

West Oxfordshire District Council

Land South of Burford Road, Minster Lovell

Appeal ref. APP/D3125/W/23/3331279

Closing Remarks on behalf of West Oxfordshire District Council

as the Local Planning Authority (“the LPA”) in this case

1. Clearly the LPA’s position has changed dramatically since the start of the inquiry and this closing will therefore concentrate on two documents: (1) the LPA’s opening comments, which set out the basis on which it considered the appeal proposal unacceptable; and (2) the position statement subsequently signed between the LPA and the appellant that accepted that the appeal proposal should be approved.

The LPA’s Opening

2. As regards the first of these, the opening asserted all the following harms:
 - Conflict with Local Plan policy OS2 and the development plan as a whole because taken cumulatively with the Holloway Lane estate, the proposal would not amount to “limited development”;
 - Conflict with Local Plan policy H2 because, housing development of this area of “undeveloped land adjoining the built up area” of Minster Lovell was not “necessary to meet identified housing needs” because the LPA could demonstrate a full 5 year deliverable housing land supply (“HLS”); and there was no conceivable other “identified need for housing”
 - a wide range of other harms and conflict with other provisions of the development plan, specifically, the LPA’s view that the appeal scheme would: a. *inter alia* a failure to protect or enhance the local landscape and the setting of the settlement and involve the loss of an area of open space that makes an important contribution to the character or appearance of the area (contrary to OS2 and EH2) as a result of landscape and visual harms; b. a failure to respect the village character and local distinctiveness contrary to OS2 and OS4; c. harm to the historic character of Minster Lovell (Charterville) by making its significance (original linear layout) more difficult to appreciate and understand (contrary to OS2 and OS4); d. a failure to help to maintain the vitality of Minster Lovell (in the absence of specific evidence from the appellant on this matter) contrary to OS2; and e. the new dwellings/ residents would be excessively car-dependent, and would not minimise the need to travel by private car, contrary to Policies T1 and T3;

3. Unfortunately, the majority of these assertions did not withstand the detailed inspection to which they were subjected in cross examination (and in some cases, as clarified in re-examination) and in particular:
- Whilst he did not accept that the correct position on the requirement that “.....The villages are suitable for limited development which respects the village character and local distinctiveness and would help to maintain the vitality of these communities” (and notwithstanding the wording of paragraph 4.22 of the supporting text to which he was directed), CW eventually accepted that if there was no harm then development should be approved and following from this that harm was important to assessing compliance with policy OS2, even if it was not “limited development”
 - CW accepted that even if the Inspector should conclude that the LPA can demonstrate a 5-year deliverable HLS, there were nonetheless “identified housing needs” across the District and in the Witney sub-area (which CW accepted was the sub-area where most growth had been anticipated in the Local Plan) compared to the requirement set out in the Local Plan, primarily as a result of the slow progress being made in bringing housing forward in large strategic development areas in the District (“SDAs”) and in particular in the Witney sub-Area,
 - CW similarly accepted that there was an identified acute need for affordable housing across the District and that the only realistic means of addressing that need was through the provision of additional large housing sites; and that given the slow progress on the SDAs, these additional large sites would very likely be unallocated sites adjoining settlements
 - Noting in this context that paragraph 5.38 of the supporting text to Local Plan policy H2 clarifies that “.....identified housing needscould be district-wide needs”, CW therefore accepted that the appeal site was therefore acceptable in principle for housing under policy H2 even if the LPA could demonstrate a full 5 year deliverable HLS.
 - CW accepted in terms that the various character harms arising from conflicts with other Local Plan policies and in particular the General Principles of OS2 (including adverse landscape and visual effects) should be assessed in that context; and that of the appellant’s arguments that relied on the “inevitability” of some of these harms had some relevance in ascribing weight to those harms;
 - CW accepted that the site had good accessibility characteristics in terms of opportunities to use public transport and cycling and that some local destinations were readily or reasonably accessible on foot for at least some future residents although he retained his view that many residents would not walk to these destinations (with the possible exception of the Horse and Radish public house); and ultimately conceded in re-examination that viewed across those policies as a whole, the proposal would not conflict with policies T1 or T3;
 - Finally, CW conceded in re-examination that if the LPA could not demonstrate a full 5 year deliverable HLS, the proposal would be acceptable under the “tilted balance”.

The Position Statement and Reason for Refusal 1

4. Further to these various concessions and in considering its position overnight, the LPA recognised that it could no longer support several of its asserted policy conflicts and the weight it had previously ascribed to the harms identified were overstated in the absence of a conflict in principle with the locational requirements of policy H2; but that the benefits likely to arise from a scheme of this kind remained significant; and in that context, it was also difficult to support a conflict with policy OS2 as whole whether or not CW's reading of the requirement for limited development in villages was correct, making it very difficult to support refusal of the proposal even if it can demonstrate a full 5 year deliverable HLS.
5. It therefore signed the joint position statement that is in front of this inquiry that states in relation to reason for refusal 1 ("RfR1"), and **on the specific circumstances of this case** that:
 1. *The LPA and Appellant agree that the site is located in a sustainable and accessible location, and that there is no conflict with policies T1 and T3 of the Local Plan.*
 2. *The LPA confirms that it does not allege a conflict with policies EH9 and EH16 of the Local Plan, and that, applying NPPF paragraph 209, the LPA agrees that there is no unacceptable impact on the non-designated heritage asset of Minster Lovell.*
 3. *As to the principle of development, for the purposes of policy H2 of the Plan, the LPA agrees that, irrespective of whether the LPA can demonstrate a five-year housing land supply, convincing evidence has been presented to demonstrate that the Appeal Scheme is necessary to meet identified housing needs and is consistent with the distribution of housing strategy set out in Policy H1.*
 4. *Whilst the LPA has alleged that there is a conflict with policies EH2, OS4 and OS2 of the Plan that arises from the landscape and visual impacts of the scheme, it is agreed that such conflicts would be expected to arise from the development of "undeveloped land adjoining the built up area" of villages, which is permitted in principle by policy H2 in this case (see paragraph 3 above). Accordingly, the LPA agrees that the appeal proposal does not conflict with the policies of the development plan, when read as a whole. It is therefore also agreed that, applying policies H2 and OS2, the appeal scheme is acceptable in principle, and is also acceptable in respect of the landscape and visual impacts in this particular case, noting the opportunities to achieve mitigation through a landscaping scheme that can be the subject of conditions.*
 5. *The LPA does not identify any other conflict with the policies of the development plan.*
 6. *It is agreed that the appeal proposal is in accordance with the development plan when read as a whole.*
6. This remains the LPA's position in closing.

7. However, it will comment further below on the issues arising in relation to its deliverable HLS; and certain of the provisions required from the S.106 agreement.

Five year housing land supply

8. Notwithstanding the LPA's altered overall position at this appeal, it continues to argue that it can demonstrate a full deliverable HLS in excess of 5 years.
9. The appellant's contrary position effectively relies primarily on its assessment that some of the sites contained in the LPA's most recently published 2023-2028 HLS position statement should not be included because the LPA had not produced "clear evidence" to support their inclusion, as required in the NPPF definition of deliverability; and to its contention that a 10% lapse rate should be applied to small sites.
10. In this context, the LPA principally relies on the evidence contained in CW's appendices and given during the round table session regarding the deliverability of the sites in dispute.
11. However, the LPA would emphasise generally in this context that:
- First, it is important to note that the test for a site to be considered deliverable under part (b) of the NPPF definition requires ".....clear evidence that housing completions will begin on site within five years", it does not require clear evidence regarding the precise quantum of delivery. Therefore, it is inappropriate to just discount entire sites from the supply on the basis that the assumptions relating to their delivery are not agreed, as Mr Richards has generally sought to do.
 - Second, as set out in CW's appendix 5b, the PPG provides some guidance on the type of information that may represent "clear evidence", which is not exhaustive, and in the LPA's submission must ultimately be a matter of planning judgement as applied to each site. Moreover, this guidance applies to a wide range of sites, even where no consent has been granted but progress is being made towards submission of an application. In that context, CW's evidence shows progress of various kinds at all the disputed sites
 - Third, the lack of specific information from a developer does not mean it cannot be considered deliverable, particularly where all the other evidence suggests completions will come forward in the next 5 years. Thus, land north of Witney Road, Long Hanborough is a relatively small, unconstrained and unallocated greenfield site that was granted planning permission over a year ago under the operation of the fourth bullet point of policy H2 and with an expedited time limit condition specifically to help boost the deliverable HLS. It is in the control of an active local house builder with a good track record of delivery; and CW's evidence shows conditions are in the process of being discharged. There is no evidence or logical justification to conclude that the process is likely to be paused or that no completions will come forward in the 5-year period.

- Fourth, whilst Mr Richards effectively suggests that the Long Hanborough site should be reduced to zero deliverability, largely as a result of the absence of any detailed trajectory, he also wishes you to disregard the REEMA North and Woodstock sites, where there are detailed trajectories, noting that the Hill Rise trajectory was submitted in support of the delivery of that hybrid proposal at inquiry;
- The LPA would also compare the evidence produced in that case and Mr Divall's evidence on deliverability, which rely on a stated trajectory and estimated delivery rates cross-checked for reasonableness against past performance of Catesby Estates as a promoter (which the LPA and the overall SoCG regards as clearly demonstrating deliverability in the current case), which are provided before the specific developer is identified.
- This argument also applies to the trajectories and build out rates produced for many of the other disputed sites, including the other Woodstock site and REEMA North (which is a cleared site in Carterton with an extant permission and an active national housebuilder involved), which the LPA contends should be regarded as more reliable because they are being presented by the specific developers who will be carrying out the work and who have detailed knowledge of their own capabilities and intentions, noting also that CW confirmed that very high build out rates have been achieved in the District recently (and indeed in Carterton).

12. As regards lapse rates for small sites (and notwithstanding the approach taken in the Ducklington decision relied on by Mr Richards), the LPA considers that just as the appellant relies on the wording of the NPPF definition of deliverability throughout its arguments relating to larger sites such as the SDAs that may well deliver some housing within the relevant 5-year period (an approach the LPA accepts as appropriate, as required by the definition), it should also recognise that:

- The definition should be naturally read as referring to sites individually; and each site should be assessed on that basis, which gives no justification for averaging "expected lapses";
- Those responsible for drafting the NPPF would have been well aware of the fact that in practice some small permissions will lapse but the definition nonetheless clearly states that ".....all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered...."; and
- Lapses will naturally disappear from the HLS in a relatively short period in any case.

Reason for Refusal 2 and Necessary Infrastructure

13. As stated in the latter sections of the position statement:

7. *In accordance with Policy OS1, para. 11 of the NPPF and s.38(6) PCPA 2004, it is therefore agreed that permission should be granted subject to satisfactory conditions and a satisfactory s.106 agreement being executed.*

8. *It is agreed that the draft s.106 agreement, if executed, would resolve reason for refusal 2.*

14. The LPA wishes to re-emphasise here that, as discussed yesterday, it regards all the infrastructure and other matters dealt with in the submitted (and now agreed) S.106 agreement that is before this inquiry; as **necessary** in planning terms.

15. In this context, it would particularly emphasise that, as it understands it, the village hall has served the local community since the early part of the 20th century and that it has adapted to increased population sizes across the years.

16. However, the proposal, taken with the recent expansion of the village to the west in the form of the Holloway Lane estate would increase the population of the village by more than 50% (noting that there are other villages in the parish); and the LPA regards the expansion of community facilities as critical to achieving satisfactory integration of the new residents into the existing community.

17. In that context and noting variously that (a) there are no other projects being put forward that would involve expansion of existing community facilities; (b) the amount requested is highly consistent with the amounts provided from the Holloway lane estate, taking account of indexation and the number of dwellings proposed; (c) the very constrained nature of the site, which will require additional land to enable the hall to be replaced or extended; and (d) the concerns of local residents including Mr Feilden, speaking as an experienced former surveyor on behalf of the Parish Council that the amount proposed is inadequate, the LPA urges the Inspector to look positively on that part of the agreement.

Conclusion

18. In summary, whilst it no longer opposes the appeal proposal, the LPA continues to argue that it can demonstrate a full 5-year deliverable HLS; and that all the provisions within the submitted (and now agreed) S.106 agreement that is before this inquiry are **necessary** in planning terms.

Chris Wood

Senior Planning Officer (Appeals)

22 February 2024