



Department for  
Communities and  
Local Government

Chris Still  
Gladman Developments Ltd  
Gladman House  
Alexandria Way  
Congleton  
Cheshire  
CW12 1LB

Our Ref: APP/C3105/A/13/2189896

23 September 2013

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)  
APPEAL BY GLADMAN DEVELOPMENTS LTD  
SITE AT LAND OFF BARFORD ROAD, BLOXHAM**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Wilde C.Eng MICE, who held a public local inquiry on 16-19 April 2013 into your clients' appeal under Section 78 of the Town and Country Planning Act 1990 against a refusal by Cherwell District Council ("the Council") to grant outline planning permission for up to 75 residential dwellings, landscape, open space, highway improvements and associated access at Land off Barford Road, Bloxham, Oxfordshire, in accordance with application Ref 12/00926/OUT, dated 25 June 2012.
2. The appeal was recovered for the Secretary of State's determination on 9 May 2013, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, so that it could be considered at the same time as three other appeals in the same district<sup>1</sup>.

**Inspector's recommendation and summary of the decision**

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed. For the reasons given in this letter, the Secretary of State agrees with the Inspector's recommendation. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

**Matters arising after the close of the inquiry**

4. On 26 June 2013, the Council submitted to the Planning Inspectorate further information about housing land supply issues, copied to you and those

---

<sup>1</sup>Land North of the Bourne and adjoining Bourne Lane, Hook Norton – ref: 2184094;  
Land East of Bloxham Road, Banbury – ref:2178521;  
Land South of Milton Road, Bloxham – ref:2189191.

representing the appellants for the other three recovered appeals referred to in paragraph 2 above (referred to below as “the four parties”). This led to representations from the four parties requesting a right to respond, to which the Secretary of State acceded in his letter of 3 July 2013. A response was subsequently received on behalf of the four parties on 17 July 2013, leading to further submissions from the Council dated 25 and 30 July 2013 which, in turn, led to a further response on behalf of the four parties on 12 August 2013. Copies of all the relevant correspondence may be obtained on written request to the address at the foot of the first page of this letter. The Secretary of State has given careful consideration to all this correspondence but, for the reasons given below and in the decision letters relating to the other three cases, does not consider that it raises any issues on which he requires further information before proceeding to decisions on these cases.

### **Policy Considerations**

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan (DP) unless material considerations indicate otherwise. In this case, the DP comprises the saved policies of the Cherwell Local Plan (LP), adopted in November 1996, and the extant policies of the South East Plan (“the RS”). The Regional Strategy for the South East (Revocation) Order 2013 came into force on 25 March 2013 and partially revoked the RS. The Secretary of State considers that the RS Policies which remain extant are not relevant to his decision on this appeal.
6. Material considerations include the National Planning Policy Framework (the Framework); Circular 11/95: *Use of Conditions in Planning Permission*; and the Community Infrastructure Levy (CIL) Regulations 2010 as amended. The Secretary of State has also had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance is currently in test mode and for public comment, he has attributed it limited weight.
7. Other material considerations include the emerging pre-submission draft local plan (PSDLP), which was published by the Council in August 2012. However, as it has yet to be submitted for examination and so is subject to change, it has been afforded little weight. Similarly, the revised housing land supply figures submitted by the Council to the Secretary of State as referred to in paragraph 4 above have yet to be subjected to independent examination as part of the local plan process and so have been given little weight.

### **Main Issues**

#### **The Development Plan and the Framework**

8. Notwithstanding the proposed revisions to the housing supply figures for the District put forward by the Council following the close of the inquiry (as explained in paragraphs 4 and 7 above), the Secretary of State does not consider that the Council have yet been able to demonstrate conclusively a five year housing land supply, and therefore he agrees with the Inspector (IR145) that the relevant policies for the supply of housing should not be considered up to date so that paragraphs 14 and 49 of the Framework come into play and the presumption in favour of sustainable development applies.

9. For the reasons given at IR146-147, the Secretary of State agrees with the Inspector that, while policy H18 of the LP has a clear function of protecting the countryside, the time expired nature of the LP and the fact that 60% of new housing will have to be on greenfield land mean that only limited weight can be afforded to that policy.
10. The Secretary of State agrees with the Inspector (IR149) that, having regard to the central thrust of the Framework, it is necessary to consider the sustainability credentials of the appeal site and, for the reasons given at IR149-151, the Secretary of State agrees with the Inspector's conclusion at IR151 that, although these may not be greater than those for other schemes, the benefits which it would provide still add to the factors that weigh in its favour.

### **Character and appearance**

11. The Secretary of State agrees with the Inspector (IR152-153) that there is little merit in considering whether or not a particular methodology for assessing landscape character has been scrupulously followed and, for the reasons given at IR 153-155, agrees with him that the demonstrable harm to the topography and character of the landscape would be no greater than would be caused by any greenfield development.

### **Prematurity and community support**

12. For the reasons given at IR156-163, the Secretary of State agrees with the Inspector at IR164 that only limited weight can be attributed against the appeal proposal to the matters of prematurity and localism. He also agrees with the Inspector at IR165 that Bloxham is one of the most sustainable village locations in the District and that the cumulative quantum of development within the village should not be a determining factor in this appeal.

### **Planning obligations**

13. The Secretary of State notes that the Section 106 Agreement was completed in response to the Council's third reason for refusal (IR166), and has gone on to consider the extent to which each of the proposed contributions is justified in accordance with regulation 122 of the CIL Regulations (IR167-168).
14. With regard to secondary/sixth form education, the Secretary of State agrees with the Inspector's conclusion at IR172 that, for the reasons given at IR169-174, the contribution relating to secondary education should not be taken into account in the overall decision on this appeal. However, for the reasons given at IR175-180, the Secretary of State agrees with the Inspector that the figure requested by the Council as the contribution towards primary education should be taken into account; and that the required contribution for special education needs (IR181) should also be taken into account.
15. With regard to library provision, the Secretary of State agrees with the Inspector (IR182) that only the lower amount should be taken into account. He also agrees with the Inspector that the requested community development contribution (IR183) does not meet the test of Regulation 122, nor do the requested contributions towards a day care centre (IR184), waste management (IR186), adult learning (IR187), commuted sums for maintenance (IR188-189), administration/monitoring fees (IR190) or refuse bins (IR190). The Secretary of State has not therefore taken

these into account in his overall decision. However, he also agrees with the Inspector that the proposed contribution towards outdoor sports provision (IR185) meets the test and can be taken into account, as can the contributions towards transport, public transport and travel plan monitoring (IR191).

### **Conditions**

16. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions as set out at IR137-143, and is satisfied that the conditions proposed by the Inspector and set out at Annex A to this letter are reasonable, necessary and comply with Circular 11/95. However, although the Secretary of State notes the Inspector's comment at IR144 that, in relation to an adjacent site, the Council requested conditions relating to a biodiversity enhancement scheme and a sustainable homes code, he takes the view that, as no parties requested this at the Inquiry into this appeal (held immediately before the one to which the Inspector refers), he has neither the authority to impose them nor the grounds for so doing. Nevertheless, the Secretary of State recognises that the adoption of such conditions would represent good practice unless there are specific reasons making them inappropriate in this case, and he encourages the parties to consider the desirability of entering into a voluntary agreement to that effect.

### **Other matters**

17. The Secretary of State agrees with the Inspector that, for the reasons given at IR192 and having particular regard to the views of the Highways Agency, the issue of traffic is not one which justifies dismissing the appeal. Similarly, he agrees with the Inspector at IR193 that water pressure and sewerage are not reasons for dismissing the appeal. He also agrees with the Inspector and the Council (IR194) that the provision of 35% of affordable housing weighs substantially in favour of the development.

### **Overall conclusions**

18. Although the appeal proposal would be contrary to certain policies within the out of date LP, the Council do not have a proven five year housing land supply so that, in accordance with the provisions of the Framework, full weight can no longer be given to the policies of that plan. Furthermore, although the appeal scheme would also conflict with the Council's emerging spatial strategy contained in the PSDLP and with the Council's latest housing land availability figures, that Plan is at a very early stage and the revised figures have not been subjected to independent examination, so that both are likely to be subject to change. Little weight can therefore be attached to these considerations against the scheme.

19. The appeal scheme represents sustainable development which would make a significant contribution towards addressing the undersupply of housing, including affordable housing, in the District. Therefore, although it would cause some limited and localised harm to the character and appearance of the countryside, the Secretary of State is satisfied that this would not significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies of the Framework taken as a whole.

## **Formal Decision**

20. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants outline planning permission for up to 75 residential dwellings, landscape, open space, highway improvements and associated access at Land off Barford Road, Bloxham, Oxfordshire, in accordance with application Ref 12/00926/OUT, dated 25 June 2012, subject to the conditions listed at Annex A of this letter.
21. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
22. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

## **Right to challenge the decision**

23. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
24. Copies of this letter has been sent to Cherwell District Council and the agents acting for the appellants in the other three recovered cases. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Jean Nowak**

Authorised by the Secretary of State to sign in that behalf

**CONDITIONS**

- 1) 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 begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.
- 3) The development hereby permitted shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall comprise of no more than 75 dwellings and shall be carried out in accordance with the following approved plans: 2010-008-100 Location Plan and 10000/03/17A Preliminary Junction Layout.
- 5) The details of layout, scale, appearance and landscaping referred to in condition 1 shall broadly accord with the Design and Access Statement (Ref DAS4756 Rev C dated June 2012). In particular the details shall take heed of the comment on page 42 of the D & A regarding *bungalows along the eastern edge*.
- 6) No development shall commence until a 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 or surface water from the site shall be accepted into the public system until drainage works referred to in the strategy have been completed.
- 7) No development shall take place until a scheme to limit the surface water runoff generated by the proposed development and to manage the risk of flooding from overland flow of surface water has been submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the approved details.
- 8) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) measures to control the emission of dust and dirt during construction
  - ii) the arrangements for prior notification of the start of the development to the occupiers of potentially affected properties
  - iii) the responsible person (e.g. site manager/office) who could be contacted in the event of a complaint
  - iv) wheel washing facilities
  - v) a route for construction traffic
- 9) Demolition, construction works or deliveries shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0900 hours to 1400 hours on Saturdays nor at any time on Sundays or Bank Holidays.

- 10) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved in accordance with a programme agreed with the local planning authority. These details shall include
  - i) The treatment proposed for all ground surfaces including hard areas
  - ii) Full details of tree planting
  - iii) Planting schedules, noting the species, sizes and numbers of plants
  - iv) Details of boundary treatments
  - v) All existing trees, hedges and other landscape features indicating those to be removed
  - vi) Details of the design of the ponds including sections and landscaping
  - vii) Details of the long term management and maintenance of those areas within the site
- 11) If within a period of five years from the date of the planting of any tree or plant that tree or plant, or any tree or plant planted in replacement for it, is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.
- 12) No development shall take place until full details of the tree/hedgerow protection measures have been submitted to and approved in writing by the local planning authority and implemented in accordance with the approved measures.
- 13) No development shall begin until a scheme for the provision of Affordable Housing as part of the development has been submitted to and approved in writing by the local planning authority. The Affordable Housing shall be provided in accordance with the approved scheme and shall meet the definition of Affordable Housing set out in the glossary to the National Planning Policy Framework. The scheme shall include:
  - i) The numbers, type and location on the site of the Affordable Housing provision which shall consist of not less than 35% of the dwellings. The tenure shall be split 70% social rented or Affordable rented and 30% intermediate and the dwellings shall be 'pepper-potted' across the site.
  - ii) The timing of construction of the Affordable Housing and its phasing in relation to the occupancy of the market housing. No more than 80% of the open market dwellings shall be occupied before the affordable Housing is completed and available for occupation.
  - iii) The arrangements for the transfer of the Affordable Housing to an Affordable Housing provider or the management of the Affordable Housing if no registered social landlord is involved.
  - iv) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing.
  - v) The occupancy criteria to be used for determining the identity of occupiers of the Affordable Housing and the means by which such occupancy criteria shall be enforced.

- 14) No development shall take place until a programme for the implementation of the whole development including public open space and equipped areas of play has been submitted to and agreed in writing by the local planning authority. The phasing of the development shall be in accordance with the approved programme.
- 15) No development shall take place until details of the provision and proposed locations of the LAP, LEAP and public open space and their future maintenance arrangements have been submitted to and approved in writing by the local planning authority. These areas shall be provided in accordance with the approved details.
- 16) No development shall take place until a travel plan, including a timetable for its implementation, has been submitted to and approved in writing by the local planning authority. The travel plan shall be implemented as approved from the date of the first occupation of the first dwelling.



---

# Report to the Secretary of State for Communities and Local Government

by John Wilde C.Eng M.I.C.E.

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

Date: 23 July 2013

---

**Town and Country Planning Act 1990**

**Cherwell District Council**

**Appeal by Gladman Developments Ltd**

**Against the decision to refuse outline planning permission for up to 75  
residential dwellings, landscape, open space, highway improvements and  
associated works**

**at**

**Land off Barford Road, Bloxham, Oxfordshire**

Inquiry held on 16/17/18/19 April 2013

Land off Barford Road, Bloxham Oxfordshire

File Ref: APP/C3105/A/13/2189896

---

## **TABLE OF CONTENTS**

<b>Procedural Matters</b>	<b>1</b>
<b>The Site and Surroundings</b>	<b>1</b>
<b>Planning Policy</b>	<b>2</b>
<b>Planning History</b>	<b>2</b>
<b>The Proposals</b>	<b>2</b>
<b>Other agreed facts</b>	<b>2</b>
<b>The case for the District Council</b>	<b>3</b>
<b>The case for the appellants</b>	<b>7</b>
<b>The case for Oxfordshire County Council</b>	<b>14</b>
<b>The case for objectors appearing at the inquiry</b>	<b>20</b>
<b>Written Representations</b>	<b>26</b>
<b>Conditions</b>	<b>26</b>
<b>Conclusions</b>	<b>28</b>
<b>Recommendation</b>	<b>37</b>
<b>Appearances and Documents</b>	<b>38</b>
<b>Annex 1 – Schedule of Conditions</b>	<b>43</b>

**File Ref: APP/C3105/A/13/2189896**

**Land off Barford Road, Bloxham, Oxfordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Ltd against the decision of Cherwell District Council.
- The application Ref 12/00926/OUT, dated 25 June 2012, was refused by notice dated 18 December 2012.
- The development proposed is up to 75 residential dwellings, landscape, open space, highway improvements and associated works.

**Summary of Recommendation: That the appeal be allowed and planning permission be granted**

---

**Procedural Matters**

1. The Inquiry sat for four days on 16-19 April 2012. There was an extra session at the request of Bloxham Parish Council on the evening of 17 April to allow attendance by members of the public who otherwise may not have been able to attend. I made unaccompanied site visits on 15, 16, and 18 April and an accompanied site visit on 19 April.
2. The application that now forms the subject of the appeal was submitted in outline with details of access to be determined as part of the application. Details of layout, scale, appearance and landscaping are reserved for later determination.
3. The application was refused for three reasons<sup>1</sup>. In brief these were:
  - 1) Character and appearance, and the fact that the appeal site lies outside of a development boundary.
  - 2) Prematurity, the fact that Bloxham has recently accommodated other new development, and that permitting the development would be contrary to the plan-led system.
  - 3) Absence of a satisfactory planning obligation that would ensure mitigation of the proposed development on local infrastructure.
4. The case was recovered for decision by the Secretary of State by letter dated 9 May 2013 so that it could be considered at the same time as three other appeals in the same district<sup>2</sup>.

**The Site and Surroundings**

5. The site is an agricultural field on the southern edge of Bloxham to the east of Barford Road. To the north of the site is a new residential development known as Woodland Gardens that is accessed from Milton Road. North-west of the site is a dwelling known as St Christopher's Lodge and to the south, on the opposite side of Barford Road, are the residential estates of Mannings Close and Gascoigne Way. The site slopes away from Barford Road and is bounded by hedgerows.

---

<sup>1</sup> See Statement of Common Ground para 2.3 for full reasons for refusal

<sup>2</sup> 2184094, Borne Lane, Hook Norton, 2178521, Bloxham Road, Banbury, 2189191, Milton Road, Bloxham

## **Planning Policy**

6. The adopted Cherwell Local Plan (LP) was adopted in 1996 and had an end date of 2001. The policies referred to by the Council in their reasons for refusal have all been saved by direction of the Secretary of State. In addition to this there is a Non Statutory Local Plan dated 2004 (NSLP). This latter plan was the subject of consultation but did not proceed through the full statutory local plan process. It has since been utilised by the Council for development control purposes.
7. There is also an emerging Local Plan (ELP) that was the subject of initial public consultation in the summer of 2012. The most up to date position on this plan was reported to the Council's Executive on 4 March 2013. This indicated that additional public consultation would take place between 28 March and 9 May 2013. Following this additional consultation the Council will have to consider the responses received and the need for any amendments and then submit the plan for examination together with copies of any representations made.
8. The South East Plan (SEP) was revoked by an order that came into force on 25 March 2013. This order also had the effect of revoking all directions under paragraph 1 (3) of Schedule 8 to the planning and compulsory Purchase Act 2004 preserving policies contained in Structure Plans in the area with the exception of policy H2 of the Oxfordshire Structure Plan 2016. This relates to the former air base at Upper Heyford and is not material to the consideration of this appeal.

## **Planning History**

9. There is no planning history relevant to the site and the current proposals.

## **The Proposals**

10. The proposed development is outline planning permission for up to 75 dwellings with 35% of these being Affordable. The development would also include landscaping and open space. Access, the only matter not reserved for later determination, would be from Barford Road.

## **Other Agreed Facts**

11. The main parties agree that Bloxham is served by a number of facilities and amenities including primary and secondary schools. A full list of the agreed facilities can be found in section 4.3 of the Statement of Common Ground (SoCG). It is agreed that the Council cannot demonstrate a five year supply of housing land for the period 2012-2017. It is also agreed that the SEP housing requirement for Cherwell of 670 dwellings per annum between 2006 and 2026 represents the most robust and up to date figure that has been tested through public examination. This figure equates to 13400 dwellings over the period 2006-2026 and this level of growth has been translated into the ELP as the basis for the Council's land supply calculations.
12. The SoCG also shows that district wide there has been an under delivery against the housing target of 1256 dwellings over the period 06/07 – 11/12, and for the Banbury and North Cherwell area an under-delivery of 237 over the same period. The housing land supply figures do not include a windfall allowance.

13. Both main parties agree that the nature of the appeal site is such that it has the potential to be developed in full within the appropriate five year period and therefore can contribute towards Cherwell's five year housing land supply. There is also agreement between the main parties that there are no highways or transportation grounds to refuse the proposed development, and that a suitable planning obligation would overcome the third reason for refusal.

### **The Case for Cherwell District Council**

The material points are:

#### Policy matters

14. Whilst the timeframe for the LP in terms of housing numbers has expired it does have an urban focus for accommodating growth. It seeks to focus growth towards main urban centres and with that there is a restriction on development in villages and the countryside beyond<sup>3</sup>. The ELP has progressed through various stages and been informed by up to date evidence. The Framework<sup>4</sup> specifically recognises that emerging plans can be afforded weight dependant upon the stage they have reached in the process, the extent of unresolved objections and the consistency of relevant policies in the emerging plan to policies in the Framework. The Framework identifies sustainable development as the key factor in the planning system and it is evident that the LP and ELP adopt this principle<sup>5</sup>. The appeal scheme would result in a significant extension to Bloxham in conflict with the overall approach of the LP and the ELP<sup>6</sup>.
15. Policies H12, H13 and H18 of the LP establish a permissive approach to development within identified settlements and a restrictive approach to development outside them. To the extent that their effect is to limit housing development and in that they rely upon areas shown in the 1996 proposals map, they are out of date in line with paragraph 49 of the Framework.
16. However, they also serve the purpose of conserving the countryside outside of settlements. That is most obviously seen in policy H18. This is in line with the Framework which continues to offer protection to the intrinsic character and beauty of the countryside<sup>7</sup>. The appeal scheme is in conflict with these policies<sup>8</sup> and some weight should attach to this conflict<sup>9</sup>.

#### Character and appearance

17. There are three assessments of the character of the wider landscape in which the appeal site sits which assist in appreciating what is characteristic about the area. The submitted Landscape Visual Impact (LVA) fails to deal with the district wide Landscape Character Assessment (LCA) which should have informed the baseline landscape character assessment work carried out by the appellants. In terms of definitions of landscapes given within the LCA, the appeal site does not display

---

<sup>3</sup> POE Smith para 6.5

<sup>4</sup> National Planning Policy Framework

<sup>5</sup> POE Smith para 6.6

<sup>6</sup> POE Smith para 6.5

<sup>7</sup> Council final submissions paras 4-6

<sup>8</sup> POE Smith para 6.10

<sup>9</sup> Council final submissions para 6

the serious degradation seen in 'restoration' landscapes but better matches the description of 'repair' landscapes. This means that it should be able to absorb limited areas of sensitive change. A restoration landscape would be better able to accommodate change<sup>10</sup>.

18. The methodology set out in the LVA was not followed through as it did not deal with the assessment stage of analysis. This includes the systematic identification of potential impacts, prediction of their magnitude and assessment of their significance. Furthermore, the visual impact assessment part of the LVA contained some baffling judgements, an example being the analysis of viewpoint 2, which had inputs of 'high' and 'high' resulting in a 'moderate' outcome. The LVA also fails to define some of the terms used, it significantly under estimates the impact of the development, adopts an unrealistic approach to the degree of screening that would be afforded the development by existing and new landscaping, and fails to consider the position the site holds in the wider landscape<sup>11</sup>. For these reasons the LVA does not greatly assist with forming judgements about the landscape and visual impacts of the scheme<sup>12</sup>.
19. The work of the Council's landscape witness was however carefully carried out and scrupulously transparent<sup>13</sup>. It shows that the overall affect on landscape character would be a significant adverse impact and the affect on visual amenity would be major/moderate adverse from several viewpoints<sup>14</sup>.
20. These conclusions put the proposed development squarely in conflict with policy C7 of the LP. This policy is consistent with the Framework which offers protection to the intrinsic character and beauty of the landscape in paragraphs 17 and 109. Policy C7 is doubly consistent with the Framework in that the threshold of demonstrable harm chimes with the language of paragraph 14 of the Framework. Substantial weight should therefore be afforded to conflict with this policy<sup>15</sup>.

#### Prematurity, the plan-led system and recent development in Bloxham

21. The Council's spatial strategy pursued in the ELP would see most of the growth in the district directed towards the main towns of Banbury and Bicester, with a further major single location for growth at former RAF Upper Heyford. Growth across the rest of the district would be limited and would focus on meeting local community and business needs, directed towards the larger and more sustainable villages within the district that offer a wider range of services and are well connected to major urban areas, particularly by public transport<sup>16</sup>.
22. The development of greenfield sites on the edge of villages provides an unconstrained source of housing land for developers. Such an approach does not however assist in delivering the more sustainable developments on the edge and within the main urban areas. In considering proposals for the release of greenfield sites on the edge of settlements it is necessary to consider the

---

<sup>10</sup> Council final submissions paras 8/9

<sup>11</sup> POE Screen paras 3.1-3.3

<sup>12</sup> Council final submissions paras 14-17

<sup>13</sup> Council final submissions para 18

<sup>14</sup> POE Screen para 2.24 and app 2

<sup>15</sup> Council final submissions paras 19/20

<sup>16</sup> Council final submissions para 22

- implications on the sustainability over the long term and to avoid only considering short term housing numbers<sup>17</sup>.
23. Policy Villages 2 is the policy in the ELP by which the more limited growth required to meet local needs would be addressed. This policy has recently been updated in the 'focused changes' version of the ELP to take account of recent permissions and completions and now indicates that 348 additional units are sought. Of these Bloxham is amongst 17 villages that are shown as delivering 96 units between them. The actual allocations would be made via a Neighbourhoods Development Plan Document (NDPD). Further planning permissions for schemes such as the one the subject of this appeal, granted in the meantime, would render the NDPD unnecessary, would wholly undermine the approach set out in Policy Villages 2<sup>18</sup>, and would undermine the process of allocating land in the rural parts of the district<sup>19</sup>.
24. Granting planning permission for 75 dwellings on the appeal site and/or 85 dwellings on the neighbouring site would render the proposed NDPD otiose as it would relate to the 17 villages of which Bloxham is only one. Given the number now required for the 17 villages, the particular circumstances of this case mean that, unusually, it would be appropriate to refuse planning permission on prematurity grounds, even without a draft of the NDPD. This is because a draft NDPD is not needed to understand the effect the permission would have upon it<sup>20</sup>.
25. Bloxham has seen a significant amount of development in recent years, with 142 completions from 2006-2011 and 73 outstanding planning permissions. When complete these numbers will increase the number of households in the village by 20%. There are three significant housing proposals for further growth of the village and it is considered that additional development on the scale proposed would be disproportionate. Villages, even the largest, are clearly not as sustainable as the large urban centres which are where new growth should be focused<sup>21</sup>. Whilst Bloxham performs well in terms of sustainability when compared to other rural settlements, it nonetheless performs relatively poorly in terms of accessibility and provision of services and facilities when compared to the urban areas<sup>22</sup>.

#### Housing land supply

26. The parties agree that the Council does not have a five year housing land supply. The extent of the shortfall is in dispute. The appellants contend that the Council have a 2.27 years supply and the Council say they have a 3.01 years supply. The difference arises depending on which buffer is applied and whether the 'Sedgefield' or 'Liverpool' method is used to distribute the backlog. Which buffer should be applied depends on whether or not the Council have had a persistent record of under delivery of housing.

---

<sup>17</sup> POE Smith para 6.34

<sup>18</sup> Council final submissions paras 24-30

<sup>19</sup> POE Smith para 6.41

<sup>20</sup> Council final submissions paras 31/32

<sup>21</sup> POE Smith paras 6.35/6.37

<sup>22</sup> POE Smith paras 6.38

27. The Council consider that it has delivered housing at around the rate required by extant or emerging policy. It is also fair to consider the 'Banbury and North Cherwell' part of the district separately because the contemporaneous requirement for the area was set out as 320 dwellings per annum. In the period 2006-2011 a total of 1749 dwellings were completed in the Banbury and North Cherwell area against a requirement for that area in the South East Plan of 1750<sup>23</sup>. In all circumstances however, a 5% not 20% buffer should apply<sup>24</sup>.
28. As regards whether the 'Sedgefield' or 'Liverpool' approach should be taken it is submitted that the 'Liverpool' approach should be preferred in this case. This is because the guidance on calculating requirements does not endorse or undermine either approach, the guidance is still relevant, and the Framework is silent about how the backlog should be incorporated within the five year calculation. Furthermore, the realism of delivering in excess of 1000 dwellings in the current economic climate must be questioned and the Framework already builds in a buffer 'to ensure choice and competition for land', and as the backlog is not ignored but addressed, albeit more gradually, in the 'Liverpool' method, given the circumstances of this district that is the correct approach<sup>25</sup>.
29. While there is a shortfall in the five year housing land supply at present the Council is in the final stages of promoting a plan to deal with both the immediate development needs and those right up to 2031, based on a sustainable spatial strategy. The Council has also been prepared to grant planning permissions in the meantime, outside settlement boundaries, where it has judged it appropriate to do so. Last week the Council resolved to grant planning permission, subject to the completion of a satisfactory s106 planning obligation, for 1900 homes on one of the ELPs strategic sites at Graven Hill<sup>26</sup>.
30. In the case of the appeal site, the appellants will not develop it themselves, it will need to be marketed and sold before any further work can be undertaken on it. It is not therefore correct to state, as the appellants have done, that the site can immediately assist with the acute housing shortfall<sup>27</sup>.

#### Planning Obligation

31. The Inspector has had very full written evidence from both the district and county councils as to the compliance of the contributions sought by both the Councils with the regulation 122 tests<sup>28</sup>.

#### Other matters

32. The Council accepts that the provision of Affordable Housing is a benefit to which substantial weight should be given in the Inspector's decision. The scheme offers 35% Affordable Housing which is consistent with what the emerging plan seeks.
33. In their evidence the appellants pointed to a number of matters that relate to the Examination Inspectors assessment of the soundness of the ELP. These matters

---

<sup>23</sup> POE Smith para 6.24

<sup>24</sup> Council final submissions paras 33-41

<sup>25</sup> Council final submissions paras 42-47

<sup>26</sup> Council final submissions paras 48-50

<sup>27</sup> Smith POE para 6.30

<sup>28</sup> Council final submissions para 57

included things such as the housing targets in the ELP, which the appellants considered to be insufficient, that the evidence base for the ELP is flawed, and that the 35% target for Affordable Housing may have been set too high. These matters are of no, or at most peripheral, relevance to this appeal and are a rehearsal of the ELP examination. It is unwise and serves no purpose to pre-empt the matters that will be considered there<sup>29</sup>.

### Conclusion

34. In conclusion the Council judges that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the scheme, taken as a whole. Granting planning permission now would be contrary to Policy Villages 2 and would drive a coach and horses through the Council's plan to allocate land for residential development between villages by means of the NDPD. This would shut off the opportunities for local involvement and would be prejudicial to the local plan-led system<sup>30</sup>.

### **The Case for the appellants**

The material points are:

#### Policy matters

35. The LP was adopted in 1996 and covered the period to 2001. It is out of date by being beyond its period end date<sup>31</sup>. The Council do not have a 5 year housing land supply in accordance with the requirements of the Framework. Therefore paragraphs 47 and 49 of the Framework are engaged. It follows that the presumption in favour of sustainable development is engaged and is satisfied in this instance. It is therefore incumbent on the Council to demonstrate that any adverse impacts of the scheme would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework, taken as a whole. That would necessitate not some form of equal balance but a balance which is deliberately weighed in favour of the development<sup>32</sup>.
36. The development boundaries in the LP have no significance bearing in mind its age and the clear effect of paragraphs 14 and 49 of the Framework<sup>33</sup>. Policy H18 is a housing supply policy and therefore in accordance with paragraph 49 of the Framework is out of date. Policies H12 and H13 apply to housing within existing settlements and are not therefore relevant to this appeal<sup>34</sup>.

#### Character and appearance

37. The Council's original concerns relating to landscape impact concerned only viewpoint 2<sup>35</sup>. This was later expanded to also include viewpoints 1, 3, 4, 6, 9 and 10. However, it is clear from relevant viewpoints including along Barford Road that the appeal site is neither a designated landscape nor a landscape

---

<sup>29</sup> Council final submissions paras 52-56

<sup>30</sup> Council final submissions paras 58-60

<sup>31</sup> POE Still para 5.2.3

<sup>32</sup> Appellants final submissions para 15

<sup>33</sup> Appellants final submissions para 20

<sup>34</sup> POE Still paras 5.2.6-5.2.9

<sup>35</sup> CD4.24

which has been evaluated as being of high significance or sensitivity in any previous objectively based study. The landscape sensitivity is limited by the proximity of the Gascoigne Way and Woodside Gardens developments and the Bloxham Mill Business Park<sup>36</sup>. The zone of visual influence is relatively small and there are relatively few residential receptors, these being limited to about 11 detached properties fronting onto the site across Barford Road, new houses at Woodland Gardens and the single house at St Christopher's Lodge<sup>37</sup>.

38. Whilst the site will be clearly visible from Barford Road, development on the site will be only minimally visible in the wider area because of the relatively enclosed nature of the site and overlapping hedgerows and trees<sup>38</sup>. It is proposed to include key landscape features that will enhance the development. These include the creation of a strong green frontage to Barford Road and a green filtered edge to the site to screen views from the wider countryside to the east<sup>39</sup>.
39. The description given in paragraph 4.15 of the Cherwell District Landscape Assessment<sup>40</sup> that *potentially these landscapes have a greater capacity to accommodate positive change because their former character has already been so substantially weakened* is appropriate here. Even if, as the Council consider, the landscape is deemed to share the characteristics of a 'repair' landscape there is no reason why development of the scale, size, materials and character proposed would not be acceptable as these would blend into the area with sensitive siting<sup>41</sup>.

#### Housing land supply

40. The extent of the housing shortfall is very acute. Whilst it could be considered that the level of the shortfall does not matter, in that the Council either meets the 5 year housing land supply or it doesn't, it is right to recognise both how acute the shortfall is and how chronic the failure to deliver has been in the district over a very prolonged period of time. The difference between the parties is in the way the shortfall should be made up and the level of buffer that should be applied.
41. It is submitted that there is no good justification for allowing a present (and indeed historic) need for housing to be met over a leisurely period of a further 18 years. That would not fulfil the criteria of significantly boosting the supply of housing. The shortfall should be made up during the first 5 years of the plan (the 'Sedgefield' method). This was the approach adopted by the Inspector in the Honeybourne decision<sup>42</sup> which in turn followed the Secretary of State decisions at both Andover<sup>43</sup> and Moreton in Marsh<sup>44</sup>. This same approach has been adopted by the Secretary of State and his Inspectors in a number of other decisions

---

<sup>36</sup> Appellants final submissions paras 8-11

<sup>37</sup> Summary POE Rech para 3.6

<sup>38</sup> POE Rech para 3.12

<sup>39</sup> POE Rech para 4.6

<sup>40</sup> CD 29

<sup>41</sup> Appellants final submissions para 12

<sup>42</sup> APP/H1840/A/12/2171339 (Still app 18)

<sup>43</sup> APP/X3025/A/10/2140962 (Still app 22)

<sup>44</sup> APP/F1610/A/10/2130320 (Still app 23)

- including at Stratford on Avon<sup>45</sup>. Whilst it is true that the Framework is silent on this issue the Council was unable to point to any instances where the Secretary of State or his Inspectors have, post advent of the Framework, adopted an alternative approach<sup>46</sup>.
42. Paragraph 47 of the Framework provides for an additional buffer of either 5% or 20% to be applied to the 5 year housing land supply requirement. This should be 20% where there is a record of a persistent under delivery of housing. The SoCG (para 6.4) notes that the Council only met the SEP target for housing once in the six years between 2006/7 and 2011/12, resulting in an under delivery of 1256 dwellings.
43. During the Inquiry the Council sought to advance a new numerical case by reference to table 9 of the SHMA<sup>47</sup>. This shows that 3122 dwellings were completed in the years 2001/2 – 2005/6, an annual figure of 624. However, the correct document to test that supply against is the Oxfordshire Structure Plan adopted in August 1998<sup>48</sup>, and not the Oxfordshire Structure Plan to 2016<sup>49</sup> as suggested initially by the Council. This required 750 dwellings per annum, hence there was a shortfall averaging 126 units per year over this period.
44. During the period 2006/7 – 2010/11 the Council produced on average 508 dwellings per annum against a SEP requirement of 670. Upon any proper or realistic basis this is a persistent record of under delivery of housing in the Cherwell area and therefore a 20% buffer should apply. The Council's contention that the district can be sub-divided between the north and the rest in respect of housing completions is without merit. It is not justified by the Framework, is not how the Council has configured its development plans and is not relevant now that the SEP has been revoked.
45. The Council's SHMA identifies a need for Affordable Housing of 831 dwellings per annum (table 49) whilst its ELP proposes only 670 dwellings per annum both for market and Affordable. This would give only 235 Affordable dwellings per annum at the suggested rate of 35%. The alternative is that the number of market dwellings would also need to increase. Whilst these are clearly matters to be considered at the ELP examination, they do indicate that the prospect of the Council seriously engaging with meeting its 5 year housing land supply is presently far from resolved<sup>50</sup>.
46. The lack of progress to date in securing the effective release of any of the large sites in Banbury and Bicester means that there is a clear prospect that the Council's five year housing land supply problem will not be resolved anytime soon. Furthermore, the present deposit draft plan is inconsistent with the Framework in that it does not demonstrate a five year housing land supply at its inception.

---

<sup>45</sup> APP/J3720/A/11/2163206 (Still app 7)

<sup>46</sup> Appellants final submissions paras 17/18

<sup>47</sup> Strategic Housing Market Assessment review and update 2012 (CD 28)

<sup>48</sup> CD33

<sup>49</sup> CD33a

<sup>50</sup> Appellants final submissions para 18

47. The Council have sought to meet this by providing a further explanatory note<sup>51</sup> contending that its plan trajectory shows how it will meet the five year housing land supply in short order. That contention is not accepted and will be the subject of scrutiny at the examination. It depends on the Council being able to release its sites in accordance with a timetable which hitherto has not been realised. It also depends on an untested allowance for windfalls and utilises a 5% buffer and the Liverpool method for distributing the shortfall. This does not provide a sound basis for diminishing the chronic housing shortfall problem, and the suggestion that the trajectory and explanatory note demonstrate a bright future whereby the five year housing land supply shortfall will be met almost exclusively at Banbury and Bicester in the short term is wholly illusory and should be rejected<sup>52</sup>

Prematurity, the plan-led system and recent development in Bloxham

48. Whilst the Framework lends support to the plan led system, it also makes clear that in circumstances where there is no up to date development plan decisions regarding housing supply still have to be made to substantially boost the supply of housing<sup>53</sup>. The application of this policy has been shown in a number of decisions by the Secretary of State on housing locations where there was a lack of a five year housing land supply and the plan making system was at a similar stage as in this case. In the Worsley decision<sup>54</sup> it was noted that *the Salford City Council Core Strategy is in preparation and is not expected to be adopted until 2013. The Core Strategy is potentially subject to amendment and the Secretary of State concurs with the parties that only very limited weight can be attached to the Core Strategy at this stage of its preparation (IR33). He is aware that the Core Strategy was submitted for examination in May 2012, but that does not alter the weight he attaches to it, as there are unresolved objections to relevant policies in the plan*<sup>55</sup>.
49. Limited weight should be attached to ELP for a number of reasons. These include the fact that it has unresolved objections, has yet to be submitted for examination and that it and subsequent DPD documents need to be found sound<sup>56</sup>.
50. In respect of the plans that the Council consider would be adversely affected, the proposed development would not be of a scale that would have any strategic implications for the ELP, and the NDPD and Neighbourhood Plan (NP) have not yet emerged. The NP has to await the emergence of the other two plans. It is clear that when assessing the current circumstances against paragraphs 17 to 19 of the General Principles document<sup>57</sup> that there is no properly founded basis to suggest that the proposal should be rejected by reason of documents still to be drafted<sup>58</sup>.

---

<sup>51</sup> Doc 8

<sup>52</sup> Appellants final submissions paras 23-25

<sup>53</sup> Appellants final submissions para 26

<sup>54</sup> APP/U4230/A/11/2157433 (Still app 5)

<sup>55</sup> POE Still para 7.1-7.4

<sup>56</sup> POE Still para 5.9.7

<sup>57</sup> The Planning System: General Principles January 2005

<sup>58</sup> Appellants final submissions paras 26-31

51. It is unsurprising that Bloxham has received a modest amount of development over the past decade or so as it is very sustainable. This was confirmed by the officer's report where he stated that *in terms of the appropriateness of the development in relation to sustainable travel patterns it is considered that Bloxham in general is one of the district's most sustainable villages, a conclusion reached partially as a result of the accessibility to facilities and the modes of transport other than the car.*
52. There has been no environmental capacity study undertaken for Bloxham so it cannot be said that it has reached any level of environmental capacity, and no difficulty would arise from the release of the site bearing in mind its transport accessibility and lack of constraint in respect of matters such as flooding, drainage and other infrastructure. The Craitlus report <sup>59</sup> commissioned by the Council gave Bloxham an overall rating of 27/30 and concluded that it was worthy of assessment for the development of up to 310 dwellings up to the end of the plan period.
53. Of the other six settlements referred to in the Craitlus report as scoring slightly higher, three have constraints due to the adjacent green belt, Bodicote has already been identified for housing at Bankside phase 1 and Banbury 4 and Launton and Ambrosden have commitments or allocations at Gavray Drive and Bicester 2. The prospect of further settlement releases at these latter locations is highly improbable.
54. The appeal site is the right place to develop and the proposals will enhance the vitality of the village and will meet some of Bloxham's and the district's market and Affordable Housing needs. The illustrative masterplan and supporting reports demonstrate how biodiversity will be improved and how the proposals will enhance this part of Bloxham by delivering positive improvements across all three of the sustainability criteria from paragraph 7 of the Framework<sup>60</sup>.

### Planning Obligation

55. The appellants have provided an executed planning obligation which provides for all of the contributions sought by both the District and County Councils<sup>61</sup>. However, the appellants do not consider that the obligations in respect of secondary school provision, sixth form provision, and special school places provision are necessary. Furthermore, the required contribution for primary education is flawed in terms of the child yield calculation and the education cost multipliers<sup>62</sup>. There are also a number of other requested contributions that are questioned in principle or where the parties differ in the amount that is considered to be justified<sup>63</sup>.
56. For the contribution towards secondary education to meet the Regulation 122 tests the Warriner School in Bloxham has to be at capacity or has to be shown to be at capacity with the introduction of children from the proposed development. However, the Warriner School admissions policy first of all favours those children

---

<sup>59</sup> Cherwell Rural Area Integrated Transport and Land Use Study

<sup>60</sup> POE Still para 9.4.4

<sup>61</sup> Appellants final submissions para 32

<sup>62</sup> POE Nicholson page 9

<sup>63</sup> POE Still para 10.1.1-10.1.4

within its immediate catchment, and then permits pupils from outside of that catchment if places are available in accordance with criteria set down in the admissions policy. As a result of the operation of that policy and due to the space currently available at the school many parents from outside of the catchment area send or seek to send their children to the school. The admissions policy however makes clear that priority should be given to pupils from Bloxham. The implementation of that policy with respect to the children from the proposed development would have consequences for parental choice, but there is no compelling policy justification as to why that ought to be paid for by the appellants in accordance with Regulation 122<sup>64</sup>.

57. Oxfordshire County Council contend that for the purposes of being considered full, spare capacity should be maintained in line with its own policy. The policy provides for 8% spare capacity in urban areas and 12% spare capacity in rural areas. However, the operation of a surplus places policy is not founded on a statutory duty as alleged by the County Council. No such statutory duty exists. The duty of the authority is to provide sufficient schools such that they can operate and secure sufficient places and the operation of the preference is not so as would prejudice the provision either of efficient education or the efficient use of resources<sup>65</sup>. This is borne out by the National Audit Office (NAO) report<sup>66</sup>, which states in paragraph 1.17 that *local authorities' statutory duty to provide sufficient schools does not require them to maintain surplus capacity for parental choice*.
58. There is no Department for Education (DfE) work to demonstrate that the surplus levels required by the County Council are justified. It follows that the County Council are expecting new housing provision to fund new educational secondary provision irrespective of whether there is existing capacity and thereby a demonstrated need. If places are kept as spare places then the obligation cannot be deemed necessary or directly related to the development or fairly related in scale and kind<sup>67</sup>.
59. Furthermore, in October 2012, 40.5% of children attending the Warriner School lived outside the designated catchment area. On average 91 pupils per year group are being admitted from outside the catchment area compared to an impact from the proposed development of less than 4 pupils per year group. As there is an overall surplus of secondary and sixth form places in the Banbury area<sup>68</sup>, it follows that the net effect of the development would simply be to limit the numbers of out of catchment pupils able to attend the Warriner School. This is evidenced by the County Council's stance in not seeking s106 contributions towards secondary or sixth form education on a development proposal in Bodicote. The issue of children attending the local school but coming from outside the catchment area has also been the subject of consideration at another section 78 planning appeal in Stone<sup>69</sup>. In that case 10% of the children

---

<sup>64</sup> Appellants final submissions paras 32-35

<sup>65</sup> Appellants final submissions para 36, taken from Section 86 School Standards and Framework Act 1998 PC Para 4.1

<sup>66</sup> National Audit Office Report *Capital Funding for New School Places* March 2013 (Chillman app 9)

<sup>67</sup> Appellants final submissions para 35

<sup>68</sup> Nicholson app ON01

<sup>69</sup> APP/Y3425/A/04/1156382 Nicholson app 6

- attending the local high school lived outside of the catchment area. The inspector concluded that no contributions should be paid by the developer to fund further school places as it was evident that in the future there would be surplus places at schools that were closer to many of the out of catchment pupils<sup>70</sup>.
60. A further decision letter that supports the position of the appellants relates to a decision at Wokingham<sup>71</sup>. In that case there was existing capacity at an existing school and both the Inspector (and the Secretary of State who agreed with her) considered there was no justification for maintaining a requirement for funding new places given the existence of that existing school provision<sup>72</sup>.
61. The Inspector in this case also specifically considered the position and the approach of seeking to apply a district wide average of SEN pupils to an individual development, with no evidence to demonstrate that this proportion of SEN requirement is likely to arise. That Inspector considered that SEN provision tends to be provided on an individual needs basis rather than in accordance with a predetermined formula based on population statistics and dwelling numbers. The Inspector concluded that in those circumstances the obligation to pay a SEN contribution cannot be fairly and reasonably related in scale and kind to the development, and that conclusion was explicitly accepted by the Secretary of State at DL24<sup>73</sup>.
62. The County Council uses a population forecast model called PopCal10 to calculate the numbers of children that can be expected from a new housing development. There are however a number of omissions from the methodology contained in this approach. Firstly, no allowance is made for the fact that some 54.9% of Cherwell residents, when they move house, move within the district. This may mean that there is a house move that does not give rise to a move between one school and another<sup>74</sup>. Secondly, the overwhelming majority of new residents living in the Affordable Homes will have a local connection. The County Council's PopCal10 methodology is therefore flawed and cannot be relied upon to define the child yield from a new development with sufficient accuracy<sup>75</sup>.
63. A more accurate way of determining the number of pupils generated by a development is to use the County's Survey of New Housing<sup>76</sup> for 2008, which includes houses built between 2003 and 2008. Using the results of this survey would result in a yield of 14 primary school places, 6 secondary school places and 4 sixth form places<sup>77</sup>, compared to the average figures of 25, 10 and 1 respectively arrived at using the PopCal10 method<sup>78</sup>.
64. The County Council also rely upon a cost multiplier which is no longer considered to be appropriate by DfE as indicated in paragraph 12 of the NAO report. This makes clear that in respect of new build development the existing cost multiplier

---

<sup>70</sup> POE Nicholson 4.2

<sup>71</sup> APP/X0360/A/11/2157754 Nicholson app 11

<sup>72</sup> Appellants final submissions para 37

<sup>73</sup> Appellants final submissions para 38

<sup>74</sup> Appellants final submissions para 35

<sup>75</sup> POE Nicholson 4.4.8

<sup>76</sup> CD3.15

<sup>77</sup> POE Nicholson 4.4.11

<sup>78</sup> Nicholson App 3

should be reduced by 30%. Following research the DfE figure to be used as a base cost should be £1113 per sqm<sup>79</sup>. The figures used by the County Council are based on 2007 data inflated to 2010 prices, and reliance on them is not justified. Furthermore, there is no robust justification for saying that the cost of extensions will be greater than those of new build<sup>80</sup>.

65. The correct cost multipliers should be £8631.40 for primary places and £12354.85 for secondary places as opposed to the £11113 and £16746 respectively required by OCC<sup>81</sup>.
66. In light of the above the appellants consider that a contribution of £120839.60 based on the appellants cost multiplier for primary education is justified, but no contributions are justified in respect of secondary and special school places provision<sup>82</sup>. The obligation should therefore take effect, subject to the Inspector's decision letter being favourable, indicating that those items have been omitted or the lower figures substituted for those identified by the County Council<sup>83</sup>.
67. The Council recognise that the provision of the full 35% of Affordable Homes is a benefit to which substantial weight should be attributed. However, given the acute historic shortfall in the provision of Affordable Housing and the presently unresolved uncertainty as to the prospects of future delivery at a high or consistent rate, the significance of the delivery of Affordable Housing on the site should have even more weight attributed to it in the planning balance<sup>84</sup>.

### **The case for Oxfordshire County Council (OCC)**

The material points are:

68. The Education Act 1996 S14 places a duty on Local Authorities to secure that schools *are sufficient in number, character and equipment to provide for all pupils the opportunity of appropriate education*. The meaning of sufficient in number is salient as there is a need for more places to be available than the projected number of children who would take up those places, to allow for fluctuations in the level of demand.
69. The Audit Commission recommends that schools should not operate at full capacity. The 1996 report<sup>85</sup> states on pages 44-45 that *not all unfilled places are surplus....some margin of capacity is necessary to allow parents choice, given that there will be some volatility in preferences from one year to the next....There is no consensus on what the level of unfilled places should be*. Furthermore, the 2002 report<sup>86</sup> reiterates on page 5 that *it is unrealistic and probably undesirable to aim for a perfect match of pupils and places at each school. Some margin of*

---

<sup>79</sup> Nicholson appendix ON10 (webpage extract) and para 4.5.3 of his POE

<sup>80</sup> Appellants final submissions para 40

<sup>81</sup> POE Nicholson 4.5.2/4.5.6

<sup>82</sup> POE Nicholson 5.1.1-5.1.11

<sup>83</sup> Appellants final submissions para 41

<sup>84</sup> Appellants final submissions para 43

<sup>85</sup> Trading Places; The Supply and Allocation of School Places (Chillman app1)

<sup>86</sup> Trading Places – A Review of Progress on the Supply and Allocation of School Places (Chillman app 2)

*capacity is necessary to allow parents choice, given that there will be volatility in preferences from one year to the next.*

70. The Audit Commission's School Places Tool of 2010<sup>87</sup> does not recommend a single surplus level but indicates that authorities should aim to have no more than 10% surplus capacity. This is because the surplus requirement is likely to vary from authority to authority, according to their circumstances. The document referenced above records Oxfordshire's primary schools as having, in 2009, *a 10% surplus which is the 10% generally agreed as the level providing both good use of resources and an opportunity for parents to express a preference.*
71. The 2013 NAO report<sup>88</sup> confirms in paragraph 1.17 that it is reasonable for authorities to aim for between 5 and 10 per cent primary surplus to allow them some opportunity to respond to parental choice and in paragraph 1.16 that 5% is *the bare minimum needed for authorities to meet their statutory duty with operational flexibility, while enabling parents to have some choice of schools.*
72. The 2004 Oxfordshire School Organisation Plan<sup>89</sup> stated that the Council has decided that a figure of 10% unfilled primary and secondary places would be sensible for planning purposes. This plan was adopted under a statutory process as per the Schools Standards and Framework Act (SSFA) 1998 which predated the Education and Inspections Act 2006. The Plan's overall target of 10% spare places was refined for primary schools to targets of 8% spare places in urban areas and 12% in rural areas as a parameter for the Oxfordshire Primary Strategy for Change<sup>90</sup> which was first approved by the County Council Cabinet in July 2006, with the overall strategy approved by the DfE in 2009.
73. Furthermore, at a county level, annual fluctuations in demand for school places as shown by on-time applications for reception places, has in several recent years exceeded the 5% bare minimum places<sup>91</sup>.
74. There are two important measures of school capacity. The first relates to the net capacity and is assessed using a methodology determined by the DfE in statutory guidance in 2002<sup>92</sup>. This method gives the average number of surplus places across a school and is a suitable measure for circumstances when a school population is relatively stable. It does not however account for trends in numbers, where for example, higher year groups may have fewer children than lower year groups.
75. The second important measure is the availability of places for first admission into schools, indicated by the school's Published Admission Number. This takes into account the situation where there may be surplus places higher up the school but insufficient places for reception children. Section 2 of the Education and Inspections Act 2006 inserts sub-section 3A into S14 of the Education Act 1996. This places a duty on local education authorities to exercise their functions under

---

<sup>87</sup> Chillman app3

<sup>88</sup> Capital Funding for New School Places (Chillman app 9)

<sup>89</sup> Chillman app 4

<sup>90</sup> Chillman app5

<sup>91</sup> Doc 9

<sup>92</sup> Assessing the Net Capacity of Schools (Chillman app 7)

- this section with a view to securing diversity in the provision of schools, and increasing opportunities for parental choice. A local authority therefore needs to secure sufficient places for reception children, notwithstanding whether or not there are spare places further up the school<sup>93</sup>.
76. Section 86 of the School Standards and Framework Act 1998 places a duty on OCC to comply with any preference expressed by parents provided compliance with the preference would not prejudice the provision of efficient education or the efficient use of resources. Section 1 of the Education and Inspections Act 2006 inserts sub-section 1(b) into S13 of the Education Act 1996, which places a duty on local education authorities in England to exercise their functions under this section with a view to ensuring fair access to educational opportunity. Section 2 of the Education and Inspections Act 2006 inserts sub-section 3A into S14 of the Education Act 1996, which places a duty on local education authorities to exercise their functions under this section with a view to securing diversity in the provision of schools, and increasing opportunities for parental choice.
77. Parents/carers will invariably apply for some schools in preference to other schools. This leads to some schools being more popular than other schools. Sub-section 3A of S14 of the *Education Act 1996*, places a duty on OCC to give regard to this in discharging its statutory functions. Moreover, paragraph 72 of the Framework states that the Government *attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities*.
78. Therefore, even if there were an overall surplus of school places in a local area, pressure would be likely to be applied to the more popular schools by pupils yielded by developments and this effect needs to be mitigated.
79. The loss of amenity for current residents in the area of a development is a material consideration. The amenity of access to a preferred school is of very high value to residents with school age children, and potential loss of such an amenity should be given significant weight.
80. Where a school is very popular, there is a tendency for the pupils that attend it to come from a larger area than is the case for a less popular school. Oxfordshire's admission rules sets out that, when there are more applicants than places available at a school, the criterion for allocation of places within an admission category relates to home to school distance. Therefore, children who live in a new development close to a popular school would be allocated places instead of the pre-existing resident children who live further away than the new development, who would otherwise have been allocated places had the development not taken place. Thus pre-existing resident children would be displaced by new children who come to live in a new development. Developers should mitigate this effect by facilitating the provision additional places at appropriate schools in the area of a proposed new development<sup>94</sup>.
81. Oxfordshire County Council uses PopCal10 to assess the infrastructure needs associated with new housing developments. This calculator was commissioned by the Oxfordshire County Council Strategic Sites Programme Board (SSPB)

---

<sup>93</sup> POE Chillman paras 3.1-3.12

<sup>94</sup> POE Chillman paras 4.1-5.2

- in 2009, has been validated by the Oxfordshire Data Observatory, and judged sound by all five constituent district councils, as well as the Oxfordshire PCT.
82. PopCal10 uses data from the Oxfordshire Survey of New Housing 2008<sup>95</sup> and takes into account the district within which the proposed development is located, the number of dwellings, the mix by size and tenure and expected phasing. It reflects that the population profile of new housing is significantly different from the wider population, and calculates a time-based profile of population change rather than taking a snap-shot. The projected number of state-funded school pupils assumes 15% of the population will attend non-state funded schools, and that 36% of the relevant age group will attend state school sixth forms. The assessment of likely impact is made not on peak demands but averaged over seven years for primary population, five years for secondary (11-16) population and two years for sixth form population. Where this projected number of pupils cannot be appropriately accommodated within existing school infrastructure, developer contributions are then sought.
83. The appellants' calculations are based on the same base date as that used by OCC. The difference is that PopCal10 tracks the maturation of the population over time whilst the appellants' method is a snapshot in time. A snapshot approach has the effect of implying that pre-school children never become school children. This leads to a significant difference in estimated pupil generation as new housing typically has a higher number of very young children<sup>96</sup>.
84. The DfE estimates the average cost for new build and extensions to schools across the country. Although it has been OCC experience that the figures used under-estimate actual build costs in Oxfordshire, in the absence of a fully-costed school capital project, the County Council accepts the use of the DfE cost multipliers for extensions of schools, adjusted for regional variation and local requirements for ICT provision and fire suppression. Based at Q3 2009 pricing levels these are £11113 per child for primary school extensions; £16746 per child for secondary school extensions; and £17812 per sixth form student for the expansion of secondary schools. The expansion of Special Educational Needs (SEN) provision is assessed to cost £29278 per child requiring a place at an SEN school.
85. Using the methodology outlined above the contributions required are £279719 for primary, £263419 for secondary, £45769 for sixth form and £12900 for special needs<sup>97</sup>.
86. Bloxham primary school has a total capacity of 420 places. In October 2010 there were 410 children in the school giving a spare capacity of 2.6%. The only year group with significant space is however the current year six, who will leave in July 2013, and in 2012 the school was over-subscribed. Schools in the area are also experiencing an existing deficiency of capacity to meet parental demand. In the schools feeding the Warriner School there were 239 applications for 231 reception places, with less than 4% average spare capacity over the four schools. If the age group leaving this year are excluded from this calculation then there is less than 2% spare capacity. This is significantly below the margin of spare

---

<sup>95</sup> Chillman app 8

<sup>96</sup> Doc 9

<sup>97</sup> POE Chillman paras 6.1-6.5

- capacity identified by the DfE and the National Audit Office as necessary to allow parents choice, given that there will be volatility in population and preferences from one year to the next.
87. This pressure on school places extends further afield, including Banbury, where last there were 686 first preference applications for 643 places, requiring one of the town schools to accept an additional reception class at short notice. It was able to do so as it had room. The pressure on places is forecast to continue to grow, and feasibility studies are underway to expand three Banbury primary schools. There is therefore an existing deficit of school places in Bloxham, across the surrounding villages and also the wider area, which the children generated from any housing development would exacerbate. The County Council has measures underway to remedy this deficit, through feasibility studies underway at two local village primary schools and three schools in Banbury.
88. Taking into account the capacity at Bloxham Primary School OCC therefore considers the proposed development unacceptable in terms of educational infrastructure. There is however appropriate mitigation through the expansion of other primary schools in the area. The reason for this is that Bloxham Primary School's catchment contains areas which are shared by other schools, two of which are being considered for expansion in response to other proposed housing developments, in the nearby villages of Hook Norton and Deddington. In each of the year groups at Bloxham Primary Schools, 7-13% of pupils live in these shared catchment areas. These overlapping catchments mean that it is possible for a growing primary school population within Bloxham to be accommodated at Bloxham Primary School, as the consequence will be the displacement of children in the overlapping catchment areas to their alternative schools.
89. OCC therefore seeks developer contributions towards the expansion of Hook Norton Primary School and/or Deddington Primary School in order to increase primary school capacity in the area and allow the impact on education infrastructure of housing development in the Bloxham area to be satisfactorily accommodated, thus mitigating the effect of this housing development.
90. It should be noted that this suggested approach to mitigating the primary school impact of this development may not be considered acceptable by all, as parents in the overlapping catchments will experience a loss of amenity in the form of reduced choice. Where older siblings are already at Bloxham Primary School and younger siblings are displaced to alternative schools, this would be particularly difficult. Some of the local community, therefore, are likely to consider that there is no appropriate mitigation for the impact of Bloxham housing development on primary education<sup>98</sup>.
91. The Warriner secondary school has an intake of 228 children into each year group, and a total capacity of 1140 places from Years 7-11. As of January 2013 there were 1124 children at The Warriner School, leaving 1% spare places. The school is regularly oversubscribed, resulting in young people being turned away. The number of first preference applications for the 228 available places received in 2013 was 260.

---

<sup>98</sup> POE Chillman paras 7.1-8.6

92. OCC accepts that the Warriner School currently has out-of catchment children on roll, mostly from the Banbury area. This is the result of patterns of parental preference. It also accepts that it would be numerically possible (over time) to accommodate additional pupils from within Bloxham at the Warriner School by gradually displacing Banbury pupils to Banbury schools, without the need for school expansion, as there are currently spare places across the Banbury secondary schools.
93. However, this would not give due regard to parental preference, and would result in a loss of amenity to young people already living in the area who would be less likely to secure a place at their first preference school as a direct result of this housing development. As such it would go against the intention of NPPF para 72 by reducing the choice of school places available to meet the needs of existing and new communities. Expansion of the Warriner School would be a proactive, positive and collaborative response to meeting the needs of these communities, and one which is realistically achievable within the current school site.
94. OCC has proposed measures to mitigate the impact of the proposed development, through the expansion of The Warriner School. The county council therefore seeks developer contributions from this development on a pro rata basis towards the expansion of the Warriner School.
95. The school has already embarked on a capital programme to expand capacity, in the first instance through a dedicated sixth form area to support its extension of age range which will provide some, but not all, of the additional capacity which will eventually be required. Section 106 contributions for secondary education from previous housing developments in the area have been allocated towards the cost of this project as, while the lack of a sixth form was an existing deficiency, housing development which has generated increased numbers of sixth form students in the area had exacerbated that deficiency. The current capital project is viewed as the first phase of a longer term programme of further expansion to meet the needs of both 11-16 and post-16 students, towards which S106 contributions are sought from this and future housing developments<sup>99</sup>.
96. The school extension build cost multipliers are based on DfE data and have been calculated by the council's property costs advisors. These multipliers have been used for assessing the impact of developments across the county and are reflected in the relevant District Council supplementary planning documents. The appellants propose an alternative cost multiplier based on recent DfE announcements. OCC recognises that the county's cost multipliers need to be reviewed and this work is underway. Until that work is complete however, OCC do not accept the appellants' interpretation of the DfE announcements.
97. The £1113/sqm cost quoted by the appellants relates to a suite of standardised drawings and specifications which can be applied across a wide range of educational facilities. It does not directly translate into lower costs for extending existing schools for a variety of reasons. These include the fact that the cost does not include external works and does not take into account site specific circumstances, which can be a significant cost factor, local factors and fees. Furthermore the figure of £1113/sqm is calculated in the context of the Priority

---

<sup>99</sup> POE Chillman paras 9.1-10.2

- School Building Programme's PFI programme. This aims to achieve savings through bulk procurement and standardised designs, thus benefitting from economies of scale. This does not apply to extensions of individual schools.
98. The number on roll in Oxfordshire's special schools has risen over recent years from 795 in 2007 to 859 in 2012. The special school population is expected to continue to grow as new housing is built and the already rising birth rate feeds through. Forecasts of future expected special school pupil numbers were calculated in 2012. At that time, it was forecast that pupil numbers in 2013 would total 890, so 2013's growth has exceeded recent trends, at 4.4%.
99. SEN schools do not have a formal capacity assessment methodology in the manner of mainstream schools, as their ability to accommodate children depends on the specific needs of each child. The existing SEN schools have already identified a growing pressure on available capacity. 1.02% of school children in Oxfordshire are educated at special schools. It is reasonable to assume that the same proportion will apply to increases in population as a result of new housing development. Therefore the county council seeks developer contributions towards the cost of expanding SEN provision on the basis of 1.02% of the pupil generation expected from this development.
100. The next priority for capital investment in Oxfordshire's SEN schools is the provision of additional capacity at Frank Wise School in Banbury. A bid is currently being prepared to the Education Funding Agency for matched funding towards this accommodation, to supplement Basic Need and S106 funding. An "Invest to Save" proposal is also well advanced to build a new autism school in Oxford at an estimated capital cost of £4m to accommodate children who are currently taught out of county due to a shortage of appropriate provision<sup>100</sup>.
101. In contrast to the 2012 Stone<sup>101</sup> appeal, at a more recent appeal in Surrey<sup>102</sup>, the Inspector concluded in similar circumstances to those at Bloxham that developer contributions were justified to expand an oversubscribed school despite a significant number of out of catchment children, in order to reflect parental choice and meet individual circumstance<sup>103</sup>.

### **The case for the objectors**

*Councillor Chris Heath*

*The material points are:*

102. The Parish Council and local community are totally opposed to this proposed development which, apart from one abstention, was voted unanimously against at the committee meeting. An important sentence in paragraph 17 of the Framework is the one that mentions *a genuinely plan-led system which empowers local communities to plan positively for their area*. This application does the exact opposite and has actually hindered the Parish Council's efforts to produce a Neighbourhood Plan.

---

<sup>100</sup> POE Chillman paras 11.1-12.2

<sup>101</sup> APP/Y3425/A/04/1156382 Nicholson app 6

<sup>102</sup> APP/C3620/A/12/2181175 (Doc )

<sup>103</sup> Chillman supplementary notes (Doc )

103. The proposed development does not satisfy the Framework's three dimensions of sustainability. It would be an encroachment into the open countryside, destroying its intrinsic character and beauty with added burdens to infrastructure. It will result in additional pollution from vehicles and does not show any attempt to create a low carbon environment. In terms of the social role the development presumes to dictate what the present and future needs of the community are.
104. The need for Affordable Housing in the village has been overstated. There are only 17 applicants in Bloxham, some of whom may wish to reside elsewhere in the district. If all the current applications are approved Bloxham will have increased in size just short of 25%. This is like putting three small villages into the village. The proposed numbers in Bloxham of 220 houses is completely out of sync and will totally destroy any chance that the village can create a realistic neighbourhood plan.
105. The village is already bursting at the seams with traffic and flooding problems, power outages and surgeries and schools that are at capacity. It cannot therefore be considered to be a sustainable location.
106. Schools, and especially primary schools, are the basis of communities. If children from the proposed development fill the school then future Bloxham children and those from surrounding villages will have to attend other schools further away from the village. Whilst the County Council state the case for expansion of Hook Norton and Deddington primary schools it should be noted that Deddington is also in the throes of opposing a speculative house building plan for 85 new homes in their village, meaning that they will require any spare school places themselves if that application was approved. Some of the local community in surrounding villages would consider that there is no appropriate mitigation for the impact of Bloxham housing development on primary education.
107. The development of this site should not be justified on the basis of the temporary land supply deficiency alone, the village has taken more than its fair share of housing in the last few years and along with other villages in the area we feel we are under intense attack by developers trying to get under the wire before a local plan is adopted. The proposed development is not in accordance with the LP, the Framework or the ELP.

*Mrs Jenny Yates on behalf of Bloxham Parish Council*

*The material points are:*

108. Bloxham is located within an Area of High Landscape Value. Consequently planning permission should require especial consideration of harm to the historic value of the landscape or of any inconsistency with local character and rural heritage. What is required is a planned/phased growth, with an even spread across the village that considers the infrastructure of the village.
109. To add another 75 homes in any one area of Bloxham is the same as adding a small village. This development would compromise the soft edge to the village that the adjacent development on Barford Road achieved and its density does not reflect the housing on either the Barford Road or the Bloxham Park areas it would face. It would destroy the visual gateway to the village, replacing views of the historic church with roof tops and walls.

110. Bloxham continually suffers from reductions and cut-offs to both electricity and water, and the Fire and Rescue Service have made the point that *the proposed development will place additional strain on its existing community infrastructure*. The sustainability of Bloxham has been overstated. There is no direct bus route to the hospital in Banbury, bus timetables are such that only 1% of residents travel to work on the bus and there are no cycle routes suitable for daily work journeys. The earliest bus leaving Bloxham for Banbury is at 07.27. Anyone going to London on public transport would not arrive until 9.28 and the last bus back from Banbury is at 18.05. The bus route referenced by the developer as being near the site is only a once per week service.
111. Both the A361 and the mini-roundabout junction of Barford Road and the A361 are over capacity. Further evidence regarding the traffic situation in Bloxham will be presented by Mr Morris on behalf of the Parish Council.
112. Bloxham Primary School is at capacity without the impact of the proposed development. Displacing existing and future children from Bloxham Primary School to schools in surrounding villages cannot be considered to be a feasible solution for a number of reasons. These other schools have limited capacity and have proposed housing in their own villages and the building extensions could not be implemented quickly enough. A solution involving parents delivering children to two different primary schools is completely unacceptable. Furthermore, the idea of improving facilities at Hook Norton and Deddington does not take into account the wishes of parents who prefer their child to attend the best rated school possible, which in this case is Bloxham.
113. Cherwell has planned for development in appropriate numbers and locations in its ELP and as such has been complimented by the Planning Minister who stated *I conclude by returning to the example that Cherwell District Council offers to the whole country, particularly to other parts of England with areas of great housing need and housing demand. The authority embraces its responsibilities. It is imaginative and creative, and, with my hon. Friends support and leadership it is coming forward with exactly the kind of proposals that this government want to see. I would love it if more authorities wanted to act in this way. I hope that they will be inspired by the work of Cherwell District Council.*

*Mr Stephen Phipps*

*The material points are:*

114. The site is agricultural land with very poor infiltration rates. The proposed development will result in more surface water unable to drain other than to the proposed ponds and their surrounding area. This will concentrate the water to a limited area which is presently spread across the whole field. The Flood Risk Assessment indicates that following attenuation storage on site the water will be pumped into the surface water public sewer in Barford Road. All of the water from this sewer is discharged into a ditch south of Bloxham Mill. However, this sewer is already stressed due to storm flows from existing sources.
115. The Environment Agency recommended refusal of the planning permission and stated that a pumped system should only be proposed as a last resort, and that in that case the developer should provide a management strategy of how the surface water would be managed should the pump fail. This later eventuality could happen as Bloxham suffers from annual power outages in storm conditions.

As gravity discharge is not possible it is difficult to see how a suitable management plan could be devised. There is also concern as to how the storage ponds on the site could be made safe on a family home development.

116. In respect of foul drainage provision, Thames Water has indicated the need for a Grampian style condition in order to prevent sewage flooding. This casts doubt on the capacity of the Bloxham infrastructure to accept further development, particularly when the flow rates indicated from the proposed development would, on their own, fill the foul sewer. Also, once again the sewerage from the site entering the system on Barford Road would be reliant upon a pumped system.
117. The response from Thames Water comments on the minimum drinking water pressure available to the site. The implication is that Bloxham is on the limit of the water supply to the area and casts doubt on the capacity of the infrastructure in Bloxham to accept further development.
118. The potential for sewage and water flooding is clear and has been highlighted by Thames Water and the Environment Agency. The development should be refused as the issues raised cannot be guaranteed to be fully resolved bearing in mind the size and location of the development and will present ongoing significant and demonstrable risk both to present and future residents.

*Mr Michael Morris on behalf of Bloxham Parish Council*

*The material points are:*

119. The parish council has had its own traffic survey undertaken in preparation for the Neighbourhood Development Plan. This survey and those commissioned by the developers of this site and the adjacent Gladmans site all identify potential problems in terms of capacity at the mini-roundabout at the junction of the A361 and Barford Road.
120. The appellant's traffic assessment concluded that when the proposed development is completed and occupied the Rate of Flow to Capacity (RFC) would be 0.968, below the figure of 1.0 and therefore acceptable. However, the common sense conclusion is that as the former figure is so close to the latter, then serious congestion would occur. There are also serious discrepancies in the figures presented in this appeal and the one from the adjacent Milton Road development, with the RFC figure for the combined developments given by the appellants in this appeal less than that given in the Milton Road appeal for that site alone.
121. The traffic assessment commissioned by the Parish Council pointed out that the County Council, as highway authority, has suggested that a sum of money, amounting to a total of about £159000, be offered by each developer of the adjacent sites. The assessment then goes on to question how this money would be used, as no mitigation proposals have been provided by either the County Council or the developer.
122. The effectiveness of a minor improvement suggested by Gladman's traffic consultant is highly questionable. It would also result in a reduction in pavement widths around the roundabout which would lead to greater danger for pedestrians and cyclists. Whilst the County Council has indicated that it has a strategy for the mini-roundabout, this is not the same as a solution.

123. Given the additional developments happening in the area (530 houses since 2009) the volume of traffic and consequent congestion will only increase. This will be impacted on by the industrial developments being planned for Banbury, whose lorries will use the A361 as it is the main arterial route connecting to the M4 and the south-west. Emergency services will no doubt experience delays due to the increased traffic congestion. There is also a problem in terms of capacity and pedestrian safety with the junction of Milton Road and Barford Road.
124. In conclusion, Barford Road, its junction with Milton road and especially the mini-roundabout junction with the A361 will not be able to safely cope with the increased traffic brought about by this proposal and the siting of any further large scale development on this side of the village.

*Mr Mike Davy*

*The material points are:*

125. The housing expansion in Bloxham over the past four years has been inappropriate. Following the developments on Milton Road the Parish Council sought the views of the village on the viability of progressing a Neighbourhood plan as the Localism Act 2011 and the Framework enabled us to do. At subsequent meetings the community recognised that any new development should be reflective of the character of the village and the need of the community rather than as a result of speculative housing.
126. The Neighbourhood Plan will address the issue of the shortage of Affordable Housing and work with local landowners and the Council to promote the construction of homes that are required in the village. The needs of the village may be addressed by the construction of high quality smaller homes for the older residents to purchase thereby raising equity from their existing homes whilst providing opportunities for younger families to move to larger properties. This would assist in balancing the demographic of the population of the village.
127. The granting of this appeal, which could influence the outcome of other appeals in the village, will undermine the villager's commitment to the production of the Neighbourhood Plan.

*Mr John Groves*

*The material points are:*

128. The local community have been involved in the creation of a Neighbourhood Plan (NP) since December 2011. During the intervening period time and effort has had to be spent in resisting developments seeking to take advantage of the assumption in favour of sustainable development. However the work on the NP has since resumed. We have undertaken substantial training, clarified key village concerns, produced an organisational structure, a schedule and a budget. The plan has been advertised and is scheduled to be presented to the district council on 20 May 2013. We understand that the ELP may be subject to challenge and change and that we will also need to see the NDPD, but that does not prevent us pushing ahead with something consistent with the LP's broad strategic objectives.
129. The residents have done everything asked of them by Government. They are positive in their approach to development and have embraced the process put

forward in the Localism Act 2012. Allowing the appeal would overtly undermine this system and bring it into disrepute.

*Mr John Braithwaite on behalf of South Newington and Milcombe Parish Councils and Milton Parish Meeting*

*The material points are:*

130. Bloxham is a hub that provides services for a cluster of other villages including Barford St Michael and St John, Milcombe, Milton and South Newington. These services include primary and secondary schools, doctors' surgery and dispensary, dental practice and a small number of shops. Increased demand for these services from within Bloxham will reduce the availability of key services to the surrounding villages, reducing their sustainability.
131. The best example of this is primary school education. The primary schools in Bloxham, Hook Norton, Deddington and Adderbury are for all practical purposes full. If demand for places at Bloxham Primary requires entries to be restricted then the County Council entry policy makes clear that children from the host village will have preference. If the children of a village can attend the same school it makes an important beneficial contribution to the social fabric of the village. The result of the proposed development would be that children from the villages would have to attend a variety of schools which would have an adverse effect on the social sustainability of the villages. This would also be likely to result in longer journeys which would be contrary to the sustainability objectives of the Framework.
132. We also share the concerns of Bloxham Parish Council regarding the traffic impact on Milton Road and the Milton Road/Oxford Road junction. A second concern regarding traffic is that a way of avoiding queues is to take an alternative route towards Banbury via Tadmarton Road and Courtington Lane. This rat-run leads to congestion in these roads which causes a danger to parents and children accessing Bloxham Primary School which is at the junction of these roads.
133. There is also only limited off-road parking by the shops in the centre of Bloxham. This, combined with the increasing use of the A361 by large lorries means that it is often only possible to use one side of the carriageway in that area. The increased congestion is likely to discourage residents of the surrounding villages from using the shops in Bloxham, again reducing the sustainability of the villages.
134. The range of services available in Bloxham as outlined by the appellants is incorrect, in that it gives a far greater range of services than actually are available. The ELP is well thought out and provides a sound vehicle for the sustainable development of the district. Speculative development like that proposed makes plan led sustainable development impossible to achieve.

## Written Representations

*Sir Tony Baldry MP*

*The material points are:*

135. Attention should be drawn to the debate held in the House of Commons on Friday 18 January and in particular the comments of the Planning Minister. Attention should also be given to the fact that the Secretary of State has decided to call in the planning application relating to the Borne Lane, Hook Norton development. Given that the issues raised in this appeal are almost identical to those raised in the Borne Lane appeal, it is very difficult to see how any inquiry could dispose of this appeal until they have had sight of the decision of the Secretary of State for the Borne Lane appeal.

*Others*

136. Written representations were also received from a great number of individuals. All apart from one objected to the proposed development. Rather than detail each individual objection I will outline the main points raised, which were similar in nature to those points made by the above objectors. They related to traffic congestion and safety, the capacity of local services including schools and doctors surgeries, and the flooding situation in the village. Other points concerned character and appearance, utilities provision and that the proposed development was not sustainable and not plan led.

## Conditions

137. A list of proposed conditions was provided within section 8 of the SOCG. However, during the Inquiry the appellants provided an amended draft schedule of conditions and these were discussed in full at the Inquiry. My recommendations regarding conditions are based on the outcome of this discussion. Where necessary I have separated, combined or amended the wording of agreed conditions (numbers shown in brackets) in the interests of precision and clarity and in order to comply with advice in Circular 11/95. This amended list of conditions is shown within the attached schedule, and I suggest that they be imposed if the Secretary of State decides to allow the appeal and grant planning permission for the proposed development.

138. As the application is in outline it would be necessary to impose the standard outline conditions setting time limits for the submission of reserved matters applications and start dates. The original draft conditions shown in the SOCG had time limits of one year for both the submission of reserved matters and the start date. In the revised conditions supplied by the appellants these times had changed to two years. The reason given by the appellants for this change was that a lot of work needs to be done prior to starting on site. The Council in turn pointed to several previous decisions where time limits had been reduced. It seems to me that as one of the appellants' justifications for the development is the shortage of housing in the district, then the sooner that the development goes ahead, if permitted, then the sooner that shortage can be addressed. For this reason I have recommended the imposition of one year time limits in both of the standard outline conditions (2 & 3).

139. The outline application was accompanied by a Design and Access Statement (DAS) and therefore a condition is required to ensure that the reserved matters

referred to in condition one are broadly in accord with the principles that were enshrined in the DAS and were before the Inquiry. During the discussion regarding conditions it was pointed out by the Council that part of the appellants' argument relating to character and appearance was that the development would blend in better with the environment if the dwellings on its eastern edge were bungalows. This matter is therefore referred to in the condition relating to the DAS (5).

140. The outline application was for 'up to' 75 dwellings. To prevent overdevelopment it would be necessary to ensure that this number of dwellings is not exceeded. Furthermore two plans accompanied the application that were not purely for indicative purposes. A condition is therefore required to identify these plans. Included with this condition is the specification of the dwelling numbers (4). To prevent the development from causing problems in relation to either surface water or foul drainage, conditions would be necessary to ensure that details of these are submitted and approved prior to construction taking place (6,7). It would also be necessary to ensure the provision of the public open space and play areas as shown on the indicative drawings (15).
141. To protect the amenities of local residents during the construction period a Construction Method Statement should be submitted for approval (8). For the same reason a condition relating to working hours should be imposed (9). Landscaping of the site is essential for its harmonisation with the area and therefore the submission of landscaping details and the long term management and maintenance arrangements of that landscaping would be necessary(10) & 11). Similarly it would be necessary to impose a condition aimed at protecting the existing trees and hedgerows on the site (12).
142. Affordable Housing accounts for over 30% of the proposed dwellings and it is necessary to ensure the arrangements for this in terms of the tenure, phasing, positioning and arrangements for future management (13). It is also necessary that the phasing of the site overall is agreed prior to the development taking place (14).
143. Finally, as sustainability is a major plank of planning policy a condition relating to the provision and implementation of a travel plan would be necessary (16).
144. It should be noted that on the adjacent development site at land off Milton Road, Bloxham (2189191), the Council requested conditions relating to a biodiversity enhancement scheme and a sustainable homes code. These conditions were not requested in the present scheme but are in the interests of both the environment and the living conditions of future residents and in my view should be imposed. It may therefore be appropriate for the Secretary of State to contact both parties with reference to these, prior to a decision, if he intends to allow this appeal.

**The report continues on the next page**

**Conclusions** (references in square brackets are to paragraphs in this report)

*Policy position*

145. The main parties agree that the Council cannot demonstrate a five year supply of housing land for the period 2012-2017 [11]. In line with paragraph 49 of the Framework it follows that relevant policies for the supply of housing should not be considered to be up to date. Paragraph 49 also makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development. Paragraph 14 of the Framework makes clear that for decision-taking this means approving development proposals that accord with the development plan without delay and where the development plan is absent, silent or relevant policies are out of date, granting permission unless either any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or, specific policies in the Framework indicate development should be restricted.
146. My attention has not been drawn to any specific policies in the Framework that indicate that the development should be restricted so it is necessary to address the local development plan and the various policies put forward by the Council. The Council accept that, to the extent that policies H12, H13 and H18 limit housing development, they are out of date [15]. The Council do however consider that, as these policies serve to protect the countryside outside of settlements, some weight should be attributed to them. They particularly point to policy H18 in this respect which they consider, because it offers protection to the intrinsic character and beauty of the countryside, to be in line with the Framework [16]. The appellants, in contrast consider policy H18 to be out of date and as such not attracting any level of weight [36].
147. I take the Council's position on this matter, particularly in respect of policy H18 which paragraph 2.76 of the LP makes clear has a function of protecting the countryside [16]. However, given the time expired nature of the LP and the fact that 60% of new housing will have to be on greenfield land<sup>104</sup> I consider that only limited weight can be afforded to policy H18. Whilst some limited weight can be attributed to policy H18, the development plan is nonetheless dated and does not contain housing sites in line with future need. I therefore also consider that the second bullet point of paragraph 14 of the Framework is brought into force, and that consequently to dismiss the appeal would necessitate showing that any adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
148. In terms of the NSLP, no policies are referred to in the putative reasons for refusal and I can in any case only afford this document extremely limited weight as it never went through the full consultative and adoption procedure. I will return to the matter of the ELP in due course.
149. Firstly however it is necessary to consider the sustainability credentials of the site, as sustainability forms the central thrust of the framework. The village contains primary and secondary schools, a health centre and a dental practice,

---

<sup>104</sup> B.98 ELP

several convenience stores, a newsagents and post office<sup>105</sup>. There is an hourly bus service to Banbury although I note that this has limitations in respect of early morning and evening services [110]. The Craitlus report commissioned by the Council gave the village an overall rating of 27 out of 30 and concluded that it was worthy of assessment for the development of up to 310 dwellings [52]. I do note however that the Craitlus report aimed *to identify the transport and land use impacts of potential new housing development in rural areas*. It is not therefore an holistic study looking at sustainability in the broadest sense.

150. I also note the Council's view that whilst Bloxham may be sustainable relative to other villages, it is not when compared to the main urban areas of the district [25]. Furthermore, the appeal site is on the edge of the existing settlement which means that the walk to the village centre would take about 15 minutes and to the Warriner School about 25 minutes. Also, the A361 through the village is not an environment likely to encourage cyclists. However, I am also conscious that the Council have recently granted planning permission for two housing sites in close proximity to the appeal site.
151. Paragraph 7 of the Framework makes clear that there are three dimensions to sustainability, these being economic, social and environmental in the broadest sense. The proposed development would certainly produce jobs during the construction phase and future residents would spend money within Cherwell, some of which would be within the village. The proposed scheme would provide much needed market and Affordable Housing and, in terms of environmental impact, would retain boundary hedgerows and existing trees wherever possible and would provide open space and new ponds. I note that many of these positive factors would be delivered by other similar developments and should not therefore be overstated. However, although not necessarily greater than delivered on other schemes, the economic and social benefits still add to the factors that weigh in favour of the scheme.

#### *Character and appearance*

152. The Council questioned the appellants' submitted Landscape Visual Assessment (LVA) and considered that they had wrongly interpreted the landscape character of the site in relation to the district wide Landscape Character Assessment. The Council considered that the appeal site should be classified as a 'repair' landscape rather than a 'restoration' landscape as concluded by the appellants [17]. Repair landscapes are defined within the LVA as ones where the landscape character is *still reasonably strong and worthy of conservation, but where some or all of the individual features of overall structure are showing noticeable decline*. The LCA goes on to state that these landscapes should be *able to absorb limited areas of sensitive development*. Restoration landscapes are defined by the LCA as being *landscapes that are often quite seriously degraded, although they do retain some discernable remnants of their former character*. These landscapes are described as having *a greater capacity to accommodate positive change because their former character has been so substantially weakened*.
153. It seems to me however that such definitions tend to refer to larger landscape areas rather than individual fields, and I am not persuaded that there is any great merit in pursuing a detailed dissection of the merits of the appeal site in

---

<sup>105</sup> SoCG para 4.3

relation to definitions contained within the LCA. Similarly I see little merit in assessing whether or not a particular methodology has been scrupulously followed [18]. The fact is that the appeal site is an agricultural field on the edge of the village. It has housing to the south and north and the Bloxham Mill Business Park further to the east. Building houses on an agricultural field must in my view result in an adverse impact, but any measure of the magnitude of this impact has to take into account the surrounding development and the zone of visual influence of the site.

154. The latter is relatively small due to existing hedgerows and trees and the relatively flat topography of the site. I also note the appellants' intention to create a strong green frontage to Barford Road [38]. The most affected residential receptors would be the dwellings on the opposite side of Barford Road, St Christopher's Lodge and the newer houses at Woodland Gardens. The effect on these would be significant, but no more so than the effect of any greenfield development on existing dwellings. The existing development on the opposite side of Barford Road also continues further south than the appeal site, such that proposed development would not be seen as a further intrusion into an undeveloped area.
155. Policy C7 of the LP states that *development will not normally be permitted if it would cause demonstrable harm to the topography and character of the landscape*. To my mind conflict with this policy would occur. However, the level of this conflict would be no greater than would be caused by any greenfield development. The conflict with policy C7 is not therefore so significant such that the appeal can be dismissed on this ground alone. Rather, the conflict with C7 should be borne in mind in the overall balancing exercise.

#### *Prematurity and Community support*

156. The Council's second reason for refusal referred to prematurity, the fact that Bloxham has recently accommodated a good deal of housing and also the fact that the proposed development does not have the support of the local community. Firstly I will address the question of prematurity.
157. Guidance on prematurity is given in The Planning System: General Principles (PSGP). This makes clear in paragraph 17 *that in some circumstances it may be justifiable to refuse planning permission on grounds of prematurity where a DPD is being prepared or is under review, but has yet to be adopted. This may be appropriate where the proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD*. The document goes on to state in paragraph 18 that *where a DPD is at the consultation stage with no early prospect of submission for examination then refusal on prematurity grounds would seldom be justified*.
158. The Council specifically reference policy Village 2 of the ELP. This has been updated in the 'Focused Changes' version of the ELP and indicates that Bloxham is one of 17 villages that would receive a proportion of 96 housing units [23]. The actual allocations would be made via the NDPD. However the ELP has yet to be submitted for examination, has outstanding objections, and the NDPD does not yet exist [50]. Furthermore, whilst I accept that allowing the proposed development would be likely to have some effect on the location and phasing of

- other sites, the number of units proposed, even when added to the adjacent site that is also the subject of an appeal, would be of a very small scale taken against the remaining district requirement of 10636 dwellings in the period up to 2026<sup>106</sup>. I therefore consider that, whilst acknowledging the level of local concern, taking into account the advice in PSGP the case for prematurity with respect to the ELP is insubstantial, and should only be afforded very limited weight.
159. In arriving at this conclusion I am conscious of the Worsley decision [48] where the Secretary of State considered that the emerging Core Strategy, although submitted for examination prior to the decision, carried very little weight.
160. In support of their position the Council pointed out that the implementation of the ELP would deal with immediate development needs and those up to 2031 [29]. However, whether or not the ELP would achieve the required housing targets is a matter to be considered at the Examination of that document and is not a matter for this Inquiry. The Council also pointed to the planning permissions that have been granted recently and produced figures purporting to show that they have delivered housing at around the rate required by extant or emerging policy [27]. This is however in contrast to the SoCG, which identifies in paragraph 6.4 that the Council has only met the SEP target for housing once between 2006/7 and 2011/12.
161. The Council also made a case for considering Banbury and North Cherwell as a separate part of the district as regards historical housing supply figures [27]. Whilst I note that this approach was supported by the SEP it is not supported by the Framework, and it seems to me that if taken to extremes this approach could have the effect of completely distorting the overall picture of a district's housing land supply situation. Overall, none of these points raised by the Council lead me to a different conclusion on the issue of prematurity with respect to the ELP than that given above.
162. With respect to the NP, I accept that the local community have embraced the process put forward in the Localism Act 2012 [129] the weight to be afforded to this is highlighted in the *Tewksbury Council v SoS DCLG* high court case where Justice Males stated that *the Secretary of State acknowledges that recent changes to the planning system are intended to give local communities more say over the scale, location and timing of development in their areas, but he insists that this carries with it the responsibility to ensure that local plans are prepared expeditiously to make provision for the future needs of their areas, and that at least until such plans are at a reasonable advanced stage of preparation it will remain appropriate to consider development proposals through the planning application process, applying long standing principles and policies, even though this may result in the grant of permission in the face of local opposition*<sup>107</sup>.
163. Whilst some work has been undertaken in preparing the NP the local community accept that it will have to be consistent with the ELP and the NDPD [128]. I acknowledge that allowing this and other appeals in the district could have an impact on the future allocation of housing and could potentially alter the

---

<sup>106</sup> SoCG para 6.6

<sup>107</sup> Still App 4 para 2

thrust of the Council's preferred strategy for allocation. However, as stated above, the ELP is subject to objections and it is conceivable that the outcome of the examination process could itself lead to a change in that allocation strategy. This in turn would impact upon both the NP and the as yet unpublished NDPD. Furthermore, the quantum of housing involved in this and related appeals is very small in relation to the number required in the district over the next fifteen years.

164. For these reasons I consider that only limited weight can be attributed, against the proposed development, to the matters of prematurity and localism.

165. There is no doubt that Bloxham has seen a significant amount of development in recent years. However, I have been presented with no objective evidence to show that the recent development has unduly harmed the character or functionality of the village and the Planning Obligation (see below) would address the pressures on local infrastructure and services as identified by the Council. Whilst the village may not be as sustainable as some locations in the main urban centres, it is nonetheless one of the most sustainable village locations, a factor that has to be viewed in light of the lack of a five year housing land supply. For these reasons I cannot accept that the cumulative quantum of development within the village can be a determining factor in this appeal.

#### *Planning obligation*

166. The Council's third reason for refusal related to the absence of a planning obligation that would ensure the required contributions to mitigate the effects of the proposed development on local infrastructure and services. At the Inquiry however I was supplied with a signed and dated obligation that would ensure the required contributions.

167. Community Infrastructure Levy (CIL) Regulation 122 makes clear that it is unlawful for a planning obligation to be taken into account in a planning decision on a development that is capable of being charged CIL if the obligation does not meet all of the following tests. These are that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development. It is therefore incumbent upon me to assess the required contributions against these tests, which are also set out in paragraph 204 of the Framework.

168. Some of these contributions are contested by the appellants and these are outlined in appendix 5 of the Statement of Common Ground. The obligation is constructed in a way such that it makes provision to meet the full extent of the requested contributions, provided that the decision maker considers that these are properly justified in accordance with the requirements of regulation 122 of the CIL Regs. In respect of the contributions contested by the appellants, then the obligation is constructed in such a way that the decision maker's findings will determine the appropriate level of payments. In the interest of clarity I will deal with each separately.

#### *Secondary/sixth form education*

169. Education contributions are contested by the appellants and I will firstly consider the required contribution of £263419 for secondary education. As at January 2013 the Warriner Secondary School had 1124 pupils and a total

- capacity of 1140, meaning that the school had a spare capacity of only about 1% [91]. OCC have pointed to the Audit Commission's School Places Tool of 2010 and the 2013 National Audit Office Report as evidence that 5% is the bare minimum spare capacity needed and 10% is the upper figure [70] [71], and they also point to the fact that the school is regularly oversubscribed [91].
170. The appellants point to the number of pupils attending the school who travel from outside the school's catchment area, mainly from the Banbury area, due to parental preference. These are in the region of 40% averaged between the various year groups which amounts to about 91 pupils per year group, or by my calculations a total of about 450 pupils. I note that there is no shortage of spaces in Banbury itself [59]. OCC in turn point to the duty placed upon them to allow parental choice, which is mirrored by paragraph 72 of the Framework, and the high value that such choice has with residents.
171. I note however that the Audit Commission's School Places Tool makes clear that a 10% surplus is *the surplus generally agreed as a level providing both good use of resources and an opportunity for parents to express a preference* [70]. The 2013 National Audit Office Report also makes clear that 5% is the *bare minimum needed for authorities to meet their statutory duty with operational flexibility, while enabling parents to have some choice of schools* [71].
172. Overall I consider it would be unreasonable for the appellants to have to contribute towards secondary education need when the Warriner School currently makes provision for about 40% of pupils from outside the catchment area. In arriving at this conclusion I am also conscious that whilst a very large development could have a significant impact in the short term in respect of the displacement of pupils, the proposed development, in producing only about 10 pupils [63], would not. The contribution relating to secondary education in the Planning Obligation cannot therefore be taken into account in any decision to grant planning permission.
173. In arriving at this conclusion I have taken heed of the appeal in Surrey [101] where the Inspector came to a contrary view. Whilst the Inspector in that decision points towards a district wide surplus of secondary places, no figures are given as to the percentage of pupils who come from outside the catchment area. I am also unaware of what information was before the Inspector in that instance. I do not therefore consider that this other case can be taken as a compelling precedent for arriving at a different decision to that outlined above.
174. It should be noted that I have reached a different conclusion on this matter in the appeal relating to land off Milton Road (2189191). This stems from the amount of evidence put to me by the appellants in each case. On this case I had substantial submissions by the appellant including the evidence of an educational specialist. This was not the case in the Milton Road appeal where the appellants supplied no evidence to counter that supplied by OCC.

#### *Primary education*

175. In respect of the required primary education contribution the appellants have concerns relating to the child yield calculations used by OCC [62]. These are primarily that a large proportion of people move within the district, indicating that this may not involve a change of school, and that the majority of new residents of Affordable Homes will have a local connection. In response to this

OCC point to the fact that their method has been validated by the Oxfordshire Data Observatory, and judged sound by all five constituent district councils, as well as the Oxfordshire PCT [81]. They also make the point that the appellants' calculations are based on a snapshot approach rather than tracking the maturation of the population over time [83].

176. It seems to me that even if people move within the district, unless the dwellings that they move from are then demolished, there will be a net increase in people living in the district, as other people will move into the vacated dwellings. The only case where there would not be an overall increase in people would be if all of the people involved in moving result from the disintegration of family units, and I consider this unlikely, particularly when the new houses are of a size aimed at families. The same argument applies to Affordable Homes, as the people moving into these would be likely to vacate other dwellings, even if these are only on the rental market. I also note that the method used by OCC reflects the population profile of new housing and calculates a time based profile rather than just a snap shot in time [82]. Overall therefore, in light of the foregoing, I am not persuaded that the appellants' contentions are proven and conclude that the child yield calculations used by OCC are valid.
177. The appellants also have concerns relating to the cost multiplier used by OCC in calculating the cost of building works [64]. Appendix ON10 of the appellants' evidence is a webpage extract from DfE which states that the *funding for school buildings is now £1113 (excluding external works, particular circumstances and fees)*. The appellants also point to advice given in the National Audit Office Report *Capital Funding for New School Places* [57]. This document states in paragraph 12 that *the Department is revising its estimates to create more up to date costings, including considering the impact of standardised designs for schools announced in October 2012. These indicate the potential for reducing building costs for new schools by 30%*.
178. OCC do acknowledge that the county's cost multipliers need to be reviewed [96], but point to a range of factors to show that the figure of £1113 does not relate to extensions of existing schools. These include the fact that the cost does not include external works, local factors and fees and does not take into account site specific circumstances [97]. OCC also point to the fact that the figure of £1113/sqm is calculated in the context of the Priority School Building Programme's PFI programme which aims to achieve savings through bulk procurement and standardised designs, thus benefitting from economies of scale, which does not apply to extensions of individual schools.
179. It seems to me that extending existing schools is a different process from building new schools. The latter can, in general, be carried on a site free from the constraints of existing use, using standardised designs and benefitting from economies of scale. This is not the case with extensions. I also note that the figure of £1113 does not include external works, local factors and fees. All of these will increase the overall cost and in the case of extensions to existing schools could be significant factors.
180. The DfE webpage extract highlighted by the appellants also makes clear that the reduction in costs have been achieved partly by reducing the gross area of schools. In the case of primary schools the webpage states that *the main reduction in area of primary schools has been achieved by omitting an ICT room*.

This is not a relevant consideration in the case of extensions. I thereby conclude that, on balance, the figures utilised by OCC relate more closely to the process of extending schools than the figures promoted by the appellant. With respect to this decision and the Planning Obligation therefore, the larger figure for primary education, as requested by the Council, can be taken into account in any decision to grant planning permission.

### *Special educational needs*

181. The required contribution towards Special Educational Needs (SEN) is also contested by the appellants in that the County Councils method for assessing such contributions is based on a county wide percentage figure which cannot therefore be reasonably related in scale and kind to the particular development [61]. It seems to me however that it is reasonable to assume that an increase in housing will generate an increase in SEN. Furthermore, OCC have shown that 1.02% of children in the County currently have SEN [99] and therefore I consider it not unreasonable to take this figure into account in determining the required contribution. I note that the Inspector in the Wokingham report came to a different conclusion that was accepted by the SoS. However, I am not aware of the information available to that Inspector but note her comment that she *had no evidence to demonstrate that this proportion of SEN requirements is likely to arise*. I cannot therefore take this previous case to be a compelling precedent for the present one. I conclude that the required contribution for SEN complies with the relevant tests and can be taken into account in any decision to grant planning permission.

### *Library provision*

182. The appellant has questioned the amount of the required library contribution as that requested by OCC is based on a rate per sqm that includes a fit out from shell cost as well as a charge for new books<sup>108</sup>. Whilst I accept the need in principle for this contribution, I have been provided with little information to show that the higher figure as requested by OCC is justified. In light of this and the appellants' comments I conclude that the higher figure has not been shown to be justified and that only the lower figure of £12406 can be taken into account in any decision to grant planning permission.

### *Community development contribution*

183. The Council require a contribution towards the cost of a Community Development Officer for three years. This worker would facilitate and support the establishing of a residents association with the aim of integrating the proposed development with the existing community. I accept that paragraph 69 of the Framework indicates that the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. However, whilst the appointment of a Community Development Officer could be seen to be beneficial, I cannot accept that it is necessary to make the development acceptable. This required contribution does not therefore meet the

---

<sup>108</sup> POE Still 10.1.3

test required by CIL Regulation 122 and cannot be taken into account in any decision to grant planning permission.

#### *Daycare centre*

184. OCC have a requirement for a contribution towards the running of a daycare centre for the elderly. However, the information before me indicates that the need has been calculated based on *the likely proportionate level of need arising from the elderly*. This to me seems somewhat vague and cannot be said to pass the test of being reasonably related in scale and kind to the development. This required contribution does not therefore meet the tests and cannot be taken into account in any decision to grant planning permission.

#### *Outdoor sports provision*

185. The Council have identified a deficiency within the area in the provision of outdoor sports facilities. They also have derived a rate per dwelling based on the average cost of sports pitch provision. Whilst I accept that there is as yet no definitive destination for any contribution, it is clear that the Council are currently working with the parish council to identify a programme of works to increase capacity at existing facilities as well as new provision. In light of this I consider that the tests have been met and the figure of £163920.75 can be taken into account in any decision to grant planning permission.

#### *Waste management*

186. OCC indicate that the present household waste re-cycling centre at Alkerton has limited capacity and that its current planning permission is due to expire in 2014. OCC state that the amount of the required contribution relates to *the cost of a new provision*. However, it was made clear at the Inquiry that OCC would prefer a new site in Banbury but that no specific site has yet been identified. I am not persuaded that the required amount can be construed to be reasonably related in scale and kind to the development if a new site has yet to be identified, and therefore the costs associated with that particular site have not yet been clearly outlined. This required contribution does not therefore meet the tests and cannot be taken into account in any decision to grant planning permission.

#### *Adult Learning*

187. OCC also require a contribution towards Adult Learning. This would go towards re-locating Adult Learning to enable educational, cultural and health needs to be met. OCC have indicated that the contribution sought is related to the specific mix of dwellings at the development and the resulting likely adult demands. However, no figures have been provided and it seems to me to be very unlikely that any such figures could predict with any accuracy the amount of demand for such services that would be generated by the proposed development. For this reason I consider that the required contribution cannot be shown to be reasonably related in scale and kind to the development, and consequently the tests have not been met.

#### *Commutated sums for maintenance*

188. The Council have requested a range of further contributions to ensure the future maintenance of the two ponds, hedgerows, play areas and public open space that will be provided within the site over a fifteen year period. For these I

have been provided with a schedule giving the justification and costings. The Council have however also requested a further 10% of each of these commuted sums for revenue management, and this is contested by the appellants. The Council justify this amount by showing that the cost of two officers managing the landscape contract comes to almost exactly 10% of the value of the contract.

189. Whilst at first sight it may seem reasonable to add a further 10% for management costs, it occurs to me that the two officers are already being paid by the Council and further management cost will only come about if extra officers are needed. This has not been demonstrated and therefore whilst I accept that the commuted maintenance sums themselves are in alignment with the relevant tests, the addition of the extra 10% is not and cannot be taken into account in any decision to grant planning permission.

*Admin/monitoring fees and refuse bins*

190. Both OCC and the Council have requested admin/monitoring fees in respect of the Section 106 agreement. While I accept that both Council's incur costs in relation to the agreement this is one of their functions, and I cannot see that the payment of an admin/monitoring fee is necessary to make the development acceptable in planning terms. Similarly I cannot accept that the purchase of refuse bins by the developer rather than either the Council or householders can be considered necessary to make the development acceptable in planning terms. For this reason I consider that the required contributions do not accord with the required tests and cannot be taken into account in any decision to grant planning permission.

*Transport, public transport and travel plan monitoring*

191. The contributions towards public transport, transport and travel plan monitoring are not contested by the appellants and from the information supplied I consider that they align with the tests associated with CIL Regulation 122 and can be taken into account in any decision to grant planning permission.

**Other matters**

192. Traffic matters, particularly relating to the impact on the mini-roundabout at the junction with the A361 were a concern of many third parties and the Parish Council [124]. However, the highway authority had no objection to the proposed scheme on the condition that a sum of money was provided in mitigation. This sum of money has been agreed by the appellants and would be added to that already acquired from the recently permitted schemes. This would allow the highway authority to implement a suitable scheme at the junction. The appellants' traffic consultant also proposed a simple improvement scheme at the junction [122]. Local residents questioned the suitability of this and were sceptical that an appropriate scheme could be devised. However, the highway authority indicated in both their consultation reply to the planning application and in an email dated 26 November 2012 to the Council that they considered it feasible that improvements could be introduced either directly at the junction or elsewhere within the area to ease the pressure on the junction. In light of this I am not persuaded that the issue of traffic is one that justifies dismissing the appeal.

193. I acknowledge that Thames Water have commented on the minimum drinking water pressure and indicated a need for a Grampian style condition regarding sewerage, and also that the Environment Agency require a condition relating to a sustainable drainage scheme. These are not however unusual occurrences. Whilst I accept that flooding has been an issue in the village, provided that the requested conditions are imposed and satisfied, these matters are not reasons for dismissing the appeal.

194. With regard to the need for Affordable Housing, the Council have accepted that there is an ongoing unmet need in the area with the 2012 SHMA indicating an annual requirement of 831 dwellings. The Council confirm that the provision within the proposed development of 35% of Affordable Housing weighs substantially in favour of the development<sup>109</sup>.

### **Balancing exercise**

195. The Council do not have a five year housing land supply and therefore the provision of new housing carries considerable weight which is augmented by the provision of Affordable Homes. The proposed development would also have social and economic benefits in a village that is relatively sustainable in terms of a rural settlement. Against these factors has to be weighed the identified conflict with policies C7 and H18 of the LP. The conflict with policy H18 carries only limited weight however and any harm to character and appearance would be very localised. I have also found the prematurity argument to be insubstantial. Overall I consider that the need for housing and Affordable Housing and the economic benefits outweigh the negative factors that have been identified.

### **Recommendation**

196. For the reasons given above I recommend that planning permission be granted subject to the conditions in the attached annex.

*John Wilde*

Inspector

---

<sup>109</sup> POE Smith para 6.61

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Miss Melissa Murphy of Counsel	Instructed by Head of Law and Governance, Cherwell District Council
She called	
Mr Tim Screen BA (Hons) LA PG Dip LA CMLI	Landscape Architect, Cherwell District Council.
Mr Phillip Smith BA (Hons) Dip TRP MRTPI	Director, Brian Barber Associates

### FOR THE APPELLANT:

Mr Peter Goatley of Counsel	Instructed by Gladman Developments Ltd
He called	
Mr Phil Rech BA, B Phil LD, CMMLI	Director FPCR Environment and Design Ltd
Mr Nigel Weeks BSc, Fellow ACE	Stirling Maynard Transportation
Mr Oliver Nicholson BA (Business Studies)	Strategy Director EPDS Consultants Ltd

Mr Richard Bailey BSC (Hons), MBA	Director Levvel Ltd
Mr Christopher Still Bsc (Hons), MRICS	Gladman Developments Ltd

**INTERESTED PERSONS:**

Councillor Chris Heath	Ward Councillor
Mr Stephen Phipps	Local resident
Mr Michael Morris	Speaking on behalf of Bloxham Parish Council
Mr John Braithwaite	Speaking on behalf of South Newington and Milcombe Parish Councils and Milton Parish Meeting
Mrs Jenny Yates	Speaking on behalf of Bloxham Parish Council
Mr Mike Davy	Local resident
Mr John Groves	Local Resident

**DOCUMENTS**

- CD     **Application documents**
- 1.1    Application Covering Letter, Application Form and Certificates
  - 1.2    Location Plan
  - 1.3    Topographical Survey
  - 1.4    Development Framework Plan
  - 1.5    Illustrative Masterplan
  - 1.6    Design and Access Statement
  - 1.7    Landscape and Visual Assessment
  - 1.8    Transport Assessment
  - 1.9    Framework Travel Plan
  - 1.10   Ecological Appraisal
  - 1.11   Arboricultural Assessment
  - 1.12   Phase 1 Desk Study Report
  - 1.13   Flood Risk Assessment
  - 1.14   Air Quality Assessment
  - 1.15   Noise Assessment
  - 1.16   Archaeological Desk Based Report
  - 1.17   Utilities Appraisal Report
  - 1.18   Soil Resources and Agricultural Use and Quality
  - 1.19   Sustainability and Energy Statement
  - 1.20   Statement of Community Involvement

- 1.21 Report on Affordable Housing
- 1.22 Socio-Economic Impacts
- 1.23 Planning Statement
- 1.24 S106 Heads of Terms
- Correspondence with Local Planning Authority**
- 2.00 18-12-12 Notice of Decision
- 2.01 07-02-12 Email re: Pre-application meeting from GDL
- 2.02 07-02-12 Email re: Pre-application meeting from GDL
- 2.03 21-02-12 Email re: Pre-application meeting from GDL
- 2.04 24-02-12 Email re: Pre-application meeting from CDC
- 2.05 07-03-12 Email re: Pre-application meeting from GDL
- 2.06 08-03-12 Email re: Consultation process from GDL
- 2.07 21-03-12 Email re: Consultation leaflet from GDL
- 2.08 28-03-12 Email re: Consultation process from GDL
- 2.09 31-05-12 Email re: Infrastructure from OCC
- 2.10 16-07-12 Email re: Socio Economic impact queries from OCC
- 2.11 14-08-12 Email re: Bloxham Parish Council meeting and GCN survey from GDL
- 2.12 16-08-12 Email re: Traffic Survey from GDL
- 2.13 06-09-12 Email re: Access issue from CDC
- 2.14 06-09-12 Email re: Travel Plan from Stirling Maynard/OCC
- 2.15 25-09-12 Email re: 5106 contribution response from OCC
- 2.16 01-10-12 Email re: Landscape issues from GDL
- 2.17 01-10-12 Email re: Confirmation of acceptable access from CDC
- 2.18 03-10-12 Email re: Response to planning policy objection from GDL
- 2.19 22-10-12 Email re: Concerns raised by CDC from GDL
- 2.20 23-10-12 Email re: S106 contributions from CDC
- 2.21 24-10-12 Email re: Education contribution from CDC
- 2.22 24-10-12 Email re: LHA comments from CDC
- 2.23 24-10-12 Email re: Admin fees from CDC
- 2.24 24-10-12 Email re: 5106 raised by CDC from GDL
- 2.25 26-10-12 Email re: Illustrative housing numbers from CDC
- 2.26 26-10-12 Email re: Illustrative housing numbers from GDL
- 2.27 29-10-12 Email re: Illustrative housing numbers from GDL
- 2.28 30-10-12 Email re: House builder confirmation from GDL
- 2.29 06-11-12 Email re: Affordable Housing and Cuddington Appeal decision from GDL
- 2.30 12-11-12 Email re: Recommendation for approval from CDC
- 2.31 14-11-12 Email re: Education contribution from OCC
- 2.32 14-11-12 Email re: Education contribution from GDL
- 2.33 14-11-12 Email re: Education contribution from OCC
- 2.34 14-11-12 Email re: Education contribution from GDL
- 2.35 15-11-12 Email re: Education contribution from GDL
- 2.36 15-11-12 Email re: Education contribution from OCC
- 2.37 16-11-12 Email re: Education contribution from GDL
- 2.38 20-11-12 Email re: Drainage queries from GDL
- 2.39 20-11-12 Email re: Drainage queries from GDL
- 2.40 20-11-12 Email re: 5106 and Education report from GDL
- 2.41 22-11-12 Email re: Comments on Education report from OCC
- 2.42 23-12-12 Email re: 5106 contributions from GDL
- 2.43 29-11-12 Email re: 5106 from GDL
- 2.44 04-12-12 Email re: 5106 education contributions from OCC
- 2.45 05-12-12 Email re: Education from OCC

- 2.46 05-12-12 Email re: 5106 from GDL
- 2.47 12-12-12 Email re: Reasons for refusal from GDL
- 2.48 12-12-12 Email re: Draft reasons for refusal from CDC
- Submissions Post Application**
- 3.1 Illustrative Housing Numbers
- 3.2 Arboricultural Assessment
- 3.3 Revised Masterplan (Rev H)
- 3.4 Illustrative Housing Numbers Plus Parking
- 3.5 Education Impact Assessment Report v3-1
- Statutory Consultee Responses**
- 4.1 Officers Report
- 4.2 12-12-12 Officer to Cllr Stratford ( comments )
- 4.3 12-12-06 Committee report supplementary info
- 4.4 12-12-04 Education School Organisation & planning Barford Road OCC response (2)
- 4.5 12-11-26 Highways and Transport ( no objection )
- 4.6 12-10-23 s106 Requirements Barford Road Bloxham
- 4.7 12-10-18 Arts and Visitor Services Manager
- 4.8 12-10-16 EA email correspondence ( no objection )
- 4.9 12-10-02 Landscape email discussion ( FPCR and Tim Screen )
- 4.10 12-09-14 Policy ( objection )
- 4.11 12-09-12 EA ( No objection )
- 4.12 12-09-04 Oxford CC Local Highway Authority ( objection )
- 4.13 12-09-10 CTMP Traffic Plan
- 4.14 12-09-05 Design and Conservation ( comments )
- 4.15 12-08-28 Stirling Maynard response to Bloxham Parish Council
- 4.16 12-08-21 Ecology Officer ( no objection )
- 4.17 12-08-17 Arboricultural ( no objection )
- 4.18 12-08-08 Milton Parish ( objection )
- 4.19 12-08-06 Sir Tony Baldry comments
- 4.20 12-08-06 Bloxham Parish ( object )
- 4.21 12-08-03 EA ( object )
- 4.22 12-07-31 OCC Education and infrastructure Contributions
- 4.23 12-07-28 Milcombe Parish (object )
- 4.24 12-08-01 Landscape Visual Impact Assessment ( objection )
- 4.25 12-07-31 Cllrs Smart & Mitchell (object)
- 4.26 12-07-30 Newington Parish ( object )
- 4.27 12-07-30 Greg Clarke comment
- 4.28 12-07-30 Biodiversity and countryside ( no objection )
- 4.29 12-07-30 Barford St John & St Michael Parish ( object )
- 4.30 12-07-28 Archaeology ( comments )
- 4.31 12-07-26 Private Housing Inspector ( no comments )
- 4.32 12-07-25 Thames Water ( comments )
- 4.33 12-07-04 Mineral Planning ( no objection )
- 4.34 12-07-23 Ecology ( comments )
- 4.35 12-07-23 CDC Housing
- 4.36 12-07-17 Landscape Officer (comments )
- 4.37 12-07-10 Bloxham Parish ( object )
- Other**
- 5 Extracts from 1996 Cherwell Adopted Local Plan
- 6 Cherwell Local Plan Saved Policies Letter
- 7 Extracts from Cherwell Non-Statutory Local Plan

- 8 Extracts from the South East Plan 2009
- 9 National Planning Policy Framework
- 10 Cherwell Local Plan Proposed Submission August 2012
- 11 Local Development Scheme May 2012
- 12 Extracts from Draft Core Strategy February 2010
- 13 Annual Monitoring Report 2011
- 14 CDC Housing Land Supply Update August 2012
- 15 PINS Guidance on 5 year land supply
- 16 CDC Legal Opinion Housing Land Supply for Hook Norton Application
- 16a Additional CDC Legal Opinion Housing Land Supply produced for Hook Norton Application
- 17 Extracts from Oxfordshire HMA (2007)
- 18 Bloxham Facilities Plan
- 19 Extracts from the CRAITLUS - Final Report and Appendices
- 20 Extracts from Cherwell Housing Needs Estimates June 2009
- 21 Planning Obligations Draft Supplementary Planning Document (July 2011)
- 22 The Planning System General Principles (2005)
- 23 Community Infrastructure Levy Regulations (2010)
- 24 Extracts from CDC Options for Growth September 2008
- 25 Local Development Scheme November 2009
- 26 Extracts from Urban Housing Potential Study 2005
- 27 Extracts from CDC Executive Meeting 3rd December 2012
- 28 Cherwell SHMA review and update December 2012
- 29 CDC Landscape Assessment - Cobham November 1995
- 30 CDC Housing Land Supply Position Statement February 2012
- 31 GDL Submission Local Plan Representations
- 32 Extract from Manual for Streets

### **Documents handed in during the Inquiry**

- 1 Copy of letter dated 12 March 2013 giving details of the Inquiry, circulation list and copy of notice in the Banbury Guardian
- 2 Final submissions by the Council on an appeal at Hook Norton Oxfordshire
- 3 Extract from the SHLAA
- 4 Extract from the Oxfordshire Structure Plan 2016
- 5 Explanatory Note 2 giving revised rural housing figures
- 6 Extract from The South East Plan
- 7 Extract from the Non Statutory Cherwell Local Plan
- 8 Explanatory Note 1 giving revised housing trajectory
- 9 Supplementary notes from Barbara Chillman on behalf of the county council
- 10 Appeal decision APP/C3620/A/12/2181175
- 11 Extract from Oxfordshire Structure Plan 2011
- 12 Extract from the Oxfordshire Structure Plan 2016 Deposit Draft
- 13 Appendix 12 to Report of the Head of Planning and Development Services entitled Housing Delivery and Urban Housing Potential Study 2005
- 14 Appendix 11 to Report of the Head of Planning and Development Services dated 17 January 2005 entitled Towards an Interim Housing Strategy
- 15 A3 spreadsheet giving the County Council related Infrastructure and Service requirements dated 16/4/2013
- 16 Extract from The Cherwell Local Plan Proposed Submission Focused

- Consultation
- 17 Draft schedule of conditions on behalf of the appellants
  - 18 Extract from the SHLAA Draft Final Report
  - 19 Signed and dated Unilateral Undertaking
  - 20 A3 spreadsheet giving the District Council related Infrastructure and Service requirements dated April 2013
  - 21 Appendices to above
  - 22 Updated Explanatory Note 2 giving revised rural housing figures with calculations
  - 23 Statement from Councillor Chris Heath
  - 24 Statement from Mrs Jenny Yates on behalf of Bloxham Parish Council
  - 25 Statement from Mr Stephen Phipps
  - 26 Statement from Mr Michael Morris
  - 27 Statement from Mr Mike Davy
  - 28 Statement from Mr John Groves
  - 29 Copy of Bloxham Neighbourhood Plan dated April 2013
  - 30 Statement from Mr John Braithwaite on behalf of South Newington and Milcombe Parish Council and Milton Parish Meeting
  - 31 Letter from Mr Peter Barwell MBE
  - 32 Letter from Mrs Claire Smith

#### **PLANS**

- A Plan showing application sites in Bloxham
- B Plan showing traffic impact of planned housing on Bloxham
- C Bloxham recreation map

## **Annex 1**

### **Schedule of conditions**

- 1) 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 begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.
- 3) The development hereby permitted shall begin not later than one year from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall comprise of no more than 75 dwellings and shall be carried out in accordance with the following approved plans: 2010-008-100 Location Plan and 10000/03/17A Preliminary Junction Layout.
- 5) The details of layout, scale, appearance and landscaping referred to in condition 1 shall broadly accord with the Design and Access Statement (Ref DAS4756 Rev C dated June 2012). In particular the details shall take heed of the comment on page 42 of the D & A regarding *bungalows along the eastern edge*.

- 6) No development shall commence until a 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 or surface water from the site shall be accepted into the public system until drainage works referred to in the strategy have been completed.
- 7) No development shall take place until a scheme to limit the surface water runoff generated by the proposed development and to manage the risk of flooding from overland flow of surface water has been submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the approved details.
- 8) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) measures to control the emission of dust and dirt during construction
  - ii) the arrangements for prior notification of the start of the development to the occupiers of potentially affected properties
  - iii) the responsible person (e.g. site manager/office) who could be contacted in the event of a complaint
  - iv) wheel washing facilities
  - v) a route for construction traffic
- 9) Demolition, construction works or deliveries shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0900 hours to 1400 hours on Saturdays nor at any time on Sundays or Bank Holidays.
- 10) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved in accordance with a programme agreed with the local planning authority. These details shall include
  - i) The treatment proposed for all ground surfaces including hard areas
  - ii) Full details of tree planting
  - iii) Planting schedules, noting the species, sizes and numbers of plants
  - iv) Details of boundary treatments
  - v) All existing trees, hedges and other landscape features indicating those to be removed
  - vi) Details of the design of the ponds including sections and landscaping
  - vii) Details of the long term management and maintenance of those areas within the site
- 11) If within a period of five years from the date of the planting of any tree or plant that tree or plant, or any tree or plant planted in replacement for it, is removed, uprooted or destroyed or dies, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.

- 12) No development shall take place until full details of the tree/hedgerow protection measures have been submitted to and approved in writing by the local planning authority and implemented in accordance with the approved measures.
- 13) No development shall begin until a scheme for the provision of Affordable Housing as part of the development has been submitted to and approved in writing by the local planning authority. The Affordable Housing shall be provided in accordance with the approved scheme and shall meet the definition of Affordable Housing set out in the glossary to the National Planning Policy Framework. The scheme shall include:
  - i) The numbers, type and location on the site of the Affordable Housing provision which shall consist of not less than 35% of the dwellings. The tenure shall be split 70% social rented or Affordable rented and 30% intermediate and the dwellings shall be 'pepper-potted' across the site.
  - ii) The timing of construction of the Affordable Housing and its phasing in relation to the occupancy of the market housing. No more than 80% of the open market dwellings shall be occupied before the affordable Housing is completed and available for occupation.
  - iii) The arrangements for the transfer of the Affordable Housing to an Affordable Housing provider or the management of the Affordable Housing if no registered social landlord is involved.
  - iv) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the Affordable Housing.
  - v) The occupancy criteria to be used for determining the identity of occupiers of the Affordable Housing and the means by which such occupancy criteria shall be enforced.
- 14) No development shall take place until a programme for the implementation of the whole development including public open space and equipped areas of play has been submitted to and agreed in writing by the local planning authority. The phasing of the development shall be in accordance with the approved programme.
- 15) No development shall take place until details of the provision and proposed locations of the LAP, LEAP and public open space and their future maintenance arrangements have been submitted to and approved in writing by the local planning authority. These areas shall be provided in accordance with the approved details.
- 16) No development shall take place until a travel plan, including a timetable for its implementation, has been submitted to and approved in writing by the local planning authority. The travel plan shall be implemented as approved from the date of the first occupation of the first dwelling.



## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.