



Appeal Decision

Inquiry held on 6, 7, 8 and 9 September 2016

Site visit made on 20 September 2016

by Karen L Ridge LLB (Hons) MTPL Solicitor

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

Decision date: 14 November 2016

Appeal Ref: APP/D3125/W/15/3138076

Land off Nethercote Road, Tackley, Oxfordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Barwood Development Securities Limited against the decision of West Oxfordshire District Council.
 - The application Ref. 15/01999/OUT, dated 29 May 2015, was refused by notice dated 14 September 2015.
 - The development proposed is an 'outline application for the demolition of existing agricultural buildings and residential development of up to 70 dwellings, including associated landscaping, public open space, access, drainage, infrastructure and parking'.
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Decision

1. The appeal is allowed and outline planning permission is granted for the demolition of existing agricultural buildings and residential development of up to 70 dwellings, including associated landscaping, public open space, access, drainage, infrastructure and parking, in accordance with the terms of the application Ref. 15/01999/OUT dated 29 May 2015 and subject to the conditions set out in the attached schedule.

Procedural Matters

2. The Inquiry was scheduled to last for 4 days. Examination of the evidence and a discussion on conditions had been completed by the end of the fourth day. With the agreement of the parties I therefore agreed to accept closing submissions in writing following an accompanied site visit on 20 September 2016. The Inquiry was closed in writing on 22 September 2016.
3. The planning application which led to this appeal was made in outline form with all matters reserved for future consideration, with the exception of access. The proposed access¹ for vehicles and pedestrians would be via the existing access point taken from Rousham Road, with a further pedestrian access at the south-western corner of the site. I shall consider these arrangements as part of my determination. Apart from the site location plan, all other plans are to be treated as illustrative only.

¹ As depicted on drawing reference C14375-001-D.

4. The parties have submitted a signed Statement of Common Ground (SCG) which records all of the main matters agreed between them, as well as the main areas of disagreement. One of the principal areas of agreement was in relation to housing land supply. Following two recent planning appeal decisions² and for the purposes of this appeal only the Council accepts that it does not currently have a 5 year housing land supply (5 YHLS) in terms of the advice within the National Planning Policy Framework (the Framework). The Council confirms that it is content to adopt a figure of 3.21 years supply to obviate the need to examine this matter in detail.
5. A statutory consultee, Network Rail, had raised an objection in relation to the proposal on the basis that it would unacceptably increase the use of the Tackley level crossing. Whilst maintaining its objection, Network Rail decided not to attend the Inquiry or present any oral evidence to it. I therefore issued an Inquiry note inviting further details and a written submission was received by Mr Tim Mayo in response.
6. At the opening of the Inquiry an additional proof of evidence was submitted on behalf of the Appellants from a railways expert, Mr Baker. This evidence was also circulated and Network Rail's comments were again invited and received. I am obliged to the offices of Network Rail for their contributions to the Inquiry in such a timely manner. I am similarly grateful to Mr Baker who, on behalf of the Appellants, sought to answer all of my questions and to furnish the Inquiry with additional information at short notice so as to assist my deliberations. All of the submissions shall be taken into account in my determination.
7. The Council's third reason for refusal relates to a failure to enter into a legal agreement to secure public transport improvements, education contributions, contributions to community facilities and affordable housing. This objection was withdrawn on the basis that the Appellants indicated they would submit an executed agreement to secure these matters.
8. A unilateral undertaking (UU) made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted. The agreement secures the payment of financial contributions towards public art, offsite sports, bus services. In addition it secures the provision of affordable housing and public open space on-site and the offer of a piece of safeguarded land for a footbridge over the rail crossing and a station contribution for the purposes of improvements. I shall return to these matters later.

Main Issues

9. Having regard to the above and to all that I have heard and read I conclude that the main issues in this case are as follows:
 - the effect of the proposed development on the character and appearance of the surrounding landscape;
 - the effect of the proposed development on the setting of heritage assets; and
 - whether or not the housing would result in an unacceptable increase in risks associated with use of the Tackley level crossing.

² APP/D3125/W/15/3019438 and APP/D3125/W/15/3129767.

10. In addition there are a series of other material considerations to be taken into account, one of which includes the shortfall in the Council's 5 YHLS.

Reasons

The development plan

11. Section 70(2) of the Town and Country Planning Act 1990 provides that, in dealing with proposals for planning permission, regard must be had to the provisions of the development plan, so far as material to the application, and to any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that, if regard is to be had to the development plan for any determination, then that determination must be made in accordance with the plan unless material considerations indicate otherwise.
12. For the purposes of this appeal the most relevant development plan policies are saved policies from the West Oxfordshire Local Plan (LP), adopted in 2006. In terms of emerging policy, the Council's West Oxfordshire Local Plan 2031 is currently undergoing examination. A first examination hearing was held in November 2015 but the process was suspended to allow further work to be done. Both parties are agreed that because of the scale of outstanding, unresolved objections the emerging plan policies carry no more than limited weight. I agree.
13. The appeal site comprises a single arable field of approximately 4.23 hectares on the north-eastern edge of Tackley village outside the settlement boundaries. LP policy H5 provides that new dwellings will be permitted in small villages such as Tackley if it comprises infilling or the conversion of appropriate existing buildings. The proposal is therefore contrary to this policy. However on the basis that the Council accepts that in order to meet its housing targets some development will be needed on greenfield sites on the edge of settlements it has not pursued an objection under this policy in terms of the principle of residential development on the site.

Effect upon the character and appearance of the landscape

14. On its western side the site adjoins historic residential development on Nethercote Road, with modern housing on Balliol Close on its shorter, southern boundary. The topography of the site is such that the land rises from the western to the eastern boundary. The northern boundary faces onto a public track and bridleway providing access to the wider countryside. The railway line sits unobtrusively in a cutting beyond the eastern boundary, with the Oxford canal a little further to the east.
15. In its wider landscape setting the site lies within the 'Estate Farmlands' landscape character type as designated in the *Oxfordshire Landscape and Wildlife Study*. At a more local level it is located within the 'Eastern Parks and Valleys' character type as identified in the *West Oxfordshire Landscape Assessment* (WOLA). This landscape character type is exemplified by areas of rolling limestone landscape dissected by valleys. Tackley appears to be a typical example of this type. It comprises two earlier settlements which were established within the valley bottom of the limestone plateau and linked by later development.

16. The site straddles two of the sub-categories within the Eastern Parks and Valleys character type, with the upper part of the site falling within 'semi-enclosed valley-sided farmland' typified by sloping and usually convex, valley – sided landforms exhibiting enclosed character with views from within and across the valley. The lower part of the appeal site falls within the 'semi-enclosed limestone wolds' sub-category which generally comprise 'rolling farmland occupying the limestone plateau and dipslope'. The site exhibits both sets of characteristics with no obvious demarcation between the two in that the lower lying farmland rolls up the valley side.
17. The Council also refers to its Design Guide 2016 which confirms that Tackley village is a bowl-shaped enclosed/valley settlement which is visually contained by its topography. The Tackley Village Character Appraisal further recognises the importance of the surrounding landscape in framing the village in rolling views out from Tackley to the open countryside.
18. LP policies BE2 and BE4 contain policy imperatives which seek to ensure that proposals are well-designed and respect the existing scale, pattern and character of the surrounding area, without harming the landscape setting of existing towns and villages. More particularly LP policies NE1 and NE3 seek to safeguard the countryside for its own sake and to protect local landscape character. Similar objectives are contained within policies OS2, H2 and EH1 of the emerging plan.
19. As a preliminary matter I shall deal with the question of the weight to be attached to the views of the Council's Landscape Officer³ recounted in the Committee Report upon which members based their decision. It is a well-rehearsed point that matters such as landscape and heritage involve subjective and qualitative judgments about the effects of a scheme. As such Members were entitled to come to a different view from their professional officers provided their collective judgment can be justified. To that end Mr Sacha revisited the scheme independently and came to the view that he could support the reason for refusal on landscape grounds.
20. Mr Sacha was therefore tasked with representing the Council's position at the Inquiry and as such it is his evidence to which I shall direct my attention. That evidence represents a comprehensive analysis of the landscape effects of the scheme and has undergone thorough testing at the Inquiry. The views of other professional officers at consultation stage are not as comprehensive, have not been subject to testing and do not represent the Council's formal position. As such I accord them limited weight.

Valued landscape

21. The site is not currently subject to any national or local landscape designation. The Council contend that the site forms part of a valued landscape referred to in paragraph 109 of the Framework which seeks to contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. The term valued landscape is not defined in the Framework but it has been the subject of a High Court judgment⁴ (the Stroud judgment).

³ The same point applies equally to the views of the Council's Conservation Officer as expressed in the committee report.

⁴ CD.30 Gladman & Stroud District Council [2015] WWHC 488 (admin)

22. In the appeal decision which was the subject of the Stroud case, the Inspector commented that to be valued a site would require some '*demonstrable physical attribute rather than just popularity*'. Having set that test the Inspector went on to apply it to the evidence in the case before him. The High Court challenge was concerned with the application of the test to the evidence rather than the actual test itself. Therefore I agree with Mr Connah's contention that the Stroud judgment does not contain a definitive judgment on what a valued landscape is but rather it establishes that land does not have to form part of a designation to be valued in the terms of paragraph 109 and that mere popularity is insufficient qualification.
23. In this instance the appeal site, when looked at in isolation, could be said to be unremarkable. In terms of its physical characteristics it has properly been described⁵ as, '*in large part...an arable field with mixed nature hedgerows along most of its four sides*'. However I do not consider that necessarily precludes it from being part of a valued landscape. Instead I consider it more important to examine the bigger picture in terms of the value of the wider setting and the contribution which the appeal site makes to that wider setting.
24. In this context the fields on the valley sides around the village form an important and intrinsic part of the village setting, helping to frame the village and contain it within the valley bottom. The fields on the valley slopes are also a key characteristic of the landscape types identified above and make an important contribution by forming an integral part of the convex valley-sided landform of the semi-enclosed valley sided farmlands. They further contribute to the rolling farmland lower down the limestone plateau of the semi-enclosed limestone wolds. In this respect the topography of the site, and its location as part of the valley side, could be said to be a notable physical characteristic which makes a contribution to a key characteristic of this landscape type and the setting of Tackley village. I shall return to the extent of the contribution made later.
25. It is also relevant to have regard to the quality of the wider landscape of which the appeal site forms a part. The landscape setting of Tackley and the wider Eastern Parks and Valleys landscape is recognised as a high quality landscape by the WOLA⁶ which records that within this type there are large areas of high quality, unspoilt and valued landscape with a rural and attractive character. The Tackley Village Character Appraisal also confirms the importance of the landscape and makes reference to lapsed policy CO7 of a former local plan which sought to protect the designated Area of High Landscape Value (AHLV).
26. Mr Sacha confirmed that, at the time the WOLA was published, the AHLV designation applied to the appeal site and indeed a wide area of the district. During the LP Examination the LP Inspector considered the issue of carrying forward the AHLV designation. The designation was removed in the LP since it was considered that an approach identifying different character areas and assessing the effects of development on those areas was more appropriate. LP policy NE3, and others, were deemed sufficient to protect those areas when proposals were assessed in conjunction with the WOLA. It is those same policies against which the current proposal will be assessed.

⁵ Mr Sacha proof of evidence 5.11

⁶ Third paragraph of page 35

27. To that end the former designation gives an indication as to the quality of the wider landscape. However, in my view, that of itself does not automatically qualify the site as part of a valued landscape in paragraph 109 terms. It is the quality of the landscape of which the appeal site forms part and the contribution which the appeal site makes as an integral part of that landscape which takes it out of the ordinary and leads me to conclude that it is part of a valued landscape.

An assessment of the effects of the proposal

28. The Council's reason for refusal contends that the housing development would be visually prominent and represent an inappropriate encroachment into countryside which would be harmful to the character and appearance of the area and to the setting of the village. Having concluded that the appeal site, as part of the bowl of valley sides around the village, is a component part of a valued landscape, it is necessary to examine the extent of the contribution made and the potential effects of the proposed development. I turn now to consider these matters.

29. At the outset I note that the proposal is in outline form only and that the layout shown on the illustrative masterplan⁷ is indicative only of how development could proceed. That masterplan depicts a green corridor behind the Nethercote Road properties and an area of undeveloped, public open space in the top north-eastern portion of the site. The underlying design rationale is driven by a desire to contain development below the 90 metre contour such that the development would not be visible from the wider countryside to the north and east.

Landscape effects

30. Boundary hedgerows and trees would be conserved wherever possible and along the line of the green lane behind the Nethercote Road housing. Additional planting on the site would add to the existing boundary features. Nevertheless the development would result in the loss of an arable field which makes a proportionately small contribution to the aforementioned landscape character types. As such it would cause some localised harm to landscape character by virtue of the loss of this arable field.

Visual effects

31. There was a consensus between the experts that consideration should be given to dynamic views as one travels around the village and surrounding environs rather than more static views recorded in photographed viewpoints. I agree entirely; impressions of the village, its landscape setting and the conservation area are gained as one travels around the village and countryside beyond.

32. The Council generally accept that the appeal scheme would have a limited visual envelope⁸. Unrestricted public views would be visible from close quarters, primarily along the bridleway and adjacent properties, and more distant open views would be obtained from the Fox Hill valley side. From the properties which bound the site there would be a significant change and this would particularly be the case from properties along Balliol Close. Views from the properties on Nethercote Road would primarily be from first floor windows

⁷ CD1.4

⁸ Mr Sacha confirmed that there would be no significant views from receptors beyond 100 metres to the north, east and south-east of the site.

- given their long rear gardens, rising landforms and intervening boundary planting as well as the proposed landscaped buffer. From Balliol Close the development would represent a significant change for the occupants. However there is generally established planting along the rear boundaries of the Balliol Close properties and there is no suggestion that the housing would be harmful to the outlook from these properties.
33. The bridleway along the northern boundary links the village to the Oxford Canal walk and provides access to a local nature reserve. The hedgerow along this boundary is mature and relatively deep such that views from the bridleway are primarily obtained through a field gate towards the crown of the hill. At this point the field provides a foreground setting with the village unfolding in the valley bottom below in an open vista. Development in the form of the masterplan would result in views across the open space in the north-eastern corner to the housing on the site. The wider ranging rural aspect would be lost and replaced by domestic development in the foreground. Along the rest of the bridleway the upper parts of the houses would be seen above the hedgerow and would be more prominent in the winter months when cover is reduced.
34. Travelling south along Rousham Road a bend is reached at which point the entrance to Balliol Farm comes into view. The entrance is in the form of a low-key track framed by established hedgerows either side with a cluster of agricultural buildings visible through the entrance and modern housing on either side of the bend. The access plan depicts a more formal entrance with kerbs and new footway links on both sides. Landscaping along the retained green lane would assist in greening up the direct view into the site but the internal access road would be an urbanising feature along with partial views of the housing set further into the site. It would represent a change of high magnitude but the aspect is a limited one gained on the short approach to the corner and would provide only a relatively fleeting view.
35. Views of the development from public areas on Nethercote Road, Balliol Close and Rousham Road would also be fleeting given the topography of the area and more particularly because of the tightly knitted properties along Nethercote Road. There would be glimpsed views through to the rear but given the set back of housing these would be very partial views. A footpath link is proposed from the development to the junction of Balliol Close and Nethercote Road. This would be landscaped and I am satisfied that it could be designed so as to be assimilated into the village scene with no detriment.
36. Public footpath 379/6 travels from Medcroft Road in the centre of the village up towards Fox Hill. Views of the site are obtained primarily along the first length of the footpath along the western boundary of an arable field which is lined by a mature hedgerow. It is this first length of the footpath which affords the most open and direct views of the appeal site which is seen as a backdrop above the houses lining Nethercote Road. From the above stretch of footpath the new houses would be seen on rising land in the middle distance. This would represent an unwelcome change from that which currently exists. However, in this view the housing would be surrounded by trees, with trees visible along the bridleway and to the rear of the housing as well as in the middle distance in front of them. Mature trees in the distance would form a backdrop to the housing and help to contain it.

37. Planting within the site, once it became established, would also assist in softening the development. I also bear in mind that the length of footpath which would afford these open views of the development is short and forms a small part of the footpath network. In addition the views are only obtained on the journey south along the footpath into the village. In the opposite direction one would be walking north away from the development although I accept that it is usually the habit of walkers to pause to look back upon views to the rear when traversing up hills.
38. The footpath continues up Fox Hill and at the corner of the field it turns through 90 degrees, through the hedgerow and into a wild flower meadow. At this point views of the appeal site, as part of the wider landscape, are very much restricted by virtue of the intervening hedgerow. The effect of the hedgerow effectively screens views of the central and western parts of the village and concentrates views towards the eastern end of the village⁹.
39. Even further along this footpath towards the Fox Hill road end, the hedgerow framing the arable field drops down in the view and houses on the appeal site would be visible towards the horizon. The topography is such that views are more expansive on this section of footpath and encompass the western parts of the village and the modern development in the centre of the village. As a consequence the proposed houses would be seen in a wider panorama and the housing would form a smaller part of the overall composition from these viewpoints.
40. This viewpoint towards the top of Fox Hill gives the impression of the village nestling in the bottom of the valley, with partial views of houses in a mature well-treed landscape. The new housing would sit higher up on the valley slope and there would be street lighting, reflections from windows and other domestic accoutrements. From this viewpoint there would be a change in the perception of the form and spread of the village. However the housing would be seen within a much wider landscape in which it would be surrounded by woodland cover, with a wooded skyline which would create a sense of enclosure and containment of itself and would reduce the incongruity of the housing.
41. From the local highway network within the village and from public places within the village, the houses would be seen intermittently in filtered views and partially glimpsed through gaps in the built environment and hedgerows. This includes views from the playing fields, car park and allotments in the centre of the village. In winter views the housing would be seen in filtered views rising in the middle distance and puncturing the skyline.

Conclusions on Landscape Issues

42. There would be harm to landscape character by the loss of a small part of the land of the character types identified. Having regard to the amount and type of views which would be gained of the development, as a generality, I conclude that it would not be visually prominent. However it would be visible from limited views at close quarters and from longer distance views on a single footpath on Fox Hill. Other views of the development would be partial or glimpsed. As a consequence there would be some visual harm to the landscape.

⁹ Mr Sacha's photoviewpoint 11 and photomontage viewpoint 1

43. As part of the valley-side which encloses the village the appeal site makes a contribution towards the setting of the village. However the value of that contribution is somewhat reduced by it being less visible than other valley-sides such as Fox Hill which features quite significantly in views from within the village and has a much greater influence in setting the rural context. The contribution made by the appeal site to the bowl-shaped context of the village, in these views from within the village itself, is relatively modest.
44. With the development in place the appeal scheme would result in housing creeping up the valley sides. The housing would be more visible in the winter months and in hours of darkness domestic and street lighting would be seen on the hillside where currently there is a dark backdrop. However this would be seen in partial or glimpsed views as one travelled around the village and its outer environs.
45. For all of these reasons I conclude that there would be harm caused to the village setting contrary to policies BE2 and BE4. This would be moderate given that the village would still read as a settlement enclosed within a valley, albeit with some development up the valley sides. Further I note that the development would not spill over the ridge-line to the east and in that respect it would still represent a settlement contained within its bowl-shaped valley.
46. The appeal site also forms part of a wider valued landscape for the reasons I have set out earlier. The Framework requires that such landscapes are protected and enhanced and the appeal scheme would not do this insofar as it would result in some harm caused by the loss of this part of the valued landscape. In addition the proposal would be contrary to LP policies NE1 and NE3 which seek to maintain or enhance the countryside for its own sake and to protect landscape character and the aforementioned policies of the emerging plan to which I have earlier referred.
47. In conducting my assessment I have had regard to the comments on other developments and sites such as the development granted planning permission at Street Farm but each site sits within its own context and any assessment must be specific to that context.

Heritage assets

48. The Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on decision makers to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest when considering whether to grant planning permission for development which affects the setting of a listed building. The Framework also requires the significance of a heritage asset to be assessed, including any contribution made to the setting of an asset. It goes on to categorise any harm to the significance of a heritage asset as either '*substantial harm to or total loss of significance of an asset*' or '*less than substantial harm to the significance of an asset*'.

The conservation area

49. The parties are agreed that the appeal site is within the setting of the Tackley Conservation Area and it is further agreed that the proposal would lead to less than substantial harm to the significance of the Tackley Conservation Area.

50. LP policy BE5 is somewhat more stringent than the Framework, it requires the special architectural, historic and environmental character or appearance of a conservation area to be preserved or enhanced but then goes on to dilute this requirement by providing that *'every effort will be made to ensure that this character or appearance is not eroded.....'* As such I conclude that it is broadly in accordance with more recent national policy. Emerging policy EH7 is in similar vein but, as agreed, it carries limited weight.
51. The eastern boundary of the Tackley Conservation Area, which includes many listed buildings, sits on the western side of the appeal site along the back of the properties on Nethercote Road. It includes much of the village of Tackley and the estate parkland to the west but excludes the more modern estate development immediately south of the appeal site. The appeal site is also outside the conservation area boundary.
52. The conservation area largely comprises the merged hamlets of Nethercote and Tackley which each exhibits its own particular character. The old Tackley hamlet was centred around a village green surrounded by attractive stone cottages and other buildings and with two parkland estates and the church on higher ground to the west. Nethercote is more intimate and rustic, comprising the humble terraced cottages lining Nethercote Road and the Malt House Farm complex. It is my view that both parts of the conservation area contribute to the whole and neither is more important than the other since they each exhibit different characteristics.
53. The Tackley Village Character Appraisal provides a useful insight into the significance of the Tackley Conservation Area. Landscape is recognised as a major component and in particular the formal parklands and gardens and the allotments and playing fields are referred to. Views out from Tackley to the rolling countryside beyond are also referenced. The Appraisal also documents the architectural character of Tackley and the differences between the two hamlets.
54. First and foremost the significance of the conservation area lies in the quality, age and quantity of many of the buildings and their arrangement around the green spaces within the conservation area. At its western end significance is derived from the grouping of the Church high up on the valley slope with estate parkland lower down and then the village green in the valley bottom. The entrance into the village from the west and the way in which this part of the village announces itself from the top of the hill arise as a result of all of these factors in combination. At the eastern end of the conservation area there is a more intimate feel, with the humble stone cottages huddling along Nethercote Road and seen in conjunction with the Malt House Farm buildings. The agricultural land outside the conservation and the rolling countryside further contribute to framing the village as a rural settlement within a valley.
55. I have already analysed in some detail the contribution which the appeal site makes to the landscape setting of the village. Many of the points within that analysis apply equally to a consideration of the contribution which the appeal site makes to the setting of the conservation area. On behalf of the Council Mr Ayton remarked that a *'tsunami'* of green surrounds the village. This is an apt and evocative description of the contribution made by Fox Hill which does appear to loom large over the properties lining Medcroft Road from vantage points within the village. It could also be said to apply to the rolling

countryside to the west when viewed from the village green. However I do not consider it to be an accurate description of the part played by the appeal site which is generally not a prominent or looming presence but a low-key contributor to the rural scene, largely in intermittent and partial views.

56. From the playing fields, village hall car park and allotments in the centre of the village the appeal site is seen in partial views behind development in the middle distance. In winter more of the appeal site is revealed. Housing on the site would be seen approaching or on the skyline from these vantage points and would appear to increase the depth of development on the western edge of the conservation area. Partial views of the rural backdrop would be lost and would somewhat diminish the impression of a settlement contained within the lower reaches of a bowl-shaped valley. However these views would be partial and limited and would also encompass development on the Street Farm site on the left hand side of the view. More importantly Fox Hill would remain a looming presence and an undeveloped skyline, reminding the viewer of the valley setting of the village.
57. The loss of part of the pastoral landscape surrounding the conservation area would result in a diminution of the significance of this heritage asset. In the winter months and in hours of darkness the development would be more conspicuous as housing on the valley slope but again such views would mostly be intermittent.
58. Whilst generally the undeveloped ground that surrounds the conservation area to the north, east and west is an important component, I recognise that it is one of a number of elements which contribute to the significance of the conservation area. In addition, the appeal site makes a smaller contribution to the setting of the conservation area than Fox Hill or the parkland estates and rural land to the west given that it is less prominent than these other areas. For the reasons explained previously I conclude that less than substantial harm would be caused to the significance of the setting of the heritage asset and the harm would be towards the lower end of this particular spectrum. As such the proposal would also be contrary to LP policy BE5.

Listed buildings

59. In addition to the statutory duty, LP policy BE8 provides that development should not detract from the setting of a listed building. It is worth repeating that paragraph 132 of the Framework provides that when considering the impact of a proposed development on the significance of a designated asset great weight should be given to the asset's conservation. Historic England advises¹⁰ that setting is essentially the surroundings in which a heritage asset is experienced.
60. Nethercote Road contains a series of four grade 2 listed buildings which were former cottages dating from the 18th century. No. 11 is part of the row of limestone rubble cottages. Nos. 17, 19 and 21 are a group of three cottages known as The Hollies whilst nos. 23 & 25 are a pair of early 19th century houses known as Coffee Lodge. Finally no. 27 is an earlier example of a part 17th and part 18th century limestone rubble dwelling.

¹⁰ Historic Environment Good Practice Advice in Planning Note 3.

61. The aforementioned are closely grouped together along the Nethercote Road frontage and make a cohesive and attractive composition. The dwellings present as relatively humble, worker's cottages and much of their significance is derived from their materials, design and the grouping as a whole. This is particularly true of their more interesting front elevations. In addition the green spaces immediately in front of the cottages and the open field as one rounds the corner from Medcroft Road into Nethercote Road enable views of the cottages and provide them with their rural setting making a smaller contribution to the significance of the asset. More partial views are obtained from the recreation ground, village car park and allotments. Tree cover on the appeal site immediately behind the properties adds to the pastoral scene. From the rear the long burbage plots and strong boundary treatments limit any appreciation of the buildings in views from within the appeal site and along the bridleway.
62. Given the nature of the cottages and their relationship to green spaces and the vantage points from which they are understood and appreciated I conclude that the setting of these listed buildings is limited to their more immediate surroundings. Development on the appeal site in the form of that in the masterplan would include a buffer strip of some 5 metres immediately behind the long burbage plots. Retention and supplementation of the trees and hedgerows within this strip would maintain the impression of a rural backdrop behind the buildings when viewed from public vantage points in the immediate vicinity. It would also serve to partially screen views of houses rising up the slope of the appeal site and create a clear sense of separation.
63. In the winter months the houses would be more visible in gaps in between the cottages and in hours of darkness there would be lights behind the listed buildings where currently there is darkness. However I am satisfied that such elements would be seen in glimpsed views and provided that sufficient distance was retained between the listed buildings and the new dwellings they would not materially detract from the significance of the setting. Similarly the sense of separation would curtail any disturbance from increased movement, activity and noise within the appeal site. The entrance to the site would be round the corner on Rousham Road and an estate road would provide access to a limited number of properties to the rear of the listed buildings.
64. For all of these reasons I conclude that the development could proceed in such a way as not to cause any loss of significance to the setting of these listed buildings.

The Malt House Farm complex¹¹

65. Malt House Farm is a grade 2 listed building comprising a farmhouse fronting onto Medcroft Road with an associated barn, cottage with attached cart shed and stable. These buildings still read as an agricultural farmstead and their significance is derived from the architectural value and historic interest of the buildings. The complex is seen from close quarters in association with the open field on the opposite side of Medcroft Road and in the context of agricultural land immediately to the rear rising up the hill. In these views the complex is not seen in conjunction with the appeal site. It is divorced from the

¹¹ Whilst I have seen this complex variously described as The Malt House Farm complex and The Malthouse Farm complex, I have adopted the former nomenclature since it originates from the Tackley Character Appraisal and is shown on various maps and the nameplate on the front of the property itself.

appeal site by the highway network, road junction and the properties lining Nethercote Road.

66. From the farmstead itself there are glimpsed views of the top of the appeal site peeping out from behind the Nethercote Road properties. In longer range views from the first section of the footpath up Fox Hill¹² the complex is seen in the middle distance within a pastoral landscape. It is framed by the arable field in the foreground and the arable field of the appeal site to its rear. The appeal site is within the setting of the complex. I consider that it makes a small contribution to the significance of the asset because it forms part of the wider agricultural landscape within which one would expect a historic farmstead to be set and one which informs the viewer as to the role and historic purpose of the complex.
67. Development on the site would result in the view from Fox Hill changing irrevocably and creating a backdrop of housing within the wider rural landscape from this particular aspect. However the farmstead would still read as a farmstead within an agricultural setting albeit a smaller part of that setting would be lost. For this reason I conclude that the harm to the setting of the listed building would be at the lower end of the less than substantial range as set out in the Framework. It follows that this would be contrary to LP policy BE8.

Tackley Level Crossing

68. The position of Network Rail is set out in its consultation responses¹³ and in the note of Mr Mayo of the 2 September 2016, as well as his additional responses emailed in relation to specific queries. I have also seen the series of exchanges between Network Rail and the Appellants as listed in the email from Lisa Bullock of 5 August 2016.
69. In the period leading up to this Inquiry Network Rail and the Appellants had discussions about possible approaches with regard to the level crossing. The Appellants provided worked up drawings showing a possible footbridge over the platforms. The UU contains an offer to provide safeguarded land within the appeal site which could be used by Network Rail for the provision of a footbridge and disabled parking. The UU further contains an offer of a contribution of £250,000 payable to the District Council to be paid to Network Rail as a contribution towards a project for level crossing safety improvements at Tackley. I shall return to these matters.
70. Network Rail is responsible for more than 650 level crossings on its western route. The Tackley level crossing is risk assessed using the 'All Level Crossing Risk Module' (ALCRM) which places the Tackley crossing in the top 10 in terms of overall safety risk. Following a fatal accident in March 2008 an urgent safety advice notice was issued which resulted in the removal of part of a palisade fence to improve sighting. Recent clearance works have resulted in the available sighting distances for users exceeding minimum requirements. Network Rail confirms that the arrangements at Tackley comply with their standards and with Office of Rail Regulation (ORR) guidance.
71. The ALCRM is a 'live' risk assessment which is regularly updated at least every 3.25 years. It is a computer model dependent on key inputs including train

¹² Mr Sacha photomontage viewpoint 1.

¹³ Holding response of 6 August 2015 and substantive objection of 4 August 2016.

quantum, speeds, types; path user quantum and types; sighting distances and user traverse time. The model then relies upon a series of algorithms to predict the theoretical likelihood of a particular event/accident. Individual risks and collective risks are indicated. Individual risks represent a measure of the risk of fatality to the individual user per year expressed as an individual risk letter A (highest) through to M (lowest). The collective risk is a measure of the total harm expressed in terms of Fatalities and Weighted Injuries (FWI) per year ranked from 1 (highest risk) through to 13 (nil risk). The current live assessment gives Tackley a score of C2.

72. With the exception of 'path user quantum and types' all of the other data inputs are relatively easily ascertained and uncontroversial. The current live assessment of the Tackley crossing relies upon data inputs in relation to the amount of users of the crossing based on assumptions as to the level of use extrapolated from the number of users observed during a 30 minute census taken by an assessor during one lunchtime in October 2015¹⁴. An algorithm is used to calculate the number of users based upon the data from the 30 minute census. In this case the output was an anticipated 270 users per day.
73. In preparing its application the Appellants initially estimated that an additional 70 dwellings would result in some 5 additional movements across the level crossing per day. This figure was queried by Network Rail and resulted in a 13 hour pedestrian survey undertaken on Monday 11 July 2016 which counted 93 movements across the level crossing. The Appellants' expert calculated that this represented one daily movement across the crossing for every four homes in the village¹⁵. Applying this ratio to the development resulted in an estimate of some 17 additional trips over the crossing as a result of new residents, assuming their travel patterns mirror those of the existing villagers.
74. The current FWI¹⁶ for the level crossing is 0.0165 or alternatively a collective risk of 1.65% per year for 270 users. When 17 additional users are factored in the FWI figure rises to 0.0176 or 1.76% per year for 287 users. Mr Mayo correctly records this as a 6.2% increase in the collective risk figure. Mr Baker fairly points out that it is essentially an increase from 1.65% to 1.76%. It is notable however that the risk remains in the C2 category. As an aside Network Rail has considered further mitigation measures in the form of the installation of miniature stop lights at a cost of £750,000. This would bring the risk down to the D3 category, with a FWI of 0.0085. Essentially it would almost halve the collective risk.
75. The Appellants first point is that, on Network Rail's figures, with the development in place the risk would remain in the C2 category and as such the increase in use occasioned by the development would not unacceptably or materially increase the individual or collective risk to users of the level crossing. Its second point is that the data input in relation to the current level of use is inflated and has artificially inflated the current levels of risk. I shall examine this point first.

¹⁴ Email from Mr Tim Mayo dated 5 September 2016 at 11.45am

¹⁵ This of course may represent an overestimation in that it could include commuters travelling to Tackley for the specific purpose of using the station. In the absence of any substantive evidence about this type of behaviour I shall rely on the existing assumptions.

¹⁶ I consider it reasonable to round to 4 decimal places for the purposes of my analysis.

76. The Appellants produced a second survey¹⁷ of the use of the level crossing completed over a 13 hour period on 7 September 2016. The total number of movements over the level crossing was some 124 compared to the 93 figure in July 2016. These two figures are comparable and are significantly less than the Network Rail extrapolated figure of 270. The latest survey results would indicate that approximately 1 in 3 of the 381 registered households in Tackley generate one level crossing movement per day. Applying this to the appeal scheme would result in an increase of 23 movements¹⁸ to be added to the 124 survey figure. With the development in place, and using the higher of the two survey figures, total movements over the level crossing would be around 150 per day.
77. All computer modelling is dependent on the reliability of the inputs in order to obtain the most accurate output. In this case I conclude that the Appellants' survey evidence based on two 13 hour surveys over 2 separate days represents the most accurate data in terms of the current use of the level crossing. Each survey was conducted on a weekday between 0600 hours and 1900 hours which would include both of the relevant peak hours.
78. The only other data is ORR estimates of annual station usage. Again Mr Baker has applied assumptions to this data and used it to sense-check his own survey results. The annualised estimated use for Tackley¹⁹ when divided over 230 working days results in an estimate of 98 two way trips per day. Mr Baker (reasonably) assumes that one half of these uses would result in travellers crossing the level crossing to access platform 1. The extrapolated figure of 49 rail users crossing the level crossing bears a striking correlation to the surveyed figure of 41 using the crossing to access platform 1 in the Appellants' second survey.
79. For all of the above reasons I conclude that the actual surveyed data is to be preferred over the figure extrapolated from a 30 minute survey on one occasion. On the Appellants' higher survey figures it is clear that the actual level of use is significantly less than that inputted into the ALCRM model. Even with the development in place, use of the level crossing would remain significantly less than that in the modelled data. Although the model has not been run with the lower survey data, Mr Baker has again extrapolated the FWI using his own empirical data from the survey. On his analysis the FWI would be around 0.00857 or 0.86% if his adjusted survey figures were used.
80. Without running the model it is not possible to come up with an accurate revised FWI figure. However, I have already concluded that the survey data represents actual empirical data which is to be preferred. Erring on the side of caution and using the higher of the two survey figures I have applied the same assumptions to estimate the level of use which the new development would generate. This appears to be a sensible approach. The resultant level of use with the development in place would be around 150 individual crossings of the level crossing per day as against the model's estimate of 270 crossings per day at current levels. This would represent some 55% of the current level of use (270 movements) which has resulted in a FWI of 1.65%.

¹⁷ Inquiry document 14.

¹⁸ $1/3 \times 70 = 23.33$

¹⁹ ORR estimate for 2014/15 is 22,612

81. If the actual adjusted level of use (with development) is 55% of the current estimated use figure in the model, then it seems reasonable to assume that the collective risk factor should fall by a corresponding amount. I say this on the basis that there is a direct relationship between the number of times a level crossing is used and the collective risk of an incident occurring. A corresponding reduction in the FWI would take it to 0.9%²⁰. I appreciate that this is a crude estimation but it is similar to Mr Baker's estimated FWI figure of 0.86%. Mr Baker points out that an FWI figure of this magnitude would place the crossing in the D3 risk category which is the same category that would result if mitigation measures in the form of the Miniature Stop Lights were introduced.
82. Network Rail point out that the ALCRM modelling is effectively only a tool which assists in informing subsequent qualitative assessments in relation to the risk associated with use of the level crossing. On behalf of Network Rail Mr Mayo confirmed that the specific features of Tackley level crossing cause considerable concern and that these features are not reflected in the ALCRM model. More particularly Tackley Station has a double line with sole platform access across the passive level crossing and non-stopping trains.
83. The sighting distances at Tackley exceed standards. However because of the configuration of the platforms and the level crossing there is the risk of a stationary train in the station (on the down platform) obscuring views of oncoming train approaching on the up line. Network Rail refers to this as 'hidden train factor' and it effectively reduces the reaction and decision time of users of the level crossing. The Rail Accident Report into the fatal accident at Tackley recognised this factor and made a recommendation that Network Rail investigate whether it a miniature stop light warning system is practicable. Such an option has been discounted by Network Rail on the basis that the scheme costs would be disproportionate to the assessed benefits and because the lights could lead to confusion on the part of crossing users.
84. Mr Mayo points out that irrespective of the level of use, the conditions at Tackley are such that they would have objected to any increase in the use of the crossing because of the qualitative judgments they have made²¹. However Mr Baker contends that Network Rail has powers to pursue a closure order in the event that it considers that a level crossing carries an unacceptable safety risk. He points out that it has never been suggested by Network Rail that this option would have to be pursued if the development were to proceed. Such a course of action has not been taken to date in circumstances where the level of use is assumed to be 270 daily users.
85. The crossing remains open having regard to this assumed level of use and the C2 risk category. The development would result in an actual increase in the level of use but this total cumulative use would still be significantly below the assumed level of use in the ALCRM model. Having regard to all of the above I conclude that the proposal would not unacceptably increase the risk of incident to users of the Tackley Level Crossing. I have reached this conclusion on the basis that the collective risk is over-represented in the model based on an over-estimation of the current level of use. An increase of 70 households in the village would result in a total level of use significantly less than that estimated by the current model.

²⁰ $1.65\% \times 55\% = 0.9075\%$ FWI

²¹ Email Tim Mayo 8 September 2016.

86. I have considered the obligations put forward by the Appellants. A contribution of £250,000 would assist in facilitating improvements to the level crossing systems and improving information and display systems. For the reasons given above I have concluded that the development would not result in an unacceptable increase in the risk of incidents over and above that which currently exists. Whilst I recognise that the development would result in an increased use of the station and the bridleway for leisure use, there is no identifiable scheme of improvements before me and no costing information. I cannot be satisfied that the monies relate in scale and kind to the development proposed.
87. In addition I have concerns about the mechanism for payment. The UU contains a promise for payment to be made to the District Council which would then be paid to Network Rail towards the crossing works. The District Council is not a signatory to the UU and is not bound by it. I do not consider that the UU provides sufficient assurance that the monies would end up being spent in the manner anticipated. I conclude that such a contribution has not been justified by reference to the tests set out in the Framework and the statutory tests in the Community Infrastructure Levy Regulations 2010 (as amended). I shall not take it into account in my decision making.
88. The UU further contains a provision securing a parcel of safeguarded land within the appeal site with a promise to transfer it on demand to the District Council or its nominee for the purposes of provision of a new bridleway bridge and disabled car park. Whilst I can see that this would be desirable and practical, it is not necessary to render the development before me acceptable in planning terms. There is insufficient link between this provision and the effects of the development to lead to a conclusion that the relevant policy and statutory tests have been met. I shall not take this matter into consideration in my determination.

Other material considerations

The Five Year Housing Land Supply

89. The National Planning Policy Framework (the Framework) is a material consideration of significant weight. It seeks to boost significantly the supply of housing and requires local authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing (the 5YHLS). Paragraph 49 confirms that housing applications should be considered in the context of the presumption in favour of sustainable development. The Council concedes that it does not currently have a 5YHLS which means that relevant policies for the supply of housing will not be considered up-to-date.
90. It is common ground that policy H5 is a policy concerned with the supply of housing and the Council confirms that it should attract limited weight²². There is a dispute between the parties about which other policies are relevant for the supply of housing in terms of paragraph 49. The judgment in *Suffolk Coastal*²³ places a broad interpretation on the type of policies which may be included and the concept extends to various policies intended to protect the local environment in one way or another by preventing or limiting development. In

²² Mr Smith proof of evidence § 8.16.

²³ *Suffolk Coastal & Richborough Estates* [2016] EWCA Civ 168, CD 28

addition my attention has been drawn to the Secretary of State's conclusion that policies NE1 and H7 were such policies in a recent decision²⁴ in the district. This is a material consideration of weight.

91. Having regard to the above and to the advice within the Suffolk Coastal case I am satisfied that policies H7, NE1, and NE3 all bear upon the principle of the site in question being developed for housing. In material respects so too does policy BE4. I am satisfied that they are all caught by the paragraph 49 definition and as such the weight afforded to them must be reduced accordingly. However I also recognise that policies NE1, NE3 and BE4 are broadly consistent with objectives in the Framework which seek to protect the character and appearance of the countryside and this is relevant to a consideration as to the weight to be attached to such policies.
92. Policies H2 and BE2 are multi-faceted policies which essentially seek to ensure that development is appropriate to whatever setting is being considered. The policy imperatives driving these policies are aimed at achieving good residential or development standards and I do not consider that they go to the heart of a consideration about the principle of residential development on a site. I conclude that they are not policies for the supply of housing.
93. Due to agreement by the parties as to the lack of a 5 YHLS the Inquiry did not examine this matter in any depth. However some further contextual information is material to my decision making process. The supply is agreed at 3.21 years based on a 5 year requirement of 4,955 homes. This equates to a supply shortfall of 1,772 units which is a significant proportion of the overall supply. The Appellants point to additional factors which could potentially increase the future requirement even further. This includes an increase in the objectively assessed needs figure from 525 per annum to 660 per annum²⁵. Negotiations are ongoing in relation to the possibility of the district council taking a share of the 15,000 homes which its constrained neighbouring authority (Oxford City) cannot accommodate.
94. The picture emerging is of a significant and serious shortfall acknowledged by the Council which could potentially be further exacerbated by an increased requirement. In this regard the Appellants contend that the district is heavily constrained. Figure 8.2 of the emerging local plan depicts special landscape policy areas²⁶. Approximately one third of the district is within a designated area of outstanding natural beauty. Approximately one third of the district remains outside a designated landscape policy area and a smaller proportion of this non-designated area falls within a flood risk area²⁷. The Council acknowledge that greenfield land will be required to meet future housing needs. It is evident that some hard choices will have to be made.
95. The Appellants assert that the appeal site represents the best option for development in Tackley. However there is no separate allocation for Tackley. LP policies H5, H6 and H7 set out the settlement hierarchy and Tackley is named as one of 21 villages in group A. The settlement hierarchy is broadly carried forward in the emerging plan with the majority of new housing directed to the Witney, Carterton and Chipping Norton sub-areas. As one of the 31

²⁴ Appeal reference APP/D3125/W/15/3005737 Burford Road, Witney, Oxford Inquiry document 19.

²⁵ From the emerging LP figure of 525pa back to the SHMA recommendation of 660 pa.

²⁶ CD9 page 94

²⁷ Figure 4.1, CD9, p 29.

identified villages, residential development would be permitted in Tackley in accordance with emerging policy H2. This provides that housing will be allowed on sites allocated by a local or neighbourhood plan; on previously development land in certain circumstances and on undeveloped land within or adjoining the built up area where the proposed development is necessary to meet identified housing needs and also meets other criteria.

96. Given that the appeal site is one of a number of villages within the hierarchy and given that there are no specific allocations in relation to such settlements I do not consider it necessary (or on the evidence before me, possible) to conduct a comparative exercise of sites within the village. Indeed that is not my remit within this appeal which must be judged on its merits having regard to its compliance with policy objectives and all other material considerations. It is however relevant to note the Council's acceptance that greenfield sites will be required.

Access arrangements

97. The sole vehicular access point would be taken from Rousham Road and the Council has confirmed that it is acceptable in highway terms. The plan depicts a re-alignment of the junction with Rousham Road to provide appropriate visibility splays and footways on both sides of the carriageway. An existing green lane serving the rear of Nethercote Road properties would be retained and a secondary pedestrian only link provided at the southern corner with Balliol Close/Nethercote Road. These arrangements conform to adopted standards and I conclude that the junction would therefore be acceptable in highway safety terms.
98. Some local residents raised concerns about highway capacity and drainage issues at application stage. A Transport Assessment²⁸ was submitted with the application which looked at traffic generation from the site and examined the impact on the local highway network. The impact of the development on the local network was found to be acceptable having regard to a capacity assessment for future year 2020. The Council's highway engineer raised no objections and I am satisfied that the development would cause no material harm to the operation of the local highway network.
99. The site is located within flood zone 1 and a balancing pond on the site is proposed which would improve localised drainage issues. There would also be improvements to foul drainage infrastructure. I have also seen objections from residents on Balliol Close regarding the effect on their outlook and privacy. The scheme is in outline form only and matters such as layout would be determined at reserved matters stage if I were minded to allow the appeal. The indicative layout on the masterplan is an example of a scheme which could be designed and would achieve sufficient separation distances from existing residents so as not to be unduly harmful to the outlook from these properties.

Benefits

100. The provision of 35 market homes, in the face of the lack of a 5 YHLS, would represent a significant benefit. These homes would be in an accessible location with regular train services to Oxford, London and Banbury as well as access to a range of facilities within the village. The provision of 35 affordable homes

²⁸ CD 1.12

with 65% being affordable rented homes would represent a significant benefit. The emerging local plan recorded that there were 974 households on the waiting list for affordable housing and that even the cheapest properties in West Oxfordshire are almost 10 times the lowest income. It is evident that, in a district currently suffering from a housing shortfall, that housing affordability is a significant problem due to West Oxfordshire being a desirable place to live and having above national average house prices. The provision of 35 affordable homes and in particular the provision of affordable rented homes would make a small but meaningful contribution to this shortfall. I attach significant weight to these matters in light of the current housing shortfall and the extent of that shortfall as well as the outstanding unmet need for affordable homes.

101. The development would also result in increased economic activity in the form of local construction work to the tune of 100 FTE construction jobs throughout the build period and an increase in the local population likely to deliver some benefits to the local economy. The new homes would also assist in diversifying the housing stock and population mix in the village. I attach some weight to all of these matters. The development would trigger payment of a New Homes Bonus but there is no evidence of a connection between the payments and the development to enable it to be taken into account in accordance with the advice in the national Planning Policy Guidance.
102. The Appellants contend that the provision of safeguarded land for the purposes of a footbridge constitutes a significant benefit. I have already concluded that such provision would be desirable but that it is not necessary in terms of the acceptability of the current proposal. In addition I have reservations about the mechanism put forward to secure such matters. Any future footbridge would also have to be subject to a separate planning application, which has proven problematical in the past and is by no means assured. I therefore attribute limited if any weight to this potential benefit.
103. Other public benefits would arise by virtue of improvements to the surface water drainage systems and improvements in foul water system capacity by creating a link between two existing but separate foul water systems.

Section 106 Matters

104. The executed unilateral undertaking (UU)²⁹ made in accordance with section 106 of the Town and Country Planning Act 1990 secures the payment of financial sums in relation to public art, offsite sports, bus services and bus shelter. It also secures the provision of affordable housing in the form of 65% affordable rented provision and 35% shared ownership provision and open space on the site. I have already made findings about the promises in relation to the safeguarded land and a contribution of £250,000 to Network Rail. Inquiry Documents 8, 12 and 18 sets out the District and County Councils' justification for each of the contributions sought in accordance with the policy tests set out in the Framework and the statutory test in regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. The Appellants raise no objections to any of the contributions sought.
105. Contributions towards public art and sport, play and recreation are in accordance with LP policies TLC7 and BE1 and similar policies in the emerging

²⁹ Inquiry document 20.

plan. Requirements in relation to public open space are supported by LP policies BE1. Public transport and bus stop contributions are required to improve the bus services available to new residents and to enhance the bus stops on Nethercote Road. The above financial contributions and on-site provision is required to mitigate the impacts of development and related in scale and kind. The provision of affordable housing is in line with the adopted LP policy requirements. Overall I am satisfied that the obligations in the UU (with the exception of the safeguarded land and Network Rail contributions) meet the tests in CIL regulation 122 and paragraph 204 of the Framework.

106. The Council also gave evidence to the Inquiry as to the number of pooled contributions in relation to the above contributions. The number of contributions do not exceed one³⁰ in any of the instances and I am satisfied that none of the financial contributions fall foul of the pooling restrictions in regulation 123 CIL regulations. As such those contributions which meet the statutory and policy tests can be taken into account.

Overall Conclusions

107. I have found that there would be less than substantial harm to the significance of designated heritage assets, namely the Tackley Conservation Area and the listed buildings at Malt House Farm. It is accepted and well-established that any harm to the significance of a heritage asset should be given considerable importance and weight and any harm or loss must be clearly and convincingly justified.

108. I now turn to consider the planning balance required by paragraph 134 of the Framework. Against this harm I must consider the public benefits of the proposal. In this case I conclude that the provision of market housing in the absence of a 5 YHLS and the provision of 35 affordable homes would represent a very significant benefit to which I attach substantial weight. Along with the other benefits listed I conclude that these benefits when taken together outweigh the less than substantial harm caused to heritage assets.

Paragraph 14 of the Framework

109. The duty in section 38(6) of The Planning and Compulsory Purchase Act 2004 enshrines in statute the primacy of the development plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework³¹. The Framework is of course a material consideration to which substantial weight should be attached.

110. Paragraph 14 recites the presumption in favour of sustainable development and sets out what it means for decision-taking. Paragraph 49 advises that housing applications should be considered in the context of the presumption in favour of sustainable development but that relevant policies for the supply of housing should not be considered up-to-date if the Council cannot demonstrate a 5 YHLS. I have concluded that relevant policies of the development are out-of-date by virtue of the lack of a 5 YHLS and the weight to be given to such policy conflict is reduced.

111. Paragraph 14 contains two alternative limbs in relation to decision-taking. The first limb requires a balance to be undertaken whereby permission should

³⁰ Being the contributions from the Street Farm development.

³¹ §§11, 12, 196

be granted unless the adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The second limb indicates that the presumption should not be applied if specific policies indicate development should be restricted. Whilst policies in relation to heritage assets fall within the ambit of footnote 9, in this case the policies do not indicate that development should be restricted. It is necessary therefore to conduct the balance in the first limb.

112. The proposal would be contrary to policy H5 by virtue of it being located outside a settlement boundary. There would be less than substantial harm to heritage assets as identified, harm to landscape character and the visual amenity of the landscape as well as the limited loss of part of a valued landscape. As a consequence of these matters I conclude that the proposal is contrary to the development plan when viewed as a whole. However relevant policies for the supply of housing are out of date and the weight which I attribute to the contravention of policy H5 is significantly reduced. The other policies which I have identified as housing supply policies are more broadly consistent with Framework objectives and therefore I conclude that they should continue to attract moderate weight.
113. There is a serious and significant shortfall in the housing supply and more particularly a substantial need for affordable homes in a district where affordability is a particular problem. The homes would be located in an accessible location and would bring economic activity and other benefits. For all of these reasons I conclude that the adverse impacts of allowing the development do not significantly and demonstrably outweigh these combined benefits. The balance is firmly in favour of permitting development and the appeal shall be allowed.

Conditions

114. The Council and Appellants agreed a set of conditions which were discussed at the Inquiry. I also put forward some additional conditions for consideration by the main parties. I have considered all of the conditions in light of the advice within the National Planning Policy Guidance and I make the following comments. The numbers in brackets relate to the conditions in the schedule.
115. In the interests of good planning it is necessary to impose conditions setting out time limits for development and to require submission of reserved matters and to relate development to the submitted plans (1,2 and 3). At the Inquiry the Appellants agreed that the time limits for commencement of development could be shortened to encourage housing to come forward sooner. In light of the contribution which the appeal scheme would make and the weight which I have placed upon it I consider it appropriate to shorten the time limits.
116. It is necessary to ensure that accesses and parking spaces have been laid out and a travel plan secured prior to occupation (4 and 6). I have also imposed the condition seeking to control development on those parts of the site which may be sensitive to noise (7). Details of the surfacing and lighting of all connective routes within the site are required prior to commencement of development (5). It is also necessary to control activities during the construction and demolition period and to restrict the hours of working (8). As discussed at the Inquiry I have imposed a separate condition in relation to hours of working.

117. It is also necessary to require an ecological management plan and a site investigation into contamination (9 and 10). A scheme to secure on-site surface water drainage works is required to ensure a satisfactory development (11). Due to the topography of the site and for the reasons already discussed it is necessary to control the heights of all buildings (12). A Grampian condition is required to secure off-site drainage works (13) and a condition to ensure tree protection measures (14). In line with policy objectives to create sustainable living environments broadband provision needs to be secured (15). I have also imposed conditions relating to archaeological investigation works (16 and 17).
118. Finally as discussed at the Inquiry I have imposed an additional condition relating to boundary treatments.

Karen L Ridge

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Connah	Of Counsel
He called	
Mr Jeremy Sacha DipLA, CMLI	Director, Sacha Barnes Limited
Mr Justin Ayton BA MA	Heritage Consultant
Mr Paul Smith BA(Hons), BSc(Hons) Dip DEnvnt, MRTPI	Planning Consultant

FOR THE APPELLANT:

Mr Andrew Tabachnik

He called

Mr Alexander Bennett BSc(Hons), MCIHT, MTPS	MEC Consulting
Mr David Baker FRICS, FCILT, MCI Arb	Baker Rose Consulting
Mr Duncan McInerney BSc(Hons), MLD, CMLI	Landscape, EDP
Mr Andrew Crutchley BA(Hons), PG.Dip (Oxon), MCiFA	Heritage, EDP
Mr Keith Fenwick BA(Hons), MRTPI	WYG

INTERESTED PERSONS:

Ms Lucinda Rumsey	Local resident
Ms Sally Grover	Local resident
Mr Nichols	

DOCUMENTS SUBMITTED DURING THE COURSE OF THE INQUIRY

1. Appearance List on behalf of the Local Planning Authority
2. Notification of Public Inquiry and list of persons notified, submitted by the Council.
3. Historic England '*Conservation Principles, Policies and Guidance*', submitted by the Council.
4. Opening Statement on behalf of the Local Planning Authority.
5. Email Network Rail dated 5 September 2016, submitted at the request of the Inspector.
6. Proof of Evidence of Mr Baker submitted by the Appellants.
7. Tackley: A Village Character Appraisal, submitted by the Council.
8. Oxfordshire County Council Community Infrastructure Levy Statement.
9. Section 106 Obligation Land Ownership information submitted by the Appellants.
10. RAIB Rail Accident Report 31 March 2008, submitted at the request of the Inspector.
11. Extract from proof of evidence in relation to appeal Land south of Witney Road, APP/D3125/W/15/3129767, submitted jointly by the Council and Appellants.
12. Oxfordshire County Council (OCC) statement in relation to section 106 contributions submitted by OCC.
13. Copy Email Tim Mayo to Colin Field dated 8 September 2016, submitted by the Appellants.
14. MEC Technical Note of 2nd Pedestrian Survey of Tackley Crossing, submitted by the Appellants.
15. Note on Tackley Train Runs, submitted by the Appellants.
16. Office of Rail Regulation '*Level Crossings: A guide for managers, designers and operators*' December 2011, submitted by the Appellants.
17. Extract of the Council's Strategic Housing and Economic Land Availability Assessment, submitted by the Council.
18. Oxfordshire County Council '*Connecting Oxfordshire: Local Transport Plan 2015-2031*' submitted by the Council.
19. SSCLG Decision letter Appeal decision APP/D3125/W/3005737 Land at Burford Road, Witney, submitted by the Appellants.
20. Executed Unilateral Undertaking dated 9 September 2016, submitted by the Appellants.
21. Closing Statement on behalf of the Council.
22. Closing Statement on behalf of the Appellants.

PHOTOMONTAGES SUBMITTED AT THE INQUIRY

Illustrative Photomontage Viewpoint 1 drawing 2515-4-6-2 VS-0001

Illustrative Photomontage Viewpoint 2 drawing 2515-4-6-2 VS-0002

Richborough Estates

SCHEDULE OF CONDITIONS ATTACHED TO PLANNING PERMISSION

- 1) The development hereby permitted shall be carried out in accordance with the plans 3041-01 Revision E and 21148_08_020_01 Revision G. The reserved matters submission shall be in general accordance with illustrative Masterplan 3041-02 Revision C and Parameters Plan 3041-05. All buildings shall be no more than 2 storeys in height.
- 2) Details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any development commences and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than two years from the date of this permission. Development hereby permitted shall begin EITHER before the expiration of three years from the date of this permission; OR before the expiration of one year from the date of approval of the last of the reserved matters to be approved; whichever is the later.
- 4) The reserved matters submission in relation to appearance shall include details of all boundary treatments to be carried out on the perimeter boundaries of the site and details of any boundary enclosures to be erected or grown within the site. The perimeter boundary treatments shall be carried out in accordance with the approved details and completed prior to any dwelling being first occupied and the boundary treatments in relation to individual plots shall be carried out and completed on each respective plot prior to its first occupation.
- 5) No dwelling shall be occupied until the vehicular accesses serving the domestic plots, driveways, car and cycle parking spaces, turning areas and parking courts that serve that dwelling have been constructed, laid out, surfaced, lit and drained in accordance with details that have been first submitted to and approved in writing by the Local Planning Authority.
- 6) Development shall not begin until details, including surfacing and lighting, of all footpaths/cycleways/bridleways within the site and their connection with the existing rights of way/highway network, have been submitted to and approved in writing by the Local Planning Authority. The details so approved shall have been fully implemented in accordance with a timetable and programme of works submitted to and approved in writing by the Local Planning Authority before any of the dwellings are occupied.
- 7) Prior to first occupation of any of the dwellings hereby permitted, a Travel Plan Statement and resident travel information pack shall be submitted to and approved in writing by the Local Planning Authority. The approved statement and travel information pack shall be made available to all purchasers of the dwellings on first occupation.
- 8) The reserved matters submission shall have regard to the findings of the Noise and Vibration Assessment dated May 2015 by Mewies Engineering Consultants. Where dwellings are to be located on parts of the site affected by noise pollution arising from the railway to the east that does not conform with World Health Organisation guidelines, a scheme for mitigating the impact of the noise shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of

development. The development shall be carried out in accordance with the approved scheme and such measures shall be in place before dwellings so affected are occupied.

- 9) No development, including any works of demolition, shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the demolition and construction period and shall provide for:
- The parking of vehicles for site operatives and visitors;
 - The loading and unloading of plant and materials;
 - The storage of plant and materials used in constructing the development and compound locations;
 - The erection and maintenance of security hoarding including decorative displays;
 - Wheel washing facilities;
 - Measures to control the emission of dust and dirt during demolition and construction;
 - A scheme for recycling/disposing of waste resulting from demolition and construction works.
- 10) No demolition, ground works or construction works shall take place outside the following hours: 0800 to 1800 hours on Mondays to Fridays and 0900 to 1300 hours on Saturdays. There shall be no such work on Sundays or Public or Bank Holidays.
- 11) Prior to commencement of the development, including site clearance, an ecological method statement and ecological management plan, including ecological protection zones for the habitats retained and a detailed reptile mitigation plan, shall be prepared in accordance with the Predicted Impacts and Mitigation contained in Section 5 of the submitted "Ecological Appraisal" dated May 2015 by EDP and referenced EDP2383_02 C. The ecological method statement and ecological management plan shall be submitted to and approved in writing by the Local Planning Authority before any work on site commences. Thereafter, all measures contained in the approved management plan shall be fully implemented in accordance with a timetable agreed with the Local Planning Authority or at the latest before the first occupation of any of the dwellings on the site. The management plan shall remain in force and all agreed measures shall be maintained for a minimum period of 10 years from the date of completion of the last dwelling to be constructed on the site.
- 12) (i) No development shall take place until a site investigation of the nature and extent of any contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any significant contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development

hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before any development begins

(ii) Any Remediation Scheme, as agreed in writing by the Local Planning Authority, shall be fully implemented in accordance with the approved timetable of works and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the Local Planning Authority in advance of works being undertaken. On completion of the works the developer shall submit to the Local Planning Authority written confirmation that all works were completed in accordance with the agreed details.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and shall be completed prior to first occupation of the development permitted as evidenced by a completion certificate submitted to the Local Planning Authority.

- 13) Prior to commencement of the development a full surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the size, position and construction of the drainage scheme and results of soakage tests carried out at the site to demonstrate the infiltration rate. Where appropriate, the details shall include a management plan setting out the maintenance of the drainage asset. The Surface Water Drainage scheme should, where possible, incorporate Sustainable Drainage Techniques in order to ensure compliance with the Flood and Water Management Act 2010.

The development shall be carried out in accordance with the approved details prior to the first occupation of the development hereby approved and shall be maintained in accordance with the management plan thereafter.

- 14) No development shall take place until plans of the site showing the existing and proposed ground levels and finished floor levels (to include existing and proposed sections) of all proposed buildings have been submitted to and approved in writing by the Local Planning Authority. These levels shall be shown in relation to a fixed and known datum point. The development shall then be carried out in accordance with the approved details.
- 15) Development shall not commence until a drainage strategy detailing any on and/or off site drainage works, has been submitted to and approved in writing by the Local Planning Authority. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.
- 16) The development shall be carried out fully in accordance with the "Findings of the Arboricultural Baseline Assessment (incorporating tree constraints)" by EDP dated May 2015 and referenced EDP 2383_03a, including all recommended tree protection measures and plan EDP2 - Tree Protection Plan. The approved protection measures shall be in place

prior to commencement of any works of demolition or construction and shall be retained in place throughout the demolition and construction period.

- 17) Prior to the commencement of development, a strategy to facilitate super-fast broadband for future occupants of the site shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall seek to ensure that upon occupation of a dwelling, either a landline or ducting to facilitate the provision of a superfast broadband service (>24mbs) to that dwelling from a site-wide network, is in place and provided as part of the initial highway works, unless evidence is put forward and agreed in writing by the Local Planning Authority that technological advances for the provision of a superfast broadband service for the majority of potential customers will no longer necessitate below ground infrastructure. The development of the site shall be carried out in accordance with the approved strategy.
- 18) Prior to any demolition and the commencement of the development a programme of archaeological work shall be implemented in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority.
- 19) Following the approval of the Written Scheme of Investigation referred to in Condition (17), and prior to any demolition on the 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 by a date to be agreed with the Local Planning Authority.

END OF CONDITIONS