weight that mitigates in favour of the site being granted planning permission.

## **9. SECTION 106 REQUIREMENTS**

9.1 The fourth reason for refusal relates to a lack of a legal agreement to cover infrastructure for the proposed development. Accompanying this evidence is a draft unilateral undertaking that provides for a variety of financial and other contributions that are considered, as the appellant understands it, by the Local Authority necessary in order for the development to take place. These need to meet the legal requirements set out in Part II of the Community Infrastructure Levy Regulations. The responsibility lies with the Authority in ensuring that all elements requested meet these requirements. Regulation 122 states that:

**“(2) A planning obligation may only constitute a reason for granting planning permission if the obligation is –**

- (a) necessary to make the development acceptable in planning terms**
- (b) directly related to the development; and**
- (c) fairly and reasonably related in scale and kind to the development”**

9.2 A summary of the elements currently provided for within the unilateral undertaking are set out below these are:

- **Affordable Housing** – The undertaking provides for the provision of 35% of the units to be affordable. This is to be split between affordable housing and the remainder Intermediate housing. Details are contained within the agreement.
- **Education Contribution** – The undertaking deals with a provision for an education contribution. Within **Appendix 30** is a report from EDPS regarding educational requirements resulting from this development. The report notes that there is a need for primary school provision and the unilateral therefore includes for a sum to cover this element. In respect of the need for a contribution towards secondary and sixth form education the report notes that it is not considered that one is required. The undertaking therefore provides for two circumstances, the first is on the basis that a contribution is not required and the second, if the inspector considers in accordance with the CIL requirements that one is required, makes provision for a sum to cover this element.
- **Transport Contribution** – The undertaking provides for transport contributions. These relate to a pedestrian crossing facility on Buckingham Road, and contribution towards other highway improvements including a transport plan monitoring fee. A number of other highway proposals related to the development are envisaged to be dealt with by a

section 278 agreement and related conditions. There is also a requirement or a public transport subsidy contribution, which it is not considered can be justified.

- **Recreation Contribution** – Provision is made for on-site open space with a management plan to provide for maintenance and management of the open space if not adopted by the LPA. In respect of onsite open space this will be provided together with a appropriate sum for long term maintenance if adopted by the LPA. This includes LAP and LEAP contributions and hedgerow contributions if adopted by the LPA. In respect of sports pitch provision there is a requirement for a contribution towards outdoor sports facilities and also a requirement for indoor sports facilities

In addition the LPA would like the unilateral to deal with the need for the submission of a scheme for the LAP and the LEAP. It is though considered this can be better dealt with by condition.

- **County Council Contributions** - provision of a contribution to cover a variety of aspects including:
  - day care centre
  - household waste and recycling
  - library
  - adult learning
  - fire and rescue
  - household waste and recycling
  - museum resource centre
  - youth
  - public right of way
  - administration fee
- **Other Contribution** - provision of a continuation towards:
  - refuse bins
  - Thames Valley Police
  - registration
  - public art
  - Council administration fee
- **Village Hall** – money is to be provided to build the hall together with the provision of land and a sum for maintenance.

9.3 This matter will be updated at the Inquiry as discussions progress further.

- 9.4 Figures set down within the undertaking are those related to requests put forward by relevant Authorities. The appellant relies on the Authority to ensure that these comply with the necessary legal requirements set out in the CIL regulations in all circumstances given that they have all been requested by the Authority. The undertaking, however, includes a clause which states that if the Inspector determines that any of the measures are not necessary to the grant of planning permission then the obligations in the agreement / undertaking will be restricted to those considered by the Inspector to be necessary. It is considered that a number of the contributions listed above have not been shown by the relevant Authorities to be in accordance with the CIL regulations.
- 9.5 In respect of coming to a decision on these matters it is relevant to look at the recent Secretary of State decisions on appeal in this Authority where he considered this aspect further. At Hook Norton, (**Appendix 3**) the Secretary of State in paragraph 18 stated that contributions towards local day centres for the elderly, special education needs and library provision in the same authority area were not CIL compliant.
- 9.6 In the land east of Bloxham Road appeal decision (**Appendix 4**) the Secretary of State stated in paragraph 16 that sums for a community development worker, refuse bins and public art were not CIL compliant. In respect of the land off Barford Road, Banbury, (**Appendix 5**) the Secretary of State stated in paragraph 15 that sums for community development contribution, day care centre, waste management, adult learning, commuted sums for maintenance, administration/monitoring fees and refuse bins were not CIL compliant. Lastly in respect of the site at Milton Road, Bloxham (**Appendix 6**) the Secretary of State stated in paragraph 15 that sums for adult learning, day care centre, waste management, administration / monitoring fees, refuse bins, community development officer and commuted fees for maintenance management were not CIL compliant.

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## **10. OTHER MATERIAL CONSIDERATIONS**

10.1 As part of the pre-application work completed before the submission of the planning application, the appellant conducted public consultation with local people which included a public exhibition. As part of that consultation, comments from local residents were encouraged, and in response to those consultations, changes were made to the overall scheme before it was submitted. Subsequently there have been a number of responses to the appeal proposals both prior to, and following submission of the application.

10.2 The report to committee noted that there were a total of 24 letters / emails received.

10.3 Objectors to the proposals raise a number of concerns. These are particularly related to the following broad headings. It is acknowledged that within each heading there may be a number of concerns that have been raised relating to that broad issue:

- Policy / principle of development
- Access, congestion and highway safety
- Flooding and drainage concerns
- Ecology
- Impact on landscape
- Impact on amenities
- Impact on facilities
- Impact on heritage aspects

10.4 Most of these issues have been considered within the evidence set out above or within other documents submitted with the application, however, I deal in summary with some of the other issues which local residents, the Parish Council and third party submissions refer to below.

### **Impact on amenities**

10.5 In respect of impact on amenities this is an aspect that will be covered in detail by the reserved matters application, but it is clear from the masterplan that acceptable provision can be made in respect of both amenities for future residents and also amenities of existing residents. The development of course does make provision for a shop and a community hall.

### **Traffic Concerns**

10.6 A transport assessment was submitted with the application regarding the impact of the proposed development. As set out in the report, there is no objection to the proposed development, and the proposals are considered to be acceptable in terms of highway safety.



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**Flooding and Drainage**

- 10.7 Concerns are raised over the drainage from the proposed development. A Flood Risk Assessment was submitted with the application which proposed a number of mitigation measures for the site. There is no objection to the development proposals subject to various conditions.

**Summary**

- 10.8 It is not considered that there are any issues that have been raised by local residents or other objectors that create material considerations that would indicate that permission should not be forthcoming on this site.

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## **11. SUSTAINABLE DEVELOPMENT CONSIDERATIONS AND THE PLANNING BALANCE**

- 11.1 As noted in the Planning Policy section of this evidence at the heart of the NPPF is a presumption in favour of sustainable development. Paragraph 6 explains that paragraphs 18 to 219, taken as a whole constitute what sustainable development is in practice. Paragraph 7 explains that there are three dimensions to sustainable development – economic, social and environmental. Paragraph 8 explains that these roles are not to be considered in isolation.
- 11.2 Considering firstly the sustainability of the proposals, in respect of the three dimensions to sustainable development – economic, social and environmental, set out in paragraph 7, the following conclusions can be drawn:
- 11.3 The appeal proposals will perform an **economic** role by providing land for aspirational and affordable local needs housing, which expands the quality and choice of housing and improves competition in the market place. The development of the site will provide jobs in construction, many of which are likely to be local jobs. The new occupants will provide increased levels of disposable income that will in part be spent locally supporting existing services and facilities.
- 11.4 The site performs a **social** role by providing market housing as required in Cherwell and affordable housing, of which there is an urgent need in Cherwell as I set out in this evidence to meet identified needs, and by providing contributions to improve social infrastructure. In particular there are benefits of the proposals in respect of proposals for a shop and community hall on the site. There is no reason to suppose that the development would not create a high quality environment which will integrate successfully with the surrounding community. The site being on the edge of Bicester is also a sustainable site with access to a range of services and facilities including schools.
- 11.5 Whilst inevitably the site will introduce change by the loss of a field and there will be some limited impact on the landscape, the development also provides an **environmental** role by providing areas of open space on the site, including protecting existing trees and improving biodiversity and landscape resources.
- 11.6 Looking at the NPPF as a whole the appeal proposals are to be considered by Paragraph 49 as a situation where the relevant housing policies of the plan are out of date. In such circumstances the relevant approach to be made is as set out in paragraph 14. Paragraph 14 sets out that at the heart of the framework is a presumption in favour of sustainable development which should be seen as a golden thread which runs through both decision making and plan making. In the light of this, the paragraph goes on to state that in decision making where a plan is considered to be out of date, which is of course the situation here through both the time expiry of the housing

policies of the plan and through paragraph 49, then permission should be granted unless one of two caveats apply.

- 11.7 The first caveat is that the adverse impacts of granting would significantly and demonstrably outweigh the benefits. This requires a balancing of the advantages of the development (the overall public benefit) against the disadvantages of the development.
- 11.8 In respect of the second caveat this relates to permission being refused if specific policies in the NPPF indicate that development should be restricted. In this case the potential for harm to a designated heritage asset is one of the circumstances where development could be restricted. This is set out in paragraph 133 of the NPPF and relates to a situation where the proposed development will lead to substantial harm to a designated heritage asset.
- 11.9 The evidence however put forward by the appellant is that the development will not lead to substantial harm to any designated heritage asset. Indeed the evidence is there will be no resultant harm. Any harm that there may be, such as it is, would fall within the description of less than substantial harm. In those circumstances then the test is as set out in paragraph 134, which is the need for the harm to be weighed against the public benefits of the proposal. In essence the same test required as by the first caveat to paragraph 14. This is the approach adopted by the Inspector in the Wolston appeal (**Appendix 31** – paragraphs 29 and 58)
- 11.10 Concerns have been raised by the Authority in respect of a number of matters. These include the impact of the proposed development on the landscape, impact on designated heritage assets, the RAF Bicester Conservation Area, and fact that the site lies outside of the defined settlement boundary. All of these aspects have been fully considered in the evidence. The evidence shows that the proposed development would not result in harm to the Conservation Area and no harm to the listed buildings and therefore the development would preserve the heritage assets. There would, at most, be minimal harm to any designated heritage asset. There would be limited harm to landscape and given the fact that the site lies outside of any special high quality landscape area and the views can be mitigated there would be limited harm.
- 11.11 The current proposed development would conflict with existing policy to develop outside of the settlement boundary, although the policies relating to the supply of housing are clearly out of date and should not be used to restrict housing supply in accordance with paragraph 49. The appeal proposals would, however, be a positive step towards addressing the shortfall in housing that exists in Cherwell. It would provide much needed open market housing and much needed affordable housing. The houses would be well located in terms of proximity to Bicester and within easy reach of local services and facilities. It would have benefits to both the national and local economy. In all appeals where there is less than a five year supply established this is considered

to be of substantial weight. This must be the case in view of the requirement in the NPPF to boost significantly the supply of housing.

- 11.12 In the Wolston appeal, which also had to consider the situation of a designated heritage asset adjacent to the site, the Inspector stated in paragraph 58 that the public benefit in contributions towards the areas 5 year housing supply and the provision of a significant number of affordable houses alone is very substantial. He considered that it far outweighed the harm identified.
- 11.13 None of the concerns with the development set down above or indeed any other material consideration raised are in my view sufficient cumulatively to outweigh the factors in favour of permitting the proposed development and I believe clearly indicate that the proposed development should be allowed.
- 11.14 In my view the proposals accord with the view of the government as to what sustainable development is in practice set as out in paragraph 6; since in determining that permission should be granted in accordance with paragraph 14, the proposals have had to be considered against paragraphs 18 to 219.
- 11.15 If it is considered that there is conflict with the development plan, then the material considerations in favour of development would outweigh any conflict with the development plan not least because the policies which relate to the provision of housing are clearly out of date, are inconsistent with the NPPF or can be dealt with at the reserved matters stage. The approach I have adopted here is the same as other Inspectors and the Secretary of State has also used, as is evidenced by paragraphs 27 to 30 of the Secretary of State's decision at Burgess Farm, Manchester (**Appendix 32**).
- 11.16 In summary the appeal proposals therefore accord with the requirements in the NPPF to provide for sustainable development. In addition I consider that the public benefit accruing from this development far outweighs all the harm identified.

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## **12. SUMMARY AND CONCLUSION**

12.1 This evidence has considered the reasons given by Cherwell as to why they refused the application at Caversfield, Bicester. Within my evidence I have considered the aspects identified in the reasons, the development plan position, the NPPF, relevant material considerations, housing land supply and other considerations.

### **Planning Policy Background**

12.2 The RS has now been revoked, there are policies in the District Local Plan regarding housing land requirements but these policies are out of date, therefore in accordance with the Hunston judgment housing supply needs to take account of the policy set out in the NPPF and the most up to date information that is available.

12.3 In respect of national guidance the NPPF sets out information in respect of the calculation of housing requirements and also sets out the need to boost significantly the supply of housing and ensure that the full objectively assessed needs for market and affordable housing are met in the area. In considering the supply of land sites have to be deliverable and developable. Specific deliverable sites have to be shown for 5 years together with developable sites for a further 5 years and where possible for years 11 to 15. In addition a buffer of 5% needs to be provided, or a buffer of 20% where there has been a record of persistent under delivery of housing.

12.4 Where a Local Planning Authority cannot demonstrate an up to date 5 year supply of deliverable sites then paragraph 49 states that relevant policies for the supply of housing should not be considered to be up to date and in those circumstances paragraph 14 states that permission should be granted unless there is a specific reason which restricts development.

12.5 The NPPF also sets out policies in respect of landscape, biodiversity and also the treatment of heritage assets (section 12) that are relevant to this appeal.

12.6 Also of relevance is the March 2011 Ministerial Statement which plans for growth and supports the provision of housing.

12.7 The **Cherwell Local Plan** only contains policies that deal with the situation up to 2001. The policies referred to in the reasons for refusal in the Local Plan, H15, H18, C7, C8, C28 and C30 are all policies which are either a) out of date because the plan expired in 2001, b) are out of date because they relate to policies which relate to the supply of housing land and there is an acknowledged shortfall in the five year supply of housing land, therefore paragraph 49 of the

NPPF becomes operative, c) are of little weight because they are not consistent with the framework, or, d) are design polices which can be dealt with by the reserved matters application.

- 12.8 The **emerging Cherwell Local Plan** has only recently been submitted to the Secretary of State. It is subject to a number of significant objections and can only be afforded little weight at present.

### **The Development Plan and the NPPF**

- 12.9 The Authority have accepted that they have not got a five year supply of housing. In that situation the NPPF is clear under paragraph 49 that the relevant polices for dealing with housing supply are therefore to be considered as out of date. In those circumstances reference needs to be made to paragraph 14 of the NPPF, which requires where relevant polices are out of date that applications are to be permitted unless one of two caveats apply. The situation here is that there is no specific policy which indicates that development should be restricted, so permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (taking account of the three dimensions to sustainable development).
- 12.10 In view of the fact that the Regional Strategy has been revoked the Local Plan has now expired in respect of housing supply, the 2011 based interim SNHP are the best available base evidence in order to determine the full objectively assessed housing figure.
- 12.11 Policy H15 deals with development in category 3 settlements. This does not apply to the appeal site because it should be treated as part of the Bicester urban area. In any event it is out of date. Policy 18 is also out of date, there is a clear need for housing to be provided in the countryside outside of settlement boundaries and the appeal site is well located in a sustainable location to meet those needs. In respect of Policy C7 this policy is not in conformity with the NPPF, nevertheless the proposals accord with the policy in that there will be no demonstrable harm to the topography and character of the landscape. In respect of Policy C8 the development does not constitute sporadic development in the countryside. In addition the policy is out of date and out of conformity with the NPPF.
- 12.12 Polices C28 and C30 are both design polices that can be dealt with properly through the consideration of reserved matters. The development can accord with these polices. Policy R12 deals with public open space provision in developments. The appeal proposals are in outline and the matter can be dealt with at the reserved matters stage with necessary contributions dealt with in the unilateral undertaking.

- 12.13 There are no polices dealing with the conservation area in the local Plan. However the appeal proposals will not result in any harm to the setting of the conservation area. They therefore preserve the setting of the conservation area. In addition the proposals will not result in any harm to the setting of the listed buildings.
- 12.14 The emerging plan polices are of little weight in respect of the consideration of this appeal. Policy ESD 13 is considered not to be consistent with the NPPF notwithstanding this point the development does respect the local landscape character. Policy ESD 15 deals with Green Buffers it is also a policy that is not consistent with the NPPF, in that it also seeks to restrict development in a manner that does not accord with the approach set out in the NPPF. In addition the appeal proposals does not conflict with the purposes of the Green Buffers either as set out in the Bicester masterplan or as set out in the Bicester Green Buffer report. There is also no conflict with ESD16, ESD 18 or Villages 1 and 2.
- 12.15 I have shown in the evidence that the appeal proposals constitute sustainable development. In respect of Paragraph 14 of the NPPF the appeal proposals are to be considered against the second bullet point of paragraph 14. There are no polices in the NPPF which indicate that development should be restricted. Permission should therefore be granted unless the adverse impacts significantly and demonstrably weigh against the benefits.
- 12.16 The material considerations set out in this evidence which in the planning balance weigh in favour of the appeal proposals are:
- The development constitutes sustainable development
  - Paragraph 14 of the NPPF is clear that development proposals that accord with the development plan should be approved without delay
  - Paragraph 49 of the NPPF states that where there is a lack of a five year supply of housing land then relevant policies for the supply of housing should not be considered up to date
  - Where policies are not up to date then paragraph 14 of the NPPF applies and planning permission should be granted unless the impacts significantly and demonstrably outweigh the benefits or unless there are specific polices in the NPPF which restrict development
  - Bicester is a main focus for development in the Authority
  - That Caversfield forms part of the Bicester urban area
  - There is less than a five year supply of housing available
  - There is an identified need for affordable houses
  - The encouragement within the March 2011 Ministerial Statement and the NPPF for LA's to grant permission for housing to encourage economic growth
  - The need to boost significantly the supply of housing set out in the NPPF
  - There is no harm to the RAF Bicester Conservation Area

- There is no, or at the worst minimal harm, to a designated heritage asset as a result of this development, it preserves the setting of the listed buildings
- The capacity of the landscape around the site to accept the proposed development together with the improvements in landscape resources
- There are clear benefits in respect of ecology that arise from the development proposals
- The lack of any constraint that cannot be accommodated by S106 obligations that would prohibit development now
- The lack of availability for housing on existing brownfield sites that requires the release of greenfield land

### **Supply of Housing Land**

- 12.17 The Local Authority acknowledge that they cannot show a five year supply of housing
- 12.18 The tables in my Appendix indicate a number of ways of calculating housing supply based on housing requirement figures using policy advice and based on the most up to date information. In respect of the appellants supply figure, there is between **1.74 to 1.98 years supply** taking account of the 20% buffer required by NPPF.
- 12.19 Utilising the Local Authority supply figures the years supply situation improves to between **2.59 years and 2.95 years supply** taking account of the 20% buffer.
- 12.20 The NPPF is clear that where there is not a five year supply of housing land the policies should not be considered to be up to date. In those circumstances planning permission should be granted provided that the development is not restricted by other policies in the NPPF.

### **Affordable Housing**

- 12.21 There is a significant under provision of affordable housing against the established need figure and an urgent need to provide affordable housing in Cherwell. Given the continuing shortfall in affordable housing provision, the provision of this affordable housing is a clear material consideration of weight that mitigates in favour of the site being granted planning permission.

### **Legal Agreement Requirements**

- 12.22 The appeal proposals seek to make full provision for those elements that are reasonably related to the proposed development.



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### **Other Material Considerations**

- 12.23 It is not considered that there are any issues that have been raised by local residents or other objectors that create material considerations that would indicate that permission should not be forthcoming on this site.

### **Planning Balance and Sustainable Development**

- 12.24 The evidence has shown that there would be limited harm to landscape and no harm to the conservation area.
- 12.25 In favour of the appeal proposals are a number of aspects. There is a need to rectify a significant shortfall in the five year supply of housing in the District. There is the significant shortfall in affordable housing provision in the District and the contribution this site will make to that shortfall in provision. The development as a whole would be well located in terms of proximity to the existing settlement and within easy reach of local services and facilities. Also of importance is that the NPPF seeks to boost significantly the supply of housing. Lastly it would have benefits to both the national and local economy. The evidence has considered the three dimensions of sustainable development and found that the proposals accord with these elements. The planning balance weighs in favour if a grant of permission on this site.

### **Conclusion**

- 12.26 The proposal which constitutes sustainable development falls to be considered against paragraph 14 of the NPPF. In a consideration of the overall balance relating to planning issues on this site, there is not a five year supply, the related housing policies are not to be considered to be up to date and therefore permission should be granted in accordance with paragraph 14 of the NPPF, the adverse impacts of the development proposals not being sufficient to significantly and demonstrably outweigh the benefits of the appeal proposals. In my view planning permission should be granted for this development.