

RE: LAND SOUTH OF BURFORD ROAD, MINSTER LOVELL

OPENING SUBMISSIONS ON BEHALF OF THE APPELLANT

1. This is an appeal against the refusal of outline planning permission, against officer recommendation, for up to 134 dwellings and means of access into the site together with associated highway works, with all other matters reserved, on land South of Burford Road, Minster Lovell (“the site”). The application was refused by West Oxfordshire District Council on 21st July 2023, contrary to the advice of its professional officer. The scheme will deliver a mix of much needed market housing, some 54 affordable homes, and 7 self-build plots, to the benefit of the district.
2. There were two reasons for refusal. The second reason for refusal related to the provision of appropriate infrastructure contributions, which is resolved by the s106 obligation. Subject to the s.106 obligation, it is understood that it will be accepted by the LPA that the settlement has the capacity in terms of its infrastructure to accommodate the development proposed
3. The Council’s substantive objection to the scheme is therefore contained in its first reason for refusal and relates to the principle of development and the effect on character and appearance of the area. The Council’s evidence also alleges harm to the settlement as a non-designated heritage asset, although this issue did not feature in the reason for refusal.
4. The Council’s reason for refusal does not bear scrutiny.
5. The delivery of a sufficient and rolling supply of good quality housing, including affordable housing, is a national priority but it is also a priority of the Council’s development plan¹. However, the Council is failing to deliver the homes that are needed in accordance with the stated priorities of the development plan and national policy. The Council’s housing needs are acute, and it has never been more important that suitable sites, such as the appeal site, are allowed to come forward to meet those critical housing needs.
6. First, the Council cannot demonstrate a five – year land supply, contrary to the minimum requirements of national policy. In both 2021 and 2022, Inspectors rejected the Council’s

¹ See EG Core Objectives 04 and 05 LP, page 40, and policy H1

assertion that it could demonstrate a five – year land supply. The Council now, once again, asserts that it can demonstrate a five – year land supply. However, the evidence that it has produced in respect of sites falls well short of the clear evidence required to demonstrate deliverability. The Appellant will say that the Council can only demonstrate a 3.86-year housing land supply. This equates to a substantial shortfall of some 651 homes, and the third consecutive year in which the Council cannot demonstrate a five – year supply. The Appellant’s delivery trajectory indicates that each and every one of the 134 homes proposed can come forward within the next five-year period and will assist in addressing the LPA’s substantial housing shortfall, in circumstances where there is a real and pressing need to do so.

7. Further, and irrespective of the five – year housing land supply position, it is clear that there has been a serious failure to deliver the homes required by the Council’s own Plan. The West Oxfordshire Local Plan 2031 (“WOLP”) seeks to deliver a minimum of 15,950 homes between 2011 -2031². By 2028, the Local Plan trajectory anticipated that some 4,192 homes should have come forward on the allocated strategic sites. To date, delivery is already 669 homes short, and the Council’s own five – year assessment anticipates that only 429 homes are now expected to be delivered to 2028. This means that by 2028, and with only 3 years remaining in the Plan period, delivery on the allocated strategic sites will be some 3,767 homes short of that which was anticipated by the Local Plan.
8. The position is plainly acute. The Council’s housing strategy has failed, and will continue to fail, to deliver the minimum number of homes required by the adopted Plan. On the Appellant’s assessment, by 2028, the Council will be so far behind its adopted requirement that it would need to deliver some 6,659 homes within the remaining three-year Plan period to meet its minimum housing requirement. That will not merely be an uphill struggle, it will be a near impossible task.
9. The Council says that its housing requirement is more than five – years old, and therefore requires review. However, that is no answer at all, since the review of the Local Plan is at a very early stage and can (it is agreed) only be attributed very limited weight³. There is no imminent Plan-led solution to the chronic failure to maintain the supply and delivery

² Policy H 1 of the WOLP 2031 Part 1, CDG1.

³ Planning SoCG at [6.6].

of homes in this Authority, and there is a pressing need for permissions to be granted now that can make a meaningful contribution to delivering the homes required.

10. The failure to deliver the homes required is plainly a significant issue for the residents of West Oxfordshire. However, there are also wider implications. West Oxfordshire, along with the other Oxfordshire Authorities, made a clear commitment through its Local Plan, to assist in meeting the housing needs of Oxford City. It did this by uplifting its single housing requirement by 2,750 homes, and by making a number of additional large strategic allocations. However, not only have those sites failed to deliver a single home to date, the LPA's own position statement finds that zero homes are considered deliverable on them to 2028. By 2031, there will plainly be a very substantial, and likely insurmountable shortfall. The failure to deliver against the planned commitment to Oxford is serious, and is rendered all the more significant when regard is had to the bigger picture. Cherwell, South Oxfordshire and the Vale of White Horse also committed to meeting Oxford City's needs, yet, by 2031, a combined 7,437 shortfall is anticipated in those local authority areas also.
11. The commitment to assist in meeting Oxford City's housing needs, and the apportionment of need between the various Oxfordshire Authorities, was the product of extensive co-operation and agreement through the Plan making process. The complete failure to deliver any homes whatsoever on the sites specifically allocated in West Oxfordshire's Plan to meet those needs to date, and in circumstances where there is a 0-deliverable supply from those sites to 2028, is not an issue that can be swept under the carpet as Mr. Wood seeks to do. The chronic failure to meet Plan commitments in respect of Oxford's unmet needs is plainly a serious and significant issue, both in West Oxfordshire, and across the wider Oxfordshire area.
12. Added to this, the position in respect of affordable housing is also stark. The Local Plan identifies that the delivery of affordable housing is a "*key issue*" in West Oxfordshire, due to its relatively high house prices, and that "*even relatively small, modest properties are beyond the reach of most single income households*"⁴. The Council's own Plan recognises that property prices are relatively high in the Witney sub - area, and that there is "*considerable housing need*" amongst those who cannot afford to buy or rent a suitable property at market prices in this area⁵. However, measured against the 2014 SHMA, the

⁴ Para 5.47 Reasoned Explanation.

⁵ See Para. 9.2.4 Reasoned Explanation page 143.

cumulative shortfall to date is some 587 affordable homes. The position is deteriorating, and even if all the sites, including the disputed sites, in the LPA's five supply deliver, by 2028, the shortfall will have increased to -752 homes⁶. The number of households on the housing register has increased exponentially from 992 in 2013 to some 2,506⁷, and with average waiting times of between 607 – 1,038 days, the position is sobering, and the outlook is bleak, for the very many residents of this district that cannot afford to access a home.

13. Not only will the proposed development deliver some 54 affordable homes in a high – quality, inclusive environment, but each proposed home will be constructed to meet the 2025 Future Homes Standards, delivering net zero ready homes which reduce carbon emissions by at least 75% over current building regulations requirements. This will be achieved through a combined fabric, energy efficiency and low carbon renewable energy approach, incorporating measures such as triple glazing, heat recovery systems, solar PV on all homes, and air source heat pumps. This is, self-evidently, a highly sustainable scheme in environmental terms. But further, reduced energy demand has a long-term benefit for occupants by reducing household energy bills. This will be particularly beneficial for local people qualifying for an affordable home, not least in the context of the current cost of living crisis.
14. Not only are there chronic failures in respect of the supply and delivery of market and affordable homes in West Oxfordshire, but West Oxfordshire is also one of 6 LPAs nationally that did not grant any permissions for any self-build plots at all in 2021/2022. Whether or not Mr. Wood agrees with it, there is a statutory requirement to grant sufficient permissions for enough serviced plots to meet the demand for self-build plots, and this Authority is falling well short of meeting that requirement. This proposal will also deliver 7 self – build plots, which is a further substantial benefit of the scheme in view of the LPA's serious failings in this regard.
15. In short, and on any basis, there is a serious and pressing need to deliver additional homes in this Authority. The appeal scheme is exactly the type of scheme that the district needs. It will deliver a package of benefits, not least much needed market and affordable housing

⁶ See Appellant's AH statement – page 14 – 15: Again, measured against the 2014 SHMA.

⁷ As recorded in the AH SoCG and taken from the Council's housing data.

and self-build plots, where there is an immediate acute and critical need to deliver the same.

16. The appeal site is located Minster Lovell. Minster Lovell is a settlement located in the Witney sub – area. This sub – area plays an important economic role within the district, being the most densely populated of all the sub-areas, with most of the district’s job opportunities and economically active residents being located here⁸. The Local Plan makes two major strategic allocations within the Witney sub – area to deliver some 1850 homes. By 2028, those sites were expected to have completed 1,250 homes. However, the Council’s five – year housing trajectory now anticipates that zero homes will be delivered on those strategic sites by 2028, and with only three years left within the Plan period. Again, the catch-up task on these sites is likely to be insurmountable, with the Plan period extending only to 2031.
17. Directing growth to Minster Lovell would be consistent with the overarching spatial strategy of the Plan, which seeks to focus growth within the Witney sub - area⁹. In addition, Minster Lovell itself is expressly identified by the Council’s own Plan as “*a sustainable settlement close to Witney and also offering its own range of service and facilities*”¹⁰. The Council’s Settlement Study that informed the Plan ranked Minster Lovell as second most sustainable village, and 11th out of all 41 settlements¹¹. Indeed, Minster Lovell was the only settlement outside Witney within the Witney sub-area that was allocated for growth in the Plan (Policy WIT4).
18. The appeal site itself is well located to accommodate the growth proposed. It is immediately adjacent to the allocated site WIT4, which the LPA’s own Plan identifies as a suitable and sustainable location for development. Key services and employment opportunities are easily accessible by public transport. The 233 and 234 bus service together providing a half – hourly service to the Key Service Centre of Witney and its hospital, dentists, doctors, large food, and non-retail offers. The journey time by public transport is only 12 minutes. The Downs employment area, which is a key employment area in the district, is also accessible on the same bus services in only 2 minutes. At 5km and 2.7km respectively, and with much of the route being located on NCR57, Witney and the Downs employment area are also accessible by cycle.

⁸ See page 146 LP.

⁹ See Policy H1

¹⁰ Page 157 LP

¹¹ LPA’s 2016 Settlement Sustainability Report, CD G9, p.17.

19. As the LPA's own settlement study records, Minster Lovell itself is also comparatively well provided for in terms of the services and facilities on offer, with spar/convenience store, post office/store, florist, hairdressers, furniture store, car garage, playgroup, primary school and public houses, and village hall.
20. The LPA's objection in relation to accessibility appears to be confined to the point that the services and facilities in Minster Lovell will not all be within 800m for all residents. No substantive point is taken in the LPA's written evidence as to the safety or adequacy of the routes to the services and facilities. However, there is no local or national policy requirement for all services and facilities to be located within 800m of each home constructed. Most of the services and facilities are accessible to most residents in around a 10-minute walk, and none of the services or facilities are more than 1.1km from the centre of the site¹². The site visit will confirm that they are reasonably accessible by foot.
21. This is a rural authority, and, as highlighted in NPPF109, the opportunities to maximise sustainable transport solutions varies between urban and rural areas. However, residents of the appeal site will have a genuine choice of sustainable transport modes, for the reasons set out above. The proposal complies with policies T1 and T3 of the Local Plan, and NPPF109, by focusing development on a sustainable site, where residents will have a "genuine choice" of sustainable transport modes (NPPF109).
22. The Appellant will therefore say that the LPA's accessibility objection is unsustainable. It is unsurprising that Officers did not find the location of the proposal to be unsustainable or recommend refusal of the scheme on this basis. Indeed, Mr. Wood's own evidence accepts that Minster Lovell benefits from,
*"significantly more facilities and significantly better public transport links than most other villages in the district' it is also closer to larger centres than most villages; and the LPA's settlement sustainability (study) (albeit last updated in November 2016) confirms this assessment, concluding that it is one of the most sustainable of the smaller villages."*¹³

¹² The White Hart pub is 965m from the nearest part of the site and 1.25km from the furthest point.

¹³ 2.32 CW, page 9

23. The appeal site is a greenfield site, adjoining the built-up area of the village. However, both the Plan and the Council's five – year land supply depend on greenfield sites as a component of supply. Indeed, Policy H2 expressly permits new development to come forward on such sites where convincing evidence is presented that such development is (i) necessary to meet identified housing needs (ii) it is in accordance with the distribution of housing set out in policy H1, and (iii) the proposal is in accordance with other policies in the Plan, in particular the general principles in Policy OS2.
24. Here, and as set out above, the proposal is plainly necessary to meet identified housing needs, and consistent with the overarching spatial strategy of the Plan contained in Policy H1 of the Plan.
25. It is accepted that there would be limited landscape harm occasioned by the appeal proposals. That inevitable harm causes a limited conflict with one of the general principles in policy OS2, Policy EH2 and OS4 of the Plan, in so far as they seek to “conserve” – that is “protect” the intrinsic character and quality of the natural environment. However, the harm occasioned is no more than the inevitable consequence of the fact that this is greenfield development – any new development of a greenfield site will have some impact on the landscape and will be visible in some views. A limited conflict with other policies of the Plan that is no more than the inevitable consequence of the fact that a scheme is a greenfield scheme, cannot logically be sufficient to bring a proposal into conflict with policy H2, which expressly permits such development. Here, there is compliance with Policy H2 and with the Plan as a whole.
26. Understood in its proper context, the Council's objection to the scheme on the basis that there would be unacceptable harm to the character and appearance of the area does not bear scrutiny.
27. The appeal site is comprised of agricultural fields located on the edge of, and heavily influenced by, the settlement edge of Minster Lovell. There is nothing particularly distinctive about it. It is not part of an area designated for its landscape value, and it is agreed that the site does not comprise part of a “valued landscape” that should be protected and enhanced in accordance with the provisions of the NPPF. Whilst the NL/AONB is located to the north of the appeal site, it is a matter of agreement that the appeal proposals would not harm the NL/AONB or its setting. The appeal site does not make any particularly valuable contribution, in visual terms, in spatial terms, or in terms

of the settlement pattern, to the setting of the village. Indeed, when travelling along Burford Road, the appeal site is visible for only a short period of time, and is then experienced as a rather unremarkable agricultural field in the context of the built development on the allocated site next door.

28. The site is well contained by topography and vegetation. The landscape effects of the scheme will be highly localised, and effectively confined to the site itself (the LPA does not allege any wider landscape harm). Visual effects will also be limited in extent and having regard to the number of receptors affected.
29. The appeal proposals are a positive, landscape led response to the local context. The Landscape Strategy shows how the appeal proposals will provide significant additional landscaping and vegetation, including (illustratively) 225 new native trees, circa 0.9km of new native hedgerows, and over 3ha of new grassland. This will bring significant biodiversity benefits and provide attractive areas of POS within the residential layout. The landscaping and POS proposals will provide a high-quality setting to the new housing development and the new settlement edge of Minster Lovell, which will provide a contiguous and consistent, and soft, relationship between the settlement and surrounding countryside.
30. In short, this is a scheme that can be integrated successfully into the local context without undue harm to the character of the local landscape or visual amenity. Any harm occasioned falls towards the bottom of the scale, is localised, and is no more than arises as an inevitable consequence of the fact that this is greenfield development. The proposal “recognises” and respond to the intrinsic character and beauty of the receiving landscape and environment in accordance with NPPF180 (b). Whilst the proposal is greenfield development, it is development contemplated by policy H2 of the Plan, and the degree of harm certainly does not justify refusal of the scheme, having regard to national policy and the policies of the Plan read together as a whole.
31. The settlement of Minster Lovell is a Chartist settlement that has been found to be a non – designated heritage asset in previous appeal decisions. However, there was no reason for refusal based on harm to heritage assets, and no allegation that the proposal is contrary to relevant heritage policies of the Plan (EH9 – historic environment, EH16, non-designated heritage assets, for example). The SCG confirms that the Council does not allege conflict

with any policies other than those set out in the Reasons for Refusal¹⁴. Nevertheless, for the first time, Mr. Wood’s written evidence asserts that there would be unacceptable harm to Minster Lovell as a non – designated asset. That assertion is wholly unsubstantiated and unevidenced. As Ms. Stoten will explain, the significance of Minster Lovell as a non – designated asset derives from the buildings and the plots within it. The layout of the plots within the settlement was designed to maximise the landholdings. The overall shape of the settlement was by chance, related to the landholding purchased, and does not reflect or relate to any Chartist ideals, and nor were there any designed views to or from the functional plots. The proposed development site, which comprises arable fields beyond the Chartist settlement area and is largely separated from it by modern housing, does not contribute to the heritage significance of the asset, and the appeal proposals would cause no harm to the significance of the asset. Mr. Wood’s written evidence provides no assessment of significance at all and does not come close to demonstrating the contrary.

32. Turning to concerns raised by third parties, a surface water drainage strategy for the site incorporates sustainable drainage techniques including attenuation and infiltration to achieve reductions in greenfield run off rates, decrease flood risk downstream, and there will be no adverse effect on the adjacent property (Repeater House). Conditions have been agreed to ensure any necessary upgrading and improvement works to increase the capacity of the local sewer network are implemented prior to occupation. Subject to the imposition of the agreed conditions, there is no objection from TWUL as the Local Water Authority, OCC acting as the LLFA, or the LPA, in respect of flood risk or drainage, and there is no compelling reason to depart from the expert views of the statutory consultees in relation to such issues¹⁵.

33. Third parties also raise highway safety concerns. The development will not cause any unacceptable impacts on highway safety. In common with flood risk objections, there is no is no compelling reason to depart from the expert views of the Highway Authority as statutory consultee.

¹⁴ PLANNING SoCG at [7.5]

¹⁵ The views of a statutory consultee should be given considerable weight, and that there should only be departure from those views where there are clear and compelling reasons to do so. See, for example: *Shadwell Estates Ltd v Breckland DC and Pigeon (Thetford) Ltd* [2013] EWHC 12 (Admin) at paragraph 72; *Visao v Secretary of State* [2019] EWHC 276 (Admin) at paragraph 65; *Swainsthorpe Parish Council v Norfolk CC* [2021] EWHC 1014 (Admin) at paragraph 70).

34. All other development impacts will be satisfactorily addressed through the obligations proposed in the s.106 obligation and controlled through the agreed conditions.
35. In short, and understood in its proper context, the appeal scheme is exactly the type of scheme that the Council should be welcoming with open arms. It will provide a package of benefits, including much needed market and affordable homes and self – build plots, in circumstances where there is a critical need to deliver the same, in accordance with the Council’s distribution strategy in policy H1, and in settlement identified as “sustainable” in the Council’s own Plan. The scheme will relate well to surrounding development and the local context, and there will be no unacceptable landscape, visual, heritage or other development impacts. There will be further benefits to the local economy, as well as to ecology, with a BNG of 13.10% (above the mandatory requirement for 10%).
36. The proposed development is in accordance with the development plan read as a whole, and planning permission should be granted without delay. However, the tilted balance applies in this case, and is incorporated into the Plan by Policy OS1. Any adverse impacts of the scheme do not come close to significantly and demonstrably outweighing the benefits of the scheme when assessed against the policies of the NPPF as a whole.
37. On any basis, this is clearly a scheme for sustainable development in the terms of the NPPF. The negative effects will be limited, and the benefits substantial. It is exactly the type of site that is required to meet housing needs going forward.
38. The Council’s Officer was plainly right to recommend that permission should be granted. There is no justifiable reason to withhold permission. It will be respectfully requested that the appeal is allowed, and permission is granted accordingly.

13th February 2024

Sarah Reid KC
Constanze Bell

Kings Chambers
Manchester
Leeds, Birmingham.