

RE: LAND SOUTH OF BURFORD ROAD, MINSTER LOVELL

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

1. This is an appeal against the refusal of outline planning permission 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. 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. This was a scheme that was refused by Members, contrary to the advice of the Council’s own professional Officer. The professional Officer was right to recommend approval, and the Council has been unable to substantiate its reasons for refusal at the inquiry. The headline point is that, following cross – examination and reflection, the LPA now agrees that¹:
 - (a) The site is located in a sustainable and accessible location, and there is no conflict with policies T1 and T3 of the West Oxfordshire Local Plan.
 - (b) There is no unacceptable impact on the non – designated heritage asset of Minster Lovell, and no conflict with policies EH9, EH16 of the Local Plan, or NPPF209.
 - (c) Applying policies H2 and OS2 of the Local Plan, the appeal proposal is acceptable in principle.
 - (d) The appeal proposal is also acceptable in respect of the landscape and visual impacts.
 - (e) The s.106 obligation, if executed, would resolve reason for refusal (2).
 - (f) The proposal is in accordance with the development plan as a whole.
 - (g) In accordance with Policy OS1, paragraph 11 NPPF, and s.38 (6) PCPA 2004, it is agreed that permission should be granted subject to conditions and the s 106 obligation.

¹ Position Statement Appellant and LPA

3. The housing needs in this Authority 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. This scheme should never have been refused by the LPA. It is, manifestly, a scheme for sustainable development that accords with both the development plan and the policies in the NPPF.
4. In that context, we turn to the Inspector's main issues².

(1) The effect of the proposal on the character and appearance of the area

5. It is now a matter of express agreement with the LPA that the impacts of the appeal scheme are no more than would be expected to arise from the development of undeveloped land adjoining the built-up area, and that the proposal is,

*"...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"*³.

6. The LPA's concession that the landscape impacts of the scheme are acceptable was plainly right.
7. The appeal site is comprised of parts of two relatively unremarkable arable agricultural fields located on the western edge of, and influenced by, the existing settlement edge. There is nothing particularly distinctive about it:
 - (i) The site does not have any statutory status or identified quality in the development plan and is technically unconstrained and undesignated in environmental and landscape terms.
 - (ii) The AONB/NL is located to the north of the appeal site and has a relatively distinct landscape character⁴. However, the appeal site is separated from the AONB/NL by relatively dense vegetation aligning Burford Road and represents a

² Although we take Inspector's main issue (a) (principle of development and accessibility) out of turn, reflecting the way in which evidence was presented at the inquiry, and so that reference back to other issues can be presented more logically in these closing submissions.

³ See paragraph 4 Position Statement

⁴ The river valley, more dramatic topography, pastoral and aesthetic qualities – see 4.19 CM proof.

very different character. It is a matter of agreement that the appeal proposals would not harm the AONB or its setting⁵.

- (iii) It is agreed that the appeal site does not form part of a Valued Landscape for the purposes of the NPPF. This is not, therefore, a landscape that requires “*protecting and enhancing*” in the terms of NPPF180 (a).
- (iv) Mr. Mylchreest’s (“CM”) assessment against the indicators of value set out in GLVIA 3 and TGN 02 – 21⁶ indicates that the landscape of the appeal site is of no more than “*ordinary*” value. The site does not demonstrate the presence of a sufficient number of indicators of landscape value, and nor does it have a single indicator of such importance, to elevate it above other unremarkable landscapes. This assessment was not disputed by Mr. Wood (“CW”) in the round table (“RT”) session.

8. Nor does the appeal site make a particularly valuable contribution to the setting of Minster Lovell⁷:

- (i) The setting of Minster Lovell is not defined, or defined as important, within any published document (such as a CAA, landscape character appraisal, or within the West Oxfordshire Design Guide).
- (ii) The appeal site makes only a limited contribution to the visual setting of the settlement. It does not form an important or prominent part of the landscape context, and there are limited locations from which it is experienced. There are few wider public views within which the appeal site is visible, let alone experienced as a valuable contributor to the setting of the village.
- (iii) The appeal site does not provide a notable arrival or departure point to or from the village. When travelling along Burford Road, the appeal site is only visible for a short distance (around 600m) and is experienced in the context of the existing Bovis scheme, which heavily influences it.

⁵ CD E6 Landscape SoCG at para. 4.

⁶ Natural Heritage, Cultural Heritage, Condition, Associations, Distinctiveness, Recreational, perceptual (scenic), perceptual (wildness, tranquillity) and functional – see pages 24 – 46 CM proof for assessment.

⁷ See analysis at CM page 29 – 34.

- (iv) Spatially, the appeal site is well related to the settlement pattern. As recognised in the Council's Design Guide⁸, the settlement has a linear form to the south, and a more nucleated form to the north. In discussion with Officers, and responding to comments made by the Local Plan Inspector when allocating the adjacent Bovis site⁹, the scheme was amended to ensure that the built form is contained away from the linear area to the south¹⁰. The development of the appeal site would be consistent with the growth of the settlement through the 20th century and the settlement pattern/nucleated form to the north¹¹.
9. In short, the appeal site does not make any particularly valuable contribution to the setting of the village, and CW's evidence in the RT session failed to articulate any evidence to the contrary. The appeal proposals will simply move the edge of the village c.240m to the west into unremarkable agricultural land, which is already influenced by the existing settlement edge. The village itself will still be experienced as a settlement in an agricultural landscape.
10. The landscape effects of the scheme would also, it is agreed, be highly localised¹². The site is remarkably well contained, such that the LPA's evidence did not suggest that there would be any landscape harm extending beyond the site itself. Even at this highly localised scale, there will be no more than a moderate effect on the landscape character of the appeal site itself following implementation of the appeal scheme¹³.
11. In visual terms, the effects would also be limited and localised. The following is noted:
- (i) In accordance with the Landscape SCG, the LPA's evidence in respect of wider viewpoints focussed on longer views from the north (VP7, 11 and 12¹⁴), together with additional VPs 7a and 12a. However, the LPA did not produce any substantive evidence to challenge CM's evidence that, at year 15, the magnitude of change from these VPs would be "*imperceptible*". Notwithstanding a minor dispute (at least in substance) as to the sensitivity of the receptors on these minor

⁸ CD G3 West Oxfordshire Design Guide, April 2016, p.8 and p.16.

⁹ See CD E21 CM rebuttal proof p.2.

¹⁰ See Officer's Report CD9 paragraph 5.23.

¹¹ CD E11 CM PoE at 6.24.

¹² CD E6 Landscape SoCG at para. 4 and, more generally, the areas of disagreement section. See also CM PoE at para. 6.33.

¹³ Combining medium sensitivity (medium value and susceptibility) with an inevitably high magnitude of change at site level.

¹⁴ See e.g. paragraph 6 Landscape SoCG, CD E6.

roads¹⁵, there was effectively no dispute from CW in the RT session that visual effects on receptors at these VPs would remain right at the bottom of the scale. On CM's expert analysis, the level of effect at Y15 will be "*negligible*"¹⁶. The Appellant respectfully suggests that this will have been more than evident on the site visit.

- (ii) There will of course inevitably be some visual effects on receptors on Burford Road, which is immediately adjacent to the appeal site. From here, however, views are already partially restricted by tree cover on the northern boundary of the appeal site. This will be enhanced over time through reinforcement planting and improved management, which will assist in softening the development proposed. Whilst there will be change to the character of the site itself, that change will be experienced by receptors on a localised section of a relatively busy highway, and in the context of the existing built form in the immediate surroundings, which is of a similar character. Overall, there will be no more than moderate effects at year 15 for members of the public using Burford Road.
- (iii) Visual effects have been assessed in respect of residential receptors. Having taken that assessment into account, the LPA accepts that there would be no harm to residential amenity¹⁷. Nor is there any "right to a view". There would, therefore, be no unacceptable planning harm caused by the appeal proposals in this respect.
- (iv) The LPA did not produce any substantive evidence to challenge CM's assessment in respect of any other viewpoint or allege that the effect on visual amenity from these viewpoints would be unacceptable.
- (v) It was also agreed that there would be no harm to the AONB/NL, or its setting caused by the appeal proposals¹⁸

¹⁵ In the RT, there was a disagreement as to whether receptors on minor roads in the AONB/NL should be attributed with "very high" sensitivity at the top of the scale (CW) or "high sensitivity" CM. The Appellant's firm case is that CW's analysis is overstated: Receptors on minor roads looking through a gap in a hedge cannot sensibly be attributed sensitivity right at the top of the scale, consistent with e.g. a receptor at a designated viewpoint on a PROW in the AONB/NL. CM's assessment is fully consistent with the methodology in the LVA, which is agreed to be proportionate and acceptable (SoCG Landscape paragraph 1).

¹⁶ See table at EDP5, and also supplemental analysis in ID4 (Additional Viewpoints).

¹⁷ CD E6 Landscape SoCG at para. 9.

¹⁸ CD E6 Landscape SoCG at para. 13.

12. Finally, it is of note that the appeal proposals are high quality, and landscape led. Therefore, whilst there would be some limited, localised and inevitable landscape and visual harm, it is also right to record that there would be moderate positive effects on the landscape fabric of the appeal site. The Landscape Strategy shows how the appeal proposals will provide significant additional landscaping and vegetation, including (illustratively) 225 new native trees, c.0.9km of new native hedgerows, and over 3ha of new grassland. This will bring significant biodiversity benefits, and moderately positive benefits in respect of the landscape fabric of the appeal site¹⁹.
13. Therefore, whilst it is accepted that there is a limited conflict with policies EH2, OS4, and bullet (9) of the General Principles to Policy OS2, these arise in consequence of the fact that those policies require development to “*conserve*” (that is, protect) and “*enhance*” the natural environment and local distinctiveness. There would be compliance with the other General Principles for the reasons set out above, and the LPA’s evidence did not come close to demonstrating the contrary. The harm occasioned is limited, localised, and, as accepted by the LPA²⁰, no more than is inevitable for any greenfield development. As we will return to below, the LPA needs greenfield development to address its acute housing needs, and policy H2 of the development plan anticipates that sites such as the appeal site can come forward in these circumstances.
14. Understood in its proper context, and in the context of Policy H2 of the Plan, this is a good greenfield site for development. As set out above, the appeal proposals are high quality and landscape led. They have taken account of the prevailing topography, the existing settlement pattern, the existing vegetation framework, and the key perceptual sensitivities of the underlying landscape. The landscape of the appeal site is ordinary and unremarkable, the site makes a limited contribution to the character of the settlement, and the landscape and visual effects will be limited, localised, and right at the bottom end of the scale.
15. The Appellant’s evidence has demonstrated that the proposals comply with NPPF180 (b)²¹. The LPA is right to concede that the proposal is acceptable in respect of its landscape and visual impacts²².

(2) The effect on the non-designated heritage asset of Minster Lovell

¹⁹ CD E11, CM PoE, p.36.

²⁰ Para 4 Position Statement

²¹ CM RT and evidence

²² Para 4 Position Statement

16. There was no reason for refusal based on harm to Minster Lovell as a non-designated heritage asset, and the Planning SCG²³ confirms that the LPA does not allege conflict with any of the heritage policies of its Plan, including policies EH9 (heritage assets) and EH16 (non-designated heritage assets). Reflecting the NPPF, these policies together call for heritage assets to be conserved in a manner appropriate to their historic character and significance²⁴, and for a balanced judgment to be taken in relation to non-designated assets, having regard to the scale of any harm and the significance of the asset²⁵.
17. The LPA now confirms that there would be no conflict with policies EH9 and EH16 of the Plan, and that, applying NPPF209, there would be no unacceptable impact on Minster Lovell as a non-designated heritage asset²⁶.
18. The LPA's concession to this effect, in the Position Statement, reflects the evidence to the inquiry. In the RT session, Mr. Wood accepted that the references to "moderate" harm in his proof amounted to a typographical error, and he did not, in fact, allege that there would be anything more than "modest" harm to Minster Lovell as a non-designated asset. In cross – examination, he further conceded that this "modest" harm was insufficient to bring the proposal into conflict with either the policies of the NPPF or the development plan, having regard to the low level of harm alleged, and balanced judgment that is required. Accordingly, CW confirmed that it was not his position that the proposal would cause any unacceptable harm to the heritage significance of ML as a non-designated asset.
19. The LPA is right to concede that this proposal complies with relevant national and local plan policies relating to non-designated assets and should not be refused based on its effect on the settlement as a non- designated heritage asset. However, on the Appellant's case, even the allegation that there would be "modest" harm to the NDHA is overstated. Such assertions were not based on any expert heritage evidence, and the LPA failed to articulate what is said to be of significance about the asset, or how exactly the appeal proposal would harm that significance. The LPA's position is also inconsistent with the approach that it took in allocating the land adjacent to the appeal site, where heritage was not identified as a constraint at all²⁷. That site has now been built out and sits between the appeal site and the NDHA of Minster Lovell.

²³ CD E4 Planning SCG at [7.5]

²⁴ EH9

²⁵ NPPF209 and EH16

²⁶ Position Statement paragraph 2

²⁷ See SHEELA, CW Appendix 3A.

20. For the reasons set out in the careful, thorough evidence of Ms. Stoten, it is clear that there would be no harm at all to the NDHA of Minster Lovell.
21. It is common ground that the Minster Lovell chartist settlement²⁸ is a non-designated heritage asset (“NDHA”), and that the appeal site is located within its setting²⁹. However, the appeal site does not contribute to the significance of the asset. Accordingly, the appeal proposals would not harm the significance of the asset.
22. The significance of the NDHA is derived from the buildings and spaces within it. This comprises the bungalows (which have architectural and historic interest), the associated chartist buildings, and their historic plots.
23. The internal layout of the plots themselves is of significance because it demonstrates how the plots were sized for self-sufficiency and enfranchisement and laid out by the Chartist Movement for these purposes³⁰. However, the wider settlement pattern (its overall shape) is not of heritage significance. This is because the settlement shape was entirely incidental and fortuitous, and simply reflects the extent of the estate that was purchased by the Chartist Land Company³¹. This is clear from the analysis of other Chartist settlements set out in GS’s proof. Those other settlements have a completely different shape to Minster Lovell, which is related to the landholding purchased by the Company in each case³². The appeal site, which is a field located outside of the NDHA and to the west of existing 20th Century development, has no functional or historic relationship with the asset, and the overall settlement shape does not contribute to an understanding of the significance of the asset.
24. In any event, the appeal proposal would not change the settlement pattern. The LPA’s own Design Guide recognizes that Minster Lovell is comprised of C19 planned utopian settlement of disperse linear form and a sizable block of C20 development³³.
25. Nor does the appeal site contribute, in visual terms, to the significance or experience of the asset. As set out above, the significance of the asset is derived from the buildings within the NDHA and the layout of its plots. This can only be experienced or appreciated in any meaningful sense from within the NDHA itself (on Burford Road and Brize Norton Road, on

²⁸ As described in GS PoE from p.9 onwards.

²⁹ A position with which the Inspector in agrees, see GS PoE at para. 3.11 referencing para. 6 of CD O8 Land to the rear of 39 Brize Norton Road, Minster Lovell, App Ref APP/D3125/W/18/3211732.

³⁰ See GS PoE plate 3.

³¹ See GS PoE plate 9.

³² See GS plate 6 – Snigs End.

³³ CD G3 West Oxfordshire Design Guide (April 2016), p.16.

the crescents, and on Bushey Ground, for example). The Chartist dwellings themselves were not designed to have views out to the wider area. Instead, their layout reflects their functional character and was intended to maximise plot size and functional space³⁴. The bungalows were therefore inward facing, with primary living space located to the front and facing onto the road, and with functional elements and enclosed yards to the rear³⁵.

26. The appeal site is separated from the NDHA by later housing and a strongly vegetated boundary³⁶. There are no views across the site towards the NDHA that aid an understanding of the significance of the asset or allow an appreciation of it. The intrinsic character of the site as an agricultural field has no relationship with, and does not better reveal, the significance of the asset, and the distinction between the NDHA itself and the land beyond to the west would be unaffected by the appeal proposals.
27. For all those reasons, the appeal site does not contribute to the significance of the NDHA of Minster Lovell, and the proposals would cause no harm in heritage terms. The LPA's evidence has not come close to substantiating a case to the contrary, or indeed explaining why anything of significance would be harmed by the proposals.
28. In any event, even taken at its highest, CW was clear that the LPA does not pursue a heritage objection to the scheme³⁷, and the LPA's position is now categorically confirmed in the Position Statement. On any basis, the proposal plainly complies with the heritage policies of the development plan and national policy and is acceptable in heritage terms.

(3) The effect of the proposed development on flood risk and drainage

29. 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 issues³⁸. As the Foul Drainage SCG records at [2.8] the

³⁴ See GS plates 3 and 6.

³⁵ See GS plate 3 and 7 and the deeds produced by the Society for the protection of Minster Lovell on day 1, now ID 5.

³⁶ The boundary is heavily screened, see GS PoE plate 10.

³⁷ CW in XX.

³⁸ 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).

imposition of the proposed foul water condition (condition 13³⁹) is agreed to overcome this issue⁴⁰. Whilst residents expressed concerns as to surface water and drainage issues, no compelling reason or evidence was produced to justify departure from the expert analysis of the statutory consultees. Their opinion should, therefore, be accorded considerable weight in the planning balance⁴¹. The LPA is also satisfied that, subject to the imposition of conditions, surface and foul water drainage issues can be adequately accommodated in this case.

30. Condition 4⁴² requires approval of a detailed surface water drainage scheme before construction begins and implementation of the scheme before the development is completed. Condition 5⁴³ requires a record of the installed SuDS and site wide drainage scheme to be deposited with the Lead Local Flood Authority Asset Register..
31. The drainage scheme will, in accordance with the proposed conditions, be finalised at the detailed stage. However, the Appellant has investigated surface water drainage at the site, and Mr. Cheeseman explained to the inquiry how its indicative drainage strategy would work. In summary, the proposed strategy is based on infiltration rather than discharge to the watercourse or to a surface water sewer⁴⁴. Surface water, assisted by gravity⁴⁵ and detailed design techniques (such as permeable paving), will discharge to an infiltration basin located at the low point/southeast corner of the site⁴⁶. Infiltration testing⁴⁷ has demonstrated that favourable infiltration can be achieved at a rate sufficient for drainage design. The geology of the Site supports this approach because, whilst (as residents noted) the top layer of the site is in places comprised of clay, the bedrock layer of the Site is comprised of porous mudstone and limestone and is therefore conducive to the infiltration strategy proposed.
32. Subject to the proposed conditions, there will therefore be no on-site or off-site surface water drainage issues caused by the appeal proposals.

³⁹ Agreed conditions at Appendix 1 to CD E4 Planning SOCG.

⁴⁰ CD E8 at [2.8].

⁴¹ 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).

⁴² Agreed conditions at Appendix 1 to CD E4 Planning SOCG.

⁴³ Agreed conditions at Appendix 1 to CD E4 Planning SOCG.

⁴⁴ And in so doing accords with the SUDS hierarchy.

⁴⁵ The topography of the site slopes northwest to southeast with a fall of 5 to 5.5m.

⁴⁶ As shown on the Illustrative Masterplan at CD A3.

⁴⁷ CD A16 is the RA. Appendix E to the FRA is the Ground Investigation Report prepared by GRM Development Solutions Ltd (pdf p.48-52).

33. The Drainage SCG⁴⁸ at 2.8 between the Appellant and LPA records an agreed foul water condition, as suggested by Thames Water. The condition operates to ensure that the development is not occupied until there is confirmation that all relevant foul water network capacity upgrades have been completed or a development infrastructure phasing plan has been agreed to allow occupation. Such an approach has been endorsed by other inspectors in recent appeal decisions. See, for example, the *Land north of Cote Road, Aston*, Oxfordshire decision⁴⁹ and the *Land east of Hill Rise, Woodstock* decision⁵⁰.
34. Subject to the imposition of the proposed conditions, there will therefore be no unacceptable impact in respect of foul drainage.

(4) Whether the proposed development would make adequate provision towards local infrastructure requirements, affordable and self-build housing needs and biodiversity net gain

35. The S106 Agreement which is in an agreed form makes adequate provision towards local infrastructure requirements, affordable and self-build housing needs and biodiversity net gain. Affordable Housing and self-build housing covenants are addressed in the Second Schedule. Care provision, outdoor pitch, sport hall, swimming pool and village hall contributions are addressed in the Third Schedule. Financial Contributions to the County including education and public transport contributions are addressed in the Fourth Schedule. Highways works are addressed in a dedicated highways schedule (the Fifth Schedule). Public Open Space is addressed in a dedicated Seventh Schedule. The S106 Agreement is subject to a general blue pencil clause (at 4.2) which releases the parties from any obligations the Inspector deems to not meet the legal tests under Reg 122 of the Community Infrastructure Levy Regulations 2020.
36. BNG is secured by condition 10 which requires submission and approval of a 30 year Biodiversity Management and Monitoring Plan which must include information regarding the delivery of on-site BNG and details of the legal and funding mechanism by which the long-term implementation of the plan will be secured by the developer with the management body responsible for its delivery.

⁴⁸ CD E8 Drainage SoCG at 2.8 and also an agreed condition appended to the Planning SoCG (CD E4B).

⁴⁹ CD O1 Land north of Cote Road, Aston, Oxfordshire (APP/D3125/W/23/3317512) at [33].

⁵⁰ CD O1 Land east of Hill Rise, Woodstock (APP/D3125/W/23/3315391) at [85]-[86].

37. As the Position Statement records, the main parties are satisfied that the legal agreement and conditions read together overcome this main issue.

(5) Whether the scale and location of the proposed development is appropriate in principle in terms of

- i. the policy approach to housing development in Minster Lovell; and**
- ii. Accessibility to services and facilities.**

i. The policy approach to housing development in Minster Lovell

38. Following the testing of the evidence at the inquiry, it is now a matter of express agreement between the Appellant and LPA that applying policies H2 and OS2, the appeal scheme is acceptable in principle⁵¹.

39. Policy H2 permits new dwellings on “*undeveloped land adjoining the main built-up area*” where:

- (i) Convincing evidence is presented to demonstrate that it is necessary to meet identified housing needs;
- (ii) It is in accordance with the distribution of housing set out in policy H1; and
- (iii) It is in accordance with other policies in the Plan, in particular the General Principles in Policy OS2.

40. For the purposes of the first requirement, 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 needs⁵². CW confirmed that this was because:

- (a) It was accepted that there was convincing evidence of under - delivery against the Council’s adopted (minimum) housing requirement and of a significant shortfall to the end of the Plan period (see paragraphs 80-87 below). This approach is consistent with the approach of the Inspector for the appeal at *Land North of Cote Road, Aston*⁵³, who also considered under performance against the Council’s housing requirement as convincing evidence of need;

⁵¹ Paragraph 4 Position Statement

⁵² Position Statement at para. 3

⁵³ See CD O1 at paras. 52-53

(b) The evidence of under – delivery and a significant shortfall within the Witney sub-area specifically was “*strong evidence*” of need for the purpose of Policy H2 (xx and xic, and see paragraph 81 below);

(c) If the Appellant is right that the LPA cannot demonstrate a five – year land supply, it was agreed that this would be another example of convincing evidence of need for the purpose of policy H2.

41. In the *Aston* decision (above), the Inspector also confirmed that evidence of affordable housing need constituted convincing evidence of housing need for the purposes of Policy H2. As discussed further below, there is accepted to be an “*acute*” need for affordable housing in West Oxfordshire⁵⁴, and the Plan recognises that market schemes are necessary to deliver the affordable homes required⁵⁵. This is, therefore, another example of convincing evidence of need that exists in this case⁵⁶.

42. Turning to the second requirement it is also a matter of agreement that the Appeal Scheme is consistent with the distribution of housing strategy set out in Policy H1. This directs some 4,702 homes to the Witney sub-area. Indeed, as set out below (at para. 81 and para.111), there has been significant under-delivery in the Witney sub – area. Directing additional growth to the sub-area does not harm, but in fact assists, in delivering the overarching distribution of housing strategy in Policy H1.

43. As set out above, the third requirement is that the proposal is in accordance with the other policies in the plan, in particular the General Principles in policy OS2. In considering this requirement, CW agreed that the policies of the Plan need to be considered as a whole. This is because, as is well established, the policies of the development plan can pull in different directions.

44. Here, as set out above, the Appellant accepts that the limited and localised landscape and visual harm caused would lead to a limited conflict with policies EH2, OS4 and bullet (9) of

⁵⁴ Planning SoCG at para. 7.21

⁵⁵ Reasoned explanation 5.52 on p. 48 of the Local Plan

⁵⁶ In contrast to the position that applies at the small villages, hamlets, and in the open countryside, there is no requirement for local need to be established, and no reference to a rural exception site approach. Instead, for the villages, CW confirmed that meeting district wide needs would be sufficient. This is also consistent with reasoned explanation 5.38 – which expressly contemplates district wide needs. There is also a reference to local needs, but this is given by way of an alternative example to meeting district wide needs, and in any case, the words of the reasoned explanation cannot “add in” a requirement that does not exist in the policy itself – see *R (Cherkley Campaign Ltd) v Mole Valley DC* [2014] EWCA Civ 567.

the General principles in OS2 of the Plan (albeit not with policy OS2 as whole⁵⁷). These parts of these policies seek to “conserve” – that is protect – and “enhance” the intrinsic character, quality and distinctiveness of the natural environment⁵⁸. However, any development of a greenfield site will have some impact on the landscape, will be visible in some views, and will inevitably give rise to such limited conflict. As CW accepted (xx), a limited conflict with other policies of the Plan that is no more than the inevitable consequence of the development of a greenfield site cannot logically be sufficient to bring a proposal into conflict with policy H2, which expressly permits such greenfield development.

45. It follows that there is compliance with policy H2 in this case. The development proposed is development contemplated by the Plan. The Position Statement with the LPA agrees that the proposal does not conflict with the policies of the development plan, when read as a whole, on this basis (paragraph 4).

46. It is noted that the Position Statement with the LPA also expressly agrees that the proposal is acceptable in principle, applying policies OS2 and H2 of the Plan. That is plainly the right approach on any basis.

47. Policy OS2 provides 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. A number of site allocations are proposed to ensure identified needs are met. Further allocations may be made through Neighbourhood Plans.

Proposals for residential development will be considered in accordance with Policy H2 of this Local Plan.

48. The words “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” does not impose a free – standing development management test requiring the decision maker to ask whether the scale of development proposed at a village is “limited” in every case. Instead, Policy OS2 expressly tests whether residential development is acceptable

⁵⁷ AD answer to Inspector’s questions

⁵⁸ NB: Whilst the Appellant agrees that there would be a limited conflict with bullet point (9) of the General Principles in so far as it requires a proposal to “Conserve and enhance the natural...environment”, it does not agree that there would be a conflict with any other of the bullet points within the General Principles. See evidence of CM and rebuttal evidence of AD.

by asking whether it accords with policy H2 of the Plan. For the reasons set out above, the appeal proposals comply with policy H2 of the Plan and are therefore acceptable in principle in accordance with policies OS2 and H2.

49. Testing a proposal against policy H2 gives effect to the spatial policy objectives of OS2 and the Plan. This is because:

- a. Policy OS2 seeks to “*focus*” a “*significant proportion*” of development on the Main Service Centres, and “*limited development*” (which respects village character etc) to the villages.
- b. This spatial distribution is reflected in the growth directed to the various settlements through the allocations made by the Plan. For example, in the Witney sub – area, 1900 homes are directed to Witney, and 125 homes are directed to Minster Lovell.
- c. Policy H2 permits development comes forward on the allocated sites (bullet (1)). In spatial terms, policy H2 therefore directs the most significant proportion of development to the MSCs, and more limited development to the villages.
- d. Where proposals seek to come forward on land adjoining the built-up area, they are subject to the restrictive policy in bullet (4).
- e. In this way, and read in its entirety, policy H2 ensures that the most significant proportion of growth is directed to the MSCs, and that development elsewhere is more limited, in accordance with the spatial objectives of Policy OS2⁵⁹.

50. Second, as set out above, Policy OS2 sets out that the villages will be suitable for “*limited development which respects the village character and local distinctiveness and would help to maintain the vitality of these communities*”. The word “*limited*” should not be read in isolation. It must be read together with the words in the same sentence that follow, and which qualify it. The intention / objective of the policy is also clear from the reasoned explanation, which sets out that,

“4.22 *Beyond the rural service centres, some development will be supported in the villages but this will be limited to that which respects the village character and local distinctiveness and would help maintain the vitality of the local community*” (emphasis added).

⁵⁹ AD re-x

CW accepted, in answer to the Inspector's questions, that interpreting the words "*limited*" as a free-standing requirement was both "*different and inconsistent*" with the Reasoned Explanation above.

51. As recognised by the Local Plan Inspector, the more restrictive approach to development proposed on greenfield land set out in policy H2 also gives effect to the objective of ensuring that development respects character and local distinctiveness⁶⁰, and therefore gives effect to the objectives of Policy OS1,

"As submitted for examination policy H2 allows for new housing on undeveloped land adjoining the built-up area only where it accords with other plan policies and is necessary to meet identified housing needs. The more restrictive approach to housing outside settlements and its limitation to land adjoining built-up areas is justified by the NPPF's core planning principle of recognising the intrinsic character and beauty of the countryside" (Emphasis added).

52. In addition, policy H2 expressly requires consideration of the other policies of the Plan, and "*in particular the General Principles in policy OS2*". The general principles in policy OS2 test the development impacts of the scheme, including whether the scale of the scheme is appropriate to its (village) context. For example:

- Bullet (1): Development should be "*of a proportionate scale to its context...*";
- Bullet (2): Development should "*form a logical complement to the existing scale and pattern of development and/or the character of the area*";
- Bullet (5): As far as is reasonably possible, development should protect or enhance local landscape "*and the setting of the settlement*";
- Bullet (13): Development should "*be supported by all necessary infrastructure*" (etc).

The Appellant's evidence has demonstrated that there is compliance with the bullet points above.

53. In short, there is no free – standing development management criterion that asks the decision maker to consider whether development proposed comprises "*limited*" development. Instead, proposals on undeveloped land adjoining the built-up area are subject to the restrictive policy

⁶⁰ See Examination Report CD G4 at para. 100.

test in H2, and development impacts are (by H2) required to be tested against the General Principles. These together give effect to the objectives of OS2, by permitting limited development at the villages to come forward which respects the village character and local distinctiveness, and which would help to maintain the vitality of communities.

54. In any case, even if that is wrong, and it is concluded that there is a free – standing requirement in OS2 for development to be “*limited*” development, the proposal here comprises such development.
55. First, it is a matter of agreement that there is no numerical “cap” or “restriction” on development that can come forward pursuant to policy OS2 and H2.
56. Second, both the Case Officer⁶¹ and CW (xx) agree that, if the proposed development is considered “*as standalone*” development, they would consider it to be “*limited*”. That is clearly how this scheme should be considered. The Bovis scheme came forward on a site that was allocated for development in the Council’s Plan. Policy H2 expressly permits development on unallocated greenfield sites adjoining the built-up area to come forward (subject to the requirements of bullet 4) in addition to the allocated sites (which are permitted to come forward under bullet 1). The quantum of development that came forward through the Bovis scheme cannot be treated as some kind of “restriction” on development at Minster Lovell. To do so would undercut the ability of the Plan to deliver other additional development on greenfield sites adjoining the built-up area in circumstances where, as here, such development is expressly agreed to be contemplated by policy H2 of the Plan.
57. For all those reasons, the Appellant’s firm position is that there is compliance with policies H2 and OS2 considered as a whole⁶².
58. In any event, even if all that were wrong, and a conclusion is reached that there is conflict with policy OS2 because the development is not “*limited*”, it would still be necessary to ask what planning harm would be occasioned by the conflict. Here, it is now a matter of agreement (with the LPA) that the only harm caused would be the limited and localised landscape harm which is an inevitable consequence of any greenfield development, and which is contemplated by Policy H2 of the Plan. CW accepted that even if there was an additional conflict with policy OS2 on the basis that this was not “*limited*” development, in the absence of additional planning harm, this would be a “*technical breach*” that would not justify the refusal of planning permission.

⁶¹ See CD C9, Officer Report at para. 5.24 and 5.29.

⁶² AD, answer to Inspector’s questions

59. However, one gets to it, therefore, it is very clear that the proposal is acceptable in principle. This has been expressly accepted by the LPA. As we set out at the outset, the Position Statement⁶³ records that the LPA agree that the proposal does not conflict with the policies of the development plan, read as a whole, and that, applying H2 and OS2, the appeal scheme is acceptable in principle.

ii. Accessibility to services and facilities

60. There is no objection from the statutory consultee, the Highway Authority, in respect of sustainability, accessibility, or any other highway impacts. Having reflected on the evidence presented to the inquiry, the LPA now also accepts 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 Plan⁶⁴. The LPA was plainly right to so concede.

61. First, the Local Plan itself recognises that Minster Lovell is a “*sustainable settlement*” both as a result of its proximity to Witney, and also because it offers its own range of services and facilities⁶⁵.

62. The evidence before the inquiry supports that conclusion. As confirmed in Mr. Wood’s written evidence, Minster Lovell benefits from significantly more facilities and significantly better public transport links than most other villages in the district⁶⁶. It is also closer to larger centres than most villages. The LPA’s settlement Sustainability Study concludes that Minster Lovell is the second most sustainable village in the district⁶⁷.

63. As set out above, the Local Plan’s characterisation of the settlement as sustainable derives in part from its locational proximity to Witney. Witney is the largest settlement in the district, and is a focus for retail, service, and employment provision⁶⁸. Mr. Wood also characterised the site itself as being “*very well located*” for access to Witney⁶⁹ and employment opportunities, and he was right to do so. Together, the 233 and 234 bus services provide a half hourly service into the centre of Witney, which ties in with the start and end of the working day. The journey time is only around 12 minutes. These services also serve the Downs Road

⁶³ Paragraph 4

⁶⁴ See agreed position statement LPA and Appellant

⁶⁵ See page 157 Local Plan, reasoned explanation 9.2.57

⁶⁶ See para. 2.32 of CW PoE, CD E17

⁶⁷ See 2.32 CW PoE on p.9.

⁶⁸ See e.g. page 144 Plan 9.2.12, page 161 para 9.2.72.

⁶⁹ See CW PE para 2.28 page 8.

employment area, which is one of the largest major employment areas in the district⁷⁰, and which provides a significant quantum of employment opportunities⁷¹. The journey time is only around 2 minutes. Both services are operated by Stagecoach, who support the proposal, and who also provide a real time information app that can assist residents in timing their trips.

64. The 234 service will be accessible from bus stops that will be located in close proximity to the site access. The appeal scheme will also deliver facilities to encourage sustainable transport choices, including sheltered bus stops, a drop kerb crossing facility, along with a proposed new 3m shared use footway/cycleway provision along Burford Road, and an extension of the 40mph speed limit to include the site access. The 233 service is accessible from bus stops near the post office, which is within a reasonable and comfortable walking distance for residents of the appeal site⁷². The school bus is also accessible from the bus stops near the post office, and Mr. Neale has confirmed with the operators that both the Stagecoach and Pullman's service are still operating.
65. Witney and the Downs employment area are also agreed⁷³ to be accessible by cycle from the appeal site along NCR57, which itself can be accessed safely and conveniently from the site. Much of the route is off carriageway. On the short sections where on road cycling is required, the roads are low speed, well lit, safe and convenient⁷⁴. As set out above, a shared footway/cycle way will also be provided along Burford Road itself, enhancing pedestrian and cycle linkages within both the settlement and onwards to the NCR57⁷⁵. It was therefore agreed by Mr. Wood that both Witney, which is around 4 - 5km from the appeal site, and the Downs employment area, which is around 2.7km (or an 11-minute bike ride) from the site access, are accessible by cycle.
66. It was therefore agreed by Mr. Wood that the appeal site is accessible and sustainably located to higher order services, facilities and employment opportunities by both public transport and cycle.
67. As set out above, the Local Plan also sets out that Minster Lovell is a sustainable settlement in consequence of its range of services and facilities. The Council's own Settlement Study ranks Minster Lovell as the second most sustainable village in the district, and 11th most sustainable

⁷⁰ DN xic

⁷¹ See D. Neale Rebuttal page 9 and 10

⁷² Evidence DN and xx CW

⁷³ CW xx

⁷⁴ DN xic

⁷⁵ See Drawings appended to DN PoE CD E10B (works proposed to Burford Road and. cycle route sheets 1 and 2 linking to NCR57).

out of all 41 settlements in the district (and this was when there was only an hourly bus service⁷⁶).

68. It was agreed by CW that the routes from the appeal site to the services and facilities in Minster Lovell are safe, lit, and attractive, and that the appeal proposal would have permeability with the adjacent development and existing settlement⁷⁷. As set out above, the appeal scheme will also provide a new 3m footway/ cycleway along Burford Road connecting into to the new Bovis link and Upper Crescent⁷⁸. Most services and facilities within Minster Lovell would be within around a 10-minute walk for all residents of the appeal site⁷⁹, and all services and facilities would be under a 15-minute walk for all residents of the appeal site⁸⁰. It was agreed by Mr. Neale (“DN”) and CW that there is no “upper threshold”, which requires development to be within 800m from services and facilities, and that consideration should in any event also be given, in accordance with the TCPA 20 Minute neighbourhood document⁸², to the fact that this is a village, but one that is highly accessible by public transport and cycle to the higher order service provision in Witney and nearby employment areas⁸³. It is also of note that all the services and facilities in Minster Lovell would be within a comfortable cycle time from every proposed home on the appeal site.

69. West Oxfordshire is a rural authority. NPPF 109 recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. The Local Plan itself recognises that, in West Oxfordshire, there are relatively high levels of car ownership, and that the need to travel by car cannot be eliminated⁸⁴. However,

“Locating development in places where public transport can be easily accessed and walking and cycling is a realistic and safe option can at least help reduce people’s propensity to drive”.

⁷⁶ Xic DN. Other than that, ML continues to benefit from the services and facilities set out in the sustainability matrix.

⁷⁷ This includes the Hoggin path – which Mr. Neale observed the day after storm Henk. There was no standing water, children were playing in the play area, and the hoggin path was well used.

⁷⁸ See CD A4 Drawing 23178-02a-2.

⁷⁹ See Planning SCG: School, playgroup, pub – all within around 800m/10 mins (agreed CW xx). Post Office and shops – within 800m/10 minutes for most residents. Only those on the furthest part of the appeal site would need to walk for around an extra 90 seconds (11.4 minutes).

⁸⁰ Village Hall and Spar/Church: under 15 minutes for all residents.

⁸¹ Distances based on an average walk speed of 3mph – as set out in IHT

⁸² TCPA Guidance Document 20-Minute Neighbourhoods, Creating Healthier, Active, Prosperous Communities: An Introduction for Council Planners in England

⁸³ See the TCPA 20-Minute Neighbourhoods, Creating Healthier, Active, Prosperous Communities: An Introduction for Council Planners in England p. 50, CD N2

⁸⁴ See e.g. page 88 Local Plan, paragraph 7.1 and 7.7

70. Those objectives are clearly achieved here. In conclusion, considered holistically, and taking into account the quality of the walk /cycle routes, the distances to the various services and facilities, the range of services on offer in the settlement itself, and the “very good”⁸⁵ accessibility by public transport and cycle to the key service centre of Witney and the Downs employment area, it is clear that this is a sustainable and accessible location for growth in accordance with NPPF109, policy T1 and T3 of the LP.
71. There are no other reasons why the proposal should be refused on highway grounds.
72. In answer to residents’ concerns, Mr. Neale has considered the PIC data, and there is nothing of concern in respect of either the frequency or type of accidents that have occurred on the highway network⁸⁶. No inherent safety concerns have been identified with the highway layout or design. As set out above, there will be a new footway / cycle provision, new bus stops, and a reduction of the speed limit past the site access on Burford Road. The appeal proposals will not cause any unacceptable impacts on highway safety, and nor is there any evidence to suggest otherwise.
73. Nor would the residual cumulative impacts on the road network be severe. Trip generation, distribution and impacts are all considered in the TA⁸⁷, and have been agreed with OCC. Further information was requested during consultation by OCC regarding vehicle assignment⁸⁸. This was presented and accepted, and the HA, who is the statutory consultee does not object to these proposals.
74. Accordingly, the appeal proposals comply with NPPF115, and there has never been an objection from the LPA on the basis of highway safety or capacity.

Summary

75. For all those reasons, the appeal site is a suitable, accessible and sustainable location for the growth proposed. The Council now accepts that directing development to Minster Lovell and the appeal site specifically would be acceptable in principle, and in accordance with the policies of the development plan, read as a whole. The LPA was plainly right to so concede.

⁸⁵ DN xic

⁸⁶ Including, in answer to residents’ concerns, in relation to the Brize Norton/Burford Rd junction, where on average there has been 1 collision every 2 years, and which cannot be considered a high crash site.

⁸⁷ TA CD A23

⁸⁸ See CD B2 – 41 AM trips and 38 PM trips to and from Witney. Appendix B shows wider distribution and assignment.

(6) Housing Supply

76. The delivery of a sufficient and rolling supply of good quality housing, including affordable housing, is a national priority. It is also a priority of the Council's development plan, which recognises that the provision of housing is a "*critically important*" issue for the Council, and that the need to deliver more affordable homes is "*particularly important*" given the high house prices in the district⁸⁹. CW accepted that these remain "*core priorities*" for the Council.

77. 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.

Delivery against the Local Plan Requirement

78. First, 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.

79. The West Oxfordshire Local Plan 2031 ("LP") seeks to deliver a minimum of 15,950 homes between 2011 -2031⁹⁰. As Mr. Richards ("JR") explained in the RT session, there is a modest shortfall of some 64 homes against the Plan requirement to date. However, the stepped housing requirement is now due to increase, rising to some 975 homes in 2023/4, and 1,125 homes in 2024/5 (the requirement was 550 dpa 2011 – 2021, and 800 dpa 2021 – 2023⁹¹).

80. The Plan recognised that this uplift in delivery would be "*extremely challenging*", being nearly double longer-term delivery rates in the district⁹². However, the Local Plan trajectory anticipated that the Council would have achieved a surplus of some 1,252 homes as it entered into this, its most challenging period. As explained by JR, that has not happened, and to date some 1316 fewer homes have been delivered than was anticipated by the Local Plan trajectory⁹³. Even if all sites in the Council's five-year supply deliver, by 2028 the shortfall against the Plan trajectory will have increased to some 3,320 homes.

⁸⁹ 5.1, 5.3, 5.8 Local Plan

⁹⁰ Policy H 1 of the WOLP 2031 Part 1, CDG1.

⁹¹ See policy H2 page 46 Plan

⁹² 5.9 and 5.11 Plan page 40 - 41

⁹³ See table JR3, PoE p. 29.

81. The failure of the Plan to deliver the homes required has arisen in consequence of the failure of the planned strategic allocations to come forward as anticipated. 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 Plan⁹⁴.
82. 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 the delivery of 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 an "*impossible task*" (Mr. Divall, xic), and Mr. Wood ("CW") accepted that, whatever the precise figure, there is likely to be a "*significant shortfall*" to the end of the Plan period.

The Witney sub - area

83. The failure of strategic sites to deliver as anticipated has included a failure of the strategic sites allocated to 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 here⁹⁵. The Local Plan made 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. Mr. Wood accepted in cross – examination that there was a "*significant shortfall*" and "*clear evidence*" of housing need in the Witney sub-area specifically. We return to this issue further below, but it is clear that the appeal site, which is located within the Witney sub-area, is particularly well placed to meet that identified need, not least in view of its proximity and accessibility to Witney.

⁹⁴ See JR PoE p. 29 – 32.

⁹⁵ See page 146 LP.

Oxford City's unmet need

84. 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.
85. However, not only have those strategic sites failed to deliver a single home towards Oxford's unmet needs to date, the LPA's own position statement finds that zero homes will be delivered towards Oxford's unmet needs to 2028. By 2031, there will plainly be a "*very significant*", and again, likely insurmountable shortfall. Again, this was accepted by CW in the RT.
86. The failure to deliver against the planned commitment to Oxford City 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 also⁹⁶.
87. 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. As set out above, it is now accepted by CW that the LPA's adopted housing requirement, which includes an uplift to assist in meeting Oxford City's unmet needs, should be attributed "*full weight*". However, there has been a complete failure to deliver any homes whatsoever on the sites specifically allocated in West Oxfordshire's Plan to meet those needs to date, and there is a 0-deliverable supply from those sites towards meeting such needs by 2028. The chronic failure to meet Plan commitments in respect of Oxford City's unmet needs is plainly a serious and significant issue, both in West Oxfordshire, and across the wider Oxfordshire area. Indeed, as noted by Mr. Richards in the RT, under delivery at this scale has "*the potential to have catastrophic effects and social consequences*", not least in terms of the delivery of affordable housing, which was a very significant issue for Oxford City.

⁹⁶ See pages 6 – 8 JR rebuttal

Weight to the adopted requirement

88. There is no imminent, plan – led solution coming to the rescue any time soon to address the chronic failure to deliver the homes required by the Plan. The review of the Local Plan will determine whether LHN is the correct figure for West Oxfordshire, or whether an uplift is required to take into account issues such as affordability, economic growth ambitions, and unmet need (see NPPF67). However, the local plan review process is at a very early stage and can (it is agreed) only be attributed very limited weight⁹⁷.
89. In these circumstances, Mr. Wood expressly accepted in xx that the adopted housing requirement should continue to be attributed “*full weight*”. As recognised by the *Ducklington* Inspector, the scale of the likely shortfall against the Council’s housing requirement is “*daunting*”, the prospects of improvement are “*poor*”, and there is a “*pressing need*”⁹⁸ for additional sites to come forward to assist in delivering the homes required. With a shortfall of literally 1000s of homes across the Plan period against the Council’s Plan requirement, that is clearly right. The Council’s Plan has failed, and will continue to fail, to deliver the homes required. All the witnesses agreed that, in these circumstances, the weight to be attributed to the delivery of additional housing should be accorded weight towards the top of their respective scales⁹⁹.

Five – year land supply

90. And that is before the Council’s five – year housing land supply position is considered.
91. On the evidence before the inquiry, it is very clear, in the Appellant’s respectful submission, that the LPA cannot demonstrate a five – year housing land supply, contrary to the minimum requirements of national policy.
92. The Council’s plan is more than five – years old, and supply is therefore to be measured against LHN of 570 dpa. However, even against this reduced figure, the Council can only demonstrate a 3.86-year deliverable 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.

⁹⁷ Planning SoCG at [6.6].

⁹⁸ See CD O2 paragraphs 92, 98, 99 and 122.

⁹⁹ Mr. Richards and Mr. Divall – substantial (confirmed by AD xic to be the top of his scale). Mr. Wood “very significant” (xx).

93. In both 2021 and 2022, Inspectors rejected the Council’s 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 to this inquiry again falls well short of the clear evidence required to demonstrate deliverability.

94. As set out in Mr. Richards’ evidence¹⁰⁰, numerous appeal decisions have made it clear that mere assertions as to a site’s potential delivery are insufficient to demonstrate that a site is “*deliverable*” within the meaning of the NPPF, such that it can be included in the LPA’s five-year land supply¹⁰¹. For example:

- In the *Woolpit appeal*¹⁰² it was noted that clear evidence must be available at the relevant base date and that the onus to provide clear evidence is on the LPA.
- In the *Ardleigh appeal*¹⁰³ submission of reserved matters was considered a “*key milestone in the delivery process*”.
- In the *Little Sparrows appeal decision*¹⁰⁴ clear evidence was held to require cogent evidence, and not mere assertion.
- In the *Bures appeal decision*¹⁰⁵ the inspector noted that where there is clear evidence then it should be logically included in a published assessment like an annual statement.

95. Notwithstanding the above, CW’s evidence in respect of each of the above failed to get past mere assertion at every turn. There was nothing tangible, let alone clear, by way of evidence that justified the inclusion of any of the disputed sites. A schedule setting out the position following the RT session is attached at Appendix 1 to these closing submissions. However, by way of summary we note the following here:

¹⁰⁰ Section 3 and see summary at paragraph 3.19.

¹⁰¹ See Glossary Appendix 2 NPPF:

“Deliverable: To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. In particular:

- a. *sites which do not involve major development and have planning permission, and all sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (for example because they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans).*
- b. *where a site has outline planning permission for major development, has been allocated in a development plan, has a grant of permission in principle, or is identified on a brownfield register, it should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”*

¹⁰² CD O11 Woolpit, Suffolk (Ref: APP/W3520/W/18/3194926), para. 65.

¹⁰³ CD O12 Ardleigh, Colchester (Ref: App/P1560/W/17/3185776), para. 94.

¹⁰⁴ CD O13 Little Sparrows, Sonning Common, Oxfordshire (Ref: APP/Q3115/W/20/3265861), para. 20.

¹⁰⁵ CD O15 Bures Hamlet, Essex (Ref: APP/Z1510/W/18/3207509), para. 66.

- (a) Land north of Witney Road, Long Hanborough: No reserved matters application has been made, and CW confirmed to the Inspector that there was nothing at all before the inquiry to confirm the developer's intentions in respect of the site. The evidence falls well short of the clear evidence required to demonstrate that a site is deliverable within the meaning of the NPPF.
- (b) CA1 REMA North Site: Although there is an extant permission on the site, CW conceded that the Council "*expected the site to be developed in a different way*" and that further permissions would therefore be required. The site should therefore be treated as a "Category B" site for the purposes of the NPPF, and clear evidence is required. The LPA referred to an email from Taylor Wimpey ("TW") to support its case. However, the timescales within that email, which allow for only four months between submission of the planning application and determination, are plainly completely unrealistic. Indeed, CW accepted that it would be "*unusually successful for a planning application to go forward on the timescales given*". In the end, CW conceded that the delivery anticipated by the LPA within the five-year period "*would be unusual*", that "*I do not know where Taylor Wimpey is, but Taylor Wimpey do know*", and that the delivery assumptions in the LPA's HLPS "*was unlikely but possible*". These comments clearly demonstrate that the evidence produced by the Council falls well short of the clear evidence required to demonstrate that a site is deliverable within the meaning of the NPPF.
- (c) EW2 West Eynsham SDA: This is an allocated site, but there is no current planning application for it (an appeal against non-determination having been withdrawn), correspondence with the developer, or evidence on timescales. There are also clear issues with HIF funding, which CW accepted would need to be resolved in advance of the grant of planning permission, and there is no evidence that this is imminent. Both the *Ducklington* and *Wroslyn Rd* Inspectors accepted this site should be removed, and the Council produced no evidence to justify a different conclusion.

Added to this, in the RT, CW accepted that the LPA's delivery trajectory was unrealistic, and reduced the deliverable supply to 150 homes (from 256). However, CW had no answer to the Inspector's query that this itself appeared "*ambitious*" since CW's revised trajectory would still require a start in the 2025 financial year in circumstances where a planning application for outline permission had not even been made. Nor did he have a substantive answer to the Inspector's point that, in a relatively short timescale, this would require an application for outline permission, determination, resolution of a 106, a reserved matters application, discharge of conditions, and spades in the ground, other than

to simply note that he was “*sticking with that*”. With respect, that is simply not enough. The LPA’s evidence in respect of this site amounts to no more than assertion and falls well short of the clear evidence required.

- (d) EW4 – Land North of Hill Rise, Woodstock and EW5 – Land North of Banbury Road, Woodstock: There is no recent correspondence from the developer or intended housebuilders confirming timescales or intentions in respect of delivery, or even when reserved matters applications are anticipated. There is no indication whether any such applications would be acceptable to the LPA, or when approval might be forthcoming. The evidence falls well short of the “clear evidence” required.
- (e) In the *Ducklington* appeal decision, the Inspector agreed that a 10% lapse rate should be applied to small sites. CW could not point to any material change in circumstances since that decision that justify a different conclusion.

96. In short, the evidence produced by the LPA in respect of these sites amounted to no more than assertion and falls well short of the clear evidence required to demonstrate deliverability in accordance with the requirements of the NPPF. It is very clear, in the Appellant’s respectful submission, that this LPA cannot demonstrate a five – year land supply.
97. With only a 3.86-year deliverable housing land supply, and a substantial shortfall of some 651 homes, there is, very clearly a need for additional sites to come forward now to assist in meeting the Council’s critical housing needs.

Reliance on greenfield windfalls

98. However, even if, contrary to the above, the Council can demonstrate a five – year housing land supply, it remains the case that there is a need for greenfield windfall sites such as the appeal site to come forward to maintain a rolling land supply.
99. This is because, in West Oxfordshire and as set out above, the strategic allocations are failing, and will continue to fail, to deliver the homes required. The Council’s land supply is not, therefore, a product of a functioning plan. Instead, the Council is dependent on unallocated greenfield sites coming forward to maintain a supply, and some 94% of the large sites identified in the Council’s five – year land supply are unallocated greenfield sites¹⁰⁶.

¹⁰⁶ See JR supplemental proof para 2.29 – 30.

100. CW therefore accepted that, irrespective as to whether the LPA can demonstrate a five – year land supply now, the LPA needs to take a positive approach to granting permissions on suitable greenfield windfall sites. On any basis, there is an accepted need for such sites to come forward so that the LPA can maintain its housing land supply.

Affordable housing

101. 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*”¹⁰⁷. 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 area¹⁰⁸. The Plan recognises that market led schemes are critical to the delivery of these much-needed affordable homes¹⁰⁹.
102. It is a matter of express agreement that there is an acute need for more affordable housing in West Oxfordshire¹¹⁰. In the RT session, Mr. Roberts and CW further agreed that the provision of affordable housing should be accorded “*substantial weight*”¹¹¹ in the planning balance.
103. That is plainly right. Measured against the 2014 SHMA (which informed the Local Plan), the cumulative shortfall to date against a need figure of 274 dpa is some 587 affordable homes. The 2022 HENA assessed that annual need has increased to some 483 homes per annum. It is accepted that this document has not yet been tested through the Plan process, but it does show that the direction of travel is one of increasing need – a position that was not seriously disputed by the LPA in the RT.
104. The LPA pointed out that there has been improved performance in respect of the delivery of affordable housing in recent years. However, delivery has not come close to addressing the very substantial backlog that is agreed to exist, and further, CW accepted that the position will deteriorate once again over the next five – year period. In that respect, Mr. Roberts has assessed that even if all the sites in the LPA’s five supply deliver, by 2028, the

¹⁰⁷ Para 5.47 Reasoned Explanation.

¹⁰⁸ See Para. 9.2.4 Reasoned Explanation page 143.

¹⁰⁹ See Para 5.52 Reasoned Explanation, page 48 Local Plan.

¹¹⁰ See Planning SCG 7.21.

¹¹¹ Using Mr. Roberts’ scale.

shortfall will have increased to -752 homes¹¹². If Mr. Richards' supply figure is correct, which the Appellant says is clearly the case, the shortfall in affordable homes will increase exponentially to a staggering - 1222 homes. CW confirmed in the RT session that he did not dispute these figures, or that the shortfall is increasing. The shortfall, which is deteriorating, is plainly very significant, as recognised by the *Woodstock* inspector"¹¹³.

105. Affordability indicators¹¹⁴ in this Authority also present a bleak picture, and these are agreed to give increased weight to the need to make additional affordable housing provision in West Oxfordshire. In summary:

- (a) The number of households on the housing register has increased exponentially from 992 in 2013 to a staggering 1,986¹¹⁵. Average waiting times are between 607 – 1,038 days. The position in respect of waiting times has not changed significantly since the *Ducklington* decision, where the Inspector rightly characterised the AH shortfall as “*substantial*”¹¹⁶.
- (b) In March 2023, some 152 households¹¹⁷ on the housing register had expressed a preference for Minster Lovell. This included a significant number of households with higher level needs that fall into the “gold” or “silver” categories¹¹⁸.
- (c) Affordability ratios have ballooned, with the ratio of lower quartile house prices to lower quartile gross annual workplace earnings being around 10.55.
- (d) Lower quartile selling and rental prices in West Oxfordshire exceed both the regional and national averages¹¹⁹. In the Hailey, Mister Lovell and Learfield Ward, lower quarter selling prices are higher again, being some 15% higher than in West Oxfordshire as a whole.

¹¹² See Appellant's AH statement – page 14 – 15: Measured against the 2014 SHMA.

¹¹³ CD O21, Land east of Hill Rise, Woodstock, APP/D3125/W/23/3315391, see para. 113. The projected shortfall is in fact significantly worse than assumed by the Woodstock Inspector, because that figure was not based on the detailed analysis of all sites in the five – year supply undertaken by Mr. Roberts in this inquiry.

¹¹⁴ Agreed in the AH SCG

¹¹⁵ 31 Dec 2023 – see SCG AH 2.10.

¹¹⁶ CD O2, para. 103

¹¹⁷ This figure fluctuates, and the SCG records that in Dec 2023 it stood at 105 households (2.11 AH SCG).

¹¹⁸ The consultation response from the Strategic Housing Officer (CD D1) places 1 homeseeker in the gold category, and 26 in the silver category. The bandings are explained in the response as follows: Gold means “has an urgent medical/ welfare need/ move due to major overcrowding etc”. Silver means “significant medical or welfare needs that would be alleviated by a move”.

¹¹⁹ See 2.15 and 2.18 AH SCG

(e) The most recent data from the Help to Buy register shows some 977 households were seeking affordable home ownership in West Oxfordshire¹²⁰.

(f) The Council's own Planning Policy Officer recognised that the appeal proposal can make "*an important contribution*" to meeting both district wide and local affordable housing needs¹²¹.

106. In short, the position is sobering, and the outlook is bleak, for the very many residents of this district that cannot afford to access a home. It is important to recognise these are not simply statistics. As recognised by the Inspector in *Ducklington*¹²², the figures represent real people lacking suitable housing everyday of their lives, resulting in an impaired quality of life and challenging health and well-being. Each and every one of the 54 affordable homes delivered at the appeal site can be delivered within the next five years and will provide a real home for a real household in real need. The Appellant wonders, rhetorically, what one of the 1,986 families that is in desperate need of a home, and has been waiting on the housing waiting list with their family for between 607 - 1038 days, would make of the argument presented to this inquiry that a suitable home should not be delivered for their family because the walk to the local spar is 90 seconds – 5 minutes¹²³ further away than the LPA/residents consider to be optimal. The Inspector is respectfully requested to have regard to the letter in support from the local resident who supports the application, providing a real-world example of the benefits and importance of increased affordable housing delivery in the local area¹²⁴.

107. 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 before they come into force, 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

¹²⁰ 2.12 SCG AH

¹²¹ WODC Planning Policy Consultation Response to Outline (CD D12)

¹²² See para.104 CD O2.

¹²³ See Appendix 2 SCG: Assuming 800m, which is considered by the LPA to be a "comfortable walking distance" = around a 10 minute walk

¹²⁴ Extract from letter in CD-C7 Officer's Report at p.32, para. 2.1. Full letter available via online public LPA file for the planning application.

beneficial for local people qualifying for an affordable home, not least in the context of the current cost of living crisis.

108. For all those reasons, the Council's housing needs are acute, there is a pressing and urgent need that these suitable, much-needed homes come forward without delay. The 54 affordable homes proposed can make a real, tangible, and important contribution towards meeting those needs.

Self - build

109. 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, and over the entire period from 2016, permissions for only 81 plots were granted. 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. The Inspector in the *Woodstock* appeal considered that the provision of self – build plots in that appeal made an “*important contribution*” in these circumstances¹²⁵. CW could not point to any material changes that would justify a different conclusion in this case, and the provision of self – build plots is plainly a further substantial benefit of the scheme in view of the LPA's serious failings in this regard.

Conclusion

110. In short, and on any basis, there is a critical need to deliver additional homes in this Authority. We return to this issue further below in the context of the planning balance, but this scheme, which, it is agreed, can deliver in full in the next five – years, will assist in addressing the LPA's substantial housing shortfall, in circumstances where there is an urgent and pressing need to do so.

(7) Whether the policies which are most important for determining the application are out of date due to a lack of a five-year supply of housing land or any other reason and if so, would any adverse impacts of the proposed development significantly and demonstrably outweigh the benefits.

¹²⁵ See CD O21 Land east of Hill Rise, Woodstock, APP/D3125/W/23/3315391 para. 116.

111. The LPA now agrees that, irrespective of whether it can demonstrate a five – year land supply, permission should be granted in this case, applying either the “straight” or “tilted” balance, subject to the agreed conditions and the execution of the s.106 obligation.
112. That conclusion is plainly right. This is, very clearly, a scheme for sustainable development. The harm will be limited, and the benefits substantial. It is exactly the type of scheme that the Council should always have welcomed with open arms.
113. First, for the reasons set out in the section of our closings above, there is a pressing and urgent need for suitable sites to come forward to meet the Council’s critical housing needs and acute affordable housing needs. The appeal site will make an important contribution to meeting those needs. First, it is a matter of agreement that all 134 homes can come forward in the next five years¹²⁶. Second, the appeal proposals will deliver growth to the Witney sub-area, in circumstances where the planned allocations in this sub area have failed to deliver, on a site that is proximate and locationally sustainable to Witney. As set out above, the Witney sub-area is a focus for growth in the Plan. Directing growth to the appeal site will therefore assist in delivering much needed housing, in accordance with the overarching distribution strategy of the Plan. Mr. Divall was right to attribute substantial weight to the delivery of both market and affordable housing in the planning balance in all these circumstances.
114. In addition, the scheme will deliver a package of important benefits including:
- (a) The delivery of 7 self – build plots, in circumstances where there has been woeful performance to date by the LPA in respect of the same (see above). This is an “*important contribution*” (above) that should also be attributed substantial weight in the planning balance, and cannot be swept under the carpet as CW’s evidence sought to do.
 - (b) Environmentally sustainable homes: All 134 homes will deliver enhanced sustainability measures, meeting the requirements of 2025 Future Homes Standards before they come into force, and delivering net zero ready homes reducing carbon emissions by at least 75% beyond current Building Regulations. The need to respond to meet the challenge of climate change is self-evidently a critical issue nationally, and in this Authority in particular. Indeed, the LP recognises that some 50% of CO2 emissions in the UK are from buildings, and there is a higher level of domestic energy consumption per person in West Oxfordshire than the South of England average. This is exemplary scheme delivers well in excess of policy requirements

¹²⁶ AD rebuttal PoE addressed deliver at 3.30, also agreed in the planning SoCG at 7.29.

and is in accordance with the Council's Action Plan and Climate Change Strategy. The sustainability credentials of the scheme should be accorded "substantial weight" in accordance with the Council's own plan and the imperatives of national policy¹²⁷. This is exactly the type of scheme that the Council should be striving to encourage.

- (c) Economic benefits generated from construction and operation of the development, to which it is agreed moderate weight should be attached¹²⁸.
- (d) BNG of 13.10%, which is above mandatory requirements (moderate weight agreed by CW in xx).
- (e) A children's play area and open/recreational space (moderate weight), and Section 106 contributions towards sports and leisure, medical facilities, education facilities and public transport facilities (moderate weight).

115. Set against this weighty package of benefits, the harm occasioned by this scheme in truth amounts to no more than the limited and localised landscape harm towards the bottom of the scale, that is no more than the inevitable consequence of developing any greenfield site. As set out above, the Council needs such greenfield windfall sites to come forward to meet its acute and critical housing needs. As Mr. Divall noted, limited weight should be attributed to that inevitable limited landscape and visual harm in these circumstances.

116. The limited, localised landscape harm brings the proposals inevitably into conflict with policies EH2, OS4 and bullet point 9 of the General Principles to policy OS2 (albeit not with OS2 as a whole¹²⁹), as would be the case for any greenfield development. However, policy H2 of the Plan expressly contemplates that greenfield development can come forward in the circumstances that apply here. Accordingly, the policies of the Plan pull in different directions. However, as this is greenfield development contemplated by the Plan, there is plainly compliance with the Plan as a whole, as the now Council accepts¹³⁰.

117. In accordance with policy OS1, paragraph 11 of the NPPF, and S38 (6) PCPA, permission should therefore be granted for this scheme without delay.

118. However, even if a different view is taken, the Council cannot demonstrate a five – year land supply in accordance with the minimum requirements of the NPPF. Accordingly,

¹²⁷ AD evidence

¹²⁸ Planning SoCG at 7.31, and xx CW

¹²⁹ AD answer to Inspector's questions

¹³⁰ See position statement paragraphs 4 and 6

the policies most important for determining the application are out of date for the purposes of NPPF11 and OS1, and the “tilted balance applies”. In this context, even if it were considered that there were a breach of policy OS1 on the basis that development is not “*limited*” (which is disputed – see above), no additional substantive harm has been identified that flows from that breach, and CW accepted that the breach would be “*technical*” and would not justify the refusal of permission in these circumstances¹³¹. The limited and localised landscape harm that has been identified does not come close to significantly and demonstrably outweighing the substantial benefits of the scheme identified above, not least the clear, pressing, and critical housing needs that have been demonstrated to exist in this Authority. Applying the tilted balance, permission should be granted in accordance with NPPF11 and the overarching policy in OS1 of the Plan. Compliance with overarching Policy OS1 of the Plan, which is the overarching policy in the Plan directing how applications should be considered, signifies that the proposal is in compliance with the development plan as a whole.

119. Notwithstanding the above, the benefits are such in this case that even if there were a conflict with the development plan, and even if the LPA could demonstrate a five – year land supply (both of which are disputed), permission should be granted, applying the ‘straight’ planning balance.

120. This is also the conclusion of the LPA, who now expressly agrees that permission should be granted on any basis, applying either the “straight” or “tilted” balance¹³².

121. On any basis, it is, therefore, manifestly clear that this is a scheme for sustainable development within the meaning of the development plan and the NPPF. The benefits are substantial, and the harm would be limited. This is exactly the type of scheme that the Council needs if it is to begin to address its critical and acute housing needs. It is a scheme which the Council should always have welcomed with open arms.

122. For all those reasons, the Appellant respectfully requests that permission should be granted accordingly.

¹³¹ Accepted in xx. See also CW PE at paragraph 106 para 11.8.

¹³² Position Statement paragraph 9.

21st February 2024

Sarah Reid KC
Constanze Bell

Kings Chambers
Manchester
Leeds, Birmingham.

APPENDIX ONE

APP/D3125/W/23/3331279

Land south of Burford Road, Minster Lovell

Housing Land Supply Round Table: 13 February 2024

Summary of the Appellant's Position on the Remaining Disputed Sites/Sources of Supply

SITE	SUMMARY OF POSITION
<p>Land North of Witney Road, Long Hanborough, Oxfordshire</p> <p>Disputed Units: 150</p>	<ul style="list-style-type: none"> • Outline permission for 150 homes granted in February 2023. It is a 'Limb B' site (under the definition of deliverable in the NPPF) and so <u>requires clear evidence</u> for it to be included in the Council's supply. • There is some evidence of an attempt to discharge conditions (by the landowner rather than the developer). Condition 7 was discharged on 9th February. Condition 9 (site investigations) was not discharged as more detail is required. • No other pre-commencement conditions have been discharged. • Importantly, <u>no Reserved Matters application ("RM") has submitted</u>. The <i>Ardleigh</i> Inspector confirmed RM as a key milestone in the delivery process (see CD O12, paragraph 94, and Mr Richards proof paragraph 3.7). • In the SCG, the Council refers to pre-application discussions. However, as <u>CW confirmed</u> to the Inspector in the RT, <u>there is nothing from the Applicant before the inquiry in terms of confirmation as to what is intended</u>, and CW could not give any detail other than that <i>"there had been discussions with the Case Officer"</i>. • When probed by the Inspector in respect of why the LPA had not sought evidence from the Applicant, CW could not answer, simply responding that he was <i>"dependent on policy officers"</i>. • There is, therefore, absolutely nothing in writing, or in the way of supporting evidence from the developer to confirm intentions. • <u>Nor is there any evidence on timing for RM</u>. Mr Wood cited a condition requiring RM within 2 years, but that time period extends until February 2025, nearly 2 years after the base date. Shorter timescales are encouraged by the NPPF, but the definition of deliverable still requires such sites to have clear evidence before they can be included in a deliverable supply. There is nothing by way of "clear evidence" here. • Once a RM is submitted, it is unknown whether it will be in an acceptable form to the LPA, what consultees might say,

	<p>and when it might be delivered. No evidence in respect of any of these matters was presented by Mr. Wood to the inquiry.</p> <ul style="list-style-type: none"> Overall, it is very clear that this site does not have the requisite clear evidence and should not be included in the Council's housing land supply.
<p>CA1 -REEMA North</p> <p>Disputed Units: 200</p>	<ul style="list-style-type: none"> This is an allocated site. It previously secured outline permission with RMs in 2011 and 2013 for 225 and 200 homes respectively – neither permission was progressed. The Council says that there has been a lawful implementation of these previous consents. The Appellant does not accept that there is evidence of the same. However, regardless, the key point is that clear evidence has been provided by the MOD that it does not intend to develop out these consents. This has been intimated by the Council in both its October 2023 Position Statement (page 72 CD I1), and the agreed SCG (see page 10 Appendix 1) sets out that the permissions won't be built out, and a fresh permission will be pursued. The position has been substantively unchanged for many years: In evidence presented at the <i>Ducklington</i> and <i>Aston</i> appeals, a scheme was 300 homes was being suggested, but this has never materialised. The <i>Ducklington</i> Inspector removed this site from the deliverable supply – CD02 (paragraph 89) and Mr Richards proof (paragraph 6.29). Mr Wood referenced <i>Wroslyn Road</i> decision (CD019) where the site was retained in the five – year supply. However, the <i>Wroslyn Road</i> Inspector was not aware of the <i>Ducklington</i> decision, which was issued only 9 days earlier. Mr Richards explains why the <i>Wroslyn Road</i> Inspector made an error in the decision, and why that decision should not therefore be relied on at his paragraph 6.30. In the RT session, it is of note that <u>CW conceded</u> that the Council “<i>did expect the site to be developed in a different way</i>” to that permitted.

	<ul style="list-style-type: none"> • Accordingly, the effect of the evidence to the inquiry is that there is “clear evidence” that homes will not be delivered from the permissions granted. The site remains allocated, but further permissions will be required to bring it forward. The site should therefore be treated as a ‘Limb B’ site (under the definition of deliverable in the NPPF) and so <u>requires clear evidence</u> for it to be included in the Council’s supply. • The LPA now suggests a scheme for 271 homes, by Taylor Wimpey, can be included in the supply. It is not clear what formal interest Taylor Wimpey have in the site. • Importantly – no actual application for permission has been made yet. • An application will only be made a year after the 1st April 2023 baseline, even if made in accordance with timetable indicated. Sites should have the necessary clear evidence at the base date (see e.g. <i>Woolpit</i> decision [CD O11 Woolpit, Suffolk (Ref: APP/W3520/W/18/3194926), para. 65]). • Once an application has been made, it is unknown what issues might be raised by the LPA, statutory consultees or third parties, when a resolution might be secured, when a S106 might be finalised, what conditions might be attached, and what the projected timescales are for delivery. • In any case, Taylor Wimpey’s timeline (Mr Wood’s Appendix B3 to his proof Appendix 5b) is wholly unrealistic. This suggests submission in March, a decision (and S106) by July 2024, and a start on site in December 2024. Mr Wood expressly agreed in the RT session that achieving such timescales would be unlikely, <i>“It would be <u>unusually successful</u> if a planning application would go forward on the timescales given”</i> (Emphasis added). • In an appeal at <i>Little Sparrows, Sonning Common</i> (see Mr Richards’ proof, page 18), the Inspector confirmed that: <i>“Clear evidence requires <u>more than just being informed by landowners, agents or developers that sites will come</u></i>
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	<p><i>forward, rather, that a <u>realistic assessment</u> of the factors concerning the delivery has been considered. This means not only are there planning matters that need to be considered but also the technical, legal and commercial/financial aspects of delivery assessed. <u>Securing an email or completed proforma from a developer or agent does not in itself constitute 'clear evidence'</u>. Developers are financially incentivised to reduce competition (supply) and this can be achieved by optimistically forecasting delivery of housing from their own site and consequentially remove the need for other sites to come forward.” (Emphasis added)</i></p> <ul style="list-style-type: none"> • The facts here are: <ul style="list-style-type: none"> ○ History of permissions not progressed. ○ History of claimed applications and supply that has not materialised. ○ No applications submitted to date. ○ Wholly unrealistic suggestions of delivery from housebuilder. ○ Lack of any actual direct, reasonable and tangible evidence to support delivery. • In the end, CW conceded in the RT that the delivery anticipated within the five-year period “<i>would be unusual</i>”, that “<i>I do not know where Taylor Wimpey is, but Taylor Wimpey do know</i>”, and that the delivery anticipated “<i>was unlikely but possible</i>”. These concessions clearly demonstrate that the evidence produced by the Council falls <u>well short</u> of that required to demonstrate that a site is deliverable within the meaning of the NPPF.
<p>EW2 – West Eynsham SDA</p> <p>Disputed Units: 180 [*CW reduced this to 150 in the RT]</p>	<ul style="list-style-type: none"> • This is an allocated site. It is therefore a ‘Limb B’ site (under the definition of deliverable in the NPPF) and so <u>requires clear evidence</u> for it to be included in the Council’s supply. • 550 homes from the 1,000 homes are allocated to meet Oxford’s unmet needs. But the Council claims all homes in the 5-year period towards its supply. • The 256 homes in the claimed supply are from: <ul style="list-style-type: none"> ○ 76 homes that have full permission – these are not disputed; ○ 180 Homes from Derrymerrye Farm – these are disputed

	<ul style="list-style-type: none"> • Derrymerrye Farm had an outline application submitted (by Goldfield Estates Limited and Pandora Properties Ltd) in 2020, but this was the subject of a non-determination appeal. The appeal was due to be heard in December 2023. • However, the appeal was withdrawn in October 2023. • No further applications for planning permission have been made. The Council declined to determine a duplicate application in December 2022. • The Appellant's letter withdrawing the appeal confirms uncertainly regarding HIF 2 funding for A40 works. In the RT, <u>Mr Wood confirmed</u> that a decision on HIF 2 had not yet been received, and also that he would not expect planning permission to be granted until the issue with HIF funding had been resolved. There is no indication as to when this might occur. • The Council previously accepted through the <i>Ducklington</i> appeal that this site should be removed as a deliverable site – and that was when the application was still live (see Mr Richards' para 6.39, page 43). • The <i>Wroslyn Road</i> Inspector also removed this site from the Council's deliverable supply – para 55 of CD I3 • No further correspondence from the applicant has been received. • The position is therefore that: <ul style="list-style-type: none"> ○ The previous appeal was withdrawn. ○ There is no current application for 180 homes. ○ There is no further correspondence provided by the Council from the developer. ○ There is no evidence on timescales. ○ There are clear issues (cited directly by previous) applicant regarding HIF2 funding, which have not been resolved, and are agreed to require resolution in advance of planning permission. ○ An absence of any clear evidence overall. • In the RT, Mr. Wood conceded, in answer to the Inspector's questions that there was <u>no documentary evidence</u> to support its position.
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	<ul style="list-style-type: none"> • In addition, during the RT session, the Mr. Wood accepted that the <u>LPA's projected delivery on the site was unrealistic</u> and reduced the figure in the supply from <u>180 to 150</u> homes. • However, even this revision was dependent on a 2025 / 2026 start date, and is wholly unrealistic, since this would require receipt of an outline application, determination of the outline application (including s106), determination of reserved matters, discharge of conditions, and spades in the ground by 2025 / 2026. <p>First, there is <u>no evidence</u> at all supporting those delivery assumptions, let alone the clear evidence required pursuant to the NPPF).</p> <p>In addition, CW had no substantive answer to the Inspector's comment that the timescale appeared <i>"ambitious"</i>, other than to say that he was <i>"sticking with that"</i>.</p>
<p>EW4 – Land North of Hill Rise, Woodstock</p> <p>Disputed Units: 132</p>	<ul style="list-style-type: none"> • This is an allocated site. • A hybrid permission was secured at appeal in October 2023. This includes 48 homes in full and 132 homes in outline form. This was granted in October 2023, some 7 months after the base date. • The 48 homes therefore fall within "Limb A" and have been accepted to form part of the supply. The 132 homes in outline are a 'Limb B' site (under the definition of deliverable in the NPPF) and so <u>require clear evidence</u> for it to be included in the Council's supply. The Council has failed to produce the clear evidence required in respect of the 132 homes. • Condition 11 requires a written scheme of investigation. This was approved in January. • However, no other conditions have been discharged. There are many additional pre-commencement conditions to discharge (decision at CD O21). • No other RMs applications for the outline element have been made.

	<ul style="list-style-type: none"> • There is no correspondence from landowner or any housebuilder. • Mr Wood relies on the previous Appellant's evidence for this site at Appendix B1 of Mr Wood's Appendix 5B. However, that delivery trajectory (Table 2 after paragraph 3.50) includes no reference to the timing for any RM submission. As set out above, no RM applications have in fact been made, and there is no clear evidence as to what the developer's intentions now are in that respect. • Mr Wood also relies on email correspondence at Appendix B2 of Mr Wood's Appendix 5B, but that correspondence is dated September 2022 and refers to being on site in Q2 2023. This was before Blenheim's decision to appeal, and clearly did not happen. This is not a trajectory that can be relied on. • No reliance should be placed on the correspondence cited by the Council. • Overall, there is no clear evidence for the units that have outline permission only and these should be removed.
<p>EW5 – Land North of Banbury Road, Woodstock</p> <p>Disputed Units: 210</p>	<ul style="list-style-type: none"> • This is an allocated site. • An outline application for up to 235 homes was submitted in January 2021. • This is, therefore, a 'Limb B' site (under the definition of deliverable in the NPPF) and so <u>requires clear evidence</u> for it to be included in the Council's supply. • This site has had a resolution to grant since December 2022. • However, no permission has been granted. • CW suggest in the SCG that S106 issues have been resolved, but the S106 is still pending. His evidence was the same in the rebuttal evidence for the Hailey Road appeal (CW Appendix 5b). • Even when the S106 is agreed and a decision notice issued, this is a site that will still only have outline permission and so it will remain a limb b site requiring clear evidence.

	<ul style="list-style-type: none"> • There is no recent correspondence from a developer or intended housebuilder confirming timescales or intentions in respect of delivery, and no clear evidence. • Nor do we know when RM might be submitted, whether it will be acceptable to the Council, and when it might be approved. • The NPPF requires clear evidence – the evidence is one of ongoing delay, and that is just in respect of the outline application. There is no evidence for any progression/intended timescales beyond this, and nothing that would satisfy the requirement for “clear evidence” in the NPPF.
<p><u>Small Sites -Lapse Rate</u></p> <p>Difference: 40</p>	<ul style="list-style-type: none"> • It is commonplace in Mr Richards’ experience to include for a lapse rate for small sites. Examples where other Council’s include a lapse rate are provided at Mr Richards’s proof, paragraph 6.55. • It is appropriate to include a lapse rate to establish a realistic supply from small sites. • An 18% lapse rate was applied by Appellant at <i>Burford</i> (CD 018) and the inspector preferred the Appellant’s supply figure. • A 10% lapse rate was <u>agreed</u> by the <i>Ducklington</i> Inspector (CD02, paragraph 93) and there has been no material change in the evidence the Council has provided. • The Inspector asked about new small sites coming forward in place of any permissions that lapse. Mr Richards confirmed that this is the nature of the requirement for an annual update of specific deliverable sites at each base date – new site will come forward and other sites will fall away but we need to establish what is a realistic assessment of how many of the existing small sites will actually deliver in the relevant 5 year period, and that won’t be 100% of them. • The windfall allowance (125 homes included in years 4 and 5) also takes into account the potential for other windfall sites to come forward beyond existing permissions.

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