

Town and Country Planning Act 1990 –Section 78

Town and Country Planning (Development Management Procedure) (England)

Order 2013

Town and Country Planning (Hearings Procedure) (England) Rules 2000

Appeal by Gladman Developments Limited

Land off White Post Road,

Banbury

Cherwell District Council

**Proposed development of up to 280 dwellings with landscaping, open
space, highway improvements and associated works**

LPA Reference 15/01326/OUT

Statement of Case



March 2017

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1 EXECUTIVE SUMMARY

1.1 Summary of Case

1.1.1 This Hearing Statement relates to an appeal against Cherwell District Council's (CDC or 'the Council') failure to determine the appeal proposals within the agreed extension to the determination of the application of up to 280 dwellings on land off White Post Road, Banbury. The following statements are made in respect of the appeal proposals:

- i. The appeal proposals form part of the Cherwell Local Plan's allocation "Banbury 17", for up to 1,345 dwellings. The proposals have been assessed as being in conformity with the adopted Cherwell Local Plan (2011-2031) by the Council's Officers in their report to planning committee on 4th August 2016 (CD 5.3).
- ii. §14 of the NPPF directs that, where development proposals are in accordance with the development plan, decision takers should approve the proposals without delay.
- iii. The main issue for this Appeal is that both CDC and Oxfordshire County Council (OCC) are seeking to impose a mechanism /requirement whereby funds would have to be provided for a road across the site, even if the planning permission is not implemented, in order to resolve highway issues for the adjoining site. The Appellant is happy to commit to delivery triggers for the road once the planning permission has been implemented. However, mitigation measures, regardless of implementation, are considered by the Appellant not to accord with any of the tests for conditions or obligations.
- iv. The County Council have also provided limited justification for their contributions sought towards education infrastructure. The Appellant reserves its position in relation to these requested contributions until the County Council has provided its detailed justification to the hearing.
- v. The development proposals will deliver both market and affordable housing in this sustainable location, which will support the Government objective to "*boost significantly the supply of housing*", in an area where there is affordable housing need.
- vi. There are significant economic benefits associated with the proposal, including increased Council Tax revenue and receipt of New Homes Bonus payments to further invest back into the community, construction and investment, and significant household expenditure annually following completion of the development.
- vii. The proposals constitute sustainable development in the context of the three dimensions of sustainable development; environmental, social and economic. There are no significant demonstrable adverse impacts as a consequence of the proposal.
- viii. The site's development as proposed is both suitable and sustainable and the appeal should be allowed in accordance with §14 of the NPPF.
- ix. The development proposals are in accordance with the Adopted Development Plan and there are no material considerations that indicate that the development should be determined otherwise, having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

2 INTRODUCTION

2.1 Context

2.1.1 This is Gladman Developments Limited's (hereafter referred to as the Appellant) Full Statement of Case against the failure of Cherwell District Council (CDC) to determine an outline planning application for:

Outline Planning Application for up to 280 residential dwellings (including 30% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from White Post Road and associated ancillary works. All matters to be reserved with the exception of the main site access, on land west of White Post Road, Banbury.

2.1.2 The planning application for the proposed development was submitted to CDC on 13th July 2015 and registered on the 14th July 2015 (App ref: 15/01326/OUT). The planning application included a comprehensive suite of technical reports in accordance with the Council's planning application validation requirements, including an Environmental Statement (ES).

2.1.3 The Appellant has engaged in constructive discussion with the Council and OCC during the consideration of the application.

2.1.4 The planning application was recommended for approval by the Case Officer ahead of the committee meeting on the 19th of May 2016 (CD 5.1). However, two days prior to the determination, an objection was lodged by Oxfordshire County Council (CD 5.2). The County Council's objection related to:

- a) Uncertainty in securing the spine road across the wider Banbury 17 site, as required by the Cherwell Local Plan as well as OCC's Local Transport Plan 4.
- b) Mitigation of this application's education impact is dependent on the delivery of the primary school proposed on the adjacent application site, which is outside of the applicant's control.
- c) Uncertainty in securing adequate pedestrian/cycle links across the wider Banbury 17 site, as required by the Cherwell Local Plan.
- d) Setting a precedent for contravening masterplan policy requirements on allocations with multiple application sites.
- e) Both applications should be considered at the same planning committee.

2.1.5 The appellant considered that OCC had had plenty of time to raise these matters previously and to clarify what, if any, further information they required, but instead, had chosen to wait a number of months and then object two days prior to the committee meeting.

2.1.6 The officer's recommendation was then changed to deferral in the update report to committee. Following the application's deferral by elected members, the Appellant met with representatives from the District Council, the County Council and the Applicants on the adjacent parcel of the allocation. At this meeting, the County Council provided clarification of the issues that they wanted to be addressed. It was agreed that the parties would meet again on the 14th June to see if the matters had been resolved, to enable the planning applications to be determined at committee within the month of July 2016.

2.1.7 At the August committee meeting, the County Council confirmed it had "no objection" (CD 5.3 Pg 149) but subject to:

- A suitable mechanism within a planning obligation for the delivery of the link road; and
- Pro-rata funding towards the costs of the link road.

2.1.8 The Committee resolved to grant permission in accordance with an amended resolution (Appendix 2). Despite numerous meetings and discussions with the Council and OCC, a resolution on this matter has not been forthcoming, hence the Appellant submitting this appeal.

2.2 Justification for a Hearing

2.2.1 In accordance with Annexe K of the 'Procedural Guide Planning Appeal – England 5th August 2016, the planning issues raised can be clearly understood from the appeal documents and a site inspection, the issues are not complex and the Inspector is not likely to need to test the evidence by cross examination and it will be clear from the Statements where there are differences of opinion and the Inspector will be able to use these alongside his/her own judgement to explore at a hearing any matters warranting further explanation.

2.2.2 It is on this basis that the Appellant believes the most appropriate procedure for the appeal is a hearing. It is suggested that a one day hearing is arranged, which allows sufficient time for the relevant issues to be discussed and time for a site visit. An expansion of these reasons for a hearing is attached at Appendix 3.

2.3 Appendices

2.3.1 A draft Statement of Common Ground is provided at **Appendix 1**. It should be noted that this is drafted to include the maximum extent of matters upon which it might be possible to achieve agreement. Past experience indicates that after discussion, the Council will consider themselves unable to agree a number of the matters included within the draft; it should therefore be treated as a draft document at this stage and not relied upon in assessing the appropriate Inquiry procedure. It is anticipated that a separate SoCG can be prepared with the highway authority, Oxfordshire County Council (OCC), in due course.

- 2.3.2 **Appendix 3** sets out the justification for requesting the Hearing procedure.
- 2.3.3 **Appendix 4** provides draft Heads of Terms for a s106 Unilateral Undertaking. The Appellant will engage in the necessary dialogue with CDC and OCC in the run up to the Hearing, following the guidance and deadlines set out in Annex N of the PINS Procedural Guide.
- 2.3.4 Subsequent appendices are as indicated on the list of Appendices on page 3 of this statement and cross-referenced within this statement.

3 THE PROPOSAL

3.1 Site Description

3.1.1 This appeal seeks Outline Planning Permission with all matters reserved save for access for a residential development comprising:

- Up to 280 dwellings, of which 30% will be affordable homes.
- Highway and associated infrastructure works, including pedestrian links, and drainage attenuation.
- Significant areas of formal and informal public open space including a formal play area.
- Landscaping (including a nature conservation area, proposed wildflower meadow and woodland buffer)
- Commuted sums for necessary community infrastructure (e.g. Education & Transport)

3.2 The Appeal Site

3.2.1 The proposed application site is located to the west of White Post Road, Banbury and comprises three agricultural fields with a number of mature trees and hedgerows which denote the boundaries of each of the fields. The site is presently in use predominantly as agricultural land and has an area of approximately 17.53 hectares (43 acres).

3.2.2 The eastern edge of the site is bound by White Post Road, with the south-eastern boundaries being formed around Banbury Cricket Club. The southern boundary is defined by Wykham Lane, with existing allotments falling outside the site boundary to the south-west of the site. The northern boundary abuts existing residential development on Sycamore Drive. The western boundary is defined by a hedgerow interspersed with a number of mature trees, beyond which are agricultural fields. The Access into the site is proposed via White Post Road.

3.3 Plans for Approval

3.3.1 The drawings for which planning permission is sought are as follows:

Drawing ref	Drawing Name
5713/ASP01	Location Plan

1361/22 Rev E

Proposed Site Accesses and Highway Improvements

3.3.2 The illustrative drawings submitted for consideration include:

Drawing Ref	Drawing Name
5713/ASP03 Rev H	Illustrative Framework Plan
JJG0043/50H	Joint Masterplan

3.4 Site Suitability and Sustainability

3.4.1 Technical work submitted with the application alongside the Local Plan allocation demonstrates that the site represents a suitable location for residential development lying on the edge of Banbury (one of the two main towns in Cherwell), which is sustainably located in relation to the settlement's amenities, shops, and services.

3.4.2 The Officer's Report to committee confirms that the *"amount, location and type of development proposed on the site is in accordance with the provisions of Policy Banbury 17 such that the principle of residential development on this part of Banbury 17 is acceptable and in accordance with the development plan. As a consequence, the principle of residential development on the site is established and it is now the detail of the proposals that are for consideration as part of this application."*

3.5 Relevant Planning History

3.5.1 The site itself does not have any relevant planning history. However, the site forms part of the Banbury 17 allocation within the Cherwell Local Plan (2011-2031), for the delivery of 1,345 dwellings. An application for 145 dwellings was granted outline approval at appeal in June 2012. A subsequent reserved matters approval was granted in November 2014.

3.5.2 The site to the west of Banbury 17, Banbury 16, was allocated for 150 dwellings in the Cherwell Local Plan (2011-2031). An outline application (14/01188/OUT) has subsequently been approved for up to 350 dwellings, associated open space and associated infrastructure.

3.5.3 An application for 1,000 dwellings (14/01932/OUT), directly adjacent to this scheme, is subject to a resolution to grant planning permission subject to signing of the S106. The resolution was passed at the same committee meeting as the appeal site. An illustrative masterplan has been prepared by the Appellant and the adjacent landowner, to ensure the proposed access and general layout arrangements have taken the opportunities available to deliver sustainable, high quality urban design.

4 THE DEVELOPMENT PLAN

4.1 Introduction

4.1.1 The Development Plan for this site consists of the Cherwell Local Plan (2011-2031), adopted on the 20th July 2015. The site forms the eastern section of the strategic site allocation Banbury 17 as contained in the plan.

4.2 The Cherwell Local Plan (2011-2031)

4.2.1 The Cherwell Local Plan, adopted July 2015, sets the strategic framework for Cherwell District. Policy BSC 1 sets out the District wide housing distribution, outlining provision of 22,840 dwellings between 1 April 2011 and 31 March 2031 (1142 dwellings per annum). The site, which forms the eastern parcel of the Banbury 17 housing allocation (see Appendix 5), will provide up to 280 dwellings towards the overall housing requirement.

4.2.2 Banbury 17 makes provision of up to 1,345 dwellings to the south east of Banbury. 145 dwellings have already been approved, to the north west of the allocation (Outline App ref: 12/00080/OUT, Reserved Matters App Ref: 14/01225/REM). It is clear from the Officer's Report to committee that the appeal site is in compliance with policy Banbury 17 (see Officer's Report §7.1, CD 5.1 and CD 5.3). Policy Banbury 17 is attached at Appendix 5.

4.2.3 The delivery of allocations such as Banbury 17 is essential for Cherwell to fulfil their requirement to deliver 22,840 dwellings over the plan period and to maintain their 5 year Housing Land Supply (HLS). Paragraph 1.27 of the adopted Local Plan (and B.95), identifies the need for a review of the plan within two years of adoption in order to plan to meet the unmet needs of Oxford City. Cherwell have agreed to deliver a further 4,400 dwellings to meet these needs and a review is underway.

4.2.4 Policy PSD1: Presumption in Favour of Sustainable Development outlines the aims of the Framework at §14. The policy identifies that where planning applications accord with the policies of the Local Plan (or any other part of the statutory Development Plan) will be approved without delay unless material considerations indicate otherwise. The proposals are in accordance with the development plan (when read as a whole).

4.2.5 Policy BSC2 states that new development in Cherwell is expected to make effective and efficient use of land with new development providing at least 30 dwellings per hectare on net developable areas.

4.2.6 This application site proposes 32.5 dwellings per hectare and accords with this policy.

4.2.7 Policy BSC3: Affordable Housing identifies that in Banbury and Bicester, all developments that include 10 or more dwellings will be expected to provide at least 30% affordable housing. This application provides a policy compliant level of affordable units.

4.2.8 The Appellant is not anticipating any landscape and visual harms to be alleged by the Council, given the Officer's comments in the committee report:

"...the proposals would result in the loss of open countryside which is inherently harmful to local landscape character does not amount to environmental sustainability given that it is a finite resource. However, the impact of the development on the wider landscape would not be significant having regard to the limited height of the proposed buildings on site, the site's urban fringe location, flat topography and the site's modest natural landscape value. Whilst the proposals would inevitably give rise to a degree of further actual and perceived coalescence between Bodicote and Banbury, this would not be significant in the context of the existing relationship between the two settlements and, in any event, the principle of it has already been accepted by the Council in allocating Banbury 17 for development. The proposals as submitted have taken the opportunities available to mitigate their impact on the local landscape in the manner required by the Policy Banbury 17 and as such officers are satisfied that the proposals are acceptable in this regard."

4.2.9 Policy ESD3 states that new residential development will be expected to incorporate sustainable design and construction technology to achieve zero carbon development.

4.2.10 The application advocates the use of sustainable build techniques in line with the most recent building regulations. The proposals therefore accord with Policy ESD3.

4.2.11 Policy ESD6 states that the Council will manage and reduce flood risk in the district through using a sequential approach to developing. Site specific flood assessment are required to accompany development proposals in certain situations.

4.2.12 A flood risk assessment has been submitted as part of this appeal, which concludes that the development will be low risk in respect of flooding and there should be no impediment to development on flood risk grounds.

4.2.13 The appeal proposals are in compliance with Policy ESD6.

4.2.14 Policy ESD10 states the need for the protection and enhancement of biodiversity and the natural environment. The application is accompanied by an Ecological Appraisal, Arboricultural Report and Badger Survey Report which outline the existing ecology of the proposed site.

- 4.2.15 The accompanying tree retention plan included within the Arboricultural Report demonstrates that the majority of mature trees and hedgerows on site will be retained. Significant areas of planting will be provided to offer green infrastructure, ecology and wildlife benefits. Habitat creation measures to ensure biodiversity is retained with enhanced hedgerows and green corridors. This will add to the ecological potential of the site, resulting in an overall net biodiversity gain.
- 4.2.16 This application complies with Policy ESD10.
- 4.2.17 Policy ESD13 aims to secure the enhancement of the character and appearance of the landscape, particularly in urban fringe locations, through the restorations, management or enhancement of existing landscapes, features or habitats and where appropriate the creation of new ones, including the planting of woodlands, trees and hedgerows.
- 4.2.18 The proposal includes a significant amount of open space to the south the application site, with substantial landscape buffers along the eastern and western boundary. The Salt Way public right of way runs to the north of the site, the proposals incorporate a landscaping buffer adding to the width of this local asset.
- 4.2.19 The development is therefore in compliance with Local Plan policy ESD13 of the adopted Local Plan Part 1.
- 4.2.20 Policy ESD15 states that proposals for development on the edge of the built up area must be carefully designed and landscaped to soften the build edge of the development and assimilate it into the landscape by providing green infrastructure that will positively contribute to the rural setting of the towns.
- 4.2.21 The proposals are part of an allocation which forms the south-western extension to Banbury. The open space and sports pitches have been located towards the south east of the site to soften the edge of the settlement and prevent coalescence with Bodicote.
- 4.2.22 The proposals are in accordance with this Policy.
- 4.2.23 Policy ESD16 states new development will be expected to complement and enhance the character of its context through sensitive siting, layout and high quality design.
- 4.2.24 The site itself is not the subject of any formal historic or environmental designations and it is not situated within a conservation area. As demonstrated in the submitted Heritage Assessment that the majority of the heritage assets within 1km of the site will be unaffected by the proposed development due to their location within the compact village of Bodicote.

- 4.2.25 The appeal site is in compliance with Policy ESD16.
- 4.2.26 Policy SLE4 states that new development will be required to provide financial contributions to mitigate the transport impacts of development and where reasonable should facilitate the use of sustainable modes of transport.
- 4.2.27 The site is in a sustainable location with access to various local facilities within walking and cycling distance, including a bus stop which provides frequent access to Banbury Town Centre. This application is accompanied by a Transport Assessment and a Travel Plan which will promote sustainable patterns of travel and identify routes for walking and cycling to key services and facilities within the area.

4.3 Accordance with the Cherwell Local Plan 2011-2031

- 4.3.1 The development proposal accords with the objectives of the Local Plan which seeks to provide a continuous supply of housing land to meet strategic requirements in sustainable locations. The site is considered to be situated in a sustainable location and will contribute towards the housing needs of Banbury and Cherwell as a whole, and in particular meeting objectives set out in Policy BSC1: District Wide Housing Distribution.

- 4.3.2 The conclusions of the Officer's Report to Committee state:

"The principle of residential development on this site as part of a wider urban extension on the allocated Banbury 17 site has been established and it is the detail of elements of the scheme that is now for consideration. The proposals as submitted would make a very significant contribution towards meeting the housing needs of the District and ensuring the Council's housing delivery trajectory in the Local Plan remains on target. For reasons set out in this report, subject to the recommended conditions and covenants in a legal agreement, the potential for significant adverse impacts arising from the development can be mitigated to an acceptable level such that the proposals amount to sustainable development in accordance with the provisions and requirements of Policy Banbury 17 and other relevant development plan policies. In addition to being found in general accordance with the development plan, the proposals are also considered to be consistent with Government guidance set out in the NPPF which establishes a presumption in favour of sustainable development. Officers consider there to be no other material planning considerations of significance that indicate determining the application otherwise in accordance with the development. As a consequence, officers recommend that Committee resolves to grant outline planning permission."

- 4.3.3 The proposals are in accordance with the development plan, make a positive and significant contribution to the District's five year housing land supply and have been considered by the Council's planning officers to represent sustainable development, as set out in the NPPF.

5 NATIONAL PLANNING POLICY FRAMEWORK AND GUIDANCE

5.1 National Planning Policy Framework

5.1.1 The Planning Statement submitted with the application (CD 1.8) states in detail the relevant parts of the framework. The OR (CD 5.1) also addresses the key elements of the framework in the context of the proposal. To avoid unnecessary repetition these documents are relied upon to provide details of the relevant parts of the Framework.

5.1.2 In summary, the proposals comply with the National Planning Policy Framework. It enacts a presumption in favour of sustainable development, seen as the 'golden thread' of the framework, as set out in §14. There are no policies applicable to the appeal site indicating that development should be restricted in accordance with footnote 9 of §14. §14 is clear that for decision taking, the presumption in favour of sustainable development means *"approving development proposals that accord with the development plan without delay."*

5.1.3 §6 of the Framework clearly states that the role of planning in contributing to the achievement of 'sustainable development'. Development proposals must be assessed against §18 to 219 of the Framework. Such an assessment should be read in the context of the social, economic and environmental dimensions set out in §7 of the framework.

5.2 Planning Practice Guidance

5.2.1 It is considered that the PPG reinforces the approach in the Framework, the planning case and the planning balance advanced for this appeal. Where necessary, this Statement refers to relevant sections of the PPG.

5.3 The Housing White Paper – February 2017

5.3.1 The Housing White Paper, published February 2017, sets out measures from the Government to ensure that housing is delivered faster than it is currently.

Tackling unnecessary delays caused by planning conditions

5.3.2 The White Paper states:

"We will tackle unnecessary delays caused by planning conditions by taking forward proposals, through the Neighbourhood Planning Bill, to allow the Secretary of State to prohibit conditions that do not meet the national policy tests, and to ensure that pre-commencement conditions can only be used with the agreement of the applicant."

5.3.3 It is clear that the Government is committed to omitting conditions that do not meet the national policy tests, and this is particularly pertinent to the development the subject of this appeal.

Housing delivery

5.3.4 The Housing White Paper sets out a wealth of potential measures for building homes faster. These measures include reducing the implementation of permissions to 2 years from the default period of 3 years, simplifying developer contributions and by diversifying the market.

5.3.5 The Government is also introducing measures to ensure that local authorities and wider interests are held accountable for their role in ensuring new homes are delivered in their area. The test is designed to highlight whether the number of new homes being built is below target. Where under delivery is identified, the Government proposes a tiered approach to addressing the situation that would be set out in national policy and guidance, starting with an analysis of the causes so that appropriate action can be taken:

- From November 2017, if delivery of housing falls below 95% of the authority's annual housing requirement, we propose that the local authority should publish an action plan
- From November 2017, if delivery of housing falls below 85% of the housing requirement, authorities would in addition be expected to plan for a 20% buffer on their five-year land supply
- From November 2018, if delivery of housing falls below 25% of the housing requirement, the presumption in favour of sustainable development in the National Planning Policy Framework would apply automatically
- From November 2019, if delivery falls below 45% the presumption would apply.
- From November 2020, if delivery falls below 65% the presumption would apply.

5.3.6 The delivery of the appeal site is crucial for the Council to deliver their housing requirement, and Oxford City's unmet need. If not, it is likely that the Council will be caught by the new tests set out by the Government.

6 CHRONOLOGY

6.1 Timescale of events leading up to Committee

6.1.1 The Application was recommended for approval by the Case Officer in advance of the planning committee meeting to be held on the 19th May 2016. However, two days prior to the committee meeting, Oxfordshire County Council lodged an objection, as detailed in section 1.1 of this Statement of Case.

6.1.2 At the meeting of the 24th May, it was agreed that the outstanding issues, as requested by OCC, were as follows (as included in an email from Matt Parry, on the 25th May 2016, CD 4.33):

- i. Gladman to provide a revised build-out trajectory for the site to CDC and OCC by the 30th May 2016.
- ii. By the 6th June 2016, OCC were to calculate the timing of the need for the new primary school (and potentially the secondary school land) based on the trajectories as submitted by Gladman and Gallagher.
- iii. By the 10th June, Gladman and Gallagher to submit a newly entitled Comprehensive Masterplan based on the existing Illustrative Framework Plan together with a proposed Infrastructure Programme for the whole Banbury 17 site taking account of the education information provided by OCC.
- iv. 14th of June meeting between all relevant parties to discuss progress, including CDC/OCC commenting on the proposed Infrastructure Programme. At that meeting it became clear that there were still matters, that particularly OCC were not happy with, for this and the adjoining site. It was also apparent that the outstanding concerns were not likely to be resolved any time soon and there were also S.106 matters that were also not likely to be agreed.
- v. It was also apparent that OCC's wish for both applications to be considered together made the prospect of a consideration at a committee meeting in the short term unlikely.

6.1.3 In response to these points, Gladman and Gallagher worked together to provide the information that the Council was seeking. These documents can be found at CD 4.34 (trajectory information) and CD 2.21 (updated masterplan).

6.1.4 §6.29 of the Officer's Report to committee (19th May 2016) clearly demonstrates that the District Council considered the highways impacts associated with delivery of the site to be acceptable with appropriate mitigation which would be secured through proposed conditions and through covenants within a planning obligation without the subsequent provisions/complications that OCC have sought to add. The Officer concluded:

"On the issue of transport impacts, officers have carefully considered the implications of the scheme having regard to the requirements of Policies Banbury

17 and SLE4 of LPP1, Government guidance in the NPPF/PPG and advice from highway officers at the LHA. In conclusion, subject to the conditions and covenants referred to above controlling the detailed access and spine road, the timing of the completion of the spine road as well as financial contributions towards off-site highway improvements, officers have found the proposals to be acceptable given that the adverse transport impacts of development on this site are not significant subject to securing the necessary mitigation. Furthermore, officers are satisfied that the mechanism by which the spine road detail would be assessed is appropriate and that subject to the controls proposed, the spine road would be delivered in a suitably timely manner in the interests of successfully facilitating development across the whole of the Banbury 17 site without having unacceptable transport impacts."

6.2 Committee Meeting

6.2.1 By the time the application did go to planning committee in August 2016, OCC had updated their position (see section 8), as follows:

"Either, imposition of a ceiling on the amount of development that can take place on the Banbury 17 site through use of additional planning condition(s) and/or vis planning obligation; Or securing delivery of the completed spine road at an appropriate stage through a mechanism similar to that set out in the OCC's consultation response."

6.2.2 Following the circulation of the committee report, a further change was communicated to the Appellant on the 29th July 2016. The Correspondence can be found at CD 4.45:

"In particular, it is point 3 of the recommendation which will be proposed to be changed to the following for both applications (the changes are indicated below):

3. Either, The imposition of a ceiling on the amount of development that can take place on Banbury 17 until the spine road is completed including through use of additional/amended planning conditions/planning obligations; And/or, securing an appropriate legal mechanism by which the means to delivery-the of a completed spine road can be ensured at an appropriate stage in accordance with OCC's recommendation-prior to the occupation of a substantial amount of development on the Banbury 17 site."

6.2.3 The Council resolved to grant permission subject to conditions and obligations as per the updated recommendation.

6.3 Actions since the Committee Resolution

6.3.1 Since the committee meeting, the Appellant, adjacent Developer and the District and County Councils have been engaged in further discussions and correspondence to try and overcome the

County Council's concerns regarding the delivery of the link road, and also to try and understand the County Council's justification for the contributions sought towards the education infrastructure.

6.3.2 This correspondence is set out at CDs 4.47 – 4.78.

7 REASON FOR NON - DETERMINATION

7.1 Introduction

7.1.1 The main issues in this case are limited to the provisions for the delivery of the Spine Road through the appeal site, and also the necessary contributions to be provided towards education provision to mitigate the impact of the site on the existing schools in the area. These are explored below.

7.2 The Spine Road

Delivery of the Planning Permission

7.2.1 The appellant is a strategic land promoter who has progressed many sites in Cherwell and across the Country. Recent examples in Cherwell include Barford Road, Bloxham and Sibford Road, Hook Norton. The business model for those sites is the same as the Appeal site in terms of promoting the site on behalf of the landowner(s) and then selling it to a housebuilder with the benefit of outline planning permission. It is essential for the business model that the site can proceed with a housebuilder.

7.2.2 The Appellant would not have invested significant resources (time and money) if there were any issues with the site (or the Appellant was not confident) that meant it could not proceed. There are no issues (beyond the normal planning process) with the Appeal proposals that the Appellant is aware of that would fetter the ability for a housebuilder to buy the site and to implement the permission and to deliver the Link Road.

7.2.3 The Appellant has been explicitly clear with the Council since the provision of a Spine Road was identified as a requirement of the Banbury 17 allocation that the link road will be delivered on the appeal site up to the agreed coordinates with the adjacent landowner.

7.2.4 It is understood that OCC and the Council's concern with the link road details for the Appeal site relate solely to the scenario whereby the Appeal site permission is not implemented. They have deemed that the Link Road needs to be in place in order to mitigate the highways impact of the adjoining Gallagher development. It is OCC and CDC's opinion that the Link Road needs to be in place all the way from the A361 to White Post Road before the occupation of more than 500 dwellings (on the Gallagher site).

7.2.5 There is only a very small risk of non-implementation and there is no evidential basis that it is not capable of implementation. The Council accept that the risk to non-delivery of the site and associated link road on the Appellant's portion of the allocation is negligible, as acknowledged by the Case Officer in his email of the 9th September 2016 (CD 4.52). The Case officer stated:

“There is a small but significant risk that development does not take place on the eastern part of the allocated site on the land being promoted by Gladman for reasons beyond either Council's control... This is an admittedly unlikely scenario given the desire to

achieve a return from the sites for the landowners selling the land and for a future purchaser to start achieving capital receipt from housing to offset land finance costs."

7.2.6 The Appellant has been in constructive dialogue since that time in order to try and find an acceptable solution (in order to try and avoid an appeal). The Appellant is strongly of the opinion that any suggested solution, as part of the planning permission, that seeks to apply in the event of non-implementation of the development, would not meet the required tests for conditions and obligations (as set out at paragraphs 204 and 206 of the NPPF). In addition, including some form of mechanism as the Councils wish, would also unduly delay and complicate the ability for the appeal scheme to be implemented, which poses a far greater risk to scheme than the very small risk that it seeks to address.

7.2.7 The Appellant is content with condition 50 within the OR (CD 5.1), namely that:

"50. The spine road approved under the requirements of condition 7 shall be fully completed and available for public use from its new junction with White Post Road through to the site's western boundary prior to whichever occurs earliest of the following:

- ***Occupation of 75% of the final number of dwellings approved on the site (as determined by reserved matters approvals);***
- ***Four years following first commencement of any part of the development on the site.***

7.2.8 This ensures that once the planning permission has been implemented, the Link Road will be delivered to the western boundary at the agreed coordinates in a timely fashion and in accordance with Policy Banbury 17. 75% was identified in order to comply with the early delivery of the Link Road, rather than the Link Road being completed at the end of the development when all of the dwellings were occupied. It should be noted that the Link Road to the west of the Appeal Site is not required to mitigate any of the traffic generated by the appeal scheme and this is agreed with OCC and the Council. The May 2016 Officer's report (CD 5.1) concluded that the development would accord with the Development Plan and the NPPF without the inclusion of any additional non-implementation mechanisms/measures.

Accordance with Policy Banbury 17

7.2.9 Policy Banbury 17 was adopted in July 2015. A copy of the Policy is attached at Appendix 5. Under infrastructure needs, the Policy states:

"Access and movement – Principal access to be created off the Bloxham Road (A361). The layout should also provide a route for an east-west link to join White Post Road for local traffic."

7.2.10 The Council were fully aware that the entirety of the allocation was in separate landownerships, as stated in the Policy itself. The allocation didn't require anything special in this regard to ensure

delivery of the link road or did it prescribe that Banbury 17 had to come forward in a single application.

- 7.2.11 The Appellant submitted their application independently of Gallagher (the adjacent developer), and this was found to be acceptable in highways terms, as acknowledged in the Officer's Report to committee (CD 5.1, §6.29):

"...officers have carefully considered the implications of the scheme having regard to the requirements of Policies Banbury 17 and SLE4 of LPP1, Government guidance in the NPPF/PPG and advice from highway officers at the LHA. In conclusion, subject to the conditions and covenants referred to above controlling the detailed design of the access and spine road, the timing of the completion of the spine road as well as financial contributions towards off-site highway improvements, officers have found the proposals to be acceptable given that the adverse transport impacts of development on this site are not significant subject to securing the necessary mitigation."

- 7.2.12 The NPPF is clear at §14 (for decision taking, first bullet point) that development proposals that accord with the development plan should be approved without delay. It is clear from the Officer's Report to committee that the development proposed is in compliance with the development plan. §7.1 of the Officer's Report states:

"The principle of residential on this site as part of a wider urban extension on the allocated Banbury 17 site has been established and it is the detail of elements of the scheme that is now for consideration. The proposals as submitted would make a very significant contribution towards meeting the housing needs of the District and ensuring the Council's housing delivery trajectory in the Local plan remains on target. For reasons set out in this report, subject to the recommended conditions and covenants in a legal agreement, the potential for significant adverse impacts arising from the development can be mitigated to an acceptable level such that the proposals amount to sustainable development in accordance with the provisions and requirements of Policy Banbury 17 and other relevant development plan policies. In addition to being found in general accordance with the development plan, the proposal are also considered to be consistent with Government guidance set out in the NPPF which establishes a presumption in favour of sustainable development. Officers consider there to be no other material planning considerations of significance that indicate determining the application otherwise than in accordance with the development plan. As a consequence, officers recommend that Committee resolves to grant outline planning permission."

- 7.2.13 The delivery of the appeal site is essential for the Council in their ability to deliver the full, objectively assessed, market and affordable housing needs of the district, and the housing requirement outlined in the adopted Cherwell Local Plan (2011-2031) and following implementation will also allow all of the adjoining site to be delivered.

7.2.14 Accordingly, with the conditions and planning obligation proposed by the Appellant:

- There are no outstanding highway or infrastructure mitigation requirements.
- There is no policy basis at a national or local level to justify this development having to deliver or make provision for the Link Road if the planning permission is not implemented.

7.2.15 The site was allocated in order to deliver dwellings to contribute towards the housing requirement and the sooner the Site can progress and be implemented, then all of OCC and the Council's concerns fall away. Arguably, the Council's concerns are holding up the delivery of both the Gallagher site (1,000 dwellings) and the Appeal site rather than allowing to progress in the manner that the allocation and the Council's trajectory originally intended.

7.3 Education Contributions

7.3.1 The Policy states that an on-site primary school is required, with contributions also sought towards provision of secondary school places. The Appellant's portion of the allocation is not seeking to deliver the primary school, which is being delivered by the adjacent promoters. The Appellant accepts that it will have to make contributions towards education and infrastructure improvements.

7.3.2 However, it is the level of provision that the Appellant is expected to contribute that is the issue in this appeal. The County Council are seeking the total sum of £4,290,067 towards education infrastructure.

7.3.3 Whilst some justification has been forthcoming from OCC, the Appellant has outstanding concerns about the contributions sought, including:

- Primary School contribution that is significantly in excess of the DfE multiplier;
- Primary School land contribution; and
- Temporary classrooms costs.
- Secondary contribution – the availability of available spaces nearby;
- Secondary School land contribution.

S.106 Policy Context

7.3.4 The Community Infrastructure Levy regulations 2010 came into effect on 6 April 2010. Regulation 122 applies to all decisions to grant planning permission on or after 6 April 2010 and means that all relevant obligations, such as monetary contributions towards education infrastructure, must meet the following three tests, which are explained under paragraph 204 of the NPPF and within the PPG:

- Necessary to make the development acceptable in planning terms;
- Directly relevant to the development; and

- Fairly and reasonably related in scale and kind to the development.

7.3.5 Within Regulation 123, cumulative pooling of funds for specific items of 'CIL' infrastructure become limited to five obligations each (with counting having been deemed artificially to have started in respect of planning obligations entered into from 6 April 2010). If Councils have already provided for more than five pooled obligations for a specific infrastructure project or type of infrastructure before the closing date, no further contributions can be sought. This is explained in greater detail in the PPG¹.

The Contributions

7.3.6 The original contributions requested by the Council were as follows:

- Primary Education - £2,272,466
- Secondary Education - £ 1,642,609
- Special Educational Needs (SEN) Education - £73,781
- **Total - £3,988,856**

7.3.7 On 26th September 2016, the County Council confirmed the final contributions requested towards education. The primary school contribution had been revised due to the mix being updated (CD 4.41) to be in line with the Oxfordshire SHMA (April 2014).

7.3.8 The contributions requested were as follows:

- Primary Education Infrastructure - £1,953,744
- Primary Land Contribution - £296,250
- Primary Temporary Classrooms - £400,000
- Secondary Education Infrastructure - £1,430,582
- Secondary Land Contribution – £146,250
- Special Educational Needs (SEN) - £63,241

7.3.9 During the course of the application, the Appellant has sought justification from the County Council for the requested contributions. The information has not all been forthcoming from the Council and there have been times, as shown by the correspondence at CD 4.51, where requested information has been provided in part, but other requests have been "to follow" yet have not been seen by the Appellant.

¹ PPG Paragraph 099, Ref ID: 25-099-20140612

- 7.3.10 This is particularly with regard to the contributions towards land for a primary school and secondary school (i.e. how the overall contribution figure has been reached), and the request for financial contributions towards temporary classrooms.
- 7.3.11 Whilst the Appellant is not seeking to challenge the principle of all of these contributions being sought, they are required to be fully justified. Due to the lack of justification provided by the County Council, the Appellant reserves its position for once the CIL justification has been provided by the Council. The Appellant will provide its detailed position following receipt of the County Council's justification. The position will consider the CIL compliance of the contributions requested and whether, in line with national planning policy, they are necessary, reasonable and reasonably related in scale in kind with the appeal scheme.

8 PLANNING BALANCE

8.1 Overview

8.1.1 S38(6) of the Planning and Compulsory Purchase Act 2004 provides that determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. §14 of the NPPF states that development proposals that accord with the development plan should be approved without delay.

8.1.2 §13 and §212 of the NPPF are explicit in that the policies within the Framework are material considerations.

8.2 Planning Benefits

8.2.1 The proposals provide a number of material planning benefits which should hold considerable weight in the determination of this Appeal. The Appellant submits that the benefits of the scheme include:

- a) The proposal accords with the recently adopted development plan and more specifically the Banbury 17 allocation (which it forms part of), including the provision of its part of the Link Road.
- b) The provision of up to 280 dwellings to meet the housing requirement.
- c) The provision of a significant percentage of affordable housing (30%).
- d) Provision can be made for all necessary planning obligations (which meet the relevant statutory tests).
- e) The scheme offers the potential to enhance biodiversity on the site. The landscape proposals include the conservation of existing site hedges and trees wherever possible.
- f) The landscape led design approach provides a considerable amount of open space, including the creation of a Local Equipped Area of Play and areas of amenity green space, woodland and other green infrastructure.
- g) Substantial economic benefits, including:
 - i. An investment in construction approaching £36.1 million.
 - ii. Around 130 FTE construction jobs per annum on average throughout the five year construction period.
 - iii. Household spending of £2.59 million per annum in the local economy.
 - iv. At least 450-480 economically active residents in the new development when complete.
- h) A new homes bonus payment estimated to be around £2.1 million over a 6 year period.
- i) This proposal accords with paragraph 56 of the Framework, which highlights the importance that is attached to the design of the built environment by the government and represents a benefit of the proposal.

8.3 Environmental Benefits

Ecological Biodiversity

8.3.1 The NPPF states that development should seek to ensure biodiversity on site is maintained and enhanced where possible. The development offers the opportunity to enhance the biodiversity through:

- Significant areas of planting to provide green infrastructure, ecology and wildlife benefits. Habitat creation measures to ensure biodiversity is retained with enhanced hedgerows and green corridors. These measures will ensure a net biodiversity gain in accordance with requirements of Paragraphs 9 and 118 of the Framework.
- Provision of domestic gardens which provide an opportunity to improve biodiversity over and above agricultural use.
- A green corridor and enhancement along the southern edge of Salt Way.
- Significant provision of Green Infrastructure
- The provision of wetland habitat within attenuation areas.

8.4 Summary

8.4.1 There are numerous benefits of the scheme which should be attributed considerable weight, as well as compliance with the development plan (which carries very significant weight in the planning balance).

9 SUPPORTING DOCUMENTATION

9.1 Core Documents

9.1.1 The Appellant has prepared and submitted a number of Core Documents, which includes the documents submitted as part of the application, relevant correspondence and the officer's report to committee.

9.2 Other Necessary Documents

9.2.1 A draft Statement of Common Ground with CDC has also been provided at **Appendix 1**. It should be noted that this is drafted to include the maximum extent of matters upon which it might be possible to achieve agreement. Past experience indicates that after discussion, the Council will consider themselves unable to agree a number of the matters included within the draft; it should be treated as a draft document at this stage and not relied upon in assessing the appropriate hearing procedure. A separate SoCG will be progressed with Oxfordshire County Council (OCC) to cover highways and S.106 matters.

9.2.2 Draft Heads of Terms for a planning obligation (Unilateral Undertaking) are attached at Appendix 4. A certified copy of a completed UU will be provided at the hearing. The undertaking will include a clause whereby an Inspector can confirm if any of the contributions do not meet the CIL regulations and should not be taken into account ("Blue pencil clause").

10 CONCLUSION

10.1 Housing Need

10.1.1 The outline planning application is made in the context of the Government's requirement to boost housing land supply and responds specifically to the pressing need identified in Cherwell to deliver additional market and affordable housing. The appeal scheme forms part of the Banbury 17 allocation in the adopted Cherwell Local Plan (2011-31) and responds directly to the Council's need to deliver 22,840 dwellings for the period 2011-2031. This has also recently been increased by 4,400 dwellings, which represents the proportion of Oxford City's unmet need that the Council has agreed to deliver, thereby increasing the housing requirement.

10.2 National Planning Policy Framework

10.2.1 Paragraph 14 of the Framework calls for decision takers to grant planning permission without delay where development proposals accord with the development plan. At §7.1 of the Officer's Report to committee (CD 5.3) the Council state:

"In addition to being found to be in general accordance with the development plan, the proposals are also consistent with Government Guidance set out in the NPPF which establishes the presumption in favour of sustainable development. Officers consider there are no other material considerations of significance that indicate determining the application otherwise than in accordance with the development plan."

10.3 Adopted Development Plan

10.3.1 It has been demonstrated that the development is in accordance with the adopted Cherwell Local Plan (2011-2031).

10.4 Sustainable Development and Key Benefits

10.4.1 The proposals will make a significant contribution towards meeting the social elements of sustainability through: providing homes to meet the objectively assessed housing needs of Cherwell and making a valuable contribution towards five-year housing land supply. Further, the application proposals will provide 30% affordable housing in circumstances where there is a chronic shortage in the district, this should be regarded as a significant material benefit.

10.4.2 There are also a number of environmental benefits associated with the development proposals including the provision of green infrastructure, landscape enhancements and the provision of a range of ecological habitats resulting in a net overall biodiversity gain.

10.5 Impacts

10.5.1 The supporting material, assessments and reports demonstrate that there are no unacceptable adverse impacts associated with the scheme. Furthermore, care has been taken to ensure that the impact and perceived impact on Banbury is minimal and acceptable; this will be achieved through careful design and siting, and a holistic approach to landscape provision. Mitigation measures have been proposed where any potential negative impacts have been identified.

10.6 Overall Conclusion

10.6.1 It can be concluded that there are no material considerations or adverse impacts that significantly and demonstrably outweigh the benefits which flow from the development.

10.6.2 This development, as proposed, clearly constitutes 'sustainable development', is viable and deliverable. There are significant material considerations that weigh heavily in its favour. In accordance with planning law and national policy guidance the appeal should be approved. The appeal proposals are in compliance with the adopted Local Plan (2011-2031) and the Appellant respectfully requests that, in accordance with §14 of the NPPF, outline planning permission be granted, subject to conditions and a planning obligation.



Appendix 1

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**Town and Country Planning Act 1990 – Section 78
Town and Country Planning (Development Management
Procedure) (England) Order 2013**

**Town and Country Planning (Hearings Procedure) (England)
Rules 2000**

Appeal by Gladman Developments Limited

Land off White Post Road

Banbury

Cherwell District Council

**Proposed development of up to 280 dwellings with landscaping, open
space, highway improvements and associated works**

15/01326/OUT

APP/

**DRAFT Statement of Common Ground between Gladman
Developments and Cherwell District Council**

March 2017



1 INTRODUCTION

1.1 Background

1.1.1 This Statement of Common Ground (SoCG) has been prepared by Gladman Developments Ltd and Cherwell District Council (CDC).

1.1.2 It has been prepared in accordance with the guidance at Annex T of the PINS Procedural Guide, Planning Appeals – England (5 August 2016).

1.2 Officer's Report

1.2.1 Where appropriate, especially on agreed matters, more detail is set out in Officer's Report to Committee dated 4th August 2016 (CD 5.3).

1.3 Parties

1.3.1 This final version of the SoCG is jointly agreed by:

Signed _____ Date _____
XXX
Title XXXXX
On behalf of Gladman Developments Ltd

Signed _____ Date _____
XX XX
Title XXX
On behalf of Cherwell District Council

2 CONTEXT

2.1 The Appeal Site

2.1.1 The proposed application site is located to the west of White Post Road, Banbury and comprises three agricultural fields with a number of mature trees and hedgerows which denote the boundaries of each of the fields. The site is presently in use predominantly as agricultural land and has an area of approximately 17.53 hectares (43 acres).

2.1.2 The eastern edge of the site is bound by White Post Road, with the south-eastern boundaries being formed around Banbury Cricket Club. The southern boundary is defined by Wykham Lane, with existing allotments falling outside the site boundary to the south-west of the site. The northern boundary abuts existing residential development on Sycamore Drive. The western boundary is defined by a hedgerow interspersed with a number of mature trees, beyond which are agricultural fields. The Access into the site is proposed via White Post Road.

2.2 The Appeal Proposal

2.2.1 This appeal seeks Outline Planning Permission for a residential development comprising:

Outline Planning Application for up to 280 residential dwellings (including 30% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from White Post Road and associated ancillary works. All matters to be reserved with the exception of the main site access, on land west of White Post Road, Banbury.

2.3 Plans for Approval

2.3.1 The drawings for which planning permission is sought are as follows:

Drawing ref	Drawing Name
5713/ASP01	Location Plan
1361/22 Rev E	Proposed Site Accesses and Highway Improvements

2.3.2 The illustrative drawings submitted for consideration include:

Drawing Ref	Drawing Name
5713/ASP03 Rev H	Illustrative Framework Plan
JJG0043/50H	Joint Masterplan

2.4 Relevant Planning History

2.4.1 The site itself does not have any relevant planning history. However, the site forms part of the Banbury 17 allocation within the Cherwell Local Plan (2011-2031), for the delivery of 1,345

dwellings. An application for 145 dwellings was granted outline approval at appeal in June 2012. A subsequent reserved matters approval was granted in November 2014.

2.4.2 The site to the west of Banbury 17, Banbury 16, was allocated for 150 dwellings in the Cherwell Local Plan (2011-2031). An outline application (14/01188/OUT) has subsequently been approved for up to 350 dwellings, associated open space and associated infrastructure.

2.4.3 An application for 1,000 dwellings (14/01932/OUT), directly adjacent to this scheme, is subject to a resolution to grant planning permission subject to signing of the S106. The resolution was passed at the same committee meeting as the appeal site. An illustrative masterplan has been prepared by the Appellant and the adjacent landowner, to ensure the proposed access and general layout arrangements have taken the opportunities available to deliver sustainable, high quality urban design.

3 PLANNING POLICY

3.1 Introduction

3.1.1 The Development Plan for this site consists of the Cherwell Local Plan (2011-2031), adopted on the 20th July 2015. The site forms the eastern section of the strategic site allocation Banbury 17 as contained in the plan.

3.2 The Cherwell Local Plan (2011-2031)

3.2.1 The Cherwell Local Plan, adopted July 2015, sets the strategic framework for Cherwell District. Policy BSC 1 sets out the District wide housing distribution, outlining provision of 22,840 dwellings between 1 April 2011 and 31 March 2031 (1142 dwellings per annum). The site, which forms the eastern parcel of the Banbury 17 housing allocation (see Appendix 5), will provide up to 280 dwellings towards the overall housing requirement.

3.2.2 Paragraph 1.27 of the adopted Local Plan (and B.95), identifies the need for a review of the plan within two years of adoption in order to plan to meet the unmet needs of Oxford City. Cherwell have agreed to deliver a further 4,400 dwellings to meet these needs and a review is underway.

3.3 Accordance with the Cherwell Local Plan 2011-2031 (and Policy Banbury 17)

3.3.1 The development proposal accords with the objectives of the Local Plan which seeks to provide a continuous supply of housing land to meet strategic requirements in sustainable locations. The site is considered to be situated in a sustainable location and will contribute towards the housing needs of Banbury and Cherwell as a whole, and in particular meeting objectives set out in Policy BSC1: District Wide Housing Distribution.

3.3.2 The conclusions of the Officer's Report to Committee state:

"The principle of residential development on this site as part of a wider urban extension on the allocated Banbury 17 site has been established and it is the detail of elements of the scheme that is now for consideration. The proposals as submitted would make a very significant contribution towards meeting the housing needs of the District and ensuring the Council's housing delivery trajectory in the Local Plan remains on target. For reasons set out in this report, subject to the recommended conditions and covenants in a legal agreement, the potential for significant adverse impacts arising from the development can be mitigated to an acceptable level such that the proposals amount to sustainable development in accordance with the provisions and requirements of Policy Banbury 17 and other relevant development plan policies. In addition to being found in general accordance with the development plan, the proposals are also considered to be consistent with

Government guidance set out in the NPPF which establishes a presumption in favour of sustainable development. Officers consider there to be no other material planning considerations of significance that indicate determining the application otherwise in accordance with the development. As a consequence, officers recommend that Committee resolves to grant outline planning permission."

- 3.3.3 The parties agree that delivery of the appeal site is essential for the Council to deliver their full, objectively assessed needs and the housing requirement outlined in the adopted Cherwell Local Plan (2011-2031).

3.4 The NPPF

- 3.4.1 The parties agree, as per §7.1 of the Officer's Report to committee (CD 5.3), that:

"In addition to being found to be in general accordance with the development plan, the proposals are also consistent with Government Guidance set out in the NPPF which establishes the presumption in favour of sustainable development. Officers consider there are no material considerations of significance that indicate determining the application otherwise than in accordance with the development plan."

- 3.4.2 The parties agree that the §14 of the NPPF calls for decision takers to grant planning permission without delay where development proposals accord with the development plan.
-

4 OTHER MATTERS ON WHICH PARTIES AGREE

4.1 Introduction

4.1.1 The following matters are agreed between the parties and are not at issue in this appeal:

4.2 Delivery of the Link Road

4.2.1 The parties agree that Condition 50 of the Officer's Report (CD 5.3) represents a sensible way forward to deliver the link road to the western boundary in a timely fashion and in accordance with Policy Banbury 17. The Condition states:

The spine road approved under the requirements of condition 7 shall be fully completed and available for public use from its new junction with White Post Road through to the site's western boundary prior to whichever occurs earliest of the following:

- ***Occupation of 75% of the final number of dwellings approved on the site (as determined by reserved matters approvals);***
- ***Four years following first commencement of any part of the development on the site.***

4.2.2 The parties agree that the Link Road to the west of the Appeal site is not required to mitigate any of the traffic generated by the appeal scheme and this is also agreed with OCC. The parties agree that the officer's report to committee of May 2016 (CD 5.1) concluded that the development would accord with the Development Plan and the NPPF without inclusion of any additional non-implementation mechanisms/measures.

4.3 Landscape

4.3.1 Both parties **agree**, as per the Officers' Report (§6.37), that the impact of the development on the wider landscape would not be significant having regard to the limited height of the proposed buildings on site, the site's urban edge location, flat topography and the site's modest natural landscape value.

4.3.2 The Officer's Report to committee, at §6.37 states:

"The proposals as submitted have taken the opportunities available to mitigate their impact on the local landscape in the manner required by the Policy Banbury 17 and as such officers are satisfied that the proposals are acceptable in this regard."

4.3.3 The parties agree that the scheme is acceptable in landscape terms, is in compliance with Policy Banbury 17, and with the relevant paragraphs of the NPPF.

4.4 Biodiversity

- 4.4.1 The parties agree that, as per the officer's conclusions in the report to committee (§6.56), that subject to the imposition of the recommended conditions, the proposals have the potential to deliver net biodiversity gains on the site in accordance with the requirements of Policies ESD10 and Banbury 17 of the Local Plan Part, as well as the guidance in the NPPF such that the scheme is considered acceptable in ecological terms.

4.5 Heritage

- 4.5.1 The Officer, in his report to committee concluded, at §6.44, the following:

"In conclusion on the issue of heritage impact, officers are of the view that the proposals would give rise to moderate harm to the historic significance of the Salt Way even with the mitigation measures proposed to be secured through conditions and legal agreement. However, the Salt Way is a non-designated heritage asset and the weight to be afforded to its preservation is not substantial and the overall benefits of providing a significant number of new homes in this location outweighs this harm as reflected in the provisions of Policy Banbury 17. The impact on the special character of the Bodicote Conservation Area would be limited and thus acceptable in the context of the significant wider public benefits stemming from the provision of much-needed new housing in this otherwise sustainable location – a fact also intrinsically recognised in the decision to allocate the Banbury 17 site. The harm caused to the setting of individual listed buildings would in officers' view be negligible and therefore of no particular concern. Consequently officers are satisfied that subject to the recommended conditions and covenants, the proposals are acceptable in heritage terms in accordance with the requirements of Policy Banbury 17 and all other relevant local and national planning policies."

- 4.5.2 The parties agree that the proposals would cause moderate harm to the Salt Way, but as a non-designated heritage asset the weight to be afforded to its preservation is not substantial and the overall benefits of the proposals outweighs this harm. The proposals would have a limited impact on the Bodicote Conservation Area and the harm caused to the setting of individual listed buildings would also be negligible and of no particular concern. Therefore, the parties agree that the proposals are in compliance with Policy Banbury 17 and Policy ESD15 of the Cherwell Local Plan, and §134 of the NPPF does not apply.

4.6 Housing Mix/Affordable Housing

- 4.6.1 The parties agree that, subject to recommended conditions, the proposals are in accordance with Policies BSC3, BCS4 and Banbury 17 of the Local Plan Part 1 with the result that they will make a strong contribution towards meeting the identified housing needs of the District.

4.7 Open Space and Recreation

- 4.7.1 The parties agree, as per the officer's conclusions at §6.52 of the report to committee, that:

"...officers are satisfied that subject to the inclusion of relevant covenants in a legal agreement to secure the necessary provision and maintenance of formal and informal recreation facilities, the needs of the residents of the new homes would be adequately served by the type, quality and quantity of facilities proposed and this the development would mitigate its impact on existing recreation provision and

provide a suitable quality residential environment within the site for future residents.”

4.8 Trees and Landscaping

4.8.1 The parties agree that all trees of significance are proposed to be retained and officers are satisfied that they can be suitably protected during construction through the tree protection measures recommended in the submitted Arboricultural report and a condition is recommended to be imposed to ensure this.

4.8.2 With regards to landscape, the parties agree that the proposals would not have a materially adverse effect on existing landscape features of significance due to the majority being proposed for retention together with proposals offering significant opportunities for enhancement on the site. The parties agree that the proposals are in compliance with Policies ESP10, ESD13, ESD15 and Banbury 17 of the Local Plan Part 1.

4.9 Drainage and Flooding

4.9.1 The Officer’s Report to committee, at §6.66 states:

“Policy ESD6 of LPP1 reflects Government guidance in the NPPF by resisting development where it would be unduly susceptible to flooding and/or increase the risk of flooding elsewhere. The site itself is not known to be at risk of either fluvial or pluvial flooding but it is nonetheless necessary for development on the site to appropriately manage surface water to ensure that it does not increase the risk of localised flash flooding in a storm event. As such, it is necessary and in accordance with both local and national planning policy for a sustainable drainage system (SuDS) to be fully incorporated into the development in a manner that mimics natural greenfield rainwater treatment so that there is no net increase in the rate of surface water discharge from the site. Full details of the SuDS on the site have not been provided at this stage given that the application is in outline but the flood risk assessment (FRA) submitted alongside the application clearly demonstrates that the ground conditions on the site and space available make SuDS viable on the site – a conclusion with which drainage officers at OCC concur. A condition is therefore recommended that requires full details of the drainage scheme to be submitted prior to commencement of development. A number of above and below ground drainage features are likely to be provided on site as part of the drainage scheme including ponds and swales which would in turn have occasional maintenance requirements such that appropriate arrangements for long term maintenance will need to be included in a legal agreement before it can be considered satisfactory. In conclusion, subject to conditions and relevant clauses in a legal agreement, officers have concluded that the proposed development would be acceptable in flood risk terms.”

4.9.2 The parties agree that the development is acceptable in flood risk terms.

4.10 Impact on Public/Community Infrastructure

4.10.1 The Officer’s report to committee states, at §6.78:

“...the proposals would have a significant and unacceptable impact on public/community infrastructure without the mitigation measures set out above being secured through conditions and/or a legal agreement as appropriate. Subject to satisfactorily securing the mitigation, the proposals are considered to be

acceptable and in accordance with the requirements of Policies BSC9, INF1 and Banbury 17.”

4.10.2 The parties agree that, subject to agreeing the relevant conditions and S106 obligations, the proposals are in accordance with national and local planning policy with regard to public/community infrastructure.

4.11 Market Housing

4.11.1 It is agreed that the supply of additional market housing represents a material benefit of the scheme which should be considered appropriately in the planning balance.

4.12 Affordable Housing

4.12.1 Both parties **agree** that 30% of the scheme shall be affordable housing.

4.13 Open Space and Green Infrastructure

4.13.1 The parties agree that the development provides the opportunity to create an environment with healthy spaces where it is easier for people arising from the new community to lead healthier lifestyles. With appropriately designed linkages to the adjacent open space and play areas, this would also be accessible to the wider community.

4.13.2 Both parties **agree** that this will be dealt with by an appropriate condition / obligation.

5 S.106 OBLIGATION

- 5.1.1 The parties will liaise regarding the planning obligation and a final draft unilateral undertaking will be circulated in advance of the Hearing. The parties agree that any differences on whether contributions would be CIL compliant would be discussed as part of the Hearing.

6 CONDITIONS

- 6.1.1 A draft list of suggested conditions, should the Inspector be minded to allow the Appeal, can be found at Appendix 1. The parties are seeking to agree conditions in advance of the Hearing.
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Appendix 2

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From: Matthew Parry [mailto:Matthew.Parry@Cherwell-DC.gov.uk]
Sent: 29 July 2016 14:55
To: 'Francesca Robinson' <frobinson@DavidLock.com>; Chris Still <C.Still@gladman.co.uk>
Subject: 14/01932/OUT & 15/01326/OUT

Dear Francesca/Chris

I thought it would be useful to let you know that officers will be proposing a very minor amendment to the recommendation to Committee on both applications. This will be set out in the written updates paper that is published the day before Committee. It is a subtle change but it follows a further representation from OCC which raised a minor query about the two recommendations. The remainder of the reports and recommendations would stay the same.

In particular, it is point 3 of the recommendation which will be proposed to be changed to the following for both applications (the changes are indicated below):

3. ~~Either~~, The imposition of a ceiling on the amount of development that can take place on Banbury 17 until the spine road is completed including through use of additional/amended planning conditions/planning obligations;

~~And/Or~~, securing an appropriate legal mechanism by which the means to delivery the of a completed spine road can be ensured at an appropriate stage in accordance with OCC's recommendation prior to the occupation of a substantial amount of development on the Banbury 17 site.

Kind regards

Matthew Parry
Principal Planning Officer
Development Management
Cherwell District Council
Telephone: 01295 221837
Email: matthew.parry@cherwell-dc.gov.uk
Website: www.cherwell.gov.uk

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Appendix 3

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JUSTIFICATION FOR THE HEARING PROCEDURE

1.1.1 This Appeal relates to the non-determination of the outline planning application for the following on land off White Post Road, Banbury:

Outline Planning Application for up to 280 residential dwellings (including 30% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water flood mitigation and attenuation, vehicular access point from White Post Road and associated ancillary works. All matters to be reserved with the exception of the main site access, on land west of White Post Road, Banbury.

1.1.2 All matters, with the exception of the main site access, were reserved for subsequent approval. The Appellant considers a Hearing is the most appropriate procedure for the consideration of this appeal. This document sets out a justification for this, taking into account the criteria set out in the PINS procedural guidance document dated 23rd March 2016 entitled Planning Appeals – England, Annexe K.

1.1.3 The Appellant has appealed against non-determination following Cherwell District Council's failure to determine the application within the agreed extended determination period.

1.1.4 There is a substantial prospect of extensive common ground being agreed between the parties in this case.

1.1.5 In accordance with Annex K of the Procedural Guide, it is considered that a Hearing is most appropriate for the appeal procedure in this case for the following reasons:

- The issues in this case are very limited and the respective cases are straightforward. The Inspector will be more than capable to test any parts of each case by asking questions of the parties.
- The nature of the areas of disagreement are not wide-ranging and the matters can be more than adequately explored at a 1 day hearing.
- The case has generated a level of local interest that warrants a Hearing.
- It can reasonably be expected that the parties will be able to present their own cases (supported by professional witnesses) without the need for an advocate to represent them.
- It is not anticipated that the issues are sufficiently complex or of a nature that requires formal cross examination by an advocate.

1.1.6 For the above reasons, the Appellant considers that a Hearing is the appropriate procedure in this case.

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Appendix 4

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S.106 DRAFT HEADS OF TERMS

The following S.106 Heads of Terms are proposed as those obligations which, in accordance with the CIL Regulations (2010) are necessary, directly related to the development and fairly related in scale and kind to the development (please note, affordable housing is proposed to be dealt with by the proposed planning condition):

OPEN SPACE

- i. The Agreement will require the Developer to provide onsite informal open space.
- ii. Appropriate phasing requirements will be specified together with the requirement to agree with the Council an appropriate scheme for the long term maintenance and management of these areas, including any off-site commuted sums as applicable.

TRANSPORT

- i. Financial contribution to off-site highway and transportation improvements to be agreed with the Highway Authority. The agreement will require the developer to commit to the production and implementation of a Travel plan

EDUCATION

- i. The Agreement will require the Developer to make a contribution to the Education Authority to mitigate the impact of the development for primary and secondary school pupils arising from the proposed development.

OTHER

- i. Other contributions may have been identified through the planning consultation process, and subject to meeting the appropriate tests of necessity and reasonableness, consideration will be given to their inclusion.

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Appendix 5

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- **Take account of the Council's Strategic Flood Risk Assessment for the site**
- **Full mitigation of flood risk in compliance with Policy ESD 6: Sustainable Flood Risk Management including use of SuDS techniques in accordance with Policy ESD 7: Sustainable Drainage Systems (SuDS) and taking account of the Council's Strategic Flood Risk Assessment**
- **The provision of extra-care housing and the opportunity for community self-build affordable housing**
- **A detailed survey of the agricultural land quality identifying the best and most versatile agricultural land and a soil management plan**
- **An archaeological field evaluation to assess the impact of the development on archaeological features.**

Policy Banbury 17 – South of Salt Way – East

C.204 This site is located to the south of Salt Way, to the east of the A361 Bloxham Road. It includes the land adjoining the A361 for which planning permission has already been granted for 145 dwellings. There is a dense hedgerow along the site's northern boundary, the Salt Way, which is a proposed new Local Wildlife Site. Salt Way is a public right of way of important historical and recreational significance running along the northern boundary of the site; a number of other public rights of way cross the site from north to south.

C.205 The Salt Way is a non-designated heritage asset. There are dense hedgerow boundaries within the site, of good condition, and areas of BAP habitat and individual woodland parcels around the boundaries of the site. Wykham Farmhouse, to the south of the site, is Grade II listed.

C.206 The development of site Banbury 17 combines two adjoining sites that have the potential to be developed as part of a single development area. Banbury 17 provides the opportunity to develop the south west of Banbury in a coordinated, integrated and

planned way, delivering the necessary facilities and infrastructure in a timely manner.

C.207 Structure planting and landscaping will be required along the site's southern boundary in order to mitigate the visual impacts of the site upon the Sor Brook Valley.

C.208 A new footpath bridleway will be required to be provided running from east to west along the southern boundary of the development area, incorporating links with existing footpaths to form a new circular route around the development linking back to Salt Way.

C.209 Formal outdoor sports provision is to be located to the south east of Banbury 17, ensuring that land extending towards Wykham Lane, where the potential for adverse landscape and visual impact is higher, will be kept free from built development, whilst the eastern most part of the site is to be utilised as informal open space in order to maintain an important gap between the settlements of Banbury and Bodicote, with each maintaining its separate identity and the character of Bodicote Conservation Area protected.

Policy Banbury I7: South of Salt Way - East

Development Area: 68 hectares (in total)

Development Description - Development of land south of Salt Way - East will deliver a new neighbourhood of up to 1,345 dwellings with associated facilities and infrastructure as part of South West Banbury. The site is in more than one ownership (Land east of the Bloxham Road and land west of Bodicote) but the development area forms a coherent whole. An integrated, coordinated and comprehensive planning approach will be taken with a link road between the sites in separate ownerships. The site will require a masterplan to ensure this is delivered.

Housing

- **Number of homes - Up to 1,345 dwellings (including 145 with permission)**
- **Affordable Housing - 30%.**

Infrastructure Needs

- **Education – an on-site primary school. Contributions will also be sought towards provision of secondary school places. Land also needs to be reserved to meet town wide secondary school needs.**
- **Open Space – to include general greenspace, play space, allotments and sports provision as outlined in Policy BSC I I: Local Standards of Provision – Outdoor Recreation**
- **Community – on-site provision including community and/or local retail facilities**
- **Access and movement – Principal access to be created off the Bloxham Road (A36 I). The layout should also provide a route for an east-west link to join White Post Road for local traffic**
- **A transport assessment and travel plan will be required to assess the transportation implications of the proposed development and to identify appropriate mitigation measures.**

Key site specific design and place shaping principles

- **Proposals should comply with Policy ESD I 5**
- **The development of a comprehensive masterplan for the allocated site in consultation with the Council, Oxfordshire County Council, the Local Nature Partnership (Wild Oxfordshire) and local communities**
- **Development must respect the landscape setting and provide an appropriate development interface with Salt Way (any buffer is likely to be 20 metres wide in accordance with the approach adopted at land east of Bloxham Road and south of Salt Way)**

- Existing natural features and additional structural planting will reinforce the landscape framework upon which to structure development parcels
- Public open space to form a well connected network of green areas within the site, suitable for formal and informal recreation. Formal recreation should be located and phased to come forward as part of development at the southern part of the site; Informal open space is to be located where the site adjoins Bodicote village in order to create a buffer to maintain separation between the two settlements and respect the setting of the Bodicote Conservation Area
- A linked network of cycle and footways to provide access into Banbury
- A high quality locally distinctive residential District for the south west of Banbury that is designed with consideration to the landscape setting and well integrated with the adjacent residential area
- A layout that maximises the potential for walkable neighbourhoods and enables a high degree of integration and connectivity between new and existing communities
- New footpaths and cycleways should be provided that link with existing networks, the wider urban area and community facilities with a legible hierarchy of routes to encourage sustainable modes of travel
- A new footpath bridleway to be provided running from east to west along the southern boundary of the development area, incorporating links with existing footpaths to form a new circular route around the development linking back to Salt Way
- Good accessibility to public transport services should be provided for with effective footpaths and cycle routes to bus stops including the provision of a bus route through the site and new bus stops on the site
- Provision of a transport assessment and Travel Plan including to maximise connectivity with existing development, including linkages with and improvements to existing public transport
- In addition to the provision of a bus service through the site and associated bus stops, provision is required for buses to turn around during the early part of housing delivery
- Early delivery of the A361 to A4260 Link Road is required, along with associated junctions. The developer will be required to fund the cost of additional public transport to serve the site.
- A well designed, 'soft' approach to the urban edge, which respects the rural setting
- Development proposals to be accompanied and influenced by landscape/visual and heritage impact assessments
- Planting of vegetation along strategic route ways to screen the noise
- Retention of Public Rights of Way and a layout that affords good access to the countryside
- Retention and enhancement of existing hedgerows and trees including the boundary with the Salt Way
- Provision of Green Infrastructure links beyond the development site to the wider town and open countryside

- **Detailed consideration of ecological impacts, wildlife mitigation and the creation, restoration and enhancement of wildlife corridors to preserve and enhance biodiversity. Ecological Surveys to accompany any development proposal.**
- **Development that retains and enhances significant landscape features (e.g. hedgerows) which are or may be of ecological value; and where possible introduces new features**
- **Provision of appropriate lighting and the minimisation of light pollution based on appropriate technical assessment**
- **Provision of public art to enhance the quality of the place, legibility and identity**
- **Demonstration of climate change mitigation and adaptation measures including exemplary demonstration of compliance with the requirements of policies ESD 1 – 5**
- **Take account of the Council's Strategic Flood Risk Assessment for the site**
- **Use of SuDS techniques in accordance with Policy ESD 7: Sustainable Drainage Systems (SuDS) and taking account of the Council's Strategic Flood Risk Assessment. Development proposals to be subject to a Flood Risk Assessment**
- **The provision of extra-care housing and the opportunity for community self-build affordable housing**
- **If necessary, the satisfactory incorporation of existing dwellings into the scheme**
- **A detailed survey of the agricultural land quality identifying the best and most versatile agricultural land and a soil management plan**
- **The need to physically preserve the location of the Neolithic causewayed enclosure. The remainder of the archaeological features will require further investigation and recording ahead of any development, together with a programme of archaeological mitigation.**

Policy Banbury 18: Land at Drayton Lodge Farm

C.210 The site is located to the west of the Warwick road (B4100) and to the north east of the village of Drayton. The village of Hanwell is located to the north east of the site. The Warwick road is on the north eastern boundary of the site and beyond this there is residential development at Hanwell Fields. Currently there is agricultural land to the north, south, east and west of the site.

C.211 At the centre of the site is a golf club with a course, driving range and a small car park, a farm, dwellings and a small caravan park with maintained pitches, paths, hedgerows and a copse. The remainder of the site is in agricultural use. There is a small lake to the south west of the site and the North Oxfordshire Academy is located to the south east of the site. There are public rights of way throughout the site. Part of the site is an archaeological constraint priority area.

C.212 It is considered that part of the site is suitable for residential development. The field to the north of the farm and the golf driving range could be developed subject to recreation uses being replaced elsewhere. The site could be linked to the existing site with planning permission to the south and to existing and proposed development to the north east of the site.

C.213 Landscape evidence has recognised that consideration should be given to the protection of the Drayton Conservation Area which the site abuts to the south, and that care should also be taken to avoid visual prominence of development from within the

Sor Brook Valley. The addendum states that the landscape is relatively open with views west towards the Sor Brook Valley creating a feeling of exposure in some locations; primarily within the arable landscape. The addendum notes an important hedgerow on the site's northern boundary.

C.214 The central part of the site containing the existing dwellings and copse should be protected from development to account for these uses and the steep and undulating landscape on this part of the site. Impacts on landscape, conservation area and the residential properties in the centre of the site should be minimised by any proposal.

Policy Banbury I8: Land at Drayton Lodge Farm

Development Area: 15 hectares

Development Description: Located at the northern edge of Banbury, this residential strategic development site will provide approximately 250 dwellings with associated facilities and infrastructure in a scheme that demonstrates a sensitive response to this urban fringe location.

Housing

- **Number of homes - Approximately 250**
- **Dwelling mix - to be informed by 'Policy BSC 4: Housing Mix'**
- **Affordable Housing - 30%**
- **The provision of extra care housing and the opportunity for community self-build affordable housing.**

Infrastructure Needs

- **Education - land for a primary school and financial or in kind contributions towards secondary education provision**
- **Open Space - to include general greenspace, play space, allotments and sports provision as outlined in 'Policy BSC 11: Local Standards of Provision - Outdoor Recreation'**
- **Community - onsite provision for community and/or local retail facilities**

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