Department for Communities and Local Government

Mrs Elizabeth Marjoram
Bird Wilford & Sale Solicitors
19-20 Church Gate
Loughborough
Leics, LE11 1UD

Our Ref: APP/C3105/A/12/2178521
Your ref: EHM/Crouch Farm

23 September 2013

Dear Madam

TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY MR M HORGAN AND BARWOOD STRATEGIC LAND II LLP;
SITE AT LAND EAST OF BLOXHAM ROAD, BANBURY

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 20-22 November 2012 and 19-20 March 2013 into your clients' appeal under Section 78 of the Town and Country Planning Act 1990 against a failure by Cherwell District Council ("the Council") to give notice within the prescribed period of a decision on an outline application for residential development of up to 145 dwellings with associated access, on land east of Bloxham Road, Banbury, Oxfordshire, in accordance with application Ref 12/00080/OUT, dated 20 January 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[1].

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. Following the close of the inquiry, the Regional Strategy for the South East (Revocation) Order 2013 came into force on 25 March 2013 and has partially revoked the South East Plan ("the RS"). The Secretary of State considers that the

[1] Land North of the Bourne and adjoining Bourne Lane, Hook Norton – ref: 2184094;
Land off Barford Road, Bloxham - ref:2189896;
Land South of Milton Road, Bloxham – ref:2189191.

Jean Nowak
Decision Officer
Department for Communities and Local Government
Zone 1/H1, Eland House
Bressenden Place, London SW1E 5DU

Tel 03034441626
Email: PCC@communities.gov.uk

RS Policies which remain extant are not relevant to his decision on this appeal. Given the reasons for the decision on this appeal, as set out in the remainder of this letter, the Secretary of State does not consider that the partial revocation of the RS raises any matters that would require him to refer back to parties for further representations prior to reaching his decision.

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

6. 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, adopted in November 1996; and the extant policies of the RS as referred to in paragraph 4 above.

7. 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.

8. 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 5 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

9. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR3(a) and (b).

The Development Plan and the Framework, including sustainability

10. The Secretary of State agrees with the Inspector that the appeal site is a greenfield site in open countryside (IR4). However, notwithstanding the proposed revisions to

the housing land supply figures for the District put forward by the Council following the close of the inquiry (as explained in paragraphs 5 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 with the appropriate buffer (IR5-6).

11. Therefore, having carefully considered the matters discussed by the Inspector at IR7-13, the Secretary of State agrees with him that, in accordance with the Framework, housing applications should be considered in the context of the presumption in favour of sustainable development (IR7) and permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole (IR13). The Secretary of State therefore also agrees with the Inspector (IR14) that the justification for the proposed development rests on its sustainability credentials and that, overall, for the reasons given at IR15-16, it fulfils the requirements of paragraph 7 of the Framework and can be considered to be sustainable.

Salt Way as a heritage asset

12. For the reasons given at IR17-23, the Secretary of State agrees with the Inspector's conclusion at IR24 that, although Salt Way has some importance as a heritage asset both in its own rights and as part of its setting, the actual physical effect of the proposed development would be limited.

Integration with the existing development form

13. For the reasons given at IR25-26, the Secretary of State agrees with the Inspector's conclusion at IR27 that the proposed development would not fail to integrate with the existing development form.

Character and appearance

14. For the reasons given at IR28-37, the Secretary of State agrees with the Inspector's conclusion at IR38 that, although there would be no conflict with LP policy C7 as there would be no demonstrable harm to the topography and character of the landscape, some harm would occur to the rural character of Salt Way, thereby creating some conflict with LP policy C5.

Conditions

15. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions as set out at IR55-57 and, like the Inspector, is satisfied that the proposed conditions as set out at Annex A to this letter are reasonable, necessary and comply with Circular 11/95.

Planning obligations

16. With regard to the section 106 Agreement completed in response to the Council's second reason for refusal (IR39-48), the Secretary of State agrees with the Inspector that the proposed contributions to the Council in relation to off-site sports provision, indoor sports facilities and commuted maintenance sums (IR41-43) can be considered to be compliant with CIL Regulation 122, as can both the transport and the non-transport contributions to Oxfordshire County Council (IR47-48); and he accordingly affords weight to all of these provisions of the Agreement. However, the Secretary of State also agrees with the Inspector (IR 44-46) that the commuted maintenance costs to the Council and contributions towards the cost of a

Community Development Worker, public art and refuse bins do not meet the tests and he gives them no weight.

Overall conclusions

17. Although the appeal proposal would be contrary to certain policies within an out of date development plan, the Council does not have a proven 5-year supply of housing land so that, in accordance with the provisions of the Framework, full weight can no longer be given to the relevant 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.

18. The appeal scheme represents sustainable development which would make a significant contribution towards addressing the undersupply of 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

19. 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 residential development of up to 145 dwellings with associated access, on land east of Bloxham Road, Banbury, Oxfordshire, in accordance with application Ref 12/00080/OUT, dated 20 January 2012, subject to the conditions listed at Annex A of this letter.

20. 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.

21. 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

22. 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.

23. A copies of this letter have 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

Annex A

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 twelve months from the date of this permission.

3) The development hereby permitted shall begin not later than twelve months from the date of approval of the last of the reserved matters to be approved.

4) No development shall commence until a phasing plan for the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. Development shall take place in accordance with the approved phasing plan.

5) No building on the site shall exceed 6.2 metres in height at eaves height or 10.5 metres at ridge height.

6) The details required under condition 1 shall include a plan showing the details of the finished floor levels of the proposed dwellings in relation to existing ground levels on the site.

7) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the first occupation of the dwelling to which it relates. Development shall be carried out in accordance with the approved details.

8) No development shall commence until a full arboricultural survey and report on all existing trees and hedgerows within and around the perimeters of the site has been submitted to and approved in writing by the Local Planning Authority. The survey and report shall include details of all the trees and hedgerows to be removed and those to be retained and the method of protection of the retained trees and hedgerows during the course of development. The tree and hedgerow retention and protection shall be implemented in accordance with the approved scheme.

9) No development shall take place until the applicant or their agents or successors in title has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation including a timetable which has been previously submitted by the applicant and approved by the Local Planning Authority.

10) Prior to the first occupation of any dwelling within the development or the construction of any phase of the development, whichever is sooner, a management plan for the enhancement and creation of biodiversity, including long term design objectives, management responsibilities and maintenance schedules for all landscaped areas shall be submitted to and approved in writing by the Local Planning Authority. The plan shall be implemented as approved.

11) Prior to the occupation of any part of the development hereby approved, a residential travel plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall thereafter be implemented and operated in accordance with the approved details.

12) Prior to the occupation of any part of the development hereby approved, all approved pedestrian and cycle linkages between the development and the Salt Way and within the application site shall be completed and available for use.

13) Prior to the occupation of any part of the development hereby approved fire hydrants shall be provided on the site in accordance with details to be first submitted to and approved in writing by the Local Planning Authority.

14) No development shall take place until a scheme for the provision of up to 3 interpretation panels at the development visible from Salt Way, including details of precise locations, design, text, graphics, arrangements for implementation and ownership has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in full.

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

Inquiry held on 20/21/22 November 2012 and 19/20 March 2013
Site visit made on 20 March 2013

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

Appeal Ref: APP/C3105/A/12/2178521
Land east of Bloxham Road Banbury

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Mr M Horgan and Barwood Strategic Land II LLP against Cherwell District Council.
- The appeal 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
- The application Ref 12/00080/OUT, is dated 20 January 2012.
- The development proposed is outline planning consent for residential development of up to 145 dwellings with associated access.

Recommendation

1. It is recommended that the appeal be allowed and outline planning permission be granted for residential development of up to 145 dwellings with associated access at Land east of Bloxham Road Banbury in accordance with the terms of the application, Ref 12/00080/OUT, dated 20 January 2012, and the plans submitted with it, subject to the conditions contained within the attached schedule.

Procedural matter

2. The application has been made in outline, with details of access to be considered at this stage. Layout, scale, appearance and landscaping have been reserved for later determination.

Main Issues

3. The main issues are:-

   (a) The effect of the proposed development on the character, appearance and historical value of the area, and whether any identified harm would be outweighed by the need for housing in light of the lack of a five year housing supply and the surrounding policy considerations.

   (b) Whether or not the proposed development should provide contributions towards a range of infrastructure, including outdoor and indoor sports facilities, transport measures, open space, library, museum and health

facilities and if so, whether arrangements for these contributions have been made.

Reasons

4. The appeal site lies to the east of Bloxham Road and to the south of a public right of way know as Salt Way. The site is a greenfield site outside of the development boundary of Banbury, which is currently defined by Salt Way. In planning terms the appeal site is therefore in the open countryside, although only about 1.5km from the centre of Banbury.

5. Paragraph 47 of the National Planning Policy Framework (the Framework) indicates that local planning authorities should identify and update annually a supply of specific deliverable housing sites to provide five years worth of housing against their housing requirements, with an additional buffer of 5% to ensure choice and competition in the market for land. Where there has been a record of persistent under delivery of housing the Framework goes on to say that the local planning authority should increase the buffer to 20%.

6. The Council have accepted that they cannot demonstrate a five year housing supply. The Statement of Common Ground shows the agreed housing land supply position, without buffers, to be 3.2 years for the district and 2 years for the Banbury and North Cherwell area.

7. Paragraph 49 of the Framework makes clear that *housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered to be up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites*.

8. In their putative reasons for refusal the Council refer firstly to policies H18, C5 and C7 of the adopted Cherwell Local Plan (LP). Policy H18 is entitled *new dwellings in the countryside* and identifies a range of criteria for allowing housing outside of the development boundaries identified within the plan. The proposed development does not comply with any of the stated criteria and therefore, as the policy has wider implications than purely the supply of housing, a conflict exists.

9. However, the LP was adopted in 1996 and had an end date of 2001. Policy H18 was intended to prevent housing outside of the development boundary in force at that time. Furthermore, the policy was saved by direction of the Secretary of State in 2007 and the letter that confirmed the saving of the policy also stated that *where policies were adopted some time ago, it is likely that material considerations, in particular the emergence of new national and regional policy and also new evidence, will be afforded considerable weight in decisions*. This is reinforced by paragraph 216 of the Framework which states that *due weight should be given to relevant policies in existing plans according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).* For these reasons therefore the conflict with policy H18 is significantly reduced.

10. Policy C5 relates to protection of the ecological value and rural character of several local features, one of which is identified as being the Salt Way. Conflict with this policy also therefore exists, although to an extent, the same caveats that I have mentioned in relation to policy H18 also apply to this policy.

11. Policy C7 makes clear that development will not normally be permitted if it would cause demonstrable harm to the topography and character of the landscape. Conflict therefore exists with this policy if it can be shown that demonstrable harm occurs, and I will return to this matter later.

12. The Council's putative reasons for refusal also refer to various policies in the Non-Statutory Cherwell Local Plan 2011. However, as the title implies, this plan never went through the statutory adoption process and cannot therefore be afforded significant weight. Similarly the Proposed Submission Cherwell Local Plan (SLP) still has to undergo various stages, including further consultation and examination, before it becomes adopted. It too cannot therefore be afforded significant weight. I do note however that paragraph B.98 of the SLP makes clear that the aim of the Council is to provide 40% of new homes on previously developed land. The corollary of this is of course that 60% of new homes will have to be built on greenfield land.

13. As the adopted development plan is dated, the second bullet point in paragraph 14 of the Framework becomes particularly important in the determination of this appeal. This states that, in terms of decision making, the presumption in favour of sustainable development means that *where the development plan is absent, silent or relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.* I have shown that the LP had an end date of 2001 and that policy H18 related to the housing situation at that time. It follows that the second bullet point of paragraph 14 should be the guiding principle in determining this appeal.

14. In their putative reason for refusal 1 the Council highlight a number of what they consider to be adverse impacts and I will address each of these in turn. Firstly however I will address the issue of sustainability, as without sustainability credentials, the proposed development would not come within the remit of paragraph 14.

Sustainability

15. The appeal site is about a 15 minute walk from Banbury town centre. As Banbury is the district's largest urban area there is a wide range of facilities including a railway station, leisure centre, shops and offices. The site is also within 800m of schools, local shops and a supermarket and there is an hourly bus service into Banbury from a stop about 200m from the site. In transport terms therefore the site can be defined as sustainable. However, the Framework also recognises in paragraph 7 that sustainability has several strands other than just the transport aspect. These are economic, social and environmental in its broadest sense.

16. In terms of the economic impact, the proposed development would create jobs both directly and indirectly. I have been supplied with information which shows that for each new dwelling there are over four jobs created. Socially the proposed development would provide both market and 30% Affordable Homes whilst environmentally it would provide new planting designed to enhance the range of habitats available for wildlife. I accept that this latter factor has to be balanced against the loss of agricultural land but nonetheless consider that the proposed development fulfils the requirements of paragraph 7 of the Framework and can be considered to be sustainable.

Putative reason for refusal 1 - Salt Way as a heritage asset

17. The Council consider Salt Way to be historic and as such be a heritage asset of local importance. They further consider that Salt Way and its setting would be harmed by the proposed development. To support this contention they produced evidence designed to show that Salt Way forms part of a medieval network of salt distribution routes between Droitwich and London. In contrast the appellants supplied information designed to show that this is by no means certain and that other routes could have been utilised in medieval times, although I do note that the Archaeological Evaluation produced on behalf of the appellants states in paragraph 3.2 that *the headland at the northern end of the modern field appears to have respected the line of the Salt Track, suggesting that this route was well established in the medieval period and may have prehistoric origins*. The Council also produced evidence regarding the age of the boundary trees and the patterns of the bordering fields. Overall though, I am not persuaded on the balance of probabilities that Salt Way constituted part of a medieval network involved in the distribution of salt from Droitwich towards London.

18. What is certain is that Salt Way is not a designated heritage asset as mentioned in paragraph 134 of the Framework and defined in the glossary of that document. If Salt Way is considered to be a heritage asset of local importance then paragraph 135 of the Framework is relevant. This informs that *the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset*.

19. In respect of the significance of Salt Way the Council produced tables taken from the Highways Agency *Design Manual for Roads and Bridges Vol 11: Environmental Assessment Part 2 Cultural Heritage (HA 208/07)*. From these they deduced that Salt Way itself is of medium significance. They also concluded that while in itself it may only be of medium significance, in its historic landscape setting it is of medium/high significance and also that the historic landscape character of the area can be considered to be of high significance. From this assessment of significance the Council then conclude that the impact of the proposed development would be moderate/large in a negative sense.

20. A moderate impact is defined within HA 208/07 as *changes to many key landscape elements, parcels or components, visual change to many key aspects of the historic landscape, noticeable differences in noise or sound quality, considerable changes to use or access; resulting in moderate changes to historic landscape character*.

21. However the Council have arrived at their conclusion as to the significance of Salt Way by judging it to be *important as a good surviving example of a green trackway that has also been used as a Salt Way in the medieval distribution of salt from Droitwich towards London.* This to my mind as I have previously stated, has not been adequately demonstrated. Furthermore the assessment of the historic landscape setting and historic landscape character both seem to gloss over the proximity of residential development to the south and the major

road to the west. The impact of the proposed development also refers to direct physical impacts arising from the upgrading of Salt Way to provide site access, which *may* have a severe impact on any below ground evidence. It is then acknowledged however that this is a matter that could be adequately covered by an archaeological condition.

22. There would be no direct impact from the proposed development on the surface or boundaries of Salt Way except for the four points where the development would access it. Here there would be some harm caused to the boundary hedges. The proposed development would have a green buffer between it and Salt Way such that its visual impact would be reduced. In terms of noise, Salt Way, in the proximity of the proposed development, already experiences traffic noise from the major road to the west.

23. I am also aware that although mentioned in policy C5 of the LP, this is not in the context of a historical asset but is in terms of its ecological value and rural character. Furthermore, a Landscape Sensitivity and Capacity study (LSCS) carried out by Halcrow on behalf of the Council in 2010 looked at an area to the south of Banbury (site G) that included the appeal site. Whilst primarily a landscape study it also had a section on cultural heritage and no mention is made of Salt Way in this context. In 1995 the Local Plan Inspector commented on the land in the area of the appeal site in the following terms. *The open countryside to the south of Salt Way should be retained, thereby retaining the value of Salt Way for its amenity value and as a natural boundary to the built up area*. Again, no reference is made to the heritage value of Salt Way. I note the Council's concern regarding the potential future pressure for physical change to Salt Way. Notwithstanding this however, the actual alignment of Salt Way and its use as a linking footway route would remain, albeit in a more modern setting.

24. In light of the above I conclude that Salt Way has some importance as a heritage asset both in its own right and as part of its setting, but that this importance has in my view been overstated by the Council. I also note that the actual physical effect of the proposed development on Salt Way would be limited. In line with paragraph 135 of the Framework, I will take these matters into account in my final balancing exercise.

Putative reason for refusal 1 - Integration with the existing development form

25. The Council also consider that the proposed development would fail to integrate with the existing housing, in that, being south of Salt Way, it would be seen as a separate development. This, in their view, comes about primarily due to the green buffer that would be provided between the proposed housing and Salt Way. The green buffer would be up to 15m in depth and would mitigate the effect of the proposed housing on Salt Way itself. The site itself is relatively flat so in visual terms it would be difficult to assess the distance between the proposed housing and that already existing to the north of Salt Way. There would be four access points from the proposed development onto Salt Way where there would be easy access to local schools and services.

26. My attention has also been drawn to several other green corridors in Banbury including the Oxford Canal where development has taken place either side of the feature in question. These have successfully incorporated development into the urban fabric of the town whilst at the same time providing a green corridor that encourages journeys by foot or cycle.

27. Overall therefore on the issue of integration I find that the proposed development would not fail to integrate with the existing development form.

Putative reason for refusal 1 - Character and appearance

28. The Council's first putative reason for refusal stated that the proposed development would cause harm to the rural character and appearance of the area and would have a localised detrimental visual impact. Certainly the proposed development would breach the current limit of built development that is contained by Salt Way. The site is currently gently sloping farmland and the proposed development would replace this with built form, but this would not necessarily in itself cause visual harm so significant as to mean that the appeal should be dismissed.

29. The appeal site has the benefit of hedges and trees along all its boundaries. There is a large group of trees to the southwest of the site that would serve to prevent extensive views of the proposed development from people travelling north along Bloxham Road until they arrived near the proposed entrance itself. At this point signs of urbanisation are already apparent in the form of lighting columns, speed restriction signs and town nameplates and I do not consider that the proposed development would significantly harm what the Council consider to be the 'green arrival' to Banbury. Views from the north along Salt Way would be limited due to the green buffer and the existing hedges and trees.

30. Any views from publicly accessed areas to the south and east (primarily rights of way) would be relatively long distance and confined to the upper sections of the proposed dwellings due to the existing green boundaries. Further planting is also indicated along the south and east boundaries of the proposed development. From the viewpoint to the northwest of the site known as Crouch Hill the tops of some of the proposed dwellings would be visible but they would be softened by existing vegetation and would be seen along with the existing development to the north of Salt Way.

31. I acknowledge that the proposed development would conflict with policy ESD 15 of the SLP which seeks the provision of green buffers that would be kept free of built development. The justification for this policy makes clear that the aim of the policy is to maintain the distinctive identity of settlements and prevent coalescence as well as protecting valuable landscape or historic features. However, I have already found that the actual physical effect of the proposed development on Salt Way would be limited and there is no case to be made that it would promote coalescence as the nearest settlement to the south-west is Bloxham which is a considerable distance away. I have also already indicated that the SLP is an emerging document that can be afforded only limited weight.

32. The appeal site formed part of a larger site known as BAN 4 that was considered in an Options for Growth document prepared by the Council and dated September 2008. This document commented that BAN 4 was *relatively close to the town centre, secondary schools, hospital and a superstore and that there was sufficient land to create a coherent neighbourhood and new local centre without unacceptable harm to landscape further south*. Furthermore, paragraph 7.2 of this document informed that *the areas of land identified have been refined by undertaking initial planning assessments which included the*

following considerations. The eighth bullet point is *landscape and visual impact*.

33. I accept that the opinions expressed in the Options for Growth document were likely to be subject to further consultation and consideration, but nonetheless, as these comments related to a considerably larger area than the appeal site it is difficult to see how it can now be concluded that the development of the appeal site on its own could cause significant harm to the character and appearance of the area.

34. I also note that the sixth bullet point refers to the impact on the historic environment, which lends weight to my considerations relating to the impact of the development on Salt Way outlined above.

35. The Council make the point that the LSCS describes the overall sensitivity of site G (which includes the appeal site) to development as moderate. However the same document also states in paragraph 4.1 when referring to the south of Banbury that in *general terms this is the least sensitive direction for new development in landscape terms although long views would need mitigation*.

36. I accept that Salt Way currently demarcates the south-west extent of Banbury. However the demarcation principle was the same for other transport routes in the past, including the canal and mineral line. These have subsequently been superseded due to the need for housing and other development and I do not consider that Salt Way should necessarily be seen as an obstacle to further development just because of what and where it is.

37. The Council also considered that the development would breach the ridgeline that is seen as forming a natural topographical limit to development on the south of Banbury, and there was considerable discussion at the Inquiry as to the exact limits of this ridgeline. The slopes to either side of this ridgeline are however relatively gentle, meaning that the ridgeline itself is not a sharp feature. I am also aware that the LSCS, when considering site G, commented that *housing estates on the edge of Banbury and Bodicote overlook the site and are themselves visible in long views from the south*, and the Council themselves accepted that there are some breaches of the ridgeline. The ridgeline has therefore already been breached by development, and even if this was not the case, I do not consider that the ridgeline is so prominent a feature that it should be seen as a final and decisive constraint to development.

38. In light of this I consider that demonstrable harm would not occur to the topography and character of the landscape and that therefore there is no conflict with policy C7 of the LP. I accept that some harm would occur to the rural character of Salt Way by virtue of having built form to both sides, albeit for a limited distance. Some conflict would therefore exist with policy C5 of the LP.

Contributions

39. The Council's second reason for refusal related to the provision of contributions to mitigate the effects of the proposed development on local infrastructure. To this end I have been supplied with a signed Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act (S106) dated 20 March 2013 which would ensure the provision of contributions towards a range of facilities including education, public transport, off site indoor sport facilities and libraries. The contributions are all in line with the

requirements of the Council, are not contested by the appellant and have been the subject of extensive negotiations between the parties. It is nonetheless still incumbent upon me to assess the required contributions against regulation 122 of the Community Infrastructure Levy Regulations (CIL).

40. 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.

41. Both Cherwell District Council (the Council) and Oxfordshire County Council (OCC), as part of their evidence, have supplied me with statements as well as a considerable amount of background documentation to justify the required contributions. I will deal firstly with the contributions required by the Council. With respect to off-site sports provision the Council indicate that the need has been established by the Open Space, Sport and Recreational Facilities Needs Assessment Audit and Strategy and the Playing Pitch Strategy. The costs of the providing new and upgrading existing facilities are included within the Banbury Football Development Plan, and the quantum of the contribution is arrived at by applying the formulae in the Draft Planning Obligations SPD. In light of the information placed before me I conclude that the required contribution accords with the tests and can be taken into account in any decision to grant planning permission.

42. The Council have also requested a contribution towards indoor sports facilities. This contribution would be directed towards the modernisation and increase in capacity of the Woodgreen Leisure Centre in Banbury. Once again, in light of the information supplied I conclude that the contribution accords with the tests and can be taken into account in any decision to grant planning permission.

43. The Council have requested a range of further contributions to ensure the future maintenance, over a fifteen year period, of the balancing pond, ditches, hedgerows and trees, play areas and public open space that will be provided within the site. The Council have however also requested a further figure of about 10% of each of these commuted sums for revenue management.

44. Whilst at first sight it may seem reasonable to add a further 10% for management costs, it occurs to me that this would only be necessary if the Council could show that it needed to recruit further staff to carry out the management. This has not been demonstrated and therefore whilst I accept that the commuted maintenance sums themselves are in alignment with the tests, the addition of the extra 10% is not and cannot be taken into account in any decision to grant planning permission.

45. The Council have also requested contributions towards the cost of a Community Development Worker, public art and refuse bins. 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 worker could be seen to be beneficial, I cannot accept that it is necessary to make the development acceptable.

46. Similarly, whilst public art can create a long lasting and high quality built environment in line with the social dimension of sustainable development set out in the Framework, I do not consider that it can be deemed to be necessary to make the development acceptable. The same argument also applies to the purchase of refuse bins. I cannot accept that the purchase of these by the developer rather than either the Council or householders can be considered to be necessary to make the development acceptable in planning terms. For these reasons the required contributions towards the employment of a Community Development Worker, public art and the purchase of refuse bins do not meet the tests and cannot be taken into account in any decision to grant planning permission.

47. OCC have requested a number of contributions and these can be loosely defined as either transport or non transport related. The transport related elements comprise a contribution aimed at enhancing the 488 bus service by providing an evening service running past the site, and a small contribution towards monitoring the progress of the Travel Plan. For both of these elements I have been supplied with details of the costs and would conclude that these contributions can be taken into account in any decision to grant planning permission.

48. The non transport related contributions comprise contributions towards primary education, Special Educational Needs, libraries, waste management, museums, an adult learning centre and social and day care provision. For each of these I have been provided with sufficient information in terms of need, locations, and quantum to conclude that these contributions can be taken into account in any decision to grant planning permission.

Overall Conclusion

49. The Council cannot demonstrate a five year housing land supply and their development plan is dated. I have found the site to be in a sustainable location and the proposed development to comply with the Framework's definition of sustainable. Determination of the appeal is therefore governed by paragraph 14 of the Framework which makes clear that *permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole*.

50. In respect of adverse impacts I have found that Salt Way has some importance as a heritage asset but that the proposed development would have a limited physical effect upon it and its setting. I have also found that the proposed development would result in the replacement of agricultural land by built form but that the effect of this would be softened by existing and proposed landscaping. There would also be conflict with policy C5 of the LP.

51. However the need to address the shortfall in land for housing weighs heavily in this appeal. The above negative factors do not to my mind constitute adverse impacts that would significantly and demonstrably outweigh the benefits that much needed housing and Affordable Housing would bring. It follows that the appeal should be allowed.

52. In arriving at this conclusion I am mindful that the appeal site forms part of a larger potential site to the south-west of Banbury, and that allowing this appeal could, in the view of the Council, have implications for the consideration of this

other site. This other site does not form part of the Council's future allocations strategy.

53. Paragraph 17 of the Planning System: General Principles states 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 it has not yet been adopted. This may be appropriate where a 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. A proposal for development which has an impact on only a small area would rarely come into this category. Where there is a phasing policy, it may be necessary to refuse planning permission on grounds of prematurity if the policy is to have effect*.

54. The proposed development is of a very small scale compared with the significant need for housing in the district, 60% of which will have to be on greenfield land. Furthermore, the SLP is the subject of objections and has yet to be presented for examination. It is entirely conceivable that the outcome of the examination process could lead to a change in the Council's allocation strategy. The issue of prematurity does not therefore lead me to a different conclusion to that outlined above.

Conditions

55. The conditions set out in the accompanying schedule are based on those suggested by the Council and the appellant and contained within the Statement of Common Ground. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with advice in Circular 11/95.

56. In the interest of the character and appearance of the final scheme I recommend conditions are imposed relating to the height of the proposed dwellings, boundary treatment, the retention of existing and provision of further landscaping and the provision of interpretation panels for Salt Way. As the site could contain historic artefacts I would also recommend a condition requiring a programme of archaeological work is attached. In the interest of biodiversity I also recommend that a condition requiring a management plan to create and enhance biodiversity should be imposed.

57. For safety reasons I have also recommended a condition to ensure the provision of fire hydrants and in the interests of sustainability I have similarly suggested conditions relating to the provision of cycle and pedestrian linkages and a travel plan. Finally, to ensure suitable living conditions for future occupiers I would suggest a condition requiring details of the phasing of construction.

Recommendation

58. In light of my above findings, and having regard to all other matters raised, I recommend that the appeal should be allowed.

John Wilde

INSPECTOR

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 twelve months from the date of this permission.

3) The development hereby permitted shall begin not later than twelve months from the date of approval of the last of the reserved matters to be approved.

4) No development shall commence until a phasing plan for the development hereby permitted has been submitted to and approved in writing by the Local Planning Authority. Development shall take place in accordance with the approved phasing plan.

5) No building on the site shall exceed 6.2 metres in height at eaves height or 10.5 metres at ridge height.

6) The details required under condition 1 shall include a plan showing the details of the finished floor levels of the proposed dwellings in relation to existing ground levels on the site.

7) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed before the first occupation of the dwelling to which it relates. Development shall be carried out in accordance with the approved details.

8) No development shall commence until a full arboricultural survey and report on all existing trees and hedgerows within and around the perimeters of the site has been submitted to and approved in writing by the Local Planning Authority. The survey and report shall include details of all the trees and hedgerows to be removed and those to be retained and the method of protection of the retained trees and hedgerows during the course of development. The tree and hedgerow retention and protection shall be implemented in accordance with the approved scheme.

9) No development shall take place until the applicant or their agents or successors in title has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation including a timetable which has been previously submitted by the applicant and approved by the Local Planning Authority.

10) Prior to the first occupation of any dwelling within the development or the construction of any phase of the development, whichever is sooner, a management plan for the enhancement and creation of biodiversity, including long term design objectives, management responsibilities and maintenance schedules for all landscaped areas shall be submitted to and approved in writing by the Local Planning Authority. The plan shall be implemented as approved.

11) Prior to the occupation of any part of the development hereby approved, a residential travel plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall thereafter be implemented and operated in accordance with the approved details.

12) Prior to the occupation of any part of the development hereby approved, all approved pedestrian and cycle linkages between the development and the Salt Way and within the application site shall be completed and available for use.

13) Prior to the occupation of any part of the development hereby approved fire hydrants shall be provided on the site in accordance with details to be first submitted to and approved in writing by the Local Planning Authority.

14) No development shall take place until a scheme for the provision of up to 3 interpretation panels at the development visible from Salt Way, including details of precise locations, design, text, graphics, arrangements for implementation and ownership has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in full.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Keen of Counsel
He called
Mr D Peckford
Prof R Tregay
Mr J Munby
Miss L Bailey

FOR THE APPELLANT:

Mr J Cahill QC
He called
Mr D McInerney
Mr A Crutchley
Mr A Raven
Mr C Rees
Mr D Jackson

INTERESTED PERSONS:

Miss C Colquhoun
Mr J Cooper
Mr R Kinchin-Smith

DOCUMENTS

1 Opening statement on behalf of the Council.
2 Opening statement on behalf of the appellants.
3 Statement and accompanying information relating to the intended Section 106 legal agreement.
4 The South East Plan.
5 Extract containing policies from the Cherwell Local Plan.
6 Extract containing policies from the Non-Statutory Cherwell Local Plan 2011.
7 The Cherwell Local Plan Proposed Submission.
8 Draft Section 106 agreement.
9 Supplementary note to proof of evidence of Mr Munby.
10 Letter dated 15 September 2011 from the Council to Savills.
11 Note on Section 106 agreement District Council requirements.
12 Council internal memorandum dated 16/7/13.
13 Details relating to the notices for the resumption of the Inquiry.
14 Secretary of State decision relating to Highfield Farm Tetbury.
15 Statement from Mr R Kinchin-Smith.
16 Submission from Banbury Civic Society.
17 Signed and dated Planning Obligation.
18 Revised list of suggested conditions.

PLANS

A Set of plans relating to the application.
B Plan showing ridge lines superimposed on a topographical map of west and south-west Banbury.
C Plan showing ridgeline on a contour plan of south west Banbury.

D OS map dated 1941.

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.