

**Land north of Berry Hill Road, Adderbury**

## **Planning Statement of Case Update**

Appeal against the refusal of an application for outline planning permission for up to 40 dwellings with associated landscaping, open space and vehicular access off Berry Hill Road (all matters reserved other than access)

LPA Ref: 19/00963/OUT

**Hollins Strategic Land**

June 2021

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## 1 Introduction

- 1.1 This Planning Statement of Case Update (PSoCU) is written in support of an appeal against the decision of Cherwell District Council (CDC) to refuse an application (no. 19/00963/OUT) for outline planning permission for the erection of up to 40 dwellings (all matters reserved other than access) on land north of Berry Hill Road, Adderbury.
- 1.2 The Appeal was submitted on 03/07/2020. The original Planning Statement of Case (PSoC) formed part of the submission but due to the pandemic, more than 7 months passed from submission to Start Date. The Start Date letter for the appeal was sent to the Appellant on 12/02/2021.
- 1.3 Following receipt of the letter, the Inspectorate agreed that the PSoC should be updated. The Appellant had pointed out that the PSoC focussed on the Council's own evidence to set out why the appeal should be allowed and the evidence had changed since the appeal was submitted. For example, reference was repeatedly made to the Council's 2019 Annual Monitoring Report (AMR) and the Council published its 2020 AMR in January 2020 which rendered parts of the original PSoC out of date. The revised PSoC was submitted to the Inspectorate in February 2021, enabling a more efficient and effective appeal process.
- 1.4 The Statement of Common Ground (SoCG) was due to be submitted to the Inspectorate on 30/03/2021, along with the LPAs Statement of Case (SoC). The Appellant sent a revised draft Statement of Common Ground (dSoCG) to the LPA on 11/03/2021 and the LPA provided comments on 30/03/2021. Upon submitting its SoC on 30/03/2021, the LPA informed the Inspectorate that the LPA and Appellant were in regular liaison and nearing agreement on the SoCGs,. The LPA also informed the Inspectorate that it was hoped that the dSoCGs would be finalised well before the scheduled Hearing date (which at that time, was 05/05/2021).
- 1.5 Unfortunately, the dSoCG has been with the LPA since 28/04/2021 and is not yet finalised despite the Appellant's repeated attempts to engage with the LPA. A chronology is provided at Appendix 1<sup>1</sup>.
- 1.6 The dSoCG addresses key substantive issues:
  - A. Tilted Balance
  - B. Deddington Application

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<sup>1</sup> Appendix 1: Chronology

- C. Heritage
- D. Traffic Calming

1.7 In the absence of a signed SoCG, the Appellant considers it necessary to provide the Inspectorate with this PSoCU, with the aim of addressing these issues in advance of the Hearing and thereby ensuring a more efficient and effective appeal process.

### A: Tilted Balance

1.8 The 2020 Annual Monitoring Report (AMR) confirmed that the Council cannot demonstrate the required supply of deliverable housing land. This was reconfirmed in the SoC. The SoC also confirmed that the Council is satisfied that the tilted balance is engaged.

1.9 Whilst the PSoC referred to the Written Ministerial Statement (WMS) on Housing Land Supply in Oxfordshire, this is no longer relevant following a Statement by the Government on 25/03/2021<sup>2</sup>.

1.10 The LPA recently confirmed its position with regard the tilted balance via its decision to approve an application (20/02083/OUT), subject to a s106 Agreement, for residential development in Deddington (another Category A village) at Committee on 20/05/2021 ('the Deddington application')<sup>3</sup>. Para. 11 of the Committee Report stated:

*The Council's housing land supply position means that under paragraph 11d of the NPPF the policies in the development plan relating to housing provision are to be considered out of date. This includes Policy Villages 1 and saved Policy H18, and the weight to be afforded these policies is therefore reduced. Where policies are out-of-date, there is a presumption within the NPPF of granting permission for sustainable forms of development unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

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<sup>2</sup> Appendix 2: Statement on WMS Housing Land Supply in Oxfordshire

<sup>3</sup> Appendix 3: Deddington Committee Report

- 1.11 Furthermore, a recent appeal decision<sup>4</sup> (Appeal Ref: 3271094) dated 01/06/2021 confirms that the tilted balance is engaged. The Inspector states the following at para. 4 of the decision:

*The Council refused the application for five reasons in which they cited conflict with policies of The Cherwell Local Plan 2011-2031 (LP). The National Planning Policy Framework (NPPF) requires the Council to maintain a supply of land for housing "...sufficient to provide a minimum of five years' worth of housing against their housing requirement...". In a Statement of Common Ground (SoCG) dated 4 May 2021 it is stated that "...it is accepted that the Council cannot do so". Consequently, by virtue of paragraph 11(d) of the NPPF and Footnote 7 on page 6, and as stated in the SoCG, the aforementioned LP policies "...are 'out-of-date' and this appeal can only fail if the Council can demonstrate that any adverse effects of the proposal would significantly and demonstrably outweigh the benefits...". It is also stated that "The Council accepts that it cannot demonstrate this and that this appeal should be allowed". The Council has, in effect, withdrawn the five reasons for refusal of the application.*

- 1.12 The Council cannot demonstrate a five year supply of deliverable housing sites. Footnote 7 of the NPPF confirms that in such circumstances, the "*policies which are most important for determining the application are out of date*" (para. 11d, NPPF). The tilted balance is engaged and the appeal should be allowed unless "*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole*" (para. 11d, NPPF).

## **B: Deddington Application**

- 1.13 The Appellant wrote to the LPA on 21/05/2021<sup>5</sup>. The letter politely requested that the SoCG be finalised by 28/05/2021 and that the LPA provided clarity on its position with regard RfR 1 in light of the Council's decision to approve the Deddington application (subject to s106 Agreement) at Committee on 20/05/2021.

- 1.14 The Appellant also provided the LPA with a revised dSoCG on 21/05/2021 to reflect the Council's position set out in the Committee Report for the Deddington application. The dSoCG sought to confirm that the Council does not have an in-principle objection to the proposals against policies H18, BSC1 and PV2, as per the Deddington Committee Report (CR).

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<sup>4</sup> Appendix 4: Appeal decision – Banbury - 3271094

<sup>5</sup> Appendix 5: Letter to LPA dated 21/05/2021

1.15 The Assessment section of the CR confirms that “*the policies in the development plan relating to housing provision are to be considered out of date*”. It states that this includes policies PV1 and H18 and that “*the weight to be afforded to these policies is therefore reduced*”.

1.16 However, the CR then continues to assess the proposals against PV2 and the headline figure of 750 stating:

*However, that figure has not yet been delivered and so at this time the principle of development remains acceptable in policy terms. The proposals would assist in further meeting overall Policy Villages 2 housing requirements and could also contribute to the provision of affordable housing.*

1.17 The PSoC addresses policies H18, BSC1 and PV2 in detail, with reference to six recent appeal decisions. The Council’s SoC does not fully engage with the Appellant’s case and does not refer to the relevant appeal decisions. As such, it is not clear to the Inspector what the Council’s stance is on these policies.

1.18 The SoC briefly refers to H18 and BSC1 at para. 7.3 (and at para. 8.4 with regard locational sustainability). Para. 7.3 also introduces a discussion with regard PV2 which continues at para. 7.11. Whereas the Deddington CR clearly states that proposals in Category A villages are appropriate in principle until such time as the 750 figure has been delivered, the SoC puts forward a different case which also appears to be based on figures that do not correspond with the 2020 Annual Monitoring Report (AMR)<sup>6</sup>.

1.19 The decision to approve the Deddington application and the content of the CR represents a change in the Council’s position with regard H18, BSC1 and PV2.

## C: Heritage

1.20 Following receipt of the LPAs SoC on 30/03/21, the Appellant contacted the LPA on 01/04/2021 to progress the dSoCG and question whether the LPA was seeking to introduce a Heritage Reason for Refusal (RfR) via its SoC and the dSoCG. This would have been inconsistent with the approach taken at Committee and in the Reasons for Refusal. As confirmed in the PSoC (see para. 1.8), the Planning Officer confirmed to Members that Historic England were satisfied that the visualisations demonstrated “*that there is a possible proposal that could address their heritage concerns and achieve improved views of the church and publicly accessible open space*”. The

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<sup>6</sup> For example, the SoC states that there have been 185 completions in Adderbury since 2014 but the AMR states that there have been 122 completions.

Officer continued to advise Members that the Heritage element of RfR 2, as drafted in the Committee Report, should be removed as it would not “*be a strong argument to defend at appeal given the Historic England’s position*”.

1.21 This matter was discussed during a SoCG meeting between the LPA and Appellant on 01/04/2021. The LPA advised that it would review its position and respond to the Appellant on 06/04/2021.

1.22 The Appellant wrote to the LPA on 09/04/2021 to politely request that the LPA inform the Appellant, as a matter of urgency, whether it intended to pursue a Heritage RfR as no response had been received<sup>7</sup>. The LPA responded by email on 14/04/2021<sup>8</sup> stating:

*The Council is not introducing a separate heritage reason for refusal. Our comments in respect to the views that we maintain would be unacceptably harmed across the site, including towards the church, are made in respect to refusal reason 2, i.e. urbanisation and visual impact on the rural character, appearance of the locality and local settlement pattern and the rural setting of the village.*

1.23 The dSoCG was intended to address a number of Heritage-related matters of importance to the determination of the appeal, including the following:

- i. The application was refused for the reasons set out in the Decision Notice and not those set out at para. 6.1 of the LPAs SoC. This point had been agreed in an earlier revision of the dSoCG.
- ii. There is no Heritage RfR and the LPA was not intending to add a Heritage RfR at para. 8.6 or 8.14 of its SoC or allege that there would be any harm to the significance or setting of a heritage asset. This point had been confirmed by the LPA in its email dated 14/04/2021 and it is only the precise wording that needed to be agreed.
- iii. The LPAs comments were merely intended to convey the Council’s opinion that the impact on views of the Church would lead to a visual impact on the rural character, appearance of the locality and local settlement pattern of Adderbury; this is a point which the Appellant disagrees with. This point had been confirmed

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<sup>7</sup> Appendix 6: Letter to LPA dated 09/04/2021

<sup>8</sup> Appendix 7: LPA email to Appellant dated 14/04/2021

by the LPA in its email dated 14/04/2021 and it is only the precise wording that needed to be agreed.

- iv. There is no archaeology RfR and at para. 8.6 of its SoC, the Council does not allege and has no evidence to suggest that the site itself has any heritage significance. A condition can be imposed relating to archaeology. This point had been agreed in an earlier revision of the dSoCG and it is only the precise wording that needed to be agreed.

1.24 This PSoCU is accompanied by a Heritage Note which responds to the LPAs SoC and third party representations. This is considered essential to the appeal process in the absence of a signed SoCG.

## D: Traffic Calming

1.25 The Appellant provided the LPA with an updated dSoCG on 25/05/2021 which dealt with a highways matter raised in third party representations<sup>9</sup>.

1.26 The representations had informed the Inspectorate that a traffic calming scheme was due to be implemented along Berry Hill Road. The Appellant received confirmation from the Local Highway Authority (LHA), Oxfordshire County Council (OCC), that the approved traffic calming scheme and the proposed development can both be implemented without any impact to highway safety<sup>10</sup>.

1.27 The PSoCU is accompanied by a Highways Note. The Highways Note addresses the traffic calming scheme and third party representations. It is considered essential to the appeal process in the absence of a signed SoCG.

## Planning Statement of Case Update

1.28 The remainder of this PSoCU is set out as per the Sections of the PSoC for ease of reference and should be read alongside the PSoC and the dSoCG (see Appendix 8):

- Planning Policy Update;
- Case for the Appellant: Introduction;
- Case for the Appellant: CLP 1996 Saved policy H18;
- Case for the Appellant: Local Plan Part 1 policy BSC1;

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<sup>9</sup> Appendix 8: dSoCG (25/05/2021)

<sup>10</sup> Appendix 9: Email from OCC



- Case for the Appellant: Local Plan part 1 Policy Villages 2;
- Case for the Appellant: Neighbourhood Plan policy AD1;
- Case for the Appellant: Locational Sustainability;
- Case for the Appellant: Reason for Refusal 2;
- Case for the Appellant: Benefits of Appeal Proposals; and,
- Case for the Appellant: Summary and Conclusions.

## 2 Planning Policy Update

### Emerging Cherwell Local Plan Review

- 2.1 The LDS states that a CLPR was scheduled to commence in April 2020, with adoption scheduled for July 2023. The CLPR timetable has experienced some slippage and the Council considers it likely that it will be adopted towards the end of 2023.

### Written Ministerial Statement: Housing Land Supply in Oxfordshire (WMS) (12/09/2018)

- 2.2 The WMS is no longer relevant. The following Statement was made on 25/03/2021:

*In March 2017 the Government committed to the Oxfordshire Housing and Growth Deal (the deal), to support ambitious plans to deliver 100,000 homes by 2031. The deal committed to an Oxfordshire-wide Joint Statutory Spatial Plan to be adopted by 2021, and to be supported by £215 million of funding to help deliver more affordable housing and infrastructure improvements to support sustainable development across the county.*

*As part of the deal, to support this strategic approach to supporting housing delivery through joint working, Oxfordshire was granted flexibility from the National Planning Policy Framework policy on maintaining a five year housing land supply. Since 2018, Oxfordshire have had to provide proof of a three-year land supply for planning purposes. This has worked to support the delivery of the local plans for the area and ensure that the local authorities could focus their efforts on their Joint Spatial Strategy.*

*This flexibility was laid out by Secretary of State at the time the Rt Hon James Brokenshire MP in a Written Ministerial Statement on 12 September 2018 - <https://questions-statements.parliament.uk/written-statements/detail/2018-09-12/hcws955>(opens in a new tab).*

*Since 2018, Oxfordshire have not finalised and adopted their Joint Statutory Spatial Plan. Therefore, in the best interests of housing delivery in the region, my Department have extended the time afforded to Oxfordshire for the delivery of this plan to 2023. This extension however will not be subject to the original land supply flexibilities. From today, Oxfordshire will need to maintain a five year housing land supply in accordance with the National Planning Policy Framework.*

*This statement is a material consideration in planning decisions and applies to those local planning authorities in Oxfordshire with whom the Government agreed the Oxfordshire Housing and Growth Deal with, namely Cherwell District Council, Oxford City Council, South Oxfordshire District Council, Vale of White Horse District Council and West Oxfordshire District Council. This statement applies from today.*

### 3 Case for the Appellant: Introduction

- 3.1 The Appellant maintains that the appeal proposals are in compliance with the development plan as a whole and that the proposals should be allowed.
- 3.2 However, the tilted balance is engaged. The PSoC set out why this was the case in February 2021 and more recently, the Council cannot demonstrate a five year supply of deliverable housing sites. The Council's SoC acknowledges that the tilted balance is engaged but does not address the implications of the tilted balance.
- 3.3 Para. 11 and footnote 7 of the NPPF confirm that when Councils do not have the required deliverable supply, all of the "*policies which are most important for determining the application are out of date*" (para. 11d, NPPF). This, of course, means all policies and not just those deemed most important for the supply of housing, as confirmed in a recent judgement<sup>11</sup> (see Statement of Reasons).
- 3.4 The tilted balance is engaged and the appeal should be allowed unless "*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole*" (para. 11d, NPPF).
- 3.5 There are no adverse impacts that would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole. As such, the appeal should be allowed.

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<sup>11</sup> Appendix 10: HSL LLP and (1) SoS for Housing Communities and Local government (2) Bedford Borough Council

## 4 Case for the Appellant: CLP 1996 Saved policy H18

- 4.1 Further to the case put forward in the PSoC, the significant and serious shortfall<sup>12</sup> in deliverable housing land renders policy H18 out of date, as acknowledged by the LPAs Committee Report for the Deddington application:

*The Council's housing land supply position means that under paragraph 11d of the NPPF the policies in the development plan relating to housing provision are to be considered out of date. This includes Policy Villages 1 and saved Policy H18, and the weight to be afforded these policies is therefore reduced. (para. 9.11)*

- 4.2 The Appellant maintains that policy H18 is out of date for the reasons set out in the PSoC as well as the absence of a five-year housing land supply. As stated in the Banbury appeal decision, "*there is an identified need for further housing in the District that the Council is failing to provide for*" (para. 7). The policy attracts limited weight.

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<sup>12</sup> Appendix 11: Appeal Decision (see para. 7 and para. 82, confirming that a supply of 4.8 represents a serious and significant shortfall)

## 5 Case for the Appellant: Local Plan part 1 policy BSC1

- 5.1 Further to the case put forward in the PSoC, the significant and serious shortfall in deliverable housing land renders policy BSC1 out of date.
- 5.2 It is of note that policy BSC1 is listed as a relevant policy in the Committee Report for the Deddington application, but no further reference is made to the policy throughout the remainder of the Report. The Council does not assess the impact of the dwellings on its housing strategy.
- 5.3 It can be reasonably concluded that the Council considers the policy to be out of date and is satisfied that the 14 dwellings in Deddington would not undermine its housing strategy i.e. that the Deddington proposals complied with policy BSC1.
- 5.4 Furthermore, the Council's position on LPP1 policy PV2 (discussed in more detail in section 6 of this PSoCU) demonstrates that the Council is satisfied that it can continue to approve applications for residential development in Category A villages until such time as the headline figure of 750 has been delivered and that there would be no adverse impact on its housing strategy i.e. that further development in Category A villages will not undermine its housing strategy.
- 5.5 It is the Appellant's case that policy BSC1 is out of date and the Appellant maintains that the proposals comply with policy BSC1 in any event.

## 6 Case for the Appellant: Local Plan part 1 Policy Villages 2

- 6.1 Further to the case put forward in the PSoC, the significant and serious shortfall in deliverable housing land renders policy PV2 out of date, in line with para 11 and footnote 7 of the NPPF. Furthermore, it is of note that the Council now adopts a different approach to development in Category A villages to that set out in its SoC.
- 6.2 The SoC is not clear. It does not engage with Section 6 of the Appellant's PSoC, nor does it make any reference to the relevant appeal history (see para. 6.6 of the PSoC) which provides six appeal decisions demonstrating that the SoC approach to PV2 is incorrect and inconsistent.
- 6.3 The SoC suggests that the Council considers the principle of development is not acceptable in terms of policy PV2 on the basis that:
- Adderbury has taken its share of the PV2 headline figure of 750; and,
  - *">90% of the 750-figure referenced in the policy [has been completed] in the first two-thirds of the plan period"* (para. 7.12).
- 6.4 As confirmed via the appeal history, policy PV2 does not have a spatial dimension. Furthermore, while para. 7.11 of the SoC acknowledges that Adderbury is one of the largest Category A villages and is also one of the more sustainable, it then continues to state that *"since 2014, the village has seen four large sites developed producing a total of 185 new dwellings"* and *"that represents virtually a quarter of the entire Policy Villages 2 rural requirement over the plan period"*. This is factually incorrect. Table 39 of the AMR 2020 confirms that Adderbury has delivered 122 dwellings and Table 40 confirms that there are presently no further sites in Adderbury that will contribute towards the 750 figure.
- 6.5 The AMR 2020 also confirms that only 415 dwellings have been delivered across all Category A villages (see para. 5.172), as confirmed in the PSoC (para. 6.12) and the Deddington Committee Report (para. 9.14). As confirmed in the Bodicote appeal decision (see Appendix 22 of PSoC), *"the policy requires the delivery of 750 units, not just a requirement to grant planning permission for this number"* (para. 10).
- 6.6 The Deddington Committee Report confirms that the headline figure of 750 has not yet been delivered and also states *"so at this time the principle of development remains acceptable in policy terms"* (para. 9.17).

- 6.7 The Council must adopt the Deddington approach for the appeal proposals in order to be consistent. Consistency in decision making is an important material consideration. The Appellant has sought to engage with the LPA to get confirmation of its position with regard policy PV2 and BSC1 but at the time of writing this PSoC Update, there has been no response. It can therefore be reasonably assumed, on the basis of the Deddington application, that the Council agrees with the Appellant that the appeal proposals are now acceptable in principle, in terms of both policy PV2 and policy BSC1. Both parties therefore agree that the proposals would be in accordance with the LPp1 housing strategy.
- 6.8 Whilst it may be the case that there is a difference in planning judgment between the parties as to the extent of compliance with the 11 criteria in PV2, having regard to the Council's approach at Deddington, there should be no dispute between the parties as to compliance with the overall strategy of the plan, as contained in BSC1 and PV2, and no justifiable reason for refusal on this basis.
- 6.9 The Appellant maintains that the proposals comply with policy PV2, which is out of date.
- 6.10 If the Inspector considers that the proposals do not comply with PV2, any non-compliance must be considered in light of the NPPF (footnote 7, para 11) rendering all of the most important policies for determining the application out of date, including PV2. Policy PV2 is of course a policy of restriction and in current circumstances, where there is an identified need for housing that the Council is failing to provide for, it must attract limited weight in the decision-making process.

## 7 Case for the Appellant: Neighbourhood Plan policy AD1

- 7.1 Further to the case put forward in the PSoC, the significant and serious shortfall of deliverable housing land renders policy AD1 out of date.
- 7.2 The SoC does not engage fully with Section 7 of the Appellant's PSoC. Rather, it points to the ANP policy being deemed acceptable because Adderbury has "taken its share" (see para. 7.11). This is discussed in Section 6 of this PSoCU.
- 7.3 At para. 7.8, the SoC acknowledges that the Council's housing land supply position requires consideration by the Parish and District Councils, possibly resulting in a review of the ANP. However, the SoC then appears to suggest that this does not have any implications on the weight to be applied to AD1 because "*the land supply position only emerged on 1<sup>st</sup> April*" and "*it has not been possible to review a formal policy response in the 5-week period running up to this appeal Hearing, particularly bearing in mind it is the pre-election period when purdah arrangements prevent consideration of substantive policy issues*" (para. 7.8). The 2020 AMR is dated December 2020 and so, by the time the Hearing takes place, the Councils will have had some 6 months to consider the implications of the housing land supply position, as opposed to the 5 weeks referred to in the SoC.
- 7.4 Nevertheless, the NPPF (para. 11, footnote 7) confirms that the policy is out of date and the tilted balance applies. The Council's SoC does not engage with this. There is an identified need for housing that the Council is failing to provide for. When the Councils do consider the implications of the housing land supply position, it can be reasonably assumed that they will acknowledge that there is a need for additional land for deliverable housing and that policy AD1 is restrictive in this regard.
- 7.5 The SoC does make reference to the Examiner noting that there was potential for additional dwellings to be provided within the settlement boundary but offers no evidence to rebut the Appellant's case that there are limited opportunities.
- 7.6 In its PSoC, the Appellant acknowledges that the proposals do not comply with policy AD1 but states that the conflict does not render the proposals contrary to the development plan and in any event, the policy is out of date and should receive limited weight. The weight is further reduced by the Council's housing land supply position.



## 8 Case for the Appellant: Locational Sustainability

- 8.1 The SoC does not engage with Section 8 of the PSoC in any detail. Rather, it discusses locational sustainability briefly at para. 7.15 and 7.16, relying upon the 2007 appeal decision. This is addressed in the Appellant's PSoC. Some Third Party Representations question the locational sustainability of the site. The Highways Note which accompanies this PSoCU responds to these Representations.
- 8.2 It remains the Appellant's case that the appeal proposals comply with LPp1 policies ESD1 and SLE4:
- A. As stated in the Committee Report, the Local Highway Authority does not object;
  - B. The policy and guidance has changed significantly since the Inspector's 2007 decision on appeal 2032232;
  - C. Locational sustainability is to be considered in the context of the NPPF and LPp1 policy PV2;
  - D. The locational sustainability of the site does not differ significantly from the sites north and south of Milton Road; and,
  - E. The appended Accessibility Statement confirms that the location of the site can encourage sustainable modes of travel.
- 8.3 Even if the Council's position were accepted by the Inspector, any such harm would now fall to be considered in light of the tilted balance. The previous appeal decision was pre-NPPF. The LPA does not explain how or why harm occasioned by a site in one of the most sustainable Category A settlements, situated within walking distance of local services, is harm that significantly and demonstrably outweighs the numerous benefits of the scheme. The benefits do of course include enhancements to the Green Infrastructure network in Adderbury (see Benefit F, Section 10, PSoC) and enhancements to the sustainability of Adderbury (see Benefit K, Section 10, PSoC).

## 9 Case for the Appellant: Reason for Refusal 2

9.1 The Appellant has sought to finalise a Landscape SoCG and has been waiting for comments from the LPA. The Landscape Consultant acting on behalf of the Council, Max Askew, has apologised for the delay and has been awaiting instructions from the LPA. It was not considered necessary to provide a Landscape Statement of Case Update.

### **CLP policy C8**

9.2 Further to the case put forward in the PSoC, the significant and serious shortfall of deliverable housing land renders policy C8 out of date.

9.3 For the avoidance of doubt, it is the Appellant's case that there is no conflict with policy C8 but in any event, it is out of date as a result of the housing land supply position.

### **CLP policy C28**

9.4 Policy C28 relates to layout, design and external appearance which are to be considered at Reserved Matters (RM) stage.

9.5 The Council has agreed, during SoCG discussions, that the proposals could comply with C28 at RM stage.

## 10 Case for the Appellant: Benefits of Appeal Proposals

### Social Benefits

#### A: Contribution to market housing in context of requirement to boost supply

- 10.1 The PSoC sets out why this benefit should be given significant weight. It is not necessary to repeat the reasons in this PSoCU but it is of note that the Council's SoC states that it should be given substantial weight (see para. 7.10), which is unsurprising given there has been a persistent shortfall against the requirement to identify a five year supply. Additionally, the Committee Report for the Deddington application afforded the provision of 14 dwellings significant weight (see para. 10.7).

#### C: Provision of small and moderately sized homes

- 10.2 It is of note that the LPA has accepted, during SoCG discussions, that housing mix cannot be controlled at Reserved Matters stage and that a condition should be imposed at outline stage. The PSoC points to the absence of any such condition on the planning permissions for the committed Category A sites and it is also of note that no such condition will be imposed on the Deddington application, once again resulting in the Council not being able to ensure the delivery of small and moderately sized homes.

#### D: Contribution to affordable housing to meet an acknowledged shortfall

- 10.3 It is of note that the Deddington application will not deliver any social rented affordable homes and so it is understood that there continues to be no provision of social rented units in Cherwell.
- 10.4 Additionally, the shortfall of all housing is significant and serious and the Banbury appeal decision confirms that "*the need for affordable housing is more acute than the need for market housing*" (para. 7).

### Economic Benefits

- 10.5 The Council's SoC acknowledges that "*the proposal has the potential to generate economic benefits for the local economy and wider region through investment and job creation*" but continues to state "*such benefits would be limited*" given the scale of development proposed (up to 40). It is of note that Council afforded minor to moderate weight to the same benefits associated with the Deddington application which would only provide 14 dwellings.

## 11 Case for the Appellant: Summary and Conclusion

### Tilted Balance

- 11.1 The tilted balance is engaged. The Council cannot demonstrate the required supply of deliverable housing sites. All of the policies which are most important for determining the application are out of date.
- 11.2 In accordance with para. 11d of the NPPF, the appeal should be allowed unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 11.3 Para. 14 of the NPPF states the following:
- In situations where the presumption (at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, provided all of the following apply:*
- a) the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made;*
  - b) the neighbourhood plan contains policies and allocations to meet its identified housing requirement;*
  - c) the local planning authority has at least a three year supply of deliverable housing sites (against its five year housing supply requirement, including the appropriate buffer as set out in paragraph 73); and*
  - d) the local planning authority's housing delivery was at least 45% of that required over the previous three years.*
- 11.4 The ANP became more than 2 years old in July 2020 and it does not contain policies and allocations to meet its identified housing requirement. As such, the conflict with the ANP must not be afforded such weight that it is “*likely to significantly and demonstrably outweigh the benefits*”.
- 11.5 The Appellant has demonstrated that the conflict with ANP policy AD1 is of limited weight given the policy is out of date and should be afforded limited weight in the decision making process. Additionally, the LSoC demonstrates that:
- the Appeal Site is suitable for the development proposed, which has evolved through an iterative design process to take account of landscape and visual parameters from the outset;

- here are no significant adverse effects on landscape or visual receptors, and indeed benefits have been identified;
- No landscape or visual designations would be adversely affected; and,
- The proposals respond to the site and its setting

11.6 These LSoC conclusions reduce the weight to be given to the loss of land beyond the built up limit.

11.7 These considerations are to be weighed against the following benefits:

**Social benefits**

- A. Contribution to market housing in context of requirement to boost supply;
- B. Contribution to housing provision in context of LPp1 plan period requirement;
- C. Provide much needed small and moderately sized homes;
- D. Contribute to affordable housing to meet an acknowledged shortfall and local need;
- E. Provision of elderly housing;
- F. Have the potential to provide high quality public open space, accessible to existing residents and managed in perpetuity, contributing to an acknowledged shortfall; and,
- G. New and improved publicly accessible views of St Mary's Church.

**Economic benefits**

- H. Provide employment opportunities for the construction industry and benefit the wider construction industry supply chain; and,
- I. Result in spending in local shops and businesses.

**Environmental benefits**

- J. Enhance biodiversity at the site; and,
- K. Provide locationally sustainable development and enhance sustainability of Adderbury.

11.8 It is the Appellant's case that the adverse impacts cannot be deemed to significantly and demonstrably outweigh these numerous benefits, which are of significant weight and include the provision of market housing in the absence of a 5-year supply and the need to find additional land, as well as affordable housing to meet an acute shortfall.

11.9 In addition, when assessed against the NPPF as a whole and the three dimensions of sustainable development (economic, social, and environmental), it is evident from the

above assessment of the benefits and adverse impacts that the appeal proposal contributes positively to each of the dimensions of sustainability and that it represents sustainable development within the overall meaning of the NPPF.



## Chronology

Date	Action
03/07/2020	Appeal submitted
12/02/2021	Start Date letter issued
26/02/2021	Updated Planning Statement of Case submitted
11/03/2021	Updated Statement of Common Ground sent to LPA, to reflect updated PSoC
30/03/2021	LPA provides comments on SoCG
30/03/2021	LPA submits Statement of Case
30/03/2021	LPA informs PINS that the LPA and Appellant were in regular liaison and nearing agreement on the SoCGs,. The LPA also informed PINS that it was hoped that the SoCGs would be finalised well before the scheduled Hearing date (which at that time, was 05/05/2021).
01/04/2021	Appellant asks LPA if it is attempting to introduce a Heritage Reason for Refusal via the SoCG and SoC
01/04/2021	Meeting held between LPA and Appellant to discuss SoCG and LPA advises Appellant it would review its position with regard Heritage and respond to the Appellant on 06/04/2021
09/04/2021	Appellant writes to LPA to request that it confirms, as a matter of urgency, whether it intended to introduce a Heritage Rfr via the SoCG/SoC. Appellant highlights that the SoC was based on the Reasons for Refusal set out in the Committee Report and not those in the Decision Notice. The reasons were amended at the Committee in light of Historic England confirming that the site could be developed without harm.
14/04/2021	LPA responds by email confirming that the Council is not introducing a Heritage RfR. LPA also provides revised SoCG.
20/04/2021	Meeting held between LPA and Appellant to discuss SoCG. This was the last time the LPA engaged in the SoCG process.
28/04/2021	Appellant sends revised SoCG to LPA to reflect what was discussed at 20/04/21 meeting. The Appellant was under the impression that the SoCG was close to being finalised.



21/05/2021	<p>Appellant writes to LPA having sent emails asking to progress the SoCG between 28/04/21 and 21/05/2021. The letter requested that progress be made on the SoCG and that it reflect the Council's latest position on the principle of development in Category A village,s as set out in the Deddington Committee Report.</p> <p>The Appellant also provided a revised SoCG to reflect the Deddington Committee Report.</p>
25/05/2021	<p>Appellant provides LPA with an updated SoCG, confirming that Oxfordshire County Council do not object to the proposed development having considered the proposals alongside the approved traffic calming scheme for Berry Hill Road.</p>
02/06/2021	<p>Appellant emails LPA to ask for the SoCG to be dealt with urgently</p>
09/06/2021	<p>No response from the LPA and so the Appellant submits an Updated Planning Statement of Case, Heritage Note and Highways Note to assist the Inspector.</p>





**Case Officer:** Bob Neville

**Applicant:** Pembury Estates Ltd.

**Proposal:** Outline - Erection of 14 two-storey dwellings

**Ward:** Deddington

**Councillors** Cllr Brown, Cllr Kerford-Byrnes, Cllr Williams

**Reason for Referral:** Development of 10 or more dwellings

**Expiry Date:** 4 June 2021

**Committee Date:** 20 May 2021

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## **1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site is part of an agricultural field located to the west of Deddington to the north of the Hempton Road. The site is relatively flat, but the land beyond the northern boundary of the site falls away into a wide valley. To the east of the site is Wimborn Close which consists of a mix of relatively modern two storey properties and has a landscaping belt adjacent to the site. Agricultural field boundaries exist to the west of the site beyond which lies further agricultural fields.
- 1.2. Deddington nursery, The Windmill Centre, recreation ground and sporting facilities exist to the south of the site beyond Hempton Road.

## **2. CONSTRAINTS**

- 2.1. In terms of site constraints, there are records of swifts within 200m of the site and the site. The site is within an area of naturally elevated Arsenic and Radon, and also lies within an area of potentially contaminated land.

## **3. DESCRIPTION OF PROPOSED DEVELOPMENT**

- 3.1. The application seeks outline planning permission for the erection of 14no two storey dwellings with access being taken off the Hempton Road to the south of the site. The application leaves all matters reserved for future consideration.
- 3.2. Whilst all matters are reserved the applicant has submitted a Site Layout drawing (drawing number: 201-304 Rev. E) and Design and Access Statement that outlines one way in which the site could be developed; with a cul-de-sac coming off the main access road.
- 3.3. The application comes following an approval outline consent 18/02147/OUT for development of 21 dwellings on the adjacent parcel of land to the south of the site. The indicative proposed layout also shows an indicative layout of proposed development approved under 18/02147/OUT, through which access would be taken via a central spine road with cul-de-sacs being taken from it. It must be highlighted that this layout is only indicative, and that further work is being undertaken on developing an acceptable layout for the earlier outline consent under its associated reserve matters application 20/03660/REM currently with the Council for

consideration. Officers have been advised that, if approved, this proposal would be brought forward by the same developers currently bringing forward the development approved under the earlier application. For ease of reference officers will refer to the development approved under 18/02147/OUT as Phase 1.

- 3.4. The site area of the application has been amended during the course of the application - expanded to include an area of land necessary to provide a drainage infiltration basin forming part of the drainage strategy for the site. This area of land and drainage feature also formed part of the site of the earlier approval.

#### **4. RELEVANT PLANNING HISTORY**

- 4.1. The following planning history is considered relevant to the current proposal:

**Application: 18/02147/OUT** Permitted 6 May 2020

Outline planning application for up to 21 dwellings comprising 1, 2, 3 and 4 bedroom dwellings together with access, garaging and landscaping (all matters reserved except the principal means of access from Hempton Road)

**Application: 20/03660/REM** Under consideration

Reserved matters application to 18/02147/OUT - Erection of 21 dwellings (consideration of Appearance, Landscaping, Layout and Scale)

#### **5. PRE-APPLICATION DISCUSSIONS**

- 5.1. No formal pre-application discussions have taken place with regard to this proposal

#### **6. RESPONSE TO PUBLICITY**

- 6.1. This application has been publicised by way of a site notice displayed near the site, by advertisement in the local newspaper, and by letters sent to all properties immediately adjoining the application site that the Council has been able to identify from its records. The final date for comments was **25 November 2020**, although comments received after this date and before finalising this report have also been taken into account.

- 6.2. A letter on behalf of residents (4 households) within Wimborn Close in objection to the proposals and a further email of comment on behalf of 'Cherwell Swifts' has been received during. The comments raised by third parties are summarised as follows:

- Wimborn Close should remain as a close with no access through to the proposed development.
- Comments made in relation to the upkeep of the play area and potential for anti-social behaviour.

- 6.3. The comments received can be viewed in full on the Council's website, via the online Planning Register.

## 7. RESPONSE TO CONSULTATION

- 7.1. Below is a summary of the consultation responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

### PARISH/TOWN COUNCIL AND NEIGHBOURHOOD FORUMS

- 7.2. DEDDINGTON PARISH COUNCIL: **No objection**, subject to appropriate provision of open space within the development area.

### OTHER CONSULTEES

- 7.3. ARBORICULTURAL OFFICER: **No objections subject to conditions**, securing an appropriate tree condition survey, Arboricultural impact assessment, and Arboricultural method statement all to BS5837 standard.
- 7.4. BUILDING CONTROL: Proposals will require a Building Regulations approval at a later stage.
- 7.5. CDC LAND DRAINAGE: **No comments** to make.
- 7.6. ECOLOGY: No comments received.
- 7.7. ENVIRONMENT AGENCY: **No comments** to make on the application.
- 7.8. ENVIRONMENTAL HEALTH: **No objections subject to conditions**, securing: appropriate assessment of potential land contamination; an appropriate Construction Environment Management Plan (CEMP), to ensure the amenities of local residents is not adversely affected during construction; and details of infrastructure for electrical vehicle (EV) charging to be included.
- 7.9. LANDSCAPE SERVICES: **No objections subject to condition** securing an appropriate landscaping scheme, and further a financial contribution for its to improve off-site play area facilities.
- 7.10. LEAD LOCAL FLOOD AUTHORITY (LLFA): **No objections subject to conditions**, securing specific details of the proposed drainage scheme and confirmation of implementation.
- 7.11. LOCAL HIGHWAYS AUTHORITY (OCC): **No objections** subject to standard conditions in respect of securing a Construction Traffic Management Plan (CTMP) and details of Travel Information Packs for potential future occupants, and financial contributions in respect highway works and public transport services.
- 7.12. PLANNING POLICY: **No objection** to the principle of residential development on this site. However, detailed consideration of design, layout and other technical matters is required.
- 7.13. PUBLIC ART: No comments received.
- 7.14. RECREATION AND LEISURE: **No objections**. Request contributions towards off-site outdoor and indoor sports facilities and community facilities.
- 7.15. STRATEGIC HOUSING: **No objection**. There is a requirement for 5 units to be affordable. Suggests the following mix:  
Affordable rented units:

- x 2 bed 4-person house of 850sqft each
- x 3 bed 5-person house of 1,001sqft each

Shared ownership:

- 1 x 3 bed 5-person house of 1,001sqft

Parking should be provided and 50% of dwellings should meet the Regulations Requirement M4(2) Category 2: Accessible and Adaptable Dwellings requirement. Additionally, dwellings **must** comply with the DCLG Technical housing standards – nationally described space standard.

7.16. THAMES WATER: **No objections.**

7.17. WASTE & RECYCLING: No comments received.

## **8. RELEVANT PLANNING POLICY AND GUIDANCE**

8.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

8.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

### CHERWELL LOCAL PLAN 2011 - 2031 PART 1 ('CLP 2015')

- PSD1: Presumption in Favour of Sustainable Development
- SLE4: Improved Transport and Connections
- BSC1: District Wide Housing Distribution
- BSC2: The Effective and Efficient Use of Land – Brownfield land and Housing Density
- BSC4: Housing Mix
- BSC10: Open Space, Outdoor Sport and Recreation Provision
- BSC11: Local Standards of Provision – Outdoor Recreation
- BSC12: Indoor Sport, Recreation and Community Facilities
- ESD1: Mitigating and Adapting to Climate Change
- ESD2: Energy Hierarchy and Allowable Solutions
- ESD3: Sustainable Construction
- ESD6: Sustainable Flood Risk Management
- ESD7: Sustainable Drainage Systems (SuDs)
- ESD10: Protection and Enhancement of Biodiversity and the Natural Environment
- ESD13: Local Landscape Protection and Enhancement
- ESD15: The Character of the Built and Historic Environment
- Villages 1: Village Categorisation
- Villages 2: Distribution Growth Across the Rural Areas
- INF1: Infrastructure

## CHERWELL LOCAL PLAN 1996 SAVED POLICIES ('CLP 1996')

- H18: New dwellings in the countryside
- C28: Layout, design and external appearance of new development
- C30: Design of new residential development
- ENV1: Environmental pollution
- ENV12: Potentially contaminated land

### 8.3. Other Material Planning Considerations:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Annual Monitoring Report (AMR) 2020

## **9. APPRAISAL**

### 9.1. The key issues for consideration in this case are:

- Principle of development
- Landscape and visual impact
- Site layout and design principles
- Highways
- Residential amenity
- Flood Risk and drainage
- Ecology
- Infrastructure
- Other matters

### Principle of Development

#### *Policy Context*

- 9.2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for the District comprises the adopted Cherwell Local Plan 2011-2031 and the saved policies of the Cherwell Local Plan 1996.
- 9.3. In determining the acceptability of the principle of new dwellings regard is paid to Government guidance contained within the NPPF. This explains that the purpose of the planning system is to contribute to the achievement of sustainable development. This is defined as meeting the needs of the present without compromising the ability of future generations to meet their own needs.
- 9.4. Policy PSD1 contained within the CLP 2015 echoes the NPPF's requirements for 'sustainable development' and that planning applications that accord with the policies in the Local Plan (or other part of the statutory Development Plan) will be approved without delay unless material considerations indicate otherwise.
- 9.5. The CLP 2015 seeks to allocate sufficient land to meet District Wide Housing needs. The overall housing strategy is to focus strategic housing growth at the towns of Banbury and Bicester and a small number of strategic sites outside of these towns. With regards to villages, the Local Plan notes that the intention is to protect and enhance the services, facilities, landscapes and natural and historic built environments of the villages and rural areas. It does however advise that there is a need within the rural areas to meet local and Cherwell-wide needs.



- 9.6. Cherwell's position on five year housing land supply is reported in the Council's 2020 Annual Monitoring Report (AMR). The 2020 AMR demonstrates that the District presently has a 4.7 year housing land supply for the period 2021-2026. An additional 509 homes would need to be shown to be deliverable within the five year period to achieve a five year supply as required by the NPPF.
- 9.7. Policy Villages 1 of the CLP 2015 provides a framework for housing growth in the rural areas of the district and groups villages into three separate categories (A, B and C), with Category A villages being considered the most sustainable settlements in the District's rural areas which have physical characteristics and a range of services within them to enable them to accommodate some limited extra housing growth. Deddington is a Category A village.
- 9.8. In order to meet the areas housing needs Policy Villages 2 of the CLP 2015 states that: *"A total of 750 homes will be delivered at Category A villages. This will be in addition to the rural allowance for small site 'windfalls' and planning permissions for 10 or more dwellings as at 31 March 2014"*. This Policy notes that sites will be identified through the preparation of the Local Plan Part 2, through the preparation of the Neighbourhood Plan where applicable, and through the determination of applications for planning permission.
- 9.9. Policy Villages 2 then sets out that when identifying and considering sites, particular regard will be given to the following criteria:
- *"Whether the land has been previously developed land or is of less environmental value;*
  - *Whether significant adverse impact on heritage and wildlife assets could be avoided;*
  - *Whether development would contribute in enhancing the built environment;*
  - *Whether best and most versatile agricultural land could be avoided;*
  - *Whether significant adverse landscape impacts could be avoided;*
  - *Whether satisfactory vehicular and pedestrian access/egress could be provided;*
  - *Whether the site is well located to services and facilities;*
  - *Whether necessary infrastructure could be provided;*
  - *Whether land considered for allocation is deliverable now or whether there is a reasonable prospect that it could be developed within the plan period;*
  - *Whether land the subject of an application for planning permission could be delivered within the next five years; and*
  - *Whether development would have an adverse impact on flood risk."*

#### *Assessment*

- 9.10. The site is not allocated for development in any adopted or emerging policy document forming part of the Development Plan and the site sits outside the built up limits of the village given its physical and visual relationship to the existing built form.
- 9.11. The Council's housing land supply position means that under paragraph 11d of the NPPF the policies in the development plan relating to housing provision are to be considered out of date. This includes Policy Villages 1 and saved Policy H18, and the weight to be afforded these policies is therefore reduced. Where policies are out-of-date, there is a presumption within the NPPF of granting permission for sustainable forms of development unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 9.12. Deddington is recognised as a 'Category A' village and is one of the larger villages in the District with a relatively wide range of services and facilities compared to other Category A settlements. It has a relatively regular bus service (S4 route – approximately hourly), which runs between Banbury and Oxford. Overall, it is therefore considered to be one of the more sustainable Category A villages.
- 9.13. The acceptability of the proposal therefore needs to be tested against Policy Villages 2 of the CLP 2015 (as set out above), as well as other material planning considerations. However, in the first instance it is important to consider the matter of scale and quantity of development, and in particular whether the proposal is in accordance with the overarching housing strategy of the CLP 2015.
- 9.14. The Council's AMR 2020 identifies that in the 12 months to 31 March 2020 there were 144 dwellings completed at Category A villages that contribute to the Policy Villages 2 requirement of 750 dwellings. There are also 193 dwellings under construction from the supply of permitted sites. Between 1 April 2014 and 31 March 2020 there were a total of 415 net housing completions on the above sites. This equates to 55.3% of the total requirement of 750 dwellings. These sites are fully committed to help deliver the Policy Villages 2 requirement.
- 9.15. Once those houses have been completed on which there were commencements at 31 March 2020 the Council will have delivered 81% of the PV2 target, and officers are aware that development has commenced at sites that would deliver a further 136 dwellings (66 at Launton, 40 at Milcombe, 20 at Weston on the Green, and 10 at the British Waterways site in Kidlington).
- 9.16. The Council is therefore well on the way to delivering the total of 750 dwellings set out at Policy Villages 2. Inspectors' decisions at Launton, Tappers Farm and Sibford Ferris have found that there could be demonstrable harm from exceeding delivery of 750 dwellings at Category A villages within the plan period.
- 9.17. However, that figure has not yet been delivered and so at this time the principle of development remains acceptable in policy terms. The proposals would assist in further meeting overall Policy Villages 2 housing requirements and could also contribute to the provision of affordable housing.
- 9.18. The NPPF places great importance on boosting the supply of homes – that it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay (NPPF, Para 59). And further, that: *'Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly'* (NPPF, Para 59).
- 9.19. As noted during the assessment and approval of the outline consent on the adjacent parcel of land the site forms part of a larger site which has been considered as having potential for residential development within the Council's Housing & Economic Land Availability Assessment 2018 (HELAA). However, whilst this notes

that there is potential for residential development at the site this is not a formal allocation under the Development Plan and is only a factor given limited weight.

- 9.20. The HELAA concluded that the site is considered suitable, available and achievable for residential development for up to 31 dwellings at a density of 20dph to reflect the surrounding areas. It is noted in the report that: *The site is visually prominent on entering the village but there is neighbouring development with an established building line to the north. The visual impacts of the development could be mitigated against by a carefully considered landscaping, design and layout, and high quality build. There is existing access available.*
- 9.21. This application, along with the existing permission for 21 homes (18/02147/OUT) will result in 25 dph. In total the site would deliver 35 homes (21 plus 14). This density would need to be considered in relation to the surrounding properties and densities.
- 9.22. Policy Villages 2 also requires that regard be had to the access to services and facilities. The application site is located on the very western edge of the village, approximately 800 metres from the Market place where numerous services and facilities exist. The bus stops are also located a similar distance. Whilst it is recognised this distance is not ideal in regard to access to services and facilities, given that the site is located in a village with a relatively high level of service provision and relatively regular public transport, and the fact that walking routes to the village centre is good with street-lit footways, this is considered to be acceptable.

#### *Conclusion*

- 9.23. Overall, having regard to the factors above it is considered that the principle of this scale of growth could be acceptable on this site in Deddington in the context of the Council's housing strategy and the Local Plan. The development would provide a positive contribution towards the Council's housing land supply and provision of affordable housing, within a sustainable location where residential development has previously been accepted. This, however, is subject to the proposal being assessed against the other relevant criteria of Policy Villages 2 and the other relevant policies and guidance, which is discussed below.

#### Landscape and Visual Impact

##### *Policy context*

- 9.24. The Government attaches great importance to the design of the built environment within the NPPF. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.
- 9.25. These aims are also echoed within Policy ESD15 of the CLP 2015 which looks to promote and support development of a high standard which contributes positively to an area's character and identity by creating or reinforcing local distinctiveness, stating that: *"New development proposals should respect the traditional pattern of routes, spaces, blocks, plots, enclosures and the form, scale and massing of buildings. Development should be designed to integrate with existing streets and public spaces, and buildings configured to create clearly designed active public frontages"*.
- 9.26. Saved Policy C28 of the CLP 1996 states that control will be exercised over all new development to ensure that standards of layout, design and external appearance are sympathetic to the character of the context of that development. Further, saved

Policy C30 of CLP 1996 states control will be exercised to ensure that all new housing development is compatible with the appearance, character, layout, scale and density of existing dwellings in the vicinity.

- 9.27. Policy ESD13 of the CLP 2015 states that development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided. Proposals will not normally be permitted if they would cause undue visual intrusion into the open countryside, cause undue harm to important natural landscape features and topography, be inconsistent with local character, or impact on areas judged to have a high level of tranquillity.
- 9.28. Further as noted above, Policy Villages 2 of CLP 2015 states that in identifying site, particular regard will be given to:
- Whether land has been previously developed land or is of less environmental value;
  - Whether development would contribute in enhancing the built environment
  - Whether significant adverse landscape and impacts could be avoided
- 9.29. The Cherwell Residential Guide SPD (2018) builds on the above policies and provides a framework to deliver high quality locally distinctive development.

#### *Assessment*

- 9.30. The application site is relatively flat and is separated from the adjacent development in Wimborn Close by a landscaping belt so that the existing development does not present a hard built edge to the village. The land further to the north of the site is agricultural and falls into a wide valley with the River Swere and is much more exposed in landscape terms than the application site, which is located to the south of the valley on the plateau. To the west of the site the land gently rises towards Hempton and is in agricultural use with medium to large sized fields. The landscape is relatively open with long ranging open views north.
- 9.31. The application is accompanied by a Landscape and Visual Impact Assessment prepared by Pegasus Group. This outlines the site is located within the Ironstone Hills and Villages character area within the Councils Landscape Character Assessment (1995) where the main features are the complex topography, the style of vernacular buildings and the iron age hill forts and sunken lands. Being predominantly agricultural land devoid of built form the application site itself has few features which are characteristic of the area and the site would be seen on the context of the built form of Deddington, and development to brought forward under Phase 1.
- 9.32. The proposed development would change the landscape character of the site from agricultural to residential; compounding the change that would result from the earlier approval. Given the topography of the site and the proposal would have a minor to moderate impact on the character area. Within the Oxfordshire Wildlife and Landscape Study (OWLS) the site is part of the Upstanding Village landscape type. Key characteristics are steep-sided undulating land form, well defined geometric patterns of fields with hedgerows and a strong settlement pattern of compact nucleated villages of varying size with little dispersal into the wider countryside. Overall, it is concluded the effect on this landscape type would be minor to moderate. The Landscape Officer concurs with the overall assessment and conclusions of the LVIA.

- 9.33. In terms of visual impact, the proposal would result in further development of a green field site and would extend the built up limits of Deddington. Deddington is an historic and attractive village. That said, the site is located on the western edge of Deddington where much of the more modern development in the village has taken place along Hempton Road, with further development coming forward under Phase 1. This includes Wimborn Close which also provides for some depth of development in the locality and the proposals would sit at a similar depth from the Hempton Road. As noted during the assessment of the Phase 1 this edge of the village is less sensitive to change than many of the more historic edges of the village where development is likely to be less appropriate given the more historic constraints of the existing settlement given previous more modern developments. In this respect the proposed development relates acceptably to the existing pattern of development in this part of Deddington.
- 9.34. Given the location of the site the visual impacts of the development would be relatively localised. The proposals would sit behind the Phase 1 and views of the site would be screened from the Hempton Road. An appropriate landscaping would further assist in helping to reduce the visual impacts and such details would be secured at the detailed application stage.

#### *Conclusion*

- 9.35. Officers consider that, whilst the proposals would result in the loss of part of the existing agricultural field and a greenfield site, any harm that would be caused to the wider landscape setting would not be so significant that it would warrant a reason to refuse the application and that such impacts could be largely be mitigated through the introduction of an acceptable landscaping scheme.

#### Site Layout and Design Principles

##### *Policy Context*

- 9.36. Policy ESD15 of the CLP 2015 provides guidance as to the assessment of development and its impact upon the character of the built and historic environment. It seeks to secure development that would complement and enhance the character of its context through sensitive siting, layout and high quality design meeting high design standards and complementing any nearby heritage assets. The National Planning Policy Framework is clear that good design is a fundamental to what the planning and development process should achieve.
- 9.37. BSC2 of the CLP 2015 states that new housing should be provided on net development areas at a density of at least 30 dwellings per hectare unless there are justifiable reasons to lower the density.
- 9.38. The Council's Design Guide seeks to ensure that new development responds to the traditional settlement pattern and character of a village. This includes the use of continuous building forms along principle routes and the use of traditional building materials and detailing and form that respond to the local vernacular.

##### *Assessment*

- 9.39. The application is in outline with all matters reserved for future consideration. The application is accompanied by an indicative layout within the Design and Access Statement, which indicates one way in which the site could be developed; showing a cul-de-sac arrangement coming off the main access road.

- 9.40. The submitted indicative layout shows 14no units. While some principles within the proposed indicative layout are considered to be appropriate for the site, there are concerns regarding other elements, which overall represents poor design that would be contrary to local and national planning policy; with particular concerns with regards to appropriate separation distances and potential overlooking issues. Further consideration will also need to be given as to how the proposals would integrate with the development to the south.
- 9.41. Overall, it is considered that the layout presented would result in an unacceptable form of development. However, it is recognised that the application is made in outline with all matters reserved. Therefore, the layout, scale and appearance of the development would be considered at a later stage. Given the relatively low density of the scheme and the not irregular shape of the site officers are satisfied that a revised layout could be negotiated at a reserved matters stage to ensure that the proposed development achieved a high quality and locally distinctive scheme. This is a similar position that was adopted on Phase 1 and such matters are currently being resolved through the reserve matters application 20/03660/REM. As with the earlier permission it is recommended that an informative be placed on any approval raising concerns regarding the layout.
- 9.42. The density of the scheme is lower than the 30 dwellings per hectare sought under Policy BSC3 of the CLP 2015. However, in this case, given the edge of settlement location of the development and the need for a robust landscape strategy to the western and northern boundaries of the site, the lower density is considered, on balance, to be justifiable.
- 9.43. The development is at a level that would trigger a need for a LAP feature to be included. There is no on-site play area as the 14no. dwellings would not allow enough space to achieved this. However, an existing play area east of the development requires refurbishment to improve its play potential for children of 2 -6 years. It is considered that local plan requirement for a local area of play can be provided off-site with a financial contribution with line with the Developer Contributions SPD.

### *Conclusion*

- 9.44. Officers have concerns over the proposed layout and design principles for the development as indicated within the current submission. However, officers are satisfied that given the context and arrangement of the site that an acceptable layout could be negotiated, and that such matters would be fully considered as part of any such reserved matters application.

### Highways

#### *Policy context*

- 9.45. The NPPF (Para. 108) states that the planning system should actively manage patterns of growth in support of the achievement of promoting sustainable transport. However, notes that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making.
- 9.46. The NPPF (Para. 108) advises that in assessing specific applications for development, it should be ensured that:
- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;

- b) safe and suitable access to the site can be achieved for all users; and
- c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

Both Policies ESD15 and SLE4 of the CLP 2031 reflect the provision and aims of the NPPF. Policy ESD15 of the CLP 2031 states that: *“New development proposals should be designed to deliver high quality safe, attractive, durable and healthy places to live and work. Development of all scales should be designed to improve the quality and appearance of an area and the way it functions”*; whilst Policy SLE4 states that: *“All development where reasonable to do so, should facilitate the use of sustainable modes of transport (and) development which is not suitable for the roads that serve*

#### *Assessment*

- 9.47. Given that all matters are reserved for future consideration, including access and layout, it is only the principle of the development and associated potential transport related issues that can be considered at this stage. However, the applicants have submitted illustrative layout plans which shows an indicative access which allows for an appropriate assessment of these potential transport impacts.
- 9.48. The Local Highway Authority (LHA) raises no objections to the development subject to conditions and contributions to be secured through S106 Agreement.
- 9.49. The traffic impact generated by the proposed development is not considered to have a severe impact on the existing highway network given the scale of the development and the nature of the roads. The submission indicates that the development would be served by an access road taken from Hempton Road through the development approved under Phase 1, with the route being on the same alignment and utilising the access arrangements as this earlier approval. However, full details of the site layout, access and parking arrangements would be considered under future reserved matters applications.
- 9.50. The LHA has requested a contribution of £14,518 for enhancement to the bus service in the village which connects to Banbury and Oxford, to a half-hourly daytime frequency, which would help in the village being more accessible by a sustainable mode of transport as encouraged by the NPPF and this would be secured through a Section 106.

#### *Conclusion*

- 9.51. The LHA advises that the proposals are acceptable in terms of highways safety and potential impacts on the local road network and officers see no reason to disagree with the LHA’s assessment.

#### Impact on neighbouring amenity

- 9.52. Policy C30 of the CLP 1996 requires that a development must provide standards of amenity and privacy acceptable to the Local Planning Authority. These provisions are echoed in Policy ESD15 of the CLP 2015 which states that: *‘new development proposals should consider amenity of both existing and future development, including matters of privacy, outlook, natural lighting, ventilation and indoor and outdoor space’*.

#### *Assessment*

- 9.53. The application is in outline only. Any detailed proposals would need to have due regard to requirements of Section 6 of the Residential Design Guide SPD with regard to appropriate standards of amenity for both existing and future residents. Appropriate positioning and scale of dwellings, boundary treatments and the nature of such treatments could be given due consideration at reserved matters stage.
- 9.54. The proposed development would be located away from surrounding residential properties. The existing properties which would be most impacted upon by the proposed development would be the properties to the east of the site in Wimborn Close. These properties are separated by the application site by landscaping belt, play area and a road and would be in excess of 35 metres from the proposed development.

#### *Conclusion*

- 9.55. Given the above, officers are satisfied that the development can be made acceptable in residential amenity terms, both for existing residents neighbouring the site and future occupiers, with acceptable details to be secured at reserved matters stage.

#### Affordable Housing and Housing Mix

#### *Policy*

- 9.56. Policy BSC3 of the CLP 2015 states that development on the site should make provision for 35% affordable housing with 70% of the affordable housing to be affordable rent and 30% as intermediate homes such as shared ownership. Policy BSC4 states that new development will be expected to provide a mix of home to meet current and expected future demand creating socially mixed and inclusive communities.

#### *Assessment*

- 9.57. The applicant has committed to providing 35% affordable housing on the site in line with Policy BSC3. The detailed housing mix would be determined at reserved matters stage and at the current time the plans are only indicative. The housing officer has raised no objection to this and has provided a suggested mix. Full details of the mix of the market and affordable housing would be determined at reserved matters stage. The affordable housing would need to be secured by a legal agreement.

#### Flooding Risk and Drainage

- 9.58. Policy ESD6 of the CLP 2015 essentially replicates national policy contained in the NPPF with respect to assessing and managing flood risk. In short, this policy resists development where it would increase the risk of flooding and seeks to guide vulnerable developments (such as residential) towards areas at lower risk of flooding.
- 9.59. Policy ESD7 of the CLP 2015 requires the use of Sustainable Drainage Systems (SuDS) to manage surface water drainage systems. This is with the aim to manage and reduce flood risk in the District.

#### *Assessment*

- 9.60. The current is situated wholly within Flood Zone 1 which is land which has a less than 1 in 1,000 annual probability of river flooding.



- 9.61. The applicant has submitted a Technical Note: Drainage Statement report (ref.: 23933-01-TN-02 REV C) which outlines a potential drainage strategy for the site including an infiltration basin feature in the south east area of the site (also part of the approved scheme 18/02147/OUT) which would then be discharged into the underlying bedrock through infiltration. The Technical Note has been updated during the course of the application in response to comments made by the Lead Local Flood Authority (LLFA).
- 9.62. The report demonstrates the feasibility of a system with sufficient capacity for the 1 in 100 year storm event (plus a 40% allowance of climate change). The LLFA whilst originally objecting have subsequently withdrawn their objection in light of revised information received; considering that the general principles of the drainage strategy to be largely acceptable. As with Phase 1 the LLFA notes that the site lies over a secondary aquifer and the site may be subject to contamination which may impact on the use of infiltration.
- 9.63. As with the Phase 1 the Council's Environmental Protection Officer has again indicated that full ground investigation needs to be undertaken on the site as part of a planning condition. Officers again consider that if this is undertaken prior to the submission of the reserved matters there can be a greater understanding of the potential for contamination to impact on the drainage arrangement and considered as part of the reserved matter, whether that be through remediation of the contamination or through an alternative method of drainage.
- 9.64. Thames Water has raised no objection to the development in regard to foul water sewage or water network provision and the development is therefore considered to be acceptable in that regard.

#### *Conclusion*

- 9.65. Officers consider that, in light of there being no technical objections from the LLFA to the general principles of the proposed drainage strategy, and subject to appropriate conditions securing an appropriate detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development and an acceptable sewage drainage strategy, the proposals could be considered acceptable in terms of flood-risk and drainage.

#### Ecology

##### *Legislative context*

- 9.66. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose European Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law. They also transpose elements of the EU Wild Birds Directive in England and Wales. The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.
- 9.67. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.

- 9.68. The Regulations provide for the control of potentially damaging operations, whereby consent from the country agency may only be granted once it has been shown through appropriate assessment that the proposed operation will not adversely affect the integrity of the site. In instances where damage could occur, the appropriate Minister may, if necessary, make special nature conservation orders, prohibiting any person from carrying out the operation. However, an operation may proceed where it is or forms part of a plan or project with no alternative solutions, which must be carried out for reasons of overriding public interest.
- 9.69. The Regulations make it an offence (subject to exceptions) to deliberately capture, kill, disturb, or trade in the animals listed in Schedule 2, or pick, collect, cut, uproot, destroy, or trade in the plants listed in Schedule 4. However, these actions can be made lawful through the granting of licenses by the appropriate authorities by meeting the requirements of the 3 strict legal derogation tests:
- (1) Is the development needed to preserve public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment?
  - (2) That there is no satisfactory alternative.
  - (3) That the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.
- 9.70. The Regulations require competent authorities to consider or review planning permission, applied for or granted, affecting a European site, and, subject to certain exceptions, restrict or revoke permission where the integrity of the site would be adversely affected. Equivalent consideration and review provisions are made with respects to highways and roads, electricity, pipe-lines, transport and works, and environmental controls (including discharge consents under water pollution legislation).

#### *Policy Context*

- 9.71. Paragraph 170 of the NPPF states that Planning policies and decisions should contribute to and enhance the natural and local environment by (amongst others): a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils; and d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
- 9.72. Paragraph 175 states that when determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.
- 9.73. Policy ESD10 of the CLP 2015 lists measures to ensure the protection and enhancement of biodiversity and the natural environment, including a requirement for relevant habitat and species surveys and associated reports to accompany planning applications which may affect a site, habitat or species of known ecological value.

- 9.74. These policies are both supported by national policy in the NPPF and also, under Regulation 43 of Conservation of Habitats & Species Regulations 2017, it is a criminal offence to damage or destroy a breeding site or resting place, unless a licence is in place.
- 9.75. The Planning Practice Guidance dated 2014 post-dates the previous Government Circular on Biodiversity and Geological Conservation (ODPM Circular 06/2005), although this remains extant. The PPG states that Local Planning Authorities should only require ecological surveys where clearly justified, for example if there is a reasonable likelihood of a protected species being present and affected by development. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity.

#### *Assessment*

- 9.76. The current application has been accompanied by an Ecological Appraisal (EA) by Aspect Ecology dated June 2020. Whilst no formal comments have been received from the Council's Ecologist (CE) during the current application it is noted that no significant concerns were raised in respect of the proposals (18/02147/OUT) on the adjacent site.
- 9.77. The current site has similar characteristics to the Phase 1 site and is not subject to any statutory or non-statutory designations. The EA indicates that there are no significant protected species issues on this site and suggests a number of mitigation measures within the recommendations of the report. The recommendations largely reflect those considered acceptable by the CE during Phase 1. These are again all appropriate including those to avoid disturbance to mammals, reptiles and birds. A separate lighting strategy would be required which can be secured through condition.
- 9.78. The proposals would, however, result in the loss of some habitat and whilst there are a number of Biodiversity Enhancement measures recommended within the EA it is not clear whether there will be an overall net gain on site for biodiversity. It is therefore recommended that such matters be conditioned as part of any such approval.

#### *Conclusion*

- 9.79. Officers are satisfied that, on the basis of evidence within the submitted EA and there being no objection from the Council's Ecologist, and subject to conditions, the welfare of any European Protected Species found to be present at the site and surrounding land would continue and be safeguarded notwithstanding the proposed development and that the Council's statutory obligations in relation to protected species and habitats under the Conservation of Habitats & Species Regulations 2017, have been met and discharged and that proposals would accord with the Development Plan Policies identified above.

#### Impact on Local Infrastructure

##### *Policy Context*

- 9.80. Policy INF1 of the CLP 2015 states that: *"Development proposals will be required to demonstrate that infrastructure requirements can be met including the provision of transport, education, health, social and community facilities."*
- 9.81. Policy BSC11 of the CLP 2015 states that: *"Development proposals will be required to contribute to the provision of open space, sport and recreation, together with*

*secure arrangements for its management and maintenance. The amount, type and form of open space will be determined having regard to the nature and size of development proposed and the community needs generated by it. Provision should usually be made on site in accordance with the minimum standards of provision set out in 'Local Standards of Provision – Outdoor Recreation'. Where this is not possible or appropriate, a financial contribution towards suitable new provision or enhancement of existing facilities off site will be sought, secured through a legal agreement."* Policy BSD12 requires new development to contribute to indoor sport, recreation and community facilities.

- 9.82. The Developer Contributions Supplementary Planning Document (SPD) setting out its position in respect of requiring financial and on site contributions towards ensuring the necessary infrastructure or service requirements are provided to meet the needs of development, and to ensure the additional pressure placed on existing services and infrastructure is mitigated. This is the starting point for negotiations in respect of completing S106 Agreements.

#### *Assessment*

- 9.83. Where on and off-site infrastructure/measures need to be secured through a planning obligation (i.e. legal agreement) they must meet statutory tests set out in regulation 122 of the Community Infrastructure Ley (CIL) Regulations 2010 (as amended). These tests are that each obligation must be:

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development;
- c) Fairly and reasonably related in scale and kind to the development.

- 9.84. Where planning obligations do not meet the above statutory tests, they cannot be taken into account in reaching a decision. In short, these tests exist to ensure that local planning authorities do not seek disproportionate and/or unjustified infrastructure or financial contributions as part of deciding to grant planning permission. Officers have had regard to the statutory tests of planning obligations in considering the application and Members must also have regard to them to ensure that any decision reached is lawful.

- 9.85. Having regard to the above, in the event that Members were to resolve to grant planning permission, the following items would in officers' view need to be secured via a legal agreement with both Cherwell District Council and Oxfordshire County Council in order to secure an appropriate quality of development as well as adequately mitigate its adverse impacts:

#### *Cherwell District Council*

- Provision of commuted sum of £19,973.10 in lieu of Open Space Provision
- Provision of a commuted sum of £32,296.04 to the upgrading of local play equipment at Wimborn Close.
- Off-site outdoor sports facilities capital provision – improvement of sports provision within Deddington - £33,568.50.
- Off-site indoor sports facilities – Towards the replacement of the main hall floor at The Windmill Centre and sports equipment - £13,895.66.
- Community hall facilities - £19,036.94 – To expand and/or enhance Windmill Community Centre.
- £106 per dwelling for bins
- Affordable housing provision – 35%

Oxfordshire County Council

- £14,518 – Public transport to upgrading of bus frequency to Oxford and Banbury
- £4,500 – Supply and installation of a solar-powered Vehicle Activated Sign

### *Conclusion*

- 9.86. A number of items would need to be secured via a legal agreement with both Cherwell District Council and Oxfordshire County Council in order to secure an appropriate quality of development as well as adequately mitigate its adverse impacts.

### Other Matters

- 9.87. Saved Policy ENV12 of the CLP 1996 sets out that development on land which is known or suspect to be contaminated will only be permitted if
- (i) Adequate measures can be taken to remove any threat of contamination to future occupiers of the site.
  - (ii) The development is not likely to result in contamination of surface or underground water resources
  - (iii) The proposed use does not conflict with other policies in the plan.
- 9.88. The site is on land which is potentially contaminated and the Council's Environmental Protection Officer has therefore recommended that phased contaminated land conditions need to be attached should permission be granted. Officers agree with this assessment.
- 9.89. Regarding air quality, the Council's EPO requests that ducting is provided for the future installation of Electric Vehicle charging infrastructure in order to make resident parking places EV ready for future demand. The NPPF and Policies SLE4 and ESD1 of the CLP 2015 encourage and support the incorporation of measures into new development that promote more sustainable forms of transport. The provision of EV charging infrastructure is also reflected in the Council's Infrastructure Delivery Plan. It is considered reasonable and necessary for this to be secured through a condition of any permission given.
- 9.90. Policy ESD1 of the CLP 2015 states that measures should be taken to mitigate the impact of development within the District on climate change, and Policy ESD2 of the CLP 2015 seeks to achieve carbon emission reductions. Policy ESD3 of the CLP 2015 encourages sustainable construction methods. The reference to allowable solutions in Policy ESD2 and 'zero carbon' are no longer being pursued by the government so are no longer relevant. However, the water usage requirements of ESD3 are still required to be met. In regard to energy efficiency the Council now seeks to secure in excess of that required under the 2013 Building Regulations. These could be controlled through a condition.
- 9.91. In relation to the best and most versatile agricultural land, the site falls within grade 3; therefore, it is considered to be the moderate quality agricultural land. The development would result in the loss of this land for agriculture but this harm is considered to be relatively limited given the quality of the land and size of the site.

## **10. PLANNING BALANCE AND CONCLUSION**

- 10.1. The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 advises that the three dimensions to sustainable development (economic, social and environmental), which are interdependent; need to be pursued in mutually supportive ways.

- 10.2. Government guidance within the NPPF supports the plan-led system and advises that applications that accord with an up-to-date plan should be approved without delay.
- 10.3. In reaching an informed decision on planning applications there is a need for the Local Planning Authority to undertake a balancing exercise to examine whether the adverse impacts of a development would be outweighed by the benefits such that, notwithstanding the harm, it could be considered sustainable development within the meaning given in the NPPF. In carrying out the balancing exercise it is, therefore, necessary to take into account policies in the development plan as well as those in the NPPF. It is also necessary to recognise that Section 38 of the 1990 Act continues to require decisions to be made in accordance with the development plan and the NPPF highlights the importance of the plan led system as a whole.
- 10.4. The site is unallocated in the adopted CLP 2015. Deddington is designated a Category A Village under Policy Villages 1 of the CLP 2015 and as such suitable for minor development within its built up limits. Policy Villages 2 supports development of sites for more than 10 homes at Category A villages in certain circumstances. 750 homes are to be delivered across these villages. The Council has yet to deliver 750 homes under PV2. When considering sites under this Policy several criteria apply relating to the site's environmental value and impact and deliverability. It is considered that the site would broadly comply with these criteria.
- 10.5. Having regard to the Council's current housing land supply position, i.e. less than a 5-year housing land supply, Paragraph 11d of the NPPF is engaged; with a presumption of granting planning permission unless such would cause conflict with other policies and would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- 10.6. The proposals are considered acceptable in terms of transport, and neighbour amenity. It is further considered that an acceptable drainage solution is achievable at the site that would ensure that flood-risk is not exacerbated. It is acknowledged that the proposals would result in the loss of a 'Greenfield' site and agricultural land, but that such impacts could be largely be mitigated through the introduction of an acceptable landscaping scheme.
- 10.7. The development would make a valuable contribution to housing delivery (including affordable housing) – significant weight should be attached to this benefit. There would also be some economic benefit in the support of construction jobs and spending in the area those future residents would bring about – this is afforded minor to moderate weight.
- 10.8. It is considered that the harm identified and the proposal's limited conflict with development plan policies would not outweigh these benefits. Given the above assessment and in light of current guiding national and local policy set out in the report, the officers consider that the proposal would amount to sustainable development for which Government policy sets a presumption in favour and is therefore recommended for approval.

## 11. RECOMMENDATION

RECOMMENDATION – DELEGATE TO THE ASSISTANT DIRECTOR FOR PLANNING AND DEVELOPMENT TO **GRANT PERMISSION, SUBJECT TO THE CONDITIONS SET OUT BELOW** (AND ANY AMENDMENTS TO THOSE CONDITIONS AS DEEMED NECESSARY) **AND THE COMPLETION OF A PLANNING OBLIGATION UNDER SECTION 106** OF THE TOWN AND COUNTRY PLANNING ACT 1990, AS SUBSTITUTED BY THE PLANNING AND

COMPENSATION ACT 1991, TO SECURE THE FOLLOWING (AND ANY AMENDMENTS AS DEEMED NECESSARY):

- a. Provision of commuted sum of £19,973.10 in lieu of Open Space Provision
- b. Provision of a commuted sum of £32,296.04 to the upgrading of local play equipment at Wimborn Close.
- c. Off-site outdoor sports facilities capital provision – improvement of sports provision within Deddington - £33,568.50.
- d. Off-site indoor sports facilities – Towards the replacement of the main hall floor at The Windmill Centre and sports equipment - £13,895.66.
- e. Community hall facilities - £19,036.94 – To expand and/or enhance Windmill Community Centre.
- f. £106 per dwelling for bins
- g. Affordable housing provision – 35%
- h. £14,518 – Public transport to upgrading of bus frequency to Oxford and Banbury
- i. £4,500 – Supply and installation of a solar-powered Vehicle Activated Sign

FURTHER RECOMMENDATION: THE STATUTORY DETERMINATION PERIOD FOR THIS APPLICATION EXPIRES ON 04 JUNE 2021. IF THE SECTION 106 AGREEMENT/UNDERTAKING IS NOT COMPLETED AND THE PERMISSION IS NOT ABLE TO BE ISSUED BY THIS DATE AND NO EXTENSION OF TIME HAS BEEN AGREED BETWEEN THE PARTIES, IT IS FURTHER RECOMMENDED THAT THE ASSISTANT DIRECTOR FOR PLANNING AND ECONOMY IS GIVEN DELEGATED AUTHORITY TO REFUSE THE APPLICATION FOR THE FOLLOWING REASON:

1. In the absence of the completion of a satisfactory unilateral undertaking or any other form of Section 106 legal agreement, the Local Planning Authority is not satisfied that the necessary infrastructure directly required both on and off site as a result of this development, in the interests of: safeguarding public infrastructure, education provision, community facilities and indoor and outdoor sports/recreation facilities; mitigating highway safety concerns; encouraging use of sustainable modes of transportation; delivering mixed and balanced communities by the provision of affordable housing; and securing on site future maintenance arrangements will be provided. This would be contrary to Policy INF1, PSD1, SLE4, BSC3, BSC4, BSC9, BSC10, BSC11, BSC12, VILLAGES 2, ESD1 and ESD15 of the Cherwell Local Plan (2011-2031) Part 1 and Government guidance contained within the National Planning Policy Framework.

## CONDITIONS

### **Time Limits**

1. No development shall commence until full details of the layout (including the layout of the internal access roads and footpaths), scale, appearance, and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.

Reason: This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. In the case of the reserved matters, the final application for approval shall be made not later than the expiration of three years beginning with the date of this permission.



Reason: This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004

3. Application for approval of all the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.

Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (General Development Procedure) Order 2015 (as amended).

### **Plans**

4. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out in broad accordance with the following plans and documents: Application form, Design and Access Statement by Pegasus Planning dated July 2020, Ecological Appraisal by Aspect Ecology dated June 2020 and drawing number: 201-305 Rev. B

Reason: For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

NOTE: The illustrative layout included within the Design and Access Statement accompanying the application is not considered to create an appropriate, locally distinctive or high quality development for the site. The applicant is advised to have regard to the Council's New Residential Development Design Guide and engage in pre-application discussions with the Council regarding the 'reserved matters'.

### **Finished floor levels**

5. No development shall take place until details of all finished floor levels in relation to existing and proposed site levels and to the adjacent buildings have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be constructed strictly in accordance with the approved levels.

Reason: To secure an acceptable standard of development that safeguards the visual amenities of the area and the living conditions of existing and future occupiers and to ensure compliance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and government guidance within Section 12 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

### **Land Contamination Desk Study / Site Walkover**

6. Prior to the submission of any reserved matters and prior to the commencement of development a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model has been carried out by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and has been submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.

Reason: To ensure that any ground and water contamination is identified and adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

#### **Land Contamination Intrusive Investigation**

7. If a potential risk from contamination is identified as a result of the work carried out under condition 6, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

#### **Land Contamination Remediation Scheme**

8. If contamination is found by undertaking the work carried out under condition 7, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework. This information is required prior to commencement of the development as it is fundamental to the acceptability of the scheme.

#### **Land Contamination Remediation Works**

9. If remedial works have been identified in condition 8, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 8. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

#### **Drainage**

10. Notwithstanding the information submitted, development shall not begin until a detailed surface water drainage scheme for the site, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be subsequently be implemented in accordance with the approved details before the development is completed. The scheme shall include:

- A compliance report to demonstrate how the scheme complies with the “Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire”;
- Full micro-drainage calculations for all events up to and including the 1 in 100 year plus 40% climate change;
- A Flood Exceedance Conveyance Plan;
- Comprehensive infiltration testing across the site to BRE DG 365;
- Detailed design drainage layout drawings of the SuDS proposals including cross-section details;
- Detailed maintenance management plan in accordance with Section 32 of CIRIA C753 including maintenance schedules for each drainage element, and;
- Details of how water quality will be managed during construction

Reason: To ensure satisfactory drainage of the site and appropriate flood prevention and to comply Policy ESD 7 of the Cherwell Local Plan 2011-2031 Part 1 and with Government guidance contained within the National Planning Policy Framework.

11. Prior to first occupation, a record of the installed SuDS and site wide drainage scheme shall be submitted to and approved in writing by the Local Planning Authority for deposit with the Lead Local Flood Authority Asset Register. The details shall include:

- a) As built plans in both .pdf and .shp file format;
- b) Photographs to document each key stage of the drainage system when installed on site;
- c) Photographs to document the completed installation of the drainage structures on site;
- d) The name and contact details of any appointed management company information.

Reason: To ensure satisfactory drainage of the site and appropriate flood prevention and to comply Policy ESD 7 of the Cherwell Local Plan 2011-2031 Part 1 and with Government guidance contained within the National Planning Policy Framework.

#### **Construction Traffic Management Plan**

12. Prior to commencement of the development hereby approved, a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved CTMP.

Reason: In the interests of highway safety and the residential amenities of neighbouring occupiers and to comply with Government guidance contained within the National Planning Policy Framework.

#### **Construction Environmental Management Plan**

13. No development shall take until a Construction Environmental Management Plan

(CEMP) has been submitted to, and approved in writing by the Local Planning Authority. The statement shall provide for at a minimum:

- a. The parking of vehicles of site operatives and visitors;
- b. The routing of HGVs to and from the site;
- c. Storage of plant and materials used in constructing the development;
- d. Wheel washing facilities/ road sweeping;
- e. Measures to control the emission of dust and dirt during construction;
- f. Delivery and construction working hours;

The approved CEMP shall be adhered to throughout the construction period for the development.

Reason: To ensure the environment is protected during construction in accordance with Policy ENV1 of the Cherwell Local Plan and Government guidance contained within the National Planning Policy Framework.

### **Energy Statement**

14. Prior to the commencement of any works associated with the construction of a dwelling, details of the means by which all dwellings will be designed and constructed to achieve an energy performance standard equivalent to a 19% improvement in carbon reductions on 2013 Part L of the Building Regulations (unless a different standard is agreed with the local planning authority) shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and no dwelling shall be occupied until it has been constructed in accordance with the approved energy performance measures.

Reason: In the interests of environmental sustainability in construction in accordance with the requirements of Policy ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and government guidance in the National Planning Policy Framework.

### **Biodiversity enhancement**

15. Prior to the commencement of the development hereby approved including any demolition, and any works of site clearance, and as part of any reserved matters for layout and landscaping, a method statement and scheme for enhancing biodiversity on site such that an overall net gain for biodiversity is achieved, to include details of enhancement features and habitats both within green spaces and integrated within the built environment, shall be submitted to and approved in writing by the Local Planning Authority. This shall also include a timetable for provision. Thereafter, the biodiversity enhancement measures shall be carried out and retained in accordance with the approved details.

Reason -To ensure the development provides a net gain in biodiversity in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

NOTE: It is advised that this condition include a Biodiversity Impact Assessment to show how a clear net gain for biodiversity will be achieved.

### **Landscape and Ecological Management Plan (LEMP)**

16. Prior to the commencement of the development hereby approved, a Landscape and Ecology Management Plan (LEMP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved LEMP.

Reason -To protect habitats of importance to biodiversity conservation from any

loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

#### **Lighting strategy**

17. Prior to the installation of any external lighting a full lighting strategy to include illustration of proposed light spill and which adheres to the recommendations set out in Section 6 - Mitigation Measures and Biodiversity Net Gains (MM2) of the Ecological Appraisal carried out by Aspect Ecology dated June 2020, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved document.

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

#### **Travel information packs**

18. Prior to first occupation the development a Travel Information Pack shall be submitted to and approved by the Local Planning Authority. Thereafter the first residents of each dwelling shall be provided with a copy of the approved Travel Information Pack.

Reason: To ensure all residents and employees are aware from the outset of the travel choices available to them, and to comply with Government guidance contained within the National Planning Policy Framework.

#### **Water usage**

19. No dwelling shall be occupied until it has been constructed to ensure that it achieves a water efficiency limit of 110 litres person/day and shall continue to accord with such a limit thereafter.

Reason - In the interests of sustainability in accordance with the requirements of Policy ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

#### **Compliance with ecological appraisal**

20. The development hereby approved shall be carried out strictly in accordance with the recommendations set out in Section 6 - Mitigation Measures and Biodiversity Net Gains of the Ecological Appraisal carried out by Aspect Ecology dated June 2020.

Reason: To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

#### **Electrical Vehicle Infrastructure**

21. Each dwelling shall be provided with ducting to allow for the future installation of electrical vehicle charging infrastructure to serve that dwelling prior to its first occupation.

Reason: To maximise opportunities for sustainable transport in accordance with Government guidance contained within the National Planning Policy Framework.

#### **Planning Notes:**

1. Planning permission only means that in planning terms a proposal is acceptable to the Local Planning Authority. Just because you have obtained planning permission, this does not mean you always have the right to carry out the

development. Planning permission gives no additional rights to carry out the work, where that work is on someone else's land, or the work will affect someone else's rights in respect of the land. For example there may be a leaseholder or tenant, or someone who has a right of way over the land, or another owner. Their rights are still valid and you are therefore advised that you should seek legal advice before carrying out the planning permission where any other person's rights are involved.

2. Your attention is drawn to the need to have regard to the requirements of UK and European legislation relating to the protection of certain wild plants and animals. Approval under that legislation will be required and a licence may be necessary if protected species or habitats are affected by the development. If protected species are discovered you must be aware that to proceed with the development without seeking advice from Natural England could result in prosecution. For further information or to obtain approval contact Natural England on 0300 060 3900.
3. Bats are a highly mobile species which move between a number of roosts throughout the year. Therefore all works must proceed with caution and should any bats be found during the course of works all activity in that area must cease until a bat consultant has been contacted for advice on how to proceed. Under the Wildlife & Countryside Act 1981 (as amended) and the Habitat and Species Regulations 2010 it is illegal to intentionally or recklessly disturb, harm or kill bats or destroy their resting places.
4. Birds and their nests are fully protected under the Wildlife and Countryside Act 1981 (as amended), which makes it an offence to intentionally take, damage or destroy the eggs, young or nest of a bird whilst it is being built or in use. Disturbance to nesting birds can be avoided by carrying out vegetation removal or building work outside the breeding season, which is March to August inclusive.
5. Thames Water will aim to provide customers with a minimum pressure of 10m head (approx. 1 bar) and a flow rate of 9 litres/minute at the point where it leaves Thames Waters pipes. The developer should take account of this minimum pressure in the design of the proposed development.

CASE

OFFICER:

Bob

Neville





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## Appeal Decision

Site visit made on 27 May 2021

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Decision date: 1<sup>st</sup> June 2021**

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### **Appeal Ref: APP/C3105/W/21/3271094**

#### **Land at Bretch Hill, Balmoral Avenue, Banbury**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
  - The appeal is made by Lone Star Land Ltd against the decision of Cherwell District Council.
  - The application Ref 20/01643/OUT, dated 22 June 2020, was refused by notice dated 29 January 2021.
  - The development proposed is the erection of up to 49 homes, public open space, and other infrastructure.
- 

#### **Decision**

1. The appeal is allowed and planning permission is granted for the erection of up to 49 homes, public open space, and other infrastructure on land at Bretch Hill, Balmoral Avenue, Banbury in accordance with the terms of the application, Ref 20/01643/OUT, dated 22 June 2020, and the plans submitted with it, subject to the conditions in a schedule attached to this decision.

#### **Procedural matters**

2. The application was submitted in outline form with all matters, except for access, reserved for future consideration. The appeal will be determined on the same basis.

3. The address of the site and the description of the development (with the omission of the superfluous 'with all matters reserved except access'), as stated above, were those given on the application form. There are no reasons for using the address and description used by the Council.

4. The Council refused the application for five reasons in which they cited conflict with policies of The Cherwell Local Plan 2011-2031 (LP). The National Planning Policy Framework (NPPF) requires the Council to maintain a supply of land for housing "...sufficient to provide a minimum of five years' worth of housing against their housing requirement...". In a Statement of Common Ground (SoCG) dated 4 May 2021 it is stated that "...it is accepted that the Council cannot do so". Consequently, by virtue of paragraph 11(d) of the NPPF and Footnote 7 on page 6, and as stated in the SoCG, the aforementioned LP policies "...are 'out-of-date' and this appeal can only fail if the Council can demonstrate that any adverse effects of the proposal would significantly and demonstrably outweigh the benefits...". It is also stated that "The Council accepts that it cannot demonstrate this and that this appeal should be allowed". The Council has, in effect, withdrawn the five reasons for refusal of the application.



5. The appeal was set up to be determined following a Public Inquiry. However, the Council, given their changed position, would not be presenting any evidence and no other party has indicated that they wish to be heard at such an event. Under powers afforded by Section 319A(4) of the Town and Country Planning Act 1990 as amended, the Secretary of State has therefore decided that the appeal will proceed by the written representations procedure. Third party representations made at application and appeal stages will be taken into account. No party's position is prejudiced by the change in procedure.

### **Reasons**

6. Local residents are concerned, as expressed in written representations made at application and appeal stages, about, amongst other things, the effect of traffic resulting from the proposed development on highway safety, the scale of development in Banbury, and their living conditions. Access to the development site is along Balmoral Avenue from its junction with Broughton Road. It was noted at the site visit that Balmoral Avenue, particularly after its junction with Dorchester Grove, rises steeply towards the proposed access into the site. Evidence indicates that the steepness of the road contributed to a lorry causing damage to a house a few years ago but the road is not so steep that there would be any significant safety concerns. The Highway Authority has not expressed any concern for the safety of traffic or other highway users, and traffic associated with a development of only up to 49 houses is not likely to result in significant harm to highway safety.

7. For the same reasons traffic associated with the proposed development would be noticed by residents of Balmoral Avenue but is not likely to have any adverse effect on their living conditions. Despite current ongoing housing developments in Banbury there is an identified need for further housing in the District that the Council is failing to provide for. The need for affordable housing is more acute than the need for market housing and the proposed development would include not less than 30% affordable units. To the east of the site is a concrete water tower and a high telecommunications mast. These are visually unattractive features of the area but are not an impediment to residential development of the site. The site has existing residential development to the north, south and east. The proposed development would not be visually intrusive and would not harm the character or appearance of the area.

8. All matters mentioned by local residents have been taken into account but they do not, either individually or collectively, alter the conclusion that the proposed development would not cause any significant harm to any matters of acknowledged importance.

### **Conditions and Planning Obligation**

#### Conditions

9. The conditions in the schedule attached to this decision have been agreed by the Council and the Appellant but they have been amended, where necessary, to meet the tests set out in the Planning Practice Guidance (PPG) and in the interests of clarity, consistency and precision.

#### Unilateral undertakings

10. The Appellant has entered into a Planning Obligation, made under Section 106 of the Act, to mitigate the effects of the proposed development. The Obligation provides for the provision of affordable housing, the provision of open

space, the incorporation of a sustainable urban drainage scheme and its maintenance, and the payment of financial contributions towards schools, healthcare, bus services, highway and public rights of way improvements, a community hall, off-site indoor and outdoor sports facilities, and the provision of waste and recycling bins.

11. The District Council and the County Council have assessed the Obligation and have concluded that the obligations contained within it comply with Regulation 123(3) of the Community Infrastructure Levy Regulations 2010. The obligations are all necessary to make the development acceptable in planning terms. They are all, furthermore and in accordance with paragraph 56 of the NPPF, directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. The Legal Obligations therefore comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010.

### **Conclusion**

12. The proposed development of up to 49 houses is required to contribute to the supply of housing in the District and the social and other impacts of the development are mitigated by planning obligations. The contribution to housing supply is a significant benefit and is not outweighed by any adverse impacts. Planning permission has thus been granted for the erection of up to 49 homes, public open space, and other infrastructure on land at Bretch Hill, Balmoral Avenue, Banbury, subject to the conditions in a schedule attached to this decision.

*John Braithwaite*

Inspector

## **Schedule – Conditions for Planning Permission 20/01643/OUT**

1. No development shall commence until details of the layout (including the layout of the internal access roads and footpaths), scale, appearance, and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.

Reason: This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

Reason: This permission is in outline only and is granted to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

3. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved whichever is the later.

Reason: To comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (General Development Procedure) Order 2015 (as amended).

4. Except where otherwise stipulated by conditions attached to this permission the development shall be carried out strictly in accordance with Drawing No. RL01 Rev B - Site Location Plan and Drawing No. 20496-06 Rev A - Proposed Site Access Arrangements.

Reason: For the avoidance of doubt and to ensure that the development is carried out only as approved by the Local Planning Authority and to comply with Government guidance contained within the National Planning Policy Framework.

5. No development shall take place until details of all ground levels and finished floor levels in relation to existing and proposed site levels and to adjacent buildings have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: To secure an acceptable standard of development that safeguards the visual amenities of the area and the living conditions of existing and future occupiers and to ensure compliance with Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and government guidance within Section 12 of the National Planning Policy Framework.

6. No development shall take place until a desk study, to include a site walk over and to identify all potential contaminative uses on site and to inform the conceptual site model have been carried out by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11', has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved desk study.

Reason: To ensure that any ground and water contamination is identified and adequately addressed to ensure the safety of the development, the environment and to ensure the site

is suitable for the proposed use to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

7. If a potential risk from contamination is identified as a result of the work carried out under condition 6, a comprehensive intrusive investigation to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The report shall be submitted to and approved in writing by the Local Planning Authority before development is commenced.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

8. If contamination is found by undertaking the work carried out under condition 7, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The scheme shall be submitted to and approved in writing by the Local Planning Authority before development is commenced.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

9. If remedial works have been identified in condition 8, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 8. A verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that any ground and water contamination is adequately addressed to ensure the safety of the development, the environment and to ensure the site is suitable for the proposed use, to comply with Saved Policy ENV12 of the Cherwell Local Plan 1996 and Section 15 of the National Planning Policy Framework.

10. No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and in general accordance with the principles of Drawing No. BAB-BWB-ZZ-XX-DR-CD-0004\_S2-P2 (Amended Drainage Strategy) and including an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- a. Discharge Rates;
- b. Discharge Volumes;
- c. SUDS (Permeable Paving, Soakaway Tanks);
- d. Maintenance and management of SUDS features (to include provision of a SUDS Management and Maintenance Plan);
- e. Infiltration in accordance with BRE365;
- f. Detailed drainage layout with pipe numbers;

- g. Network drainage calculations;
- h. Phasing;
- i. Flood Flow Routing in exceedance conditions (To include provision of a flood exceedance route plan).

Development shall be carried out in accordance with the approved surface water drainage scheme.

Reason: To ensure that sufficient capacity is made available to accommodate the new development and in order to avoid adverse environmental impact upon the community and to ensure compliance with Policy ESD 7 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance within the National Planning Policy Framework.

11. No development shall take place until full details of improvements to footpath 120/24 within the planning application site, including, position, layout, construction, drainage and a timetable for the delivery of the improvements, have been submitted to and approved in writing by the Local Planning Authority. The footpath shall be improved in accordance with the approved details before any dwelling is occupied and shall be retained as improved thereafter.

Reason: In the interests of highway safety and public amenity and sustainable development and to comply with Policies ESD1, ESD15 and Banbury 10 and Government guidance contained within the National Planning Policy Framework.

12. No development shall take place until full details of the means of access between the planning application site and the highway on Balmoral Avenue to the south of the site, including, position, layout, construction, drainage and vision splays, have been submitted to and approved in writing by the Local Planning Authority. The means of access shall be constructed in accordance with the approved details before any dwelling is occupied and shall be retained as constructed thereafter.

Reason: In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework.

13. No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. The CTMP shall incorporate the following:

- a. The CTMP must be appropriately titled, include the site and planning permission number.
- b. Routing of construction traffic and delivery vehicles is required to be shown and signed appropriately to the necessary standards/requirements. This includes means of access into the site.
- c. Details of and approval of any road closures needed during construction.
- d. Details of and approval of any traffic management needed during construction.
- e. Details of wheel cleaning/wash facilities – to prevent mud etc, in vehicle tyres/wheels, from migrating onto adjacent highway.
- f. Details of appropriate signing, to accord with the necessary standards/requirements, for pedestrians during construction works, including any footpath diversions.
- g. The erection and maintenance of security hoarding / scaffolding if required.

- h. A regime to inspect and maintain all signing, barriers etc.
- i. Contact details of the Project Manager and Site Supervisor responsible for onsite works to be provided.
- j. The use of appropriately trained, qualified and certificated banksmen for guiding vehicles/unloading etc.
- k. No unnecessary parking of site related vehicles (worker transport etc) in the vicinity – details of where these will be parked and occupiers transported to/from site to be submitted for consideration and approval. Areas to be shown on a plan not less than 1:500.
- l. Layout plan of the site that shows structures, roads, site storage, compound, pedestrian routes etc.
- m. A before-work commencement highway condition survey and agreement with a representative of the Highways Depot – contact 0845 310 1111. Final correspondence is required to be submitted.
- n. Local residents to be kept informed of significant deliveries and liaised with through the project. Contact details for person to whom issues should be raised with in first instance to be provided and a record kept of these and subsequent resolution.
- o. Any temporary access arrangements to be agreed with and approved by Highways Depot.
- p. Details of times for construction traffic and delivery vehicles, which must be outside network peak and school peak hours.

Development shall be carried out in accordance with the approved CTMP.

Reason: In the interests of highway safety and to mitigate the impact of construction vehicles on the surrounding highway network, road infrastructure and local residents, particularly at morning and afternoon peak traffic times.

14. Prior to first occupation of the development a Travel Information Pack shall be submitted to and approved in writing by the Local Planning Authority. The first residents of each dwelling shall be provided with a copy of the approved Travel Information Pack.

Reason: To ensure all residents and employees are aware from the outset of the travel choices available to them, and to comply with Government guidance contained within the National Planning Policy Framework.

15. Prior to its first occupation each dwelling shall be provided with ducting to allow for the future installation of electrical vehicle charging infrastructure

Reason: To maximise opportunities for sustainable transport in accordance with Government guidance contained within the National Planning Policy Framework.

16. No development shall take place until full details of the proposed footpath joining the new development to the highway on Balmoral Avenue to the north of the site, including, position, layout, construction, drainage and a timetable for the delivery of the improvements, have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the footpath has been constructed in accordance with the approved details.

Reason: In the interests of highway safety and public amenity and sustainable development and to comply with Policies ESD1, ESD15 and Banbury 10 and Government guidance contained within the National Planning Policy Framework.

17. No development shall take place until a Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved CEMP.

Reason: In the interests of highway safety and the residential amenities of neighbouring occupiers and to comply with Government guidance contained within the National Planning Policy Framework.

18. No development shall take place until details of the means by which all dwellings shall be designed and constructed to achieve an energy performance standard equivalent to a 19% improvement in carbon reductions on 2013 Part L of the Building Regulations (unless a different standard is agreed with the Local Planning Authority) has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and no dwelling shall be occupied until it has been constructed in accordance with the approved energy performance measures.

Reason: In the interests of environmental sustainability in construction in accordance with the requirements of Policy ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and government guidance in the National Planning Policy Framework.

19. No dwelling shall be occupied until it has been constructed to ensure that it achieves a water efficiency limit of 110 litres per person per day and shall continue to accord with such a limit thereafter.

Reason: In the interests of sustainability in accordance with the requirements of Policy ESD3 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

20. No development shall take place, including any demolition and any works of site clearance, and as part of any reserved matters application for layout and landscaping, until a method statement and scheme for enhancing biodiversity such that an overall net gain for biodiversity is achieved, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of enhancement features and habitats both within green spaces and integrated within the built environment, shall be in general compliance with Enhancement Area – Ecological Management Plan, report reference: edp4380\_r004, shall include a biodiversity impact assessment metric, and shall include a timetable for provision of the biodiversity enhancement measures. The biodiversity enhancement measures shall be carried out and shall be retained in accordance with the approved scheme.

Reason: To ensure the development provides a net gain in biodiversity in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

21. No development shall take place until a Landscape and Ecology Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved LEMP.

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

22. Prior to the installation of any external lighting, a full lighting strategy to include illustration of proposed light spill and which adheres to best practice guidance, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved strategy.

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

23. The development hereby permitted shall be carried out in accordance with the recommendations set out in sections 6.2 to 6.8 of the Ecological Appraisal, report reference: edp4380\_r002d, carried out by EDP dated June 2020.

Reason: To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

24. No dwelling shall be occupied until approval has been given in writing by the Local Planning Authority that either:

a. Evidence to demonstrate that all water network upgrades required to accommodate the additional flows/demand from the development have been completed; or

b. A housing and infrastructure phasing plan has been agreed with Thames Water and the Local Planning Authority in writing to allow additional properties to be occupied. Where a housing and infrastructure phasing plan is agreed no dwelling shall be occupied other than in accordance with the agreed housing and infrastructure phasing plan.

Reason: The development may lead to no / low water pressure and network reinforcement works are anticipated to be necessary to ensure that sufficient capacity is made available to accommodate additional demand anticipated from the new development.





**Mr Andy Bateson**  
Development Management Division  
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21 May 2021

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Dear Andy,

**PLANNING APPEAL 3255419: LAND OFF BERRY HILL ROAD, ADDERBURY**

I am writing to politely request that we finalise the Statement of Common Ground (SoCG) next week and that the LPA provides clarity on its position with regard Reason for Refusal 1.

I sent a revised version of the SoCG to you on 28/04/21 and as yet, have not received any further comments. The revisions in the latest draft were minimal as we had already agreed the majority of the content so I was hopeful it would be finalised quickly. It would be unreasonable to further delay its completion.

The SoCG will provide the Inspector with clarity on matters such as the Written Ministerial Statement (WMS), housing land supply and the engagement of the titled balance. Moreover, the SoCG provides clarity on the Council's position with regard Heritage. Whereas the Council's Statement of Case (SoC) suggested that a Heritage RfR was being introduced, you have agreed verbally and by email (dated 14/04/21) that this is not the case, but I do consider it essential that the Appellant and Inspector have clarity on this matter in an agreed SoCG as a matter of urgency.

The SoCG must also be updated in light of the Council's decision to approve application no. 20/02083/OUT at Committee yesterday evening. The application was for outline permission for residential development on land off Hempton Road, Deddington. The Committee Report (CR) confirmed that, much like our appeal site, the application site was on land outside the built up limits of a Category A village.

The Assessment section of the CR confirms that "*the policies in the development plan relating to housing provision are to be considered out of date*". It states that this includes policies PV1 and H18 and that "*the weight to be afforded to these policies is therefore reduced*". The latest version of our SoCG also confirms this.

However, the CR then continues to assess the proposals against PV2 and the headline figure of 750 stating:

*However, that figure has not yet been delivered and so at this time the principle of development remains acceptable in policy terms. The proposals would assist in further meeting overall Policy Villages 2 housing requirements and could also contribute to the provision of affordable housing.*

Our SoCG must now confirm that this is also the Council's position for our appeal.

Our Planning Statement of Case (PSoC) addresses policies H18, BSC1 and PV2 in detail, with reference to six recent appeal decisions. The Council's SoC does not fully engage with our case or the relevant appeal decisions and so it is not clear for the Inspector as to what the Council's stance is on these policies. The draft SoCG provides some clarity but at present, there is conflict between the Council's position in the draft SoCG and that set out in the Deddington CR.

The SoC briefly refers to H18 and BSC1 at para. 7.3 (and at para. 8.4 with regard locational sustainability). Para. 7.3 also introduces a discussion with regard PV2 which continues at para. 7.11. Whereas the Deddington CR clearly states that proposals in Category A villages are appropriate in principle until such time as the 750 figure has been delivered, the SoC puts forward a different case which also appears to be based on figures that do not correspond with the 2020 Annual Monitoring Report (AMR). For example, the SoC states that there have been 185 completions in Adderbury since 2014 but the AMR states that there have been 122 completions.

The decision to approve the Deddington application and the content of the CR represents a change in the Council's position with regard H18, BSC1 and PV2. This must be confirmed in the SoCG as a matter of urgency. If it is not, the Council would be running a case that is inconsistent with its latest position, the position we now find ourselves in, as well as the position set out by Inspectors in the aforementioned appeal decisions. I am of the opinion that this would be unreasonable.

I understand that the Council is likely to want to retain objections with regard locational sustainability and landscape, but it would be in the interests of all parties if the SoCG can confirm that the Council does not have an in-principle objection to the proposals against policies H18, BSC1 and PV2, as per the Deddington CR.

I would welcome a discussion over the phone or via Teams and look forward to hearing from you as a matter of urgency.

Yours sincerely,

**Matthew Symons BA MPlan MRTPI**  
**Planning Manager**  
**On behalf of Hollins Strategic Land**



**Mr Andy Bateson**  
Development Management Division  
Cherwell District Council  
Bodicote House  
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9 April 2021

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[matthew.symons@hsland.co.uk](mailto:matthew.symons@hsland.co.uk)

Dear Andy,

**PLANNING APPEAL 3255419: LAND OFF BERRY HILL ROAD, ADDERBURY**

I am writing to politely request that you inform us today whether the Council intends to pursue a Heritage reason for refusal (RfR).

As you will now be aware, the formally resolved position of the Council was that there was no Heritage RfR. The Committee Report did recommend that RfR 2 incorporated the following:

*It would also result in 'less than substantial harm' to the setting of the Church of St Mary and the harm stemming from the proposals is not considered to be outweighed by any public benefits.*

However, as confirmed in the Appellant's Statement of Case (see para. 1.10 and 1.11), this was removed following a verbal update from the LPA at the Committee Meeting.

The Verbal Update confirmed that the LPA had discussed the proposals with Historic England (HE), the government's expert advisor on England's heritage, in their role as statutory consultee.

HE advised that they hold no serious concerns regarding the principle of development on the site in heritage terms and that a scheme could be achieved without causing harm necessarily on heritage grounds. This advice followed the submission of illustrative visualisations of the proposed development, which were undertaken in response to earlier written advice (dated 06/11/2019) from HE.

HE was subsequently satisfied, having already advised that "*allowing public access to proposed green space in the north of the site would enable new, clear views of the church, which would allow for a better appreciation of this building within the landscape*" and that the proposals "*could result in improved views of the church from Berry Hill Road*".

Members followed the advice of the LPA and HE. The Decision Notice confirms that RfR2 is as follows:

*The development proposed, by virtue of its poorly integrated relationship with existing built development, its extension beyond the built limits of the village (beyond the Adderbury Settlement Boundary as defined in the Adderbury Neighbourhood Plan 2014 - 2031) causing significant urbanisation and its visual impact on the rural character, appearance of the locality and local settlement pattern, would cause unacceptable harm to the character and appearance of the area and the rural setting of the village and would fail to reinforce local distinctiveness. The proposal is therefore contrary to Policies ESD13, ESD15 and Villages 2*

*of the Cherwell Local Plan (2011-2031) Part 1, Saved Policies C8, C27, C28 and C33 of the Cherwell Local Plan 1996, Policy AD1 of the Adderbury Neighbourhood Plan - 2014 - 2031 and Government guidance contained within the National Planning Policy Framework.*

Despite this, it appears as though the LPA may be pursuing a Heritage RfR.

This was first brought to our attention when we reviewed the LPAs revised Planning SoCG (received on 30/03/2021). The Appellant returned the SoCG with comments/questions on 30/03/2021, in advance of receiving the LPAs Statement of Case (SoC). These questions included asking whether the LPA was attempting to introduce a Heritage RfR. We then received the LPAs SoC and I emailed you during the morning of 01/04/2021 to ask whether the LPA was seeking to introduce a Heritage RfR.

You and I then met on 01/04/2021 to discuss the SoCG and the same question was asked. I informed you of the need for us to urgently address this matter as we may need to produce a Rebuttal. I also advised that I would have to consider whether the LPA was acting unreasonably. You informed me that you would review the position and let me know how the Council intends to proceed during the morning of 06/04/21.

As I had not received a response by the end of the morning, I emailed you (sent 11.57) setting out how I thought the issue/confusion had arisen. I have enclosed a copy of the email for convenience, but in short, it appears as though the Council's Statement of Case was written on the basis of RfR 2 as it was written in the Committee Report, rather than as per the DN.

As I mentioned in the email, that however would not explain why the LPAs SoC would then also allege 'substantial harm' when the Committee Report alleged 'less than substantial harm'.

The LPAs SoC does not provide a Heritage Assessment to attempt to substantiate the alleged harm and Heritage RfR. Nor does it provide the balance required by para. 195/196 of the NPPF.

I must inform that you that we will shortly instruct our Heritage Consultant to provide a Rebuttal Statement.

But hopefully you will be able to confirm this afternoon that the LPA will not pursue a Heritage RfR, as was confirmed at the Committee Meeting following advice from HE. We can then confirm that via the Planning SoCG and separately in writing to the Inspectorate.

Unfortunately, I must also inform you that we reserve the right to make an application for costs against the LPA.

I look forward to hearing from you on this as a matter of urgency.

Yours sincerely,

**Matthew Symons BA MPlan MRTPI**  
**Planning Manager**  
**On behalf of Hollins Strategic Land**

*Enc.*

**From:** Matthew Symons

**Sent:** 06 April 2021 11:57

**To:** Andy Bateson <[Andy.Bateson@cherwell-dc.gov.uk](mailto:Andy.Bateson@cherwell-dc.gov.uk)>

**Subject:** FW: Planning Inspectorate APP/C3105/W/20/3255419: OS Parcel 9100 Adjoining And East Of Last House Adjoining And North, OX17 3HF

Morning Andy,

Hope you had a good long weekend.

Sorry to chase, but as you'd expect I'm keen to know how you intend to proceed with regard Heritage. You had said you would review the Council's position following our meeting on Thursday and hoped to come back to me this morning.

I have since looked again at the Council's Statement of Case and I can see where the issue arises. Para. 6.1 states "*the three reasons for refusal for the application are as follows*" and then lists the reasons as set out in the Committee Report rather than as per the Decision Notice. Para. 7.1 then confirms that the Council's SoC is based upon the reasons set out in the Committee Report. As stated in the Appellant's Statement (para. 1.10 and 1.11), the formally resolved position of the LPA was that there was no heritage reason for refusal. It was removed at Committee.

Although this does not then explain the Council's SoC stating at 8.6 that the harm would be substantial, despite the Committee Report RfR 2 stating "*less than substantial*". It is also of note that the SoC does not provide a Heritage Assessment, nor does it assess the balance as required by para. 195/196 of the NPPF.

On this basis, I do hope we can agree, via the SoCG, that the Council does not wish to pursue a Heritage RfR and certainly not one that alleges substantial harm. Please can you confirm whether this is the case or not this afternoon? As discussed, I need to consider our position asap.

Also, having reviewed the LPAs Statement, I think we can add further areas of agreement to the SoCG to help the Inspector. Are you happy for me to add these in to the next revision? You are probably on with amending the latest version following our meeting on Thursday, so I didn't think it would help if I started adding now?

I'm available for another Teams meeting this afternoon or tomorrow morning (out from 12) if that would help.

Thanks,  
Matthew

**Matthew Symons BA MPlan MRTPI**  
Planning Manager



On behalf of Hollins Strategic Land | Suite 4 | 1 King Street | Manchester | M2 6AW  
0161 300 6509 | 07827 669141 | [matthew.symons@hsland.co.uk](mailto:matthew.symons@hsland.co.uk) | [www.hsland.co.uk](http://www.hsland.co.uk)

**From:** Matthew Symons  
**Sent:** 01 April 2021 10:23  
**To:** Andy Bateson <[Andy.Bateson@cherwell-dc.gov.uk](mailto:Andy.Bateson@cherwell-dc.gov.uk)>  
**Subject:** FW: Planning Inspectorate APP/C3105/W/20/3255419: OS Parcel 9100 Adjoining And East Of Last House Adjoining And North, OX17 3HF

Morning Andy,

How are you getting on with the SoCG?

If you are unable to come back me on all matters today, please can you respond to my question as to whether the LPA is seeking to introduce a heritage reason for refusal at this stage?

Having read the LPAs Statement, it appears that might be the case, but it's not entirely clear and as you'd expect, I hope it isn't the case given what was reported at Committee (see para. 1.10 and 1.11 of our Statement (attached for convenience)).

As discussed, I'm heading out shortly and won't be back until 2ish. I am still ok to meet at 3.30 if you've been able to review the SoCG by then.

Thanks,  
Matthew

**Matthew Symons BA MPlan MRTPI**  
Planning Manager



On behalf of Hollins Strategic Land | Suite 4 | 1 King Street | Manchester | M2 6AW  
0161 300 6509 | 07827 669141 | [matthew.symons@hsland.co.uk](mailto:matthew.symons@hsland.co.uk) | [www.hsland.co.uk](http://www.hsland.co.uk)

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## Matthew Symons

---

**From:** Matthew Symons  
**Sent:** 03 June 2021 14:52  
**To:** Matthew Symons  
**Subject:** FW: Planning Inspectorate APP/C3105/W/20/3255419: OS Parcel 9100 Adjoining And East Of Last House Adjoining And North, OX17 3HF

---

**From:** Andy Bateson <Andy.Bateson@cherwell-dc.gov.uk>  
**Sent:** 14 April 2021 20:17  
**To:** Matthew Symons <matthew.symons@hsland.co.uk>  
**Cc:** max@askewnelson.com; Matthew Barrett <Matthew.Barrett@cherwell-dc.gov.uk>  
**Subject:** RE: Planning Inspectorate APP/C3105/W/20/3255419: OS Parcel 9100 Adjoining And East Of Last House Adjoining And North, OX17 3HF

Hi Matthew,

The Council is not introducing a separate heritage reason for refusal. Our comments in respect to the views that we maintain would be unacceptably harmed across the site, including towards the church, are made in respect to refusal reason 2, i.e. urbanisation and visual impact on the rural character, appearance of the locality and local settlement pattern and the rural setting of the village. Whilst I acknowledge that HE considered that new public views from your suggested northern POS and the access points could afford some rural landscape views and across the valley towards the centre of Adderbury and the church, as suggested in the illustrative layout plans and montage views those views are currently afforded from Berry Hill Road and the two PRow footpaths. We disagree with you that there would be any benefit derived from that and maintain instead that there would be significant harm.

The latest version of the Planning SoCG is attached.

Matthew Barrett, who I have copied in to this response will deal with s.106 matters associated with this appeal. His CDC phone number is 01295 753798.

The OCC Officer who should be contacted with respect to the £20k PRow contribution is Rashid Bbosa – E:  
[rashid.bbosa@oxfordshire.gov.uk](mailto:rashid.bbosa@oxfordshire.gov.uk)

Kind regards,

Andy

**Andy Bateson** BSc (Hons) MRTPI  
**Team Leader – Major Developments**  
Development Management Division  
Place and Growth Directorate  
Cherwell District Council  
Tel: 01295 221 637  
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Land north of Berry Hill Road, Adderbury

## Revised Draft Statement of Common Ground

Appeal against the refusal of an application for outline planning permission for a resubmission of application 17/02394/OUT for a development of up to 40 dwellings with associated landscaping, open space and vehicular access off Berry Hill Road (all matters reserved other than access)

LPA Ref: 19/00963/OUT

PINS Appeal Ref: APP/C3105/W/20/3255419

Date of Hearing: 05/05/2024TBC

Hollins Strategic Land & Cherwell District Council

April~~March~~ 2021 (Rev 76543)

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## 1 Appeal proposals

- 1.1 The description of development is: Resubmission of application 17/02394/OUT – Outline application for permission for up to 40 dwellings with associated landscaping, open space and vehicular access off Berry Hill Road (all matters reserved other than access).
- 1.2 Although not specifically referenced as part of the application description, the Appellant proposes development in accordance with adopted Local Plan policy BSC3 which requires 35% affordable housing (i.e. up to 14 units) and 5% housing (i.e. up to 2 units) built to Lifetime Homes standards. This can be secured by s106/condition.
- 1.3 A list of plans and documents to be used by the decision maker when assessing the appeal proposals is provided at Appendix 1<sup>1</sup>.

**Commented [A1]:** are you happy for the SoCG to include this? Am thinking it will help the Inspector and us on the day too?  
i'm happy to pull the list together

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<sup>1</sup> Appendix 1: List of appeals plans/documents

## 2 Description of the site

- 2.1 The appeal site is some 4ha in extent. It comprises of land currently used as equestrian, with a sand paddock, stables and an access track occupying the eastern side of the site. The southern portion of the site is reasonably level; the northern portion falls northwards to vegetated land.
- 2.2 The site is surrounded by field hedgerows and trees, with Public Right Of Way (PROW) footpaths extending along the northern and eastern boundaries. Part of the western boundary abuts the houses along Berry Hill Road, which form the settlement boundary of Adderbury in this locality. The existing development along Berry Hill Road forms part of the Berry Hill Rd/ St Mary's Character Area, as per the Neighbourhood Plan. Adderbury is classified a Category A sustainable village and service centre.
- 2.3 Glimpse views of the site are available through the hedgerow and tree lined boundaries to the east from the PROW and south from Berry Hill Road with more extensive views available from the PROW to the north:
- To the north, the site is bound by a Public Right of Way (PROW) beyond which the land falls into a densely vegetated valley where the former railway existed;
  - To the east, the site is bound by another PROW with hedgerows and trees either side, beyond which lies open countryside;
  - To the south, a hedgerow and trees separate and partially screen the site from Berry Hill Road, which has no footways and beyond the road to the south lies open countryside; and,
  - To the west, approximately half of the site boundary adjoins existing residential development and another sand paddock, with the remainder of the boundary adjoining land used for grazing purposes.
- 2.4 A number of local services and facilities are accessible by foot/cycle within Adderbury, including the S4 bus service that runs hourly between Banbury and Oxford along the A4260 Oxford Road.

Commented [A2]: Why in part?

Commented [A3]: You had accepted this later in the SoCg so I've inserted it here for clarity on the character that is relevant. That ok?



### 3 Relevant Planning History

3.1 The relevant planning history for this site is as follows:

- An application (no. 02/01009/F) for erection of stable block, hay barn and manège with trach to existing access was granted permission in 2002;
- An application (no. 05/01468/F) for erection of one bungalow with associated access and re-siting of stables was refused in 2005;
- An application (no. 06/00712/OUT) for outline permission for 17No. dwellings (5 open market and 12 affordable) along the site frontage was refused in 2006 and the subsequent appeal (APP/C3105/W/06/2032232) was dismissed;
- An application (no. 17/02394/OUT) for outline permission for up to 55No. dwellings was refused on 25/05/2018 for the following reasons and the subsequent appeal (APP/C3105/W/18/3216992) was withdrawn:
  1. The development proposed, by reason of its scale and siting beyond the built up limits of the village, in open countryside and taking into account the number of dwellings already permitted in Adderbury as well as Cherwell District Council's ability to demonstrate an up to- date five year housing land supply, is considered to be unnecessary, undesirable and unsustainable development which would undermine the housing strategy and prejudice a more balanced distribution of rural housing growth planned for in the Cherwell Local Plan Part 1. The site itself is in an unsustainable location on the edge of the village, distant from local services and facilities and would result in a development where future occupiers would be highly reliant on the private car for day to day needs. The proposal is therefore unacceptable in principle and contrary to Policies ESD1, SLE4 and Villages 2 of the Cherwell Local Plan (2011-2031) Part 1, Saved Policy H18 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.
  2. The development proposed, by virtue of its poorly integrated relationship with existing built development, its extension beyond the built limits of the village (beyond the Adderbury Settlement Boundary as defined in the Draft Adderbury Neighbourhood Plan Referendum version - 2014 - 2031) causing significant urbanisation and its visual impact on the rural character and appearance of the locality, would cause unacceptable harm to the character and appearance of the area and the rural setting of the village and would fail to reinforce local distinctiveness. It would also result in 'less than substantial' harm to the setting of the Church of St Mary and the harm stemming from the proposals are not considered to be outweighed by any public benefits. The proposal is therefore contrary to Policies ESD13, ESD15 and Villages 2 of the Cherwell Local Plan (2011-2031) Part 1, Saved Policies C8, C27, C28 and C33 of the Cherwell Local Plan 1996, Policy AD1 of the Draft Adderbury Neighbourhood Plan Referendum version - 2014 - 2031 and Government guidance contained within the National Planning Policy Framework.

3. The Design and Access Statement and indicative layout submitted as part of the application fails to provide sufficient acceptable detail in respect of the design principles set as a basis for the future detailed consideration of the development proposed. The Local Planning Authority is therefore unable to determine whether the development proposed could be satisfactorily accommodated on the site in a manner that would respect its context, enhance the built environment and properly respond to local distinctiveness. The proposal therefore fails to accord with the requirements of Policy ESD15 of the Cherwell Local Plan (2011-2031) Part 1, Saved Policies C27, C28 and C30 of the Cherwell Local Plan 1996 and Government guidance within the National Planning Policy Framework.
4. The submitted Drainage Strategy does not provide sufficient certainty to demonstrate that a drainage strategy based on Sustainable Urban Drainage Systems can be appropriately accommodated to deal with the sustainable discharge of surface water. The proposal is therefore contrary to Policy ESD7 of the Cherwell Local Plan (2011-2031) Part 1 and Government guidance contained within the National Planning Policy Framework.
5. In the absence of the completion of a satisfactory Planning Obligation, the Local Planning Authority is not convinced that the necessary infrastructure directly required both on and off site as a result of this development, in the interests of safeguarding public infrastructure, mitigating highway safety concerns, delivering mixed and balanced communities by the provision of affordable housing and securing on site future maintenance arrangements will be provided. This would be contrary to Policy INF1, PSD1, BSC2, BSC9, BSC11 and ESD7 of the adopted Cherwell Local Plan (2011-2031) Part 1 and the advice within the National Planning Policy Framework.

## 4 Reasons for Refusal

4.1 The application was refused for the following reasons, and not those listed at para. 6.1 of the LPAs Statement of Case:

Commented [A4]: Have included this section so we can confirm to the Inspector that the Council is not introducing a Heritage RfR, nor an Archaeology RfR.

- 1. The development proposed, by reason of its scale and siting beyond the built up limits of the village, in open countryside and taking into account the number of dwellings already permitted in Adderbury, with no further development identified through the Adderbury Neighbourhood Plan 2014-2031, is considered to be unnecessary, undesirable and unsustainable development. The site itself is in an unsustainable location on the edge of the village, distant from local services and facilities and would result in a development where future occupiers would be highly reliant on the private car for day to day needs. The proposal is therefore unacceptable in principle and contrary to Policies ESD1, BSC1, SLE4 and Villages 2 of the Cherwell Local Plan (2011-2031) Part 1, Saved Policy H18 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.*
- 2. The development proposed, by virtue of its poorly integrated relationship with existing built development, its extension beyond the built limits of the village (beyond the Adderbury Settlement Boundary as defined in the Adderbury Neighbourhood Plan 2014 - 2031) causing significant urbanisation and its visual impact on the rural character, appearance of the locality and local settlement pattern, would cause unacceptable harm to the character and appearance of the area and the rural setting of the village and would fail to reinforce local distinctiveness. The proposal is therefore contrary to Policies ESD13, ESD15 and Villages 2 of the Cherwell Local Plan (2011-2031) Part 1, Saved Policies C8, C27, C28 and C33 of the Cherwell Local Plan 1996, Policy AD1 of the Adderbury Neighbourhood Plan - 2014 - 2031 and Government guidance contained within the National Planning Policy Framework.*
- 3. In the absence of the completion of a satisfactory S106 Planning Agreement, the Local Planning Authority is not convinced that the necessary infrastructure directly required both on and off site as a result of this development, in the interests of safeguarding public infrastructure, mitigating highway safety concerns, delivering mixed and balanced communities by the provision of affordable housing and securing on site future maintenance arrangements will be provided. This would be contrary to Policy INF1, PSD1, BSC2, BSC9, BSC11 and ESD7 of the adopted Cherwell Local Plan (2011-2031) Part 1 and the advice within the National Planning Policy Framework.*

## Heritage

### 4.2 There is no Heritage Reason for Refusal (RfR).

The recommended RfR 2 set out in the Committee Report and referenced at para. 6.1 of the LPAs Statement of Case incorporated the following: *It would also result in 'less than substantial harm' to the setting of the Church of St Mary and the harm stemming from the proposals is not considered to be outweighed by any public benefits*

### 4.3 However, this was removed following a verbal update from the LPA at the Committee Meeting, which confirmed that the LPA had discussed the proposals with Historic England (the government's expert advisor on England's heritage) in their role as statutory consultee and resulted in the formally resolved position of the Council being that there is no Heritage RfR.

### 4.4 The Council's Statement of Case does not attempt to reintroduce a Heritage RfR. The Council does not allege 'substantial harm' or 'less than substantial harm' to the Conservation Area or the Church of St Mary's.

### 4.5 At para. 8.6 and 8.14 of its Statement, the Council was not intending to add an additional reason for refusal on heritage, or allege that there would be any harm to the significance or setting of the listed asset (St Mary's Church). The Council accepts that there would be no harm to the listed Church, or its setting, or to any other heritage asset or its setting.

### 4.4.6 The Council's comments in its Statement in relation to views of the Church were not intended to amount to an allegation that there would be harm to the significance or setting of the Church but was intended to convey the Council's opinion that the impact on views of the Church would lead to a visual impact on the rural character, appearance of the locality and local settlement pattern of Adderbury.

### 4.5.7 The Appellant agrees that there would not be any harm to any heritage asset or the setting of any heritage asset, but disagrees that the proposal would harm the rural character, appearance or local settlement pattern of Adderbury.

## Archaeology

### 4.8 There is no archaeology RfR.

4.64.9 At para. 8.6 of its Statement, the Council does not allege, and has no evidence to suggest, that the site itself has any heritage significance, and does not allege that the proposals would cause harm to any heritage asset. A condition can be imposed relating to archaeology and this is sufficient.

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## 5 Access

- 5.1 Since the date of the decision on the application, Oxfordshire County Council (OCC) has approved a traffic calming scheme in Adderbury, including along Berry Hill Road. The approved scheme is provided at Appendix #<sup>2</sup>. -Work on the scheme is due to commence in June 2021.
- 5.2 The Appellant produced a revised highway improvement plan (Drwg no. 1899-F03<sup>3</sup>) to incorporate the traffic calming scheme.
- 5.3 OCC subsequently confirmed that the traffic calming scheme along Berry Hill Road and the proposed residential development can both be implemented without any impact to highway safety.
- 5.4 The Council and Appellant agree that the Inspector should consider the appeal proposals on the basis of plan 1899-F03.
- 5.5 The Council and Appellant agree that the traffic calming scheme will impact on the character and appearance of Berry Hill Road.

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<sup>2</sup> Appendix #: Traffic calming scheme

<sup>3</sup> Appendix #: 1899-F03

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## 6 Development plan

- 6.1 The development plan for the purposes of this appeal comprises the:
- Local Plan Part 1 (LPp1);
  - Cherwell Local Plan 1996 saved policies (CLP); and,
  - Adderbury Neighbourhood Plan (ANP).
- 6.2 The Local Plan Part 1 Partial Review does not include policies relevant to the appeal.

### Local Plan Part 1 (2011 - 2031)

- 6.3 The Local Plan Part 1 (LPp1) was formally adopted by Cherwell District Council (CDC) on 20/07/2015 and provides the strategic planning policy framework for the District to 2031.
- 6.4 Table 1 sets out the LPp1 policies considered relevant by the Appellant and CDC.

LPp1 Policy reference	LPp1 Policy heading
PSD1	Presumption in favour of sustainable development
SLE4	Improved transport and connections
BSC1	District wide housing distribution
BSC2	The effective and efficient use of land – brownfield land and housing density
BSC3	Affordable housing
BSC4	Housing mix
BSC8	Securing health and well-being
BSC9	Public services and utilities
BSC10	Open space, outdoor sport and recreation provision
BSC11	Local standards of provision – outdoor recreation

BSC12	Indoor sport, recreation and community facilities
ESD1	Mitigating and adapting to climate change
ESD2*	Energy Hierarchy & Allowable Solutions
ESD3	Sustainable construction
ESD5*	Renewable Energy
ESD6	Sustainable flood risk management
ESD7	Sustainable drainage systems
ESD10	Protection and enhancement of biodiversity and the natural environment
ESD13	Local landscape protection and enhancement
ESD15	The character of the built and historic environment
ESD17	Green Infrastructure
Policy Villages 1	Village Categorisation
Policy Villages 2	Distributing Growth across the Rural Areas
Policy Villages 4	Meeting the needs for Open Space, Sport and Recreation
INF1	Infrastructure

Commented [A5]: ESD2 and ESD5 were listed in the committee report but then no reference was made to them. Which elements do you consider to be relevant to the appeal proposals?

Table 1: Relevant LPP1 policies (Those marked \* relevant at Reserved Matters)

6.5 The appeal site is located adjacent to the settlement boundary of Adderbury, which is categorised as a Category A village under Policy Villages 1 (PV1). After the main towns of Banbury and Bicester, the largest service centre village of Kidlington and the planned redevelopment of the former RAF Upper Heyford site, where most new development is planned to be accommodated, Category A villages are considered to be the most sustainable rural locations at which villages to accommodate growth. They offer a wide range of services and are generally well connected to major urban areas, particularly by public transport. Of the 23 Category A villages, 6<sup>4</sup> (including Adderbury) are identified as “service centres” for the “satellite villages”, forming a “village cluster”.

Commented [A6]: Is this term used in the development plan to describe these settlements?

<sup>4</sup> Adderbury, Ambrosden, Bloxham, Cropredy, Deddington, Steeple Aston



### Cherwell Local Plan 1996 Saved Policies

- 6.6 The Cherwell Local Plan 1996 (CLP) was adopted on 06/11/1996. A number of policies were then originally 'saved' on 27/09/2007, in the context of PPS7. The LPp1 replaced a number of the 'saved' policies of the CWP though many of the 'saved' policies are retained by CDC and remain part of the development plan. Appendix 7 of the LPp1 lists those CLP policies that have been replaced.

CLP Policy reference	CLP Policy heading
H18	New Dwellings in the Countryside
C8	Sporadic development in the Open Countryside
C27	Development in Villages to respect Historic Settlement Pattern
C28*	Layout, Design and External Appearance of New Development
C30	Design control
C33*	Protection of Important Gaps of Undeveloped Land

Table 2: Relevant CLP policies (Those marked \* relevant at Reserved Matters)

**Commented [A7]:** Are you happy for this to be moved into areas of disagreement, given it is a policy that is relevant to RM stage, as agreed at para 5.6?

Or we simply use the \* with a footnote to confirm it's a policy for the RM stage, as you have done in the table in section 5.

**Commented [A8]:** As we don't think this policy is relevant – we can move this into areas of disagreement?

### Adderbury Neighbourhood Plan 2014 – 2031

- 6.7 The Adderbury Neighbourhood Plan (ANP) was Made on 16/07/2018 and was examined under NPPF 2012.

ANP Policy reference	ANP Policy heading
AD1	Adderbury settlement boundary
AD2	Green infrastructure
AD16	Managing design in Berry Hill Road and St Mary's Road

Table 3: Relevant ANP policies

6.8 The Adderbury settlement boundary defined in the made Adderbury Neighbourhood Plan (July 2018) adjoins part of the western boundary of the appeal site. There is no settlement boundary policy in the LPP1.

6.9 The site is bound by the Adderbury Green Infrastructure (GI) network to the north and east. Policy AD2 identifies a GI opportunity along Berry Hill Road. The site also adjoins the eastern edge of the Berry Hill Road and St Mary's Road Character Area.

6.10 The site was assessed as part of the NP evidence base (Sustainability Appraisal).

Commented [A9]: Am thinking this might help the Inspector if there are third party reps from the NP Group?

### Supplementary Planning Documents

6.11 The following Supplementary Planning Documents (SPD) are considered relevant:

- Cherwell Residential Design Guide SPD (2018); and,
- Developer Contributions SPD (2018).

### Emerging Development Plan documents

6.12 The LPA and Appellant agree that the following emerging DPDs are relevant but given their early stage of preparation carry no significant weight:

- Cherwell Local Plan Review 2040; and,
- Oxfordshire Plan 2050.

6.13 The LPA and Appellant will provide an update on the emerging DPDs in advance of the Hearing, if necessary.

### Cherwell Local Plan Review

6.14 The LDS states that the CLPR was due to be adopted by July 2023. District Wide Options Consultation was due to be undertaken in February and March 2021 but is now scheduled to take place in June/July 2021.

6.15 The CLPR timetable has experienced some slippage but is still likely to be adopted towards the end of 2023.

6.16 The CLPR should be afforded very limited weight.

### Oxfordshire Plan 2050

6.17The Oxfordshire Plan (OP) was originally due to be submitted to the Inspectorate for independent examination by 31/03/2020 and adopted by 31/03/2021. The latest timetable was presented to the Oxfordshire Growth Board in November 2020 via the 'Proposed new timetable and quarter two report' ('the Timetable Report') and states that the OP will not be adopted until May/June 2023.

6.18The OP should be afforded very limited weight.

#### **Written Ministerial Statement: Housing Land Supply in Oxfordshire**

6.19The LPA and Appellant agree that the March 2017 WMS is no longer relevant.—The following Statement was made on 25/03/2021:

*In March 2017 the Government committed to the Oxfordshire Housing and Growth Deal (the deal), to support ambitious plans to deliver 100,000 homes by 2031. The deal committed to an Oxfordshire-wide Joint Statutory Spatial Plan to be adopted by 2021, and to be supported by £215 million of funding to help deliver more affordable housing and infrastructure improvements to support sustainable development across the county.*

*As part of the deal, to support this strategic approach to supporting housing delivery through joint working, Oxfordshire was granted flexibility from the National Planning Policy Framework policy on maintaining a five year housing land supply. Since 2018, Oxfordshire have had to provide proof of a three-year land supply for planning purposes. This has worked to support the delivery of the local plans for the area and ensure that the local authorities could focus their efforts on their Joint Spatial Strategy.*

*This flexibility was laid out by Secretary of State at the time the Rt Hon James Brokenshire MP in a Written Ministerial Statement on 12 September 2018 - <https://questions-statements.parliament.uk/written-statements/detail/2018-09-12/hcws955>(opens in a new tab).*

*Since 2018, Oxfordshire have not finalised and adopted their Joint Statutory Spatial Plan. Therefore, in the best interests of housing delivery in the region, my Department have extended the time afforded to Oxfordshire for the delivery of this plan to 2023. This extension however will not be subject to the original land supply flexibilities. From today, Oxfordshire will need to maintain a five year housing land supply in accordance with the National Planning Policy Framework.*

*This statement is a material consideration in planning decisions and applies to those local planning authorities in Oxfordshire with whom the Government agreed the Oxfordshire Housing and Growth Deal with, namely Cherwell District Council, Oxford City Council, South Oxfordshire District Council, Vale of White Horse District Council and West Oxfordshire District Council. This statement applies from today.*

## 7 Areas of agreement

7.1 These are the areas of agreement between the LPA and Appellant.

### S106 Agreement

7.2 The LPA and Appellant agree that Reason for Refusal 3 can be overcome via a s106 Agreement. Both parties will work proactively to ensure this is completed in advance of the Hearing.

### Development plan policies

7.3 The Appellant and LPA agree that the proposals do/can be made to\* comply with the policies set out in the Table below:

Policy Reference	Policy Heading
<b>Local Plan Part 1</b>	
<u>BSC1</u>	<u>District wide housing distribution</u>
BSC2*	The effective and efficient use of land – brownfield land and housing density
BSC3*	Affordable housing
BSC4*	Housing mix
BSC8*	Securing health and well being
BSC9*	Public services and utilities
BSC10*	Open space, outdoor sport and recreation provision
BSC11*	Local standards of provision – outdoor recreation
BSC12*	Indoor sport, recreation and community facilities
ESD2*	Energy Hierarchy and Allowable Solutions
ESD3*	Sustainable construction
ESD5*	Renewable Energy
ESD6*	Sustainable flood risk management
ESD7*	Sustainable drainage systems
ESD10*	Protection and enhancement of biodiversity and the natural environment
ESD17*	Green infrastructure

**Commented [A10]:** i have included BSC1 in light of the Council's position on Category A development as set out in the Deddington Committee Report

Policy Villages 4*	Meeting the needs for open space, sport and recreation
INF1*	Infrastructure
<b>Cherwell Local Plan Saved Policies</b>	
C28*	Layout, Design and External Appearance of New Development
C30*	Design control
<b>Adderbury Neighbourhood Plan</b>	
AD2*	Green infrastructure
AD16	<del>Managing design in Berry Hill Road and St Mary's Road</del>

Table #: Policies complied with

#### LPp1 policy BSC1

7.4 In the Ambrosden appeal, the Council accepted that the overall strategy of the plan to deliver most housing to Bicester and Banbury was succeeding, on the basis of 73% of housing (completions and commitments) going to Bicester and Banbury against a target of 76%.

7.5 The 2020 AMR demonstrates that the Council is now achieving its target of 76%.

7.57.6 The Council and Appellant agree that the proposals comply with policy BSC1. This follows the recent Committee Report for application 20/02083/OUT ('the Deddington application') which represents a change in position for the Council with regard policies H18, BSC1 and PV2. The Council now considers there to be no in-principle conflict with these policies until such time as the 750 headline figure set out in PV2 has been delivered.

#### CLP policy H18

7.7 The Council and Appellant agree that there should be no in-principle objection to the appeal proposals with regard H18, consistent with the approach set out in the Committee Report for the Deddington application.

#### LPp1 policy PV2

7.67.8 Adderbury is one of the largest category A villages in the District in terms of size and it is one of the more sustainable in terms of the range of facilities it provides as well as the transport connections available. Adderbury is also a service centre for the satellite villages.

**Commented [A11]:** Not of relevance or compliant with because the appeal site lies outside the boundary of the defined Berry Hill Road and St Mary's Road character area

**Commented [A12]:** The RfRs do not refer to this policy and so we should work on the basis that the LPA accepts compliance? Otherwise, the LPA is seeking to introduce another policy to the RfR?

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7.9 CDC attempted to challenge the Ambrosden decision in the High Court, but were refused permission. The refusal was issued after the Council decided to refuse the application subject of this appeal.

7.10 The Appellant and Council agree that there should be no in-principle objection to the appeal proposals, consistent with the approach set out in the Committee Report for the Deddington application.

7.77.11 Subject to the prior completion of a satisfactory s106 Planning Obligation Agreement, CDC is satisfied that the proposals should not result in local infrastructure being unable to cope, land of higher environmental value being developed or out-commuting and traffic congestion being unacceptable.

7.12 Previous developments permitted at Adderbury have equated to about 16% of all development allowed at Category A settlements.

*PV2 criteria*

7.87.13 CDC and the Appellant agree that the proposals comply with bulleted criteria 4, 6, 7, 8, 10 & 11. Also, criteria 9 is not relevant.

**ANP policy AD1**

7.97.14 The Council considers ANP policy AD1 to be the key policy in respect to considering the principle of development, as per para. 9.15 of the Committee Report.

7.107.15 The proposals would not comply with policy AD1 insofar as the proposals are outside the settlement boundary.

7.117.16 The ANP was Made in July 2018 and is more than 2 years old.

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Commented [A13]: Criteria 1: at para. 5.16 you agree the proposals will not result in land of higher environmental value being developed?  
Criteria 2: is the LPA attempting to introduce a heritage RfR at this stage of the appeal?  
Criteria 2: do you consider the proposals will result in significant adverse impacts on wildlife assets? IS the LPA attempting to introduce an ecology RfR at this stage?  
Criteria 9: Can we agree this is not applicable?

Commented [A14]: The LPA is happy to agree compliance with criteria 4, 6, 7, 8, 10 and 11 to PV2. Whilst the LPA agree that the land is not part of a specially protected landscape it is nevertheless undeveloped open countryside that contributes significantly to the character and appearance of its surroundings and the setting of the village; so the LPA does not agree to include reference here to criteria 1. Criteria 2 - the LPA is not suggesting a significant adverse heritage or wildlife impact but the views afforded across the site towards the church are part of the landscape setting to the village as one approaches from the surrounding open rural countryside. Criteria 9 - the land is not being proposed as a Development Plan allocation, so is irrelevant to this proposal.

### Locational sustainability

7.127.17 The LPA and Appellant agree that the Inspector's decision for appeal 2032232 was issued on 22/03/2007 at a time when the policy and guidance context will have differed from that set out in the current development plan, national policy and guidance.

7.137.18 The locational sustainability of the site should be viewed in the context of:

- The site being adjacent to the edge of a sustainable Category A village and service centre;
- Policy PV2 seeking the delivery of 750 homes in Category A villages with 977 dwellings having been identified as contributing towards the target figure;

### Accessibility on foot

7.147.19 The LPA and Appellant agree that accessibility on foot should be considered against the distances set out in Tables 2.1 and 2.2 of the Accessibility Statement.

7.157.20 The Appellant and LPA agree that Tables 2.5, 2.6 and 2.7 of the AS are accurate.

### Accessibility by cycle

7.167.21 The LPA and Appellant agree that an acceptable and comfortable distance for general cycling is up to 5km and general commuting cycling is acceptable up to 8km.

7.177.22 The LPA and Appellant agree that Table 2.8 of the AS is accurate.

### Accessibility by Bus

7.187.23 The nearest existing bus stop is approximately 480 metres from the centre of the site. The proposed bus stops along Oxford Road will be some 350m from the centre of the site. There is an hourly ~~a good S4 Gold~~ bus service throughout the majority of the day. The most recent timetable is appended<sup>5</sup>.

7.197.24 Table 2.10 is accurate.

### Accessibility by Rail

**Commented [A15]:** Is there a different figure the LPA has identified?

**Commented [A16R15]:** the Council's case does not identify a different figure and so this can be agreed can't it?

**Commented [A17R15]:** you were going to check the figure and we can then hopefully agree on it.

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**Commented [A18]:** Yes

**Commented [A19R18]:** ok, i will append the new timetable when we come to turn this into a pdf document.

**Commented [A20]:** There is a new timetable as of March 2021. Are you happy for this to be appended as an update?

<sup>5</sup> Appendix #: S4 timetable March 2021

7.207.25 Banbury train station is accessible via a 4 minute walk to the bus stop, a 20 minute bus journey to Banbury bus station and a 4 minute walk to the train station. The train station provides frequent, regular and direct train services.

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### Benefits of proposed development

7-247.26 The LPA and Appellant agree that the proposals would provide the following benefits:

#### Social benefits

- A. Contribution to market housing in context of requirement to boost supply;
- B. Contribution to housing provision in context of LPP1 plan period requirement;
- C. Provide much needed small and moderately sized homes, subject to the granting of conditional permission to include a housing mix condition;
- D. Contribute to affordable housing to meet an acknowledged shortfall and local need;
- E. Provision of elderly housing, subject to the granting of conditional permission;
- F. Have the potential to provide high quality public open space, accessible to existing residents and managed in perpetuity, contributing to an acknowledged shortfall, subject to completion of s106 Agreement; and,
- G. New publicly accessible views of St Mary's Church.

#### Economic benefits

- H. Provide employment opportunities for the construction industry and benefit the wider construction industry supply chain; and,
- I. Result in spending in local shops and businesses.

#### Environmental benefits

- J. Enhance biodiversity at the site.

#### A: Contribution to Housing in context of deliverable supply

7-227.27 The LPA and Appellant agree that the Council cannot demonstrate a five-year supply.

7-237.28 The AMR states that the LPA can demonstrate a supply of 4.7 years (using the Sedgefield method). ~~The LPA and Appellant agree that the figure would be or 4.5 years should the Inspector deem it inappropriate for the Council to unilaterally reduce its annual requirement and apply the Liverpool method.~~

7-247.29 The weight to be afforded to the provision of up to 40 homes is substantial ~~significant~~ ~~modest~~ ~~not agreed~~. It would contribute towards boosting supply.

**Commented [A21]:** Agree to restore B. As an outline proposal with only access agreed, there is no control over the sizes of the up to 40 houses, so cannot agree C or E. F could be restored, subject to prior completion of a s.106 to guarantee delivery of the same. Agree to partial restoration of G, provided it excludes "and improved".

**Commented [A22R21]:** B restored. F restored and amended. G restored and amended

C and E - we are agreeing to a housing mix condition and elderly housing condition/106. And housing mix is not a reserved matter so outline stage is the opportunity to fix this.

**Commented [A23]:** B, C, E, F and G – move to areas of disagreement?

Do you consider B, C and E are not benefits?

F – we are significantly over-providing POS – but you don't consider it to be a benefit for existing Adderbury residents?

G – is it the Council's case that the proposals will not create new and improved accessible views, despite HE comments and LPA not imposing a heritage RfR?

**Commented [A24]:** i have reinstated some of this - just because i think it's a little easier to follow, confirming that its 4.5 if the requirement isn't changed as per the AMR?

**Commented [A25]:** Move to Areas of Disagreement (AoD)?

**Commented [A26R25]:** the Council's SoC states substantial at 7.10 so i've put that in here.

**B: Contribution to housing in context of LPP1 requirement**

7.257.30 The Council's latest published Annual Monitoring Report (April 2019 – March 2020) published December 2020 states that it can deliver 23122 homes, 282 more than the figure set by policy BSC1.

**C: Provision of small and moderately sized homes**

7.267.31 One of the key community issues facing the villages and rural areas is the lack of smaller homes generally.

7.277.32 The most up to date evidence on housing need is provided in the pre-amble to policy BSC4:

	1-bed	2-bed	3-bed	4-bed
Market	5%	25%	45%	25%
Affordable	25-30%	30-35%	30-35%	5-10%
All Dwellings	15%	30%	40%	15%

7.287.33 There is a greater need for 3-bed properties in Cherwell and the overall mix is focussed towards smaller properties.

7.297.34 There is a locally widening gap in the ratio of house prices to earnings. The affordability ratios set out in Table 9 of the Appellant's Statement are accurate.

7.307.35 The AMRs confirm that there has been no monitoring of LPP1 policy BSC4 in the last two monitoring years.

7.317.36 BSC4 was monitored in 2016/17 and 2017/18. This showed a significant under provision of 3-bedroomed homes and an over-provision of 4-bedroomed homes.

7.327.37 Tables 11 and 12 of the Appellant's Statement are accurate. These show an under-provision of smaller homes and an over-provision of 4-bedroomed+ homes in Category A villages, including Adderbury.

Commented [A27]: Is there more recent evidence?  
Commented [A28R27]: the Council's SoC does not provide other evidence and as such, this remains the most up to date evidence?

Commented [A29]: Agree restoration of comment.  
Commented [A30R29]: restored

7.337.38 A condition can be imposed requiring housing mix to be agreed at RM stage. This will deliver much needed smaller housing and this should be given weight.

#### **D: Affordable housing**

7.347.39 There is a district-wide and Adderbury specific need for affordable housing.

7.357.40 There is a need to increase delivery of affordable housing in the rural areas of the district.

7.367.41 There have been no social rented units provided in Cherwell for 5 years.

7.377.42 The proposed affordable housing should be given weight.

#### **E: Provision elderly housing**

7.387.43 The need to provide elderly housing nationally is critical and this is reflected in Cherwell.

7.397.44 The provision of elderly suitable units within the scheme should be afforded weight in favour of the appeal proposals.

#### **F: Provision of green infrastructure**

7.407.45 One of the key community issues facing the villages and rural areas is the deficiencies in open space provision.

7.417.46 There is a shortfall of natural/semi-natural green space in Adderbury and a need to improve accessibility to POS.

7.427.47 The Council wants to provide new equipped play areas and additional play opportunities in the Rural North, including Adderbury.

7.437.48 Approximately 0.26ha of on-site POS would be required by CDC and the proposals could provide some 2.53ha comprising of semi-natural greenspace, amenity greenspace and an equipped play area as well as an orchard and seating towards the Church spire. The POS can be easily accessed via the PROW network and the new footway proposed along Berry Hill Road.

7.447.49 The proposed GI weighs in favour of the proposals.

#### **G: Views of St Mary's Church**

7.457.50 The provision of POS in the northern part of the site would provide new unrestricted publicly accessible views of the church and its contextual landscape.

7.467.51 This is a benefit to be weighed in favour of the appeal proposals.

#### **Economic benefits**

7.477.52 The economic benefits that arise from the appeal proposals are of more importance now than they would have been at the time the application was refused, because of the economic impact of the pandemic.

7.487.53 CDC has acknowledged the impact that the pandemic will have on its five year supply by seeking to reduce its requirement. If this impact were to come to fruition, it would impact on the construction industry and supply chain.

Commented [A31]: In retrospect, happy to restore.

Commented [A32R31]: restored

#### **H: Employment opportunities for construction industry and benefits to supply chain**

7.497.54 The development could be built out in 1.5 years, providing 1.5 years of economic benefits for the construction industry.

#### **I: Spending in local shops and businesses**

7.507.55 The permanent economic benefits would accrue to the local shops and businesses in Adderbury and the surrounding area. The proposals would help to maintain local services and facilities.

#### **J: Enhance biodiversity**

7.517.56 A 24.32% biodiversity net gain could potentially be achieved along with a 19.69% gain in hedgerow units.

7.57 This is higher than anticipated at application stage. Biodiversity enhancement as mitigation for development impact is a Development Plan requirement. Any increased enhancement above that required should be given weight in favour of the appeal proposals.

7.52

**Tilted balance**

7.58—The LPA and Appellant agree that the tilted balance is engaged. The Council cannot demonstrate a five year supply of deliverable housing sites.

7.59 The LPA and Appellant agree that the Inspector must consider whether the adverse impacts significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

7.537.60 All of the policies that are most important for determining the application (those listed in the Reasons for Refusal) are out of date in accordance with para. 11 of the NPPF.

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Commented [A33]: worth confirming this for the Inspector too i think?

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## 8 Areas of disagreement

8.1 These are the areas of disagreement between the LPA and Appellant.

8.2 The LPA considers that the proposals do not comply with the policies set out in the Table below.

Policy Reference	Policy Heading
<b>Reason for Refusal 1</b>	
<i>Local Plan Part 1</i>	
PSD1	<del>Presumption in favour of sustainable development</del>
BSC1	District wide housing distribution
ESD1	Mitigating and adapting to climate change
SLE4	Improved transport and connections
<del>Policy Villages 4</del>	<del>Village Categorisation</del>
Policy Villages 2	Distributing growth across the rural areas
<i>Cherwell Local Plan Saved Policies</i>	
H18	New Dwellings in the Countryside
<b>Reason for Refusal 2</b>	
<i>Local Plan Part 1</i>	
ESD13	Local landscape protection and enhancement
ESD15	The character of the built and historic environment
Policy Villages 2	Distributing growth across the rural areas
<i>Cherwell Local Plan Saved Policies</i>	
C8	Sporadic Development in the Open Countryside
C27	Development in villages to respect historic settlement pattern
C28	Layout, Design & External Appearance of New Development
C33	Preserving Undeveloped Land / Preserving View of Historic Value
<i>Adderbury Neighbourhood Plan</i>	
AD1	Adderbury settlement boundary

**Commented [A34]:** i have noticed that neither PSD1 nor PV1 were listed in a RfR - so we can take these out.

LP Policy BSC1

8.3 The Council and Appellant disagree as to whether a development of up to 40 dwellings could undermine the housing strategy.

Commented [A35]: this section where we're discussing policies is a bit messy in terms of formatting but I'm happy to tidy it all up when we've greed the words.

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LP policy PV2

8.4 Whereas the Appellant and Council are able to agree that criteria 9 is not relevant and that the proposals comply with criteria 4, 6 – 8 and 10 – 11, agreement cannot be reached with regard 1 – 3 and 5.

*Criterion 1*

8-28.5 The Appellant considers that the site is partly previously developed land and is also of lesser environmental value. The Council disagrees on the basis of the site being open countryside which contributes significantly to the character and appearance of its surroundings and the setting of the village.

*Criterion 2*

8-38.6 There is no heritage or ecology RfR.

8-48.7 The Appellant considers that the supporting Heritage and Ecological submissions demonstrate no significant adverse impact and that the proposals will achieve significant biodiversity net gain and the creation and enhancement of views of St Marys Church.

8-58.8 The Council is not suggesting a significant adverse heritage or wildlife impact but considers that the views afforded across the site towards the church are part of the landscape setting to the village as one approaches from the surrounding open rural countryside.

*Criterion 3*

8-68.9 The Appellant and Council cannot agree on whether good design can be achieved.

*Criterion 5*

8-78.10 The Appellant and Council cannot agree on whether significant landscape impacts could be avoided.

CLP Policy H18

8.11 The Appellant considers that policy H18 is out of date. The Council considers that policy H18 is still of relevance but carries reduced weight in light of the District's lack of a 5-year housing land supply.

CLP Policy C8

8.12 The Appellant considers that the proposals do not represent sporadic development and that, in any event, policy C8 is out of date. The Council considers that policy C8 is still of relevance but carries reduced weight in light of the District's lack of a 5-year housing land supply.

CLP Policy C33

8.8 Policy C33 seeks to retain undeveloped gaps of land which are important in preserving the character of a loose-knit settlement structure or in maintaining the proper setting for a listed building or in preserving a view or feature of recognised amenity or historical value.

8.9 The Appellant considers that policy C33 should not have been included in RfR 2.

8.10

8.11

It is the Council's case that Berry Hill Road has a loose knit structure and that the proposals would not enhance views of St Mary's Church, but would cause harm to views of St Mary's Church.

8.128.13

ANP policy AD1

8.138.14 The Appellant considers that the policy should attract reduced weight in the decision making process and is out of date. The Council considers that policy ~~C8~~AD1 is still of relevance but carries reduced weight in light of the District's lack of a 5-year housing land supply.

Commented [A36]: i have added this, assuming that you would take a similar approach as the other policies?



**Benefits**

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**8.14** C: Provision of small and moderately sized homes

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8.15 The Appellant considers this benefit should be afforded significant weight. The LPA considers it should be afforded some weight.

**8.16**

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**8.17** D: Affordable housing

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**8.18.16** The Appellant considers this benefit should be afforded substantial weight. The LPA considers it should be afforded some weight.

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**F: Provision of green infrastructure**

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**8.19.17** The Appellant considers this benefit should weigh heavily in favour of the appeal proposals. The LPA considers that, in general, provision of GI should be afforded neutral weight but accepts some weight to overprovision.

**G: Views of St Mary's Church**

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**8.20.18** The Appellant considers that the new views of the church would allow for a better appreciation of the building within the landscape. The proposals could result in improved views of the church from new safe pedestrian route along Berry Hill Road and views from within and through the site could be enhanced through increased accessibility. These views are shared by Historic England.

**8.21.19** The Council disagrees and considers that the creation of a public open space in the northern part of the site, as suggested in the Illustrative plans, would afford views of the church and parts of the surrounding countryside from positions not currently publicly available but that those same views are already available from Berry Hill Road and the PROWs, so there would be no enhancement and there would be harm to the views currently afforded from Berry Hill Road.

**J: ~~Enhance~~ Biodiversity**

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**8.22.20** The Appellant considers the potential net gain should be given significant weight. The Council considers it should be given modest weight.

**K: ~~Enhance~~ Sustainability of Adderbury**

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The Appellant considers the proposals will enhance the sustainability of Adderbury for the reasons set out in the Statement of Case. The Council considers that this proposal will not improve general

connectivity or accessibility. The existing PRoWs already provide connectivity from Berry Hill Road/St Mary's Road properties to the village centre and the wide verge along Berry Hill Road already provides connectivity to the PRoW along the eastern site boundary. Other works would be necessary to mitigate development impacts.

**Compliance with development plan as a whole**

~~8.23 The LPA and Appellant do not agree that proposals can comply with the development plan as a whole if there is conflict with one or more development plan policies.~~

8.21

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- Commented [A37]: Move to AoD? What is the LPAs stance o this – can we say the Appellant considers X while the Council considers X?
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## 9 Conditions

9.1 The LPA and Appellant agree that the following conditions should be imposed should planning permission be allowed:

1. No development shall commence until full details of the layout, scale, appearance, and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.
2. In the case of the reserved matters, application for approval shall be made not later than the expiration of 18 months beginning with the date of this permission.
3. The development to which this permission relates shall be begun not later than the expiration of one year from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.
4. The total number of dwellings accommodated on the site shall not exceed 40 and shall include 35% affordable dwellings and 5% Lifetime Living Homes in accordance with Development Plan policy BSC3.
5. Prior to the commencement of the development, details for the construction of the site access arrangement shall be submitted to and approved in writing by the Local Planning Authority. Details shall be in accordance with the Site Access Arrangement (Drawing number xxxx) and the approved Site Access Arrangement shall be implemented prior to first occupation of the first dwelling, in accordance with the Oxfordshire County Council design guide for Residential Roads.
6. No structure exceeding 1m metre in height measured from carriageway level shall be placed within the visibility splays of the site access.
7. Prior to the first occupation of each dwelling hereby approved, the parking areas shall be constructed, laid out, surfaced, drained and completed in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority, and shall be retained for the parking and manoeuvring of vehicles at all times thereafter.
8. Prior to first occupation a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority and thereafter shall be implemented in accordance with the approved plan.
9. Prior to the commencement of the development hereby permitted, a detailed scheme for the surface water and foul sewage drainage of the development shall be submitted to, and approved in writing by, the Local Planning Authority. The approved surface water drainage scheme shall be carried out prior to commencement of any building works on the site and the approved foul sewage drainage scheme shall be implemented prior to the first occupation of each building to which the scheme relates. The drainage works shall be laid out and constructed in accordance with the Water Authorities Association's current edition "Sewers for Adoption".

**Commented [A38]:** to be agreed. i don;t think the comments we discussed when we met have been included here. Shall we do this in the next revision?

**Commented [A39R38]:** to be reviewed by LPA

10. Prior to the commencement of the development hereby approved, full details of the construction of the surface water balancing pond and timing for implementation, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved balancing pond shall be constructed in accordance with the approved details.
11. No works of site clearance or development shall take place until an Ecological Enhancement Scheme, including timing for implementation, has been submitted to and approved in writing by the Local Planning Authority. The Ecological Enhancement Scheme shall be implemented in accordance with the approved scheme.
12. No removal of mature trees shall take place until such time as they have been checked for bats immediately prior to removal. Should bats be found to be present in a tree due for removal, a bat mitigation scheme must be submitted to and approved in writing by the Local Planning Authority prior to the removal of the trees concerned. Development shall be carried out in accordance with the mitigation measures approved as part of the scheme.
13. As part of the Reserved Matters, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:
  - a. details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas;
  - b. details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation;
  - c. details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps.
14. As part of the Reserved Matters, a landscape management plan, to include the timing of the implementation of the plan, long term design objectives, management responsibilities, maintenance schedules and procedures for the replacement of failed planting for all landscape areas, other than for privately owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the landscape management plan shall be carried out in accordance with the approved details.
15. Prior to the commencement of the development hereby approved, full details of a scheme of supervision for the arboricultural protection measures, to include the requirements set out in a) to e) below, and which is appropriate for the scale and duration of the development works, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the arboricultural protection measures shall be carried out in accordance with the approved details.

- a. Written confirmation of the contact details of the project Arboriculturalist employed to undertake the supervisory role of relevant arboricultural issues;
  - b. The relevant persons/contractors to be briefed by the project Arboriculturalist on all on-site tree related matters;
  - c. The timing and methodology of scheduled site monitoring visits to be undertaken by the project Arboriculturalist;
  - d. The procedures for notifying and communicating with the Local Planning Authority when dealing with unforeseen variations to the agreed tree works and arboricultural incidents;
  - e. Details of appropriate supervision for the installation of load-bearing 'structural cell' planting pits and/or associated features such as irrigation systems, root barriers and surface requirements (e.g.: reduced dig systems, arboresin, tree grills).
16. All tree works granted consent shall be carried out in accordance with British Standard 3998: Recommendations for Tree Works and all subsequent revisions thereof and shall be undertaken by suitably qualified and insured arboricultural contractors.
17. No development shall take place until a scheme for the affordable housing has been submitted to and approved by the local planning authority. Such a scheme shall detail all of the affordable housing as meeting the Homes and Communities Agency, Design and Quality Standards and Code for Sustainable Homes Level 3, and 50% of the Affordable Rented Housing as meeting Lifetime Homes Standards, or an alternative equivalent national standard applicable at the time of implementation. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing outlined below. The scheme shall include:
- a. The numbers, type, tenure and location on the site of the affordable housing provision to be made which shall be clustered in no more than 15 dwellings together throughout the development and which shall consist of not less than 35% of the total dwellings 70% of which shall be Affordable Rented Housing and 30% of which shall be Shared Ownership Housing or other such low cost home ownership as is agreed with the local planning authority;
  - b. The timing of the construction of the affordable housing and all necessary infrastructure including serviceable roads, utilities (power, heating, sewerage) and public access, its phasing in relation to the occupancy of the market housing. No more than 70% of the open market dwellings shall be occupied before the affordable housing is completed and ready for occupation and transfer of the affordable housing to a Registered Provider or the Council;
  - c. The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing, subject to any Mortgagee in

Possession clause to be submitted as part of the affordable housing scheme and agreed with the local planning authority;

- d. The occupancy criteria to be used for determining the identity of the occupiers of the affordable housing, which shall require the Affordable Rented Housing to be allocated via the Council's Choice Based Lettings system, determined by its Allocations Scheme and the Shared Ownership shall be allocated to those qualifying under the Help to Buy Agents applicable criteria.

For the purpose of this condition, the following definitions apply:

**Affordable Housing**

Affordable Rented Housing and Intermediate Housing provided to eligible households whose needs are not met by the market. Affordable Housing should meet the needs of eligible households including availability at a cost low enough for them to afford, determined with regard to local incomes and local house prices include provision for the home to remain at an affordable price for future eligible households or, if these restrictions are lifted, for the subsidy to be recycled for alternative affordable housing provision.

**Affordable Rented Housing**

Rented housing let by registered providers of social housing to households who are eligible for social rented housing (as such term is referred to in the definition of "Affordable housing" contained in the glossary to the National Planning Policy Framework) Affordable Rent is not subject to the national rent regime but is subject to other rent controls that require a rent of no more than 80 percent of local market rent.

**Shared Ownership Housing**

Housing which is offered via the Registered Provider on a low cost home ownership basis to the first occupier and so the first occupiers initial share is between 25% and 75% with an average share equal to one half of the equity in the relevant housing unit and so that the remaining half shall be let by way of a lease in the form of the HCA model lease for shared ownership.

18. Prior to the commencement of the development hereby approved, including any demolition and any works of site clearance, a Construction Environmental Management Plan (CEMP), which shall include details of the measures to be taken to ensure that construction works do not adversely affect biodiversity and the local environment, and shall include construction vehicle management, routing, wheel washing and hours of operation, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved CEMP.

19. Prior to any demolition and the commencement of the development a professional archaeological organisation acceptable to the Local Planning Authority shall prepare an Archaeological Written Scheme of Investigation, relating to the

application site area, which shall be submitted to and approved in writing by the Local Planning Authority.

20. Following approval of the Written Scheme of Investigation referred to in condition 22 and prior to any demolition on site and the commencement of the development (other than in accordance with the agreed Written Scheme of Investigation), a staged programme of archaeological evaluation and mitigation shall be carried out by the commissioned archaeological organisation in accordance with the approved Written Scheme of Investigation. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication which shall be submitted to the Local Planning Authority.

Signed on behalf of Appellant	Signed on behalf of Local Planning Authority
Matthew Symons	Andy Bateson <del>Caroline Ford</del>
Date: ##/04/2021	Date: ##/04/2021
Position: Planning Manager	Position: Team Leader, Major Developments





**From:** [Matthew Symons](#)  
**To:** [Matthew Symons](#)  
**Subject:** FW: Berry Hill Road, Adderbury (19/00963/OUT)  
**Date:** 25 May 2021 14:19:54  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[0.png](#)

---

Hi Phil,

My apologies. Please see my revised remarks below.

I have examined the proposed traffic calming scheme in the context of the proposed residential development to which I find no highway safety concern significant to warrant an objection of the residential development.

The proposed highway improvement plan (Drwg no: 1899-F03) shows that the proposed give-way markings to the scheme are in excess of 100m north-west of the residential development site access. This set back is sufficient to accommodate a number of vehicles that may be waiting without affecting the safety operation of the site access.

In summary, I consider that the chicane give-way scheme and the residential development can both be implemented without any impact to highway safety.

Kind regards,

Rashid

---

**Rashid Bbosa** – Senior Transport Planner  
**Transport Development Control** – Chewell, West Oxfordshire and Oxford City. Growth and Place.  
Environment and Place Directorate  
**Oxfordshire County Council** – County Hall, New Road, Oxford, OX1 1ND **Mob: 079175 34264**

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**From:** Phil Wooliscroft <[Phil.Wooliscroft@eddisons.com](mailto:Phil.Wooliscroft@eddisons.com)>  
**Sent:** 25 May 2021 12:09  
**To:** Bbosa, Rashid - Communities <[Rashid.Bbosa@Oxfordshire.gov.uk](mailto:Rashid.Bbosa@Oxfordshire.gov.uk)>  
**Subject:** RE: Berry Hill Road, Adderbury (19/00963/OUT)

Thanks Rashid but can you remove the word 'not' from your conclusion as it reads that you do think that there would be an impact to highway safety.

Many thanks.

**Phil Wooliscroft**

Partner



**D.** 0161 837 7388 **M.** 07957 557667  
340 Deansgate | Manchester | M3 4LY

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**From:** Bbosa, Rashid - Communities <[Rashid.Bbosa@Oxfordshire.gov.uk](mailto:Rashid.Bbosa@Oxfordshire.gov.uk)>

**Sent:** 25 May 2021 11:54

**To:** Phil Wooliscroft <[Phil.Wooliscroft@eddisons.com](mailto:Phil.Wooliscroft@eddisons.com)>

**Subject:** RE: Berry Hill Road, Adderbury (19/00963/OUT)

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Hi Phil,

I have examined the proposed traffic calming scheme in the context of the proposed residential development to which I find no highway safety concern significant to warrant an objection of the residential development.

The proposed highway improvement plan (Drwg no: 1899-F03) shows that the proposed give-way markings to the scheme are in excess of 100m north-west of the residential development site access. This set back is sufficient to accommodate a number of vehicles that may be waiting without affecting the safety operation of the site access.

In summary, I do not consider that the chicane give-way scheme and the residential development can both be implemented without any impact to highway safety.

Kind regards,

Rashid

---

**Rashid Bbosa** – Senior Transport Planner

**From:** Phil Wooliscroft <[Phil.Wooliscroft@eddisons.com](mailto:Phil.Wooliscroft@eddisons.com)>  
**Sent:** 21 May 2021 10:03  
**To:** Bbosa, Rashid - Communities <[Rashid.Bbosa@Oxfordshire.gov.uk](mailto:Rashid.Bbosa@Oxfordshire.gov.uk)>  
**Subject:** RE: Berry Hill Road, Adderbury (19/00963/OUT)

Morning Rashid

This is the e-mail I sent to Chris some time ago with the plans on it.

Thanks.

**Phil Wooliscroft**  
Partner



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340 Deansgate | Manchester | M3 4LY

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**From:** Bbosa, Rashid - Communities <[Rashid.Bbosa@Oxfordshire.gov.uk](mailto:Rashid.Bbosa@Oxfordshire.gov.uk)>  
**Sent:** 21 May 2021 10:02  
**To:** Phil Wooliscroft <[Phil.Wooliscroft@eddisons.com](mailto:Phil.Wooliscroft@eddisons.com)>  
**Subject:** RE: Berry Hill Road, Adderbury (19/00963/OUT)

**This Message originated outside your organization.**

---

Hi Phil,

Could you please share with me the plan showing an OCC traffic calming scheme along Berry Hill Road. It has not made its way to me.

Kind regards,

Rashid

---

**Rashid Bbosa – Senior Transport Planner**

**Transport Development Control** – Chewell, West Oxfordshire and Oxford City. Growth and Place.  
Environment and Place Directorate

**Oxfordshire County Council** – County Hall, New Road, Oxford, OX1 1ND **Mob: 079175 34264**

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**From:** Phil Wooliscroft <[Phil.Wooliscroft@eddisons.com](mailto:Phil.Wooliscroft@eddisons.com)>

**Sent:** 20 May 2021 18:50

**To:** Nichols, Chris - E&E <[Chris.Nichols@Oxfordshire.gov.uk](mailto:Chris.Nichols@Oxfordshire.gov.uk)>

**Cc:** Bbosa, Rashid - Communities <[Rashid.Bbosa@Oxfordshire.gov.uk](mailto:Rashid.Bbosa@Oxfordshire.gov.uk)>; White, Joy - Communities <[Joy.White@Oxfordshire.gov.uk](mailto:Joy.White@Oxfordshire.gov.uk)>

**Subject:** RE: Berry Hill Road, Adderbury (19/00963/OUT)

Thanks Chris. Rashid, can you confirm that you concur with our views below please on the traffic calming and our appeal scheme site access?

Many thanks.

**Phil Wooliscroft**

Partner



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340 Deansgate | Manchester | M3 4LY

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---

**From:** Nichols, Chris - E&E <[Chris.Nichols@Oxfordshire.gov.uk](mailto:Chris.Nichols@Oxfordshire.gov.uk)>

**Sent:** 20 May 2021 18:26

**To:** Phil Wooliscroft <[Phil.Wooliscroft@eddisons.com](mailto:Phil.Wooliscroft@eddisons.com)>

**Cc:** Bbosa, Rashid - Communities <[Rashid.Bbosa@Oxfordshire.gov.uk](mailto:Rashid.Bbosa@Oxfordshire.gov.uk)>; White, Joy - Communities <[Joy.White@Oxfordshire.gov.uk](mailto:Joy.White@Oxfordshire.gov.uk)>

**Subject:** RE: Berry Hill Road, Adderbury (19/00963/OUT)

**Importance:** High

**This Message originated outside your organization.**

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Hi Phil,

I have received both your chasing emails, but thought I'd reply to this one. Sorry for the delay but I myself am preparing for a public inquiry which is taking up all of my run time!

I note that the County's Rashid Bbosa has been dealing with this latest application and this really should go to him initially. I have copied him in on this message.

Best regards,

Chris

---

**From:** Phil Wooliscroft <[Phil.Wooliscroft@eddisons.com](mailto:Phil.Wooliscroft@eddisons.com)>

**Sent:** 12 April 2021 12:21

**To:** Nichols, Chris - E&E <[Chris.Nichols@Oxfordshire.gov.uk](mailto:Chris.Nichols@Oxfordshire.gov.uk)>

**Subject:** Berry Hill Road, Adderbury (19/00963/OUT)

Hi Chris

I hope all is well and it's been a while since we spoke about this one. As you are probably aware, the original application was amended and resubmitted (19/00963/OUT) but was then refused for a number of reasons, none of them highways based, as per the enclosed decision notice.

Our clients have since appealed the refusal and I also enclose a copy of the OCC CiL Regs Compliance Statement for info and also a plan showing an OCC traffic calming scheme along Berry Hill Road. You will note from enclosed Drawing Number 1899-F03 (based on our agreed access proposals from 1899-F01 Rev H) that the scheme can be accommodated on BHR whilst allowing our access to be constructed so neither scheme prejudices the other.

Can you confirm that you concur with this view please so we can send it to the Inspector?

Many thanks.

**Phil Wooliscroft**

Partner



**D.** 0161 837 7388 **M.** 07957 557667  
340 Deansgate | Manchester | M3 4LY

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IN THE HIGH COURT OF JUSTICE

ADMINISTRATIVE COURT

PLANNING COURT

IN THE MATTER OF A CLAIM UNDER S288 TOWN AND COUNTRY PLANNING  
ACT 1990

BETWEEN:

HOLLINS STRATEGIC LAND LLP

Claimant

-and-

(1) SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL  
GOVERNMENT

(2) BEDFORD BOROUGH COUNCIL

Defendants



~~XXXX~~ CONSENT ORDER

**UPON** the Claimant having applied for a planning statutory review pursuant to section 288 of the Town and Country Planning Act 1990;

**AND UPON** the First Defendant's Acknowledgement of Service indicating that he does not intend to defend the claim;

**AND UPON** the Second Defendant indicating it does not intend to contest the claim

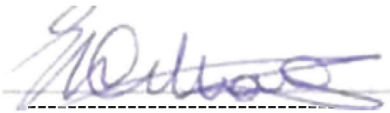
**AND UPON** THE Court being satisfied that the parties' agreed final order should be made without a hearing pursuant to CPR Practice Direction 8C

**IT IS ORDERED THAT**

1. Permission for statutory review in the Claimant's application is allowed.

2. The decision of the Secretary of State by his planning inspector dated 15 September 2020 is quashed for the reasons set out in the attached statement of reasons and the appeal is remitted for redetermination.
3. The First Defendant shall pay to the Claimant the sum of eight thousand three hundred and forty pounds (£8,340) in full and final settlement of the Claimant's costs, within 28 days of the date of this sealed Order.

**Dated**



On behalf of the Claimant

Addleshaw Goddard *AG*  
One Peter's Square  
Manchester  
M2 3DE

*For the Treasury Solicitor*

On behalf of the First Defendant

Government Legal Department  
102 Petty France  
London  
SW1H 9GL

On behalf of Bedford County Council

Legal Services  
3rd Floor  
Borough Hall  
Cauldwell Street  
Bedford MK42 9AP

**BY THE COURT**

## STATEMENT OF REASONS

1. The Claimant sought leave to challenge the decision of the Inspector dated 15 September 2020 relating to land west of Wootton School, Hall End Road, Wootton MK43 9HT under section 288 of the Town and Country Planning Act 1990. By that decision the Inspector dismissed the Claimant's appeal under section 78 of that Act. The appeal sought outline planning permission for up to 81 dwellings.
2. The Inspector concluded that the Second Defendant council was unable to demonstrate a five year supply of housing land as required by paragraph 73 of the National Planning Policy Framework 2019 (Decision Letter paragraph 43).
3. Under paragraph 11(d) of the NPPF one consequence of this finding was that the tilted balance applied and also that all of the policies which were most important for determining the application were deemed out of date, as a result of footnote 7.
4. In paragraph 43 of the Decision Letter the Inspector indicates that engaging paragraph 11 d) "renders the most important policies for the supply of housing out of date". As identified at paragraph 42 of the Claimant's Statement of Facts and Grounds, that was an erroneous statement of extant national policy contained in footnote 7 to paragraph 11 (d) (above), which required that the policies which were most important to determining the application to be deemed out of date.
5. As identified in the Statement of Facts and Grounds under Ground 1, the decision does not identify which policies were deemed out of date, or proceed on the basis that all of the policies most important for the determination of the application were so treated rather than only those important for the supply of housing, as required by footnote 7 to paragraph 11 (d) NPPF (above).
6. As a consequence, the reasons for giving more weight to the conflict with the recently adopted development plan is not clear. This gives rise to substantial doubt as to whether paragraph 11(d) of the NPPF was properly applied. As a result the First Defendant accepts that the reasoning in the Decision Letter as to the application of paragraph 11(d) of the NPPF was legally inadequate and that the decision ought to be quashed.
7. The First Defendant accepts that the decision is unlawful on the basis of Ground 1 and that it is appropriate for the Court to make an Order that the decision be quashed and remitted to the Secretary of State for redetermination.

It is the Claimant's case that the decision was also unlawful and should be quashed for the reasons set out in Grounds 2 and 3 of the Statement of Facts and Grounds. However, on the basis that it is agreed that the decision should be quashed for the reasons set out in Ground 1, it is agreed that it is unnecessary for the Court to determine Grounds 2 and 3.



---

## Appeal Decision

Hearing held on 23 November 2016

Site visit made on 24 November 2016

**by Karen L Ridge LLB (Hons) MTPL Solicitor**

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

**Decision date: 23 January 2017**

---

### **Appeal Ref: APP/M2325/W/16/3144925 Land off Dowbridge, Kirkham PR4 3RD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Hollins Strategic Land LLP against Fylde Borough Council.
  - The application Ref. 15/0547, is dated 11 August 2015.
  - The development proposed is the erection of up to 170 no. dwellings (all matters reserved other than access) following demolition of existing buildings.
- 

### **Decision**

1. The appeal is allowed and outline planning permission is granted for the demolition of existing buildings and residential development of up to 170 dwellings, including associated infrastructure, in accordance with application reference 15/0547 dated 11 August 2015, on land off Dowbridge, Kirkham PR4 3RD, subject to the conditions set out in the schedule annexed hereto.

### **Procedural Matters**

2. The planning application which led to this appeal was made in outline form with all matters except access reserved for future consideration. The proposed access for vehicles and pedestrians would be via the existing access point taken from Dowbridge. I shall consider these arrangements as part of my determination. Apart from the site location plan and access plans all other plans are to be treated as illustrative only.
3. The description of development in the banner header above is taken from the application form. At the Hearing both parties agreed that the description on the appeal forms more accurately reflects what is proposed and I shall adopt that description.
4. Following submission of the appeal the Appellant submitted some revised plans and some additional plans. Minor revisions were made to the proposed access and traffic calming plan as well as the cycle lane provision plan<sup>1</sup>. The revised plans are accepted by the Council. It will not harm the interests of any parties to the proceedings to accept them so I shall proceed on the basis of the revised plans.

---

<sup>1</sup> Plan number SK21452-002 revision E and SK21452-007 revision A.

5. The planning application which led to this appeal was not determined within the prescribed period. Following the submission of this appeal the Council's Development Management Committee considered a report which recommended the Council's approach at the appeal. The committee resolved to accept the three putative reasons for refusal set out in that report. In short those reasons include the following concerns:
  - the development would have a significant detrimental visual impact on the landscape character of the area, being a visually prominent feature;
  - the development would result in substantial harm to the setting of Kirkham by virtue of the topography, scale and pattern of development; and
  - the proposal fails to make contributions towards the delivery of affordable housing on the site and financial contributions towards off-site requirements including educational provision and sustainable transport improvements.
6. The Council's objection set out in the third putative reason for refusal was subsequently withdrawn on the basis that the Appellant indicated that it would submit an executed agreement to secure these matters. A executed agreement made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) has been received and it is acceptable to the Council. The agreement secures the payment of financial contributions and the provision of affordable housing and public open space on-site. I shall return to these matters later
7. The parties have submitted a signed Statement of Common Ground (SCG) which records all of the main matters agreed between them, as well as the main areas of disagreement. One of the principal areas of agreement was in relation to housing land supply. For the purposes of this appeal the Council accepts that it does not currently have a 5 year housing land supply (5 YHLS) in terms of the advice within the National Planning Policy Framework (the Framework). The Council confirms that it is content to adopt a figure of 4.8 years supply as at 31 March 2016.
8. The appeal site is made up of three fields or parcels of land. The southernmost parcel of land was the subject of a successful application for outline planning permission for up to 95 dwellings. A resolution to grant planning permission conditional on completion of a section 106 agreement was made on 27 July 2017. I am instructed that the agreement is nearing completion and the Council does not anticipate any obstacles to a grant of planning permission in the near future. Both parties are agreed that this grant of planning permission is a material consideration in my determination. At the Hearing it was further agreed that the assessment of any effects or benefits of the appeal proposal should focus on those effects or benefits over and above those associated with this alternative scheme (the 95 dwelling scheme).
9. Finally, after the close of the Hearing correspondence was received from a local resident raising new issues about the five year housing land supply. The Council and Appellant were afforded the opportunity to make representations in relation to this matter and a response was received from the Council. I shall take these additional representations into account.

## **Main Issues**

10. In addition to the Council's putative reasons for refusal, local residents have raised objections on other grounds. At the Hearing two principal concerns emerged; flood risk and highway safety and I shall examine these as main issues.
11. Having regard to the above, and to all that I have heard and read, I conclude that the main issues in this case are as follows:
  - the effect of the proposed development on the character and appearance of the surrounding landscape and on the setting of Kirkham;
  - flood risk considerations; and
  - the effect of the proposal on highway safety.
12. There are also a series of other material considerations to be taken into account, one of which includes the shortfall in the Council's 5 YHLS.

## **Reasons**

### *The development plan*

13. Section 70(2) of the Town and Country Planning Act 1990 provides that, in dealing with proposals for planning permission, regard must be had to the provisions of the development plan, so far as material to the application, and to any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that, if regard is to be had to the development plan for any determination, then that determination must be made in accordance with the plan unless material considerations indicate otherwise.
14. For the purposes of this appeal the most relevant development plan policies are saved policies from the Fylde Borough Local Plan (as altered) dated October 2005 (the LP). The appeal site comprises 13 hectares of land in a countryside area as designated by the LP. Both parties agree that the proposal is contrary to LP policies SP1 and SP2. These policies are strategic policies designed to restrict development to within defined limits identified in named settlements and to strictly control development in countryside areas other than within specified circumstances. The proposal does not fall within any of the excepted categories and consequently it is contrary to policy SP2.
15. In addition the proposal would result in the loss of 11.3 hectares of grade 3a best and most versatile land. The Framework seeks to protect such land and confirms that where significant development of agricultural land is demonstrated to be necessary local planning authorities should seek to use areas of poorer quality in preference. In this case the Council confirms that there is a large amount of grade 2 and grade 3 agricultural land across the Borough and therefore it did not raise an objection in relation to this matter. The SCG records that this loss should be given minor weight.
16. The Council is currently preparing a Local Plan Part 1 and Part 2 combined and to that end a Preferred Option of the Local Plan to 2032 has been published and identifies areas for growth. The emerging Local Plan is due to be



submitted for examination. At this stage I agree with the assessment of the Council and Appellant that it can attract only limited weight.

***Effect upon the character and appearance of the landscape***

17. The site is made up of three fields delineated by hedgerows and fences and adjoining a residential area on the edge of the Kirkham settlement boundary. The western boundary of the site extends towards Dow Brook, with housing beyond. The northern site boundary lies alongside Spen Brook with open countryside beyond. The southernmost land parcel contains a dwelling and a pig farm which remains in active use. Structures and hard-standing associated with the pig farm are clustered in this part of the site, together with an existing dwelling and its associated hardstanding and outbuildings.
18. The northern part of the scheme would lie on north facing slopes which look out to the open countryside beyond. The southern parts of the site are more inward facing towards Kirkham and bear a closer association with the settlement due to this topography and the partial development therein.
19. A private track runs along a ridge line from New Hey Lane into the site along the boundary between the southern field and the north-western field. The track is bounded by a line of trees and represents a strong demarcation line between the two fields. As a result of this feature and the surrounding topography the main parties are agreed that residential development on the southern part of the site is acceptable in principle. This is demonstrated by the progression of the 95 dwelling scheme. I shall therefore focus my assessment mainly upon the effects of development within the two northern fields on the character and appearance of the landscape.
20. Finally in carrying out my assessment I bear in mind that the proposal is in outline form only. Many of the plans are illustrative only and indicative of how development could proceed on the site. In particular the Appellant has submitted an illustrative Landscape Masterplan<sup>2</sup> and a Parameters Plan<sup>3</sup>. The landscape plan was revised to incorporate a landscape buffer wrapping around the north-eastern corner of the development with dwellings set back and a community green on the eastern edge of the site. A linear park is depicted along Dow Brook on the western boundary. The parameters plan indicates a zone of single storey dwellings on the highest part of the site adjoining the internal track. The Appellant points out that there would be a benefit in terms of hedgerow retention and the retention and enhancement along the stream corridors with additional tree planting to create a wooded skyline through the highest part of the site, along the internal track.

*Effects upon landscape character*

21. There are no landscape designations attributable to the site. It is located within 'The Fylde' character area 15d, a sub-category of the Coastal Plan Landscape Character Type as defined by the *Landscape Strategy for Lancashire, Landscape Character Assessment (2000)*. Such character types exhibit features including gently undulating or flat lowland farmland divided by ditches, large fields, open road verges and long views.

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<sup>2</sup> Drawing number 1956\_02 Revision K.

<sup>3</sup> PAR001

22. Whilst the site is adjacent to the settlement boundary, for the reasons given above, the two northern fields have a close association with the rolling countryside to the north. From within the site and particularly from these two fields there are wide ranging views of the open countryside separating Kirkham from the small hamlet of Treales to the north-west. The open countryside extends outwards from the western edge of Kirkham in a pastoral landscape comprised of long views over a patchwork of low lying farmland. From the site the small hamlet of Treales is visible to the north-west and in the foreground a railway line bisects the countryside on an east-west trajectory.
23. All three agricultural fields form part of the open countryside. The development of 95 houses on the southern field would result in the loss of an agricultural field on the settlement edge. The appeal proposal would result in the introduction of further housing on the two northern fields, albeit with the potential for a landscaped buffer which would wrap around the north-eastern corner of the appeal site. The two northern fields are an intrinsic part of the gently undulating farmland which lies to the north. The loss of these fields to housing would be detrimental to landscape character in that it would result in a diminution of the agricultural land which is part of a greater whole. It would introduce incongruous and uncharacteristic elements into the pastoral landscape which would bring about a significant change to the character of the appeal site which itself comprises a small part of the landscape character area under consideration.
24. Having regard to the juxtaposition of the site with the urban area I am satisfied that the appeal scheme would be viewed as an extension of the existing urban area. I do not agree with the Council's assessment that in some views it would be seen as an area of housing divorced from the adjoining area. The housing would be seen as a continuation of that on St Michaels Road even with the linear park depicted on the illustrative masterplan. From Carr Lane and the footpath running along Carr Brook the houses would merge with existing residential development and the linear park would not be readily discernible in these views.
25. Taking all of the above into account I conclude that the appeal proposal would result in a modest erosion of the landscape character of this part of the open countryside contrary to LP housing policy HL2. This requires, amongst other things, that housing proposals are in keeping with the character of the locality.

*Visual effects*

26. The Appellant has pointed to the inclusion of the appeal site as a potential development site in the Council's '*Appraisal of Strategic Site Options: Landscape Capacity to Accommodate Landscape and Visual Change*' (ASSO) from March 2016. In that document the Council concluded that the site only has a moderate sensitivity to development. The Appellant further contends that other sites of high sensitivity have been granted planning permission. Be that as it may, the appeal proposal must be assessed on its own merits and not as part of some comparative exercise within my decision making on an individual proposal.
27. The Council has already concluded that, in principle, residential development on the southern field is acceptable in visual terms. As a result of the ridgeline running along the internal track within the appeal site, and its associated treeline, the houses within the 95 dwelling scheme would only be glimpsed in

- viewpoints to the north and north-west. It is in middle and longer distance viewpoints that the two northern fields are readily appreciated as an intrinsic part of the open countryside which runs up to the western edge of Kirkham.
28. One of the closest public vantage points from which the development would be seen is from Carr Lane to the north-west of the site. This is a road which travels out of the settlement into the open countryside in the direction of Treales. Currently when travelling out of the settlement along Carr Lane there is an abrupt change of scene when the last houses on the urban edge of Kirkham are left behind. At this point panoramic views open up of the countryside on all sides. I note that Carr Lane is on a regional cycle route. Due to its proximity to the settlement I consider that it is likely to be a well-used and attractive recreational route for cyclists and walkers affording immediate and easy access to the countryside beyond the settlement.
29. With the appeal proposal in place, along this section of Carr Lane housing would be seen extending out from Kirkham on the southern horizon. This would erode the impression of the viewer being surrounded by rolling countryside. It would reduce the extent to which Kirkham is seen as being clearly confined to the higher land to the west, with housing starting to intrude on the lower slopes. I conclude that there would be a moderate effect upon this viewpoint.
30. The appeal proposal would also be seen in between the houses which adjoin the western appeal site boundary and from the Oxford Drive/Abbots Close cul-de-sac, as well as from private gardens and rear windows of the properties adjoining the site. However public views would be glimpsed. In any event these views are going to change somewhat by virtue of the likelihood of the 95 dwelling scheme coming forward. The additional housing in the appeal scheme would be seen as an extension to the 95 dwelling scheme in views from these vantage points.
31. A public footpath runs adjacent to Carr Brook connecting Carr Lane with St Michael's Church. From the church the footpath continues north-easterly before turning 90 degrees towards Carr Lane. Once the bend is rounded the appeal site comes into view in the middle distance and is seen in the context of an attractive wildflower footpath in the foreground framing rolling hills beyond. From this length of the footpath the appeal site is part of the rural backdrop located in the middle distance and containing the settlement edge. From this vantage point the appeal proposal would result in the appearance of built development extending further out into the open countryside and wrapping around the green foreground. In the longer term with the establishment of planting I conclude that there would be a moderately adverse effect on views from this viewpoint.
32. The housing would also be seen in longer distance views from the public right of way 5-8 which bisects the countryside and from Mowbreck Lane to the north. As the footpath travels towards Mowbreck Lane the land rises and enables views over the railway line towards the appeal site in the far distance. At this point the urban edge of Kirkham is clearly demarcated and the introduction of housing on the appeal site's northern slopes would be visible on the far horizon extending the urban edge eastwards. However it would only form a small part of a much larger composition and would represent only a minor incursion into the open countryside from this viewpoint. This footpath

travels south, across the railway line in the direction of St Michael's Church. Views of the development from this section of the footpath would be partial. Due to the oblique angle between the viewer and the northern parts of the site, the development would be seen as a minor and unremarkable extension of the urban area.

33. Other vantage points from which the housing would be visible are longer distance viewpoints which would afford glimpsed or partial views of the development. These include a handful of viewpoints in Treales and the surrounding lanes and at field openings along Spen Lane. From these points the housing would be seen in glimpsed views in the middle and longer distance and against the backdrop of Kirkham rising to the west. The changes would be relatively modest from this viewpoint. I was asked to visit the Boys Brigade Country Pursuits Centre on Carr Lane. From the centre there are limited, if any, views of the appeal site given two mature boundary hedgerows on either side of Carr Lane.
34. I also note that there would be views of the development from the elevated vantage point of the railway line but these would be fleeting and I do not consider that there would be any appreciable erosion of the sense of open countryside around the settlement. Taking all of the above together I conclude that the development would cause a moderate amount of visual harm.

*The setting of Kirkham*

35. The town of Kirkham became established on the higher ground with the lower lying and wetter land around the network of brooks established as agricultural land enveloping the town. The town is largely contained by the Kirkham bypass to the south and the A585 running northwards along its western edge. The new housing would extend the urban area into lower lying areas to the east of Kirkham but it would appear as a continuation of existing houses on the north-facing slopes. In addition, if the housing was set back from the north-eastern corner of the appeal site<sup>4</sup>, the development would not have a hard linear built edge but a more organic appearance mimicking the edges of development on the higher slopes.
36. The 95 dwelling scheme would result in an extension of residential properties into the southern part of the site. Development on the two northern fields would represent a greater incursion into the open countryside. Whilst there would be some moderate harm to the setting of Kirkham, I conclude that it would still read as a historic settlement on higher land surrounded by lower lying farmland.

*Conclusions on landscape matters*

37. I have concluded that the appeal proposal would result in a modest erosion of landscape character to this part of the wider landscape; it would cause a moderate amount of visual harm and would cause moderate harm to the setting of Kirkham. Consequently the proposal is contrary to LP policy HL2 and policies EP10 and EP11 which seek, inter alia, to protect important landscape features and to ensure that development is in keeping with the landscape character types identified in the Landscape Strategy.

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<sup>4</sup> As indicated on the landscape masterplan and in accordance with the parameters plan.

38. In this respect the proposal would also be contrary to national policy objectives in the Framework which seek to recognise the intrinsic character and beauty of the countryside. Whilst the Council has cited paragraph 109 of the Framework in its reason for refusal there is no reason to conclude that the site forms part of a 'valued landscape' in that it does not exhibit any special or particular characteristics which take this part of the countryside out of the ordinary. This was accepted by the Council in its statement of case.

*Flood risk considerations*

39. The site covers an area of some 13 hectares, with Dow Brook and Spen Brook immediately on its western and northern boundaries respectively. The Environment Agency Flood Maps depict the site falling within flood zones 1, 2 and 3. The Appellant's intention is to locate the residential development solely within the larger area entirely within flood zone 1. A Flood Risk Assessment and Drainage Strategy Management Plan (FRA) and a separate Hydraulic Assessment<sup>5</sup> were submitted with the planning application. On reviewing the hydraulic model the Environment Agency concluded that it more accurately reflects the level of flood risk on the site than the Environment Agency's own Revised Flood Map.
40. The FRA concludes that infiltration methods would be unlikely to provide a viable drainage solution for surface water run-off generated by the development. Instead it suggests using infiltration methods in part, supported by a controlled discharge to Dow Brook, possibly with multiple outfalls. It is proposed that discharge be restricted to the pre-development greenfield rates. In addition a community green space or public open space is proposed to incorporate sustainable urban drainage features such as bio-retention, ponds and swales within the western and south-western part of the site. These arrangements could be secured by condition in the event that the proposal was acceptable in all other respects.
41. The Hearing heard representations from Mr Scott and Mr Long who each set out the concerns of local residents in relation to flooding. In addition I have also seen a number of other letters of objection raising this issue at both application and appeal stage and a video presentation was shown at the Hearing, with accompanying slides submitted. Mr Scott's concern relates to the area of land which would become impermeable as a result of development and he makes the point that surface water would run-off the site at a much higher rate.
42. Flood risk involves a consideration of the probability and potential consequences of flooding. The Planning Practice Guidance sets strict tests to protect people and property from flooding. Paragraph 103 of the Framework confirms that developers must demonstrate that the most vulnerable development is located to areas of the lowest flood risk within the site. In this case I am satisfied that the housing would all be contained within flood zone 1. The Environment Agency and Council have expressed themselves satisfied with the strategy outlined in the FRA.
43. It is inevitable that building on a greenfield site would increase surface water run-off but the FRA sets out an approach to the technical solutions which would be used to control the additional surface water run-off so as not to increase the

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<sup>5</sup> Both dated July 2015.

risk of flooding elsewhere. I have seen photographs and video evidence of flooding in the vicinity of the site and some evidence of flooding on the site. Local residents confirm that flooding occurs several times a year and with increasing frequency.

44. There was a suggestion at the Hearing that some of the houses on the north-western corner of the site would be sited on areas subject to recent flooding events. It is difficult to assess accurately the true extent of previous flooding from video footage. Flooding appears to occur on the lower reaches of the site, adjacent to the confluence of the two brooks. This is the part of the site which lies in flood zones 2 and 3. The Environment Agency has seen the Landscape Masterplan which contains an indicative layout and has confirmed that the houses shown would all sit within flood zone 1.
45. In any event I am mindful that this is an outline proposal with matters of layout reserved for future consideration. This effectively means that the layout depicted on the landscape masterplan is not cast in stone and the question I must ask myself is; in principle could 170 dwellings be accommodated on site without compromising flood risk.
46. Adoption of the measures within the FRA would ensure that sufficient mechanisms are in place to adequately control surface water. The conditions suggested by the Council would ensure that a fully drawn up surface water drainage scheme was submitted as part of the reserved matters application. Such a scheme would have to demonstrate that surface water run-off post development would not exceed greenfield run-off rates.
47. Having regard to all of the evidence, including the representations from the Environment Agency and third parties, I conclude that if such measures were adopted the risk of flooding elsewhere would not be materially increased and the flood risk to on-site development would be acceptable provided the dwellings were all located within flood zone 1. The proposal is acceptable in relation to this matter.

*Highway safety*

48. Access to the site is from Dowbridge which is a main arterial road into Kirkham and which joins the A583 bypass to the south. The scheme for 170 homes would utilise the existing vehicular access point subject to some re-alignment of the bell-mouth and with the provision of additional works to the public highway. A Transport Assessment and Travel Plan were submitted with the application and considered by Lancashire County Council as the Highways Authority. Further information was requested in relation to traffic figures and speed surveys and this was provided along with two further technical notes from the Appellant's highways consultants.
49. Initially the County Council expressed two concerns; firstly that the development would have only one point of access and secondly concerns about the speeds of vehicles travelling along Dowbridge. The first concern was addressed by a proposed cycle/pedestrian link to New Hey Lane which could be utilised for vehicular access in an emergency. In addition a 24 hour speed survey was carried out by the Appellant's experts and a separate, longer survey was done by the Highways Authority itself. As a result of the speed surveys the Highways Authority required traffic calming and other measures. A stage 1 road safety audit was undertaken in relation to the access

- improvement and traffic calming proposals which resulted in modifications to the original scheme.
50. The off-site highway improvements agreed by the Highways Authority and the Appellant would include traffic calming measures along Dowbridge, street lighting, advisory cycle lanes and a pedestrian refuge island as well as a renewal of existing road markings and a new give way triangle and slow markings. In addition the County Council requested the imposition of conditions on any grant of planning permission to require construction of the off-site highway works prior to certain points in the occupation of the housing scheme. A further condition would require a traffic speed review in the vicinity of the site access prior to occupation of the 51<sup>st</sup> dwelling and in the event that 85<sup>th</sup> percentile speeds are greater than 30 miles per hour then a scheme of further works designed to reduce speeds on Dowbridge would be required to be implemented in accordance with an approved timetable<sup>6</sup>.
51. In addition to the off-site works and suggested conditions, provision is made in the section 106 agreement for the payment of financial contributions towards pedestrian cycle improvements at the rail station; further speed measurement survey and a contribution towards travel plan support.
52. At the Hearing I heard evidence from Mr Lever on behalf of the Residents Action Group. Mr Lever has had substantial experience as a police officer attached to the traffic division and was responsible, amongst other things, for conducting road traffic investigations following serious accidents. Mr Lever has read the Appellant's traffic reports and raises a number of concerns about the accuracy of some of the data and questions some of the findings. It is clear that he has raised what he says are anomalies within the report with Lancashire County Council's Highways Engineer. Indeed the County Council's letter of the 16 May 2016 confirms that *'substantial further information relating to road safety was considered which was provided by a local resident (a retired police officer) as well as LCC's own analysis'*.
53. One of Mr Lever's prime concerns was in relation to traffic speeds. He points out that the 50 miles per hour speed limit ends just past New Hey Lane to the east of the access. This means that inward coming vehicles from the east must adjust their speeds to 30 miles per hour a short distance before the access to the development. In the other direction Mr Lever points out that Dowbridge is on a hill and has a wide carriageway such that vehicles travelling out of Kirkham down the hill are more likely to exceed the speed limits given the forward visibility available and the width and nature of the carriageway.
54. Mr Lever raises valid and pertinent concerns in relation to speed. However it is clear that these concerns were before the County Council's highways engineer when he considered the scheme. Objections were only removed once additional information was obtained with regard to current speeds on the road and proposals were in place to assist traffic calming. Mr Lever criticised the Appellant's survey since it was conducted on only one day and at a time when Brookside Cottage had parked vehicles outside which may have caused vehicles to pass by with more caution. However the judgment reached by the County Council Highway's Engineer was having regard to all of the information

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<sup>6</sup> I note that conditions in the same terms are to be imposed on the planning permission for the 95 dwelling scheme.

- including the Council's own speed surveys taken over a longer period. There is nothing to persuade me that the Council's own data was flawed.
55. Mr Lever pointed to a history of road traffic accidents on Dowbridge including a fatal accident in 1992, an accident at Dow Bridge in 2006 and two incidents in 2014 when the bridge was struck on separate occasions. Some of these accidents, if not all, would have occurred outside the period for which the personal injury data was obtained. Mr Lever further explained that there has been a high incidence of personal injury accidents on the road in the last two years. The Transport Assessment relied upon accident data from 1 January 2009 and 31 August 2014. The database for that period did not reveal any accidents on the vicinity of the site access. There were six accidents at the junction of Dowbridge with the Kirkham Bypass further to the east.
56. The response of the Highways Authority confirms that the personal injury accident data covered the most recently available 5 year period and that the data did not point to any particular accident pattern which would be a cause for concern. Mr Lever presented a series of photographs depicting the aftermath of accidents in 2014, 2015 and 2016. The notations indicate five accidents along the length of Dowbridge including one at the bus stop. It is not known if the accidents in the photographs resulted in personal injuries. The accidents appear to be at different points in the road and do not appear to exhibit any particular pattern.
57. Mr Lever also raised concerns in relation to an increase in vehicles making left turning manoeuvres from the A583/Blackpool Road into Dowbridge as it travels into Kirkham. The Transport Assessment considered this junction as it was forecast to experience in the region of a 30+ increase in vehicles as a result of the development<sup>7</sup>. It records 6 accidents over five years at this junction; five slight and one serious. The assessment records high levels of traffic passing through the junction in the AM and PM peak hours of which a small proportion make the left hand turn off the bypass into Dowbridge<sup>8</sup>. The junction is forecast to operate within capacity with the development in place and with forecast traffic growth at years 2019 and 2024 in both the AM and PM peak hours. Lancashire County Council's Highway's Engineer raised no concerns about the operation of this junction. There is no substantive evidence before me to cause me to question that judgment.
58. Finally concerns were raised about the location of the bus stop. The existing bus stop for eastbound services is located immediately adjacent to the site access. The Access Improvements plan notes the position of the existing bus stop and confirms that it is to be repositioned as part of the detailed design. The Stage 1 Road Safety Audit concluded that the new location would have to be included within the Stage 2 Audit to ensure that the new location does not present safety problems.
59. The Highway's Authority confirmed that the bus stop may need to be re-located slightly to the west but was satisfied that such a matter could be considered and implemented as part of the highway improvements. Having carefully considered the current alignment of the highway and the access proposals there is no reason to suggest that the bus stop could not be safely re-located. This would then have to be subject to a stage 2 road safety audit.

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<sup>7</sup> Transport Assessment § 1.8.

<sup>8</sup> Appendix D



60. The proposals have been subject to a road safety audit and two separate traffic speeds surveys have been undertaken. A series of traffic calming measures are required in the event that the development proceeds and these would be supported by conditions requiring further speed surveys and additional works if necessary. Having regard to all of the above I am satisfied that, subject to the measures proposed being adopted the appeal scheme would not compromise highway safety in the vicinity of the site and along Dowbridge. I have come to this view independently of any assessment as to the fallback position in terms of the traffic generation associated with either the current use or the likely traffic generation associated with the 95 dwelling scheme.
61. In terms of highway safety considerations I conclude that the proposal would not materially compromise the safety of pedestrians and other road users. As such it is acceptable in relation to this matter.

### **Other matters**

62. I now turn to consider other objections raised by local residents and others. Concerns were expressed about possible trespassers from the linear park through the rear gardens of existing houses which would provide a more direct route into town. I accept that the route from some of the dwellings proposed into town would be somewhat circuitous but I do not consider that the idea of scrambling across the brook and its embankment into private gardens would prove to be a more attractive alternative. The risk of criminal behaviour is present in all schemes and I note that the Local Constabulary has confirmed that it would be content provided secured by design principles are followed. Again this is an issue which would properly be addressed at reserved matters stage.
63. Some local residents of St Michael's Road expressed concern about the effect of the new housing on their privacy. However the existing dwellings generally sit at a higher level than the appeal site and the existing brook and proposed linear park would ensure that the new housing was sufficiently set back so as not to materially harm the privacy of existing occupiers.
64. Local residents have also questioned the accessibility credentials of the site in terms of its relationship with the town. I agree that the walk into Kirkham from the site would be at least 15 minutes and would involve the uphill climb along Dowbridge. However the site is on the settlement edge approximately 1 kilometre from the town centre which has a range of facilities. In addition there would be ready access to a bus stop on the main road and on a bus route with regular bus services Preston and Blackpool via Kirkham and Poulton and Preston. Local primary and secondary schools are situated less than one mile away from the site. Having regard to all of these factors I conclude that the site performs well in terms of accessibility considerations.
65. The appeal site is not designated for nature conservation purposes. The Ribble and Alt Estuaries Special Protection Area (SPA), the Ramsar site and the Ribble Estuary Site of Special Scientific Interest (SSSI) are located more than 4 kilometres south of the site. Ecology surveys were carried out and confirmed that the site has a low potential for use by specially protected species, with the exception of wintering birds and foraging bats.
66. A shadow habitats regulation assessment was undertaken by the Appellant including a wintering bird survey. The assessment concluded that development

on the site would not result in any likely significant effects when considered on its own. When considered in combination with other developments or cumulatively the same conclusion was arrived at. These conclusions were accepted by Natural England and by the Greater Manchester Ecology Unit. Any grant of planning permission could include a series of conditions to protect wildlife and biodiversity interests. I have no reason to demur from these conclusions.

67. Objections have also been made on the basis that the local schools are full. However the County Council as Education Authority has assessed a requirement for financial contributions towards both primary and secondary school provision. These payments are secured in the section 106 agreement and would address any additional demands placed upon local schools.

### **Other material considerations**

#### *The Five Year Housing Land Supply*

68. The National Planning Policy Framework (the Framework) is a material consideration of significant weight. It seeks to boost significantly the supply of housing and requires local authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing (the 5YHLS). Paragraph 49 confirms that housing applications should be considered in the context of the presumption in favour of sustainable development.
69. The Council's Five Year Housing Supply Statement has a base date of 31 March 2016 and reveals that the Council has a deliverable supply of 4.8 years. This is based upon an accepted annual requirement for 370 new dwellings with the accrued shortfall of housing being distributed over the next 5 years of the plan in accordance with the recognised Sedgfield approach. As a result the Council has conceded that it does not currently have a 5YHLS which means that relevant policies for the supply of housing will not be considered up-to-date.
70. At the Hearing and in its post-hearing letter the Dowbridge Residents' Group raised concerns about the 5 YHLS position advanced by the Council and agreed by the Appellant. It was asserted that the revised 5 YHLS figure put forward at another appeal had misrepresented the Council's true position<sup>9</sup> on the basis that the Council had resolved at its committee meeting of 15 June 2016 to adopt a different method of distribution for the shortfall. However the Council confirms that this appeal had already been recovered by the Secretary of State for his own determination in February 2016 because of a Neighbourhood Plan.
71. On 15 June 2016 the Council's Development Management Committee considered the publication version of the Local Plan. That report contained a resolution to the effect that the policies in the housing chapter of the emerging local plan should be approved for immediate use. The text to those supporting policies contains a reference to the method of addressing the accrued housing shortfall over the plan period. The Council points out that the resolution referred to policies only and as such it does not address or affect the existing methodology used to deal with the shortfall. The issue as to how the accrued shortfall should be distributed (whether it is in the first five years or over the

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<sup>9</sup> APP/M2325/W/15/3004502 and 3141398

rest of the remaining plan period) is a matter for the Inspector conducting the examination into the Local Plan.

72. It would appear that some confusion has arisen in the minds of local residents and others with regard to a possible change in approach in distributing the shortfall which would change the 5 YHLS figures. However the Council's position is clearly established. It was further set out in the position statement put before the Development Management Committee of 7 September 2016. It is also clear that the Council Officers have acted entirely properly in relation to this matter and that the Council has taken a pragmatic decision to continue using the Sedgefield method of distribution until such time as greater weight can be attached to its Local Plan. It follows that I agree that the Council does not have a 5 YHLS at the present time and for the purposes of this appeal only.
73. It is common ground that policies SP1 and SP2 are policies concerned with the supply of housing and the Framework directs that they should not be considered up to date in circumstances where the Council does not have a 5 YHLS. The Council further accepts that the LP was drawn up to direct development up to the period ending in 2006 and in that regard policies relating to the settlement boundaries are out of date.

#### *Benefits*

74. The Appellant contends that the proposal would involve a series of benefits which weigh in favour of the grant of planning permission. The SCG records the Council's agreement that the development would provide employment opportunities in the construction industry and would contribute to additional spending in the locality. It would also make a contribution towards meeting the housing shortfall and to the provision of affordable homes when there is a shortfall of 1007 affordable units across the Borough. I am mindful that the 95 dwelling scheme will bring forward the same benefits to a lesser degree. Essentially the benefits under consideration are those which would accrue as a result of the additional 75 homes on the northern fields.
75. The Appellant asserts that the traffic improvement measures would bring benefits to existing residents. However the improvements are necessary to make the development acceptable in planning terms and I am not convinced that they would bring wider benefits. Similarly there is no evidence to suggest that the pig farm is injurious to existing residential users given the separation distances involved. The provision of public open space on the site would form part of any reserved matters proposal in accordance with policy requirements. These are not matters which weigh in favour of the proposal.

#### *Section 106 matters*

76. The section 106 agreement secures a series of covenants in relation to the payment of contributions for primary school provision, secondary school provision, a travel plan and cycle contribution, a speed measurement contribution, sustainable transport contribution and the provision of on-site affordable housing. The Council has provided a statement setting out justification for each of the contributions sought in accordance with the policy tests set out in the Framework and the statutory test in regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. The Appellant raises no objections to any of the contributions sought.

77. Overall I am satisfied that the obligations in the agreement meet the tests in CIL regulation 122 and paragraph 204 of the Framework. The Council also gave evidence at the Hearing as to the number of pooled contributions in relation to the above contributions. The Council has not received five or more contributions in any of the instances and I am satisfied that none of the financial contributions fall foul of the pooling restrictions in regulation 123 CIL regulations. As such those contributions which meet the statutory and policy tests can be taken into account

### **Overall Conclusions**

#### *Paragraph 14 of the Framework*

78. The duty in section 38(6) of The Planning and Compulsory Purchase Act 2000 enshrines in statute the primacy of the development plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework<sup>10</sup>. The Framework is of course a material consideration to which substantial weight should be attached.
79. Paragraph 14 recites the presumption in favour of sustainable development and sets out what it means for decision-taking. Paragraph 49 advises that housing applications should be considered in the context of the presumption in favour of sustainable development but that relevant policies for the supply of housing should not be considered up-to-date if the Council cannot demonstrate a 5 YHLS. I have concluded that relevant policies of the development plan are out-of-date by virtue of the lack of a 5 YHLS and the weight to be given to such policy conflict is reduced.
80. Paragraph 14 contains two alternative limbs in relation to decision-taking. The first limb requires a balance to be undertaken whereby permission should be granted unless the adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The second limb indicates that the presumption should not be applied if specific policies indicate development should be restricted. It is agreed that that is not the case here, so I shall go back to conduct the balance in the first limb.
81. The proposal would be contrary to LP policies SP1 and SP2 in that it would be in the open countryside and outside a settlement boundary. It would also result in the loss of best and most versatile agricultural land and there would be a modest erosion of landscape character, a moderate amount of visual amount and moderate harm to the setting of Kirkham. As a consequence of these matters I conclude that the proposal is contrary to the development plan when viewed as a whole. However relevant policies for the supply of housing are out of date and the weight which I attribute to the contravention of policies SP1 and SP2 is significantly reduced.
82. There is a serious and significant shortfall in the housing supply and more particularly a substantial need for affordable homes. The homes would be located in an accessible location and would bring economic activity and other benefits in terms of construction work.
83. The balancing exercise to be carried out in the first limb of paragraph 14 is not a straight balance; it is often referred to as a tilted balance because planning permission must be granted unless the adverse impact of the development

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<sup>10</sup> §§11, 12, 196

*significantly and demonstrably* outweighs the benefits. In this case I am satisfied that the adverse impacts which I have identified do not significantly and demonstrably outweigh the benefits. As such the appeal succeeds and outline planning permission shall be granted.

### **Conditions**

84. The Council suggested a set of conditions which were discussed at the Hearing. I also put forward some additional conditions for consideration by the main parties. I have considered all of the conditions in light of the advice within the Planning Policy Guidance and I have made some revisions in the interests of enforceability and precision. The numbers in brackets relate to the suggested conditions in the Council's list. I have also amended some of the suggested conditions in the terms discussed at the Hearing. In the interests of good planning it is necessary to impose conditions setting out time limits for development and to require submission of reserved matters and to relate development to the submitted plans (1, 2 and 3). The development is to be constructed in phases and details of the proposed phasing of the development is required (28).
85. The Council suggested a condition requiring development to be substantially in accordance with the illustrative masterplan and parameters plan and I agree that this is reasonable in order to achieve a satisfactory development (4). I have deleted the reference to a linear park and community green since these details are contained within the plans and are required in any event by condition 4 which I have imposed. At the Hearing I suggested additional conditions in relation to requirements for finished floor levels and to require details of boundary treatments. These were accepted by the parties.
86. It is necessary to secure construction of the site access, emergency access and off-site highway works (5) and to secure a timetable for implementation of the on-site and off-site works (6). I have already discussed the conditions necessary to secure a traffic speed review and further works (7) and a condition is required to secure implementation of a Travel Plan in relation to each phase of development (8). It is also necessary to control activities during the construction and demolition period and to restrict the hours of working (9 and 24).
87. A hedgerow retention scheme is necessary (11) as are conditions necessary to protect sensitive habitats, provide bird nesting and bat roosting opportunities and to prevent the spread of Himalayan Balsam (13, 14, 15, 16 and 17). It is also necessary to require an ecological management plan (18). I have already set out the need to carry out development in accordance with the FRA and to control surface water drainage (19, 20 and 22). Suggested conditions 21 and 22 are incorporated into condition 20 as was agreed. I have imposed the condition requiring a programme of archaeological recording and analysis but I have simplified the condition (23). The Geo-Environmental Assessment recommended the deposit of clean sub-soil and I have imposed the suggested condition relating to this (25). Similarly reinforced floor slabs are required to address gas movement issues (26).
88. I have incorporated suggested condition (27) into the phasing condition. I do not consider that condition (29) is necessary given that landscaping is a reserved matter. Three additional conditions were also discussed at the Hearing; conditions securing the provision of internal access roads and foul

drainage arrangements were also considered necessary. Suggested condition (10) was withdrawn.

*Karen L Ridge*

INSPECTOR

**APPEARANCES**

FOR THE APPELLANT:

Mr Matthew Symons BA MPlan MRTPI	Planning Manager, Hollins Strategic Land
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Miss Catherine Mitchell BA(Hons) MPhilD CMLI	Landscape Architect, Technical Director, SLR Consulting
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Mr Ian Ponter	Of Counsel
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FOR THE LOCAL PLANNING AUTHORITY:

Mr Kieran Birch	Senior Development Officer, Fylde Borough Council
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Mrs Joanne Folland BA(Hons) CMLI	Senior Associate Landscape Architect, Randall Thorp
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Mr Eddie Graves	Principal Planning Policy Officer, Fylde Borough Council
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INTERESTED PERSONS:

Mr Adrian Long	Local resident
Mrs Susan Long	Local resident
Mr Ian Scott	Local resident
Mr Charles Fox	Local resident
Mrs Donnelly	Local resident
Mr Neil Lever	Local resident
Councillor Oades	Local Councillor
Mr Neil Donnelly	Local resident

## DOCUMENTS SUBMITTED AT THE HEARING

- 1 Appellant's list of appearances.
- 2 Extracts from Fylde Local Plan, submitted by the Council at the request of the Inspector.
- 3 Letter of notification of the hearing and list of those notified, submitted by the Council.
- 4 Committee report on Kirkham Public Realm Improvements: Phase 5 submitted by the Council.
- 5 Forest of Dean District Council v SSCLG and Gladman Developments Limited [2016] EWHC 2429 (Admin), submitted by the Appellant.
- 6 Statement of Mr Adrian Long.
- 7 Statement of Mrs Sue Long.
- 8 Minutes of Development Management Committee meeting on 15 June 2016, submitted by the Council.
- 9 Letter Bryning-with-Warton Parish Council to the Inspectorate dated 11 August 2016.
- 10 Note from Mr Michael Eccles, local resident.
- 11 Statement from Mrs Hadia Donnelly.
- 12 Executed unilateral undertaking dated 23 November 2016, various parties, submitted by the Appellant.
- 13 Office copy entries of the title to the appeal site, submitted by the Appellant.
- 14 Letter Environment Agency to the Council dated 22 October 2015, submitted by the Council at the request of the Inspector.
- 15 Slides from powerpoint presentation 'Flood Risk at Brook Farm, Dowbridge' submitted by Mr Ian Scott.
- 16 Environment Agency letter to Council dated 28 September 2015.
- 17 Environment Agency letter to Council dated 11 May 2016.
- 18 Letter Lancashire County Council to the Council dated 29 February 2016, submitted by the Council.
- 19 Letter Lancashire County Council to the Council dated 16 May 2016, submitted by the Council.
- 20 Statement of Neil Donnelly.



CONDITIONS ATTACHED TO THE GRANT OF OUTLINE PLANNING PERMISSION

- 1) The development hereby permitted is for no more than 170 dwellings. The development shall be carried out in accordance with the following plans, unless otherwise varied by the conditions set out:
  - Proposed site location plan (0-)A001
  - Proposed access improvement and traffic calming general arrangement plan SK21452-002 revision E
  - Proposed cycle land provision B5259 plan SK21452-007 revision A.
- 2) Details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any development commences and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission and the development must commence not later than either:
  - The expiration of five years from the date of this permission, or
  - The expiration of two years from the final approval of the reserved matters, or in the case of approval on different dates, the final approval of the last such matter approved.
- 4) The Reserved Matters layout submission shall include a plan/strategy for the development of the whole site in phases, including the provision of public open space, landscaping and woodland planting, children's play area and the infrastructure associated with the development (including internal access roads) within each phase of the construction of the approved dwellings. The development shall thereafter only be carried out in accordance with the approved phasing plan/strategy unless any variation to the approved plan/strategy is first approved in writing by the Local Planning Authority.
- 5) The details submitted as part of the Reserved Matters application shall be substantially in accordance with the illustrative Landscape Masterplan drawing 1956\_02 Revision K and the Parameters Plan reference PAR001.
- 6) The Reserved Matters submission in relation to layout on each phase shall include details of existing and proposed site levels throughout the phase and finished floor levels of all dwellings on that phase which shall be defined relative to a datum or datum points the location of which has been previously agreed by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the approved levels.
- 7) The Reserved Matters submission in relation to appearance on each phase shall include details of all boundary treatment to be carried out on all the perimeter boundaries on that phase and details of any boundary enclosures to be erected or grown within that phase. The approved details of perimeter boundary treatment shall thereafter be carried out and completed within each phase of development prior to any dwelling within that phase being first occupied and the boundary treatment

relating to individual plots shall be carried out and completed on each respective plot prior to its first occupation.

- 8) No part of the development hereby approved shall commence until a scheme for the construction of the site access, emergency access and the off-site highway improvements have been submitted to and approved in writing by the Local Planning Authority. The off-site highway improvements shall include details of:
- Site access junction and associated highway works shown on drawing SK21452-002 Revision E subject to detailed design and including the following:
    - i. Site access junction
    - ii. Traffic calming/gateway measures
    - iii. Upgraded bus stop provision to quality bus standard
    - iv. Street lighting
    - v. Review of and implementation of changes to Traffic Regulation Order(s)
    - vi. Construction detail to adoptable standard
  - Highway works to the wider area as shown in drawing SK21452-007 Revision A to be implemented upon completion of 25 dwellings or 18 months from the commencement of development whichever is the sooner, and comprising:
    - i. advisory cycle lanes;
    - ii. gateway measures; and
    - iii. a pedestrian refuge island.
  - White lining renewal/update scheme at A583 Kirkham Bypass/B5192 Dowbridge comprising:
    - i. renewal of existing road markings; and
    - ii. review and update to include new give way triangle and slow markings and additional hatching to eastern give way.

Development shall be carried out in accordance with the approved scheme.

- 9) Prior to the first occupation of the first dwelling on any part of the development the access works shown on drawing SK21452-002 Revision E shall be constructed in accordance with the details approved. No more than 25 dwellings on the site shall be occupied until such time as the off-site highway improvement works referred to in condition 8 have been constructed in accordance with the approved details. The emergency access shall be provided prior to occupation of the 95<sup>th</sup> dwelling on the site in accordance with details which have been submitted to and approved in writing by the Local Planning Authority.

- 10) No more than 51 dwellings on the development hereby permitted shall be occupied until the developer has carried out a traffic speed review in the vicinity of the site access in accordance with details approved by the Local Planning Authority. The results of the review shall be provided to the Local Planning Authority and should the review indicate that the 85<sup>th</sup> percentile speeds are greater than 30 miles per hour in either direction then a scheme of further works designed to reduce speeds on Dowbridge shall be submitted to the Local Planning Authority for written approval together with a timescale to be approved as part of that submission. In the event that further works are required no more than 51 dwellings shall be occupied until such time as the timetable for implementation of the works has been approved in writing by the Local Planning Authority.
- 11) Prior to the first occupation of any dwelling within a particular phase, a Travel Plan in relation to that phase shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall provide a framework for the phase and consider measures for encouraging sustainable modes of transport based on the number of residential units created within that phase. Development shall be carried out in accordance with the approved details.
- 12) Prior to the commencement of any demolition, construction or remediation on each phase a scheme in the form of a Construction Environmental Management Plan (CEMP) in relation to that phase shall be submitted to, and approved in writing by, the Local Planning Authority. Such a plan shall include details of the following:-
  - the parking of vehicles of site operatives and visitors;
  - the loading and unloading of plant and materials;
  - storage of plant and materials used in constructing the development;
  - the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing;
  - wheel washing facilities;
  - publicity arrangements and a permanent contact / Traffic Manager once development works commences to deal with all queries and authorised by the developer / contractors to act on their behalf;
  - details of the measures to be employed to control and monitor noise, vibration and dust;
  - construction routes within the site;
  - compound locations;
  - a scheme for recycling/disposing of waste resulting from demolition and construction works (there shall be no burning of materials on site);
  - a Management Plan to identify potential ground and water contaminants; details for their storage and how water courses will be protected against spillage incidents and pollution during the course of demolition and construction;
  - the routing of construction vehicles and deliveries to the site and the timing of their arrival.

Development shall thereafter only be carried out in accordance with the approved CEMP, unless any variation to it is otherwise first agreed in writing by the Local Planning Authority.

- 13) No demolition, ground works or construction works shall take place outside the following hours: 0800 to 1800 hours on Mondays to Fridays and 0900 to 1300 hours on Saturdays. There shall be no such work on Sundays or Public or Bank Holidays.
- 14) Prior to commencement of development on any phase of development a hedgerow retention and replacement scheme shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme. All existing lengths of hedgerow on the site shall be retained except where their removal is required for access points or visibility splays or in cases where a replacement scheme has been agreed.
- 15) Prior to the occupation of development on any phase, a 'Lighting Design Strategy for Biodiversity' in relation to that phase shall be submitted to and approved in writing by the Local Planning Authority. The Strategy shall:
  - Identify those areas or features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of territory and;
  - Show how and where external lighting will be installed on that phase so that disturbance to bats will not be caused. Such lighting should also seek to reduce light pollution from that phase so far as it practicable.
  - All external lighting on that phase shall be installed in accordance with the approved Strategy details and no external lighting shall be installed other than in accordance with the Strategy.
- 16) Prior to works of demolition or construction on each phase of development details of the fencing to be erected between that phase of development and sensitive habitats due to be retained (ponds, hedgerows and watercourses) shall be submitted to and approved in writing by the Local Planning Authority. The approved fencing arrangements shall be in place prior to any works of demolition or construction and shall be retained throughout the demolition and construction works.
- 17) Prior to the commencement of demolition or construction on each phase of development a Method Statement of measures (including a timetable for implementation) to be taken to prevent the spread of Himalayan Balsam and eradicate it from the development shall be submitted to and approved in writing by the Local Planning Authority. The approved Method Statement shall be implemented in full in accordance with the approved timetable.
- 18) Prior to the commencement of demolition or construction on each phase of development details of bird nesting opportunities to be installed on that phase shall be submitted to and approved in writing by the Local Planning Authority. The details shall include provision for Song Thrush, Dunnock and House Sparrow (Species of Principal Importance) and shall include consideration of provision for other declining species such as House Martin and Swift as well as a timetable for implementation. The

approved details shall be implemented in full on that phase in accordance with the approved timetable.

- 19) Prior to the commencement of demolition or construction on each phase of development full details of bat roosting opportunities to be installed on that phase, together with a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full on that phase in accordance with the approved timetable.
- 20) No tree felling, vegetation clearance works, removal of hedgerows, demolition works or other works that may affect nesting birds shall take place between 1 March and 31 August inclusive on each phase unless surveys by a qualified ecologist show that nesting birds would not be affected on that phase have been submitted to and approved in writing by the Local Planning Authority.
- 21) No site clearance, site preparation or development work shall take place on each phase until a fully detailed landscaping/habitat creation and management plan for that phase has been submitted to and approved in writing by the Local Planning Authority. The Habitat Management Plan shall include:
  - i. A description and evaluation of the features to be managed;
  - ii. Ecological trends and constraints on site that may influence management;
  - iii. Aims and objectives of management;
  - iv. Appropriate management options for achieving aims and objectives;
  - v. Prescriptions for management actions;
  - vi. Preparation of a works schedule (including a 5 year project register, an annual work plan and the means by which the plan will be rolled forward annually);
  - vii. Personnel responsible for the implementation of the plan;
  - viii. Monitoring and remedial/contingencies measures triggered by monitoring.

The approved details shall be implemented in full for each particular phase and carried out as approved within the first planting season following completion of development on that particular phase and shall thereafter be maintained in accordance with the approved plan.

- 22) The drainage for the whole development hereby permitted shall be carried out in accordance with the principles set out in the submitted Flood Risk Assessment and Drainage Strategy Management document Revision 1.0 dated 19 November 2015 and the mitigation measures within it. Surface water must drain to watercourses and no surface water will be permitted to drain directly or indirectly into the public sewer unless otherwise agreed in writing by the Local Planning Authority. The mitigation measures shall be fully implemented prior to first occupation of any dwelling on the development in accordance with the approved timetable or within any other period as may subsequently be agreed in

writing by the Local Planning Authority. The development shall be completed, maintained and managed in accordance with the approved details.

- 23) No development shall commence until details of an appropriate management and maintenance plan for the sustainable urban drainage system for the lifetime of the development has been submitted to, and approved in writing by, the Local Planning Authority. The submitted scheme shall include:
- 1) the arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a Residents' Management Company;
  - 2) arrangements concerning appropriate funding mechanisms for its ongoing maintenance of all elements of the approved system;
  - 3) information about the lifetime of the development design storm period and intensity (1 in 30 & 1 in 100 year +30% allowance for climate change), discharge rates and volumes (both pre and post development), temporary storage facilities, means of access for maintenance and easements where applicable, the methods employed to delay and control surface water discharged from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters, including watercourses, and details of flood levels in AOD;
  - 4) demonstration that the surface water run-off will not exceed the following greenfield run off rates; 1 in 1 -65.1l/s, 1 in 30 - 126.8l/s and 1 in 100 +30% climate change allowance - 155.5l/s;
  - 5) any works required off-site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant);
  - 6) flood water exceedence routes, both on and off-site;
  - 7) a timetable for implementation, including phasing where applicable;
  - 8) site investigation and test results to confirm infiltration rates;
  - 9) details of water quality controls where applicable.

The approved scheme shall be implemented in full and subsequently maintained in accordance with the approved phasing/timing arrangements.

- 24) No part of the development hereby permitted (including works of demolition or preparatory works) shall be commenced within the site until a programme of archaeological work, recording and analysis has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

- 25) Prior to the commencement of demolition or construction on each phase of development a scheme for the deposit of clean subsoil on that phase, together with a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full on that phase in accordance with the approved timetable.
- 26) Prior to the commencement of demolition or construction on each phase of development a scheme for the provision of reinforced concrete floor slabs on that phase, together with a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full on that phase in accordance with the approved timetable.
- 27) Prior to any development being commenced within each phase, details of the design, construction, specification, lighting and drainage of all internal access roads within that phase shall be submitted to and first approved in writing by the Local Planning Authority. Development on that particular phase shall be carried out in accordance with the approved details in accordance with a timescale approved by the Local Planning Authority.
- 28) The internal access roads within each phase shall be completed to a minimum of base course level prior to the construction of each phase of development and shall be fully completed in accordance with the approved details contained within condition 27 in accordance with the agreed phasing plan/strategy required by condition 4.
- 29) Development shall not commence until a foul drainage strategy detailing any on and/or off site drainage works, has been submitted to and approved in writing by the Local Planning Authority. No discharge of foul water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.

END OF CONDITIONS