



Department for  
Communities and  
Local Government

Mr Peter Frampton  
Framptons  
Wood Frampton  
42 North Bar  
Banbury  
Oxfordshire  
OX16 0TH

Our Ref: APP/C3105/A/12/2189191  
Your ref: PJF/omjt/BAR06/PF/8840

23 September 2013

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)  
APPEAL BY MINTONDALE DEVELOPMENTS LTD  
SITE AT LAND SOUTH OF MILTON ROAD, BLOXHAM, OXFORDSHIRE**

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 23-25 April 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 a residential development comprising up to 85 dwellings with access and associated infrastructure at Land south of Milton Road Bloxham, Oxfordshire, in accordance with application Ref 12/01139/OUT, dated 10 August 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 representing the appellants for the other three recovered appeals referred to in

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<sup>1</sup> Land North of the Bourne and adjoining Bourne Lane, Hook Norton – ref: 2184094;  
Land off Barford Road, Bloxham - ref:2189896;  
Land East of Bloxham Road, Banbury – ref:2178521.

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, 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 (ELP), 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**

#### **Policy position**

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 agrees with the Inspector (IR95) that the Council cannot, at the present time, demonstrate conclusively a five year housing land supply and that paragraphs 14 and 49 of the Framework come into play so that the presumption in favour of sustainable development applies. The Secretary of State also agrees with the Inspector that, for the reasons given at IR96-98, very little weight can be afforded to LP policies H12 and H13 and, given

the time expired nature of the LP and the fact that 60% of new housing will have to be on greenfield land, only limited weight can be given to policy H18.

### **Sustainability**

9. The Secretary of State agrees with the Inspector (IR100) that the whole thrust of paragraphs 49 and 14 of the Framework makes it necessary to ascertain whether the proposed development would be sustainable and, for the reasons given at IR100-102, he agrees with the Inspector that, although not necessarily greater than those delivered on other schemes, the economic and social benefits still add to the factors which weigh in favour of the scheme.

### **Landscape**

10. Turning to the environmental impact of the appeal scheme, for the reasons given at IR103-106, the Secretary of State agrees with the Inspector's conclusion at IR106 that, while some harm would occur and give rise to conflict with LP policy C7, this would be no greater than that caused by any greenfield development and would not be so significant as to justify dismissing the appeal on that ground alone.

### **Prematurity and community support**

11. The Secretary of State has given careful consideration to the Inspector's argument at IR108-110, and agrees with his conclusion at IR111 that substantial weight cannot, at this stage, be attributed to policies in the ELP and allowing the appeal would not be prejudicial to the Plan taken as a whole. The Secretary of State has also taken account of the arguments put to the Inspector about Localism and the lack of community support (IR112-116). However, he also agrees with the Inspector's reasoning at IR113 and 116 and with his conclusions that only limited weight can be attributed, against the development, to the matters of prematurity and localism (IR114); and that the quantum of development in Bloxham should not be regarded as a determining factor (IR116).

### **Conditions**

12. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions as set out at IR89-93 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 obligation**

13. The Secretary of State notes that the Section 106 Agreement was completed in response to the Council's third reason for refusal (IR117) and, like the Inspector (IR117-128), 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 and paragraph 204 of the Framework.
14. The Secretary of State agrees with the Inspector that, for the reasons given at IR118 and IR131-132, the contributions towards public transport and transport infrastructure would pass the requirements of the tests as, for the reasons given at IR121, would the contribution towards library provision. He also agrees that the contributions towards Special Educational Needs (IR123), outdoor sports (IR125) and the maintenance of ponds, hedgerows, trees, ditches, play areas and public

open space (IR126) are appropriate, (but not the commuted sums for maintenance management.

15. With regard to matters which do not comply with the tests, the Secretary of State agrees with the Inspector that the contributions towards adult learning and a day care centre (IR119) should be so regarded; and that it has not been shown that the required contribution for waste management (IR120) would be fairly and reasonably related to the scale and kind of the development. He also agrees with the Inspector that contributions towards administration/monitoring fees (IR124), the provision of refuse bins (IR124), a Community Development Officer (IR126) and commuted fees for maintenance management (IR126) would not pass the tests.
16. Turning to the education contributions (IR122), the Secretary of State notes the Inspector's comments that, while no evidence was put forward to indicate that the proposed contributions would be contrary to the tests in the case under consideration, he has taken the view with regard to the Barford Road case that the contribution towards secondary education should be given no weight. However, he goes on to say that he sees no reason to take a similar line in this case in the absence of evidence from the appellant to lead to that view. The Secretary of State agrees that it would have been for the appellants to produce the necessary evidence if they considered that the education contributions were not reasonable whereas, in fact, they have agreed to pay them (IR133). He needs to judge each case on its own merits and, as the parties have entered into an agreement to make the contributions, sees no reasons not give them due weight.

### **Other matters**

17. The Secretary of State agrees with the Inspector (IR129) that there are no grounds for weighing the loss of agricultural land *per se* for future food security against the appeal proposal. He also agrees with the Inspector (IR130) that water pressure, sewerage and drainage can be dealt with by the imposition of conditions and are not reasons for dismissing the appeal. The Secretary of State also agrees with the Inspector and the Council (IR134) 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 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 ELP 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 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 a residential development comprising up to 85 dwellings with access and associated infrastructure at Land south of Milton Road Bloxham, Oxfordshire, in accordance with application Ref 12/01139/OUT, dated 10 August 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 (including the protection and enhancing of existing hedgerows around the site), 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) No development shall take place until details of the finished floor levels of the proposed dwellings in relation to the existing ground levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) The dwellings shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- 6) The landscaping scheme as approved under condition 1 shall be carried out in accordance with a landscaping phasing plan to be submitted and approved in writing by the local planning authority and retained thereafter. Any new or existing hedgerows around the perimeter of the site shall be retained and any plant dying or removed within a period of 5 years from the completion of the development shall be replaced with one of a similar size and species during the next planting season.
- 7) No development shall take place until a scheme for the surface water drainage of the approved development in accordance with RSK's Flood Risk Assessment dated August 2012 (reference 131733 – R1(1) – FRA) has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved works have been carried out.
- 8) No development shall take place until a drainage strategy detailing 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 the drainage works referred to in the strategy have been completed.
- 9) No development shall take place until a scheme for additional street lighting along Milton Road between the site access and Barford Road has been submitted to and approved in writing by the local planning authority. The street lighting shall be carried out in accordance with the approved details at a time previously agreed with the local planning authority.
- 10) When the new access hereby permitted is brought into use, the existing accesses from Milton Road will be permanently closed in a manner to be agreed with the local planning authority.

- 11) No dwelling shall be occupied until details of a scheme for the provision of a footpath along Milton road, as shown on drawing 14043-06 (submitted to the local planning authority on 20/11/12) including construction and drainage details, has been submitted to and approved in writing by the local planning authority and the scheme completed.
- 12) 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) the parking and turning of vehicles of site operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) control of noise emanating from the site during the construction, including hours of work
  - iv) the location of the site compound
  - v) means of minimising the deposit of mud and other debris on the highway during construction
  - vi) measures to control the emission of dust and dirt during construction
- 13) No dwelling shall be occupied until a travel plan has been submitted to and approved in writing by the local planning authority. The provisions of the travel plan shall be implemented thereafter as approved.
- 14) No dwelling shall be occupied until a Biodiversity Enhancement Scheme (BES) has been submitted to and approved in writing by the local planning authority. The BES shall include the following elements:-
  - i) Details on native landscaping
  - ii) The management regime for public open areas/features
  - iii) The type and location of biodiversity enhancement measures such as bat and bird boxes
  - iv) The timing of the implementationThe BES shall be carried out as approved in a timescale agreed with the local planning authority.
- 15) No more than 85 dwellings shall be accommodated on the site.





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# 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

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**Town and Country Planning Act 1990**

**Cherwell District Council**

**Appeal by Mintondale Developments Ltd**

**Against a failure to give notice within the prescribed period of a decision on  
an application for outline planning permission for a residential  
development comprising up to 85 dwellings with access and associated  
infrastructure**

**at**

**Land south of Milton Road, Bloxham, Oxfordshire**

Inquiry held on 23/24/25 April 2013

Land south of Milton Road, Bloxham, Oxfordshire, OX15 4HD

File Ref: APP/C3105/A/12/2189191

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**File Ref: APP/C3105/A/12/2189191**

**Land south of Milton Road, Bloxham, Oxfordshire, OX15 4HD**

- 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 Mintondale Developments Ltd against Cherwell District Council.
- The application Ref 12/01139/OUT is dated 10 August 2012.
- The development proposed is a residential development comprising up to 85 dwellings with access and associated infrastructure.

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

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**Procedural Matters**

1. The Inquiry sat for three days on 23-25 April 2012. There was an extra session at the request of Bloxham Parish Council on the evening of 24 April to allow attendance by members of the public who otherwise may not have been able to attend. I made an unaccompanied site visit on 22 April and an accompanied site visit on 25 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. Layout, scale, appearance and landscaping are reserved for later determination.
3. Following the appeal for non-determination the council outlined three putative reasons for refusal<sup>1</sup>. In brief these were:
  - i) Character and appearance, and the fact that the site lies outside of a development boundary, set against the agreed lack of a five year housing land supply.
  - ii) Prematurity, the fact that Bloxham has recently accommodated other new development, and that permitting the development would be contrary to the plan-led system.
  - iii) 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 appeal site is an agricultural field lying to the south of Milton Road on the eastern edge of the village of Bloxham. There are relatively new housing developments on both the opposite side of Milton Road and to the west of the site. Bloxham Mill business centre borders the site to the south and further to the east of the site, north of Milton Road, there is a gypsy and traveller's site and a scrap yard. There are hedgerows and

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<sup>1</sup> See Statement of Common Ground (version 4) for full putative reasons

<sup>2</sup> 2184094 (Borne lane, Hook Norton), 2189896 (Barford Road, Bloxham), 2178521 (Bloxham Road, Banbury)

trees bordering the site, and a public right of way runs north to south across the site.

### **Planning Policy**

6. The Cherwell Local Plan (LP) was adopted in 1996 and had an end date of 2001. The policies referred to by the Council in their putative 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 that has been the subject of initial public consultation. At the time of the Inquiry the Proposed Submission Focused Consultation version of this document was the subject of further consultation on proposed changes, with an end date for consultation being given in a report to the Council's Executive<sup>3</sup> as 26 April 2013. The same report stated that the final plan sign off and submission to the Secretary of State would be 15 May 2013 at the earliest.
8. The South East Plan 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 have been no previous planning applications on the appeal site that are relevant to this appeal.

### **The Proposals**

10. The proposed development is outline planning permission for 85 dwellings with access and associated infrastructure. The 85 dwellings would include not less than 35% Affordable Homes. Access, the only matter not reserved for later determination, would be off Milton Road.

### **Other Agreed Facts**

11. Putative reason for refusal 1 contained a reference to design issues. Prior to the Inquiry however the Council accepted that this matter should not be considered at outline stage and this is reflected in paragraph 3.1 of the Planning Statement of Common Ground. It should be noted that there are two Statements of Common Ground relating to this case, the Planning one mentioned above and also one relating to landscape matters.
12. It is common ground between the parties that the Council cannot demonstrate a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirement. The Council accept that they currently have a 3.2 year housing land supply, excluding an additional 5% or

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<sup>3</sup> Report of the Head of Strategic Planning and the Economy to the Council's Executive 4 March 2013 (app 1 to POE of Philip Smith)

20% buffer. It is also common ground between the parties that future housing requirements cannot be met by the use of previously developed land and that therefore greenfield sites in sustainable locations will have to be released<sup>4</sup>.

13. Both parties also agree that there is an identified Affordable Housing need within Bloxham, that traffic from the proposed site would be unlikely to cause material harm in terms of highway safety or traffic capacity within Bloxham and that no protected species are likely to be affected by the appeal proposals. Both parties also agreed that in planning terms the appeal site lies in the open countryside.

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

*The material points are:*

#### Character and appearance

14. 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<sup>56</sup>. However, they also serve the purpose of conserving the countryside outside of settlements, and this is made clear in respect of policy H18 in paragraph 2.76 of the LP. Here it states that the intention of the policy is to ensure the protection of the countryside from sporadic development. This is in line with the Framework which continues to offer protection to the intrinsic character and beauty of the countryside.
15. The policies therefore have twin or more aims, only one of which is to make housing land supply provision. They should therefore be afforded some weight and not considered wholly out of date as contended by the appellants. The appeal site lies outside of the built up limits of Bloxham and for that reason developing the site for housing would place it in conflict with policy H18 of the LP<sup>7</sup>.
16. The contextual landscape to the appeal site can be defined as a gently rolling landscape, spreading westwards towards Bloxham from Adderbury with strongly defined, regularly shaped field patterns with well maintained hedgerows with visually strong features of trees grouped within some hedgerows, with the contrasting open landscape of the Barford St John Wireless Station with its strong visual radio masts to the south-east of the site. Physical containment to the immediate surroundings of the appeal site is provided by the residential developments of Gascoigne Way to the south-west, Woodland Gardens to the north and St Christopher's Lodge adjoining the north-western corner of the site. The immediate landscape is less strongly contained by landform, with Bloxham Mill Business Centre to the south-east<sup>8</sup>.

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<sup>4</sup> Planning Statement of Common Ground para 3.6

<sup>5</sup> National Planning Policy Framework

<sup>6</sup> Council closing submissions para 6

<sup>7</sup> Council closing submissions paras 5-10

<sup>8</sup> POE Screen para 2.21

17. The local landscape has a good, clear structure, is designated as an Area of High Landscape Value, and has a medium sensitivity to change. The erection of 85 dwellings would have a direct adverse impact on views over the site which would result in substantial harm being caused to the character of the landscape. The effects would be permanent and could not be addressed by landscape planting. Notwithstanding the presence of the Woodlands Gardens development to the west and the Collins Drive development on the northern side of Milton Road opposite, both of which are visually distinct from the appeal site, the development would be viewed as a clear encroachment into the open countryside beyond the well established settlement boundaries<sup>9</sup>.
18. In respect of harm to the landscape, the Landscape Statement of Common Ground sets out a methodology to be followed. The appellants have failed to follow this methodology in that they omitted to draw a conclusion about the sensitivity of the landscape to change. They have also failed to evaluate the magnitude of change to the landscape that would be caused by the development. This would be a very high magnitude of change leading to a major/moderate significance of an adverse nature<sup>10</sup>.
19. In terms of visual impact, there are four viewpoints of concern, VP6, 7, 9 and 10<sup>11</sup>. The introduction of the proposed development would cause substantial harm<sup>12</sup>. The appellants are incorrect to take into account the potential development on the adjacent Barford Road site when the baseline landscape character position has been agreed in the Landscape Statement of Common Ground where just the existing adjacent development is referenced<sup>13</sup>. Neither is it correct to suggest that a comparative exercise with other potential sites should have formed part of the landscape and visual analysis<sup>14</sup>.
20. From viewpoint 6<sup>15</sup> at the south edge of the site the proposed development would combine with the existing development to produce an accumulation of landscape and visual effects that would cause harm to the sub-character, the appeal site and its immediate surroundings. Given the proximity of residential properties on the opposite side of Barford Road, views from which should be taken into account, the sensitivity to change would be high with a high magnitude of change, resulting in a major/moderate overall impact at year zero, greater than that suggested by the appellants. At year fifteen due to the screening provided as part of the development the overall impact would reduce to moderate.
21. From viewpoint 7 the adjacent Barford Road appeal site would be in the foreground. There would be views from vehicular and pedestrian traffic and also representative views from properties which front onto Barford Road. The assessment of this viewpoint by the appellants does not recognise the presence of these properties, and is not therefore in conformity with the Guidelines for

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<sup>9</sup> POE Screen paras 2.23 & 2.24

<sup>10</sup> Council closing submissions paras 11-13

<sup>11</sup> Council closing submissions para 16

<sup>12</sup> Council closing submissions para 19

<sup>13</sup> Council closing submissions para 22

<sup>14</sup> Council closing submissions para 24

<sup>15</sup> See Landscape Statement of Common Ground App 1 for plan showing viewpoints

- Landscape and Visual Assessment. From this viewpoint the magnitude of change would be medium and the overall significance of the impact would be moderate.
22. Viewpoint 9 is taken from the public footpath in the north-west corner of the site. The view would be filled with the built development of the proposed scheme. The loss of the field with its open rural character would cause significant harm to the character and appearance of the landscape. The sensitivity of receptors would be high, the magnitude of change would be very high and the overall result would be a major impact. The appellant's assessment fails to recognise the open character of the site and significantly overstates the influence and impact of existing development.
  23. Viewpoint 10 is located within the new development on the north side of Milton Road. The magnitude of change would be high at both year zero and at year fifteen. The magnitude of change would not reduce over time as contended by the appellants.
  24. Overall, the appellants have adopted a position whereby a positive impact from the development would be seen, although this is not supported by their Landscape Visual Assessment (LVA). The appellants LVA also fails to properly recognise the open rural character of the site or the role that it plays in the setting of the village within the wider landscape of the Sor Valley. The role the site plays within these views is material to the assessment of the impact of the development and has not been recognised within the LVA<sup>16</sup>.
  25. The proposed development would conflict with policy C7 of the LP. This policy is consistent with the Framework in that it seeks to protect the intrinsic character and beauty of the landscape and also in that it sets out a threshold of demonstrable harm, similar in language to paragraph 14 of the Framework. Paragraph 49 of the Framework is irrelevant to consideration of policy C7, and paragraph 215 should be applied. When it is it is apparent that substantial weight should be afforded to policy C7<sup>17</sup>.

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

26. Bloxham has seen 184 housing completions between 2006 and 2012 with a further 33 commitments<sup>18</sup>. This is an increase in households of around 13.5% since 2001. This is a significant amount of development that far outstrips any other similar settlements and there is no good reason why Bloxham should be called upon to absorb yet further development<sup>19</sup>. The development of the appeal site would take this figure up to 20%. There are also two other housing proposals in the village which would take the figure up to 38%<sup>20</sup>. The Inspector in the Adderbury Decision commented that Adderbury, with only 86 completions *had made a more than adequate contribution*<sup>21</sup>. He also found that approval of the appeal site in that case weighed against the proposals in pre-empting the development plan process. Although the Inspector ultimately concluded that the

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<sup>16</sup> POE Screen paras 3.2/3.3

<sup>17</sup> Council closing submissions paras 16-30

<sup>18</sup> Council closing submissions para 31

<sup>19</sup> Council closing submissions para 42

<sup>20</sup> POE Smith para 6.15

<sup>21</sup> POE Smith app 3 APP/C3105/A/12/2168102

proposals would not be premature, this was in a context where there were not the same competing sites as is the case here. Adderbury is also a category 1 village that has had far less recent development than Bloxham<sup>22</sup>.

27. Two of the completed sites in Bloxham were identified in the Non-Statutory Cherwell Local Plan which was originally produced as a replacement for the adopted local plan. The Revised Deposit Draft of this plan was consulted upon in 2002 and pre-Inquiry changes were published for consultation in 2004. The decision was however taken to discontinue work on the plan which was approved by the Council for development control purposes in December 2004. It is important therefore to recognise that the Council has not avoided bringing forward housing growth in the absence of a new Local Plan and has continued to seek to meet the District's housing needs<sup>23</sup>.
28. The appeal site is not identified for development by either existing or emerging policy and its development is not supported by the local community, who are not anti-development per se. The spatial strategy as pursued in the emerging local plan (ELP) would see most of the growth in the district directed to locations within or immediately adjoining the main towns of Banbury and Bicester. Apart from these two towns the major single location for growth would be at RAF Upper Heyford. Growth across the rest of the district would be more limited, directed towards the larger and more sustainable villages and focussed on meeting local community and business needs<sup>24</sup>.
29. The proposed distribution of housing in rural areas is based on sound sustainability assessments contained in the CRAITLUS report<sup>25</sup>. This report considered a variety of factors in order to determine the relative sustainability of rural settlements in the district<sup>26</sup>. Bloxham performs well in terms of sustainability compared to other rural settlements, being classified as a category 1 settlement in the LP and a group 1 village in the ELP<sup>27</sup>. It is in the group of rural settlements that are proposed to accommodate the highest level of growth in the development plan period up to 2013. It is clear however, that when compared to the urban areas, Bloxham performs relatively poorly in terms of accessibility and the provision of services and facilities. The ELP seeks to distribute further development in a sustainable manner. Sustainability lies at the heart of national planning policy and it is important not to view appeals such as this as simply a housing numbers matter. Proposals should be considered fully in terms of sustainability and appropriateness of location and not simply in terms of meeting housing targets<sup>28</sup>.
30. Furthermore, there are three identified strands to sustainability, economic, social and environmental. The economic benefits of the scheme should not be overstated as any such benefits would be delivered by similar developments including those in the more accessible urban areas. In terms of the social role, the delivery of market and Affordable housing would be a benefit, although the

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<sup>22</sup> POE Smith paras 6.42/6.43

<sup>23</sup> POE Smith paras 5.26/5.27/6.14

<sup>24</sup> Council closing submissions paras 32/33

<sup>25</sup> CD19 Cherwell Rural Area Integrated Transport and Land Use Study

<sup>26</sup> Poe Smith para 6.12

<sup>27</sup> POE Smith PARA 6.38

<sup>28</sup> Poe Smith para 6.36



location of the site does not provide the most accessible location to services. Environmentally, the development of a greenfield site will result in significant harm to the countryside. The development therefore performs poorly against the tests of sustainability laid down in the Framework<sup>29</sup>.

31. Having assessed the objections to the ELP, the Council has considered the extent to which it requires changes to ensure its soundness. There are some issues which require alteration to policies, but these do not impact on any aspects of the plan which are relevant to this particular appeal. The Council remain satisfied that the policies of the ELP relevant to this appeal remain sound and in compliance with the Framework. It is recognised that there remain objections to village policies 1 and 2 and that this necessarily reduces the weight that can be attributed to them in line with paragraph 216 of the Framework. The Council consider however that there is broad support for the distribution of growth of most new housing towards the main urban centres and also for much less development directed towards villages. A number of the objections are related to competing sites around settlements, particularly where villages are not proposed to accommodate significant development during the plan period<sup>30</sup>.
32. Although still the subject of objections the ELP is at an advanced stage and is informed by up to date evidence. Given the additional work that has been carried out in assessing the objections and the fact that the approach to achieving sustainable patterns of growth is fully in accordance with the Framework, it is considered that substantial weight can be attributed to these policies<sup>31</sup>.
33. Policy Villages 2 in the ELP is the means by which the more limited growth in villages would be addressed. This policy has recently been updated 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 wholly undermine the strategy as set out in Policy Villages 2 and would render the NDPD otiose<sup>32</sup>.
34. Given the limited number of units now required for the 17 villages the particular circumstances of this case means that, unusually, it would be appropriate to refuse planning permission on prematurity grounds, even without a draft NDPD. This would be consistent with the aim of the advice given in paragraph 17 of the General Principles document<sup>33</sup> which makes clear that *refusing planning permission may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting planning permission could prejudice the DPD by predetermining decisions about the scale, locations or phasing of new development which are being addressed in the policy in the DPD.*

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<sup>29</sup> POE Smith paras 6.60-6.63

<sup>30</sup> POE Smith para 5.33

<sup>31</sup> POE Smith para 5.34/6.6

<sup>32</sup> Council closing submissions paras 35-42

<sup>33</sup> The Planning System: General Principles January 2005

35. This is a rare case where, although the development is small scale, allowing it would dispose of decisions re the scale and location of new development in the NDPD. Therefore refusal on prematurity grounds is justified even when there is no NDPD in draft form, because it is unnecessary to see a draft of the NDPD to understand that it would be rendered useless in respect of the 17 villages if the appeal were to be allowed<sup>34</sup>.
36. The guidance in the Framework emphasises the importance of a plan led planning system and the need for communities to have a central role in this. This is set out in the core planning principles in paragraph 17 of the Framework. The community in Bloxham are currently progressing a Neighbourhood Plan which will ultimately determine the issue of growth in the village in light of the overall emerging strategic policies of the district. The NP is at an early stage but the approval of the appeal scheme and the implications this is likely to have for the other two sites on the edge of the village would undermine the ability of the local community to determine the way the village develops for themselves. Given the existence of other proposals in Bloxham the situation here is substantially worse than the case identified in the Adderbury appeal decision. Consequently far greater weight should be attributed to harm caused by the levels of growth proposed around the village<sup>35</sup>.
37. The Council has a three year housing land supply. It does however take the shortfall against the five year requirement seriously, has granted planning permissions where it has thought it appropriate to do so, and is doing everything it can to remedy the position. It is making rapid progress towards the adoption of the ELP which sets out how development needs will be met up to 2031. The Council will be able to argue successfully at examination that it has a five year housing land supply at the date of the examination. There are in excess of 4800 planning permissions (4300 on large sites) in the district, and the Council have actively sought to provide the housing required under the provisions of the South East Plan in the most sustainable manner, having granted planning permission for developments in Banbury and Bicester. There is also a grant of a further 1900 units at Graven Hill subject to a satisfactory s106 planning obligation. It is accepted however that in the case of some sites, there is a fairly long lead-in period between permission and completion<sup>36</sup>.
38. The appeal site falls within the Banbury and North Cherwell area of the district and the Council consider that a 5% buffer is the correct approach to be applied in the north of the district given the level of housing growth that has been achieved since 2006. In the period 2006-2011 a total of 1749 dwellings were completed against the South East Plan requirement of 1750. Consequently there has not been a persistent under delivery in the area<sup>37</sup>.
39. The scheme would make provision for 35% Affordable Housing, which is consistent with the requirements of the emerging plan and to which substantial weight should be given<sup>38</sup>.

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<sup>34</sup> Council closing submissions paras 43-46

<sup>35</sup> POE Smith paras 6.44/6.45

<sup>36</sup> Council closing submissions paras 47-50 & POE Smith para 6.20

<sup>37</sup> POE Smith para 6.24

<sup>38</sup> Council closing submissions para 51

40. The appellants' case relies on the development plan policies being out of date and, as such, the second bullet point of paragraph 14 of the Framework being engaged. This approach is incorrect and fails to recognise the wider policy framework that the development plan contains. There is clear conflict with a number of policies from the LP as well as the NSLP and the ELP. These policies are consistent with the Framework and can therefore be considered to be up to date. The second bullet point of paragraph 14 is only engaged if the development plan is *absent, silent or relevant policies out-of-date*. This is not case in respect of this appeal<sup>39</sup>.
41. The appellant is not a housebuilder and the land will need to be marketed and sold before any progress on the reserved matters application and actual building can take place. This provides a potential for delay in the delivery of the site<sup>40</sup>.
42. In conclusion the Council considers that 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 the strategy identified in 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 remove the opportunities for local involvement and be prejudicial to the plan-led system<sup>41</sup>.

### Contributions

43. Putative reason for refusal 3 referred to contributions to mitigate the effect of the proposed development. A s106 planning obligation has been provided by the appellant to which the Council is a signatory. The Council has also provided a written justification of its components to show compliance with the tests outlined in Community Infrastructure Regulation 122. It follows that putative reason for refusal 3 has been overcome<sup>42</sup>.

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

*The material points are:*

44. The LP is clearly out of date. The policies within it were formulated circa 1993, some twenty years ago, and applied to a plan period up to 2001. The LP was prepared pursuant to the general strategy of the Oxfordshire Structure Plan which *sought to protect the environment, character and agricultural resources of the County by **restraining** the overall level of development*. This is in stark contrast to the planning circumstances prevailing today, where the Government's number one priority is to get the economy growing<sup>43</sup>.
45. Although some of the policies within the LP have been saved the Saving Directions from the Secretary of State made clear that *the exercise of extending saved policies is not an opportunity to delay DPD preparation. LPAs should make good progress with the local development framework according to the time tables in their local development schemes. Policies have been extended in the*

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<sup>39</sup> POE Smith para 6.28

<sup>40</sup> POE Smith para 6.30

<sup>41</sup> Council closing submissions paras 53-55

<sup>42</sup> Council closing submissions para 52

<sup>43</sup> POE Frampton paras 4.1/4.2/4.15

*expectation that they will be replaced promptly.* The Local Development Scheme 2012 envisaged plan preparation over an eight year period with adoption in March 2013. To date the LP has not even been submitted to the Secretary of State and is the subject of further consultation<sup>44</sup>.

46. The ELP accepts that at least 60% of new housing will have to be on greenfield land beyond existing settlement boundaries. A policy that restricts development in the countryside should therefore be given less weight as it is inescapable that land beyond the confines of existing settlements will be required to accommodate housing growth. Policy H12 is therefore out of date. Policy H13 is directed to development within category 1 settlements and hence not relevant to this proposal. The form of development control expressed in policy H18 which relates to sporadic development is not intended to be directed at a planned expansion of an existing urban area<sup>45</sup>. Furthermore, there is no middle ground relating to these policies, they are either out of date or not out of date, they cannot be regarded as out of date for one purpose but relevant and contemporary for another. Any other approach is confused and unlawful<sup>46</sup>.
47. Also no weight should be afforded policies contained within the NSLP as this document has not been subject to any form of independent scrutiny<sup>47</sup>.
48. This proposal falls to be considered under the second bullet point of paragraph 14 of the Framework. This makes clear that where the development plan is absent, silent or relevant policies are out of date permission should be granted unless (1) *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole or (2) specific policies in this Framework indicate development should be restricted.* There are no specific policies in the Framework that indicate that the proposed development should be restricted<sup>48</sup>.

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

49. The Council accepts that it cannot demonstrate a five year supply of deliverable housing land and over the past 11 years has failed to meet its annual target 8 times, resulting in a total shortfall over this period of 3240 dwellings. Of the strategic housing sites identified in Banbury and Bicester in the ELP, no development has started and the timing of the delivery of new housing on these sites is not known. It follows that there is an urgent need to release land for housing where development can be promptly undertaken<sup>49</sup>.
50. Bloxham is in a sustainable location and within the six group one villages. It has unrivalled access to education facilities<sup>50</sup>. The population of the village has increased by about 20% in each of the last two decades, but there is no objective evidence to show that the character or functionality of Bloxham have been unduly harmed<sup>51</sup>. The range of facilities on offer in the village is materially

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<sup>44</sup> POE Frampton paras 4.3-4.5

<sup>45</sup> POE Frampton paras 4.11-4.13

<sup>46</sup> Appellant closing submissions para 10

<sup>47</sup> POE Frampton paras 4.11-4.13

<sup>48</sup> POE Frampton para 4.14

<sup>49</sup> POE Frampton paras 4.16-4.21

<sup>50</sup> POE Frampton 4.22/4.23

<sup>51</sup> POE Frampton 4.27 & Appellant closing submissions paras 24-27

- greater than the other five category 1 villages, and new blood in a village has the beneficial effect of improving and securing the vitality of community facilities<sup>52</sup>. The sustainability of Bloxham is accepted by the Council in that they have granted planning permission for two nearby schemes<sup>53</sup>.
51. The scheme would provide for the early delivery of housing to meet social needs and economic benefits during the construction process and when the houses are occupied<sup>54</sup>.
52. The ELP does not indicate that the dwellings allocated to the rural villages will be spread equally across those villages. The precise number of homes to be allocated to an individual village will be set out in the NDPD. This document is shown within the Local Development Strategy as being consulted on in March/April 2013, but as yet the document has not been published<sup>55</sup>. The advice given in the General Principles document<sup>56</sup> regarding prematurity cannot apply to a plan which does not exist<sup>57</sup>. There are also unresolved objections to the rural provision and therefore less weight should be given to Policy Villages 2 in the ELP<sup>58</sup>.
53. In the context of a requirement for about 14288 new dwellings between 2006 and March 2031 it cannot be argued that granting permission for 160 dwellings (appeal site and the adjacent Barford Road site) would be so significant as to prejudice the ELP<sup>59</sup>.
54. The local community has indicated an intention to prepare a Neighbourhood Plan. This is however in a very early stage of gestation and has to be consistent with the ELP, which has unresolved objections and has yet to be submitted for examination. It follows that very little weight should be given to the indicated intention to prepare a NP.
55. The second putative reason for refusal also contends that planning permission should not be granted for the development as it is not supported by the local community. The case of *Tewksbury Council v SoS DCLG* 20<sup>th</sup> February 2013 in the High Court has recently looked at the weight that should be given to local opinion in the context of the provisions of the Localism Act 2011, and has indicated that until local plans are at a reasonably 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 planning permission in the face of local opposition*<sup>60</sup>.
56. As regards the appeal at Adderbury that the Council seek to rely on, although the Inspector concluded that the matter of prematurity weighed against the appeal proposals he also acknowledged *that in the context of the under supply of*
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<sup>52</sup> Appellant closing submissions para 3

<sup>53</sup> Appellant closing submissions para 5

<sup>54</sup> POE Frampton para 5.4

<sup>55</sup> POE Frampton 4.24-4.26

<sup>56</sup> The Planning System: General Principles January 2005

<sup>57</sup> Appellant closing submissions para 19

<sup>58</sup> POE Frampton 4.24-4.26

<sup>59</sup> POE Frampton para 4.37

<sup>60</sup> POE Frampton 4.31

*housing land in Banbury and North Cherwell this would not be sufficient reason on its own to justify a refusal of planning permission<sup>61</sup>.*

### Character and appearance

57. The effect of the proposals on the localised landscape character would be neutral. Whilst there would be a degree of change, the site and its setting have the capacity to accommodate this change and there would not be a detrimental effect upon the character of the site. It is already influenced by the existing urban edge associated with the residential development to the west of the site, the new development at Woodland Gardens, the Bloxham Mill Business Centre, the traveller site and the existing residential development on Barford Road. It cannot therefore be considered to be entirely rural or open countryside and should be considered to be a rural fringe site<sup>62</sup>.
58. The proposed development would have an open space to the south, would be of low density and would relate to the existing urban edge<sup>63</sup>. It is agreed that the only material impacts on either the character or appearance are those which are shown in viewpoints 6, 7, 9, and 10<sup>64</sup>. These are on the edge of the site and therefore the impact would be confined to the appeal site itself and would not change the landscape character of this part of Bloxham which will remain urban fringe. The visual impact is highly localised and is the sort of impact that will inevitably arise if housing land is to be made available to meet the Council's housing land requirements. The Landscape Methodology makes clear in paragraph 1.7<sup>65</sup> that *it is also possible for a low to very high magnitude of change to occur that has a neutral effect on the landscape or view, due to the development being compatible with the local area<sup>66</sup>.*
59. With regard to the effect of the proposals on the Area of High Landscape Value (AHLV), it should be noted that this is a local designation, one which should be acknowledged as a landscape of particular merit or value, but which is no longer given significant weight in the Framework. In paragraph 3.19 of the Council's statement of case it is acknowledged that *since the adoption of the Cherwell Local Plan 1996 there has been a material change to the planning approach for local designations. Previously only landscapes identified as 'special areas' merited particular attention.* It is also acknowledged that *the materiality of this change means that the emerging Cherwell Local Plan no longer carried forward the AHVL policy, not least because the policy revisions are no longer up to date with the best practice and no longer consistent with the Framework.*
60. The quality of the localised setting of the AHVL is somewhat diminished by the presence of the existing wireless masts associated with Barford St John airfield, and as such cannot be considered a landscape of heightened quality and value and should not be afforded such weight as those areas which are more notably attractive. Since the adoption of the LP there has been a significant change to

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<sup>61</sup> POE Frampton 4.32

<sup>62</sup> POE Wright paras 5.12/5.15/5.16

<sup>63</sup> POE Wright para 5.16

<sup>64</sup> Appellants closing submissions para 8

<sup>65</sup> Wright App 4 page 26

<sup>66</sup> Appellants closing submissions para 15

the rural character of the site and its setting resulting from both new development and consented developments within the immediate site context.<sup>67</sup>

61. It is clear that there is great interest amongst developers in bringing forward this site. It will be built out within five years reflecting the position in the recent adjacent developments and will thereby sustainably help address the housing shortfall<sup>68</sup>.

### **The Case for the objectors**

Mr John Hiron

*The material points are:*

62. There has been a remarkable expansion of Bloxham in the last fifty years. Recent developments have been on agricultural land and have clearly put further strain on the village infrastructure. Further expansion would only exacerbate this and would reduce our ability to retain our food security still further, if only by a very small percentage. Six farms within the village boundaries have been lost and due consideration should be given to future demand for agricultural land for food production and our future food security.

Councillor Chris Heath

*The material points are:*

63. There is much opposition in the village to this proposal. The ELP shows the intention to build 14208 new houses in the district between 2011 and 2031. These will utilise brownfield sites wherever possible including the canal-side development in Banbury and the MOD land in Bicester. A debate in the House of Commons instigated by our local MP<sup>69</sup> recently addressed the question of the way in which developers are behaving in the anticipation of the introduction of new local plans. They are making opportunist planning applications on sites they consider to be the most attractive. This is planning anarchy that will undermine the concept of a plan led system.
64. The restriction of development around villages is a long standing and fundamental plank of planning policy which continues to have a prominent place in the Framework. Because of the continued recognition of the need to protect the countryside policies relating to this issue should be afforded full weight.
65. 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.

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<sup>67</sup> POE Wright paras 5.77-5.82

<sup>68</sup> Appellants closing submissions para 30

<sup>69</sup> Document 20

66. 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.
67. The development of this site should not be justified on the basis of the temporary land supply deficiency alone. Two large developments in Banbury (over 800 homes) are due to come before the Council's Planning Committee shortly, both of which form part of the ELP. If approved they will make a significant difference to the five year housing land supply.

Mr Stephen Phipps

*The material points are:*

68. 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.
69. The site is agricultural land with very poor infiltration rates. The Environment Agency in their consultation response recommended a condition concerning a sustainable drainage scheme. The Flood Risk Assessment (August 2012) indicated that there would be two attenuation ponds on the site and that the run-off would be pumped into a ditch on Milton Road. This ditch is already stressed and there is therefore a flood risk on and off the site. There is also concern as to how the storage ponds could be made safe on a family home development. As Bloxham suffers from regular power outages there is also concern as to how a management strategy can be devised in the event of a power cut.
70. 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.
71. 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:*

72. 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 Gladman's site all identify potential problems in terms of capacity at the mini-roundabout at the junction of the A361 and Barford Road. The traffic assessment provided by David Tucker Associates for this development concludes that the *mini-roundabout junction is approaching capacity in the AM peak for 2012 and exceeds capacity for 2017*. It then goes on to state that *there is little difference in the operation of the junction with the addition of the development generated traffic*. However, the common sense conclusion is that the development would make an already serious situation



- worse and if the Gladmans site were to be allowed this would make the situation even worse.
73. 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.
74. 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.
75. The developer makes much of the government's policy of encouraging trips of up to 5km by cycle and refers to the proximity to the site of National Cycle Route 5. However, this route does not travel directly to any likely employment location. Also the A361 that runs through the village carries a high volume of traffic and is not therefore safe for cyclists. The time estimated by the appellants to walk from the site to the village centre is also underestimated, meaning that the site is not as sustainable as the appellants suggest.
76. 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, who's 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.
77. Contributions were agreed and paid by the developers of the two completed sites off Milton Road but these funds remain unspent. From this I would conclude that it is proving impossible to find any worthwhile improvements that can be made with such sums. In an appeal decision in Bidford-on-Avon<sup>70</sup> the Inspector concluded that without proper detailed assessment the highway access could not be assured if it was left to a condition or reserve matter and therefore the appeal should fail. This should be the case in respect of the mini-roundabout.

Ms Myra Peters on behalf of South Newington and Milcombe Parish Councils and Milton Parish Meeting

*The material points are:*

78. 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.

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<sup>70</sup> APP/J3720/A/12/2176743 POE Frampton App 8

79. 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.
80. 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.
81. 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.
82. 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.

Mr John Groves

*The material points are:*

83. 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.
84. 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.

Mrs Jenny Yates on behalf of Bloxham Parish Council

*The material points are:*

85. The appeal site is in the countryside. It is not an urban edge but a soft rural edge, and the proposed development would result in a significantly adverse visual effect when entering the village. Views would be lost from houses facing Milton Road and Barford Road, pedestrians walking along these roads and walkers along the public right of way. On entering the village along Milton Road there would be a solid corridor of housing rather than the open approach that currently exists. This must be seen as causing significant adverse harm.
86. The appellants have suggested that a new playing pitch could be placed on the land fronting Barford Road. There is however no indication how this would be accessed, how the public footpath would be protected or how the inadequate drainage problem would be resolved. This seems to suggest a new application, reflecting the Adderbury refusal in that it is not clear what the development is.

### **Written Representations**

Sir Tony Baldry MP

*The material points are:*

87. 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

88. 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. These 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**

89. In the event that planning permission is granted the appellants and the Council have agreed a list of conditions which they would wish to see imposed on the planning permission. This list is found in the Planning Statement of Common Ground at page 23. I attach at Annex 1 of this report the conditions I recommend if permission is granted. My recommendation takes account of the agreement of the parties and the discussion at the inquiry.
90. The first three conditions are standard and, as the application was in outline, relate to the submission of the reserved matters and the timing of these and the implementation of the permission. It should be noted that the appellants agreed to periods of one year for both the application of approval of reserved matters and the commencement of the development after approval of the last of the

reserved matters. These periods are less than the standard periods and are seen by the appellants as showing that the proposed development could start to deliver dwellings in a relatively short time period. As this was one of the appellants' justifications for the scheme I concur with this view.

91. In the interest of the final character and appearance of the proposed development I consider it would be necessary to impose conditions relating to finished floor levels of dwellings (4) and landscaping (6) and also a condition that restricts the number of dwellings to that applied for (15). To comply with the requirements of the statutory authorities and prevent the proposed development causing flooding problems conditions relating to the submission of further details of the drainage (8) and surface water schemes for the site (7) are necessary.
92. To ensure that the site has a suitable pedestrian connection to the existing network it would be necessary to impose conditions relating to the provision of a footway along Milton Road (11), additional street lighting (19) and the closure of the existing site access (10). To ensure the sustainability credentials of the site it would be necessary to impose conditions that require a travel plan to be produced (13) and adhered to, and to ensure that the proposed dwellings achieve level 3 of the code for sustainable homes (5). In the interests of biodiversity a condition requiring a biodiversity enhancement scheme has been suggested (14). It seems to me that such a condition would be beneficial to the environment and the living conditions of future residents and I have therefore included it in the attached annex.
93. Lastly, in the interests of neighbouring inhabitants I consider it necessary that a construction method statement is imposed (12).

**The report continues on the next page**

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

*Policy position*

94. I accept that the Council take the housing shortfall seriously and has granted permissions where it thought it appropriate to do so (albeit that some of the sites have long lead in times) including 1900 units at Graven Hill, in an effort to remedy the position. The Council also consider that Banbury and North Cherwell, taken as a sub area of the district, has achieved almost exactly the housing numbers required by the SEP [38]. I also note that the Council consider that they will be able to demonstrate a five year housing land supply at the time of examination of the ELP [37].
95. Notwithstanding these factors however, both main parties agree that the Council cannot, at the present time, demonstrate a five year housing land supply [12]. In line with paragraph 49 of the Framework therefore it follows that relevant policies for the supply of housing should not be considered to be up to date. Paragraph 49 of the Framework also makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development. Paragraph 14 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.
96. 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 have accepted that in terms of the supply of housing policies H12, H13 and H18 are out of date [14]. The difference in approach here between the Council and appellants is that the Council consider that these policies also serve to protect the countryside from sporadic development and should therefore be afforded some weight [14], whilst the appellants consider that the policies are out of date and no weight should be afforded to them [46].
97. However, both policies H12 and H13 refer to existing settlements, and the appeal site is outside of a settlement boundary. Both are also primarily housing restriction policies. Very little, if any weight can therefore be afforded to these policies. In respect of policy H18 however, paragraph 2.76 of the LP makes clear that it has a function of protecting the countryside [14], and therefore has some relevance in line with the Framework. Notwithstanding this however, given the time expired nature of the LP and the fact that 60% of new housing will have to be on greenfield land [46] I consider that only limited weight can be afforded to policy H18.
98. 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 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.

99. 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 has not been through the full consultative and adoption procedure.

#### *Sustainability*

100. The whole thrust of paragraphs 49 and 14 of the Framework is of course sustainable development, and it is therefore necessary to ascertain whether the proposed development would be sustainable. Bloxham does benefit from having primary and secondary schools and the appellants consider that it has a range of facilities materially greater than the other five category one villages as defined by the LP [50]. This is to an extent confirmed by the Council who have accepted that Bloxham does perform well in terms of sustainability compared to other rural settlements and is in the group of rural settlements that are proposed to accommodate the highest level of growth in the development plan period up to 2031 [29].

101. I do note that 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. Furthermore, 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 very close proximity to the appeal site [50]. These were included as sites within the NSLP and share similar characteristics in terms of relationship to Bloxham as the appeal site.

102. 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 appellants point to the economic benefits that would arise from the scheme during the construction phase and also when the houses are occupied, and to the social benefits that would arise from the provision of new housing [51]. The Council consider that the economic and social benefits of the scheme should not be overstated in that similar benefits would be delivered by other developments including those in more accessible urban areas [30], and to a large extent I accept this point. 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.

#### *Landscape*

103. This brings me to the environmental impact of the proposed development, which formed the basis for the first putative reason for refusal. 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*. The Council identified four particular viewpoints in close proximity to the site where it considered significant harm would accrue such that conflict with policy C7 would occur [19]. The appellants considered that because these view points are on the edge of the site the impact would be highly localised and would not change the landscape character of this part of Bloxham which would remain urban fringe, and that overall the effect of the proposals would be neutral [57].

104. I do not agree with this assessment. A rural field would be changed into a housing estate and I cannot accept that could be defined as neutral. Particularly when seen from the public footpath at viewpoint 9 in the north-west corner of the

site an open field, albeit with some adjacent development, would become a housing estate. This would cause harm to the character and appearance of the immediate landscape. However, in my view the important word in the previous sentence is immediate.

105. Any change to the landscape would be localised and would not have great significance in longer range views. I accept that the existing dwellings in Barford Road would lose their view of the open field. However, the appeal site is relatively flat and the proposed development would be seen against the adjacent housing development in Milton Road and also in conjunction with the Bloxham Business Centre. The existing hedge and tree boundaries would in the main be retained and would also be reinforced with further planting. Furthermore, due to the business centre and also the travellers site and scrap yard along Milton Road, the proposed development would not be introducing built form in to an area devoid of such.
106. Therefore, whilst some harm would occur such that there would be conflict with policy C7, this harm 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. In arriving at this view I acknowledge the presence of the AHLV [17] but also note that there has been a material change to the planning approach for local designations since the adoption of the LP, that the present designation is not afforded significant weight by the Framework and that the quality of the area around the appeal site has been diminished by development [59]. These factors all serve to considerably reduce the weight that can be given to the presence of the AHLV.

*Prematurity and community support*

107. The Council's second putative reason for refusal related to prematurity and also the fact that the proposed development was not supported by the local community. I will deal with the question of prematurity first.
108. The Council specifically referred to Policy Villages 2 of the ELP in its putative reason for refusal. This policy originally indicated that 500 dwellings would be allocated between a group of six villages including Bloxham, although this figure would reduce as further completions and approvals were recorded from April 1 2011. At the Inquiry it was confirmed that in the Proposed Submission Focused Consultation<sup>71</sup> Policy Villages 2 has changed such that Bloxham would now only receive a proportion of 96 houses allocated to a group of about 16 villages. The precise number of homes to be allocated to an individual village, and the actual allocation sites, would be set out in the NDPD1 [33].
109. Guidance on prematurity is given in The Planning System: General Principles. 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*

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<sup>71</sup> Document 6

*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. Further guidance is given later in the same paragraph where it states that where a DPD has been submitted for examination but no representations have been made in respect of relevant policies, then considerable weight may be attached to those policies because of the strong possibility that they will be adopted. The converse may apply if there have been representations which oppose the policy (my underlining).*

110. In this particular case, the NDPD has not yet been published despite being shown, in the Local Development Strategy, as out for public consultation in March/April 2013 [52]. Furthermore, the ELP, although at a relatively advanced stage and informed by up to date evidence, is yet to be submitted for examination and still has objections, some of which relate specifically to Villages Policies 1 and 2 [31] [52]. In terms of quantum, even if the numbers of units on the proposed development are added to those on the proposed neighbouring site and that at Tadmarton Road, the actual number would be very small in relation to the 14288 required between 2006 and 2031 within the district.
111. In light of these factors I cannot agree with the Council that substantial weight should be attributed to policies in the ELP, or that allowing the appeal would be prejudicial to the ELP taken as a whole.
112. In respect of the NP and the lack of community support, I accept that the local community have embraced the process put forward in the Localism Act 2012 [84]. However, 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.*
113. 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 [83]. 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 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.
114. For these reasons I consider that only limited weight can be attributed, against the proposed development, to the matters of prematurity and localism.
115. The Council have quoted the Adderbury appeal decision [26] in support of their case. In that decision however the Inspector noted the substantial shortfall in housing land supply and concluded that *in so far as a decision on the appeal scheme in isolation may well pre-empt those local decisions, this is a matter that*



*weighs against the proposals, although in the context of the under supply of housing land in Banbury and North Cherwell, this would not be sufficient reason on its own to justify a refusal of planning permission.* Whilst I accept that the overall quantum of development proposed in Bloxham is more than that at Adderbury, I nonetheless agree that the same situation applies in this case.

116. I accept that Bloxham has seen a considerable amount of development since 2001 and note that residents consider it to be now 'full' [66]. However, as the appellants have pointed out there is no objective evidence to show that the character or functionality of Bloxham have been unduly harmed by this development. The Planning Obligation (see below) would address the pressures on local infrastructure and services as identified by the Council and the village is sustainable in relation to other rural locations. For these reasons I cannot accept that the quantum of development can be a determining factor in this appeal.

*Planning obligation*

117. The Councils 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. Whilst these have not been contested by the appellants it is nonetheless incumbent on me to assess these required contributions against the tests outlined in Community Infrastructure Levy (CIL) Regulation 122. These tests, which are also set out in paragraph 204 of the Framework, 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.
118. For this purpose the Council have supplied me with two documents<sup>72</sup> that give the justification and relevance for each of the requested contributions. The former of these outlines the requirements of the County Council and I will deal with these first. The contribution towards public transport would be used to enhance bus services serving the site and the transport infrastructure contribution would help mitigate the impact of the scheme through off site highway improvements. They are in my view in line with the tests.
119. The contribution towards Adult Learning would go towards the re-development of adult learning facilities in Banbury. I note however that the quantum of the contribution is assessed in light of the *likely adult generation from which demands for adult learning derive*. This to me seems very non-specific. Similarly the required contribution towards a daycare centre mentions the *likely proportionate level of need arising from the elderly*. I cannot accept that these required contributions fulfil the test of being fairly and reasonably related in scale and kind to the development, and cannot therefore recommend that they are taken them into account in the decision relating to this report.
120. As regards the required waste management contribution, the amount of the contribution is indicated as relating to the cost of a new provision serving the site and is shown as a cost per home. However, the information before me also states that *scheme delivery either at Alkerton or in the environs of within*

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<sup>72</sup> Documents 3 and 4

*Banbury*, and I have been given no information relating to the costs of either of these schemes. From the information before me therefore I cannot relate this to the amount required per home and therefore it has not been shown that the required contribution is fairly and reasonably related in scale and kind to the development.

121. A contribution is required towards new library provision in Banbury, identified in the Oxfordshire Local Investment Plan. The quantum is based on adopted standards plus a requirement for initial provision of bookstock at two volumes per person, all related to the numbers of bedrooms in the proposed development. From the information before me I conclude that this required contribution complies with the required tests.
122. In terms of education contributions the expected demands are based on the 2008 Oxfordshire Survey of New Housing and also take account of location, scale and mix of the dwellings, development phasing and attendance at non state funded schools. The information provided by OCC indicates that both the secondary and primary schools in Bloxham are effectively full and are oversubscribed. Contributions would go towards the expansion of the Warriner School in Bloxham and a neighbouring primary school. Costs are based on DfE<sup>73</sup> cost multipliers for extensions of schools adjusted for regional variation and local requirements for ICT provision and fire suppression. The appellants have provided no evidence to contest that put forward by OCC and therefore, in light of the information before me, I find nothing to indicate that such a contribution would be contrary to the tests. However, in the light of my findings in the Barford Road case (2189896), where far more evidence was presented on this issue, the SoS may wish to seek further evidence before determining the suitability of the preferred undertaking in this regard.
123. The information provided by OCC for the contribution towards Special Educational Needs (SEN) indicates that the quantum of the required contribution is related to the mix of dwellings and the costs of previous extensions of SEN schools. The contribution would go towards the expansion of a Special School in Banbury for which I note that a bid is currently being prepared. In light of the information before me I conclude that the required contribution for SEN complies with the tests and can be taken into account in any decision to grant planning permission.
124. 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 to make the development acceptable in planning terms. For this reason I consider that the required contributions do not accord with the tests and cannot be taken into account in any decision to grant planning permission.
125. 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

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<sup>73</sup> Department for Education

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.

126. 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 note 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 tests and cannot be taken into account in any decision to grant planning permission.
127. The Council have requested a range of further contributions to ensure the future maintenance of the two ponds, hedgerows, trees, ditches, 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. 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.
128. 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 tests, the addition of the extra 10% is not and cannot be taken into account in any decision to grant planning permission.

### **Other matters**

129. Government policy is strongly directed towards an increase in housing designed to stimulate the economy. Nowhere is there guidance that requires the retention of agricultural land per se for future food security. This is not therefore a matter that can weigh against the proposed development.
130. 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 (63/64). 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.
131. Traffic matters, particularly relating to the mini-roundabout and the Barford Road/Milton Road junction, were a concern of many third parties and the parish council [67]. 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. I note that the sums acquired from the other sites remains unspent, but do not consider that this necessarily means, as suggested by the Parish Council, that it is proving impossible to find worthwhile improvements. The highway authority indicated in their consultation reply to the planning application 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.

132. The Bidford-on-Avon decision related to the design of the access road to the proposed development itself, which was a concern of the highway authority. This is entirely different to the present case where the concerns relate to an existing junction that the highway authority has indicated can be improved given the appropriate funding.

133. In respect of school provision the County Council have indicated that a contribution to mitigate the effects of the proposed development would be satisfactory and the appellants have agreed to pay the requested sum. This cannot therefore be a reason for dismissing the appeal.

134. 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>74</sup>.

### **Balancing exercise**

135. Given the housing land supply situation in the district the provision of housing carries considerable weight, and the provision of the required amount of Affordable Housing adds to this. The proposed development would also have social and economic benefits in a village that is sustainable in terms of a rural settlement. Against this has to be weighed the conflict with policies C7 and H18, although I have found that the latter carries only limited weight and the harm occasioning the conflict with C7 is localised. I have also found that only limited weight should also be attributed to the prematurity and localism issues. Overall I consider that the need for housing and Affordable Housing and the economic benefits outweigh the negative factors that have been identified.

### **Recommendation**

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

*John Wilde*

Inspector

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<sup>74</sup> POE Smith para 6.65

## 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 Anthony Crean QC	Instructed by Miltondale Developments Ltd
He called	
Mr Ben Wright BA (Hons) DIP LA CMLI	Director, Aspect Landscape Planning Ltd
Mr P J Frampton BSc (Hons) TP MRICS MRTPI	Director, Frampton Town Planning Ltd

### INTERESTED PERSONS:

Mr John Hiron	Local resident
Councillor Chris Heath	Ward Councillor
Mr Stephen Phipps	Local resident
Mr Michael Morris	Speaking on behalf of Bloxham Parish Council
Ms Myra Peters	Speaking on behalf of South Newington and Milcombe Parish Councils and Milton Parish Meeting
Mr John Groves	
Mrs Jenny Yates	Speaking on behalf of Bloxham parish Council

**Application Documents**

- 1 Planning Appeal Form
- 2 Appellant's Grounds of Appeal
- 3 LPA Registration Letter, dated 22" August 2012
- 4 Copy of the Original Planning Application sent of LPA  
*Plans:*  
Site Location Plan, dwg. no. PJF/omjt/BAR06/PF/8840.01  
Development Masterplan, dwg. no. 5050/ASP2 Rev. B  
*Documents:*  
Covering letter, dated 10<sup>th</sup> August 2012  
Application Form & Certificates, signed & dated 10<sup>th</sup> August 2012  
Planning Statement, dated August 2012  
Design & Access Statement, dated August 2012  
Energy Statement, dated August 2012  
Ecological Appraisal (Rev. A), dated August 2012 Flood Risk Assessment, dated August 2012 Transport Assessment, dated August 2012 Residential Travel Plan, dated August 2012  
Notice served on landowner, dated 10<sup>th</sup> August 2012
- 5 **Copies of additional plans, drawings and documents sent to the LPA but which did not form part of the original application**  
*Plans:*  
Development Plan, dated November 2012  
Development Plan Rev A, dated December 2012  
*Documents:*  
Outline Drainage and Utilities Assessment, dated September 2012  
Landscape and Visual Assessment, October 2012  
Statement of Community Involvement, dated October 2012  
Ecological Appraisal (Rev B), dated October 2012  
Revised Design and Access Statement, dated October 2012  
Landscape and Visual Assessment, dated November 2012
- 6 **Relevant correspondence between applicant and LPA**  
LPA email dated 30 August 2012  
Frampton's email dated 6 September 2012  
LPA email dated 10 September 2012  
Frampton's email, dated 13 September 2012  
Frampton's email, dated 2 October 2012  
Frampton's emails (x5) dated 4 October 2012 timed at 10H50 and 10H51  
Frampton's letter, dated 19 October 2012  
Frampton's email, dated 26 October 2012  
Frampton's letter, dated 30 October 2012  
LPA email, dated 8 November 2012  
Frampton's email, dated 8 November 2012  
LPA email, dated 15 November 2012  
Frampton's email, dated 20 November 2012  
Frampton's email, dated 22 November 2012  
Frampton's email, dated 23 November 2012  
Frampton's emails (x2), dated 26 November 2012 and timed at 12H23 and 12H32  
LPA email, dated 3 December 2012  
Frampton's email, dated 4 December 2012  
Frampton's email, dated 5 December 2012

**Documents handed in during the Inquiry**

- 1 Letter dated 12 March with attached circulation list and copy of advert in the Banbury Guardian giving details of the date, time and location of the Inquiry
- 2 Copy of appeal decision APP/Y2810/A/12/2180530
- 3 Spreadsheet giving information relating to the required contributions from the County Council.
- 4 Spreadsheet giving information relating to the required contributions from the District Council.
- 5 Explanatory Note 2 originally produced in relation to the Barford Road Inquiry
- 6 The Cherwell Local Plan Proposed Submission Focused Consultation dated March 2013
- 7 Explanatory Note 1 originally produced in relation to the Barford Road Inquiry
- 8 Extracts from the Non Statutory Cherwell Local Plan 2011 dated December 2004
- 9 Signed and dated Planning Obligation by Deed of Agreement
- 10 Statement from Mr John Hirons
- 11 Statement from Councillor Chris Heath
- 12 Statement from Mr Stephen Phipps
- 13 Statement from Mr Michael Morris
- 14 Statement from Ms Myra Peters
- 15 Statement from Mr John Groves
- 16 Summary of Statement from Mrs Jenny Yates
- 17 Statement from Mrs Jenny Yates
- 18 Letter from Mr Peter Barwell MBE
- 19 Letter from Mrs Claire Smith
- 20 Transcript of debate in the House Commons 18 January 2013
- 21 Opening submissions on behalf of Cherwell District Council
- 22 Opening submissions on behalf of the appellants
- 23 Closing submissions on behalf of Cherwell District Council
- 24 Closing submissions on behalf of the appellants
- 25 Statement of common ground – landscape
- 26 Statement of common ground (version 4) – planning
- 27 Update POE from Tim Screen
- 28 Errata sheet relating to POE from Tim Screen

## Annex 1

### Schedule of conditions

- 1) Details of the appearance, landscaping (including the protection and enhancing of existing hedgerows around the site), 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) No development shall take place until details of the finished floor levels of the proposed dwellings in relation to the existing ground levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) The dwellings shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- 6) The landscaping scheme as approved under condition 1 shall be carried out in accordance with a landscaping phasing plan to be submitted and approved in writing by the local planning authority and retained thereafter. Any new or existing hedgerows around the perimeter of the site shall be retained and any plant dying or removed within a period of 5 years from the completion of the development shall be replaced with one of a similar size and species during the next planting season.
- 7) No development shall take place until a scheme for the surface water drainage of the approved development in accordance with RSK's Flood Risk Assessment dated August 2012 (reference 131733 – R1(1) – FRA) has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved works have been carried out.
- 8) No development shall take place until a drainage strategy detailing 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 the drainage works referred to in the strategy have been completed.
- 9) No development shall take place until a scheme for additional street lighting along Milton Road between the site access and Barford Road has been submitted to and approved in writing by the local planning authority. The street lighting shall be carried out in accordance with the approved details at a time previously agreed with the local planning authority.
- 10) When the new access hereby permitted is brought into use, the existing accesses from Milton Road will be permanently closed in a manner to be agreed with the local planning authority.
- 11) No dwelling shall be occupied until details of a scheme for the provision of a footpath along Milton road, as shown on drawing 14043-06 (submitted to



the local planning authority on 20/11/12) including construction and drainage details, has been submitted to and approved in writing by the local planning authority and the scheme completed.

- 12) 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) the parking and turning of vehicles of site operatives and visitors
  - ii) loading and unloading of plant and materials
  - iii) control of noise emanating from the site during the construction, including hours of work
  - iv) the location of the site compound
  - v) means of minimising the deposit of mud and other debris on the highway during construction
  - vi) measures to control the emission of dust and dirt during construction
- 13) No dwelling shall be occupied until a travel plan has been submitted to and approved in writing by the local planning authority. The provisions of the travel plan shall be implemented thereafter as approved.
- 14) No dwelling shall be occupied until a Biodiversity Enhancement Scheme (BES) has been submitted to and approved in writing by the local planning authority. The BES shall include the following elements: -
  - i) Details on native landscaping
  - ii) The management regime for public open areas/features
  - iii) The type and location of biodiversity enhancement measures such as bat and bird boxes
  - iv) The timing of the implementationThe BES shall be carried out as approved in a timescale agreed with the local planning authority.
- 15) No more than 85 dwellings shall be accommodated on the site.



## 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.