



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

**AGAINST THE REFUSAL OF AN OUTLINE APPLICATION FOR THE CONSTRUCTION OF UP TO 200 NO. RESIDENTIAL UNITS WITH ASSOCIATED ACCESS, AMENITY SPACE AND ASSOCIATED WORKS BY CHERWELL DISTRICT COUNCIL**

**AT LAND AT SOUTH LODGE FRINGFORD ROAD, CAVERSFIELD, BICESTER, OXFORDSHRE**

**STATEMENT OF CASE**

Reference: BIR.4382 Date: 17 October 2013

**Pegasus Group**

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## 1. INTRODUCTION

1.1 Pegasus Group has been instructed by CALA Homes (the Appellant) to act on their behalf in respect of the appeal against the refusal of planning application 13/01056/OUT by Cherwell District Council (the LPA). This Statement of Case is submitted pursuant to Rule 6 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000.

1.2 The appeal is against Cherwell District Council's refusal of the following planning application:

*"OUTLINE – Up to 200 residential units, access, amenity space and associated works, including new village shop/ hall"*

1.3 The application was submitted on the 10<sup>th</sup> July 2013 and allocated the application reference 13/01056/OUT. The application submission itself 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.

1.4 This application (13/01056/OUT) was taken to Cherwell District Council planning committee on 3<sup>rd</sup> October 2013 with an officer recommendation to refuse the application. The planning committee agreed with 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.

1.5 A full list of the documents and drawings will be set out in the joint Statement of Common Ground between the Appellant and LPA. A separate Statement of Common Ground on highways matters will be prepared between the Appellant and Oxfordshire County Council as local highway authority.

1.6 This Statement of Case sets out the arguments which the Appellant intends to present in support of its case that planning permission for the appeal proposals should be granted. This Statement will describe areas of evidence to be presented and identifies documents and information which may be presented in support of the Appellant's case.

## **2. SITE DESCRIPTION**

- 2.1 The Appellant will describe the nature of the appeal site and its relationship to the surrounding area. Detailed reference will be given to the physical characteristics of the site, including on-site features, boundaries and adjacent land uses.
- 2.2 The Appellant will also make reference to the relationship between the appeal site, the local area, and the wider environment.
- 2.3 The appeal site is located to the western side of Fringford Road and extends to an area of 7.1 hectares. The site currently comprises of rough grassland within which there is a dwelling and associated outbuildings.
- 2.4 The site is bounded by mature woodland to the north west and eastern corner. Hedgerows line the south eastern and south western boundaries which abut Fringford Road, and an unnamed road respectively, with the exception of the south east corner, which runs behind the back gardens of four houses on Fringford Road. The northern boundary is more open to the fields beyond.
- 2.5 The existing access points to the site are via the unnamed road on the southern boundary, with a further access taken from Fringford Road positioned just north of the 4 no. Properties, opposite Skimmingdish Lane. There are no public footpaths in, adjacent or adjoining to the site though there is a public footpath which crosses Fringford Road in the vicinity of Springfield Road approximately 200m north of the site.
- 2.6 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.

**3. BACKGROUND TO THE APPEAL**

- 3.1 The planning background to the planning authority and consideration the planning application will be set out and commented upon. Particular reference will be made to any relevant planning applications, permissions or appeals that have taken place either on or in proximity to the appeal site that are considered to be relevant.
- 3.2 The application documents will be considered including the Report to Committee and where necessary relevant discussion will be provided.
- 3.3 Any subsequent events to the consideration of the application or other important appeals and judgements may be set out with consideration of the application or other important appeals and judgements may be set out with a consideration of their relevance to the appeal proposals.

#### 4. PLANNING POLICY

- 4.1 Relevant planning policy and guidance will be described at a national, regional and local level. This will include a consideration of:
- a) The Localism Act;
  - b) Planning for Growth – Written Ministerial Statement 23 March 2011;
  - c) Steve Quartermain Letter of 31 March 2011;
  - d) Laying the Foundations (November 2011);
  - e) National Planning Policy Framework;
  - f) Written Ministerial Statement, September 2012;
  - g) Community Infrastructure Levy Regulations 2010;
- 4.2 In each case, relevant passages to the appeal proposals and the case set out below will be identified.

##### *The Development Plan*

- 4.3 The current position regarding the Development Plan will be set out. It will be noted that the South East RS, adopted in May 2006 set out housing figures of 13,400 dwellings 2006 to 2026, but that the relevant parts of that document that apply to the appeal site have been revoked in accordance with the Hunston Judgement. The figures do not accord with those which meet current need and can no longer be relied upon.

##### *The Cherwell Local Plan*

- 4.4 Relevant policies saved beyond September 2007 of the Adopted Cherwell District Local Plan (1996) will be referred to. Of particular relevance are Policies H5, H15, H18, TR1, R12, C1, C4, C7, C8 and ENV1. However, it should be noted that 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. Consideration will be given to the extent to which the plan is out of date given that housing policies extended to 2011.
- 4.5 It will be set out that the plan is of little weight in respect of this appeal and that the plan is out of date in the context of paragraph 14 of the NPPF.

##### *The Non-Statutory Cherwell Local Plan*

- 4.6 Relevant policies H1A, H3, H4, H7, H17, H19, TR3, TR4, TR5, TR11, R8, R9, R10a, R11, EN1, EN23, EN30, EN34, EN35, D2 and OA1 of the Non-Statutory Cherwell Local Plan (2011) will be considered and it will be set out that the Non-Statutory Local Plan is of little weight in respect of this appeal.

*Emerging Cherwell Local Plan*

- 4.7 The current position regarding the emerging Local Plan will be considered and it will be shown that little weight can be attributed to this plan at the appeal. In particular, policies PSD1, BSC1, BSC2, BSC3, BSC4, BSC11, ESD3, ESD6, ESD7, ESD10, ESD13, ESD15, ESD16, ESD18, INF1 and Policy Villages 1 and 2 of the Proposed Submission (August 2012) and Focussed Consultation (March 2013), will be considered as they are referred to in the reasons for refusal.

*Supplementary Planning Document and Supplementary Planning Guidance*

- 4.8 Where applicable reference will be made to relevant SPDs and SPGs, including the Bicester Masterplan SPD.
- 4.9 References will be made to the 2008 Based Subnational Household Projections and also the 2011 Based Interim Subnational Household Projections. It will be shown that the 2008 based projections set out a growth of 16,003 households 2006 to 2031. In this context reference will also be made to the Local Authority SHMA Review and Update 2012. It will also be shown that the 2011 Based Interim Subnational Household Projections set out a growth of 6,884 households 2011 to 2021.



## 5. APPELLANT'S CASE

5.1 The Appellant considers the following issues:

- Accordance with the policies of the Development Plan and National Policy;

In particular reference will be made to the fact that the appeal proposals fall to be considered under paragraph 14 of the NPPF and the second bullet point of that paragraph. It will be demonstrated that the Development Plan is out of date, for two reasons: the plan expired in 2001; and in accordance with paragraph 49 of the NPPF a five year land supply cannot be demonstrated therefore relevant policies within the Cherwell Local Plan should not be considered up to date.

The appeal proposals will be tested against all relevant saved policies of the Cherwell District Local Plan in respect of the issues identified.

Reference will also be made to any relevant appeals and judgements. In particular, a press release confirming that the Council will not be challenging the recent appeal decisions in Cherwell, on the basis that there are no errors of law in coming to the conclusion that there is not a five year land supply in the District, will be referred to.

- Housing Land Requirements and Supply;

The appropriate requirement figure will be identified in order to calculate the five year supply. It will be shown that with the revocation of the RS, the fact that the Local Plan is out of date (on the basis that: the plan only deals with housing provision to 2011, it is inconsistent with the NPPF; and the authority does not have a five year land supply) and that the emerging Local Plan is of little weight. The full objectively assessed minimum requirements will be those set out in the 2011 Based Subnational Household Projections. The household projections will be converted to a dwelling figure for the purposes of considering a five year land supply against.

A consideration as to whether a 5% or 20% buffer should be added to the five year supply. It will set out that 20% buffer should be added due to a persistent rate of under delivery in the preceding years.

It will also be shown that the Sedgefield Approach should be utilised in respect of identifying and meeting the shortfall to date, that is within the five year period to 2018. This, Sedgefield Approach, is to be followed above the Liverpool or residual approach.

A critical consideration of the Local Authority housing supply figures will be undertaken. It will be shown that deliverable supply is not as great as suggested by the Authority. In particular a number of large sites will be considered, the likelihood of all permissions being

delivered in the five year period will be considered, a consideration of windfall and if compelling evidence has been provided an assessment of the evidence will be undertaken.

It will be concluded that a five year supply cannot be identified and that there is a significant shortfall in that supply. In that context, paragraph 49 of the NPPF applies “relevant policies for the supply of housing land should not be considered up to date” and therefore the second bullet point of paragraph 14 relating to decision making applies “permission should be granted” unless the caveats then set out would demonstrably outweigh the shortfall or specific policies restricting development apply.

An assessment of the affordable housing position in the District will be undertaken and it will be shown that there is a significant shortfall in affordable housing provision against need and that this is a further element to be put into the planning balance in favour of allowing the appeal.

- Landscape and Visual considerations;

The Appellant will consider the landscape setting and visual amenity implications of the development proposal.

- Proposed Access arrangements;

The Appellant will consider the adequacy of the proposed access arrangements with particular regard to the safety and convenience of highway users. The Appellant will demonstrate that the site can be accessed by a range of modes of transport and as such there is not a reliance on the private car.

- Setting of Conservation Area and Listed Building;

The Appellant will assess the contribution that the appeal site makes to the significance of the RAF Bicester Conservation Area and the listed buildings in the vicinity, and will demonstrate that the proposed development would not cause any harm to the significance of any of these heritage assets

- Infrastructure Provision/Legal agreements/Planning obligations;

A consideration of the applicability of the planning obligations to the CIL regulations will be set out to establish compatibility with the requirements.

The Appellant will present the Inspector with a legal agreement that provides for a variety of financial and other contributions that are considered necessary in order for development to take place and which are considered appropriate.

- Other material considerations.

All other material considerations will be taken into account including those raised by third parties. The relevance or otherwise of the material considerations will be explored in the evidence.

- 5.2 In summary, it will be established that the proposal is in conformity with the requirements of the National Planning Policy Framework. It will be shown that consistent with the NPPF, paragraph 14, there should be a presumption in favour of sustainable development. It is understood that reference to policies C28 and C30 in Reason for Refusal 1 have been included in error as the application for development was made in outline and are not therefore relevant. Confirmation has been sought from the LPA on this matter.

#### *Planning Balance*

- 5.3 Finally, the planning balance will be presented identifying that, in accordance with the test in Paragraph 14 of the NPPF, the adverse impacts of allowing the development would not significantly and demonstrably outweigh the benefits.
- 5.4 The Appellant will consider adverse impacts weighing against the development;
- specifically, adverse impacts are identified in respect of transport and landscape matters, which can for the most part, be mitigated against.
- 5.5 The Appellant will consider the benefits the proposal would deliver:
- contribute to the Council's significant shortfall in the five year land supply;
  - provide much needed market and 35% affordable housing;
  - a new village shop/ hall;
  - as demonstrated by the ecological assessment undertaken, there will be biodiversity enhancement;
  - as demonstrated by the Flood Risk Assessment, SUDS will provide a betterment to the existing flood risk position;

- sustainable development by delivering economic, social and environmental enhancements.

5.6 Consideration of the above will lead the Appellant to conclude that the planning balance is in favour of the proposed development being granted planning permission.

5.7 The appellant reserves the right to amend, change, alter, add or remove any of the elements set out in the Appellant's case to respond to the publication of documents, figures, policy etc. subsequent to the submission of this Statement of Case.

**6. CONCLUSION**

- 6.1 The conclusion that will be reached by the Appellant is that the appeal proposal constitutes an entirely suitable and sustainable location for this residential proposal. It will be concluded that the provision of residential development is in accordance with paragraph 14 of NPPF whereby the benefits of the development would outweigh adverse impacts when assessed against the framework as it would contribute to meeting the District's 5 year housing supply as well as meeting local housing needs.
- 6.2 The Appellant will contend that permission should therefore be granted and the Inspector is therefore respectfully requested to allow the appeal.

## 7. DOCUMENTS

7.1 The following documents are likely to be referred to at the Inquiry:

All relevant Government Circulars;

National Planning Policy Framework;

Planning for Growth Written Ministerial Statement (23<sup>rd</sup> March 2011);

Laying the Foundations (November 2011);

South East Regional Plan (May 2009);

Cherwell District Local Plan (1996) (saved policies September 2007);

Non-Statutory Cherwell Local Plan (2011);

Emerging Cherwell Local Plan – Proposed Submission (August 2012);

Emerging Cherwell Local Plan - Focussed Consultation (March 2013);

Green Buffer Report – March 2013;

Bicester Masterplan;

The Oxfordshire Wildlife and Landscape Study 2004;

Cherwell Landscape Character Assessment 1994;

Guidelines for Landscape and Visual Impact Assessment Third Edition – April 2013;

Guidance on Transport Assessment (2007);

Manual For Streets (2007);

Manual For Streets 2 (2010);

TD9/93 Highway Link Design (Amendment No.1) – (2002) and the DMRB more generally;

Oxfordshire Local Transport Plan 2011-2030 – Revised April 2012;

Oxfordshire County Council's 'Transport for New Developments';

Oxfordshire County Council's 'Residential Road Design Guide';

Good Practice Guidelines, Delivering Travel Plans through Planning Process, published by DfT (2009);

The Essential Guide to Travel Planning, published by DfT (2008);

Making Residential Travel Plans Work; Guidelines for New Development, published by DfT (2005); Historic Environment Planning Practice Guide;

Draft online National Planning Practice Guidance;

Conservation Principles, Policies and Guidance (English Heritage 2008);

Understanding Place: Historic Area Assessments: Principles and Practice (English Heritage 2010);

Understanding Place: Conservation Area Assessments Designation, Appraisal and Management (English Heritage 2011);

The Setting of Heritage Assets (English Heritage 2011);

Strategic Housing Land Availability Assessment - October 2013;

Strategic Housing Market Assessment – June 2009;

Strategic Housing Market Assessment – Update 2012;

AMRs from 2006 – Affordable Housing and Housing Extracts;

Inspector's Report to BANES Core Strategy;

Cherwell Appeals Statement of Common Ground;

Other relevant LDF evidence base documents;

Relevant Household Population Projections;

Relevant Housing Land Supply and Trajectory information;

Relevant Committee Reports and Minutes;

Relevant Appeal Decisions; including

- Bloxham Road, Banbury Appeal Decision APP/C3105/A/12/2178521
- Barford Road, Banbury Appeal Decision APP/C3105/A/13/2189896
- Milton Road, Bloxham Appeal Decision APP/C3105/A/12/2189191
- Hook Norton Appeal Decision APP//C3105/A/12/2184094
- Kidlington Appeal Decision APP/C3105/A/13/2192506
- Andover Appeal Decision APP/X3025/A/10/2140962
- Bude Appeal Decision APP/D0840/A/09/2115945
- Tenbury Wells Appeal Decision APP/J1860/A/13/2194904
- Wotton Bassett Appeal Decision APP/Y3940/A/10/2141906
- Tetbury Appeal Decision APP/F1610/A/11/2165778
- Honeybourne Appeal Decision APP/H1840/A/12/2171339

- Sapcote Appeal Decision APP/T2405/A/11/2164413
- Markfield Appeal Decision APP/K2420/A/12/2180699
- Shottery Appeal Decision APP/J3720/A/11/2163206
- Torquay Appeal Decision APP/X1165/A/11/2165846
- Ashby-de-la-Zouch Appeal Decision APP/G2435/A/13/2192131
- Morton in Marsh Appeal Decision APP/F1610/A/10/2130320
- Moat House Farm Appeal Decision APP/Q4625/A/11/2157515
- Chapel-en-le-Frith Appeal Decision APP/H1033/A/11/2159038
- Rushwick Appeal Decision APP/J1860/A/12/2187934
- Sandbach Appeal Decision APP/R0660/A/13/2189733

Relevant Judgements.

- Hunston Judgement [2013] EWHC 2678 (Admin)
- Tewkesbury Judgement [2013] EWHC 286 (Admin)
- Colman Judgement [2013] EWHC 1138 (Admin)
- Shottery Judgement [2013] EWHC 2074 (Admin)
- Tesco V Dundee Judgement
- Bedford BC Judgement [2012] EWHC 4344 (Admin)
- East Northants Judgement [2013] EWHC 473 (Admin)

Other Government Guidance, statements and correspondence as necessary, relevant case law and local authority Committee Report and Minutes in respect of local planning policies and other matters.

7.2 The Appellant reserves the right to add to or amend this list of documents as necessary.