

## Appeal Decision

Inquiry held on 13-16 February 2018

Accompanied site visit made on 15 February 2018

**by M C J Nunn BA BPL LLB LLM BCL MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 April 2018**

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**Ref: APP/D3125/W/17/3182718**

**Land South of Oxford Road, Enstone, Oxfordshire, OX7 4NE**

- 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 Rosconn Strategic Land Ltd against the decision of West Oxfordshire District Council.
  - The application Ref: 17/00426/OUT, dated 8 February 2017, was refused by notice dated 30 June 2017.
  - The development was originally described as "outline planning application for the erection of up to 30 no dwellings (Class C3); and a new access off Oxford Road, with all other matters reserved".
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### Decision

1. The appeal is allowed and planning permission granted for an outline application for up to 29 dwellings and a new access off Oxford Road with all other matters reserved on land south of Oxford Road, Enstone, Oxfordshire, OX7 4NE, in accordance with the terms of the application, Ref: 17/00426/OUT, dated 8 February 2017, subject to the conditions set out in the attached Schedule.

### Preliminary Matters

2. The application is made in outline with all matters except access reserved for subsequent determination. In addition to my accompanied site visit, I made a number of unaccompanied visits to the site and its surroundings before, during and after the Inquiry.
  3. Revised illustrative plans, which indicate the intended form of the development, have been put forward by the appellant for consideration to replace those originally considered by the Council. The key differences in the revised plans are that the total number of dwellings has been reduced from 30 to 29, and some have been realigned to be parallel with Oxford Road, with consequent changes to layout and landscaping. Publicity was undertaken by the appellant, which included letters to those originally notified of the application, a newspaper advert, and a notice displayed at the site. Full details are provided in the *Public Consultation Summary (January 2018)*. The Council has confirmed no objection is raised to the appeal being determined on the basis of the revised plans.
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4. I am satisfied that those with an interest in the proposal have had sufficient opportunity to comment on the revised plans, which do not alter the substance of this outline scheme. I am also satisfied that having regard to the *Wheatcroft Principles*, no-one would be prejudiced by my assessing the appeal on the basis of the revised plans. Therefore, I have proceeded on this basis.
5. The Council's third reason for refusal relates to drainage. The appellant has put forward a revised approach to site drainage as detailed in the Flood Risk Assessment and Drainage Strategy dated 9 February 2018<sup>1</sup>. The Council has confirmed that its concerns have now been addressed and has withdrawn this reason for refusal.
6. The Council's fourth reason for refusal relates to the absence of legal agreements to mitigate the impacts of the development and to provide affordable housing. Two planning obligations have now been completed with the County Council (dated 13 February 2018)<sup>2</sup> and the District Council (dated 14 February 2018)<sup>3</sup>. As a consequence, the fourth reason for refusal has been withdrawn by the Council. I deal with the planning obligations in the body of my decision.

### **Main Issues**

7. Having regard to the above, the main issues are:
  - i. the effect of the proposal on the character and appearance of the area, including the landscape;
  - ii. the effect of the proposal on the significance of nearby heritage assets; and
  - iii. in the absence of a five year supply of deliverable housing sites, whether any adverse impacts of the development would significantly and demonstrably outweigh the benefits of the scheme; or whether specific policies indicate development should be restricted.

### **Reasons**

#### *Planning Policy Context*

8. The relevant legislation<sup>4</sup> requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The statutory development plan comprises the 'saved' policies of the West Oxfordshire Local Plan 2011, adopted in 2006 ('the Local Plan'). The Council's remaining reasons for refusal cite Policy BE2 (general development standards), Policy BE4 (open space within and adjoining settlements), Policy BE8 (development affecting the setting of a listed building), Policy NE1 (safeguarding the countryside), Policy NE3 (local landscape character) and Policy H2 (general residential development standards).
9. The National Planning Policy Framework ('the Framework') sets out the Government's planning policies and is a material consideration in planning

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<sup>1</sup> ID 1

<sup>2</sup> ID 18

<sup>3</sup> ID 16

<sup>4</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004

- decisions. Importantly, the Framework does not change the statutory status of the development plan for decision making. However, the Framework advises at Paragraph 215 that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.
10. The Local Plan is 'time expired' being designed to provide policy guidance up to 2011. That said, the mere age of a plan does not mean it loses its statutory standing as the development plan. Nonetheless, there is no dispute that the Council cannot demonstrate a deliverable five year supply of housing, as required by the Framework<sup>5</sup>. The Council is prepared accept that, in a worst case scenario, it can only demonstrate a 4.9 year supply of housing, although the appellant says it is much less than that. However, for the purposes of this appeal, the appellant has agreed to accept the Council's case. In addition, the Local Plan fails to make provision for housing beyond 2011, and so in that respect is out of date<sup>6</sup>.
  11. In these circumstances, the second bullet point of Paragraph 14 of the Framework is potentially engaged in this appeal. This is clear that where the development plan is absent, silent or out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. However, this so called 'tilted balance' in favour of granting permission may be dis-applied where specific policies in the Framework indicate development should be restricted<sup>7</sup>. I return to this matter in due course.
  12. Turning to policies cited by the Council, Policies BE2 and H2 are criteria based policies setting out general development standards. BE2 requires, amongst other things, that development should respect, and where possible improve the character and quality of its surroundings. It also states that development will only be permitted if the landscape surrounding and providing a setting for an existing village is not adversely affected, and that in the open countryside any appropriate development will be easily assimilated into the landscape, and wherever possible, be sited close to an existing group of buildings. Policy H2 requires development not to erode the character and appearance of the surrounding area, including public and private open space. The overall approach of these policies is generally consistent with the Framework and they can be given full weight in this appeal.
  13. Policy BE4 relates to open space and requires, amongst other things, that proposals for development within or adjoining the built up area should not result in the loss or erosion of an open area which makes an important contribution to the distinctiveness of a settlement, and/or the visual amenity or character of the locality. The second part of the policy requires that, when assessing any proposals which could affect existing open space, consideration will be given to the opportunity to remedy deficiencies in provision, and exchange the use of one site for another to substitute for any loss of open space.

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<sup>5</sup> Housing Land Supply Statement of Common Ground, signed 12 February 2018

<sup>6</sup> Statement of Common Ground, Paragraph 3.1

<sup>7</sup> Examples of such policies are given in Footnote 9 of the Framework

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14. The appellant contends that Policy BE4 is not of direct relevance to this appeal, and states that it is inconsistent with the Framework because it is not criteria based and could be applied to any open land that adjoins an existing built-up area, thereby imposing a 'blanket' landscape protection on all such land. However, the policy specifically refers to areas that make an 'important contribution' to a settlement's distinctiveness, and so provides a criterion for judging areas of open space. I do not find the overall approach to be in conflict with the Framework, and so the Policy can be afforded full weight.
15. Policy BE8 states that development should not detract from the setting of a listed building. Whilst it is generally consistent with the underlying aims of the Framework to conserve and enhance the historic environment, this policy does not accurately reflect the wording of the relevant legislation<sup>8</sup> nor does it reflect aspects of the Framework's approach to heritage assets, for example, in terms of weighing of public benefits. This limits the weight that can be accorded to this policy.
16. Policy NE1 requires proposals for development in the countryside to maintain or enhance the value of the countryside for its own sake, including its beauty, its character and distinctiveness. The Framework does not require protection of the countryside for its own sake, although it requires the planning system to contribute to protecting and enhancing the natural environment<sup>9</sup>, as well as recognising the intrinsic character and beauty of the countryside<sup>10</sup>. Therefore, it is partially consistent with the Framework and can be afforded moderate weight.
17. Policy NE3 states that development will not be permitted if it would harm the local landscape character of the District, and that proposals should respect and, where possible, enhance the intrinsic character, quality and distinctive features of the individual landscape types. The overall aims of the policy are generally consistent with the Framework, and it can be accorded full weight.

#### *Emerging Policy*

18. A new Local Plan is currently being prepared, but this has been subject to delays. The Council, in its remaining reasons for refusal, cites Policy OS2 (locating development in the right places), Policy H2 (delivery of new homes), Policy EH1 (landscape character), Policy EH3 (public realm and green infrastructure) and Policy EH7 (historic environment) from the emerging Local Plan.
19. I understand that the first sessions of the Local Plan Examination took place in November 2015. The Examination was subsequently suspended to allow further work to be undertaken to ensure a sound housing strategy. Proposed modifications were published for consultation and further Examination sessions took place in the summer of 2017. Arising from these sessions, further reports and modifications were forwarded to the Examining Inspector. The Inspector has recently issued a letter with his interim findings.

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<sup>8</sup> Planning (Listed Buildings and Conservation Areas) Act 1990

<sup>9</sup> Paragraph 7

<sup>10</sup> Paragraph 17

20. I acknowledge that the Examination is at a relatively advanced stage, and the Inspector has indicated that, subject to further modifications, the emerging Local Plan is likely to be capable of being found legally compliant and sound. All that said, and importantly, the Examination is not concluded and the consultation process on main modifications is still in progress. Further liaison is required with the Inspector in respect of the wording of some of the further modifications. Importantly, the Inspector has yet to produce his final report. In these circumstances, and in accordance with Paragraph 216 of the Framework, I consider only limited weight can be given to the Emerging Local Plan.

#### *Character and Appearance*

21. The appeal site forms a single, pastoral field that slopes southwards towards the River Glyme, forming part of its valley. The northern boundary, fronting the Oxford Road (A44), is enclosed by dry stone walling, vegetation and mature trees. 'Westbourne House', a detached residence, lies to the west. Directly to the east is Hillside, a Grade II listed residential property, separated from the site by a close-boarded fence. Also to the east is 'Bridge House', another Grade II listed residence, the garden of which abuts the southern boundary of the site. The River Glyme meanders in an east-west direction along the bottom of the valley, with dense mature trees either side. To the north of the Oxford Road lies an area of allotments, and the wider area comprises an undulating landscape of pastoral and arable fields. The site is located on the edge of the village of Enstone, which comprises Church Enstone to the north-east and Neat Enstone to the south-east.
22. The appeal site lies within the 'Cotwolds' National Character Area (NCA 107). At a more local level<sup>11</sup>, it falls within the 'Enstone Uplands (3)' Landscape Character Area (LCA). This LCA is subdivided into 'sub-character types' with the appeal site identified within the 'Open Limestone Wolds' type. However, the parties agree that the site displays more of the characteristics of the immediately adjacent 'Minor Valleys' sub-character type. The key characteristics include 'small-scale tributary valleys which dissect plateaux and valley sides and connect with major valleys', and which possess an 'enclosed, intimate character created by valley form and vegetation cover'.
23. Whatever character 'label' is attached, the character of the site and surroundings is clear from site inspection. From my own observations, I consider that the site can be regarded as reasonably attractive, comprising a sloping pastoral field, but it is nothing out of the ordinary. It is not covered by any specific landscape designations, and the Council has accepted it is not a 'valued landscape'<sup>12</sup> in terms of the Framework<sup>13</sup>. In terms of scenic quality, the site contains few landscape features of intrinsic value. The site is reasonably well contained, notwithstanding its position outside the settlement boundary of Enstone. There are trees and mature vegetation around the edges of the site, especially to the northern and southern boundaries.
24. In my judgement, the site's character is affected by adjacent development: in particular the existing properties along the eastern and western sides. On the

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<sup>11</sup> West Oxfordshire Landscape Assessment 1998

<sup>12</sup> Paragraph 4.13 Statement of Common Ground

<sup>13</sup> As per Paragraph 109

northern boundary is the Oxford Road (A44), along with the Bicester Road (B4030) junction. The site is perceived in the context of the surrounding development. Consequently, I do not regard it as an essential or intrinsic component of the wider open countryside. Nor do I find it an open area that makes an important contribution to the distinctiveness of Enstone, in terms of Policy BE4 of the Local Plan. The site itself has no public access, no public rights of way and does not perform a formal recreational function. In terms of tranquillity, it is affected by the busy Oxford Road to the north.

25. In terms of views in the wider landscape, I observed the site from various points, in longer range views, including from the opposite side of the valley. From Lidstone Road to the south, the site is relatively conspicuous because of its sloping topography. However, it is seen in the context of a much larger panorama, and forms only a small component of it. The development would certainly be seen as expanding the settlement edge of Enstone, but the proximity of existing built development reduces the site's sensitivity.
26. From the north, the site is visible from the allotments, as well as from public footpaths 202/19 and 202/18 (Shakespeare's Way). As one walks along these footpaths, views of the site are heavily filtered by the intervening vegetation, and impeded by the rolling topography. Indeed, existing established trees along the northern boundary of the site provide a strong degree of containment and additional tree planting is proposed that would provide a robust green edge to the proposal. Overall, the visual intrusion of built development would be limited when viewed from these points because of the benefit of distance, the site's sloping topography, the intervening vegetation and width of view.
27. A concern raised by the Council is the impact on the setting of the village of Enstone. It is contended, amongst other things, that the development would introduce a dense form of development into the lower elements of the Glyme Valley, and that it would push Enstone beyond its 'leading edge' into open countryside. Also, that it would subsume Westbourne House - at present an outlier - into the main fold of the village. However, as acknowledged by the Council, there is already development within the lower valley comprising the residences of Hillside and Bridge House, as well as the Artyard Cafe. I do not find the amalgamation of Westbourne House into the main part of the village to be intrinsically problematic. I see no reason why the scheme should not be adequately assimilated in the locality.
28. The Council also objects to the scheme on the basis that, historically the entrance to Enstone was marked by two public houses on either side of the road, namely 'The Plough' (now Hillside) and 'The Harrow' (now the Artyard Cafe). It is contended that developing the appeal site would mean that Hillside would be situated well within the village rather than at its extremity. However, more recent modern development has now significantly changed the experience. This includes the residential development fronting Bicester Road, the car park on rising ground associated with the Artyard Cafe, as well as the traffic paraphernalia associated with the Oxford Road - including road barriers, signage, the speed camera and so on. This has resulted in a more urbanised experience on the approach to Enstone with the consequence that these two historic properties no longer stand out as the prominent 'entrance' markers to the village as they may have in the past.

29. Whilst the proposal would result in the loss of an open field and the new housing would create a substantially more suburban appearance, I am satisfied that the proposed dwellings could be designed to be of a high quality and of an appropriate scale, and that the palette of materials of the buildings could reflect those of the existing locality. In my judgement, there is no reason to suppose that new residential development would not blend with the other existing houses in the locality.
30. Drawing all these matters together, in terms of character and appearance, I consider that the appeal scheme would have a relatively localised impact on the character of the area. The proposal would have a modest effect on the wider landscape because of the site's relatively self-contained nature and the existing development around its edge. In these circumstances, I do not find there to be any fundamental conflict with the underlying aims of Policies BE2 and H2 of the Local Plan, both concerned with general development standards. And whilst the development would result in the loss of an open area, I do not consider that it makes an important contribution to the distinctiveness of Enstone in terms of Policy BE4.
31. There would, however, be some conflict with Policies NE1 and NE3 concerned with safeguarding the countryside and local landscape character, because the scheme would result in the loss of undeveloped countryside. Thus it would not maintain or enhance the value of the countryside for its own sake. Nor could the proposal be said to respect or enhance the intrinsic character, quality and distinctive features of an individual landscape type. The conflict with these policies must be considered in the overall planning balance.

*Effect on the significance of heritage assets*

32. In terms of designated heritage assets affected by the development, the Council has identified Bridge House and Hillside, both Grade II statutorily listed buildings. The listing description identifies Hillside as a two storey house dating from the mid to late 18<sup>th</sup> century of coursed limestone rubble with ashlar dressings, and with a Welsh slate roof. As noted, it was formerly a public house known as 'The Plough' and was historically in the same ownership as the appeal site. Bridge House, of similar age and construction, is positioned adjacent to the bridge over the River Glyme, and is identified in the listing description as a mid to late 18<sup>th</sup> century house, possibly incorporating earlier elements. It is also of coursed limestone rubble with ashlar dressings, and a Welsh slate roof. The significance of these buildings derives primarily from their composition and built fabric, although their setting also contributes to their significance.
33. The Framework defines the setting of a heritage asset as the surroundings in which it is experienced and its extent is not fixed<sup>14</sup>. The appeal site makes some contribution to the setting and significance of both listed buildings in forming part of their rural and undeveloped 'backdrop'. In terms of Hillside, some change in setting would occur when viewed from the Oxford Road following the development of the site. However, according to the illustrative drawings, substantial structural planting is proposed along the eastern boundary of the site, with the new housing located beyond. Once established,

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<sup>14</sup> Glossary

this planting would reduce the visibility of the new dwellings and provide a wooded backdrop to Hillside, thereby minimising the impact on this listed building's setting. Importantly, the main facade of Hillside does not front Oxford Road. Rather, the property is set at right-angles to it, with its side elevation facing the road. Hence, the glimpsed views from the Oxford Road through to the appeal site are largely incidental, and do not provide an intrinsically important component of the setting of Hillside.

34. The Council also emphasises the historical connection between the appeal site and Hillside, in that they were once in common ownership. However, this is no longer the case, and the erection of a substantial close-boarded fence provides a strong barrier separating the two areas. This significantly reduces inter-visibility between them. Therefore, the relationship between the two areas has been to a very large extent lost.
35. With regards to Bridge House, again some change in setting would be visible from Oxford Road. However, changes would be more apparent from the property's extensive curtilage that extends westwards, running south of the appeal site, along the valley bottom. Standing within this low lying area, the appeal site reads as part of the tranquil wooded valley slope rising up from the river. This contributes to the pleasantly rural valley bottom setting of Bridge House. The illustrative layout shows development would be set some distance away from the boundary with Bridge House's curtilage, and a substantial wedge of land to the south would remain undeveloped. That said, the proposal would nonetheless result in residential development on the higher ground, and to that extent, would detract from the currently undeveloped valley setting.
36. Both the appellant and Council agree that the overall degree of harm to both these heritage assets would be less than substantial in terms of the Framework. But there is a clear difference of opinion between the parties as to how the harm should be categorised. The appellant concludes that there would be some limited harm to the significance of Hillside, but no harm to Bridge House<sup>15</sup>. The Council, by contrast, considers that the harm to Hillside would fall in the mid-range of the less than substantial harm spectrum, and for Bridge House, in the mid to lower range.
37. The relevant legislation requires that where considering whether to grant permission for a development that affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting<sup>16</sup>. In my judgement, the proposal would result in some degree of harm to the setting of both Hillside and Bridge House. To that extent, it would fail to preserve their setting, contrary to the relevant legislation. However, the scheme would not impair the ability to appreciate and understand both assets as examples of 18<sup>th</sup> century limestone buildings positioned adjacent to Oxford Road. For these reasons, I consider that the level of harm to both heritage assets would be limited and should therefore be placed at the lower end of the 'less than substantial' spectrum. In accordance with the Framework, the harm to heritage assets, although less than substantial, needs to be weighed against the public benefits of the proposal.

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<sup>15</sup> The original Heritage Assessment found the harm to Bridge House would be negligible or 'de minimis'

<sup>16</sup> S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

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### *Other Matters*

38. My attention was drawn to a recently dismissed appeal for a development of up to 10 dwellings on nearby land at 'The Drive'<sup>17</sup>. In that case, the Inspector noted that the site was an integral and important part of the wider valley landscape, and although the effects of development would be somewhat localised, concluded that irrevocable harm would result to the landscape. By contrast, I find that the scheme before me would occupy a relatively well contained and enclosed site, and be well related to the existing built-up area, representing an acceptable extension to it. The Drive site also differs in that there is a public footpath<sup>18</sup> running across it from which the surrounding landscape can be observed. This is not the case here. The circumstances are different, and so I do not consider that appeal creates a precedent for this case.
39. The 'Enstone Marvels' have also been mentioned. I understand that these were a historic system of waterworks derived from a spring and, according to the evidence, also once included a grotto with an attached banqueting house. However, the exact location of the Marvels is unclear. They subsequently fell into disrepair, and no traces are known to survive of them<sup>19</sup>. The Council has not raised any objections to the scheme on this issue, nor was any point raised in terms of a harmful effect on archaeological assets. In the absence of any cogent contrary evidence, I see no reason to take a different view.
40. Some concerns were raised regarding the light spillage from the development, in that it would erode the ability to appreciate the dark skies in the locality. One of my site visits took place during the hours of darkness, and I witnessed the absence of light pollution in the vicinity of the site. I am satisfied, however, that any new lighting could be designed so as to avoid excessive light spillage, thus ensuring that light pollution does not impair the existing dark skies. This could be secured by condition.
41. The site is largely located within Flood Zone 1 which is at the lowest risk of flooding, with small areas on the southern part of the site within Flood Zones 2 and 3. Although the Council's reason for refusal relating to drainage has been addressed, local residents still remain concerned. In response, the appellant has produced a note specifically dealing with flooding, drainage, groundwater and water supply matters<sup>20</sup> that supplements the revised Flood Risk Assessment and Drainage Strategy<sup>21</sup>. On the basis of all this evidence, I am satisfied that flood and drainage matters can be appropriately dealt with by a condition.
42. In terms of ecology, the site is not subject to any statutory designations<sup>22</sup>. I am satisfied that appropriate mitigation measures could be undertaken, secured by condition, to ensure there is no negative effect on nature conservation interests, or any protected species present within the site. There is also the opportunity for ecological enhancement and habitat creation through new planting.

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<sup>17</sup> APP/D3125/W/17/3172998 (Appendix 4, Proof of Ms Tetlow)

<sup>18</sup> 202/15

<sup>19</sup> Proof of Ms Stoten, Paragraphs 6.33 to 6.48

<sup>20</sup> ID 13

<sup>21</sup> ID 1

<sup>22</sup> Statement of Common Ground, Paragraph 2.2

43. I have carefully considered the concerns of residents in relation to highway matters. These include the safety of the proposed access, especially given its location close to the Oxford Road and Bicester Road junction, and the presence of speeding vehicles in the vicinity. However, the relevant Highways Authority has not raised objections on this issue, and I find no compelling evidence to indicate that there would be an unacceptable risk for drivers arising from the development or that additional traffic could not be satisfactorily accommodated.

#### *Planning Obligations*

44. The appellant has completed two planning obligations, dated 14 February 2018<sup>23</sup>, and 13 February 2018<sup>24</sup>. The first is signed with the Council<sup>25</sup> and secures the provision of affordable housing at a rate of 50%. It also secures financial contributions in respect of the following: play and recreation, public art, and sport and recreation, all calculated according to the Council's formulae. It also secures provision of an area of public open space, with a requirement for a management scheme and a financial sum for its upkeep. The second obligation is signed with the County Council<sup>26</sup> and secures contributions towards bus services and primary education. It also secures various highway works to ensure adequate access into the site, including the realignment of the existing boundary wall along Oxford Road.

45. I have no reason to believe that the formulae and charges used to calculate the various contributions are other than soundly based. In this regard, both the Council<sup>27</sup> and County Council<sup>28</sup> have produced compliance statements. It is confirmed that the level of provision of affordable housing would comply with the Council's policy requirement, and other aspects of the obligations are justified. The development would enlarge the local population with a consequent effect on local services and facilities. I am satisfied that the provisions of the obligations are necessary to make the development acceptable in planning terms, that they directly relate to the development, and fairly and reasonably relate in scale and kind to the development, thereby meeting the relevant tests in the Framework<sup>29</sup> and the Community Infrastructure Levy Regulations<sup>30</sup>.

#### **Overall Conclusions and Planning Balance**

46. The relevant legislation requires that the appeal be determined in accordance with the statutory development plan unless material considerations indicate otherwise. The Framework states that proposals should be considered in the context of the presumption in favour of sustainable development, which is defined by economic, social, and environmental dimensions and the interrelated roles they perform. These dimensions give rise to the need for the planning system to perform a number of roles.

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<sup>23</sup> ID 16

<sup>24</sup> ID 18

<sup>25</sup> West Oxfordshire District Council

<sup>26</sup> Oxfordshire County Council

<sup>27</sup> ID 17

<sup>28</sup> ID 19

<sup>29</sup> Paragraph 204

<sup>30</sup> Regulation 122

47. Paragraph 14 of the Framework explains how the presumption in favour of sustainable development applies. Where the development plan is absent, silent or the relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Alternatively, specific policies in the Framework may indicate development should be restricted. Those relating to heritage assets are one such category. Hence the 'public benefits' test of Paragraph 134 relating to heritage assets is engaged in this case
48. In this case, the additional housing would be a weighty benefit for the area, by introducing much needed private and affordable housing for local people: 29 new units are proposed of which 50% would be affordable homes. It would boost the supply of housing in accordance with the Framework. It would create additional housing choice and competition in the housing market. It would create investment in the locality and increase spending in local shops. It would create jobs and investment during the construction phase, albeit for a temporary period.
49. The development would result in the loss of open pasture land, but the site is physically reasonably well contained, and visually well related to the built up area of the village. There is the potential for biodiversity enhancement through additional planting. I am satisfied that the planning obligations accord with the Framework and the relevant regulations and I have taken them into account in my deliberations.
50. As noted earlier, Paragraph 134 of the Framework requires the harm to the significance of heritage assets to be balanced against the public benefits of the scheme. In addition, Paragraph 132 requires that, when considering the impact of a proposed development on the significance of heritage assets, great weight should be given to their conservation. However, for the reasons explained, I consider that the level of harm to heritage assets would be limited and should be placed at the lower end of the 'less than substantial' spectrum. In this case, I find that the harm to heritage assets would be outweighed by the scheme's public benefits. As a consequence, I find that the so called 'tilted balance' of Paragraph 14 is not displaced in this instance.
51. There would be some conflict with Policies NE1 and NE3 of the Local Plan. Importantly, however, the Council cannot demonstrate a five year supply of housing. This diminishes the weight that can be attached to any conflict with these policies. The housing shortfall attracts substantial weight in favour of granting permission for the proposals, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. I am satisfied that none of the reasons put forward for opposing the development establishes that the harm would be significant or would demonstrably outweigh the benefits. Therefore, notwithstanding any conflict with Local Plan policies, it follows that the appeal should succeed, subject to conditions. I deal with conditions below.

### **Conditions**

52. I have reviewed the suggested conditions in the light of the discussion at the Inquiry and advice in the Planning Practice Guidance (PPG). Where necessary,

I have reworded them for clarity and simplicity, and have also amalgamated some of the conditions to avoid duplication.

53. Commencement conditions are necessary to comply with the relevant legislation. A condition requiring compliance with the submitted plans, unless otherwise agreed, is necessary for the avoidance of doubt. A condition specifying the scope of requirements in relation to reserved matters is necessary to ensure these are properly dealt with and to ensure a high quality scheme. These matters include details of: finished ground levels of the buildings in relation to existing ground levels; the northern boundary wall repositioning; the road layout and parking areas; the tracking details for refuse vehicles; the trees to be retained; proposed landscape features and green infrastructure; the design, form and architectural features of the dwellings including materials to be used on external surfaces; the provision of a superfast broadband service to the dwellings; details of an external lighting strategy to ensure adequate illumination of roads and paths and to avoid unnecessary light pollution.
54. Conditions ensuring the retention of landscaping, adequate site access provision, sustainable site drainage, and landscape & ecology management are required to ensure these matters are appropriately addressed. A condition dealing with measures to encourage sustainable transport use is required to minimise private car trips. A condition requiring a Construction Method Statement & Transport Plan is necessary to minimise disturbance to local residents and ensure highway safety. A condition requiring a Construction Environmental Management Plan is necessary to minimise disruption to biodiversity and the environment. A condition requiring an assessment of noise from the Oxford Road (A44) is necessary to ensure satisfactory living conditions for future residents of the scheme.
55. In reaching my decision, I have carefully considered the serious concerns voiced by local residents. In this case, I have judged the balance falls in favour of granting permission because the adverse impacts would not significantly and demonstrably outweigh the benefits. That judgement is specific to this proposal and would not necessarily be the same if applied to other cases. Subject to the conditions in the attached schedule, I conclude that the appeal should be allowed.

*Matthew C J Nunn*

INSPECTOR

### Schedule of Conditions

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for the approval of the reserved matters shall be made to the local planning authority not later than twelve months from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in general accordance with the following approved plans and any variations shall be agreed in writing by the local planning authority:
  - Site Location Plan: 6105/ASP01 LP
  - Single Parameter Plan: DE296\_002 C
  - Enstone Frontage Proposal: DE296\_003
  - Vertical Visibility Review DWG-07
- 5) Details of appearance, landscaping and layout required to be submitted and approved under Condition 1 shall include:
  - i. Details of the finished levels, above ordnance datum, of the ground floor levels of the proposed dwellings in relation to existing ground levels;
  - ii. Details of the repositioned boundary wall adjacent to the highway to include traditional dry stone walling constructed in local stone;
  - iii. Details of the road layout, turning areas, driveways, car / cycle parking areas and footpaths, including their surface materials and means of drainage;
  - iv. A plan showing vehicle tracking for a refuse vehicle of not less than 11.6 metres in length, indicating that it can enter, turn and leave the site in forward gear;
  - v. Details of the trees to be retained and how they will be protected during construction (in accordance with BS 5837:2012 '*Trees in Relation to Design, Demolition and Construction*');
  - vi. Details of landscape features / green infrastructure / green buffers, including details of areas of open space;
  - vii. Details of the design, form and architectural features of the dwellings, including materials to be used on external surfaces;
  - viii. Details to demonstrate that each dwelling can connect to and receive a superfast broadband service;

- ix. Details of an external lighting strategy to ensure adequate illumination of roads and paths and to avoid unnecessary light pollution. The strategy must include measures to avoid disturbance to bat species using their territory and accessing their roosts, including in the woodland area in the southern portion of the site.
- 6) The approved landscaping works shall be carried out in accordance with a programme agreed in writing by the local planning authority; and any trees or plants which within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority gives written approval to any variation.
- 7) The dwellings shall not be occupied until the vehicular access to the site has been provided in accordance with Vertical Visibility Review DWG-07 to include the provision of visibility splays of a minimum of 2.4 metres by 90 metres in both east and west directions at the junction of the site access with Oxford Road. There shall be no obstruction above 0.9 metres within the visibility splays.
- 8) The vehicular and pedestrian accesses shall be constructed, laid out, surfaced, lit and drained in accordance with details previously submitted to and approved in writing by the local planning authority. The works shall be carried out before the dwellings are occupied. The details shall include measures (such as a gateway or chicane) to ensure safe egress from the site of pedestrians and cyclists on to the Oxford Road (A44).
- 9) The dwellings shall not be occupied until a scheme to promote and encourage the use of alternative modes of transport to the car has been submitted to and approved in writing by the local planning authority. The scheme shall include for the first owner of each dwelling, a residential travel information pack to promote sustainable transport.
- 10) No development shall take place until a surface water drainage scheme, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development has been submitted to and approved in writing by the local planning authority. The scheme shall be in general accordance with the Flood Risk Assessment and Drainage Strategy (dated 9 February 2018) and shall be implemented in accordance with the approved scheme before the dwellings are occupied. No built development shall take place in Flood Zones 2 and 3. The scheme shall include: discharge rates & discharge volumes; maintenance & management of the sustainable urban drainage system (SUDS) features; sizing of features – attenuation volume; maintenance & management of the proposed land drainage strategy; infiltration in accordance with BRE365; detailed drainage layout with pipe numbers; SUDS design to replicate existing nature and behaviour of the pre-development site; network drainage calculations; phasing; flood flow routing in exceedance. Adjoining properties must be protected from surface water flooding arising from the development and the scheme shall include mitigation measures to be used.

- 11) No development shall take place until a Construction Method Statement & Traffic Management Plan has been submitted to and approved in writing by the local planning authority. This shall provide details of: the proposed hours and days of working; proposals to minimise disruption to the adjacent local area from ground works, construction noise and site traffic; the parking of vehicles of site personnel, operatives and visitors (avoiding unnecessary parking in the vicinity of the site); loading and unloading of plant and materials; vehicle wheel washing facilities/ measures to guard against the deposit of mud or other substances on the public highway; routing of construction traffic including any road closures or traffic management required during construction; appropriate signing for pedestrians during construction including any footpath diversions; erection / maintenance of security hoarding / scaffolding if required; site manager contact details; appropriately trained/qualified banksmen for guiding / unloading construction vehicles; a before-work commencement highway condition survey and agreement with a representative of the Highways Depot; a scheme of liaison with local residents (including informing them of significant deliveries). The approved details shall be adhered to throughout the construction period.
- 12) No development shall take place until a noise assessment of road traffic from the Oxford Road (A44) has been submitted to and approved in writing by the local planning authority. The scheme shall determine the noise climate and include details of any attenuation / design measures necessary to protect the living conditions of future occupiers of the dwellings. All works that form part of the approved scheme shall be completed before the dwellings are first occupied and shall be permanently retained thereafter.
- 13) No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall be adhered to throughout the construction period in accordance with the approved details. The CEMP shall include the following: precautionary measures for site clearance to avoid or reduce impacts during construction; protection measures for small reptiles and mammals; measures to ensure no excavation of trenches, or storage of any materials, or lighting of any bonfires are carried out within any tree protection area; a risk assessment of potentially damaging construction activities; measures to avoid harm to biodiversity features; details of protective fences / barriers; details of responsible persons / lines of communication; details of monitoring during construction and immediately post completion of construction works.
- 14) No development shall take place until a Landscape & Ecology Management Plan has been submitted to and approved in writing by the local planning authority. This shall be in general accordance with the recommendations in the Preliminary Ecological Appraisal (Cotswold Wildlife Surveys, 2543-CWS-01) dated 1 December 2016, the Ecological Addendum Report (Cotswold Wildlife Surveys, 2543-CWS-02) dated May 2017 and the Biodiversity Enhancement Statement (Cotswold Wildlife Surveys, 2543-CWS-03) dated November 2017. The Plan shall be

implemented in accordance with the approved details and permanently retained thereafter. It shall include the following:

- i. Full specification of habitats to be created, including description and evaluation of features to be managed, including locations on a map;
- ii. Measures for encouraging biodiversity within the site, including details of the provision of bat roosting features and nesting opportunities for birds (House Martin, House Sparrow, Starling and Swift);
- iii. Aims and objectives of the Plan, and how these will be achieved; preparation of a work schedule; details of ongoing monitoring and remedial measures; timetable for reviewing the Plan;
- iv. Details of how the aims and objectives of the Plan will be communicated to the occupiers of the development;
- v. Details of body or organisation responsible for implementation and legal and funding mechanism for the Plan.

Richborough Estates



## APPEARANCES

### FOR THE COUNCIL:

George Mackenzie Instructed by Bhavna Patel, Head of Legal & Property Services, West Oxfordshire District Council

He called

Paul Gibbs Director, David Jarvis Associates

Catherine Tetlow Principal Planning Officer, West Oxfordshire District Council

### FOR THE APPELLANT:

Thea Osmund-Smith Instructed by Daniel Hatcher, Planning Director, Rosconn Strategic Land Ltd

He called

Andrew Williams Director, DEFINE

Gail Stoten Director, Pegasus Planning Group

Peter Frampton Director, Frampton Town Planning Ltd

The following also participated in the discussion regarding planning obligations and conditions:

Daniel Hatcher Planning Director, Rosconn Strategic Land

Richard Oliver Infrastructure Funding Negotiator, Oxfordshire County Council

Will Marshall Senior Transport Planner, Oxfordshire County Council

### INTERESTED PERSONS

Andrea Bates Local Resident

Carol Hicks Local Resident

Roslyn Miller Local Resident

## DOCUMENTS SUBMITTED AT THE INQUIRY

1. Flood Risk Assessment and Drainage Strategy (Travis Baker) dated 9 February 2018
2. Appeal decision APP/F1610/W/16/3144113
3. Plan showing relationship between 'The Drive' & appeal site
4. Opening Statement on behalf of the Appellant
5. Opening Statement on behalf of the Council
6. Submissions of Carol Hicks
7. Submissions of Andrea Bates
8. Update letter from MHCLG (Steve Quartermain) dated 30 January 2018
9. MHCLG Single Departmental Plan
10. Annotated plan showing route for site visit
11. Mr Gibb's Appendices (with illustrative photomontages) at A3 scale
12. Extracts of West Oxfordshire Local Plan 2031 including further main modifications (February 2018)
13. Drainage Note prepared by Ted Wake of Travis Baker in response to submissions of Andrea Bates
14. Note by Savoy Consulting in response to A44 Enstone Speed Surveys carried out by Thames Valley Police provided by Andrea Bates
15. Enstone Frontage Proposal, with reference numbering: DE296\_003
16. Planning Obligation dated 14 February 2018 completed with West Oxfordshire District Council ('The District Planning Obligation')
17. Note dated 15 February 2017 from Catherine Tetlow of West Oxfordshire District Council setting out how provisions of the District Planning Obligation comply with the relevant regulations and policy
18. Planning Obligation dated 13 February 2018 completed with Oxfordshire County Council ('The County Planning Obligation')
19. Note dated 12 February 2018 setting out how provisions of the County Planning Obligation comply with the relevant regulations and policy
20. Extract of Planning Practice Guidance relating to 'public benefits' (Paragraph: 020 Reference ID: 18a-020-20140306)
21. Annotated extract of West Oxfordshire Local Plan 2031 showing changes
22. Closing Statement on behalf of the Council
23. Closing Statement on behalf of the Appellant