



Appeal Decision

Inquiry held on 28-31 October & 4 November 2014; 21-23 April 2015; 3-6 & 10 November 2015

Site visit made on 5 November 2014

by Terry G Phillimore MA MCD MRTPI

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

Decision date: 16 December 2015

Appeal Ref: APP/D3125/A/14/2217185

Land off Aston Road, Bampton, Oxfordshire OX18 2AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Ltd against the decision of West Oxfordshire District Council.
 - The application Ref 13/1309/P/OP, dated 10 September 2013, was refused by notice dated 16 December 2013.
 - The development proposed is up to 127 dwellings with associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal relates to an outline application with all matters other than access reserved for later approval.
3. At the inquiry draft versions of a unilateral undertaking and an agreement containing planning obligations pursuant to section 106 of the Act were submitted. Executed versions of these were provided after the inquiry.
4. Rule 6 status for the inquiry was accorded to a local body known as the Society for the Protection of Bampton.
5. Following the provision of further information by the appellant the Council did not pursue its grounds of objection to the proposal based on odour and archaeology concerns.

Adjournments

6. At the opening of the inquiry on 28 October 2014 I was advised that discussions were continuing to take place between the appellant and the Environment Agency (EA), acting for the Council, regarding flood risk. These discussions related to concerns that had been raised about the flood modelling work undertaken by the appellant. I was told that due to the complexity of additional work that was being sought it would not be possible for this to be completed during the timescale allocated for the inquiry (6 days ending on 5 November). This initial sitting period of the inquiry was subsequently used to deal with non-flooding issues and a site visit. Arrangements were agreed for
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- preparation of a brief for the further flood modelling work, which I indicated should also involve the Rule 6 party in view of the role they had played in bringing forward evidence on flooding. The inquiry was adjourned until 21 April 2015, as the earliest date when all would be available and to allow sufficient time for the work and submission of revised evidence according to an agreed programme.
7. When the inquiry reconvened the appellant asked for a further adjournment. This was on the basis of what was said to be a late response by the EA with respect to the model inputs. With the time required to run the model, changes to it could not be tested during the sitting period then allocated (4 days ending on 24 April). The appellant asserted that unless able to respond to the EA's points the presentation of its case would be prejudiced.
 8. Such an adjournment was opposed by the Council and the Rule 6 party on the grounds that the current position demonstrated that the appellant's model was not fit for purpose and disagreement that the appellant had been disadvantaged by the timing of the points now raised about the model. At the same time, there was no support for an alternative suggestion made by the appellant that the model be set aside and reliance placed instead on the EA's flood risk maps, since all agreed that the work so far undertaken had produced a more accurate picture of flood risk on the site.
 9. After hearing submissions I gave an oral ruling as follows. It was very unfortunate that after a lengthy adjournment the appellant's flood risk model remained subject to outstanding issues. Leaving aside the sequence and timing of events leading to this position, in general it is not in the public interest for the determination of an appeal to become a protracted process. Without hearing the evidence on flooding I was unable to reach a fully informed view on the nature of the outstanding issues on the model and the likely implications of these. Nevertheless, the reason for the previous adjournment remained in play, and I accepted the appellant's point that it would be unfair to determine the appeal in advance of their having an adequate opportunity to carry out the additional work. This was especially so in the context of the Council's best advice that this would be likely to lead to the position of an agreed model (although it appeared the Rule 6 party did not expect to share this agreement). I noted the views of all three parties that it would not be efficient to proceed with hearing initial flooding evidence and deal with the implications of model refinements later. I also bore in mind that both the Council and the Rule 6 party had prior to the resumption made written requests for this to be delayed, and a shared view now being put forward that it was unlikely there would be adequate time to complete the inquiry during this second allocated sitting period were flooding evidence to be heard.
 10. I therefore agreed to the requested adjournment on the basis that all of the flooding evidence would then be heard in the context of a finalised model. The resumption was set at 3 November, again as the earliest date available, with a programme agreed for the submission of further evidence.
 11. Before the adjournment of the second session of the inquiry I proceeded to hear the further evidence on housing need and supply matters that had been submitted. It was then possible to deal with updates to this evidence largely by way of written representations submitted in advance of the final session of the inquiry.

Amended proposals

Reduction to 116 units

12. The original application was based on a proposed development of up to 127 dwellings. Prior to the Council's determination of the application the appellant sought to amend this to a scheme of up to 116 dwellings, supported by a revised illustrative Development Framework Plan in which the extent of the area to be developed for housing was reduced. The Council did not accept the change and reached its decision on the basis of the original proposal.
13. Subsequent to that a further application (ref 14/0993/P/OP) for the revised proposal was submitted to the Council. This was refused permission on 17 September 2014 for very similar reasons to the current appeal application. The parties agree that conditions could be imposed on a grant of permission for the appeal scheme to secure the intended reduced scale. At the opening of the inquiry the Council did not oppose determination of the appeal on this basis. Given that the proposal would remain essentially the same, together with the extent of consultation carried out and the opportunities provided to comment on the reduced scheme, I take this option of a development limited to up to 116 dwellings into account later below.

Reduction to 60 units

14. On 27 August 2015 the appellant copied to the Planning Inspectorate a letter it had sent out as a consultation on a further proposed reduction of the appeal scheme to an upper level of 60 dwellings. This was linked to a stated intention to confine residential development to an area of the site which is outside Flood Zones 2 and 3 as defined by the flood modelling work, with the limit again proposed to be achieved by way of planning conditions. A further revised Development Framework Plan incorporating the change had been prepared.
15. Prior to the resumption of the inquiry on 3 November, the Council and the Rule 6 party set out written objections to the appeal being considered on this further revised basis and seeking my views on the suggestion, with additional correspondence on the matter also received from the appellant. My written response as follows was sent to the parties on 26 October:

"It is normal good practice that the appeal process should not be used to evolve a scheme.¹ Nevertheless, as I have previously advised, and having regard to the Wheatcroft case², it is possible in principle to use conditions to reduce the scale of a proposal in this way. The key test is whether the development would be so changed that to grant it would be to deprive those who should have been consulted on the changed development the opportunity of such consultation.

I note the representations that have been made with respect to potential prejudice that could arise from the appellant's suggested approach including on the publicity carried out. A matter that clearly has a bearing on this in the particular case are the potential implications of the amendment and suggested conditions on flood risk, and the way in which evidence on this has come forward. Since the further detailed evidence on flooding submitted by the main and Rule 6 parties is to be heard and tested at the resumed

¹ As advised in the Planning Inspectorate Procedural Guide on Planning Appeals 31 July 2015 Annex M

² Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

inquiry, the outcome of a scale reduction in terms of possible prejudice is not one on which I can form a final view at this stage. However, I note the Council's point that the appellant's promotion of a reduced scheme implies an acceptance that the extent of development previously proposed (at 127 or 116 dwellings) would not be consistent with flood protection objectives. Early clarification of this by the appellant would be of assistance. Suggested conditions are to be discussed at the resumed inquiry, and will need to be assessed against all the normal tests of conditions.

With respect to the position reached that evidence on the heritage and landscape implications of the development has already been given prior to the suggestion of the further reduced scheme, that is a matter on which I will need to make a judgment having heard all of the evidence.

Regarding the possible implications for planning obligations, the session of the inquiry on obligations has yet to be held, and therefore will be able to explore these and the justification for obligations that are put forward.

The points raised with respect to reasonableness of behaviour would need to be dealt with as a separate matter should there be a wish to pursue these.

Taking into account the above, it would not be appropriate at this stage for me to rule that the scope for determination of the appeal on the basis of a scheme restricted by conditions to 60 units should not be considered at the resumed inquiry. I expect to be able to reach a fully informed view on the potential prejudice that could arise from this option after hearing the further evidence and any additional submissions on the matter made at the inquiry."

16. At the resumption of the inquiry the parties made submissions that repeated the points previously made. Having heard these I advised that I saw no reason to depart from the position I had already set out as above. I noted that the appeal remained as being against the refusal of a proposal for up to 127 dwellings, and drew attention to the risk for the appellant that I might find the suggested use of conditions to amend the scheme not to be acceptable. The inquiry continued and closed on that basis.
17. In the event I have concluded that the appeal should not be determined on the basis of a reduction to 60 units for the reasons that I set out later below.

Applications for Costs

18. At the inquiry written applications for costs were made by both the Council and the Rule 6 party against the appellant. Responses by the appellant and final comments were subsequently received in writing after the inquiry in accordance with a timetable I set out. These applications are the subject of separate Decisions.
19. Just prior to the close of the inquiry the appellant raised the possibility of making a later costs application against the Environment Agency. The EA appeared at the inquiry on behalf of the Council. Counsel for the Council raised a question as to whether the EA is a party to the appeal against which an award could be made. In addition, I drew attention to the normal requirement for costs applications to be made prior to the close of an event. In the alternative, the appellant invited me to consider using my power to initiate a costs award against the EA. Aside from the point on the legal basis for such a

potential award, I have not formed the view that any is warranted. I therefore do not pursue this matter.

Main Issues

20. The main issues are:

- a) the principle of the development in this location and the impact it would have on the character and appearance of the area and the settings of heritage assets;
- b) the acceptability of the proposal in terms of flood risk and drainage matters;
- c) the degree to which the proposal is supported by sustainable development and housing land supply considerations, and the overall balance.

Reasons

Principle of the development and effect on character and appearance

Development plan position

21. The site of some 6.88ha lies on the south side of Aston Road which leads eastwards out of the village of Bampton. It comprises three flat, pastoral, irregularly shaped fields, currently used mainly for horse grazing. It is immediately adjacent to but outside the existing limit of built-up development of Bampton.
22. Policy H4 of the West Oxfordshire Local Plan 2011 (adopted June 2006) sets out limited categories of construction of new dwellings that will be permitted in the countryside. Under policy H7, new dwellings will be permitted in the towns and villages identified as being in 'Group C' (which include Bampton) in certain limited circumstances, including rounding off within the existing built-up area and on sites specifically allocated for residential development. None of these categories apply to the appeal proposal, and there is agreement that it conflicts with these policies. The proposal is contrary to the development plan because of the fundamental nature of this policy conflict.

Landscape and visual impact

23. The north side of Aston Road is lined by residential properties up to Mount Owen Road, which lies opposite the eastern end of the site. Twentieth century development extends northwards in depth, giving a relatively hard edge to this part of the settlement as seen in views approaching from the east.
24. On the south side of Aston Road the undeveloped appeal site frontage creates a long break between the unlisted Calais Farm building at the outer edge of the main part of the village and a detached line of buildings along the road adjacent to the east boundary of the site. With its open fields and vegetation the site appears as a fairly extensive swathe of agricultural land. This is despite the presence of some farm type buildings and screening by roadside hedging. On leaving the village the land creates a feel of reaching countryside on the south side of the road, in contrast to the development extending on the north side, and the buildings further to the east appear as a separate grouping. On arriving from the east these buildings together with the adjacent highway width restrictions give an initial impression of entering the village at this point, but the site then provides a sense of continuing countryside on that side of the

road until Calais Farm is reached. The site therefore provides a character of open countryside in this location, rather than just an isolated element of undeveloped edge of settlement land. In this respect my assessment is consistent with that of the Inspectors in previous appeal decisions in 1991 and 2001 relating to the location.³

25. In terms of high level landscape categorisation, the site lies within Natural England's 'Upper Thames Clay Vales' National Character Area, which is identified as a broad belt of open, gently undulating lowland farmland. These features are echoed more locally in the West Oxfordshire Landscape Assessment 1998. This recognises a distinctly low-lying but gently rolling clay vale landscape in the Bampton Vale Landscape Character Area, with the site lying in a location identified as a Floodplain Pasture landscape sub-type. The site has some of the features attributed to this such as distinctly flat low-lying land, a landscape structure provided by vegetation, and an intimate, semi-enclosed pastoral character.
26. Nevertheless, the site with its relationship to the settlement is strongly influenced by the proximity of this. In this respect the Assessment recognises a Bampton Key Settlement zone within the broader character area, which provides a more specific assessment for the fringes of Bampton. There is disagreement on whether the site falls in Area B (Bampton East) or Area C (Bampton South) as identified within this. From the boundaries indicated on the accompanying map it appears that the latter applies, but for both areas there are references among other things to a somewhat scruffy urban edge and, as key sensitivities, a need to strengthen landscape structure and resist further urbanisation.
27. At the same time my inspection confirmed the appellant's assessment that the site is visually well contained by topography, existing development and vegetation screening. Its visual influence is mainly restricted to a short stretch of Aston Road and limited areas to the north of this (including both residential properties and public viewpoints), a section of Buckland Road to the south, and a footpath running from Buckland Road to the south east. The site is thus not seen in wide vistas, and makes minimal contribution to the important landscape character features of the wider area.
28. The Council agrees as common ground that, in itself, the layout and form of the development as indicated in the submitted material provides the basis for an attractive and functional new development through the reserved matters. This could involve a landscape led approach to avoid dominance by buildings and hard edges, as required by the West Oxfordshire Design Guide. As such it could be assimilated successfully within the context of other development in which it would be seen, including from the south on Buckland Road across open land.
29. I have taken into account the detailed findings of the appellant's Landscape and Visual Impact Assessment, and the Council's assessment of the site and its anticipated impact of the development. These involve matters of judgment. I conclude that there would be some landscape harm from the loss of existing open land in this part of the settlement, but that this would be localised in effect, essentially continuing the developed envelope to the detached grouping to the east of the site on the south side of Aston Road. This could be done in a

³ refs T/APP/D3125/A/91/187500/P8 and APP/D3125/A/10/2131587 respectively

way that provides a high quality developed form. I assess that there would at most be a moderate adverse effect on landscape and visual character, which would reduce over time with landscape assimilation to a minor adverse effect.

30. It is common ground that the scheme is contrary to policy NE1 of the Local Plan, which requires proposals for development in the countryside to maintain or enhance the value of the countryside for its own sake. There is also some conflict with the landscape protection aims of policies BE2, BE4 and NE3 by way of erosion of a distinctive open area that contributes to the character and appearance of the locality. The appellant argues that these policies are not consistent with the approach of landscape assessment set out in the National Planning Policy Framework, but this contains a requirement for the intrinsic character and beauty of the countryside to be recognised. In the context of the particular harmful effects as set out above, the conflict with the Local Plan policies carries a degree of weight which is not overridden by current national policy towards the countryside.

Heritage assets

31. Bampton Conservation Area encompasses much of the settlement of Bampton. On the south side of Aston Road it extends as far as Calais Farm, with the boundary continuing south to Buckland Road, so that the Area abuts the west side of the appeal site. The development on the north side of Aston Road is not included except the west end where it joins Buckland Road.
32. The Council has not produced an appraisal of the Area, which was designated in 1976, but the submitted evidence and the site visit enable an assessment of its character and appearance. The village is a long-established rural settlement with a history as a farming and trading community. The well preserved historic core has a focus of vernacular buildings, many of which are listed, and a layout based on a convergence of routes at a market place with a network of lanes around these. On the west and south sides of the core the boundary of the Area takes in tracts of open land and farm buildings, extending south westwards to include the outlier settlement of The Weald.
33. The main significance of the Area as a designated heritage asset derives from the built form of the core. At the same time, within the Area itself there is an evident close relationship between agricultural land and settlement, which gives additional significance in terms of the legible development of a large rural village linked with the surrounding agricultural landscape. The setting of the Area on the south and west sides comprising further farmland continues this relationship, with views into and out of the Area. As such these aspects of setting add to significance.
34. Twentieth century development abutting the north-east side of the Area has removed any sense there of transition to countryside. While this does not directly impact on the core, this setting does not contribute to the significance in the same way as that to the south and west. The development within the Area on its eastern edge, including on the south side of Aston Road, is mixed. Calais Farm is an older group, and there are some mid 19th century cottages. Outside the Area on the north side of Aston Road the group of nos 1-6 is also recognisable as three pairs of agricultural workers' cottages, and agreed to be undesignated heritage assets. In this location there is also more modern development, including within the Area at the junction of Aston Road with Buckland Road. While to some extent there is a transition to a more dispersed

pattern of settlement, with a petering out of development, this is not a strongly evident historic feature. In the context of the changes that have taken place along Aston Road in the 20th century, I agree with the assessment by English Heritage that *"this gradual pattern of development suggests that maintaining the current settlement boundary is not essential in order to sustain the character of the conservation area as a whole"*.

35. Nevertheless, the appeal site, with its countryside qualities as identified above, provides a sense of agricultural land relatively close to the historic core, despite that there is little inter-visibility with this. As an outer setting for the core, this makes a minor positive contribution to significance, rather than a neutral one as suggested by the appellant. In addition, although Calais Farm is severed from this land both functionally and by way of boundary treatment, it provides a rural type setting for this which relates to its historic farmhouse origin and therefore adds to its significance. The relationship of nos. 1-6 to agricultural land is less clear, but the land also gives a degree of rural setting for these in a similar way.
36. The proposal would introduce modern residential development across much of the site. Even with soft boundaries, the land would clearly no longer have any agricultural use or countryside features, and the sense of large-scale modern development on this side of the village would be increased. The countryside setting of this part of the Conservation Area would be pushed further eastwards, and the immediate rural connection of the undesignated heritage assets would be lost. This would lead to minor harm to the significance of the Area and the individual buildings based on the contribution that the site makes to this significance. The harm would be considerably less than substantial, but requires justification by way of public benefits under the Framework. It also results in a degree of conflict with policy BE5 which seeks to safeguard Conservation Areas.
37. Ampney Lodge is a Grade II Georgian house located just to the west of the Aston Road/Buckland Road junction. Its setting relates to its immediate built-up context, and the site makes no contribution to its significance.
38. On this first issue, it can be concluded that the proposal would result in some harm to the character and appearance of the area and settings of heritage assets, and does not accord with the development plan.

Flooding

39. The irregularly shaped site is generally flat with a slight fall southwards towards Shill Brook. This watercourse abuts part of the site's southern boundary. An unnamed Ordinary watercourse which is partly contained within culverts crosses Aston Road from the north on the western side of the site, and turns to flow eastwards across the site itself. In addition to the presence of these fluvial features, the EA's surface water maps show a risk of surface water flooding on the site. A July 2007 serious flooding event affected the site and surrounding land and properties, and is recorded in photographic and anecdotal evidence as well as by report. The evidence indicates that this event involved both surface water (pluvial) and fluvial flooding.
40. The site includes areas that are within Flood Zones 2 and 3 (medium and high fluvial flooding risk respectively) as indicated in the EA's published mapping. There is no dispute that the relatively coarse JFLOW modelling underlying these

maps is inadequate for a proper assessment of flood risk on the site, and the appellant has undertaken alternative modelling work to refine these. This modelling has undergone a number of iterations. Initial work involved 1D HEC RAS modelling of the Shill Brook and the unnamed watercourse based on fluvial risk. Subsequently a combined fluvial and pluvial ISIS/TUFLOW model was developed to model the interaction between all watercourses and surface flow processes in the area of the site.

41. There are continuing third party concerns about this model, including as expressed in expert evidence for the Rule 6 party. These concerns relate particularly to an absence of calibration, specifically in terms of replication by the model of the 2007 event. However, the model has been agreed as fit for purpose by the EA. The Council adopts the EA's technical evidence. There is no dispute that the site-specific modelling of fluvial flood risk represents a significant improvement on the original indicative EA mapping, and the revised Flood Zones have been accepted by the EA in substitute for this.
42. Large parts of the site are again shown as being within Zones 2 and 3. This includes an area on the western side of the site which in the application as submitted is proposed for residential development, much of which is now identified as Zone 3.
43. The Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. More detailed advice is given in the Planning Practice Guidance (PPG), including on applying the Sequential Test to individual development proposals. The Test ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding. Flood zones provide the basis for applying the Test. The aim is to steer new development to Flood Zone 1. Where there are no reasonably available sites in Flood Zone 1, local planning authorities in their decision making should take into account the flood risk vulnerability of land uses and consider reasonably available sites in Flood Zone 2, applying the Exception Test if required. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 be considered, taking into account the flood risk vulnerability of land uses and applying the Exception Test if required.
44. The PPG sets out that the objectives of a site-specific flood risk assessment include establishing the evidence for the local planning authority to apply (if necessary) the Sequential Test. Given that the proposal includes residential development within Flood Zones 2 and 3, the Sequential Test is applicable. No evidence has been provided to enable the Sequential Test to be undertaken. Indeed, the appellant acknowledges that this would be unlikely to be passed, with the Council's representations reinforcing this position. In the circumstances there is no dispute that the proposal is contrary to national flood risk policy. The conclusion is that the development would give rise to an unacceptable flood risk.

Sustainable development and housing land supply

Dimensions of sustainable development

45. The Framework sets out that there are three dimensions to sustainable development: economic, social and environmental.
46. The development would create economic benefits within the local area and the District, as identified in the appellant's supporting assessment. No issue has been raised about the viability or deliverability of the scheme, and it would bring financial benefits by way of new homes bonus and Council Tax receipts.
47. In social respects, the supply of additional housing is an objective of national planning policy. The proposed provision of 50% of the units as affordable housing would help meet the general need for such housing in the District, despite that as argued by third parties this is not required to meet specifically identified local needs. Strong local objections have been raised in relation to the perceived social impact of the scale of the development, with some concern on this ground also expressed by the Council, although not assessed by it to involve harm that in itself would be sufficient to warrant refusal. A relevant matter in this respect is that permission has been granted for a development of 160 dwellings relatively nearby in New Road. In combination with the current proposal, the result would be an increase in the population of the village by around 25%. The appellant contends that local concerns about the difficulty for the community of absorbing this level of increase in reality represent a resistance to change. However, this context of existing permitted growth reduces the weight that can be attached to the appellant's further argument that the appeal proposal is necessary to maintain the viability of local services and the vitality of the community.
48. A particular matter in relation to the capacity of the settlement to absorb the additional growth relates to primary school provision. A planning obligation would ensure by way of a financial contribution that provision would be made to accommodate the additional number of pupils likely to arise from the development. However, there appear to be site constraints on the potential expansion of the school in Bampton, so that the necessary provision might be made further afield. The outcome could be a higher proportion of children not being able to attend the local school, although the precise effect is uncertain given the role of choice and catchment areas in this.
49. Overall on balance the proposal would lead to a reasonable degree of positive social impact.
50. In environmental terms, as found above there would be at most some moderate adverse effect on landscape and visual character, and minor harm to heritage assets. There would be some scope for ecological enhancement of the site by way of new biodiversity features, together with provision of additional public open space and a footpath link. Bampton's designated status in the adopted and emerging Local Plan as a rural service centre indicates that it is a reasonably sustainable location for new development. Although outside the existing built development limit, the site itself is relatively accessible to a range of local facilities by non-car means. However, local employment opportunities are limited, and the proposal could be expected to result in significant travel generation in terms of a need for trips further afield for employment and higher order facilities. This impact would be mitigated by the reasonable degree of

accessibility to other centres by public transport, and planning obligations that would provide for sustainable travel contributions. The flood risk associated with the proposal is a major negative environmental factor, since it would not be sustainable to build houses where there is such a flood risk.

Housing land supply

51. According to the Framework, housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.
52. This is in the context of the requirement of the Framework that local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework. It further requires authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements.
53. There is agreement that policies H4, H7 and NE1 are relevant policies for the supply of housing given their reliance on built-up area limits and the potential effect of this approach in restricting housing supply.
54. At the outset of the inquiry the Council accepted that it was unable to demonstrate a five-year housing land supply. By the time of the close of the inquiry the Council's position had shifted to an assertion that this was no longer the case and that a five-year supply exists, citing changes in material circumstances and new evidence. The appellant disagrees with this position. The matter was explored by way of the evidence submitted to the inquiry, which highlighted the differences giving rise to the respective conclusions.
55. There is currently no development plan basis for the housing requirement figure in West Oxfordshire, with that contained in the Local Plan not going beyond 2011. The Council contends that the appropriate figure for the District's Objectively Assessed Need is 525 dwellings per year, as included in the emerging Local Plan to cover the period 2011-2031. The appellant relies on a figure of 660 dwellings per year based on the findings of the Oxfordshire Strategic Housing Market Assessment 2014. In addition, the appellant considers that the District is one where a 20% buffer (rather than 5%) should apply. There are also calculation differences with regard to whether the 'Liverpool' or 'Sedgefield' approaches should be used in dealing with the backlog.
56. On the supply side, the respective figures are 4,417 dwellings for the Council, and 3,255 dwellings for the appellant. The main disparities in evidence here relate to the anticipated supply from certain large emerging Local Plan site allocations, with disagreements on the achievability of specific numbers.
57. Taking these differences into account, the calculations of the five-year supply position range from 6-7 years for the Council to 2.9-3.2 years for the appellant.
58. Various recent appeal decisions in the District have been referred to where the Inspectors reached varying conclusions on the housing land supply position, reflecting their findings on the particular evidence before them.

59. The Examination of the emerging Local Plan is underway. I was informed that strategic issues and housing land supply were due to be heard at a session commencing on 23 November. The evidence before the Examining Inspector was provided for the latter session of this inquiry. He has sought clarification on particular matters relating to the housing requirement. It can be anticipated that the Inspector will in the near future be reaching conclusions and providing a view on these matters. The current position on the District's housing land supply is therefore one of flux.
60. I have considered against this background whether it would be a useful exercise for me to undertake an assessment of the evidence for the purposes of this appeal. I have had regard to the advice in the PPG that: "*The examination of Local Plans is intended to ensure that up-to-date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption, in a way that cannot be replicated in the course of determining individual applications and appeals where only the applicant's/appellant's evidence is likely to be presented to contest an authority's position*". I have also borne in mind the distinction between the calculation of an objectively assessed need and the derivation of a housing requirement for the purposes of a Local Plan.
61. Were I to find that the Council is unable to demonstrate a five-year supply, the relevant policies would be out-of-date. According to paragraph 14 of the Framework, the presumption in favour of sustainable development means for decision-taking, when this is the case, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in (the) Framework taken as a whole; or specific policies in (the) Framework indicate development should be restricted. As specified by footnote 9, the latter include locations at risk of flooding. Due to my conclusion above on flood risk, and the conflict found with national policy on flooding, the proposal would therefore not be subject to the tilted balance of paragraph 14.
62. Furthermore, even were I to agree with the appellant's assessment on the five-year housing land supply position, the resultant increased benefit of housing supply in meeting this requirement in combination with the other benefits of the proposal, as set out above, would in my judgement be insufficient to outweigh the harm of the proposal in terms of flood risk and the other identified harmful impacts together with the conflicts with the development plan and national policy on flooding.
63. I therefore do not consider the five-year housing land supply position further.
64. Overall I find that the proposal does not represent sustainable development.

The scope for the use of planning conditions to reduce the scheme

65. As set out above, the appellant has suggested that the maximum number of residential units within the scheme and the extent of the area of residential development be restricted by way of planning conditions.
66. The option put forward prior to the inquiry was a maximum of 116 units, with the exclusion of housing development from a central southern part of the area shown for development in the original scheme. With this amendment, residential development would remain proposed in a western part of the site

lying within Flood Zones 2 and 3 as subsequently agreed. It would thus not overcome the serious shortcoming of the originally submitted proposal on flood risk grounds, as set out above. Irrespective of any issue of potential prejudice that might arise from adopting such an amendment, it would therefore not be capable of making the proposal acceptable, and I give no further consideration to it.

67. The appellant's subsequent suggestion is for conditions to impose a maximum limit of 60 units and exclude housing development from a further area of the site. This is the western section of the originally proposed development, with the intention being to limit the residential area to the part of the site lying within the agreed Flood Zone 1. This option is shown in revised indicative plans, with a corresponding increase in undeveloped open space area.
68. Amended in this way by the proposed conditions, the scheme would clearly remain well within the upper numerical limit of the original application. Residential development would not extend on to any new area of the site not previously indicated, with conversely a large contraction in the area of such. As with the suggested restriction to 116 units, there is no dispute as to the lawfulness in principle of securing an amendment to the proposal by the means put forward.
69. The appellant does not seek to argue that the proposal reduced in this way would have a materially lesser impact in landscape and heritage terms. The harmful effects in those respects found above would essentially be unchanged with the retained development proposed on the frontage part of the site. The planning obligations as contained in the undertaking and agreement and discussed at the inquiry mostly utilise a tariff basis to relate the size of contributions to the number of units within the development, and therefore would be able to accommodate a reduced scale.
70. From the third party representations before me that respond to the proposed amendment, the publicity exercise on this carried out by the appellant appears to have achieved a fairly extensive degree of local awareness regarding it. The Rule 6 party was able to put forward views on the revision at the inquiry. In addition, it is clear that there is a significant extent of 'root-and-branch opposition' to the proposal that is unaffected by its precise size, including on flooding grounds.
71. However, on the latter matter there are detailed aspects which are of fundamental importance in terms of the suggested amendment that involve potential prejudice. The final expressed position of the EA on the scheme reduced to 60 units is one of no objection on Sequential Test grounds in relation to fluvial flood risk or combined fluvial and surface water risk, on the basis that all of the development would be outside Flood Zones 2 and 3. However, as also confirmed late in the inquiry, the EA does not comment on whether the Sequential Test should be applied in relation to surface water risk. The PPG advises that it is for the local planning authority, taking advice from the EA as appropriate, to consider the extent to which Sequential Test considerations have been satisfied, taking into account the particular circumstances in any given case.
72. In addition, the justification argued for the suggested revision relies on the findings of the appellant's Flood Risk Assessment. In the final version of this (revision 10), changes were made in response to continuing previous concerns

of the EA, including on surface water flooding and drainage matters. It is dated October 2015, with the appellant confirming that this supersedes all previous versions. The material it contains, including in relation to the changes, was addressed in examination of evidence at the final session of the inquiry.

73. The Council maintained an objection to the scheme on Sequential Test grounds even with a restriction to 60 units, as contended through the evidence of its planning witness and in submissions. However, it has no formally resolved position on this matter in relation to a scheme for 60 units accommodated within a restricted part of the site, a point noted against the Council's case in the appellant's submissions. I consider that the absence of an opportunity to reach a formal resolution after consideration of such a proposal in the light of the EA's advice, the information contained in the final FRA and the outcome of a normal full consultation with all interested parties potentially affects the weight carried by the Council's stance in relation to the Sequential Test on the scheme as proposed to be revised by conditions. There is therefore a risk of material prejudice to its position from adopting the amendment.
74. Further, the local publicity carried out by the appellant on the suggested revision by way of letters sent out on 27 August pre-dated the final version of the FRA. The appellant acknowledges the importance of local consultation on the proposed revision, as well as the significance of the FRA in assessing the acceptability of this in flood risk terms. Despite the 'root and branch' nature of much opposition to the proposal, the detailed aspects of flooding are clearly matters of local interest, and there is agreement on the high value of third party evidence with respect to the 2007 event and present day conditions. Representations were received more widely than from those participating directly at the inquiry, including on technical matters.
75. The way in which the appellant's consultation exercise was carried out means that it invited responses in advance of the final information on flooding, based on which I am being asked to accept the amendment. I cannot be sufficiently confident that all who are entitled to make representations on the proposed amendment in the light of the revised technical assessment on which the amendment relies, including with respect to surface water flooding and drainage and the need for the Sequential Test, have been given the opportunity to do so. Deprived of this, there would be a real risk of significant adverse prejudice to other parties were the suggested revision to 60 units to be taken into account.
76. For these reasons, I conclude that the appeal should be determined only on the basis of the original application and the earlier suggested reduction to 116 units. This is not a conclusion I reach lightly, given the benefit of a degree of flexibility in the conduct of appeals, as recognised in *Wheatcroft*, and the lengthy period of consideration of this appeal. However, in the particular circumstances of the case and having heard the evidence on flooding, I consider that the balance of public interest lies in ensuring that material prejudice in reaching a decision on the appeal is avoided.

Conclusion

77. For the reasons given above and taking into account all other matters raised I conclude that the appeal should be dismissed.

T G Phillimore

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Guy Williams of Counsel	Instructed by the Solicitor for West Oxfordshire District Council
He called:	
Richard Wheeler BA(Hons) DipJournalism	Design and Conservation Officer, West Oxfordshire District Council
Chris Wood BA DipTP	Senior Planning Appeals Officer, West Oxfordshire District Council
Lewis Purbrick BSc(Hons) MCIWEM	Flood Risk Adviser, Environment Agency
Barbara Chillman	Oxfordshire County Council (planning obligations session)
Judith Coats	Oxfordshire County Council (planning obligations session)
Martin Holland	West Oxfordshire District Council (planning obligations session)

FOR THE APPELLANT:

Celina Colquhoun of Counsel	Instructed by Chris Still, Gladman Developments Ltd
She called:	
Graham Harker BSc(Hons) CEng MIES MIAQM ACGI	Lead of Air Quality, PBA Peter Brett Associates LLP
Robert Hindle BSc(Hons) MRICS	Director, Rural Solutions Limited
Nigel Weeks BSc FACE	Director, Stirling Maynard Transportation
Timothy Jackson BA(Hons) DipLA CMLI	Director, FPCR Environment and Design Ltd
Laurie Handcock MA MSc	Associate Director, CgMs Ltd
Richard Lomas BSc(Hons) DipTP MRTPI	Associate, Hourigan Connolly
Martin Taylor BSc MSc MRTPI MIED	Associate Director, Nathaniel Lichfield & Partners
Christopher Still BSc(Hons) MRICS	Planning and Development Manager, Gladman Developments Ltd
David Lloyd BSc(Hons) PhD	Flood Risk Technical Director, Hydrock Consultants Ltd

FOR THE SOCIETY FOR THE PROTECTION OF BAMPTON:

Trevor Milne-Day	Chair, The Society for the Protection of Bampton
He called:	
Robin Shuckburgh	Chairman of Bampton Community Archive and founder member of the Save Bampton Library Committee
Richard McBrien	Member of Bampton Parish Council
Ned Westaway of Counsel	Instructed by The Society for the Protection of Bampton
He called:	
Andrew Tagg BSc(Hons) MSc MCIWEM MICE	Manager of the Floods Group, HR Wallingford
Janette Bone	Local resident
Jacqueline Allinson	Chairman of Bampton Parish Council
Lesley Campbell	(delivered closing submissions)
Janette Bone	(delivered closing submissions)

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Signed Statement of Common Ground
- 2 Appellant opening submissions
- 3 Council opening submissions
- 4 Society for the Protection of Bampton opening submissions
- 5 Hydrock Flood Risk Assessment October 2014
- 6 Draft s106 unilateral undertaking
- 7 Draft s106 agreement
- 8 Society for the Protection of Bampton - key plan
- 9 Council documents WODC1-6
- 10 Letter from Peter Miles, Witney
- 11 Appellant's response on planning contributions with appendices
- 12 Planning Inspectorate Decision reference S62A/2014/0001
- 13 Appellant's 2014 and 2015 base date Housing Land Supply Assessment updates
- 14 Mr Purbrick's supplementary proof (17 April 2015)
- 15 Mr Purbrick's Appendices EA3, EA21, EA24, EA26-EA31
- 16 JBA Consulting Note dated 20 April 2015
- 17 Oxfordshire County Council Preliminary Flood Risk Assessment June 2011 (Mr Tagg's Appendix F)
- 18 Flood alerts and flood warnings issued by the Environment Agency (Ms Bone's Appendix 4)
- 19 Ditch plan (Ms Allinson's Appendix J)
- 20 Housing land supply – clarification requested by appellant
- 21 Summary table of contested sites
- 22 Council's notes on housing sites and email dated 21 April 2015

- 23 Council's table of completions in North East Development Areas
- 24 Letter dated 29 October 2015 from Environment Agency
- 25 Flood Risk Assessment dated October 2015
- 26 Appeal decision ref APP/D3125/W/15/3121611
- 27 Drawing no. C13262-SKC028 rev B
- 28 Council's submissions on *Wheatcroft* application
- 29 Planning Inspectorate Good Practice Advice Note 09
- 30 Drawing no. 13262-C001 rev C
- 31 Hydrock Technical Note dated 4 November 2015
- 32 HR Wallingford telecom minutes dated 24 September 2015
- 33 Email from Lewis Purbrick dated 27 October 2015
- 34 West Oxfordshire District Council Land Drainage Consent dated 29 October 2015
- 35 Planning Practice Guidance on Water supply, wastewater and water quality
- 36 Appeal decision ref APP/D3125/W/15/3014933
- 37 Appellant statement of case for appeal ref APP/D3125/W/15/3014933
- 38 Council appeal statement of case for appeal ref APP/D3125/W/15/3121611
- 39 West Oxfordshire District Council Lowlands Area Planning Sub-Committee report dated 19 October 2015
- 40 West Oxfordshire District Council Lowlands Area Planning Sub-Committee report dated 2 November 2015
- 41 Revised draft unilateral undertaking
- 42 Revised draft legal agreement
- 43 West Oxfordshire County Council email dated 5 November 2015 and planning obligations statement
- 44 Email from Lewis Purbrick dated 5 November 2015
- 45 Appeal decision ref APP/Z2260/A/14/2213265
- 46 Appeal decision ref APP/P1615/A/14/2228822
- 47 Planning Inspectorate letter to The Bone Family dated 9 October 2015
- 48 Plan of New Road proposal
- 49 Email exchange with Lewis Purbrick dated 9 November 2015
- 50 Suggested draft conditions
- 51 Bundle of consultation responses provided by appellant
- 52 Appellant's section 106 update note
- 53 Letter from Thames Valley Police dated 9 November 2015 and attachments
- 54 Closing submissions for the Society for the Protection of Bampton
- 55 Closing submissions for the Council
- 56 High Court decision [2015] EWHC 410 (Admin)
- 57 Closing submissions for the appellant
- 58 Costs application for the Society for the Protection of Bampton
- 59 Costs application for the Council

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 60 Appellant's joint response to the costs applications
- 61 Final costs reply for the Council
- 62 Final costs reply for the Society for the Protection of Bampton
- 63 Signed section 106 unilateral undertaking dated 1 December 2015
- 64 Signed section 106 agreement dated 1 December 2015