



Department for  
Communities and  
Local Government

Mr C Still  
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CONGLETON  
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CW12 1LB

Our Ref: APP/C3105/A/14/2226552

7 December 2015

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY GLADMAN DEVELOPMENTS LTD:  
LAND AT SIBFORD ROAD, HOOK NORTON, BANBURY, OXFORDSHIRE OX15 5LA  
APPLICATION REF: 14/00844/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Tim Wood BA(Hons) BTP MRTPI, who held a public local inquiry on 13 – 14 January and 31 March 2015 into your appeal against the refusal of Cherwell District Council ('the Council') to grant outline planning permission for the erection of up to 54 residential dwellings, landscape, public open space and associated works, in accordance with application ref 14/00844/OUT, dated 23 May 2014.
2. On 20 October 2014 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposal for residential development of over 10 units in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority.

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

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions (except where indicated otherwise because of changes in circumstances since the Inspector's report was submitted) and agrees with his recommendation, allows the appeal and grants planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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

4. On 13 July 2015 the Secretary of State wrote to the Council to seek information about the number of planning obligations which had been entered into on or after 6 April

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2010 and which provide for the funding or provision of a project, or provide for the funding or provision of that type of infrastructure for which an obligation is being sought in relation to this appeal proposal. Responses were received from the District and County Councils, both dated 20 July 2015.

5. It then came to the Secretary of State's attention that the Cherwell Local Plan 2011-2031 Part 1 was formally adopted by Cherwell District Council on 20th July 2015. On 30 July he wrote to the main inquiry parties to invite representations on the following matters:
  - a. The relevance of the adoption of the Cherwell Local Plan 2011-2031 Part 1 and of any policies therein to the facts of this appeal;
  - b. Whether there is a demonstrable five year supply of deliverable housing sites;
  - c. Progress with the Hook Norton Neighbourhood Plan and the relevance of any policies therein to the facts of this appeal;
  - d. Any other matters which the parties considered to be material to their case.
6. He received responses from Allen Bruton dated 31 July, the Council and Hook Norton Neighbourhood Plan Steering Group, both dated 6 August, and the appellant dated 14 August. These responses were recirculated for further comment on 17 August. He received replies from the Council dated 27 and 28 July, and from the appellant dated 28 July.
7. The Secretary of State has given careful consideration to all the responses to his communications of 30 July and 17 August. As all the responses were circulated to the main inquiry parties, he does not consider it necessary to summarise them here or attach them to this letter. Copies of the correspondence can be obtained upon request to the address at the bottom of the first page of this letter.

### **Statutory and Policy considerations**

8. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan comprises the Cherwell Local Plan 2011-2031 Part 1, as noted above, together with the remaining saved policies of the Cherwell Local Plan 1996 (CDLP) which have not yet been replaced and the Hook Norton Neighbourhood Plan (HNNP) which having successfully passed referendum on 3 September 2015 was made by the Council on 19 October 2015.
9. At the time of the Inquiry the parties agreed that the CDLP policies relevant to this appeal were policies C8, C9, H5, H13, H18 and ENV1 (IR12). However, of these, only policies C8, H18 and Env1 have been retained following adoption of the Local Plan Part 1. The Secretary of State considers that the most relevant policies in the now adopted Local Plan Part 1 are those listed at IR13 and 54. The policies in the HNNP that he considers to be most relevant to this case are considered at paragraphs 16 – 17 below.
10. Material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (The Framework), the associated planning practice guidance, the Community Infrastructure Levy (CIL) Regulations 2012 as amended and the Written Ministerial Statement on Neighbourhood Planning of 10 July 2014.

## **Main issues**

### *Housing land supply*

11. At the time of the Inquiry it was common ground that the Council could not demonstrate a 5 year supply of housing land. Consequently the Inspector took the view that relevant policies for the supply of housing could not be considered up to date (IR14 and 53). The Secretary of State has had regard to the Appellant's case concerning housing land supply in their representations referred to at paragraph 6 above. However the Secretary of State is more persuaded by the reasoning put forward by the Council in its representations also referred to at paragraph 6 above. In particular, the Secretary of State notes that the Inspector who examined the newly adopted Cherwell Local Plan Part 1 endorsed the housing trajectory as being effective and up to date, which includes a housing land supply for the next five years. Moreover, that Inspector found that the modified new housing total and revised housing trajectory represent a reasonable and realistic, deliverable and justified basis for meeting local needs over the plan period. Consequently the Secretary of State takes the view that at present the Council can demonstrate a 5 year housing land supply consistent with the relevant policies in the recently adopted Local Plan Part 1. Applying paragraph 49 of the Framework, the Secretary of State considers that the relevant policies in the Local Plan and Neighbourhood Plan for the supply of housing should be considered up-to-date, and he gives those policies full weight.

### *Whether the proposal complies with the Local Plan*

12. After taking into account representations in the correspondence referred to at paragraph 6 above, the Secretary of State considers that in this case the key policy in the recently adopted Local Plan Part 1 is Policy Villages 2. He has given careful consideration to the Council's representations on this policy, but is persuaded by the Appellant's representations. Policy Villages 2 does not restrict the proportion of the 750 dwellings referred to in this policy that may be built in any one village, including Hook Norton, nor control phasing of that figure up to 2031. Moreover, the Council has accepted that Hook Norton is a relatively sustainable location, a conclusion which is endorsed by the Inspector (paragraph 19 below). For this reason the Secretary of State takes the view that it would be acceptable for Hook Norton to provide a relatively larger share of the 750 dwellings than other villages listed in Policy Villages 2. In the circumstances of this appeal the Secretary of State does not consider that allowing up to 54 dwellings would undermine the sustainable strategy to which the Council's representations refers.
13. The Council has suggested that the proposal does not fully comply with the criteria in Policy Villages 2. However, notwithstanding that the site is in agricultural use the Secretary of State agrees with the Inspector that the proposal would meet the three dimensions of sustainable development at paragraph 7 of the Framework (IR66 and paragraph 19 below). As regards whether development would contribute in enhancing the built environment, the appeal is for outline planning permission. Ensuring good design, in order to make a positive contribution to the locally distinctive character of the village, is an issue for further consideration at the reserved matters stage. All in all, the Secretary of State considers that the appeal proposal broadly accords with the criteria in Policy Villages 2.
14. The Secretary of State has considered the degree of conflict with the relevant remaining saved policies of the CDLP, as identified at paragraph 9 above. CDLP Policy H18 on new dwellings in the countryside states that planning permission will

not be granted for residential development beyond the built-up limits of settlements, other than in specified exceptions which are not relevant here (IR52). CDLP Policy C8 seeks to prevent sporadic development in the countryside and its supporting text states that it will apply to all new development proposals beyond the built-up limits of settlements. However saved policies H18 and C8 predate and must be read alongside the recently adopted Policy Villages 2 which, subject to criteria referred to in paragraph 13 above, does allow some residential development beyond the built-up limits of Category A settlements including Hook Norton. As the Secretary of State has concluded in paragraph 13 above that the appeal proposal broadly accords with Policy Villages 2, he considers that in the circumstances of this appeal there is conflict between that policy and saved policies H18 and C8. The Guidance states that if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted (Ref 21b-013-20150327). Consequently the Secretary of State places no weight on the conflict between the appeal proposal and saved Policies H18 and C8. For the reasons at paragraph 18 below he finds no conflict with CDLP Policy Env1.

*Degree of conflict with the Hook Norton Neighbourhood Plan*

15. The HNNP does not allocate any sites for development, so there are no allocated sites that might be held back if the appeal were allowed. Nor does the HNNP identify the appeal site for any special environmental protection.
16. The Secretary of State has carefully considered the relevant policies in the HNNP that the appeal parties raised in the representations listed at paragraph 6 above. HNNP Policy HN-H1 sets out that sustainable housing for Hook Norton means conversions, infilling and minor development. Each of these is defined, with minor development being small scale and typically less than 10 dwellings. The Policy states that proposals for up to 20 dwellings may be permitted where this does not result in more than 20 dwellings being built in any location at any time. The examiner who examined the HNNP concluded at paragraph 74 of his report that it is not entirely clear what is meant by “no more than 20 dwellings being built in any location at any time”. The Secretary of State agrees with that assessment. Like the examiner, the Secretary of State’s understanding is that this policy wording could be taken to mean that there may be locations where more than 20 dwellings would be acceptable over a period of time, but that no more than 20 dwellings should be built in any one discrete phase of development. In the Secretary of State’s view, development of the whole appeal site would not necessarily conflict with Policy HN-H1, providing construction were to proceed incrementally in the form of three or more separate phases, each of no more than 20 dwellings built at say five year intervals. In view of this, the Secretary of State considers that the degree of conflict between the proposal and Policy HN-H1 is limited and he finds no evidence that any significant material harm would ensue if this development were to be completed more rapidly than is allowed by Policy HN-H1.
17. The Secretary of State has also considered the other HNNP policies that are raised in representations from the Council and HNNP Steering Group, including policies on character and design matters. However, as indicated above, these matters including layout and materials are properly addressed at the reserved matters stage and the Secretary of State finds no evidence of any significant policy conflict in granting outline planning permission.

### *Odour and insects*

18. The Secretary of State agrees with the Inspector's analysis and conclusions at IR57 – 63. For the reasons given he agrees that it is likely that the future occupiers of the proposed residential development will be subjected to a slight adverse effect as a result of odours generated by the adjacent Redlands Dairy Farm (IR78), but there is an absence of empirical evidence which supports the Council's contention that the appeal site is subjected to a level of odours that would be unacceptable to residents (IR60). Though siting new homes closer to Redlands Dairy Farm could well mean that concentrations of insects will be greater as a result of being closer, there is no evidence to suggest that the levels of insects will be at unacceptably high levels (IR63).

### *Other matters including the sustainability of Hook Norton as a location for development*

19. The Secretary of State agrees with the Inspector's assessment regarding the matters considered at IR64 – 66. He agrees that the proposal would be sustainable development in terms of paragraph 7 of the Framework (IR66).

### **Conditions**

20. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions at IR80 – 87. The Secretary of State considers that conditions 1 – 23, as set out in Annex A of the IR and in Annex A of this letter, meet the tests of paragraph 206 in the Framework and comply with the Planning Practice Guidance (IR81).

### **Section 106 Planning Obligations**

21. The Secretary of State agrees with the Inspector's assessment of the executed Section 106 Unilateral Undertaking, which contains some provisions the justification for which is disputed by the appellant (IR67 - 77). For the reasons given the Secretary of State agrees with the Inspector that obligations relating to primary education, the bus shelter, the bus service improvement contribution, refuse bins and re-cycling, the outdoor sport contribution, the LEAP/LAP commuted sums, and the open space management contribution are justified and necessary in order to make the proposal acceptable and comply with the requirements of Regulation 122 of the CIL Regulations and paragraph 204 of the Framework. The Secretary of State also agrees that for the reasons given the remainder of the obligations are not to be justified or necessary (IR76), and he has therefore not taken them into account in deciding this appeal.
22. Having regard to the Inspector's recommendation at IR77, the Secretary of State has given careful consideration to responses to his letter of 13 July referred to at paragraph 4 above. In the light of those responses he is satisfied that all the obligations that he has taken into account in this appeal are compliant with Regulation 123(3) of the Community Infrastructure Levy Regulations 2010, as amended.

### **Overall balance and conclusion**

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any decision must be made in accordance with the Development Plan unless material considerations indicate otherwise. The Secretary of State considers that the proposal accords with the up to date Cherwell Local Plan 2011-2031 Part 1 (see paragraph 12 above), which is now part of the Development Plan, and he places no weight on the conflict between the appeal proposal and saved Policies H18 and C8 for the reason at paragraph 14 above. However he has identified a limited conflict with Policy HN-H1

in the recently made HNNP. Furthermore, paragraph 198 of the Framework states that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted. However, in the circumstances of this case the Secretary of State gives no more than moderate weight to the conflict with the HNNP in view of the limited nature of that conflict. In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, the Secretary of State has gone on to consider whether there are any other material considerations which indicate that the appeal should be allowed and outline planning permission granted, despite the limited conflict with the HNNP.

24. Notwithstanding the Secretary of State's finding that there is at present at least 5 years' housing land supply in Cherwell District, a significant benefit of the proposal is that it will contribute to boosting housing supply, including a 35% proportion of affordable housing, in line with the relevant policies of the Local Plan Part 1. The Secretary of State considers that this factor weighs heavily in favour of the appeal.
25. The provisions of the Section 106 Unilateral Undertaking would satisfactorily address the infrastructure and related impacts of development.
26. The proposal would be sustainable development and paragraph 187 of the Framework states that decision takers should seek to approve applications for sustainable development where possible. Overall, the Secretary of State considers that the benefits of this sustainable development would clearly outweigh the harm in terms of the limited conflict with the HNNP and the slight adverse effect on future occupiers as a result of odours generated by the adjacent Redlands Dairy Farm. He therefore concludes that the material circumstances in this case indicate that the appeal should be allowed and outline planning permission granted.

#### **Formal decision**

27. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation and hereby allows your appeal and grants outline planning permission for the erection of up to 54 residential dwellings, landscape, public open space and associated works, in accordance with application ref 14/00844/OUT dated 23 May 2014 and subject to the conditions in Annex A.

#### **Right to challenge the decision**

28. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. From 26 October 2015, this must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
29. A copy of this letter has been sent to Cherwell District Council. A notification e-mail or letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Julian Pitt*

**JULIAN PITT**

Authorised by Secretary of State to sign in that behalf

## **Annex A**

### **Conditions of planning permission - Application ref 14/00844/OUT**

1. No development shall commence until full details of the layout, scale, appearance, and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.
2. In the case of the reserved matters, application for approval shall be made not later than the expiration of 18 months beginning with the date of this permission.
3. The development to which this permission relates shall be begun not later than the expiration of one year from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.
4. The number of dwellings accommodated on the site shall not exceed 54.
5. Prior to the commencement of the development, details for the construction of the site access arrangement shall be submitted to and approved in writing by the Local Planning Authority. Details shall be in accordance with the Site Access Arrangement (Drawing number C13578-001) and the approved Site Access Arrangement shall be implemented prior to first occupation of the first dwelling, in accordance with the Oxfordshire County Council design guide for Residential Roads.
6. No structure exceeding 1m metre in height measured from carriageway level shall be placed within the visibility splays of the site access.
7. Prior to the first occupation of each dwelling hereby approved, the parking areas shall be constructed, laid out, surfaced, drained and completed in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority, and shall be retained for the parking and manoeuvring of vehicles at all times thereafter.
8. Prior to first occupation a travel plan shall be submitted to and approved in writing by the local Planning Authority and thereafter shall be implemented in accordance with the approved plan.
9. Prior to the commencement of the development hereby permitted, a detailed scheme for the surface water and foul sewage drainage of the development shall be submitted to, and approved in writing by, the Local Planning Authority. The approved surface water drainage scheme shall be carried out prior to commencement of any building works on the site and the approved foul sewage drainage scheme shall be implemented prior to the first occupation of each building to which the scheme relates. The drainage works shall be laid out and constructed in accordance with the Water Authorities Association's current edition "Sewers for Adoption".
10. Prior to the commencement of the development hereby approved, full details of the construction of the balancing pond(s) and timing for implementation, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved balancing ponds shall be constructed in accordance with the approved details.
11. No works of site clearance or development shall take place until an ecological enhancement scheme, including timing for implementation, has been submitted to

and approved in writing by the local planning authority. The ecological enhancement scheme shall be implemented in accordance with the approved scheme.

12. No removal of mature trees shall take place until such time as they have been checked for bats immediately prior to removal. Should bats be found to be present in a tree due for removal, a bat mitigation scheme must be submitted to and approved in writing by the Local planning authority prior to the removal of the trees concerned. Development shall be carried out in accordance with the mitigation measures approved as part of the scheme.
13. As part of the Reserved Matters, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-
  - a. details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
  - b. details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation
  - c. details of the hard surface areas, including pavements, pedestrian areas, reduced- dig areas, crossing points and steps.
14. As part of the Reserved Matters, a landscape management plan, to include the timing of the implementation of the plan, long term design objectives, management responsibilities, maintenance schedules and procedures for the replacement of failed planting for all landscape areas, other than for privately owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the landscape management plan shall be carried out in accordance with the approved details.
15. Prior to the commencement of the development hereby approved, full details of a scheme of supervision for the arboricultural protection measures, to include the requirements set out in a) to e) below, and which is appropriate for the scale and duration of the development works, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the arboricultural protection measures shall be carried out in accordance with the approved details.
  - a. Written confirmation of the contact details of the project Arboriculturalist employed to undertake the supervisory role of relevant arboricultural issues.
  - b. The relevant persons/contractors to be briefed by the project Arboriculturalist on all on-site tree related matters
  - c. The timing and methodology of scheduled site monitoring visits to be undertaken by the project Arboriculturalist.
  - d. The procedures for notifying and communicating with the Local Planning Authority when dealing with unforeseen variations to the agreed tree works and arboricultural incidents
  - e. Details of appropriate supervision for the installation of load-bearing 'structural cell' planting pits and/or associated features such as irrigation



systems, root barriers and surface requirements (eg: reduced dig systems, arboresin, tree grills)

16. All tree works granted consent shall be carried out in accordance with British Standard 3998: Recommendations for Tree Works and all subsequent revisions thereof and shall be undertaken by suitably qualified and insured arboricultural contractors.
17. Prior to the commencement of development, a scheme for the design and installation of a vegetative barrier adjacent to the northern boundary of the site should be submitted to and approved in writing by the Local Planning Authority. The design of the vegetative barrier should take account of the presence of the noise attenuation barrier along the northern boundary of the site and should include details of species, mix, planting location and growth rates of the chosen vegetation. A mixture of deciduous and evergreen species should be used in the barrier and the barrier should be a minimum of 3 rows and 9m wide. The scheme should include arrangements for the maintenance of the vegetative barrier. The barrier should be planted in the first planting season following commencement of the development and shall be fully implemented prior to the first occupation of any building to which the scheme relates. The barrier is to be maintained in place throughout the life of the development.
18. Prior to the commencement of development, a scheme for the design and installation of a noise attenuation barrier, adjacent to the northern boundary of the site and utilising the principles detailed within the Noise Assessment Report (Ref: Wardell Armstrong LE12230-001), shall be submitted and approved in writing by the Local Planning Authority. The barrier shall be fully implemented prior to the first occupation of any building to which the scheme relates.
19. Prior to the commencement of development, a scheme for the design and installation of acoustically treated passive ventilation, utilising the principles detailed within the Noise Assessment Report (Ref: Wardell Armstrong LE12230-001) shall be submitted and approved in writing by the Local Planning Authority. The scheme shall be fully implemented prior to the first occupation of any building to which the scheme relates.
20. No development shall take place until a scheme for the affordable housing has been submitted to and approved by the local planning authority. Such a scheme shall detail all of the affordable housing as meeting the Homes and Communities Agency, Design and Quality Standards and Code for Sustainable Homes Level 3, and 50% of the Affordable Rented Housing as meeting Lifetime Homes Standards, or an alternative equivalent national standard applicable at the time of implementation. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing outlined below. The scheme shall include:
  - a. The numbers, type, tenure and location on the site of the affordable housing provision to be made which shall be clustered in no more than 15 dwellings together throughout the development and which shall consist of not less than 35% of the total dwellings 70% of which shall be Affordable Rented Housing and 30% of which shall be Shared Ownership Housing or other such low cost home ownership as is agreed with the local planning authority.
  - b. The timing of the construction of the affordable housing and all necessary infrastructure including serviceable roads, utilities (power, heating,

sewerage) and public access, its phasing in relation to the occupancy of the market housing. No more than 70% of the open market dwellings shall be occupied before the affordable housing is completed and ready for occupation and transfer of the affordable housing to a Registered Provider or the Council

- c. The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing, subject to any Mortgagee in Possession clause to be submitted as part of the affordable housing scheme and agreed with the local planning authority.
- d. The occupancy criteria to be used for determining the identity of the occupiers of the affordable housing, which shall require the Affordable Rented Housing to be allocated via the Council's Choice Based Lettings system, determined by its Allocations Scheme and the Shared Ownership shall be allocated to those qualifying under the Help to Buy Agents applicable criteria.

For the purpose of this condition, the following definitions apply

*Affordable Housing*

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

*Affordable Rented Housing*

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

*Shared Ownership Housing*

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

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

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

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

by Tim Wood BA(Hons) BTP MRTPI

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

Date 4 June 2015

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## TOWN AND COUNTRY PLANNING ACT 1990

CHERWELL DISTRICT COUNCIL

Application by GLADMAN DEVELOPMENTS LTD

Inquiry held on 13 and 14 January and 31 March 2015

Land at Sibford Road, Hook Norton, Banbury, Oxfordshire OX15 5LA

File Ref(s): APP/C3105/A/14/2226552

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**File Ref: APP/C3105/A/14/2226552**

**Land at Sibford Road, Hook Norton, Banbury, Oxfordshire OX15 5LA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Gladman Developments Ltd against the decision of Cherwell District Council.
- The application Ref 14/00844/out, dated 23 May 2014, was refused by notice dated 5 September 2014.
- The development proposed is the erection of up to 54 residential dwellings, landscape, public open space and associated works.
- The appeal was recovered for decision by the Secretary of State on 20 October 2014 as the appeal involves residential development of over 10 units in an area where a neighbourhood plan has been submitted to the local planning authority by a qualifying body.

**Summary of Recommendation: That planning permission should be granted**

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**Procedural Matters**

1. I sat on 13 and 14 January and on 31 March 2015. I made an accompanied visit to the site and the adjacent farm on 31 March and I made unaccompanied site visits to the wider surrounding area on 12 January and 1 April 2015. The Inquiry was adjourned on 14 January and after some discussion during the Inquiry, it was agreed that we would resume sitting on 31 March 2015. The Council did not write to notify interested parties of the date and venue for the resumption of the Inquiry. However, as interested parties were present when the resumption date was agreed and the fact that all the evidence had been heard on the first 2 days, it was considered that the resumed Inquiry could proceed without any prejudice arising in relation to interested parties.
2. The appeal relates to an Outline application with the means of access to be determined at this stage.
3. An executed Section 106 Agreement was submitted at the Inquiry; I discuss its contents and implications later in the report.

**The Site and Surroundings**

4. The appeal site amounts to 2.70ha of agricultural land and is located to the north of Hook Norton, on the east side of Sibford Road. The site is bounded to the north by Redlands Dairy Farm and to the east by open countryside. To the south of the site is Hook Norton Primary School.
5. The site lies outside but immediately adjacent to the development boundary of Hook Norton as defined in the Cherwell District Local Plan.

**Planning Policy**

6. The development plan consists of the saved policies of the Cherwell District Local Plan (CDLP) which was adopted in 1996.
7. Work on a replacement to the CDLP, the Cherwell Local Plan 2011 was abandoned in December 2004. Notwithstanding, the Council decided that it would be used as interim planning policy for development control purposes.

8. The emerging Cherwell Local Plan was submitted to the Secretary of State for examination on 31 January 2014. The appointed Inspector raised concerns relating to housing delivery and progress has been delayed in order to allow the Council to propose modifications. These were submitted and the examination resumed in December 2014 and the Inspector's report is awaited.
9. The Hook Norton Neighbourhood Plan is the subject of a recent Examiner's report, although it had not progressed to a referendum at the time of closing the Inquiry.

### **Other Matters Agreed between the Council and the Appellant**

10. A Statement of Common Ground was submitted at the Inquiry; this sets out a number of relevant common views as agreed by the Council and the appellants. I do not seek to repeat each and every matter here but draw attention to ones of particular note.
11. In relation to the Council's second reason for refusal, it is agreed that the concerns expressed therein can be met by a suitable Planning Obligation. Furthermore, any issues relating to noise could be addressed by suitable planning conditions.
12. In relation to planning policy, the relevant policies in the CDLP are C8, C9, H5, H13, H18 and ENV1. With respect to the non-statutory Cherwell Local Plan 2011, it is set out that it is a material consideration but one of very limited weight.
13. In relation to the emerging Cherwell Local Plan, as there are currently unresolved objections, the weight that may be attached to its policies is reduced. The relevant policies are agreed as being BSC 3, BSC 10, BSC 11, Policy Villages 1 and Policy Villages 2.
14. Both main parties agree that the Council is unable to demonstrate a 5 years' supply of housing land, only being able to show a supply of 3.4 years. In order to rectify this it has been agreed that additional greenfield sites beyond the existing settlement boundaries will be required. The delivery of market and affordable housing in this context is seen as having significant weight in the planning balance of this appeal.
15. A number of issues are set out in the Statement which do not give rise to any conflict between the main parties. The single main issue between the Council and the appellants is identified as the effects of odour from Redlands Farm on future residents of the appeal site and (although insects are also added to this in other evidence), further, that they disagree on the weight to be attached to the benefits and the impacts when undertaking the planning balance.

### **The Case for Gladman Developments Ltd**

16. The appeal site lies on the edge of the settlement of Hook Norton and under the adopted CDLP of 1996, taken in isolation, the proposal is contrary to Policies H13, H18 and C8. However, the Council's policies and the defined settlement boundary are long out of date, as the CDLP was to run until 2001. In addition, the Council can only demonstrate a 3.4 years supply of housing land; set against the requirements of the National Planning Policy Framework (the Framework), these relevant policies for the supply of housing are out of date. Therefore, the proposal is to be judged in accordance with paragraph 14 of the Framework,

namely that permission should be granted unless any adverse impacts of doing so significantly and demonstrably outweigh the benefits of the scheme.

17. Hook Norton is identified as a Category A Village in the emerging Local Plan, meaning that it is one of the more sustainable villages in the District. Furthermore, the emerging Local Plan envisages that in such villages development sites for 10 or more dwellings will arise, either through a more detailed allocations plan or through planning applications. The sustainability of the village as a location for residential development is emphasised in the 2014 SHLAA update.
18. In relation to the Hook Norton Neighbourhood Plan, whilst it now has progressed to the stage where the Examiner's report has been published, it remains the case that a referendum still has to be held and so full weight cannot be given to it. In addition, Policy HN-H1 of the Neighbourhood Plan is a relevant policy for the supply of housing for the purposes of paragraph 49 of the Framework; in the absence of a 5 years' supply of housing site Policy HN-H1 cannot be considered up to date.
19. The provision of additional homes in the context of the Council's significant shortfall is a substantial benefit and the provision of 35% affordable homes adds weight in favour of the scheme. There is no question in relation to the viability of the scheme. There are economic benefits that the scheme would deliver, including additional construction jobs and associated employment and also additional economically active residents who would add significant expenditure to the local area.
20. The issue of the effects of noise generated at the neighbouring farm on the future residents at the appeal site has been raised. However, the Council is satisfied that suitable conditions requiring passive ventilation would enable residents to close their windows and sufficiently insulate themselves from any noise, should it occur.
21. Assessments of the odour arising from the neighbouring farm and the effects on future residents have been undertaken in accordance with the guidance produced by the Institute of Air Quality Management (IAQM). The assessment incorporates a predictive element and an observational element (in the form of sniff tests on site). The outcome suggests no more than a slight adverse effect in the northern part of the appeal site; not one which should prevent the scheme from going ahead and not one which would significantly and demonstrably outweigh its benefits. Indeed, in the SHLAA, the Council envisaged residential development of the appeal site and saw no overriding issues in relation to the farm.
22. The approach taken in evidence appropriately categorises the source odour potential and the effectiveness of its flow to the appeal site (pathway effectiveness). The enterprise at Redlands Farm is appropriately seen as an intensive livestock rearing operation; this is a "moderately offensive" category using the IAQM Guidance and so gives a "medium" categorisation for the unpleasantness of the "source odour potential". The presence of a slurry lagoon is a normal and expected part of such an operation and does not therefore automatically result in a worse categorisation.
23. In terms of the pathway effectiveness, the appeal site is to the south of the slurry lagoon and so prevailing winds would result in smells being taken away

from the appeal site. When winds are generally from the north, not all areas of the appeal site would be affected. The relatively short distance from the slurry lagoon to the proposed houses and gardens and the fact that the lagoon is open is offset by the intervening area of vegetation within the farm and that proposed to be developed, plus a barrier which would make a contribution to dispersion and dilution. Therefore, the pathway effectiveness is rightly assessed as "moderate". The predictive assessment correctly concludes that there would be a "slight adverse" effect from odour for the northern part of the site.

24. The sniff tests were appropriately carried out in accordance with the IAQM Guidance. They were carried out in a variety of conditions with temperatures ranging from 1 degree C to 25 degrees C and with wind spread across all directions. In July 2014 a sniff test was carried out in high summer temperatures with a breeze from North/North-East. The interpretation led to the conclusion that a "slight adverse" effect would arise on future residents.
25. There are activities on the farm which are said to generate more smells than is otherwise the case. In the middle part of the day slurry separation is undertaken and the sniff tests, which were all done in the early or late part of the day, would not pick these up. However, there has been no demonstration of the odour producing effect of this process. It is not clear if the slurry pumping was on-going when some of the sniff tests were done; these were done when the wind was from the south-west and so demonstrates that there is little effect in these conditions. There is very little potential for the potentially greater odour-producing operations and the 'worst' weather conditions occurring simultaneously; the conditions observed in June 2014 occur for only 0.4% of the time and slurry pumping took place on 28 days in 2014 and so the potential worst case is restricted. The point is more forceful for the clear out of the slurry lagoon which happens annually and is said to take 2 -3 days.
26. The Council has been unable to produce any evidence of its own which may indicate that odours would be unacceptable within the appeal site; no sniff testing has been done by them and they have placed the burden of proof, inappropriately, on the appellant.
27. The relevant test set in paragraph 109 of the Framework is that new development should not be adversely affected by unacceptable levels of pollution; this is not a no-impact test but one of judging the effect, which then needs to be balanced against the benefits of the scheme.
28. Policy ENV1 of the adopted CDLP which is referred to in the Council's first reason for refusal is not relevant as it deals with the effects of pollution generating new development, not the effects of existing sources on new development.
29. There is an absence of any evidence which supports the allegation that the future residents of the proposal would be subjected to unacceptable levels of flying insects as a result of the neighbouring farm. There are no records of any complaints about the existing situation and no other similar examples are referred to.

### **The Case for the Council**

30. The Council presents evidence from individuals with extensive experience of dealing with dairy farms, including the owner of the neighbouring farm. It is



their considered view that problems arising from odour will be inevitable and significant. Local residents have also referred to unacceptable levels of odour arising from the farm.

31. To a large extent the evidence in relation to odour relies on judgement and the informed judgement of the Council's witnesses should carry considerable weight.
32. The appellant's conclusion of a "slight adverse" is flawed as they have failed to ensure that testing has taken place when the odour generating activities are undertaken. There was 1 assessment in July 2014, 17 in September/October and 3 in December. With one exception all of the assessments were undertaken either at the beginning or the end of the day and so would have missed the slurry separation which happens in the middle of the day. The exception was on 7 October when the wind was from the south-west and so would not have affected the appeal site. In relation to slurry pumping, this was only undertaken on 2 days and the wind was in the wrong direction (additionally it is not known if the pumping was going on when the sniff tests were done). Digging sludge out of the lagoon and slurry agitation are summer activities and it is not known if these were caught in the only summer sniff test at 5pm on 25 July 2014.
33. The appellants state that they have captured a range of wind directions and temperatures in their testing (notwithstanding that there was only 1 occasion when it could be considered to be warm). However, they cannot demonstrate that they have captured the odour generating activities. The appellants failed to contact the owner of the farm in order to co-ordinate testing at the relevant times. For these reasons the appellants' assessment is seriously deficient.
34. There are additional flaws in the way that the appellants have presented their findings; for each of the 17 days' observations the figures are given as an average. This is inappropriate and results in a misleadingly low figure. The unacceptable effects of a relatively high scoring odour in an afternoon will not be made acceptable by an odour-free morning. In relation to the IAQM guide for recording the odour level, the appellant has under-recorded the results as they have given scores of, for example, 2 which is 'odour present but cannot be described' but have then described the source. If the source can be described it should have a score of at least 3.
35. In terms of the predictive assessment, the appellant's categorisation of the source odour potential as medium ignores the huge size of the slurry lagoon and that slurry and sludge are within the most offensive odour category. The proximity of the lagoon to the proposed nearest properties reinforces the Council's case.
36. In part, the appellant relies on mitigation from planting between the lagoon and the proposed houses. Aside from the fact that the appellant mis-calculated this distance as 38m when it is actually 23m, there is little evidence that a vegetative buffer would be effective. The case referred to by the appellant actually shows an increase for one of the two years after a tree buffer was planted. We also suggest that the effectiveness of planting may be far less for odours arising from wet sources where the source is molecular, rather than particulate as in a dry source, such as a poultry farm.

37. The appellant also proposes a fence which they say will halt the airflow; however no aerodynamic modelling has been produce which indicates what the effects will be.
38. The Council's witnesses have considerable experience of dairy farms and this leads them to conclude that any future residents on the appeal site will inevitably be subjected to unacceptable levels of insects arising from the farm. This very large dairy herd produces vast quantities of manure, slurry and silage, which attract insects and provides a breeding ground for them. The appellant states that there are no recorded problems of such nuisance in the village at the moment, but this ignores the fact that the appeal site is closer to the farm and so insect concentrations will be significantly higher. The appellant has not undertaken any assessment of the likely impact of insects in order to refute the Council's claim.
39. The significant odour and insect nuisance that would arise would prevent the existing farm and the proposed residential development from happily co-existing. This would give rise to pressure from the residents for the farm to reduce its operations or to close altogether. The Council's witnesses confirm that best practices are already used in order to reduce any potential nuisance and so no more could be done. The farm is a large enterprise, giving local employment and spending significantly in the local area. The reduction or closure of the farm's operations would have an inevitable and negative economic consequence.
40. In relation to the benefits of the scheme, the Council accepts that the provision of new homes would be a significant one, but should not be over-stated. There is a need for affordable homes in the District generally, but not in the village given that the need of 25 as recorded in the Bourne Lane appeal (APP/C3105/A/12/2184094) will have been met by the Bourne Lane and Stanton Engineering developments. The village is a relatively sustainable location but, again should not be over-stated. In relation to economic benefits of the scheme, these should not be given weight as the effect on Redlands Farm will more than counterbalance any benefits brought about by the proposed development.

### **The Case for Mr P Watkins for Hook Norton Neighbourhood Plan Steering Group**

41. The HNNP is important for this appeal and it is the reason why the Secretary of State is determining this appeal. We have reviewed the appellants' evidence and set out a number of comments, the first of which is to draw attention to the confusion on the appellants' behalf in referring variously to the 'draft' plan and 'submission'.
42. The appellant refers to the HNNP not being in conformity with the emerging Local Plan; we would point out that Neighbourhood Plans are not tested against emerging plans. The HNNP is consistent with the Spatial Strategy. The appellant mis-represents the contents of the HNNP in relation to the size of acceptable developments. The HNNP does not allocate sites, but this does not indicate any weakness in it and is often the case for neighbourhood plans. The appellant's comparison with the Adderbury case is inappropriate, not least because that neighbourhood plan was in the very initial stages of preparation, in contrast with the HNNP.

43. There is widespread support for the HNNP and the appellants' reference to a significant number of unresolved objections over-states the position. There were only 3 real objections; not a significant number and in any event are from applicants, including this one.

### **The Case for Mr A Bruton**

44. The appellants propose a fence or bund in an attempt to mitigate against the odour and insects from Redlands Farm. Neither would fit in with the landscape here. The odour assessment confirms that even when the wind is from the south-west the smell of slurry was present on site (as set out for 19 February 2014).
45. Hook Norton is a rural village with poor access to jobs, services and public transport and there is heavy reliance of the private car. The proximity of the farm with a large amount of machinery could pose a real safety threat to children who may stray onto the farm.
46. Noise, odour and insects are problems which the appellant has failed to address. In relation to noise, their suggestion is that future residents should remain inside with no windows open; this is not normal behaviour. This would also impose unrealistic restrictions on the normal use of gardens. The snap-shots represented by the sniff tests do not reflect what it would be like to live in close proximity to the farm year-round.

### **The Case for Mr C Henderson of the Parish Council**

47. The increase in population represented by the proposal and those others in the pipe-line could not readily be assimilated into the village. The roads leading into and out of the village are narrow and do not allow safe passage of vehicles, particularly larger ones. Footpaths are inadequate and often mean stepping onto the roads. The proposed increase in the population would bring about a large increase in vehicles and would generate a need for additional school places. The increase in traffic will lead to conflict with the school access and the development site opposite. Other sites in the area are more suitable.
48. There is no mains gas supply in the village and there is not space to provide domestic oil tanks. Therefore all domestic power is by electricity which does not align comfortably with the village being a Low Carbon Community.

### **Written Representations**

49. 2 letters of objection were received at the appeal stage and both authors of these attended and spoke at the Inquiry. At the application stage 95 letters of objection were recorded in the Council's Committee report. Most of the matters raised in the letters were raised at the Inquiry. Additional matters related to general unsustainability of the location, lack of public transport, needs more affordable housing, loss of village atmosphere, affects on landscape value of the area and problems with broadband connections.

### **Conclusions**

50. The following considerations are based upon the evidence given at the Inquiry, the written representations made and my inspection of the site and the

surrounding area. In this section the numbers in square brackets [] refer to paragraphs in the preceding sections of the Report.

51. At the beginning of the Inquiry I identified that the main issue in this appeal is the effects of odour and insects arising from Redlands Farm on the future residents of the proposed development. The Statement of Common Ground (SOCG) adds that there is disagreement between the appellant and the Council in relation to the weight to be attributed to the benefits and the impacts of the proposal when undertaking the planning balance.

### *Planning Policy Context*

52. It is agreed that the Development Plan consists of the saved policies of the Cherwell District Local Plan (Adopted 1996) (the LP). The LP was adopted in 1996 and covered the period to 2001. The relevant policies for the purposes of this appeal are C8, C9, H5, H13, H18 and ENV1. Policy C8 seeks to prevent sporadic development in the countryside and C9 resists development outside Banbury and Bicester which would be of a size that would be incompatible with a rural location. Policy H5 aims to secure affordable housing where there is a need. Policy H13 states that development in Category 1 settlements (of which Hook Norton is one) will be restricted to infilling, minor development within the built-up area and conversions. Policy H18 states that planning permission will not be granted for residential development beyond the built-up limits of settlements, other than in specified exceptions, which are not relevant here. Policy ENV1 states that development which is likely to cause materially detrimental levels of pollution will not normally be permitted. [6,12,13]
53. The SOCG accepts that the Council cannot demonstrate a 5 years' supply of housing land and so the relevant policies for the supply of housing cannot be considered as up to date. Therefore, it appears to be common ground that Policies C8, C9, H13 and H18 are not up to date. [14]
54. The emerging Cherwell Local Plan (CLP) was submitted for examination in January 2014 but progress was delayed for further work on housing delivery and the examination resumed in December 2014. In the light of unresolved objections at that stage, the Council and the appellant agree that less weight can be given to the emerging CLP. The following policies are relevant, BSC 3, BSC 10, BSC 11, Policy Villages 1 and Policy Villages 2. Policy BSC 3 relates to the provision of affordable housing; Policy BSC 10 and BSC 11 relate to securing the provision of open space and outdoor recreation. Policy Villages 1 relates to allowing for small scale developments within village boundaries and Policy Villages 2 relates to the distribution of housing growth across the rural areas. It seems to me that even though the main parties have agreed that some weight may be attached to these policies, although they qualify this by stating that the weight should be reduced, the fact that these policies (Villages 1 and Villages 2) relate to the supply of housing, they may not be considered as up to date. [8,13]
55. The emerging Hook Norton Neighbourhood Plan (HNNP) has now been the subject of the Examiner's report, which recommends that it should proceed to a referendum, with a number of recommended modifications. Although some progress has been made, full weight is not given to the HNNP as the statutory process has not been completed. In addition, Policy HN-H1 'Sustainable Housing Growth' which seeks to limit the nature and scale of housing development, can be considered as a relevant policy for the supply of housing and so cannot be

considered as up to date in the light of the lack of a 5 years' housing land supply. [9]

56. In these circumstances paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered as being up to date. Paragraph 14 of the Framework then sets out that, where the development plan is out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

*Consideration of the effects of odour*

57. The appellant has undertaken a predictive assessment and also undertaken sniff tests in a variety of meteorological conditions at different times of the year. Their conclusion is that there would be a slight adverse effect on residents in the northern part of the site. The appellant's assessment appropriately categorises the dairy farm as within the "moderately offensive" category of table 5 of the IAQM Guidelines and so sits in the "medium" category of table 8 for the "unpleasantness" of the source odour potential. I consider that this is more realistic than trying to separately categorise the slurry lagoon, rather than considering it as part and parcel of the intensive livestock concern. [21,22]
58. With regard to the pathway effectiveness, I have taken account of the proximity of the proposed housing to the main adjacent odour source. Although this is quite close, this must be off-set to some degree by environmental factors, not least of which is the prevailing wind direction, which would result in odour being taken away from the appeal site. I accept that there would certainly be times when winds from other directions would have the potential to carry odours from the farm to parts of the appeal site, but these would be unlikely to affect the whole site and would not be for the majority of the time. Although the cases presented by example are not clear, there appears to be some beneficial effect of providing vegetation between the source and receptor. In this case, there is an existing dense vegetative area within the farm which lies between the slurry lagoon and the appeal site. I consider that this, augmented by measures contained in the proposal, would have some beneficial effects in protecting the appeal site. As a consequence, I consider that the appellant's categorisation within a moderately effective pathway for odour is realistic here. Using these factors in combination and using table 10 of the IAQM Guidance, the resultant likely magnitude of odour effect is "slight adverse effect". [23,36]
59. The appellant has undertaken sniff tests and the results are presented in the documentation. The Council are critical as they consider that they have not been done at appropriate times when the odour generating activities at the farm may be on-going. From my consideration, it seems that the sniff tests have been undertaken in a variety of conditions in relation to temperatures and wind directions. Although it may be possible to criticise the comprehensiveness of the tests and the fact that they were not specifically co-ordinated with the farm to coincide with the odour generating activities, the Council has offered no sniff testing which accords with the IAQM Guidance of its own to show what effects would be found at those relevant times. Indeed, the Council criticise the appellant for not contacting the farm owner, but he appears as a Council witness at the Inquiry and so would have been possible for them to co-ordinate appropriate sniff testing. [24,25,32]

60. The evidence that the Council does offer in this respect is the opinion of the farm owner and another witness with many years experience of dairy farms. Whilst I do not seek to dismiss their experience, such evidence is not comparable with the structured sniff tests which methodically record temperature, wind speed and the type and strength of smells, in accord with the IAQM Guidance. Although some letters of representation mention odours from the farm, in this respect, there is an absence of empirical evidence which supports the Council's contention that the appeal site is subjected to a level of odours that would be unacceptable to residents. In addition, some of the odour generating activities referred to by the Council take place infrequently and so, even if weather conditions were to be conducive to odour transfer, it would be inappropriate to base my judgement on the strength of such infrequent events. [26,30,31,33,34,38]
61. There was some discussion at the Inquiry of the relevance of Policy ENV1 of the LP; this states that development which is likely to cause materially detrimental levels of pollution (in its varied forms) will not normally be permitted. Notwithstanding that the supporting text envisages situations where the pollution source is already established and new development within its area is proposed, the wording of the policy is clear and does not strictly apply to the proposed development here. Nevertheless, the matter is legitimately considered within the appeal as paragraph 109 of the Framework seeks to prevent proposed developments from being put at unacceptable risk from pollution. [28]

#### *The effects of insects*

62. The Council's case rests on the opinion of the owner of the farm and others with much experience of dairy farms, that the level of flying insects generated by the farm will be such that they will cause nuisance to future residents of the appeal site. The Council adds that the appellant has failed to provide an adequate assessment to allay any concerns in this respect. [38,39]
63. Apart from the anecdotal statements made by their witnesses, there is very little in the Council's evidence to assess the level of flying insects locally, or if that level would be sufficient to have an unacceptable effect on neighbours, if the proposal were to go ahead. I accept that the dairy farm gives rise to a level of insects and even in March at the time of my site visit, some were present around the herd and feed. The Council cite 2 examples locally but these are for different practices which may give rise to different levels of insects. There are no records of any formal complaints regarding flies from the farm affecting existing homes within the village. Whilst I accept that siting new homes closer to the farm could well mean that concentrations of insects will be greater as a result of being closer, there is simply no evidence to suggest that the levels of insects will be at unacceptably high levels. In this instance I do not see it as necessary to rely on the appellant to prove the negative of the argument. [29,38,39]

#### *Other Matters*

64. The Council states that, as a result of the likely unacceptable residential environment that would be created, future residents would register complaints about the farm, which would inevitably lead to the scaling back of operations or its ultimate closure. In my judgement, for the reasons set out above, such a scenario is unlikely to arise and so is not given weight of any significance in my judgement.

65. Apart from the matters addressed above, some seek to question the principle of Hook Norton as a sustainable location for new residential development, including its safe access by road. I note that the County Council as Highways Authority has raised no objections in this respect. In addition, the District Council have accepted that Hook Norton is in a relatively sustainable position. From my own assessment, I did not see anything which leads me to conclude that access by road would be particularly inconvenient or unsafe, nor would it be made so by the additional proposed development. Furthermore, in a recent appeal I note that another Inspector and the Secretary of State concluded favourably on the sustainability of Hook Norton and I find nothing to depart from this view.
66. In respect of the overall sustainability of the proposal, I have had regards to paragraph 7 of the Framework and I am satisfied that, taken as a whole, the three dimensions of sustainability are met. With this finding in mind, paragraphs 49 and 14 of the Framework then apply.

### **The Planning Obligation**

67. The appellant has submitted a completed Unilateral Undertaking which contains provisions for all of the requested items of the Council and the County Council. However, the appellant disputes the justification for a number of these items.
68. The Undertaking has been drawn up in the light of Policies TR1 and R12 of the Local Plan and the draft supplementary planning document 'Planning Obligations' (SPD). The draft SPD is used by the Council and offers advice which is consistent with national advice, although as a draft document I give less weight to it than if it had been adopted. I have taken the relevant Local Plan policies and the draft SPD into account, as well as Regulation 122 of the Community Infrastructure Levy regulations 2010 (as amended) and the tests in paragraph 204 of the Framework.
69. The Undertaking contains provision for a contribution towards the cost of a new classroom as part of the expansion of Hook Norton Church of England Primary School. It is anticipated by the County Council that the proposed development would generate a need for 18.33 pupil places. Department for Education advice is that in Oxfordshire £11,582 is required per pupil place. The appellant does not dispute the need for this contribution. On the basis of these matters, the contribution is necessary to mitigate the effects of the proposed development.
70. Provisions for contributions to improve bus services and a bus shelter are included and justified as the route mentioned would improve connectivity with Banbury and Chipping Norton allowing residents better access to services and employment opportunities. I consider that these are necessary in order to make the scheme acceptable in accessibility terms.
71. A contribution towards the stock of books at the local library is sought and included, although its need is questioned by the appellant. The County Council had confirmed that Hook Norton Library has the capacity to cope with the proposed increase in population. The contribution is sought on the basis of an additional 2 books per additional resident. From the evidence before me, there is little to conclude that the existing stock of books at the library is insufficient to meet the needs of the population nor would it be as a result of the increase proposed herein. Therefore, this contribution has not been justified.

72. A contribution is included which would go towards the provision of 3 refuse bins and a food caddy for each dwelling. The appellant considers this is not necessary and cites other appeal decisions which support that stance. The Council point to the Secretary of State's decision at the nearby Bourne Lane (APP/C3105/A/12/2184094) dated September 2013 wherein it was determined that such a contribution was justified. I accept that there are decisions which both support and reject the need for such a contribution. However, in the light of the fact that the Secretary of State has given consideration to this matter relatively recently and within a very short geographic distance, I see no reason to depart from his conclusions; therefore I find that the contribution is necessary to facilitate the collection and disposal of household waste.
73. Provisions are included for an Outdoor Sports Contribution, a LEAP/LAP Commuted Sum and Other Open Space Management Commuted Sum. These include, respectively: increasing the capacity of sports pitches at Hook Norton Sports and Social Club, which is currently running at capacity at peak times and so any increase in population could not be accommodated, in terms of additional use; a local equipped area of play and a local area for play are proposed and their maintenance would be ensured by the sum, if adopted; similarly the proposed open space would need to be maintained and the commuted sum would ensure this, if it is adopted by the Council. I consider that these matters are necessary and justified and relate directly to the proposed development.
74. The Undertaking also includes an Administration/Monitoring Fee separately for both the District and County Councils. At the Inquiry the District Council stated that they no longer think that the contribution for them to be necessary, in the light of this, I consider that no justification is offered. In relation to the County Council a detailed justification was presented, which included reference to the recent High Court judgement of *Oxfordshire County Council and SoS* case at Banbury Road, Adderbury. In the case before me, the County Council would be involved in contributions relating to public transport, the bus stop and the primary school contribution. The bus stop contribution would be payable upon implementation of the scheme; the public transport contribution would be payable prior to first occupation and; the primary education contribution would be payable in 4 instalments, 3 of which are deferred to various stages of occupation.
75. The contribution sought, and included is for £3,750. The County Council states that monitoring fees are charged on a sliding scale and relate to the level of financial contributions payable under the obligation. The amount of the fee here was formulated on the basis of 9 other contributions relevant to the County Council. At the conclusion of the Inquiry a number of those contributions were no longer sought; in addition I have recommended that others are not justified. This has resulted in the inclusion of just 3 of the contributions being justified in my view. In the light of the judgement referred to above, there is a planning judgement to be made in relation to administration/monitoring fees and in this case it seems to me that, at least the primary education contribution would require some monitoring in order to keep track of the stages of development and whether payments had been made at those appropriate times. However, the sum sought and included relates to a much larger suite of contributions and so I cannot conclude that the same fee is justified for this much less comprehensive number of contributions.



76. Therefore, in relation to the Unilateral Undertaking, of all of the obligations included, it is considered that those relating to primary education, the bus shelter, the bus service improvement contribution, refuse bins and re-cycling, the outdoor sport contribution, the LEAP/LAP commuted sums, and the open space management contribution are justified and necessary in order to make the proposal acceptable and comply with the requirements of Regulation 122 of the CIL Regulations. The remainder of the obligations, for the reasons set out above are judged not to be justified or necessary and so I recommend should not be taken into account in relation to this appeal.
77. It is noted that the County Council have not pursued some items that were previously included in its list of obligations; this has been done in the light of Community Infrastructure Levy Regulation 123(3) and planning obligations for pooled contributions and they have acknowledged that more than 5 schemes are contributing to some items, now removed from their request. I recommend that, should the Secretary of State accept my recommendation to grant planning permission, then an additional check should be undertaken so that it can be made certain that none of the other accepted obligations are affected by this matter.

### **Conclusions and Planning Balance**

78. On the basis of the evidence before me, I have concluded that it is likely that the future occupiers of the proposed residential development will be subjected to a slight adverse effect as a result of odours generated by the adjacent dairy farm. However, this is seen in the context of an agreed inability by the Council to be able to demonstrate a 5 years supply of residential land and an agreed position wherein "significant weight" (SoCG) should be attached to the delivery of market and affordable housing.
79. Paragraph 14 of the Framework states that where the development plan is out of date planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits. In my judgement, the harmful effects are predicted to be slight and it is acknowledged that significant weight should be given to the benefit of additional housing, within this sustainable location. Therefore, I consider that the adverse impacts of granting planning permission are insufficient to significantly and demonstrably outweigh these significant benefits.

### **Conditions**

80. Appendix A contains a full list of conditions that I recommend if the appeal is allowed. The list is based on the largely agreed set of conditions submitted at the Inquiry and discussed at the conditions session. I have considered the conditions in the light of the advice in the national Planning Practice Guidance. I have made some amendments to the wording of the conditions in order to better reflect the Guidance and as a result of discussions at the Inquiry and I have excluded some for the reasons given.
81. Conditions requiring the timely submission of reserved matters and commencement of the development are necessary and reasonable. It was agreed at the Inquiry that the standard time-limits could be reduced in order to ensure that the development makes a prompt contribution to housing delivery in the District; I agree that this is reasonable. I shall also recommend a condition

- that limits the number of dwellings to a maximum of 54 in order to comply with the terms of the application.
82. In order to ensure a safe and convenient highway access and so that the surrounding network is not prejudiced conditions requiring the agreement of details of the new junction, the retention of visibility splays and the provision of on site parking are necessary. So that the development is satisfactorily drained and does not contribute to flooding, I have recommended conditions requiring a foul and surface water drainage scheme and one which requires a balancing pond, to be implemented and retained as part of the development.
83. So that the proposal contains a suitable provision for wildlife and ecology an enhancement scheme is necessary and I have recommended a condition requiring that one is submitted, agreed and implemented as part of the development. In the same interest, I have included a condition that requires that any tree scheduled for removal should be checked for bats and, if found, a mitigation scheme should be agreed.
84. Although landscaping is a reserved matter, I recommend that conditions that set out what measures should be included in any future scheme for submission, should be included, for the sake of clarity; this would also include a management plan. In addition a scheme for arboricultural protection should be agreed and all tree works should be carried out in accordance with the relevant British Standard. A separate condition requiring a vegetative barrier between the appeal site and the adjacent farm is included in the interests of residential amenity.
85. As a result of the submitted assessment about noise from the adjacent farm, it is necessary that a noise attenuation barrier should be erected adjacent to the relevant boundary of the site and that acoustic passive ventilation is installed in the dwellings.
86. In order to comply with Policy H5 of the Local Plan to make suitable provision for affordable homes, I have recommended an appropriate condition. So that the construction process does not unacceptably affect the local environment, a condition requiring the agreement of a Construction Environmental Management Plan is included. In the interests of sustainable transport I have included a requirement for a Travel Plan. Suitable conditions have been included which require that an archaeological investigations and suitable measures taken, if necessary.
87. Conditions relating to boundaries for the individual houses, external lights, refuse stores and cycle stores were included on the list at the Inquiry. However, I consider that these matters are more appropriately addressed at the reserved matters stage and so have not recommended them in my list. A condition requiring that fire hydrants are provided was requested by the Council. The appellants confirmed that this is covered by the Building Regulations and in this instance, I shall not include such a condition as it is covered by other legislation.

### **Recommendation**

88. I recommend that outline planning permission should be granted.

*ST Wood*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

H Flanagan	Of Counsel
He called	
E Addae-Bosompra	Development Control Planner
R Lowther	Anti-Social Behaviour Manager
T Kernon	Director, Kernon Countryside Consultants Ltd
R Gasson	Owner, Redlands Farm

### FOR THE APPELLANT:

A Evans	Of Counsel
He called	
C Still	Planning and Development Manager, Gladman Developments Ltd
G Harker	Peter Brett Associates LLP

### INTERESTED PERSONS:

I Prosser	Oxfordshire County Council
C Henderson	Hook Norton Parish Council
A Bruton	Local resident
P Watkins	Hook Norton Neighbourhood Plan Steering Group

### APPLICATION PLANS

2013-068-100	Location Plan
C13578/001	Access Plan

### DOCUMENTS SUBMITTED AT THE INQUIRY

1. Supplementary Note in Response To Appellant's Evidence, from Mr Kernon
2. 3 tabulated sheets containing sniff tests in December 2014, from the Appellant
3. Plan indicating the location of objectors, from the Council
4. Public Transport Developer Funding Contribution, statement from County Council
5. Updated Statement of Justification from Oxfordshire County Council
6. Table of Appeal Results, from County Council
7. Copy of High Court judgement, Oxon County Council and Cala Homes
8. Statement of Justification for Oxfordshire County Council (Additional Comments)
9. Statement of Justification County Council (Education)
10. Response form the Appellant to Contributions Sought
11. Hook Norton Neighbourhood Plan Submission Version July 2014
12. Hook Norton Neighbourhood Plan, Examiner's Report
13. Statement from Mr Henderson
14. Statements (2 documents) from Mr Bruton
15. Statement from Mr Watkins
16. Unilateral Undertaking
17. Final set of Conditions

## **APPENDIX A – SCHEDULE OF CONDITIONS**

1. No development shall commence until full details of the layout, scale, appearance, and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.
2. In the case of the reserved matters, application for approval shall be made not later than the expiration of 18 months beginning with the date of this permission.
3. The development to which this permission relates shall be begun not later than the expiration of one year from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.
4. The number of dwellings accommodated on the site shall not exceed 54.
5. Prior to the commencement of the development, details for the construction of the site access arrangement shall be submitted to and approved in writing by the Local Planning Authority. Details shall be in accordance with the Site Access Arrangement (Drawing number C13578-001) and the approved Site Access Arrangement shall be implemented prior to first occupation of the first dwelling, in accordance with the Oxfordshire County Council design guide for Residential Roads.
6. No structure exceeding 1m metre in height measured from carriageway level shall be placed within the visibility splays of the site access.
7. Prior to the first occupation of each dwelling hereby approved, the parking areas shall be constructed, laid out, surfaced, drained and completed in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority, and shall be retained for the parking and manoeuvring of vehicles at all times thereafter.
8. Prior to first occupation a travel plan shall be submitted to and approved in writing by the local Planning Authority and thereafter shall be implemented in accordance with the approved plan.
9. Prior to the commencement of the development hereby permitted, a detailed scheme for the surface water and foul sewage drainage of the development shall be submitted to, and approved in writing by, the Local Planning Authority. The approved surface water drainage scheme shall be carried out prior to commencement of any building works on the site and the approved foul sewage drainage scheme shall be implemented prior to the first occupation of each building to which the scheme relates. The

drainage works shall be laid out and constructed in accordance with the Water Authorities Association's current edition "Sewers for Adoption".

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

measures, to include the requirements set out in a) to e) below, and which is appropriate for the scale and duration of the development works, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the arboricultural protection measures shall be carried out in accordance with the approved details.

- a. Written confirmation of the contact details of the project Arboriculturalist employed to undertake the supervisory role of relevant arboricultural issues.
  - b. The relevant persons/contractors to be briefed by the project Arboriculturalist on all on-site tree related matters
  - c. The timing and methodology of scheduled site monitoring visits to be undertaken by the project Arboriculturalist.
  - d. The procedures for notifying and communicating with the Local Planning Authority when dealing with unforeseen variations to the agreed tree works and arboricultural incidents
  - e. Details of appropriate supervision for the installation of load-bearing 'structural cell' planting pits and/or associated features such as irrigation systems, root barriers and surface requirements (eg: reduced dig systems, arboresin, tree grills)
16. All tree works granted consent shall be carried out in accordance with British Standard 3998: Recommendations for Tree Works and all subsequent revisions thereof and shall be undertaken by suitably qualified and insured arboricultural contractors.
17. Prior to the commencement of development, a scheme for the design and installation of a vegetative barrier adjacent to the northern boundary of the site should be submitted to and approved in writing by the Local Planning Authority. The design of the vegetative barrier should take account of the presence of the noise attenuation barrier along the northern boundary of the site and should include details of species, mix, planting location and growth rates of the chosen vegetation. A mixture of deciduous and evergreen species should be used in the barrier and the barrier should be a minimum of 3 rows and 9m wide. The scheme should include arrangements for the maintenance of the vegetative barrier. The barrier should be planted in the first planting season following commencement of the development and shall be fully implemented prior to the first occupation of any building to which the scheme relates. The barrier is to be maintained in place throughout the life of the development.

18. Prior to the commencement of development, a scheme for the design and installation of a noise attenuation barrier, adjacent to the northern boundary of the site and utilising the principles detailed within the Noise Assessment Report (Ref: Wardell Armstrong LE12230-001), shall be submitted and approved in writing by the Local Planning Authority. The barrier shall be fully implemented prior to the first occupation of any building to which the scheme relates.
19. Prior to the commencement of development, a scheme for the design and installation of acoustically treated passive ventilation, utilising the principles detailed within the Noise Assessment Report (Ref: Wardell Armstrong LE12230-001) shall be submitted and approved in writing by the Local Planning Authority. The scheme shall be fully implemented prior to the first occupation of any building to which the scheme relates.
20. No development shall take place until a scheme for the affordable housing has been submitted to and approved by the local planning authority. Such a scheme shall detail all of the affordable housing as meeting the Homes and Communities Agency, Design and Quality Standards and Code for Sustainable Homes Level 3, and 50% of the Affordable Rented Housing as meeting Lifetime Homes Standards, or an alternative equivalent national standard applicable at the time of implementation. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing outlined below. The scheme shall include:
  - a. the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall be clustered in no more than 15 dwellings together throughout the development and which shall consist of not less than 35% of the total dwellings 70% of which shall be Affordable Rented Housing and 30% of which shall be Shared Ownership Housing or other such low cost home ownership as is agreed with the local planning authority.
  - b. the timing of the construction of the affordable housing and all necessary infrastructure including serviceable roads, utilities (power, heating, sewerage) and public access, its phasing in relation to the occupancy of the market housing. No more than 70% of the open market dwellings shall be occupied before the affordable housing is completed and ready for occupation and transfer of the affordable housing to a Registered Provider or the Council
  - c. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing, subject to any Mortgagee in Possession clause to be submitted as part of the



affordable housing scheme and agreed with the local planning authority.

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

For the purpose of this condition, the following definitions apply

#### Affordable Housing

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

#### Affordable Rented Housing

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

#### Shared Ownership Housing

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

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

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



## **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 for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

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

With the permission of the High Court 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. 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 for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

#### **SECTION 4: 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 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.