



Appeal Decision

Hearing held on 2 February 2016

Site visit made on 2 February 2016

by Karen L Baker DipTP MA DipMP MRTPI

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

Decision date: 08 August 2016

Appeal Ref: APP/D3125/W/15/3137627

**Land at Downs Road, Richard Jones Road, Downs Road, Witney,
Oxfordshire OX29 0RD**

- 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 Witney Developments Limited against the decision of West Oxfordshire District Council.
 - The application Ref. 15/01968/OUT, dated 29 May 2015, was refused by notice dated 23 September 2015.
 - The development proposed is 51 first time buyer and/or shared equity homes.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was made in outline with all matters reserved for subsequent approval, with the exception of access.
3. The Hearing was adjourned on 2 February 2016 to enable the appellants to submit a revised Unilateral Undertaking and a more detailed Viability Assessment. These documents¹, along with a supporting statement, were submitted on 25 February 2016. A further amended version of the Unilateral Undertaking² was submitted on 1 March 2016. The Council, Oxfordshire County Council and Witney Town Council also submitted statements³ in respect of these matters. Following consideration of the submitted documents, I informed the parties that it would not be necessary for the Hearing to resume as sufficient information had been provided upon which to make my Decision. The Hearing was closed in writing⁴ on 6 July 2016.
4. During the adjournment, a judgment of the Court of Appeal was issued on 11 May 2016 in the case of the Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441 upon which the views of the main parties in this appeal were sought. In addition, the Housing and Planning Act was enacted on 12 May 2016 and amendments were made to the Planning Practice Guidance (The Practice Guidance) in respect of Starter Homes. The main parties have made

¹ Document 14

² Document 16

³ Documents 18, 19, 20 and 22

⁴ Document 27

comments on these matters and I have had regard to these responses⁵ during my consideration of this appeal.

5. The appellants confirmed at the Hearing that, although the proposal is described as 51 first time buyer and/or shared equity homes on the planning application form, it is their intention to provide 51 Starter Homes on the appeal site, in accordance with the Housing and Planning Act. In this regard, a certified copy of the final version of the appellants' Unilateral Undertaking⁶, dated 2 March 2016, was submitted during the adjournment and includes obligations relating to the provision of Starter Homes on the appeal site. I have had regard to this Unilateral Undertaking during my consideration of this appeal.
6. Following the submission of the revised Unilateral Undertaking, the Town Council confirmed that it would now be objecting to the proposed development, given that its requests for funding through any Section 106 Agreement have not been successful, and has withdrawn its initial support.

Applications for Costs

7. During the adjournment, applications for costs were made by Witney Developments Limited against West Oxfordshire District Council; West Oxfordshire District Council against Witney Developments Limited; and Oxfordshire County Council against Witney Developments Limited. These applications are the subject of separate Decisions.

Main Issues

8. The main issues in this appeal are:
 - a) the effect of the proposed development on the character and appearance of the area;
 - b) whether or not the proposal would provide satisfactory living conditions for future occupiers of the proposed dwellings, with particular reference to noise and disturbance, odour and safety;
 - c) the effect of the proposed development on employment provision within Witney, along with commuting patterns and levels of congestion on the routes to Oxford; and,
 - d) whether or not the proposal would deliver Starter Homes on the site and make adequate provision for any additional need for community infrastructure and services arising from the development, having regard to the viability of the scheme.

Reasons

Character and Appearance of the Area

9. The appeal site is located on the southern side of Burford Road. Three detached residential properties of 2 and 1.5 storeys are sited adjacent to the appeal site to the east, close to the junction of Downs Road with Burford Road. A new cul de sac, Richard Jones Road, is sited within the appeal site. It

⁵ Documents 24, 25 and 26

⁶ Document 17

- currently provides access from Downs Road to an existing car storage area, bounded by metal palisade fencing, located to the south of the appeal site, associated with West Oxfordshire Motor Auction Limited, which is sited on the western side of Downs Road, at its junction with Burford Road. Richard Jones Road would also provide access to the proposed development. Further to the south and east of the appeal site is the Windrush Industrial Park. To the north of the appeal site, on the other side of Burford Road, is the Windrush Valley and Cotswolds Area of Outstanding Natural Beauty (AONB).
10. Beyond the Windrush Industrial Park, further along Burford Road to the east, is the Witney Sports Ground, which is sited to the west of the junction of Deer Park Road with Burford Road. Beyond this junction, the development is mostly residential, with Deer Park Road forming a distinct boundary of the extent of the built up area of Witney.
 11. The appeal site, as part of a larger site, currently benefits from outline planning permission (Ref. 07/0454/P/OP) for the erection of B1 business units (to include offices, research and development labs/studios and light industrial units), B2 general industrial units and B8 wholesale warehouses, alterations to existing and construction of a new access. Following the approval of reserved matters, the new access road was constructed, along with the car storage area to the south of it and the building currently occupied by Jason Hydraulics, which is sited immediately to the east of the appeal site.
 12. As part of the planning application the appellants submitted an Illustrative Masterplan (Drawing No. CSa/2647/101 Rev. A), which indicates how a development of 51 dwellings could be accommodated on the appeal site, which is around 1.19ha and would result in a density of around 43 dwellings per hectare (dph). Furthermore, the Illustrative Streetscenes (Drawing No. CSa/2647/104) and the Design and Access Statement, submitted with the planning application, indicate that the proposed development would include a general mix of 2, 2.5 and 3 storey buildings on the appeal site. The Council is concerned that by reason of the location, density and scale of the proposal, it would appear as an incongruous and illogical addition to the housing stock of the town and would detract from the pleasant approach to the town and the visual amenity of the countryside to the north.
 13. With the exception of the 3 residential properties sited close to the junction of Downs Road with Burford Road, the development to the south of Burford Road, in the vicinity of the appeal site is predominantly industrial and commercial. In contrast, the area to the north of Burford Road, is predominantly open countryside, forming part of the AONB.
 14. I acknowledge that the proposed development would retain and manage the existing hedgerow along the boundary of the appeal site with Burford Road, along with the indication that the dwellings along this frontage would be of 2 and 2.5 storeys in height. However, I am concerned that these frontage properties, along with the 3 storey buildings to the rear, would, given their scale, density and siting, appear visually prominent and incongruous in this location, out of keeping with the existing pattern and grain of development along this part of Burford Road. Furthermore, given the topography of the local area, the proposed dwellings would be sited on a prominent skyline ridge. As such, when viewed from the north, within the AONB, they would appear visually obtrusive and dominant.

15. I conclude, therefore, that the proposal would harm the character and appearance of the area. As such, it would be contrary to Policies BE2 and H2 of the West Oxfordshire Local Plan 2011, adopted in June 2006, and would not accord with Policies OS2, OS4 and H2 of the emerging West Oxfordshire Local Plan 2031 and the National Planning Policy Framework (The Framework).

Living Conditions of Future Occupiers

16. The Council is concerned that the proposed development would not provide satisfactory living conditions for future occupiers of the proposed dwellings, with particular regard to noise and disturbance, odour and safety.
17. The appellants submitted an Environmental Noise Impact Assessment⁷ as part of the planning application. This included a 72 hour background noise survey, which was undertaken between 1500hrs on Friday 15 May 2015 and 1500hrs on Monday 18 May 2015, at a position on the northern boundary of the appeal site, close to Burford Road. It concluded that the maximum daytime levels were $L_{Aeq, 16 \text{ hour}}$ 62dB and the maximum night time levels were $L_{Aeq, 8 \text{ hour}}$ 55dB. The assessment assumed that the most noise sensitive facades of the proposed dwellings would be those facing north, towards Burford Road. The assessment indicated that the maximum noise levels that would be likely to be present at these facades would be $L_{Aeq, 16 \text{ hour}}$ 56dB during the daytime period and $L_{Aeq, 8 \text{ hour}}$ 49dB during the night time period. It went on to make recommendations in respect of the specifications of the proposed dwellings, their proximity to the northern boundary, the position of residential outdoor amenity space and mitigation measures.
18. I am concerned about the scope of the Environmental Noise Impact Assessment. The use of an assessment point, close to the northern boundary of the appeal site, would predominantly measure the noise from Burford Road. However, further assessment points within the site, in order to measure the industrial uses immediately to the south and east of the appeal site would have been helpful. Furthermore, the time interval chosen, which was primarily over the course of a weekend, would not necessarily have accurately recorded the noise from these neighbouring industrial uses, most of which would not operate on a Saturday and Sunday. In addition, the car auctions generally occur on Tuesday and Thursday evenings and, given the location of the car storage area for this business immediately to the south of the appeal site, along with the lack of any assessment during these times, I am not satisfied that the existing noise levels in the vicinity of the appeal site have been accurately measured. Furthermore, I consider that the movement of vehicles in and out of the car storage area, particularly during the evenings, would lead to disturbance to future occupiers of those dwellings immediately adjacent to it.
19. In addition, given the neighbouring industrial uses and the lack of restrictions relating to their hours of operation, along with the likelihood that different businesses may operate there in the future, I am not satisfied that future occupiers of the proposed dwellings would benefit from satisfactory living conditions in respect of noise and disturbance.
20. It was apparent from my site visit and from evidence presented to the Hearing that a strong, unpleasant odour exists on and around the appeal site. No assessment of this odour has been carried out. However, given its nature and

⁷ Environmental Noise Impact Assessment, May 2015, prepared by Impact Acoustics Limited

extent, although measures could be introduced to control its seepage into the proposed dwellings, it would be likely to be present in their gardens to the detriment of future occupiers. As such, I do not consider that the proposal would provide satisfactory living conditions for future occupiers in respect of odour.

21. The Council is concerned that the proposed development would not provide a safe area for children to play and that this would lead to conflict between them and the movement of vehicles along Richard Jones Road. Although the proposed development would not include a children's play area, most of the dwellings shown on the Illustrative Masterplan would benefit from private gardens. Furthermore, the Witney Sports Ground is located further along Burford Road, within walking distance of the appeal site, with a pedestrian link shown from the appeal site onto the footway along the southern side of this road. I am satisfied, therefore, that the proposal would be unlikely to lead to conflict between children and vehicles along Richard Jones Way.
22. Although I have found that the proposal would be unlikely to lead to conflict between children and vehicles along Richard Jones Way, I conclude that the proposal would not provide satisfactory living conditions for future occupiers of the dwellings, with particular reference to noise and disturbance and odour. As such, it would be contrary to Local Plan Policies BE2 and BE19 and would not accord with emerging Local Plan Policy EH6 and The Framework.

Employment Provision/Commuting Patterns and Levels of Congestion

23. The Council is concerned that the proposal would lead to the loss of a viable and attractive employment site, along with likely pressure from future occupiers of the proposed dwellings to limit the impact on their amenity arising from the adjoining trading businesses. As such, the Council considers that the proposal would damage the employment base and attractiveness of the town to business. Furthermore, the Council is of the view that the loss of the appeal site for employment uses would give rise to additional out commuting from the District to centres of work, which would add to the existing levels of congestion on the routes to Oxford.
24. The appeal site is not allocated for any use either within the Local Plan or the emerging Local Plan. The latter has been submitted for Examination and Hearings, which considered mainly strategic matters, including the housing target and supply, commenced on 23 November 2015. The Local Plan Inspector has agreed⁸ to a formal suspension of the Examination until December 2016 to enable the Council to undertake further work and consult on proposed changes in response to his Preliminary Findings. Given this, I consider that the emerging Local Plan should be afforded only limited weight, having regard to paragraph 216 of The Framework.
25. Although not subject to any allocation in the adopted or emerging Local Plans, the appeal site benefits from outline planning permission for the erection of B1, B2 and B8 uses. Policy E6 of the Local Plan says that the change of use of existing premises and sites with an established employment use to non-employment uses will not be allowed unless it can be demonstrated that the site or premises are not reasonably capable of being used or redeveloped for employment purposes; or the site or premises is considered unsuitable on

⁸ Document 9

- amenity, environmental or highway safety grounds for employment uses; or substantial planning benefits would be achieved by allowing alternative forms of development.
26. It is apparent from the Local Plan Proposals Map that existing employment sites and premises are not allocated for such uses, including the industrial area immediately to the south of the appeal site. The reasoned justification to Local Plan Policy E6 makes it clear that retaining a wide range of existing employment sites throughout the District plays an important part in maintaining and promoting a balance between employment and housing both in urban and rural areas. It goes on to say that the relationship between jobs and housing can quickly become imbalanced, particularly if the employment sites are redeveloped for housing. In addition, acceptable replacement sites for employment, particularly in the rural areas of the District, can be difficult to find. As such, the loss of existing employment sites would be resisted unless they are obviously unsuitable for that purpose or there would be substantial overriding planning benefits in allowing alternative forms of development.
27. Policy E1 of the emerging Local Plan says that non employment uses on employment sites will be resisted in a number of circumstances including those similar to the ones set out in adopted Policy E6. The Policies Map⁹ in the emerging Local Plan identifies the main existing employment sites within Witney, including land either side of Downs Road, to the south of Burford Road, but excluding the appeal site and the sites now occupied by Jason Hydraulics and the car storage area, associated with Oxfordshire Motor Auction Limited. It is apparent from the reasoned justification to emerging Policy E1, however, that there is a significant proportion of employment sites with planning permission which are not identified on the Policies Map. This includes the appeal site.
28. The appellants contend that as the appeal site is not allocated as an employment site within either the adopted or emerging Local Plans, Local Plan Policy E6 and emerging Local Plan Policy E1 do not apply. However, the Council's Economic Development Officer considers that the appeal site forms part of the West Witney Industrial Area, being bounded by the Windrush Industrial Park and the Bromag Industrial Estate and benefitting from planning permission for commercial development. In my view, it is clearly the Council's intention that Policy E6 and emerging Policy E1 should be applied to both allocated and non-allocated employment sites and premises, including the appeal site, which currently benefits from planning permission for employment uses. Indeed, it was apparent from my site visit, that the appeal site relates well to the neighbouring industrial uses and any proposed development on the appeal site would be accessed via the existing cul de sac, known as Richard Jones Road, which also serves the car storage area to the south.
29. I acknowledge the appellants' view that there is extensive floorspace available on the commercial market for the take up of a variety of different businesses, in addition to a number of outstanding planning permissions for new industrial floorspace which have yet to be implemented. However, this is disputed by the Council, who refer to a chronic shortage of available employment land in Witney, with West Witney being a key employment area for the settlement and the District as a whole. Indeed, given its concerns about the loss of

⁹ Plan B1/2

- employment sites, the Council has served an Article 4 Direction to prevent changes of use from office to residential on key employment sites within the District in order to maintain a strong employment base and reduce commuting to higher order settlements.
30. The appellants also refer to the appeal site having been actively marketed since 2007, with no real interest having been expressed in bringing it forward for commercial development. Although I note that the appeal site has been available during a period of recession, the Council's Economic Development Officer has confirmed that several businesses have tried to acquire plots of land on the appeal site, but have been frustrated in their attempts to do so by the terms offered by the owners, with this resulting in some, including Minster Paving, moving out of Witney.
 31. The appellants have not demonstrated that the appeal site would not be reasonably capable of being used or redeveloped for employment purposes or that it would be unsuitable on amenity, environmental or highway safety grounds for employment uses. The appellants, however, consider that the provision of Starter Homes on the appeal site would be a substantial planning benefit which would help to meet the need for housing in the District.
 32. Although the appellants consider that the Council cannot currently demonstrate a 5 year supply of deliverable housing land, the Council is of the view that it may be able to demonstrate a 5 year housing land supply and, even if this were not the case, the degree of any shortfall would not be such that approval should be given in this appeal in the face of the shortcomings of the proposed development.
 33. The Unilateral Undertaking seeks to deliver all 51 proposed dwellings on the appeal site as Starter Homes. Paragraph 007 of the Starter Homes Section of The Practice Guidance says that Starter Homes exception sites are expected to be on land that has been in commercial or industrial use, and which has not currently been identified for residential development. It goes on to say that suitable sites are likely to be under-used or no longer viable for commercial or industrial purposes, but with remediation and infrastructure costs that are not too great so as to render Starter Homes financially unviable. It goes on to say that where applications for Starter Homes come forward on such exception sites, they should be approved unless the local planning authority can demonstrate that there are overriding conflicts with The Framework that cannot be mitigated.
 34. When assessing whether an industrial or commercial site is underused or unviable, paragraph 008 of The Practice Guidance says that local planning authorities can take into account a number of factors. In this case, from the evidence before me, it is apparent that the land value of the appeal site is not significantly below that of other sites with a similar permitted use in the area; there is not a high percentage of vacant units on the neighbouring industrial estates; the appeal site has been actively marketed and has attracted interest from potential industrial and commercial uses, albeit that this has not resulted in development taking place; and there has been recent development activity to improve the appeal site, primarily through the construction of an access road. I do not consider, therefore, that the appeal site should be regarded as underused or unviable. As such, it should not be classified as an exception site where the development of Starter Homes should be promoted.

35. From the evidence before me, I am not satisfied that the Council has demonstrated that it has a 5 year supply of deliverable housing land. The provision of 51 dwellings on the appeal site would, therefore, go some way to boosting significantly the supply of housing in the District. Although the provision of 51 dwellings would represent a planning benefit of the scheme, I am not satisfied that the appeal site would be an appropriate location for a development of Starter Homes, given that it would result in the loss of an attractive employment site. Furthermore, in my opinion, the development of the appeal site for housing would, given its close proximity to the neighbouring industrial uses, lead to pressure from future residential occupiers to limit the impact on their amenity arising from the adjoining trading businesses. Indeed, not only would the proposed development prevent the natural and necessary expansion of the industrial area, but it would reduce the viability of the existing businesses. Furthermore, the loss of the appeal site for employment uses would give rise to additional out commuting from the District to centres of work, which would add to the existing levels of congestion on the routes to Oxford.
36. I conclude, therefore, that the proposed development would harm employment provision within Witney and would be detrimental to commuting patterns and levels of congestion on the routes to Oxford. As such, it would be contrary to Local Plan Policy E6 and would not accord with emerging Local Plan Policy E1 and Government policies in The Framework and The Practice Guidance.

Starter Homes, Community Infrastructure and Services

37. The Council and Oxfordshire County Council are concerned that the adverse impacts of the proposed development would not be fully and properly mitigated. At the Hearing, the appellants submitted a Unilateral Undertaking¹⁰ which included obligations in respect of a financial contribution of no more than £2,000 per dwelling towards the provision of community facilities by the Council within the District, along with the designation of all dwellings comprised in the planning permission as Starter Homes and to comply with the provisions relating to Starter Homes in the Housing and Planning Act 2016. Several concerns relating to the content and legality of the Unilateral Undertaking were raised by the Council and County Council at the Hearing. Following which, the appellants asked if they could submit a revised Unilateral Undertaking.
38. The appellants submitted an amended Unilateral Undertaking¹¹ following the adjournment of the Hearing, which designates all of the dwellings comprised in the planning permission as Starter Homes, which, for a period of 5 years from the date of first occupation, each dwelling shall be sold for no more than the Restricted Value, following which the dwellings can be sold on the open market free of the Restricted Value. Starter Homes are defined as dwellings to be available for first time buyers aged 40 years or younger, sold at the Restricted Value. The Restricted Value means 80% of the Market Value, which is the price determined by calculating the average of 2 written valuations undertaken by 2 qualified Royal Institution of Chartered Surveyors familiar with the local market conditions.

¹⁰ Document 10

¹¹ Document 17

39. The Council and County Council refer to the lack of consultation between the appellants and the 2 Councils during the adjournment to address the errors and omissions within the Unilateral Undertaking. In particular, they both raise several concerns relating to errors in the drafting of the Unilateral Undertaking and its legality, as well as a lack of: any qualification for the first time buyers; restrictions on letting out the properties; any mechanism for ensuring that any future sales within the 5 year period would comply with the restriction; a cap on the total sales value of the units to £250,000; and a requirement that first time buyers have a local connection. Furthermore, the Council also points out that the Unilateral Undertaking does not include any obligations relating to landscape maintenance and off site highway improvements.
40. In addition, the County Council refers to the lack of financial contributions towards primary and secondary education of £336,489 and £184,725 respectively, as well as the failure to include the provision of a footpath extension on the south side of Burford Road. Witney Town Council also now objects to the proposed development following the exclusion of a financial contribution of no more than £2,000 per dwelling towards the provision of community facilities.
41. The appellants submitted a Viability Profit Sheet¹² at the Hearing, which indicated that the viability of the appeal site is sensitive, given that the developer would have to accept a Gross Development Value (GDV) reduction of over £2.5m as a consequence of ensuring a 20% discount for first time buyers, with a likely ceiling price of £250,000 per dwelling, as required by emerging Government policy at that time. This would lead to a gross site profit margin of just under 14% for the developer. A Development Viability Report¹³ was submitted during the adjournment which concludes that the development would not generate enough surplus over the Benchmark Land Value to fund any affordable housing on the appeal site or provide any financial contributions.
42. The Council and the County Council question many of the variables used in the appellants' Development Viability Report. Indeed, the latter commissioned a critique of the Development Viability Report from the District Valuer, the findings of which the County Council accepts, with the exception of the premium of 15-20% to encourage the sale of the land. The County Council is of the view that as the appellants say that the appeal site has been marketed for sale for industrial use for a long period without success, it would seem unbelievable that the seller should need a premium of 15-20%, let alone the 25% proposed as part of the appellants' Development Viability Report, to encourage the sale of the land. The District Valuer's critique indicates a surplus of around £780,000, which the County Council says would more than fund the contributions it is seeking.
43. The Practice Guidance says that a Starter Home is not expected to be priced after the discount significantly more than the average price paid by a first time buyer. This would mean the discounted price should be no more than £250,000 outside London. Paragraph 003 of The Practice Guidance says that local planning authorities should put in place planning obligations to ensure that Starter Homes are offered for sale at a minimum of 20% below its open market value of the property, with such properties expected to be offered to

¹² Document 2

¹³ Document 14

- people who have not previously been a home buyer and want to own and occupy a home, and who are below the age of 40 at the time of purchase.
44. Paragraph 004 of The Practice Guidance makes it clear that to deliver the minimum 20% discount, local planning authorities should not seek Section 106 affordable housing contributions, including any tariff-based contributions to general infrastructure pots, from developments of Starter Homes. It goes on to say, however, that local planning authorities will still be able to seek other Section 106 contributions to mitigate the impact of development to make it acceptable in planning terms, including addressing any necessary infrastructure.
45. In order to enforce the discount and age restriction for Starter Homes, paragraph 005 of The Practice Guidance says that local planning authorities should include in the relevant Section 106 Agreement a requirement on the developer to offer Starter Homes to a first time buyer under the age of 40 for a discount of at least 20% below the open market value of the property, and for there to be appropriate restrictions to ensure that Starter Homes are not resold or let at their open market value for 5 years following the initial sale.
46. The Unilateral Undertaking designates all of the dwellings the subject of this appeal as Starter Homes, which are defined as dwellings to be available for first time buyers aged 40 years or younger sold at the restricted value, for a period of 5 years from the first occupation of each dwelling. It states that the restricted value means 80% of the market value. However, the Unilateral Undertaking does not include a cap of £250,000 on this discounted price, as required by The Practice Guidance. Furthermore, the Unilateral Undertaking does not include any restrictions on letting or a mechanism for future sales during the initial 5 year period. As a result, I am not satisfied that the Unilateral Undertaking would secure the provision of Starter Homes on the appeal site. In addition, I am concerned about other deficiencies in the Unilateral Undertaking, including the definition of title interests and proof of title, along with the timing of the implementation of paragraph 1.2 of the Schedule. As such, I am not satisfied that the Unilateral Undertaking would be valid in its current form.
47. With regards to the obligations sought by the Town, District and County Councils, I have considered these in the light of the statutory tests contained in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations. I have also had regard to the County Council's statements¹⁴ addressing the tests on obligations arising under Regulation 122 and on compliance of planning obligations sought regarding the pooling of contributions under Regulation 123 of the CIL Regulations. Local Plan Policy BE1 says that development will not be permitted unless appropriate supporting transport, service and community infrastructure is available or will be provided and appropriate provision has been made to safeguard the local environment. It goes on to say that contributions will be sought from developers and/or landowners in accordance with Government advice.
48. Witney Town Council has requested that a financial contribution of £2,000 per dwelling be made towards the Sports Facilities Improvement Fund. Furthermore, the Town Council has requested that a pedestrian footpath along Downs Road, into Range Road and into the new North Curbridge Development,

¹⁴ Documents 3, 4, 5, 6 and 20

with a pedestrian crossing before De Havilland Way, be provided. Finally, the Town Council refers to a site at Edington Square for an ATC and Cadet Hut, which has funding from the Government in the region of £800,000, for which it is asking for a financial contribution of 10% (£80,000) towards it being brought into community use. I am not satisfied, from the evidence before me, that the contributions sought by the Town Council would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. As such, the financial contributions sought would not pass the statutory tests.

49. The District Council states that the Unilateral Undertaking should address on site landscape maintenance. The Illustrative Masterplan indicates where additional landscaping may be proposed as part of any reserved matters application. Given the nature and extent of this proposed landscaping, I consider that its implementation and maintenance could be satisfactorily addressed by appropriate conditions on any approval of reserved matters.
50. The County Council is seeking financial contributions towards primary and secondary education. With regards to the primary education contribution, the County Council refers to the forecast shortage in primary school places in Witney from 2016. The County Council has estimated that the proposed development would generate an additional 12.67 primary school pupils and is seeking a proportionate financial contribution towards the cost of a new primary school in West Witney. With regards to the secondary education contribution, the County Council refers to there currently being some spare places across the 2 secondary schools in Witney, due to a demographic dip. However, given the higher numbers of pupils already in primary schools and the level of local housing development, current pupil forecasts indicate that there would be a shortage of secondary school places by 2021. The County Council estimates that the proposed development would generate an additional 8.78 secondary school places and is seeking a financial contribution towards the cost of the provision of these additional places. Given that insufficient places exist at the local primary school and the 2 secondary schools to accommodate the estimated additional pupils to be generated by the proposed development, I am satisfied that the financial contributions sought would pass the statutory tests. However, no such obligations are included within the Unilateral Undertaking.
51. The County Council is also seeking the provision of a footpath extension of around 15m on the south side of Burford Road, to the west of its junction with Downs Road, which would ensure that pedestrians leaving the appeal site could use a footway from the site entrance to the bus stop on Burford Road. Given the need to encourage future occupiers of the proposed development to use sustainable transport options, I am satisfied that the provision of this footpath extension would pass the statutory tests. However, no such obligation is included within the Unilateral Undertaking.
52. I am satisfied that the suggested obligations with regard to education contributions and the provision of a footpath extension would be necessary to make the development acceptable in planning terms. I note that the appellants have not included them in the Unilateral Undertaking due to viability concerns and given that the development relates to Starter Homes. However, The Practice Guidance does not preclude the inclusion of obligations needed to address any necessary infrastructure to mitigate the impact of development to

make it acceptable in planning terms. With regards to the viability of the scheme, I have some concerns about the variables used in the appellants' Development Viability Report. Indeed, I consider that the District Valuer's critique of viability would represent a more appropriate assessment of the proposed development in terms of Benchmark Land Value, Profit and Programme. From the evidence before me, therefore, I am satisfied that the proposed development could provide the financial contributions towards education and the provision of a footpath extension along Burford Road which would make the development acceptable in planning terms.

53. I conclude, therefore, that the proposal would not deliver Starter Homes on the site or make adequate provision for any additional need for community infrastructure and services arising from the development, having regard to the viability of the scheme. As such, it would be contrary to Local Plan Policy BE1 and would not accord with Government policy in The Framework and The Practice Guidance.

Planning Balance and Overall Conclusion

54. I have found that the Council has not demonstrated that it has a 5 year supply of deliverable housing sites. As such, relevant policies for the supply of housing should not be considered up to date. Housing applications should be considered in the context of the presumption in favour of sustainable development. Paragraph 14 of The Framework says that for decision taking this means approving development proposals that accord with the development plan without delay; and, where the development plan is absent, silent or relevant policies are out of date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in The Framework taken as a whole.
55. Although the proposed development would go some way to boosting significantly the supply of housing in the District, I have found that the proposed development would harm the character and appearance of the area and would not provide satisfactory living conditions for future occupiers of the dwellings, with particular reference to noise and disturbance and odour. I have afforded to each of these matters. Furthermore, I do not consider that the appeal site should be regarded as underused or unviable and, as such, it should not be classified as an exception site where the development of Starter Homes should be promoted. In addition, I have afforded some weight to the likely pressure from future residential occupiers on the adjoining trading businesses, given their close proximity, to limit the impact on their amenity arising from these operations, along with the limitations that this development would place on the natural and necessary expansion of the industrial area and the reduction in the viability of the existing businesses; and the additional out commuting from the District to centres of work, along with the associated rise in levels of congestion, following the loss of the appeal site for employment uses. Finally, the deficiencies in the Unilateral Undertaking, which would not deliver Starter Homes on the site or make adequate provision for any additional need for community infrastructure and services arising from the development, would add further weight against the proposal.

56. I conclude, therefore, that the cumulative impacts of granting outline planning permission in this case would significantly and demonstrably outweigh the benefits. As such, the appeal should be dismissed.

Karen L Baker

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANTS:

Mr Phil Salmon BA(Hons) DMS MRTPI	Agent
Mr Ken Gunbie FCIQB	Director of Witney Developments Limited
Mrs Hilde Bartlett	Director of Witney Developments Limited
Mr Robert Kingston	Director of DKR Developments Limited
Councillor Colin Dingwall	Director of DKR Developments Limited and Ward Member for Freeland and Hanborough

FOR THE LOCAL PLANNING AUTHORITY:

Mr Phil Shaw	Area Development Manager
Mr Will Barton	Economic Development Officer
Councillor Harry Eaglestone	Ward Member for West Witney

INTERESTED PERSONS:

Councillor Chris Holliday	Witney Town Council
Councillor Ben Woodruff	Ward Member for Curbridge, Ducklington and Lew
Councillor Steve Good	Ward Member for Standlake, Aston and Stanton Harcourt and Member of the Lowlands Planning Committee
Mrs Angela Wharton	Local Resident
Mr John Wharton	Local Resident
Mr Alan Pope	Oxfordshire County Council Funding Team
Mr John Cooper	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Council's letter notifying interested parties of the date, time and venue for the Hearing, along with a list of those people notified, submitted by the Council
- 2 Viability Profit Sheet, submitted by the appellants
- 3 Annex 1: Site – Contribution Triggers Schedule 11 January 2016, submitted by Oxfordshire County Council
- 4 Oxfordshire County Council S106 Contributions Chart with updates, submitted by Oxfordshire County Council
- 5 Community Infrastructure Levy Regulation 123 Note on Compliance of Planning Obligations sought by Oxfordshire County Council, submitted by Oxfordshire County Council
- 6 Oxfordshire County Council Statement (Corrected Version), submitted by Oxfordshire County Council
- 7 West Oxfordshire Local Plan Examination: Inspector's Preliminary Findings – Part 1: The Housing Requirement, the needs of Oxford City and the Duty to Cooperate, submitted by the appellants
- 8 West Oxfordshire Local Plan Examination: Inspector's Preliminary Findings – Part 2: Housing Supply and Delivery; Affordable Housing and Requirements for Particular Housing Needs; Viability; and, Traveller Policy, submitted by the appellants

- 9 West Oxfordshire Local Plan Examination: Suspension Request – Inspector’s Response, submitted by the appellants
- 10 Unilateral Undertaking, submitted by the appellants
- 11 Certificate of Completion of Works (End of Maintenance – S38) relating to the works at Richard Jones Road, submitted by the appellants
- 12 Email from Bryan Johnson, a local resident, dated 1 February 2016, submitted by the appellants

DOCUMENTS SUBMITTED WHILE THE HEARING WAS ADJOURNED

- 13 Email, dated 22 February 2016 (1414hrs), from the County Council confirming that it and the Council, have heard nothing as yet from the appellants
- 14 Email, dated 25 February 2016 (1358hrs), from the appellants enclosing a ‘Further Statement in Relation to Viability Assessment and Revised Unilateral Undertaking’, dated February 2016, a ‘Development Viability Report’ and an unsigned and undated Unilateral Undertaking
- 15 Application for Costs by the appellants, dated February 2016
- 16 Email, dated 1 March 2016 (0651hrs), from the appellants to the District and County Councils, enclosing the final version of the Unilateral Undertaking
- 17 Letter, dated 1 March 2016, from the appellants enclosing a Certified Copy of the Unilateral Undertaking
- 18 Email from the Council, dated 3 March 2016 (2351hrs), enclosing the Council’s final comments, along with an application for an award of costs
- 19 Email from the Council, dated 4 March 2016 (1214hrs), enclosing an updated version of the Council’s final comments, along with an application for an award of costs
- 20 Email from the County Council, dated 4 March 2016 (1644hrs), enclosing its final statement, along with an application for an award of costs
- 21 Council’s Response to the Application for an Award of Costs, dated 10 March 2016
- 22 Letter, dated 10 March 2016, from Witney Town Council, including its final comments
- 23 Email, dated 18 March 2016 (1746hrs), from the County Council stating that it has nothing of substance to add to its final statement
- 24 Email, dated 9 June 2016 (1012hrs), from the Council commenting on the revisions to the Planning Practice Guidance on Starter Homes
- 25 Email, dated 9 June 2016 (1659hrs), from the County Council stating that it has nothing further to add in respect of the recent Court of Appeal’s Judgment
- 26 Email, dated 16 June 2016 (0044hrs), from the appellants enclosing their response to the Court of Appeal’s Judgment, the amended Planning Practice Guidance and the final comments submitted by the Council and County Council
- 27 Letters to the main parties from The Planning Inspectorate informing them that the Hearing is now closed

APPLICATION PLANS

- A1/1 Site Location Plan (Drawing No. CSa/2647/105)
- A1/2 Illustrative Masterplan (Drawing No. CSa/2647/101 Rev. A)
- A1/3 Illustrative Streetscenes (Drawing No. CSa/2647/104)
- A1/4 Photographs from the Cotswolds AONB (Drawing No. CSa/2647/103)

PLANS SUBMITTED AT THE HEARING

- B1/1 Proposals Map from the West Oxfordshire Local Plan 2011, adopted June 2006, submitted by the Council
- B1/2 Figure 9: Witney Sub-Area Strategy, submitted by the appellants

Richborough Estates