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## Appeal Decision

Inquiry opened on 26 July 2016

Site visits made on 26 July and 7 November 2016

**by Keith Manning BSc (Hons) BTP MRTPI**

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

**Decision date: 17 January 2017**

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### **Appeal Ref: APP/D3125/W/15/3139687 Land west of Shilton Road, Burford**

- 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 Hallam Land Management Ltd against the decision of West Oxfordshire District Council.
  - The application Ref 15/00166/OUT, dated 16 January 2015, was refused by notice dated 17 August 2015.
  - The development proposed is residential development of up to 91 dwellings (50% affordable) and 5.2 acres of care provision comprising of up to 78 assisted/supported living apartments and up to a 90 bed care home. Two new accesses onto Shilton Road (B4020); Local infrastructure improvements including new crossings on the Shilton Road and A40; and open space, landscaping and biodiversity enhancements.
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### **Decision**

1. The appeal is allowed and planning permission is granted for residential development of up to 91 dwellings (50% affordable) and 5.2 acres of care provision comprising of up to 78 assisted/supported living apartments and up to a 90 bed care home. Two new accesses onto Shilton Road (B4020); Local infrastructure improvements including new crossings on the Shilton Road and A40; and open space, landscaping and biodiversity enhancements at land west of Shilton Road, Burford in accordance with the terms of the application, Ref 15/00166/OUT, dated 16 January 2015 subject to the conditions set out in the Annex hereto.

### **Preliminary and Procedural Matters**

2. The application is in outline with all matters reserved except for access.
3. The inquiry opened on 26 July 2016 and sat for four consecutive days. It quickly became clear that, owing to the number of witnesses and the scope of the evidence, further time would be required. Accordingly I adjourned the inquiry until 8 November 2016 and the inquiry sat for a further four days, closing on 11 November 2016.
4. I conducted a formal site visit with the appropriate witnesses and other representatives of the parties on 26 July, specifically to examine plant life within the site boundary which had been discussed that day. My formal site visit of a more wide ranging nature, including a walk into the town of Burford, was conducted on 7 November. Local objectors in attendance

helpfully arranged for a 'cherry picker' at 10.5 metres height and pegged out the location of the care home as shown on the indicative layout relevant to my determination of the appeal.<sup>1</sup> The location of these markers was verified with the appellant on a plan sufficiently similar to the indicative layout to be meaningful for this purpose.<sup>2</sup>

5. Between the Council's refusal of the application and the opening of the inquiry, the appellant conducted a comprehensive consultation<sup>3</sup> on certain amendments it wished to have considered for the purposes of the appeal in the context of the outline nature of the application. I received a number of letters in specific response to the consultation, in addition to those received earlier on notice of appeal. Having discussed the proposed amendment with the parties at the opening of the inquiry and having due regard to the so-called '*Wheatcroft Principles*'<sup>4</sup> (bearing in mind the outline nature of the application, the limited nature of the amendments in that context and the evident effectiveness of the appellant's consultation initiative) and the Council's indicated contentment that I should determine the appeal on the basis of the amendments proposed, I accepted the proposition that I should do so.
6. Consequently, for the purposes of this appeal I have adopted the slightly changed description of the development set out above. The principal changes are a slight reduction in the area to be devoted to care and the conceptualisation of the care home as having a maximum of 90 bedrooms rather than a prescription of that number. The amendments include, in a spatial sense, a "parameters plan"<sup>5</sup> which allows for a more robust landscaping concept for the southern boundary than originally anticipated.
7. The appeal is now accompanied by three planning obligations. The first, an agreement with the Oxfordshire County Council ('the OCC obligation'), is dated 9 November 2016. The second obligation ('the WODC obligation') is an agreement with the Council and is dated 11 November 2016. Following discussions towards the close of the inquiry, the appellant initially offered two further, single purpose, unilateral undertakings.
8. The first would have provided for a financial contribution (around £244,000) towards off-site provision of affordable 'extra-care housing' equivalent to around 10% of the proposed assisted/supported living apartments (generally referred to below for convenience as 'the extra-care housing'), whereas the second would have provided simply for the provision of a dropped kerb on Barns Lane. The omission of this from the package of highway measures proposed was a matter of potential concern highlighted by the Burford Shilton Road Residents' Association & Help Preserve Burford Campaign Group ('The Residents' Group', hereinafter abbreviated to TRG).<sup>6</sup>
9. These two obligations were subsequently combined into a single supplementary obligation to Oxfordshire County Council ('the supplementary undertaking') dated 24 November to meet the 14 day deadline I had

<sup>1</sup> Dwg. 3005-003 Rev D

<sup>2</sup> ID50

<sup>3</sup> Ref. Letter from David Lock Associates to consultees and respondents dated 28 June 2016

<sup>4</sup> ID4

<sup>5</sup> Dwg. 3005-001 Rev D

<sup>6</sup> By agreement of the parties at the inquiry it was agreed, for convenience during the proceedings, to refer to the BSRRA & HPB simply as 'The Residents' Group'.

imposed. This change, for economy, followed agreement with OCC that the efficacy of the relevant provisions would be unaffected. It is simply procedural and does not affect the substance of what is intended. As with the principal obligations, the relevant provisions are subject to a so-called 'blue pencil clause' - meaning that they have no effect if I specifically conclude them to be unnecessary and therefore incapable of lawfully being accorded weight.

10. The OCC obligation includes provision for staged financial contributions towards the expansion of the Burford County Primary School, off-site highway works, support for the 233 bus service including new bus stops on Shilton Road and sundry contributions in respect of the implementation of traffic regulation orders and travel plan monitoring.<sup>7</sup>
11. The WODC obligation provides for enhancement of the nearby Carterton Leisure Centre and more immediately local facilities in Burford, a Local Equipped Area for Play (LEAP) and open space and landscaping within the site, together with maintenance arrangements, 50% affordable housing and provisions to secure an appropriate range and quality of 'extra-care' services for residents of the assisted/supported living apartments.<sup>8</sup>
12. A statement of common ground ('the SoCG') on general planning matters<sup>9</sup> was finally agreed between the adjournment and the resumption of the inquiry. A statement of common ground on Highways and Transportation ('the H & T SoCG') had been agreed between the appellant and the Highways Authority (OCC), prior to the opening of the inquiry.<sup>10</sup> A Statement of Common Ground concerning matters relevant to objectively assessed needs and housing land supply ('the OAN/HLS SoCG')<sup>11</sup> was agreed between the Council and the appellant on 28 October 2016. A further statement of common ground<sup>12</sup>, concerning walk times and distances to town centre facilities, was agreed between TRG and the appellant's highways consultants on 18 October 2016.
13. Following discussions at the inquiry of suggested planning conditions, a track change document indicating possible changes and an unmarked version of the final list of suggested conditions, both dated 11 November 2016, were agreed between the Council and the appellant. These were forwarded after the close of the inquiry but are essentially inquiry documents and I have numbered them ID66 and ID67 respectively.

## Main Issues

14. I consider the main issues to be as follows:-
  - The effect of the proposed development on the character and appearance of the area having particular regard to its landscape setting, local distinctiveness and the established settlement pattern;

<sup>7</sup> Summarised in ID56

<sup>8</sup> Summarised in ID57

<sup>9</sup> ID27

<sup>10</sup> CD2.4

<sup>11</sup> ID28

<sup>12</sup> ID

- Whether the proposed development would be sufficiently accessible to services and facilities so as to allow adequate and realistic choice in modes of transport;
- The effect of the proposed development on local services and facilities;
- The effect of the proposed development on biodiversity; and
- Whether, having regard to these issues in the context of development plan policy and other material considerations, including the National Planning Policy Framework, the development proposed represents sustainable development which ought to be permitted.

## Reasons

### *Site context*

15. Burford lies at the crossroads formed by the A40 and the A361, the intersection being facilitated by a substantial roundabout at the southern end of the historic core of the town. This descends markedly down the valley side around an extension of High Street known as The Hill and the core of the town is contained to the north by the River Windrush, crossed by a single vehicular track and pedestrian reservation over the historic bridge, the passage of vehicles in both directions being controlled by signals.
16. The A40 follows a distinct ridge and marks the southern boundary of the Cotswolds Area of Outstanding Natural Beauty ('the AONB') in this locality. The historic core of the town, with its intense concentration of listed buildings,<sup>13</sup> together with its immediate setting, is a designated conservation area. North of the A40, this part of the town lies wholly within the AONB. It is without doubt a special place, much visited by tourists, and, within its broader AONB setting, it can be appreciated from a range of vantage points north of the A40.
17. Although the Burford Conservation Area marginally extends to the south of the A40 in places and includes the roundabout, the character and appearance of the town south of this road is markedly different. Features principally include the substantial buildings associated with the secondary school, some commercial uses south west of the roundabout within the conservation area, a wooded golf course straddling the A361, low density housing either side of the B4020 (Shilton Road) and the large and well known Burford Garden Centre.
18. The latter, which is comprehensively screened by tree planting, lies to the east of Shilton Road, south of an area of low density housing, and its entrance is opposite the appeal site which lies to the west of the road between the Garden centre and the golf course. The northern boundary of the appeal site is marked by a belt of trees just beyond, delineating land associated with the low density housing which lies between it and the A40.
19. A public footpath runs from the A40, just within the eastern boundary of the golf course and outside the western boundary of the appeal site and hence southwards through fields to join a network of footpaths associated with the valley of the Shill Brook, which runs south east towards Shilton and

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<sup>13</sup> See for example the evidence of Mr Rosedale, proof plan BR1

Carterton. Save for the principal features I have described south of the A40, the landscape here is primarily gently rolling farmland sloping southwards from the watershed along which the A40 runs.<sup>14</sup> The southern boundary of the appeal site is marked by a drystone wall typical of this farmland area.

20. The appeal site itself essentially comprises two fields, the much larger of which is currently used as pasture. It is plainly visible from the adjacent Shilton Road and from the footpath along its boundary to the golf course. It is common ground that it is neither adjacent to nor within the AONB or the conservation area. In my assessment it cannot be seen from either. It is open land of pleasant appearance both in its own right and in its present context on arrival at the southern fringe of Burford along Shilton Road or via the footpath from the valley of the Shill Brook.
21. From viewpoints in the countryside further to the south along the Shilton Road, and the footpath network in the countryside to the south, where not masked by the topography of the valley formed by the Shill Brook, the location of the site is evident in the gap between the conifer hedge marking the frontage of the garden centre to Shilton Road and the less formal tree planting at the south eastern corner of the golf course.
22. The southern boundary of the site broadly corresponds with a bifurcation of the elevated land associated with the ridge top<sup>15</sup> generally followed by the A40, albeit the northern end of the site is less elevated. Consequently, when viewed from the south, the southern part of the site, although itself flat, is discernible from the viewpoints in the surrounding countryside mentioned above. It is, however, seen in the context of the trees to either side, namely those associated with the golf course and the garden centre, and those associated with the low density residential area to the north.
23. The site is around 7 hectares in extent and is understood to be within the generalised Grade 3 of the Agricultural Land Classification. The precise sub-grade is not known and it is therefore not possible to say whether it falls within the 'best and most versatile' category. It is clear, however, that it is not intensively cropped at present.

#### *Policy context*

24. The development plan currently comprises the West Oxfordshire Local Plan 2011 ('the Local Plan'), adopted in 2006 to cover the period until 2011. Certain of its policies have been saved but it is common ground that the housing supply policies therein are out of date. It is, moreover, common ground that the Council cannot currently demonstrate a five year supply of available housing sites to cater for its current view of objectively assessed needs and that the presumption in favour of sustainable development described in paragraph 14 of the National Planning Policy Framework ('the Framework') is therefore engaged.
25. The "emerging local plan" for the area, the West Oxfordshire Local Plan 2031, is temporarily stalled in its progress towards adoption, the examination having been suspended, in January 2016, pending further work.<sup>16</sup> The merits of the process and the emerging local plan itself are not

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<sup>14</sup> Proof plan BR3 (*Slope Analysis*) in the evidence of Mr Rosedale shows the nature of the sloping topography.

<sup>15</sup> Ibid. *Topography*

<sup>16</sup> CD3.12

matters for me, but it is material that in October 2016 the Council decided to promote main and minor modifications for further consultation distinguished by track changes in the text to highlight deletions and additions.<sup>17</sup> Simply for clarity, I refer to this document, to the extent that it is necessary to do so, as the “track change local plan” (abbreviated to TCLP).

26. It was agreed in August 2016, as common ground between the Council and the appellant, that “no more than limited weight” may be attached to the emerging local plan and I have no reason to take a different view. Moreover, notwithstanding that the subsequently published TCLP is now based, inter alia, on an upwardly revised annual housing requirement of 660 dwellings per annum (dpa) and indicates what is sometimes described as the “direction of travel”, I consider that the same principle broadly applies to this document specifically. There is scope for significant objection and much has yet to be decided before the final content of the adopted plan becomes a firm prospect in view; and the principles set out in paragraph 216 of the Framework are therefore entirely apposite.
27. This has practical implications for my determination: to the extent that the Council is evidently seeking to address its own objectively assessed needs for housing (as well, from 2021, as a proportion of those generated by the City of Oxford) the direction of travel of the TCLP in that particular regard seems to me to be a relevant consideration meriting significant weight at least because, not only does the increased overall housing requirement of 660dpa, as now proposed, respond to fundamental concerns as to the soundness of the emerging local plan, but it also accords with the Framework’s express intention to “boost significantly the supply of housing”.<sup>18</sup> That particular object seems to me to provide an important backdrop to this appeal; and I am of course conscious of the national situation addressed in the appellant’s closing submissions.
28. On the other hand, it seems to me that the degree of comfort drawn by the opposing parties from the more location-specific elements of the TCLP is perforce limited. Whilst the merits of the proposed spatial strategy and specific allocations are entirely within the remit of the examining Inspector (and not therefore a matter with which I am concerned) it does seem to me, for example, that the proposed increase in the indicative housing apportionment to the Burford - Charlbury Sub-Area (800, increased to 1,000 dwellings)<sup>19</sup> perforce carries as little weight for present purposes as the proposed allocation for 85 dwellings on the eastern side of Burford within the conservation area and the AONB (TCLP reference BC1b). Neither can be assumed to necessarily represent a certain outcome of the examination process.
29. What is certain, however, is that the policies relevant to the supply of housing in the existing Local Plan cannot be considered to be up-to-date for the purposes of paragraph 49 of the Framework. Not only are the housing land supply policies time expired in any event, but the Council agrees that it cannot currently demonstrate a five year supply of available housing sites for the district as a whole, when calculated on the usual “Sedgefield” basis, even if only a 5% buffer is used to reflect the delivery pattern of the past ten

<sup>17</sup> ID34

<sup>18</sup> Framework paragraph 47

<sup>19</sup> TCLP Policy H1

years or so. On that basis, all other things being equal, the Framework paragraph 14 presumption in favour of sustainable development continues to apply, as the Council and the appellant have agreed.

30. TRG suggests that the number of housing approvals in the district in recent months, on appeal and at first instance<sup>20</sup>, potentially improves the land availability situation. However, whilst, on the face of it, this may be so, it is of limited assistance because it represents only a partial view as to the reality of the situation. As the appellant rightly points out in closing submissions, the proposition takes no account of sites dropping out of the supply equation and no meaningful comparative calculation can be carried out on that basis. The relevant and meaningful bases for calculation are those that underpin the Council's Housing Land Supply Position Statement 2016 and the OAN/HLS SoCG. Bearing in mind that a special case for deployment of the "Liverpool" method has yet to be made out, if at all, in the context of the emerging local plan, I have no reason to question the veracity of the Council's position that, for the purposes of this appeal, a five year supply of deliverable housing sites cannot in fact be demonstrated.
31. The late submissions of the CPRE<sup>21</sup> raise many questions that are more appropriate to the ongoing examination of the emerging local plan as far as objectively assessed needs and housing supply are concerned and the organisation did not attend the inquiry to facilitate cross-examination or in order to challenge the appellant's response document.<sup>22</sup> This reduces the weight I am able to attach to the CPRE propositions and in any event I have no reason not to prefer the expert evidence of Mr Watton for the appellant on the relevant points.
32. Neither was the evidence of Mr Watton regarding objectively assessed needs for housing challenged by the Council. Moreover, the evidence of Mr Freer regarding the five year supply was not challenged either. The upshot is that, whilst there is broad agreement as to the magnitude of objectively assessed needs (circa 660dpa) notwithstanding differing routes to the same conclusion (adding, if anything to the robustness of the identified need), there is untested disagreement between the parties on the magnitude of the shortfall in housing land supply.
33. Following the *Richborough*<sup>23</sup> (Hopkins Homes) ruling, the magnitude of such a shortfall potentially affects the weight to be attributed to it. The range of possibility for the purposes of this appeal is from 2.18 years' supply only, using the 20% buffer advocated by the appellant, together with Mr Freer's view of availability, to 4.18 year's supply using the 5% buffer advocated by the Council and its view of site availability. I am mindful that the examining Inspector for the emerging local plan has so far preferred a 5% buffer on the basis of the Council's delivery performance to 2011 under the auspices of the time expired local plan and the now revoked regional policy context (South East Plan).<sup>24</sup> Equally, I am mindful that the evidence of Mr Freer on the availability of sites rests unchallenged. His calculation using a 5% buffer leads to a 2.50 years' supply.

<sup>20</sup> ID52

<sup>21</sup> ID44

<sup>22</sup> ID44

<sup>23</sup> *Suffolk Coastal v SSCLG and Hopkins Homes: Richborough Estates v Cheshire West and SSCLG* [2016] EWCA Civ 168

<sup>24</sup> CD3.10 paragraph 2.14

34. On those bases I am inclined to prefer the 5% buffer advocated by the Council and the more pessimistic view of current availability proffered by the appellant, which in literal terms would indicate a 2.50 year supply.<sup>25</sup> However, notwithstanding the inappropriateness of including the figures proffered by TRG as a potential improvement in the land availability situation in a detailed but incomplete calculation, it would defy common sense to suppose that the evident success of applicants and appellants in recent months, bearing in mind the contextual intention of the Framework to significantly boost supply, leads in reality to no improvement whatsoever, and my expectation would therefore be that, as of now, the supply situation is in reality closer to 3 years than 2 but closer also to 3 years than 4.
35. Beyond that, I have no basis for refinement, but the broad measure of agreement as to the existence of a shortfall within the range cited by the parties does not require me to attempt the sort of precise calculation that Planning Practice Guidance in any event discourages in the context of s78 inquiries, as opposed to development plan examinations. The situation is not currently a marginal one and it is sufficient for my purposes to note that my estimate of a current shortfall in reality of around 2 years' supply, possibly more, from the requisite 5 years' supply of deliverable housing sites equates to a significant failure to maintain the adequacy of available housing land which the Framework demands. I am conscious, moreover, that its object in doing so is to help resolve housing shortages both nationally and locally and thereby mitigate the human consequences of such shortages.
36. Given the underlying reasons for the Framework's housing policies and the consequential express intention to significantly boost supply, that overall significant shortage of available housing land across the Council's area now is a matter to which I accord substantial weight, irrespective of the potential efficacy of the emerging local plan in ultimately delivering and distributing the requisite quantum of housing for all the population in need of it.
37. That said, the Framework is very clear, notably at paragraph 196, that it is a material consideration in the plan-led system. The primacy of the development plan in practical terms requires it to be the starting point in determining planning applications and appeals. In this case, policies of the Local Plan variously cited as potentially relevant by the parties include the following: H2 (*General residential development standards*), H4 (*Construction of new dwellings in the countryside and small villages*), H7 (*Service centres*), H11 (*Affordable housing on allocated and previously unidentified sites*), NE1 (*Safeguarding the Countryside*), NE3 (*Local Landscape Character*), BE1 (*Environmental and Community Infrastructure*) and BE2 (*General Development Standards*). I refer to these policies as necessary and accord them appropriate weight according to whether or not they can be said to be up to date or (following the principle set out in its paragraph 215) consistent with the Framework, in whole or in part as the case may be.

#### *Effect on character and appearance of area*

38. Owing to the location and physical circumstances of the appeal site as I have described them, the proposed development would have no material effect on the character or appearance of the Burford Conservation Area or on the landscape and scenic beauty of the AONB. That is not to say that its effects

<sup>25</sup> ID28 paragraph 10

would be inconsequential. The consequences of developing agricultural land on the scale proposed, clearly, would be to change the character and appearance of the site and its immediate environs and would also change perceptions of the site within the broader landscape influenced visually by its presence and existing characteristics. This can be said of virtually any development of significant scale which impinges on the countryside around a settlement.

39. The nub of the issue for the necessary planning balance is whether, after appropriate mitigation, the effect would be significantly harmful so as to conflict with relevant policy intentions. Moreover, it is germane that the proposal is largely outline in nature, with significant scope for refinement in the context of the necessity to obtain approval from the local planning authority of reserved matters. My concern is therefore whether or not, in principle, the proposed development could be acceptably accommodated in terms of the character and appearance of the area.
40. Insofar as policy BE2 of the Local Plan seeks to secure good design in context, I find no inconsistency with the Framework and therefore accord it full weight, bearing in mind that many aspects of the proposed development's design would more appropriately be considered at the reserved matters stage. Elements of the principle of the development are nevertheless within the purview of this policy, the first criterion of which is to respect the existing scale, pattern and character of the surrounding area.
41. In applying this criterion I do not concur with the proposition that the southern limit of Burford is effectively the A40. Although that may have been the case historically, as reflected by the conservation area boundary, the notion that the A40 defines the southern limit of the town ignores the reality of what exists on the ground. Even as long ago as the 1940s, the town was beginning to spread southwards over the ridge followed by this highway, as is evident from the aerial photograph of the time.<sup>26</sup> Although the land was largely open fields typical of the broader agricultural landscape to the south of the town and there was no garden centre, a scatter of suburban low density dwellings had by that time been constructed at Signet End and southwards along Shilton Road.
42. Today, the area south of the A40 is different again. A footbridge has been constructed over it to access the secondary school. The golf course has become very well established and the houses on Shilton Road have acquired various neighbours (albeit the overall number of dwellings remains quite small) and the very major commercial enterprise that is the Burford Garden Centre has a defining influence on the character and appearance of the area east of Shilton Road. The net result is a landscape that is essentially suburban in character, with substantial buildings and belts of trees planted for ornamental or screening purposes and a well-established concentration of dwellings in large gardens with trees at the northern end of Shilton Road. All of this allies the area to the town rather than the surrounding countryside.
43. The appeal site itself has characteristics of both these contrasting environments. Standing within it and looking out to the south one experiences and almost feels part of the agricultural landscape to the south,

<sup>26</sup> ID16

albeit one is conscious of the strong influences of the garden centre and the golf course to the east and the west. Looking northwards within and towards the site in the direction of the A40, however, the prevailing influence of the sylvan suburban environment which has developed over the last 60 years or so is very apparent and the site sits within this as an enclave of open pasture. It is therefore very much at the margin of the two contrasting environments and, if developed with care, could in character and appearance terms just as easily sit within the suburban southern sector of the town as its rural hinterland. (This dichotomy is reflected in the evidence and judgement of the appellant's and the Council's landscape witnesses respectively.) In principle, therefore, conflict with the first criterion of policy BE2 of the Local Plan is not an inevitable consequence of development on the site, albeit this principle cannot be wholly divorced from the essential substance of what is proposed and it is relevant to consider, inter alia, the density of development implied.

44. I acknowledge that the historic core of Burford is compact and dense. This of course reflects the technology and functional concerns prevailing at the time of its origins. I also accept that, as a general rule, towns tend to be dense at the centres and less dense at their margins but this is a geographical and historical tendency and, despite significant advantages in transport terms within large urban areas in particular, not an immutable principle of town planning to be universally applied regardless of other considerations including specific circumstances. There are countless examples of variation in density across townscapes over time, often dependent on function, finance and pressure on land resources. The latter is now intense and policy at national level does not encourage the profligate use of land, even though minimum densities are no longer prescribed. Although an increase in density beyond the existing very low density residential fringe is possibly somewhat counter-intuitive<sup>27</sup> as the Council's submissions would have it, I do not consider this would necessarily render the proposal unacceptable in principle.
45. In any event, neither policy BE2 nor its explanatory text attempt to prescribe density of development. Density per se is not referred to. Paragraph 3.13 signals that the plan as a whole promotes efficient land use whilst avoiding over-development. It cross-refers to policy H3 in the context of residential development which is accompanied by explanatory text at paragraph 5.47. This does refer to the (former) PPS3 approach of characterising efficient residential land use as a net density of between 30 and 50 dwellings per hectare (dph), with the rider that the main opportunities for densities towards the upper end of the range will lie within the existing urban areas and the larger developments proposed in Witney. TRG estimates the net density of the proposed development excluding the care home scheme as 34.5 dph,<sup>28</sup> albeit this calculation includes the (up to) 78 assisted/supported living apartments and should be therefore interpreted with care if a misleading impression is not to be given. Nevertheless, this places the proposed development at the lower end of the range previously deemed by PPS3 to be efficient of land take, even if the apartments are uniformly included on the same basis as individual houses, which seems to me to be an unlikely scenario in density terms, given the need for communality and efficient management.

<sup>27</sup> ID61 paragraph 18

<sup>28</sup> ID60 paragraph 27

46. The adopted supplementary planning document (SPD) *The West Oxfordshire Design Guide*, which is a material consideration relevant to the application of policy BE2, contains a more sophisticated approach to density and counsels against the crude application of net residential densities. Under 'Density and local character', it advocates a variety of strategies to create distinctive areas of local character, all of which seem to me to be potentially relevant at the reserved matters stage within the overall parameters of the proposed scheme. Moreover, if classification through density is at all relevant, it is noteworthy that the SPD's *New Urban* categorisation of development styles defines 'Medium Density' as 35-55dph and 'High Density' as containing housing areas in the range 40-75dph. The density expectation of *New Rural* developments is not defined but it is reasonable to infer densities below 35dph and certainly a maximum plot ratio of 40% and 2 storeys maximum height is advocated by the guidance.
47. The text associated with *New Rural* includes the following... *"Within infill plots the context for the building or buildings may already be well established. In such situations it is essential that the new design follows the existing pattern."* (However) it continues... *"Where the context is undistinguished or ambiguous, the opportunity may exist to create from new a distinctive New Rural Character. The approach is particularly well suited to the fringes of larger developments, where it can provide a sensitive interface with the landscape beyond."*
48. The particular mix of building types would include large footprint buildings, namely the proposed care home and in all probability the main components of the extra care accommodation, as well as individual detached, semi-detached and terraced dwellings. It would be inappropriate in my view to pre-judge the reserved matters stage by attempting to pigeon hole what is proposed, as a whole, in terms of the classifications set out in the Council's SPD. However, it is clear that thinking has evolved, in response to site constraints and critical inputs received from a variety of sources, from that displayed in the original Access and Design Statement submitted (CD 1.8) through the subsequent Vision Statement (CD1.9) to the general principles portrayed on the Parameters Plan.
49. Burford south of the A40 already contains large footprint buildings, notably at the secondary school and the garden centre and, whilst I acknowledge that much of the existing housing associated with Shilton Road is at a lower net density than what is intended on the appeal site, there is no prescriptive requirement within the policy concept of respecting the existing scale, pattern and character of the surrounding area to necessarily replicate existing adjacent densities.
50. It seems to me that what ultimately matters is how the development appears and is experienced on the ground in the established context, so as not to be alien, intrusive or incongruous. Bearing in mind the existing buildings in the area within the framework of landscaping and substantial tree planting, and the fact that the residential densities implied by the proposal are within what would be considered the lower band of density compatible with reasonably efficient land use and would allow for significant softening of appearance through landscape design, I am confident that appropriately skilled overall design could achieve that objective. The details of how it would be achieved in practice are properly the substance of reserved matters submissions.

51. Moreover, it is material that the terms of the application are such that the numbers of units in each of the land use categories applied for are presented and expressed as maxima. This gives an extra layer of comfort that, in applying its standards and relevant design guidance to reserved matters submissions, the Council could require, for aesthetic reasons, a lower number if important design principles, notably those outlined in its SPD which it considered relevant to the circumstances, were to otherwise be compromised. The balance between what precisely may be achieved in terms of efficient density and sensitivity to context is essentially a matter of design skill and, while it would be important for this to be deployed to maximum advantage to integrate the proposed development with its immediate developed and essentially suburban surroundings, I am not persuaded that the proposed development cannot, in principle, be accommodated alongside the existing nearby development in a manner which complies with policy BE2.
52. An important but materially different aspect of policy compliance in terms of the impact of the proposed development on the character and appearance of the area is its potential effect on the rural landscape in the countryside to the south of Burford, bearing in mind my conclusion that the appeal site itself, in terms of how it is experienced, has characteristics of both the contrasting environments that exist here, being surrounded in part by the suburban fringe of the town whilst being in itself open pasture contiguous with similar land to the south, which is indisputably rural.
53. The Framework seeks to protect valued landscapes, including those that are formally designated for their qualities. The site in question here and the neighbouring rural land to the south, does not sit within a formal designation, as previously noted, and although previously the Shilton Downs Landscape Character Area (as defined in the *West Oxfordshire Landscape Assessment*) as a whole was previously included within an Area of High Landscape Value, this was not carried forward into the adopted Local Plan as specific policies, notably BE2 and NE3 serve to provide the necessary protection.
54. That said, I am not persuaded that the appeal site itself has attributes that take it out of the ordinary in terms of rural quality. Whilst it shares physical characteristics of the distinctive and visually attractive sub-area of open limestone wolds and is physically attached at its southern boundary to the extensive area of such to the south, across which sweeping vistas of the landscape type can be appreciated, the reality is that, since the encroachment of Burford oriented developments I have described, from around the 1940s onwards, it has become a small residual enclave of the category, defined as much by its suburban context as by its parent typology. In landscape character terms the appeal site, in contrast to the open countryside to the south, is already compromised by the existence of the garden centre, the golf course and the properties to the north which form its immediate context. It cannot be said to be an essential part of the landscape classification within which it is included.
55. Accordingly, whilst I am comfortable that much of the extensive landscape to the south might properly be described as 'valued' for the purposes of the paragraph 109 of the Framework, I consider it stretches the concept too far to apply it to the appeal site itself. It is no more than rural land within the wooded fringe of the town, the loss of which would not significantly impact

upon the defining quality of the broader open landscape type it was originally more integral to.

56. That is not to say that development on the site could not harm that landscape. Badly executed without mitigation, it would. This is because the views across the landscape towards Burford from the south would be unacceptably compromised if the elevated land at the southern boundary of the site, which is discernible against the wooded backdrop that broadly corresponds with the ridge carrying the A40, were to be changed to a harsh urban edge by reason of a phalanx of houses being developed hard against it without adequate screening. Such a prospect would unacceptably harm the sylvan prospect of the town margins within the landscape south of the AONB, notwithstanding the incongruous and obvious artificiality (in landscape character terms) of the existing hedging conifers alongside the garden centre.
57. Whilst I appreciate the concerns of TRG in particular, who arranged for the cherry picker to be placed on the site for scale, this is not, however, what is actually proposed, even though the helpful but potentially misleading 'wireframe' drawings produced by the appellant's landscape witness, taken too literally, might suggest otherwise.
58. My reasons for concluding thus are as follows. First, the wireframes are based on an indicative layout that has yet to be worked through into a detailed design. More importantly, such drawings are an essentially two-dimensional aid which lacks the subtlety<sup>29</sup> to replicate the effect of development in depth with interspersed planting complementary to the screen planting they are so useful in demonstrating the need for. Having viewed the site from key viewpoints to the south, I am in no doubt that the sensitive southern boundary requires not only effective screening but, crucially, carefully chosen species composition and disposition to effectively mitigate the impact of development on the site on the broad prospect of Burford from viewpoints across the rolling open wolds landscape. It would be unfortunate, for example, if the conifer hedge to the garden centre were to be used as a guiding reference and exemplar. It lacks the necessary finesse in landscape design terms that the proposed development could display to advantage if carefully executed.
59. The parameters plan now forming part of the application would reduce the maximum height of the buildings at the southern margin of the site to 6.5 metres and the appellant's planning witness explained that the maximum ridge height of 10.5 metres across the rest of the site was intended primarily to allow some design responsiveness to context and was not a uniform intention. The appellant's landscape witness explained that, in order to achieve the most rapid screening possible along the southern boundary of the site, it is intended that mature stock be used rather than whips.
60. The stony nature of the ground is evident on site and the Council's landscape witness, drawing on his experience of the locality, was sceptical of the growth rates predicted for the proposed planting by his opposite number for the appellant, albeit the latter's view was more evidentially based on a range of situations. Inevitably, therefore, the actual growth rate that could be achieved is something of a matter of conjecture, as planting techniques and the associated expense can vary. The essentially domestic screening operation

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<sup>29</sup> CD1.9 The Vision Statement at page 13, although simply an artist's impression, and purely illustrative of a concept, is more three dimensional.

beyond the northern boundary of the site is not to my mind a reliable guide as it is understood that these trees were planted as whips and the ground preparation techniques generally available to developers may not have been deployed in any event.

61. What is indisputable is that the area supports very substantial trees, as is evidenced by the golf course. Notwithstanding the prominence of the southern margin to the site, I am confident that an appropriate scheme of planting could, in the medium to long term, completely hide the proposed development from this direction, should such a level of concealment ultimately be desired, preventing views from the footpaths to the south and substantially delaying awareness of the proposed development for northward travellers on Shilton Road until virtually the point of arrival at its entrance near the existing garden centre. This would mean that its existence would be visually subsumed within the wooded appearance of the high land associated with the ridge as currently experienced in the broader landscape.
62. Over the course of the shorter term, possibly up to 20 years or more, it would of course be possible to see elements of the proposed development, primarily roof tops, from the south. However, as the proposed landscape buffer would be of sufficient depth and initial stature to effectively filter views and soften what could otherwise appear as an unacceptably stark urban edge, I consider that not only would any residual harm arising from actual visibility of buildings in the broader landscape be time limited but that the possibility of it being significantly intrusive in that context would be substantially diminished early on in the lifetime of the development.
63. While I accord full weight to the relevant aspects of Local Plan policy BE2, including criterion e), which protects the landscape setting of settlements, for all the above reasons I do not consider (assuming careful exercise of the power to control reserved matters, which can also reinforce local distinctiveness) that, in principle, the proposed development would inevitably conflict with it.
64. Policy NE1 of the Local Plan now carries little weight in the sense that it seeks to protect the countryside for its own sake in a manner which is inconsistent with the Framework's approach of balancing protection of the most important areas of countryside against the satisfaction of development needs which, in West Oxfordshire, the Council accepts, must inevitably lead to the loss of some rural land at the edge of settlements. Thus the impact of the proposed development simply in terms of loss of what would generally be considered countryside, with no qualitative dimension to the assessment, cannot be decisive against this proposal.
65. Policy NE3 on the other hand aims to protect local landscape character from development which would harm it. This is consistent with Framework intentions to recognise the intrinsic character and beauty of the countryside and to protect and enhance valued landscapes and the policy continues to merit full weight. However, given my conclusions on the principle of the proposed development in the context of policy BE2, and my reasons for those conclusions, it follows that I do not consider the proposal to be, in principle, one that would conflict with policy NE3. The circumstances of the site are such that its careful development need not compromise the aim of respecting the

prevailing character of the extensive open limestone wolds landscape generally experienced south of Burford.

66. Having considered the evidence before me and visited the site and the surrounding area I am satisfied in the light of the above analysis that, in principle, the proposed development would not unacceptably harm the character and appearance of the area having particular regard to its landscape setting, local distinctiveness and the established settlement pattern. The intentions of the development plan in those important respects, which merit full weight, would, moreover, be satisfied.

### *Accessibility*

67. Following initial disagreement over what are essentially matters of fact and calculation, TRG and the appellant's transport consultants co-operated constructively to agree precise distances and likely journey times on foot<sup>30</sup>, and I am appreciative that they took the trouble to do so. What the work essentially demonstrates is that the extensive range of town centre and community facilities, from the public house at the top of the hill to the doctor's surgery towards the lower part of the town, can be reached by foot at a reasonably normal walking pace within ten to twenty minutes (in round terms 950 – 1,750 metres).
68. This, in my experience, is by no means an unusual distance from residential areas to a central place with facilities as good as Burford's. The time factor may be a discouragement for those with busy lives, especially given the ready availability of private motorised transport and the availability of free parking, which is prevalent in this area, on and off-street within the town. It does not follow, however, that the proposed development would not be reasonably accessible on foot to those who choose to walk, either habitually or when circumstances favour the choice.
69. Like many historic towns, Burford has a centre which is essentially linear, so that facilities at one end of the main street are appreciably further on than those at the near end to the walker's home origin. Whilst all trips are clearly not to the nearest facility, they are not necessarily to the furthest and, in reality, people may well visit two or more destinations within the linear town centre, prolonging their trip and pausing between destinations as they conduct their business.
70. Bearing this in mind, I consider a degree of caution is needed in using time and distance alone, although I appreciate that studies indicate statistical trends and apparent thresholds at which people tend to resort to other forms of transport and it seems that the northern end of Burford centre, being in excess of 1.5 km from the site would generally be a little in excess of the 16 minute threshold cited in the evidence of TRG as the point at which people tend not to walk, in contrast with the 15 minutes ceiling below which up to 90% of fit and able pedestrians "would be liable to walk".<sup>31</sup>
71. The figures, on the face of it, suggest a marked change in behaviour across the boundaries of the defined thresholds and clearly there are dangers in crudely applying nationally derived and simply presented statistics to a particular

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<sup>30</sup> ID29

<sup>31</sup> Derived from paragraphs 2.8 and 2.9 of TRG supplemental statement and ID29 agreed distances/times, following 2014 National Travel Survey

situation locally. It seems to me most unlikely that a resident contemplating a walk to Burford town centre from Shilton Road would opt for the car simply because he or she needed to call at, for example, the doctor's surgery rather than, for example, the Chemist/Post Office/Newsagent. Equally, it would be unlikely that the mode of transport to, for example, the nearest public house would be influenced solely by the fact that it is perhaps 10 minutes' walk rather than 15 or 20. A range of other factors are likely to be at least as influential.

72. In other scenarios these might include the purpose or purposes of the trip, whether bulky or numerous goods were to be purchased, the time available, the perception of parking difficulty, the weather and the light. So, for example, the conditions prevailing at a summer weekend, when the town centre is busy with tourists, and the resident has time to enjoy it, would be more conducive to walking for a few light errands in the town centre than would the need to go shopping for heavy food and other necessities on a bleak, wet winter weekday when parking might be easier (due to lesser pressure from tourists) and walking would be rather less enjoyable for most people.
73. In reality, innumerable factors, including health and the desire to be healthy, influence individual choice. People tend to opt for the choice that in a practical sense suits them best and this will vary according to circumstances. It is no part of Framework policy to prescribe travel choice, but it is policy wherever practical to facilitate and encourage sustainable choices.
74. In distance and walking time terms the centre of Burford, taken as a whole, would not in my view be sufficiently close to the site to positively encourage alternatives to the use of the car in a way that eminently 'walkable' urban neighbourhoods do. Realistically, it is unlikely that even the able-bodied, certainly the economically active amongst them with time constraints, would routinely opt for walking as an alternative to private transport, albeit cycling would be a time saving option for those so inclined, the rigours of The Hill notwithstanding.
75. However, the present tendency to use the car for speed and convenience is not, in any event, confined to the situation under consideration here and the requirements of national policy are to provide for alternatives, as is clear from paragraph 29 of the Framework, according to geographic circumstances. As far as the latter point is concerned, it is pertinent that whilst clearly not a truly urban situation, the site is not located in the deep countryside where expectations of real transport choice would be unrealistic, but rather Burford is identified as a 'Rural Service Centre' in the TCLP where a degree of housing growth is to be anticipated and is currently proposed, albeit I accord only limited weight to its emerging formal status in that respect. The geographic reality that Burford is an established significant settlement is material nonetheless in this context.
76. The appellant has proposed and is committed to a range of measures to improve access on foot and also proposes support for the newly routed 233 bus service which passes the site and connects it with the centre of Burford. Although at the upper end of the walking distance that would be considered desirable for the positive encouragement of walking, as I have noted, it cannot be reasonably held in my view that the site is inaccessible on foot to and from

the town centre, that links cannot in any event be improved, or that alternatives to the use of the car are not available. The highways authority was explicit in agreeing in the H & T SoCG that... *"The wide range of facilities available within Burford and Carterton which can be reached within acceptable walking distance or bus journey times means that the site is accessible to a wide range of facilities, is not isolated, and that residents and visitors to the site will not be reliant on the private car."* (The emphases are mine.)

77. All in all, on the basis of my own assessment, I have no reason to doubt the overall veracity of that conclusion as far as the reasonably able-bodied are concerned. Moreover, the walk into Burford is by no means unpleasant and, once the A40 is crossed, the walk down into the town is arguably one of the best means of appreciating its special qualities, taking it out of the ordinary and making the walk itself a pleasure to be enjoyed for its own sake. This is a factor which I consider has been considerably underplayed by parties arguing that the site is in an unsustainable location, and one which in my view would positively encourage walking for those with the time and basic inclination, for example able-bodied older people, countering to some degree at least the factors previously considered to be negative.
78. Significant concern has been expressed regarding the constraints imposed by The Hill, the gradient of which is of course an impediment to those in poor health or confined to wheelchairs and (whilst demonstrably not impossible) it is furthermore clearly very difficult for somebody assisting a wheelchair user to cope with it. However, in common with many other towns built historically in hilly country, steeply sloping streets are a fact of life in Burford. When visiting the Council's recent draft allocation off Barns Lane<sup>32</sup>, for example, I observed an electric mobility scooter labouring up the shared surface of that highway, which is clearly not ideal. Those who originally laid out The Hill, which is a broad street with separation of pedestrians from through traffic, seemingly anticipated its use as a thoroughfare for, amongst others, travellers on foot, making the best of prevailing circumstances, but the gradient remains inescapable.
79. Nevertheless, bearing in mind the nature of the town's circumstances and environment, I do not consider undue weight should be placed on the existence of The Hill in the walking route from the appeal site. For most, it would not be a particular problem in the context of a walk to or from the town centre. Neither is it inconceivable that residents from the appeal site (or those already living on Shilton Road) might opt to walk down into the town but catch the 233 bus back, especially if weighty shopping needed to be carried. The mobility impaired cannot practically be expected to do other than adapt their arrangements to the prevailing topography of the town centre, which cannot be changed and is likely to affect the way they move around the town under any scenario involving additional development. The gradient of The Hill, in itself, is not a reason to resist in principle development south of the A40, even though, of itself, it clearly does not positively weigh in favour of such development in the context of access by foot.
80. Thus, for residents of the conventional dwellings proposed, the site is in my judgement capable of being made reasonably accessible by foot, bearing in

<sup>32</sup> ID34 Policy BC1b

mind the package of measures proposed, even if not wholly convenient. Judged in the round and (importantly) in context I would not therefore consider the location of the appeal site to be fundamentally inaccessible. In drawing that conclusion I am conscious that a colleague seemingly took a different view in determining an appeal<sup>33</sup> at 'Windermere' just south of the garden centre on Shilton Road, but that concerned an individual small development incapable of supporting the comprehensive measures associated with this proposal, which I consider to be essential mitigation of extant inhibitions to accessibility.

81. Whilst I am bound to consider the proposal before me on its specific individual merits, I am also very conscious of the comments of the Inspector who reported on the present local plan in June 2005, to the effect that it would not be "at all desirable to look at any development requiring a crossing of the A40." The Local Plan Inspector's remark<sup>34</sup> is undoubtedly material, but in my view merits limited weight in this case. I am not party to the detailed evidence before him, the strategic and national planning policy context was very different 11 years ago (as is clear from his covering letter and the tenor of the current emerging local plan) and, although the remark was in the context of referring to sites the Inspector regarded as "somewhat peripheral to the town", it is the case nonetheless that important developments associated with the town, including some housing, have already taken place south of the A40.
82. As I have previously noted, the town today does not stop at the A40 and there is therefore an established requirement for residents and others to cross the A40 regardless of the outcome of this appeal. The precise reasons for the Inspector's remark are therefore unclear and I am not in any event bound to share his apparent view that the A40 is a boundary which necessarily constrains, or should constrain, further growth. For reasons previously detailed, I do not.
83. Although I do not consider the appeal site to be fundamentally unsustainable in terms of its location relative to the centre of Burford for general purpose housing, the Council is concerned nevertheless that the other primary elements of the proposed development are, by virtue of their very nature, unsustainably located and this proposition merits careful consideration quite apart from that I have undertaken thus far.
84. The residents of nursing homes, almost by definition, are generally unable to avail themselves of opportunities to leave the premises independently and on foot. The norm is by motorised transport in the company of a carer. Ready accessibility to town centre facilities is not a mainstream requirement and many such institutions occupy rural premises in relatively isolated locations. The appellant's evidence on this is as persuasive as it is in any event logical. Moreover, taking a realistic view, friends and relatives of nursing home residents, if not coming by public transport, will use cars for what is generally a single purpose visit and the dedicated parking would be a distinct advantage; and the site is not remote and inaccessible in the way that a truly rural location would be to those who do not have the use of a car.
85. The assisted/supported living apartments are, intuitively at least, given its proposed location, more problematic. However, Burford is proposed to be a

<sup>33</sup> Ref APP/D3125/A/10/2124197

<sup>34</sup> ID10 paragraph 5.343

'Rural Service Centre' and there is an emerging local planning intention to locate extra care housing in such settlements<sup>35</sup>. While I accord no more than limited weight to that policy background, there is in any event an undisputed need, identified by OCC<sup>36</sup>, for perhaps as many as 90 extra care places in Burford by the end of the next decade, growing from a need for around 55 places now. Although a number of third parties claim that there is in general a range of opportunities for accommodating the elderly within and around Burford, such claims are unsupported by credible evidence that these are sufficient or would be universally considered to be of an adequate standard. I have no evidence that there is any specific provision to meet the need for extra-care accommodation identified by OCC. Rather the evidence is directly to the contrary.

86. Extra-care living is essentially a provider response to the needs of an ageing and increasingly long-lived population, elements of which strive to maintain their independence as long as possible, subject to varying degrees of assistance which may be increased over time. In my experience reasonable proximity to local facilities is perceived as advantageous but relatively large developments are required for practicality and viability given the importance of appropriate staffing, communal facilities and physical layout conducive to efficient operation. Central area sites for such accommodation are a rare commodity in the best of circumstances and demolition and redevelopment of suburban dwellings on aggregated plots is not an uncommon arrangement.
87. I have no evidence to suggest that there are any previously developed sites in the historic core of Burford that could meet the identified need and I place little weight on the recently proposed greenfield allocation for residential development on Barns Lane. Even were this to have been mooted to include for extra care accommodation, specifically, there is much uncertainty over when and if the site might eventually be deliverable as a development opportunity. It is, moreover, also an elevated location requiring navigation of steep streets towards the town centre in any event.
88. The undoubted and convenient attractions of the Burford Garden Centre to prospective residents of the extra care accommodation, as an alternative in some respects to the town centre, are not something I accord any more than limited weight to, even though it features as an advantage in aspects of the appellant's case. Although it is a well-established and thriving business, the essential permanence of an established town centre cannot be assumed for it. However, insofar as the appellant's witness confirmed in response to my question that its existence was an advantage rather than a requirement for the proposed extra care housing, it seems to me that it can be taken at face value as exactly that. It is no substitute for the centre of Burford itself.
89. This begs the question of access to facilities, bearing in mind that residents of extra-care accommodation may well not be as sprightly as they might wish. I acknowledge that some residents might find a walk into the town centre both stimulating and beneficial, even the return journey up The Hill in some instances, but I doubt that would be the norm given some of the factors that tend to induce contemplation of moving into extra-care accommodation. In an ideal world, a flatter journey for such residents would, common sense suggests, be preferable. While I consider the

<sup>35</sup> ID34 draft policy H4

<sup>36</sup> CD4.14

appellant's relevant witness, notwithstanding his wide experience in the field, to be perhaps a little optimistic on that particular point, it is nevertheless pertinent that Burford is a town in which gradient is largely inescapable other than within a tightly limited area around the valley floor.

90. As it is, the world rarely is ideal and people always respond to practical difficulties, possibly in this case balancing general proximity to established social and/or family connections in Burford, or the surrounding area more widely, with having to do so. The possibilities for access to the town centre remain varied in any event, especially for those for whom time is less of a constraint than for the economically active. A bus service is available in one or both directions, to suit; driving is an obvious possibility for those that own a car, or sharing a car journey with friends from the same development; taxis are often used by the elderly and there might even be special arrangements laid on by the management of the accommodation.<sup>37</sup> Some extra-care residents may choose to walk when personal and weather circumstances favour that choice, but it is unsurprising as a general principle that the National Travel Survey 2014 indicates that the elderly, especially those over 70, are markedly less likely to walk for 20 minutes than younger people.
91. The Council's closing submissions<sup>38</sup> highlight that the Department for Transport's Inclusive Mobility Report establishes that a suitable walking distance for those who are mobility impaired is 100m. On that basis, I acknowledge that it would arguably be logical to hope that specialist accommodation for the elderly, many of whom might be (or might become) mobility impaired, would always be located within that sort of distance of a settlement centre. That is plainly impractical, however, for a whole variety of possible reasons, not least in historic towns such as Burford. Therefore it must be accepted that even moderately short walking distances will not facilitate that mode of transport for most people in that category in most care situations. Some form of personal or communal powered transport is likely to be used for trips to all but the most immediately adjacent destinations. If an alternative location for extra-care accommodation were to be identified in Burford (which is not the case before me) closer in towards the historic centre, it would not necessarily be the case that appreciably more of its residents would in fact avail themselves of the opportunity to walk, certainly unless it were at the very heart of the town.
92. Bearing all of the above in mind, I do not consider the Council's portrayal of the proposed development as likely to become an enclave of the isolated elderly, simply by virtue of its location, to be at all realistic. Care homes are perforce fairly insular but many elderly people opt for extra-care accommodation precisely in order to overcome the isolation they might otherwise experience continuing to live in conventional housing. In terms of integration with the community both elements would be likely to benefit from the Use Class C3 family housing also proposed on the site, which would help to promote social balance, contrasting favourably with other models of provision such as geographically isolated nursing homes and gated communities for the more active elderly.

<sup>37</sup> The likely provider has not yet been identified, so management practices remain unknown

<sup>38</sup> See ID61 paragraph 49biii

93. Nor is there any evidence, notwithstanding the open market nature of the proposal, that the extra-care element would disproportionately attract in-movers from elsewhere in the country. It is reasonable to conclude that the relatively elderly and affluent nature of the local population is likely to result in advantageous local take up.
94. For all the above reasons, whilst I understand the theoretical basis of its position, I am not overall persuaded that those aspects of the Council's case alleging isolation, remoteness and undue reliance on the use of private vehicles are in reality sufficiently convincing to demonstrate harmful conflict with relevant policy concerning accessibility. Bearing in mind the package of measures proposed, the location of the development cannot be said to be fundamentally unsustainable for the range of uses proposed. On a balanced view I find no unacceptable conflict with the penultimate core principle of the Framework as set out in its paragraph 17. Under the auspices of that core principle the Framework advocates a balanced and practical approach to the issue, as opposed to a prescriptive universal template, as is clear from Section 4 *Promoting sustainable transport*. It does not seek to prevent needed development that cannot practically conform to a theoretical ideal. This seems to me to be a case in point.
95. Policy BE3 of the Local Plan is not inconsistent with the Framework in the sense that it seeks to provide for access to and promote accessibility of new development in a sustainable fashion, albeit the recognition of having to strike a practical balance is less explicit and I therefore accord it moderate weight. Nevertheless, the policy criteria relevant to this issue do not lead to a fundamentally different conclusion, on balance, than that which I have drawn in the context of national policy, namely that, with mitigating improvements of the type proposed the site is not, on balance, unacceptably inaccessible for the uses proposed and may therefore be considered capable of being made sustainable.
96. To conclude on this issue, although the balance is clearly a relatively fine one, for all the reasons I have given, I consider, in the knowledge that a comprehensive package of individually modest, but in aggregate sufficient, measures would be put in place, the proposed development would be sufficiently accessible to services and facilities so as to generally allow adequate and realistic choice in modes of transport, notwithstanding that the less mobile elderly would necessarily have more limited choices, variable according to circumstances, as is inevitably the case in many care situations.

#### *Effect on local services and facilities*

97. The Council's third and final reason for refusal concerned the lack of any agreed mitigation package in respect of its impact on the local community and facilities. This shortcoming would conflict with policy BE1 of the local plan which is not inconsistent with the Framework and merits full weight.
98. Relatively late in the day, but in time to be taken into account nevertheless, agreements were struck with both the Council and the County Council in the form of planning obligations to each that comprehensively address the concerns of both authorities. On that basis, the Council confirms<sup>39</sup>, subject to

<sup>39</sup> ID

the issue of affordable extra-care units, that it is content not to pursue its final reason for refusal.

99. Overall in respect of the issue of impact on local services and facilities, I consider the effect of the development can be adequately mitigated, as evidenced by the Council's stated contentment with the scope and content of the bi-lateral agreements entered into. The conflict with policy BE1 is thereby resolved.
100. I return to the matter of the obligations and the weight to be accorded to them below, prior to my ultimate conclusion and decision on whether or not the appeal should be allowed. However, it is pertinent at this juncture to address the matter of the contribution sought by the Council in respect of affordable extra-care housing.
101. The background to this is well known to the parties. In brief, the Council did not seek to rely expressly on Local Plan policy H11 (affordable housing) in refusing permission but now contends that a contribution to the provision off-site of affordable extra-care housing would be required under the provisions of that policy, consistent with the approach now being put forward as a modification to the emerging local plan (draft policy H3) such that in this part of the Council's area 10% (or a financial contribution equivalent to that number off-site) of the extra-care units should be affordable (as opposed to 50% in the case of general purpose housing).
102. Whilst, as a matter of good practice, I have more than a little sympathy with the appellant's complaint that the Council's demand in this respect appears to be an afterthought in the light of the emerging local plan, I am reminded in the Council's closing submissions that proper interpretation of policy is a matter of law.<sup>40</sup> Notwithstanding the explicit approach now proposed in the emerging local plan, and notwithstanding the fact that the Council has apparently persuaded other developers to provide for affordable extra-care units absent that proposed modification, the question for me is therefore whether policy H11 of the Local Plan (which is agreed by the parties to be consistent with the Framework and therefore to be accorded full weight) does in fact encompass extra-care housing.
103. I have no reason to resile from the view expressed in my June 2008 appeal decision<sup>41</sup> (concerning a site in Manor Road, Stratford-upon-Avon) that it is logical in principle that extra-care housing should be regarded as desirable for an element of the population unable to afford market housing (as I have been quoted in the Council's closing submissions.) Moreover, the appropriateness or otherwise, in principle, of extending affordable provision to those in need of extra-care is not at issue here. What I now have to consider is whether, in practice, there is a development plan policy basis in this case for requiring a contribution to that end such that taking it into account would be compliant with the Community Infrastructure Levy (CIL) Regulations 2010.
104. As I noted under *Preliminary and Procedural Matters*, the supplementary undertaking provides, amongst other things, for the contribution at issue, but whether or not the appellant could be bound by it would be dependent on my concluding that it does meet the relevant CIL tests; and this in large

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<sup>40</sup> ID61 paragraph 68

<sup>41</sup> CD10.28

part depends on the policy justification. I have opposing submissions from the appellant and the Council.

105. Plainly, the proposed modification of policy H3 of the emerging local plan is not a matter for me to condone or condemn as necessary or not. It says what it says and the policy will be adopted with or without modification in due course. My concern is the meaning of the existing Local Plan Policy H11.
106. The appellant contends that the facts that the committee report indicated policy compliance as an explicit consequence of provision of 50% affordable housing on the Use Class C2 portion of the site (and made no mention of Use Class C3 accommodation in this context) points to an understanding on the part of the Council that the policy H11 does not, and is not intended to, encompass extra-care housing.
107. That is a reasonable supposition on the face of it and, from a consistency (and possibly fairness) point of view, uncontentious. The Council's stance in this inquiry does seem a little opportunistic but, on the other hand, it submits that its previous approach, if unfortunately incorrect, is irrelevant nonetheless. It is effectively submitted that, going back to basics, what matters is what the policy says. It is not for me to go behind the wording of the policy and its explanation or ultimately take any sort of moral stance on the Council's late demand and I therefore concur with Mr Connah's proposition in that respect.
108. Nor is the definitive legal interpretation of the policy a matter for me. I am constrained and inescapably required, however, to prefer one position or the other if I am to lend weight or not to the undertaking given, as the case may be.
109. 'Housing' is not defined in the Local Plan (or in the Framework). Policy H11 refers to affordable housing, as defined both in the policy and the plan glossary. Neither definition refers to Use Class C3. (Nor does the more comprehensive definition in the Framework.) Perhaps unsurprisingly, no party explicitly suggests that assisted/supported living apartments or extra-care housing is not actually 'housing' in the commonly understood broad sense of the word. Part C of the Use Classes Order encompasses Hotels (C1), Residential Institutions (C2), Secure Residential Institutions (C2A), Dwellinghouses (C3) and Houses in Multiple Occupation (C4).
110. Policy H11 states that... "*an element of affordable housing will be sought as part of residential development schemes*"...Paragraph 5.92 admits the principle of off-site financial contributions, albeit this is explanation not policy.
111. Extra-care housing, as distinct from the long established concept of simply sheltered housing, is a relatively recent concept and planning policy tends to evolve over time to address market changes. I can fully appreciate why the (existing) Local Plan, on which work was initiated around the turn of the century, does not explicitly address extra-care housing. Whether it should have done so, or whether indeed the emerging plan should do so is not especially relevant for present purposes. The more pertinent question, it seems to me, is whether the application of policy H11 to extra-care housing is precluded by its own terms.
112. I do not consider that to be the case. The policy is cast in terms of "residential development schemes" – not 'dwellinghouses' or C3 uses. It cannot be

reasonably argued, to my mind, that what is proposed to include a (Use Class C2) "residential institution" (as defined in the UCO) comprising extra-care apartments for essentially independent living, is not part and parcel and an essential and integral part of the particular residential development scheme at issue as applied for. Even though a nursing home, a hospital, a residential school, college or training centre would also fall within the C2 use class, the assisted/supported living apartments proposed in this case are without doubt intended to be residences for individual occupiers in much the same way that conventional apartments in a block, for example, or indeed sheltered housing with no specific care element, would be.

113. Nor is it the case that the policy H11 requires 50% affordable or none at all. It is explicitly the case that up to 50% affordable will be sought and it does not seem unreasonable in principle that different percentages should be negotiated on different elements of the same residential scheme, as these may well be separately accounted for, for viability purposes, within the context of the scheme overall. The justification for the 10% opted for in those terms is not a matter that need specifically concern me for present purposes. The relevant parties are satisfied in this case that 10% is the figure to which the proposed financial contribution relates.
114. For all the above reasons, I do not consider that the terms of the policy preclude its application to extra-care housing and the fact that PPG<sup>42</sup> now advocates that housing for older people, including residential institutions in Use Class C2, should be counted by local planning authorities against their housing requirement (whilst in many respects a separate point) adds some weight to the generality of the conclusion that a "residential development scheme" must include the extra-care element at least.
115. Having concluded that the application of policy H11, on its face, to extra-care housing is not precluded by its own terms, I consider that it can be said to encompass it, as the Council has argued. The weight to be accorded to the appellant's undertaking in this respect is a separate matter to which I return.

### *Biodiversity*

116. On the basis of the survey submitted with the application and the response of specialist bodies, the Council raises no objection on biodiversity grounds, taking the view that planning conditions and the need for reserved matters approval would provide adequate safeguards to facilitate policy compliance.
117. TRG expresses concerns about the thoroughness of the original ecological appraisal, albeit this was carried out by professional ecologists using tried and tested techniques that are the industry norm and scoped in agreement with the OCC Ecologist Planner.<sup>43</sup> This appraisal includes a botanical survey conducted in June 2014.<sup>44</sup> This concludes that most of the site is species-poor semi-improved grassland occasionally grazed by sheep, but that part of the south east corner has higher botanical diversity. The generality of that was evident on my first visit to the site.

<sup>42</sup> Reference ID: 3-037-20150320

<sup>43</sup> Evidence of Mr Wigglesworth paragraph 2.5

<sup>44</sup> CD1.16 Appendix EDP 1

118. Partly in response to TRG's claims, a further botanical survey of the grassland was undertaken in June 2016.<sup>45</sup> This confirmed the generality of the original survey but with the notable exception of identifying 3 species specifically protected by virtue of s13 and Schedule 8 of the Wildlife and Countryside Act 1981, namely Cotswold penny-cress (*Thlaspi perfoliatum*), Downy woundwort (*Stachys germanica*) and Meadow clary (*Salvia pretensis*). With the exception of the Cotswold penny-cress I was able to observe the plants on my first site visit, but I have no reason to doubt that it exists at the location indicated.<sup>46</sup>
119. The plants were readily located at the time of the second botanical survey, partly because small protective enclosures had been erected around them.<sup>47</sup> It is not entirely clear why all three were overlooked in June 2014.<sup>48</sup> Be that as it may, they are there and it is an offence under s13 of the Act to intentionally pick, uproot or destroy them unless the act is demonstrably "an incidental result of a lawful operation and could not reasonably have been avoided".
120. The appellant's evidence is very clear to the effect that the species would not be expected to occur on the site because the land is not a long-established unimproved pasture.<sup>49</sup> It would have proved virtually impossible to definitively investigate their growth circumstances on my site visit without destroying the plants. Whether the species arrived by way of wind, for example, or through the activities of birds or animals cannot be ascertained.
121. The TRG witness, despite his formidable knowledge of natural history and species identification, was himself unable to say with any certainty which was the most probable scenario and was genuinely puzzled. Having positively identified the species, however, he had been at commendable pains to protect them from grazing and other sources of damage by the use of the enclosures and by the periodic removal of immediately competing grasses and the like.
122. Ultimately, however, the existence of the species on the site need not be an impediment to the implementation of planning permission because the species, including authorised translocation, could be accommodated in the context of detailed design and approval of reserved matters, the implementation of which would constitute a lawful operation.
123. Therefore the existence of the protected species would not be sufficient reason of itself to withhold planning permission, either in the interests of biodiversity or through conflict with relevant law.
124. More generally, TRG's evidence on biodiversity matters is an informative supplement to that of the appellant but cannot be compared side by side with it owing to different and less appropriate methodologies. Clearly the recording of species on a systematic basis over a prolonged period will show that many species, especially those capable of moving about on their own accord, such as birds and insects, is likely to suggest a richness associated with the site and, importantly, its surroundings that more standardised periodic surveys of the site itself might underplay; but the key issue in planning decisions is habitat loss so as to significantly harm biodiversity overall, including threats to protected species.

<sup>45</sup> Evidence of Mr Wigglesworth Appendix 1 paragraph A1.2

<sup>46</sup> I was told that by that point in the summer its annual cycle is such that it would not be showing.

<sup>47</sup> Evidence of Mr Wigglesworth paragraph 2.32

<sup>48</sup> Ibid. paragraph 2.31

<sup>49</sup> Ibid. paragraph 2.33

125. Aside from the latter, there is credible evidence in this case to suggest that the south eastern extremity of the appeal site might be considered a 'habitat of principal importance'<sup>50</sup>, given its richness and history of non-intervention, but the weight of evidence in respect of the majority of the site supports the appellant's original conclusion that it is predominantly species-poor grassland.
126. Nature is intrinsically dynamic and responsive to circumstances and, given the balance of uses outlined for the site as a whole, I have no reason to consider that, with appropriate care, the more important habitat within it cannot, in principle, be conserved, represented or reproduced within an overall scheme of reserved matters that provides for this. Nor do I doubt that, in principle, the interests of biodiversity can be protected by the ultimate creation of an environment exhibiting a net gain in biodiversity in comparison with the species-poor grazing land which characterises the major part of the site.
127. In concluding thus I am in fact supported by the view of the Council's ecologist<sup>51</sup> that a revised layout could, if the Council believed it to be necessary in discharge of its duty to conserve biodiversity<sup>52</sup>, retain much or all of the more species rich area. Notwithstanding the parameters plan now submitted, it would be open to the Council to insist on a layout that is more conducive to that in the context of reserved matters approvals. The layout is not fixed by the terms of the application and nor are the numbers of dwellinghouses and other units of accommodation. Moreover, although I acknowledge Mr Campbell's apparent scepticism regarding the feasibility of translocating the protected species identified in the main body of the site, I am conscious of the isolated and in all probability ephemeral occurrence of these species (bearing in mind the current protective measures seen to be necessary) and I have no convincing specific evidence that this could not be successfully undertaken.
128. For all the above reasons I am satisfied that, in principle, the proposed development need not have an unacceptable effect on biodiversity such that it would harmfully conflict with the development plan, the Framework, or indeed relevant protective legislation.

#### *Other Matters*

129. Numerous matters are raised by individual local residents and others opposing the scheme, albeit many are capable of being resolved by the imposition of planning conditions or are otherwise addressed by the terms of the planning obligations. Some are potentially capable of weighing against the principle of the proposed development and I consider these as necessary before turning more specifically to the conditions suggested and the obligations put forward.
130. The H & T SoCG demonstrates substantial agreement between the appellant and the highways authority as to the acceptability of the proposed development, both in highway safety terms regarding access to the site and similarly in terms of its effect on the loading of the wider network and the efficacy of the specific improvements committed to by the appellant. I am conscious of the various criticisms levelled by TRG across all those matters but, on the basis of the evidence and my own observations, being satisfied that the appellant's transport assessment and specific proposals relevant to

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<sup>50</sup> Natural Environment and Rural Communities Act 2006 s41

<sup>51</sup> Exhibit 3 to evidence of Mr Campbell

<sup>52</sup> Natural Environment and Rural Communities Act 2006 s40

highways and accessibility are adequate for purpose, I consider these to be marginal in their effect on the acceptability or otherwise of the proposal.

131. The Framework sets the relevant tests at paragraph 32 and while I have already considered in detail the issue of accessibility in terms of sustainable transport choices, I have no reason to consider that the access proposed to the site itself would be anything other than in accordance with acceptable standards of safety and suitability for all people, or that the residual cumulative impacts of the proposed development would be so severe as to require refusal of planning permission. The position of the highways authority on the latter point could not be clearer. The formally agreed H & T SoCG states, unequivocally, at paragraph 6... *"In terms of highway impacts the development proposals have been assessed robustly and will not have a severe impact upon highway capacity."* I have no reason to fundamentally disagree with that assessment.
132. The generality of that conclusion is not undermined or negated by references to specific events, notably those associated with a fashion show held at the Burford Garden Centre, which necessitated a letter of apology to local residents<sup>53</sup> and the difficulties apparently encountered on Shilton Road by the occasional low loader transporting a military helicopter.<sup>54</sup> There is no evidence or official representation to suggest that the latter could be a decisive consideration and in any event most highways are periodically subject to extraordinary disruptions, whether by reason of unusual loads, planned events or accidental occurrences of one sort or another.
133. The matters raised by the CPRE<sup>55</sup> are dealt with elsewhere in this decision or are otherwise not supported by authoritative expert evidence to the inquiry which may properly be accorded weight.
134. Burford Garden Centre (which, amongst other things rents the appeal site as part of its livestock farming operation) alleges<sup>56</sup> that the proposed development would inhibit its ability to trade to its full potential at an edge of settlement location (the nature of its operation being such that it requires ready access by car) both during the construction period, when visitors might well be deterred by delays associated with roadworks, and subsequently when residential traffic is generated.
135. There is no convincing evidence to show the latter to be at all likely and it is in any event unlikely that essentially leisure time visits by garden centre customers would coincide with peak flows from and to the housing proposed. It is even less likely that the nursing home would be at all problematic in that respect and while the extra-care housing might generate more traffic out of the morning and evening peak than it would during it, it is not credible in my estimation to conclude that this would significantly discourage custom at what appears to generally acknowledged as a garden centre of considerable repute.
136. Notwithstanding that reputation, there is no firm evidence to suggest that its promoted image of rural linkage would be materially harmed by the loss of access to the grazing land within the appeal site. Nor is there any basis in evidence to support the contention that customers would, in any large

<sup>53</sup> ID8

<sup>54</sup> ID25

<sup>55</sup> ID3 & ID44

<sup>56</sup> ID17

measure, be deterred from buying pot plants by the introduction of speed cushions on Shilton Road.<sup>57</sup>

137. I am more sympathetic to the argument that roadworks could be disruptive, and there does seem to be an evidential basis for concluding that sales could be temporarily reduced by delays on the highway as a consequence of such operations. However, that is no different in principle to situations faced by countless businesses when highway works are initiated, whether in the way of necessary improvements by the relevant highway authority or in the way of works to support individual schemes of development. It is for all concerned to practically anticipate, manage and minimise such disruption and its consequences. It is not generally held to be a potentially decisive planning harm.
138. In any event the garden centre does not attempt to maintain that the proposed development is an existential threat. If that were the case it is improbable in any event that it would even contemplate the scale of expenditure that major new access works direct to the A40 (which it says it will initiate if the appeal is allowed<sup>58</sup>) would involve. The merits of such works are not a matter for me, although I note that OCC is said to be agreeable in principle.
139. In the absence of more specific financial information and authoritative projections, I can accord only very limited weight to the stated concerns of the garden centre regarding potential business impact.
140. It is regrettable that the appellant's initially high hopes of reaching a practical accommodation with Burford Golf Club in respect of the relationship between the ultimate layout of the proposed development and the existing configuration of fairways were not realised by the close of the inquiry. Having heard the evidence of the club's adviser, regarding the tee for the sixth hole in particular, and having visited the course at its interface with the appeal site, I am nevertheless satisfied that measures can be put in place, both temporary pending landscape maturity, if necessary, and permanent as integral design features, to safely manage the relationship between the existing and proposed uses.
141. Such measures are commonplace and varied according to circumstances and I have been presented with no evidence to suggest that, in principle, there cannot be a practical solution to the golf club's understandable concern. It seems to me that the reserved matters approval process would be the most appropriate forum for resolving any difficulties that could potentially arise. Again, this is not a matter to which more than limited weight may reasonably be accorded.

### *The planning obligations*

142. The OCC obligation is supported by a detailed written justification<sup>59</sup> covering the tests of necessity, proportionality and relatedness set out in Regulation 122 of the CIL Regulations and a statement<sup>60</sup> confirming compliance with

<sup>57</sup> ID17 paragraphs 5.1 – 5.3

<sup>58</sup> ID17 paragraph 4.11

<sup>59</sup> ID58

<sup>60</sup> ID11

Regulation 123 concerning the maximum number of pooled contributions allowable in any particular case.

143. In summary, it provides for a staged financial contribution towards the expansion of Burford Primary School based on published formulae, a staged financial contribution to sustain and enhance the new 233 bus service between Burford and Witney via Carterton now running past the appeal site and a financial contribution in respect of bus stop infrastructure on Shilton Road to serve the development, a limited term contribution towards the monitoring of the travel plan specifically, monies to implement the Traffic Regulation Orders in respect of the highway works to calm traffic on Shilton Road and provide a signalised crossing of the A40. The obligation requires the off-site highway works specified therein ('Principal', 'Preparatory and Ancillary' and 'Amenity and Accommodation') to be implemented and, finally, a miscellaneous sum of £2,250 to be paid towards the monitoring of the obligation.
144. The latter has previously been a matter of contention and is in this case. Although the agreement is not entirely straightforward in that it is a potentially fluid entity, in view of staged payments and the like, and the fact that the eventual number of units of accommodation is not fixed at this stage, it is not in my view so extensive or complex that it would require extraordinary effort over and above the normal administration of the OCC area. Whilst I acknowledge the submissions of the OCC's Infrastructure Funding Manager<sup>61</sup>, which addresses relevant case law<sup>62</sup>, I am not persuaded in the light of that case law, of the merits of the general monitoring provision in respect of this particular development proposal and it is in my view unnecessary in terms of planning acceptability, in this instance, to underwrite the means by which implementation of the binding agreement will be monitored. On that basis, the contribution is not justified in terms of the CIL regulations.
145. Bearing in mind the reasoning of the statement concerning the obligation as a whole, I have no reason to question the compliance of the remainder of its provisions. In my view, with the exception of the general monitoring contribution, all its provisions satisfy the relevant tests and may therefore be accorded weight in the planning balance.
146. The supplementary obligation satisfies the relevant tests in my view and may therefore be accorded weight in its entirety. This is because the package of necessary works to improve conditions for pedestrians are logically incomplete if the omission of a dropped kerb to the north side of Barns Lane identified by TRG were not to be rectified; and I have concluded that Local Plan policy H11 is not precluded on its own terms from being applied to extra-care housing, best provided for off-site in West Oxfordshire through the services of OCC. The contribution offered is in my view logically required by current policy, the reduced percentage contribution agreed is not disproportionate in the circumstances, and the contribution is directly related to the residential scheme proposed in similar fashion to the requisite provisions for general purpose affordable housing.
147. The WODC obligation is supported by a statement<sup>63</sup> demonstrating compliance with both CIL Regulation 122 and CIL Regulation 123. It provides for a

<sup>61</sup> ID58 Annex 2

<sup>62</sup> *Oxfordshire County Council v SSCLG and others* [2015] EWHC 186 (Admin)

<sup>63</sup> ID54

formula based contribution towards improvements to the leisure centre at Carterton, which is sufficiently close by and accessible to experience additional pressure from the occupiers of the new housing proposed, more local leisure facilities within Burford, the laying out of a local equipped play area within the development itself to provide for the needs of children living there and for open space more generally to serve the site to be managed according to an agreed scheme and under the auspices of a management company. It provides that 50% of the conventional housing on the site shall be affordable to specifications and terms of occupation to be agreed with the Council. Finally, it puts in place arrangements to limit the occupation of the extra-care housing and care to qualifying persons, as defined, and seeks to ensure a defined minimum standard of care and facilities. In short, it defines that component of the development concerned with specialised accommodation for the elderly and helps to ensure its ongoing identity within the development as a residential institution or institutions within the C2 use class.

148. Bearing in mind the reasoning of the Council's compliance statement I have no reason to consider that any of the provisions in the WODC obligation fail to satisfy the relevant tests of necessity, proportionality and relatedness or that any of the provisions to which Regulation 123 would apply would be precluded from consideration for that reason. In my view, all the provisions of the obligation may legitimately be accorded weight in the planning balance.

#### *Conditions*

149. Various iterations of the draft potential planning conditions discussed have been submitted, but for the avoidance of doubt I refer now to the latest suggested conditions (SC), produced following discussions at the inquiry.<sup>64</sup> I consider them having regard to PPG and the tests of relevance, necessity, precision, enforceability and reasonableness. In the interests of satisfying those tests, some minor adjustment to wording is required in some instances. Some of the SC cannot be justified in those terms and would therefore need to be omitted.<sup>65</sup>
150. SC1, which would define the reserved matters, necessarily reflects the position that the development naturally falls into and is likely to be implemented in distinct phases corresponding to the parcels of land to be developed for the different uses. SC2 would reduce the time for submission of reserved matters, reflecting the need for urgent action to address the housing land supply and the role of that in justifying the proposal itself.
151. SC3 would necessarily limit the maximum number of units in each component of the proposed development to that applied for, reflecting the basis upon which the proposal has been assessed. SC4 would be complementary to the planning obligation provisions concerning the nature of the extra-care housing and is needed to define the permission for the avoidance of doubt.
152. SC5 would ensure a prompt start on the general purpose housing whilst reflecting the longer timescale likely to be required to fully engage an operator or operators for the more specialist accommodation for the elderly,

<sup>64</sup> ID67

<sup>65</sup> It should be noted that, owing to the need for further changes, omissions and re-ordering, the SC numbers used below do not necessarily correspond to those in the annex to this decision.

which would be a more complex development proposition than the general purpose housing.

153. SC6 is required to define the permission and in the interests of good planning should make clear that the parameters plan (as its name suggests) constrains rather than necessarily defines the ultimate layout and design of the development. This would allow for necessary variation to achieve design excellence and other objects whilst safeguarding important principles such as the 6.6m height limitation in the southern part of the site.
154. SC7 would be required to indicate the scope of the landscaping details required and to ensure that it would be promptly implemented and securely established. SC8 would be required to ensure prompt implementation of the robust landscape treatment required at the southern boundary and to ensure robust landscape treatment along the Shilton Road frontage. SC9 would be necessary to ensure control of the levels of the buildings across the site.
155. SC10 would be necessary to safeguard and enhance biodiversity, whilst SC11 and SC12 concerning necessary archaeological investigations are best combined into a single condition. SC13 is queried by the appellant. However, this would be a large and comprehensive development on a green field site with residential institutions for the elderly at its heart and, from a public safety perspective, I can see that it is important to ensure from the outset the best possible conditions for the fire service should the need arise. On balance, in this instance, I consider a condition of this type to be necessary. However, it would be too onerous to prevent occupation of any dwelling pending agreement concerning the whole site as the residential institutions could well be designed after housing development has commenced and such a condition is not normally imposed on standard housing schemes. It should therefore relate only to the Use Class C2 elements so far as occupation is concerned.
156. SC14 concerns surface water drainage and flood risk and would be necessary and appropriate, as would a condition such as SC15 concerning foul drainage given the scale and greenfield nature of the development. However, a standard form of condition is most appropriate.
157. SC16 concerns the construction of the site access points and their ongoing maintenance to standard in the interests of highway safety. The condition would be necessary for highway safety and it is appropriate to prevent occupation of buildings in advance of such construction. SC17 would serve a similar function within the body of the site. SC18 concerning the finalisation and implementation of a travel plan to promote sustainable travel habits is a necessary and usual type of condition bearing in mind policy aims and the location of the site.
158. The site has historically been used for agriculture and, most recently, grazing. There is no evidence to suggest the presence of any significant contamination and I do not consider SC19 to be necessary. SC20 concerning construction, on the other hand, would be necessary for a development on this scale but the standard form of construction method statement, with some refinement to reflect site circumstances, is to be preferred.

159. SC21 would require a scheme of lighting to be approved for each parcel of development and would be necessary in view of the environmental and public safety implications. High speed broadband, on the other hand, raises no such planning considerations, being delivered through telecoms cabling and ducting which would be integral to any development of this sort. Notwithstanding the discussion at the inquiry and the importance in principle of encouraging universal access, I have no clear or compelling evidence to suggest that, in this instance, a strategy to facilitate its availability is a necessary pre-requisite of development and it has no significant implications for safety or amenity. It would be unduly onerous to make the developer hostage to third party performance and in any event from a commercial point of view it would be in the developer's best interests to prevail upon providers to undertake any necessary upgrades for the area. I agree with the appellant that SC22 is not necessary.

### *Planning Balance and Conclusion*

160. There is much common ground between the appellant and the Council to inform the planning balance, notably that the policies in the local plan relevant to the supply of housing are not up-to-date, inter alia because the Council is unable to demonstrate a five year supply of deliverable housing sites for the purposes of paragraph 49 of the Framework and that, accordingly, the so-called 'weighted presumption' of paragraph 14 of the Framework is engaged. I have no reason to take an alternative view and hence that presumption is the essential basis for my decision.
161. There is agreement between these parties on the magnitude of objectively assessed needs for housing, if not their precise derivation, but no agreement as to the magnitude of the shortfall in housing supply those needs give rise to, the reasons for those differences having been summarised above. I have perforce been led to the conclusion, for the reasons I have given, that at around 3 years' supply, possibly more, possibly less in reality, the housing land available, on the balance of probability, is only about 60% of what it should be to satisfy the minimum requirement of Framework policy in this respect.
162. The shortfall is therefore not marginal but substantial in any event and, given the general national situation which underlies the Framework's intention to boost significantly the supply of housing, and that express intention specifically, I accord substantial weight to it.
163. Clearly that cannot be the end of the matter. It is no part of Framework policy to override all other considerations in pursuit of housing growth, but rather the specific test of sustainable development articulated in paragraph 14 which requires that, unless material considerations indicate otherwise,<sup>66</sup> permission should be granted unless "*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies<sup>67</sup> in this Framework indicate that development should be restricted*".
164. The site does not engage any policies in the inclusive list exemplifying the specific restrictions the Framework has in mind. Nor does it substantially engage any other Framework policies which might otherwise serve to inhibit

<sup>66</sup> Footnote 10 to Framework

<sup>67</sup> Footnote 9 to Framework

development. For the reasons I have given, I do not consider the site itself to be 'valued landscape' in terms of paragraph 109 of the Framework, whatever may be said of the broader landscape adjacent to it. Nor do I consider, despite the uncertainty over precise grading, that the loss of farmland may be considered significantly harmful in terms of paragraph 112 of the Framework. It is grazing land of limited extent and I have no evidence that its economic benefits are especially significant in agricultural terms, notwithstanding that the Burford Garden Centre clearly values the ability to graze rare breed sheep on it as part of its livestock farming operation.<sup>68</sup>

165. There would be harm temporarily experienced from within the landscape to the south, primarily through the visibility of massed building on elevated ground within a vista characterised at present largely by what is currently perceived as a wooded fringe to Burford beyond the more open limestone wolds landscape. However, the harm is capable of being effectively mitigated by reduced maximum building heights along the southern margin and a robustly implemented and managed scheme of planting which would have the potential over time to assimilate the buildings within the perceived woodland environment by virtue, if so desired, of completely screening it. By such means potentially harmful conflict with the development plan and the Framework can be overcome. Moreover, Burford south of the A40 is quite distinct in character from the historic core, whilst being part of the town nevertheless, and for the reasons I have detailed I do not consider that the proposal would unacceptably compromise or fail to respect local distinctiveness and the established settlement pattern.
166. The site is towards the margins of what might generally be regarded as a convenient walking distance to the centre of Burford, bearing in mind also the steep return via The Hill, but it is not so remote that there is effectively no reasonable choice for most people and there would be alternatives to the use of the car. For this reason, and those I have given in respect of the more specialised accommodation for the elderly, bearing in mind the range of measures proposed by the appellant, I do not consider the location of the site, to be intrinsically unsustainable so as to make it unacceptable in development plan or Framework policy terms.
167. Notwithstanding the existence of isolated rare plants protected by statute and some grassland habitat at the south eastern corner of the site which merits careful treatment in the interests of biodiversity, I do not consider that this consideration presents, in principle, an obstacle to development provided appropriate mitigation is designed into the reserved matters that would require specific approval by the Council; and I am conscious that the Council itself raises no fundamental objection on biodiversity grounds.
168. All in all, there are no potential conflicts with development plan policies, to the extent that they may currently be accorded full weight, which cannot be adequately overcome through conditions or obligations as the case may be. The emerging development plan as embodied in the TCLP, carries limited weight only, including the proposed spatial distribution of new housing, albeit the 'direction of travel' is fairly clear. However, the Council accepts that development on greenfield sites on the edge of settlements is a necessary part

<sup>68</sup> ID17 paragraph 5.1

of meeting its district wide housing requirements now and that these are not provided for at present in terms a five year supply of deliverable sites. Consequently, I accord little weight to the existing Local Plan policies H4 and H7 which might otherwise restrict development in such locations. Policy H7 is out-of-date by virtue of paragraph 49 of the Framework and not consistent with it in the sense that it would preclude implementation of important policies within it to deliver housing development according to objectively assessed needs. H4 is in any event now accepted by the Council as not being directly relevant in principle to the proposal<sup>69</sup> and I have no reason to disagree. Given my conclusion on policy BE2, it follows that H2 would be complied with, given the equivalence of the relevant provisions acknowledged by the Council.<sup>70</sup>

169. The engagement of the presumption in favour of sustainable development requires that the potential benefits of the proposal are weighed against potential harm, which in this case would be limited and in the main of limited duration, meriting correspondingly limited weight, and I consider such benefits below.
170. The social and economic benefits of developing housing to meet needs are integral to the policies of the Framework, which embodies the imperative to significantly boost supply. What is proposed here is consistent with that general aim. Moreover, 50% of the conventional dwellings on the site would be affordable and some funds would be generated, bearing in mind my conclusion on policy H11 of the Local Plan, for affordable extra-care accommodation elsewhere in the Council's area. Given the demographic profile of the population nationally and locally and the lack of comparably suitable accommodation in Burford, the extra-care housing proposed represents a substantial benefit within the Framework's overall aim of delivering a wide choice of high quality homes. Although occupancy cannot be prescribed, it is reasonable to surmise that local people wishing to move into that form of accommodation would avail themselves of the opportunity if able to do so, thereby freeing up family houses for others.
171. Likewise the nursing home element represents a significant benefit in the context of the Framework aim to promote sustainable, inclusive and mixed communities and, as a general principle, providing for the elderly in terms of specialist accommodation is supported both by the Framework and PPG.
172. Overall, quite apart from the economic benefits to be derived from housing development in general, and the more localised benefits of increased investment in the town, the social benefits in this case to be derived from the affordable and specialist elements would be considerable and merit substantial weight in the context of national policy and very considerable identified local need. All the housing proposed, whether affordable or open market, would contribute importantly to meeting the current shortfall experienced in West Oxfordshire.
173. I also accord some, albeit not of itself decisive, weight to the social benefits of improved conditions for pedestrians along Shilton Road and the easier and safer crossing of the A40 which is to be provided, bearing in mind that the full package of highway works is necessitated by the development in any event.

<sup>69</sup> ID61 paragraph 9

<sup>70</sup> Ibid.

174. The environmental benefits are less clear cut and, to the extent that they exist, much less pronounced than the principal social and economic ones I have identified in the sense that the site contributes pleasantly to the environment of and approach to the southern margins of Burford now. Considerable mitigation, both visually and in terms of biodiversity is necessary to make the proposal acceptable but, for all the reasons I have given, I am confident, subject to appropriately good design in the context of reserved matters submissions, that the development can over time be made harmonious with adjoining uses and that it can be visually assimilated within the sylvan fringe of Burford as perceived from viewpoints to the south, so as to avoid conflict with relevant development plan and Framework policy. Specific elements of biodiversity importance can be catered for and overall there is likely to be some enhancement in this respect.
175. I have taken all other matters raised into account, including the numerous references to case law and other appeal decisions, but none alter the overall thrust of my reasoned conclusion concerning the principle of the proposed development, namely that it cannot be concluded, on balance, that any adverse effects of granting planning permission, including conflict with policy H7 of the Local Plan, would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.
176. On that basis, the proposed development is sustainable and, as there are no material considerations identified that would require an alternative outcome<sup>71</sup>, this leads me to the overall conclusion that the appeal should be allowed.

*Keith Manning*

Inspector

#### **Annex: Schedule of Conditions**

- 1) Details of the layout, scale, appearance and landscaping, including boundary treatments (hereinafter called "the reserved matters") for each parcel of the development shall be submitted to and have been approved in writing by the local planning authority for that parcel of development before any development takes place within that parcel and the development of that parcel shall be carried out as approved. All such parcels shall be defined on a plan to be submitted to the local planning authority for approval in writing and shall separately comprise the areas to accommodate the residential dwellings (Use Class C3), the extra care/assisted living accommodation and the care home hereby approved.
- 2) 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.
- 3) The residential development parcel or parcels (Use Class C3) hereby permitted shall begin not later than one year from the date of approval of

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<sup>71</sup> Footnote 10 to the Framework

- the reserved matters for that parcel or parcels and the extra care/assisted living accommodation and care home shall begin not later than two years from the approval of the reserved matters for the relevant parcel of development in each case.
- 4) The development hereby permitted shall be limited to a maximum of 91 dwellings (50% affordable); up to 78 assisted living units and a care home with up to 90 bedrooms.
  - 5) The assisted living accommodation and care home hereby permitted shall be used for purposes falling within Use Class C2 of the Town and Country (Use Classes) Order 1987 (as amended), and for no other purpose.
  - 6) The development hereby permitted shall be carried out in accordance with the Location Plan (Drawing ref. SH/181428/001) hereby approved and within the limits, including height limits, indicated on the Parameters Plan (Drawing ref. 3005-001 Rev. D) hereby approved.
  - 7) Reserved matters submissions for each parcel of the development shall include a comprehensive hard and soft landscaping scheme for that parcel of the development. The scheme shall include: the location and details of trees and hedgerows to be retained (within or adjoining the site), together with details for their protection during construction (in accordance with BS 5837:2012 or any replacement thereof); retention, repair and rebuilding of existing natural dry stone walls, location of new dry stone walls, except where removal is necessary to facilitate the means of access; details of all proposed planting areas and plant species, numbers and sizes; all proposed boundary treatments and means of enclosure; surfacing materials, including all surfacing to footpaths within the site; and any mounding or other landscape features to be introduced. The scheme shall have been fully implemented as approved by the end of planting season immediately following completion of that parcel of the development. In the event of any of the trees or shrubs so planted dying or being seriously damaged or destroyed within 10 years of the completion of the development, new trees or shrubs of equivalent number and species, shall be planted as a replacement.
  - 8) Prior to the commencement of development, details of the "buffer planting" and "frontage planting" shown on plan EDP2283/31c shall be submitted to and approved in writing by the Local Planning Authority. Details of the "buffer planting" and "frontage planting" shall be in general accord with the principles set out on the Landscape Proving Plan Layout (EDP2283/14f), and include provision for the planting of semi-mature trees and details of the management of the planting and aftercare of the buffer planting. The Landscaping Scheme for the "buffer planting" (as shown on drawing EDP2283/31c on the southern boundary) shall be implemented in accordance with the approved details and be completed prior to the end of the first season following the start of the development. The "frontage planting" shall be carried out in accordance with the approved details in accordance with a programme to be submitted to and approved in writing by the local planning authority.
  - 9) No parcel of development shall commence until plans showing the existing and proposed ground levels and finished floor levels of all proposed buildings within that parcel of development 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 be carried out in accordance with the approved details.

- 10) No development shall take place until a ten year Ecological Management Plan has submitted to and approved in writing by the local planning authority. The Management Plan will include details of mitigation and enhancement, as set out in the Ecological Appraisal submitted with this application and shall include provision for translocation of any plant species listed in Schedule 8 of the Wildlife and Countryside Act 1981. The Management Plan will also contain details of how the enhancements to biodiversity on site will be maintained in the long term, with particular reference to the creation of species-rich wildflower grassland and hedgerows and the long-term management of the green space so as to ensure a net gain in biodiversity.
- 11) Prior to the commencement of the development a professional archaeological organisation shall prepare an Archaeological Written Scheme of Investigation and Mitigation, relating to the application site area, which shall be submitted the local planning authority for approval in writing and no development shall take place other than in accordance with the mitigation details as approved.
- 12) No part of the extra care/assisted living accommodation or care home shall be occupied until details of fire hydrants throughout the site, including the phasing and timing of their provision, have been submitted to and approved in writing by the local planning authority. Fire hydrants shall be provided in accordance with the approved details.
- 13) No development shall take place until a surface water drainage scheme for the site, based on the agreed Flood Risk Assessment & Drainage Strategy Report No: 14132/FRA01, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is completed. The scheme shall include:
  - The disposal of all surface water generated by the development by infiltration up to and including the critical 1 in 100 year storm event including a 30% allowance for climate change.
  - Provision for the future maintenance of the surface water drainage system.
- 14) None of the buildings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 15) No building shall be occupied until the junctions between the site and the Shilton Road, including visibility splays, have been constructed in accordance with the details for those two junctions shown on drawing W14132-601-P6. The approved visibility splays shall be kept free of any obstruction to visibility above a height of 1.2m.
- 16) No building shall be occupied until the vehicular accesses, driveways, car and cycle parking spaces, turning areas and parking courts that serve that building have been constructed, laid out, surfaced, lit and drained in

accordance with details that have been submitted to and approved in writing by the Local Planning Authority.

- 17) None of the buildings in any parcel of the development hereby permitted shall be occupied until a detailed Travel Plan (including provision for a travel information pack) for that parcel of the development, has been submitted to and approved in writing by the local planning authority. The Travel Plan or plans shall include a timetable for implementation; provision for monitoring and review; and any penalties for failure to meet the requirements of the Travel Plan. The Travel Plan or plans shall be implemented in accordance with the approved timetable and details and shall remain operative in accordance with the provisions of the Plan or plans.
- 18) No parcel of development shall take place until a Construction Method Statement for that parcel has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) access by construction vehicles
  - ii) vehicle routeing
  - iii) the parking of vehicles of site operatives and visitors;
  - iv) loading and unloading of plant and materials;
  - v) storage of plant and materials used in constructing the development;
  - vi) the erection and maintenance of security fencing;
  - vii) wheel washing facilities;
  - viii) measures to control the emission of dust and dirt during construction;
  - ix) measures to minimise disturbance from piling;
  - x) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - xi) delivery and construction working hours;
  - xii) a point of contact for complaints.

The approved Construction Method Statement for each parcel of development shall be adhered to throughout the construction period for that parcel of development.

- 19) No external lighting for any parcel of the development, other than within a private residential curtilage, shall be installed other than in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority for that parcel of the development.

\* \* \*

## APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY: Jack Connah of Counsel

He called

J Sacha DIP LA CMLI	Sacha Barnes Ltd
C Wood BA DipTP	Senior Planning Appeals Officer

FOR THE APPELLANT: Christopher Young of Counsel

He called

T Wigglesworth BSc (Hons) MSc MCIEEM	The Environmental Dimension Partnership
B Rosedale BSc (Hons) MSC (dist) CMLI AIEMA	The Environmental Dimension Partnership
Dr C Miele MRTPI IHBC	Montagu Evans
M Grist BSc (Hons) DipUD MCILT MCIHT	Jubb Consulting Engineers Ltd
T Watton BA DipTP MRTPI	RPS Planning and Development Ltd
J Stacey BA (Hons) Dip TP MRTPI	Tetlow King Planning
N Newton Taylor BSc (Hons) MRICS	Healthcare Property Consultants Ltd
N Freer MSc MRTPI	David Lock Associates Ltd

FOR BURFORD SHILTON ROAD RESIDENTS' ASSOCIATION & HELP PRESERVE  
BURFORD CAMPAIGN GROUP (Rule 6 Party)

A Bateson BSc (Hons) MRTPI MFSB	AB Planning & Development Ltd
J Campbell AMA	Local resident
H Jones BTEC HNC	HJV Transport Ltd

INTERESTED PERSONS:

J White	Mayor of Burford
T Gashe	Ferax Planning (for Burford Garden Centre)
D Cotterill	Chairman, Burford School Foundation
S Gidman BA Land. Arch.	Simon Gidman International Golf Course Architects (for Burford Golf Club)

B Dimmock-Smith Oxfordshire County Council  
& J White

## INQUIRY DOCUMENTS (ID)

- 1 Council's notification letter
- 2 Letter from the Hon. Mrs J A Cecil dated 11 July 2016
- 3 Statement from the west Oxfordshire CPRE
- 4 Transcript – *Bernard Wheatcroft Ltd v Secretary of State*
- 5 Appellant's opening statement
- 6 Council's opening statement
- 7 Opening statement for BSRRA & HPB
- 8 Letter from Burford Garden Company to local residents (with appended photograph of traffic event referred to)
- 9 Note on Cotswolds historic towns (with maps) – Dr C Miele
- 10 Extract - Inspector's report on West Oxfordshire Local Plan 2011
- 11 CIL Regulation 123 statement –Oxfordshire County Council
- 12 Decision APP/D3125/W/16/3133885 Milton-under-Wychwood
- 13 Draft Statement of Common Ground on general matters
- 14 Draft heads of terms for planning obligation (25 July 2016)
- 15 Statement on behalf of landowners (D Cotterill)
- 16 Aerial photographs of site/surrounds 1940s and 2000s
- 17 Statement on behalf of Burford Garden Company
- 18 'Key Stats' Census data for selected Cotswolds settlements
- 19 Accessibility comparison: appeal site and Doc 12 site (Milton)
- 20 Product range Burford Co-operative store
- 21 Accessibility comparison: appeal site and approved sites
- 22 Council's suggested conditions – first draft (with track changes)
- 23 Extract – BSRRA response to JUBB Transport Assessment
- 24 Oxford/London weekday train times
- 25 Photograph of low loader with military helicopter- Shilton Road
- 26 Email re additional housing allowed at Upper Rissington
- 27 Statement of Common Ground on planning: 23 August 2016
- 28 Statement of Common Ground on five year land supply: 28 October 2016
- 29 (Corrected) Statement of Common Ground on distances to town centre facilities: 18 October 2016 (Rule 6 Party/appellant)
- 30 Council's Housing Land Supply Position Statement October 2016
- 31 Council's Shilton Road (Inquiry) Position Statement
- 32 Council's Local Plan Monitoring Report 2016
- 33 Report to Council's Cabinet on the Local Plan: 19 October 2016
- 34 Draft Local Plan with proposed main and additional minor modifications highlighted by track changes: October 2016
- 35 Draft planning obligation to West Oxfordshire District Council
- 36 Draft planning obligation to Oxfordshire County Council
- 37 Email from Elizabeth Mortimer dated 10 October 2016
- 38 Letter from Carterton Town Council dated 5 October 2016
- 39 List of suggested conditions dated 28 October 2016
- 40 Final draft planning obligation to West Oxfordshire District Council
- 41 Final draft planning obligation to Oxfordshire County Council
- 42 Photograph of proposed development site: Local Plan Ref BC1b
- 43 Council's Garden Village bid document
- 44 Statement submitted by CPRE
- 45 Report to Council's Cabinet re Garden Village bid: 27 July 2016
- 46 Minutes of Council's Cabinet re Garden Village bid: 27 July 2016

- 47 Appellant's response to CPRE statement
- 48 Factual background to housing with care schemes with affordable elements referred to by Council
- 49 Replies to FOI request to Council ref. RD16097 re affordable housing
- 50 Plan agreed by appellant showing location of cherry picker and pegging out on site organised by Rule 6 Party
- 51 Summary of Appendix 2 to evidence of Mr Bateson
- 52 Houses approved in 'last four months'
- 53 Text of examination in chief of evidence of Mr Bateson
- 54 CIL compliance statement – WODC
- 55 CIL Regulation 123 compliance statement – OCC
- 56 Summary of planning obligation to OCC
- 57 Summary of planning obligation to WODC
- 58 Justification for OCC planning obligation requirements
- 59 Email from Mr Bateson 28/10/16 @ 16:24 with suggested planning conditions from R6 Party
- 60 Closing submissions for BSRRA & HPB
- 61 Closing submissions for the Council
- 62 Court transcript with summary: *Forest of Dean District Council v SSCLG & Gladman Developments Ltd* [2016] EWHC 2429 (Admin)
- 63 Court transcript with summary: *Cheshire East Borough Council v SSCLG & Harlequin (Wistaston) Ltd* [EWHC] 694 (Admin)
- 64 Court transcript with summary: *Daventry District Council v SSCLG & Gladman Developments Ltd* [2015] EWHC 3459 (Admin)
- 65 Closing submissions for appellant
- 66 Draft conditions with track changes, dated 11 November 2016
- 67 Final draft conditions document, dated 11 November 2016

## **CORE DOCUMENTS (CD)**

### **1. Application Documentation and Reports**

- CD1.1 Location Plan (drawing reference: SH/181428/001)
- CD1.2 Indicative Master Plan Parameters (drawing reference: 3005-001 Rev C)
- CD1.3 Indicative Site Plan (drawing reference: 3005-003 Rev C)
- CD1.4 Proposed Access & Pedestrian Improvement (drawing reference: W14132/601 rev P2)
- CD1.5 Covering letter dated 19 January 2015
- CD1.6 Covering letter dated 19 June 2015
- CD1.7 Planning Statement (dated January 2015)
- CD1.8 Design and Access Statement (dated October 2014)
- CD1.9 Vision Statement (dated June 2015)

- CD1.10 Statement of Community Involvement (dated January 2015)
- CD1.11 Flood Risk Assessment and Drainage Strategy (reference: 14143/FRA01)
- CD1.12 Transport Assessment (date June 2015)
- CD1.13 Travel Plan (date June 2015)
- CD1.14 Archaeological Desk Based Assessment (dated December 2014)
- CD1.15 Services and Utilities Report (reference: 14132/UTIL01)
- CD1.16 Ecological Appraisal (dated January 2015)
- CD1.17 Landscape and Visual Appraisal (dated June 2015)

### **Committee and Related Reports**

- CD1.18 Report to Uplands Area Planning Sub-Committee of 3 August 2015
- CD1.19 Minutes to Uplands Area Planning Sub-Committee of 3 August 2015
- CD1.20 Letter to Committee Members (dated 29 July 2015)
- CD1.21 Decision Notice

### **Updated Application Documentation and Reports**

- CD1.22 Revised Parameters Plan (drawing reference: 3005-001 Rev D)
- CD1.23 Revised Indicative Site and Landscape Masterplan (drawing reference: 3005-003 Rev D)
- CD1.24 Revised Proposed Access & Pedestrian Improvement (drawing reference: W14132/601 rev P6)
- CD1.25 Correspondence to Representors including revised Description of Development
- CD1.26 Correspondence to WODC 28 June 2016 including revised Description of Development

## **2. Appeal Documentation**

- CD2.1 Hallam Land Management Statement of Case
- CD2.2 WODC Statement of Case
- CD2.3 Burford Shilton Road Residents Association and Help Preserve Burford Campaign Statement of Case
- CD2.4 Statement of Common Ground: Highways and Transport
- CD2.5 **Now ID27** Statement of Common Ground: General Matters

### **3. Planning Policy Documentation**

#### **National Policy, Guidance and Ministerial Statements**

- CD3.1 National Planning Policy Framework (2012)
- CD3.2 National Planning Policy Guidance
- CD3.3 Laying the Foundations: A Housing Strategy for England; Department for Communities and Local Government, 21 November 2011.
- CD3.4 Fixing the Foundations: creating a more prosperous nation. Department for Communities and Local Government, July 2015
- CD3.5 Local Plans – Report to the Communities Secretary and to the Minister of Housing and Planning; Local Plans Expert Group; March 2016
- CD3.5a Local Plans – Report to the Communities Secretary and to the Minister of Housing and Planning [Extract]; Local Plans Expert Group; Appendices March 2016

#### **Development Plan**

- CD3.6 West Oxfordshire Local Plan 2011 – Adopted 2006
- CD3.7 Secretary of State Direction on Saved Local Plan Policies (2 June 2009)

#### **Emerging Local Plan**

- CD3.8 West Oxfordshire Local Plan 2031, Submission Document.
- CD3.9 West Oxfordshire Local Plan Examination Inspectors Preliminary Findings Pt 1
- CD3.10 West Oxfordshire Local Plan Examination Inspectors Preliminary Findings Pt 2
- CD3.11 LDF Update January 2016
- CD3.12 WODC Letter to Local Plan Inspector January 2016

#### **Other Policy Documents and Reports**

- CD3.13 Burford Town Plan 2011
- CD3.14 Burford Conservation Area Map
- CD3.15 West Oxfordshire Design Guide
- CD3.16 Draft West Oxfordshire Design Guide (2016)
- CD3.17 West Oxfordshire District Affordable Housing Supplementary Planning Document (April 2007)
- CD3.18 Affordable Housing Consultation Paper (November 2013)
- CD3.19 Oxford and Oxfordshire City Deal

- CD3.20 WODC Settlement Sustainability Report 2013
- CD3.21 West Oxfordshire Sustainable Community Strategy (2010)
- CD3.22 West Oxfordshire Council Plan (2016-2019)
- CD3.23 Department for the Environment Department of Transport, Reducing Transport Emissions Through Planning (1993)

#### **4. Documents Relating to Housing**

- CD4.1 Oxfordshire Housing Market Assessment 2007
- CD4.2 West Oxfordshire Housing Needs Survey 2008
- CD4.3 West Oxfordshire Housing Needs Assessment Update (DCA, 2011)
- CD4.4 Oxfordshire Strategic Housing Market Assessment Final Report (April 2014)
- CD4.5 An Analysis of West Oxfordshire's Future Housing Requirement 2011-2029. June 2014
- CD4.6 Validation of Objectively Assessed Housing Need. CCHPR. January 2015
- CD4.7 Report from John Hollis
- CD4.8 McDonald, N and Williams, P (2014) Planning for housing in England: Understanding recent changes in household formation rates and their implications for planning for housing in England. RTPI Research Report No.1
- CD4.9 West Oxfordshire SHLAA (June 2014)
- CD4.10 Eastleigh Local Plan 2011-2029 Inspectors report (11 February 2015)
- CD4.11 West Oxfordshire District Council Supporting West Oxfordshire's Ageing Population November 2012
- CD4.12 Oxfordshire Extra Care Housing Strategy
- CD4.13 Oxfordshire County Council; Market Position Statement: Care Homes. September 2014
- CD4.14 Oxfordshire County Council; Market Position Statement: Extra Care Housing. March 2014.
- CD4.15 Inspector's Interim Report on the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (26 May 2016)
- CD4.16 Planning Advisory Service: Technical Note on Objectively Assessed Need
- CD4.17 West Oxfordshire Future Housing Needs, Summay Report Prepared by RPS on behalf of Hallam Land (June 2016)

#### **5 Documents Relating to Landscape**

- CD5.1 Guidelines for Landscape and Visual Assessment, Third Edition. 2013
- CD5.2 Historic England Good Practice Advice in Planning Note 1: Conservation Area Designation, Appraisal and Management (Historic England, March 2011, republished 2016)
- CD5.3 Historic England Good Practice Advice in Planning Note 3: The Setting of Heritage Assets (Historic England, March 2015, republished July 2015)
- CD5.4 National Character Area profile 107: Cotswolds (NCA), (2014)
- CD5.5 West Oxfordshire Landscape Assessment (1998)
- CD5.6 Oxfordshire Wildlife and Landscape Study (OWLS), (2004)

## **6. Documents relating to Housing Land Supply**

- CD6.1 West Oxfordshire District Council Housing Position Statement (July 2015)
- CD6.2 Housing Land Supply Position Statement (February 2015)
- CD6.3 Annual Monitoring Reports (e.g. 2013-2014)
- CD6.4 Exeter Housing Market Area SHLAA Methodology (May 2013)
- CD6.5 Cheshire East SHLAA Update (February 2013)
- CD6.6 Land South of Witney Road, Long Hanborough – Statement of Common Ground (May 2016) APP/D3125/W/15/3129767 and APP/D3125/W/15/3139807
- CD6.7 Proof of Evidence of Chris Wood, Eynsham Nursery and Plant Centre (May 2016) APP/D3125/W/15/3136815
- CD6.8 Land North of Burford Road, Witney – Statement of Common Ground (Housing Land Supply) (January 2016) APP/D3125/W/15/3005737
- CD6.9 Lewes District Council and South Down National Park Authority, Strategic Housing and Economic Land Availability Assessment (SHELAA) – Main Report, October 2015.
- CD6.10 WOLP14: West Oxfordshire Local Plan 2031 Examination – Joint Statement of Common Ground, Housing Delivery at West Witney (North Curbridge) (October 2015)
- CD6.11 Proof of Evidence of Chris Wood, Station Road, Eynsham (February 2016) APP/D3125/W/15/3019438
- CD6.12 WOLP15: West Oxfordshire Local Plan 2031 Examination – Joint Statement of Common Ground, Housing Delivery North Witney (October 2015)
- CD6.13 WOLP16: West Oxfordshire Local Plan 2031 Examination – Joint Statement of Common Ground, Housing Delivery East Witney (October 2015)

- CD6.14 WOLP17: West Oxfordshire Local Plan 2031 Examination – Joint Statement of Common Ground, Housing Delivery East Carterton (October 2015)
- CD6.15 WOLP19: West Oxfordshire Local Plan 2031 Examination – Joint Statement of Common Ground, East Chipping Norton (October 2015)
- CD6.16 WOLP21: West Oxfordshire Local Plan 2031 Examination – Joint Statement of Common Ground, East Chipping Norton SDA (October 2015)
- CD6.17 WOLP25: West Oxfordshire Local Plan 2031 Examination – Joint Statement of Common Ground, North Witney SDA – Capacity
- CD6.18 Proof of Evidence of Richard Lomas relating to Housing Land Supply Issues, Station Road, Eynsham (February 2016)  
APP/D3125/W/15/3019438
- CD6.19 Appendices to Proof of Evidence of Richard Lomas relating to Housing Land Supply Issues, Station Road, Eynsham (February 2016)  
APP/D3125/W/15/3019438

## **7. Legal Cases**

- CD7.1 Stratford-upon-Avon v Secretary of State, JS Bloor and Hallam Land Management [2012] EWHC 2074 (July 2013)
- CD7.2 COURT OF APPEAL Decision (CO 4686 2013) on City and District Council of St Albans v The Queen (on the application of) Hunston Properties Limited Secretary of State for Communities and Local Government
- CD7.3 Hunston Properties v St Albans DC and Sec of State [2013] EWHC 2678 (September 2013) (Admin)
- CD7.4 Gallagher Homes Ltd and Lioncourt Homes Limited v Solihull MBC [2014] EWHC 1283 (Admin) April 2014)
- CD7.5 COURT OF APPEAL Decision (CO 17668 2013) on District Council of Solihull vs Gallagher Estates Ltd and Lioncourt Homes (17 December 2014)
- CD7.6 Satnam Millennium Ltd v Warrington Borough Council [2015] EWHC 370 (Admin) (February 2015)
- CD7.7 COURT OF APPEAL in Suffolk Coastal District Council v Hopkins Homes and Richborough Estates Partnership LLP V Cheshire East Borough Council & Secretary of State for Communities and Local Government [2016] EWCA 168.
- CD7.8 Borough of Kings Lynn & West Norfolk v SSCLG [2015] EWHC 2464 (Admin)
- CD7.9 Stroud District Council v Secretary of State [2015] EWHC 488 (Admin)

- CD7.10 West Berkshire District Council v Secretary of State for Communities and Local Government and HDD Burgfield Common Limited [2016] EWHC 267 (Admin) [16 February 2016]
- CD7.11 Bloor Homes East Midlands Limited v SoS for CLG v Hinckley and Bosworth Borough Council [2014] EWHC 754 (Admin)

## **8. Secretary of State Decisions**

- CD8.1 Secretary of State Decision and Inspector's Report concerning Land at Worsley, Manchester (July 2012) APP/U4230/A/11/2157433
- CD8.2 Secretary of State Decision and Inspector's Report concerning Homelands Farm, Bishops Cleeve, Gloucestershire (July 2012) APP/G1630/A/11/2146206
- CD8.3 Secretary of State Decision and Inspector's Report concerning Land South West of Alcester Road, Shotton, Stratford-upon-Avon (October 2012) APP/J3720/A/11/2163206
- CD8.4 Secretary of State Decision and Inspector's Report concerning Land between Station Road and Dudley Road, Honeybourne (August 2012) APP/H1840/A/12/2171339
- CD8.5 Secretary of State Decision and Inspector's Report concerning Land to the South of Berrells Road, Tetbury (February 2013) APP/F1610/A/12/2173305
- CD8.5a Secretary of State Decision and Inspector's Report concerning Land at Highfield Farm, Tetbury (February 2013) APP/F1610/A/11/2165778
- CD8.6 Secretary of State Decision and Inspector's Report concerning Land to the south of Shutterton Lane, Dawlish, Devon (September 2013) APP/P1133/A/12/2188938
- CD8.7 Secretary of State Decision and Inspector's Report concerning Land at Gotham Road, East Leake, Nottinghamshire (March 2008) APP/P3040/A/07/2050213
- CD8.8 Secretary of State Decision and Inspector's Report concerning Land adjacent to SIMS Metal UK, Long Marston, Peabworth (July 2014) APP/H1840/A/13/2202364
- CD8.9 Secretary of State Decision and Inspector's Report concerning Land at Pulley Lane, Newlands Road and Primsland Way, Droitwich Spa APP/H1840/A/13/2199085 and Land at North of Pulley Lane and Newland Lane, Droitwich Spa (July 2014) APP/H1840/A/13/2199426
- CD8.10 Secretary of State Decision and Inspector's Report concerning Land at Sketchley House, Burbage (November 2014) APP/K2420/A/13/2208318
- CD8.11 Secretary of State Decision and Inspector's Report concerning Land off Rilshaw Lane, Winsford, Cheshire (October 2015) APP/A0665/A/14/2229269

- CD8.12 Secretary of State Decision and Inspector's Report concerning Land at Sibford Road, Hook Norton, Banbury, (December 2015)  
APP/C3105/A/14/2226552
- CD8.13 Secretary of State Decision and Inspector's Report concerning Money Hill, Land North of Wood Street, Ashby de la Zouch (February 2016)  
APP/G2435/A/14/2228806
- CD8.14 Secretary of State Decision and Inspector's Report concerning Lowbrook Farm, Lowbrook Lane, Tidbury Green, Solihull (March 2016)  
APP/Q4625/13/2192128

## **9. West Oxfordshire Appeal Decisions**

- CD9.1 Land off Ashton Road, Bampton (December 2014)  
APP/D3125/A/14/2217185
- CD9.2 Land off Station Road Eynsham (May 2016)  
APP/D3125/W/15/3019438
- CD9.3 Land to the West of Fruitlands, Eynsham (May 2016)  
APP/D3125/W/15/3039143
- CD9.4 Land south of Witney Road, Long Hanborough  
APP/D3125/W/15/3129767 and Land at Riley Close, Long Hanborough  
(July 2016) APP/D3125/W/15/3139807

## **10. Other Appeal Decisions**

- CD10.1 Land north of Upper Chapel, Launceston (April 2014)  
APP/D0840/A/13/2209757
- CD10.2 Land between Leasowes Road and Laurels Road, Offenham, Worcestershire (February 2014) APP/H1840/A/13/2203924
- CD10.3 Mead Park, Bickington, Barnstaple (May 2015)  
APP/X1118/A/14/2224465
- CD10.4 Land adj. Gretton Road, Winchcombe (May 2013)  
APP/G1630/A/12/2183317
- CD10.5 Land off Elmwood Avenue, Essington (April 2013)  
APP/C3430/A/12/2189442
- CD10.6 Land to the north and west of Lucas Lane, Whittle-le-Woods, Chorley (September 2012) APP/D2320/A/12/2172693
- CD10.7 Land east of Springwell Lane, Whetstone APP/T2405/A/13/2193758  
and Land off Countersthorpe Road and Springwell Lane, Whetstone  
(August 2013) APP/T2405/A/13/2193761
- CD10.8 Land at Hill Top Farm, By-Pass Road, Northwich (September 2015)  
APP/A0665/W/14/3000528
- CD10.9 Land at Fountain Lane, Davenham, Cheshire (September 2015)  
APP/A0665/A/14/2226994

- CD10.10 Land off Cotes Road, Barrow upon Soar, Leicestershire (November 2015) APP/X2410/W/15/3004925
- CD10.11 Land off Bath Road, Leonard Stanley (July 2014) APP/C1625/A/13/2207324
- CD10.12 Land at Roycroft Farm, Bramshall Road, Uttoxeter (January 2015) APP/B3410/A/14/2218974
- CD10.13 Longbank Farm, Ormesby, Middlesbrough (March 2016) APP/V0728/W/15/3018546
- CD10.14 Land Between Iron Acton Way and North Road, Engine Common, Yate (April 2013) APP/P0119/A/12/2186546
- CD10.15 Land East of Groby Cemetery, Ratby Road, Groby (March 2015) APP/K2420/A/12/2181080
- CD10.16 Land at Manchester Road/Crossings Road, Chapel-en-le-Frith, High Peak (August 2012) APP/H1033/A/11/2159038
- CD10.17 Land east of Butts Road, Higher Ridgway, Ottery St Mary (December 2012) APP/U1105/A/12/2180060
- CD10.18 Former Pontin's Holiday Centre, Wall Park Road, Brixham, Devon (December 2011) APP/X1165/A/11/2145178
- CD10.19 Greetham Garden Centre, Oakham Road, Greetham (May 2015) APP/A2470/A/14/2222210
- CD10.20 Salisbury Landscape Limited, Boughton Road, Moulton, Northampton (June 2015) APP/Y2810/A/14/2225722
- CD10.21 Land off Field End, Witchford, Cambridgeshire (June 2015) APP/V0510/A/14/2224671
- CD10.22 Land adjacent to Cornerways, High Street, Twynning, Tewkesbury (July 2015) APP/G1630/W/14/3001706
- CD10.23 Land at Firlands Farm, Burghfield Common, Reading, Berkshire (July 2015) APP/W0340/A/14/2228089
- CD10.24 Walcot Meadow, Walcot Lane, Pershore, Worcestershire (August 2015) APP/H1840/W/15/3005494
- CD10.25 Land adjacent to 28 Church Street, Davenham, Cheshire (January 2016) APP/A0665/W/15/3005148
- CD10.26 Land at Park Farm, Rudheath, Northwich, Cheshire (May 2016) APP/A0665/W/15/3140241
- CD10.27 Land rear of 62 Iveshead Road, Shepshed (February 2016) APP/X2410/W/15/3007980
- CD10.28 Land off Manor Road, Stratford-upon-Avon (June 2012) APP/J3720/A/11/2153222

- CD10.29 Land at Tiddington Fields, Main Street, Tiddington (September 2007)  
APP/J3720/A/07/2037666
- CD10.30 Land at Bubb Lane, Hedge End, Eastleigh (May 2016)  
APP/W1715/W/15/3063753
- CD10.31 Land at Southwell Road, Farnsfield, Nottinghamshire (January 2016)  
APP/B3030/W/15/3006252
- CD10.32 The Severn & Wye Smokery, Chaxhill, Westbury-on-Seven (April 2013)  
APP/P1615/A/12/2179818, APP/P1615/A/12/2179821 and  
APP/P1615/A/12/2184311
- CD10.33 Porthpean Road, St. Austell, Cornwall (February 2015)  
APP/D0840/A/14/2222789

Richborough Estates