

**WEST OXFORDSHIRE DISTRICT COUNCIL**

# **Rule 6 Statement**



**WEST OXFORDSHIRE  
DISTRICT COUNCIL**

## **Appeal by Catesby Strategic Land Ltd**

**Against the Decision of West Oxfordshire District Council  
to Refuse Outline Planning Permission for:**

**Development of up to 134 Dwellings (Use Class C3)**

**including means of access into the site (not internal roads)  
and associated highway works, with all other matters (relating  
to appearance, landscaping, scale and layout) reserved  
(amended description) (amended plans) at**

**Land South of Burford Road,  
Minster Lovell**

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

**LPA Application ref. 22/03240/OUT**

**13 December 2023**

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## **1 Introduction**

- 1.1 This "Rule 6" initial statement of case relates to application ref. 22/03240/OUT ("the appeal application"), as received by West Oxfordshire as the Local Planning Authority in this case ("the LPA") on 21 November 2022, which eventually (further to amendments to the plans) sought outline full planning permission for development described as:

***Development of up to 134 dwellings (Use Class C3), including means of access into the site (not internal roads) and associated highway works,  
with all other matters (relating to appearance, landscaping, scale and layout) reserved (amended description) (amended plans)***

- 1.2 The application was refused on 21 July 2023 for the following two reasons:

- 1 The proposal does not respect the village character and local distinctiveness as it extends the existing C20 development, which further delineates the historic from the modern. Cumulatively, it is not limited development. It would not protect the local landscape or setting of Minster Lovell. It would involve the loss of an area of green space that makes an important contribution to the character and appearance of the area and the scheme causes localised landscape harm by urbanising a greenfield site. In addition, the site is divorced from key services and facilities on offer in Minster Lovell with future residents reliant on private vehicles to meet their daily needs. While the development would provide up to 134 dwellings to include 40% affordable homes and 5% self-build plots; economic benefits, a children's play area, open space/recreational route, pedestrian and cycle links, biodiversity net gain, and sustainability measures.

The adverse impacts identified would significantly and demonstrably outweigh the benefits.

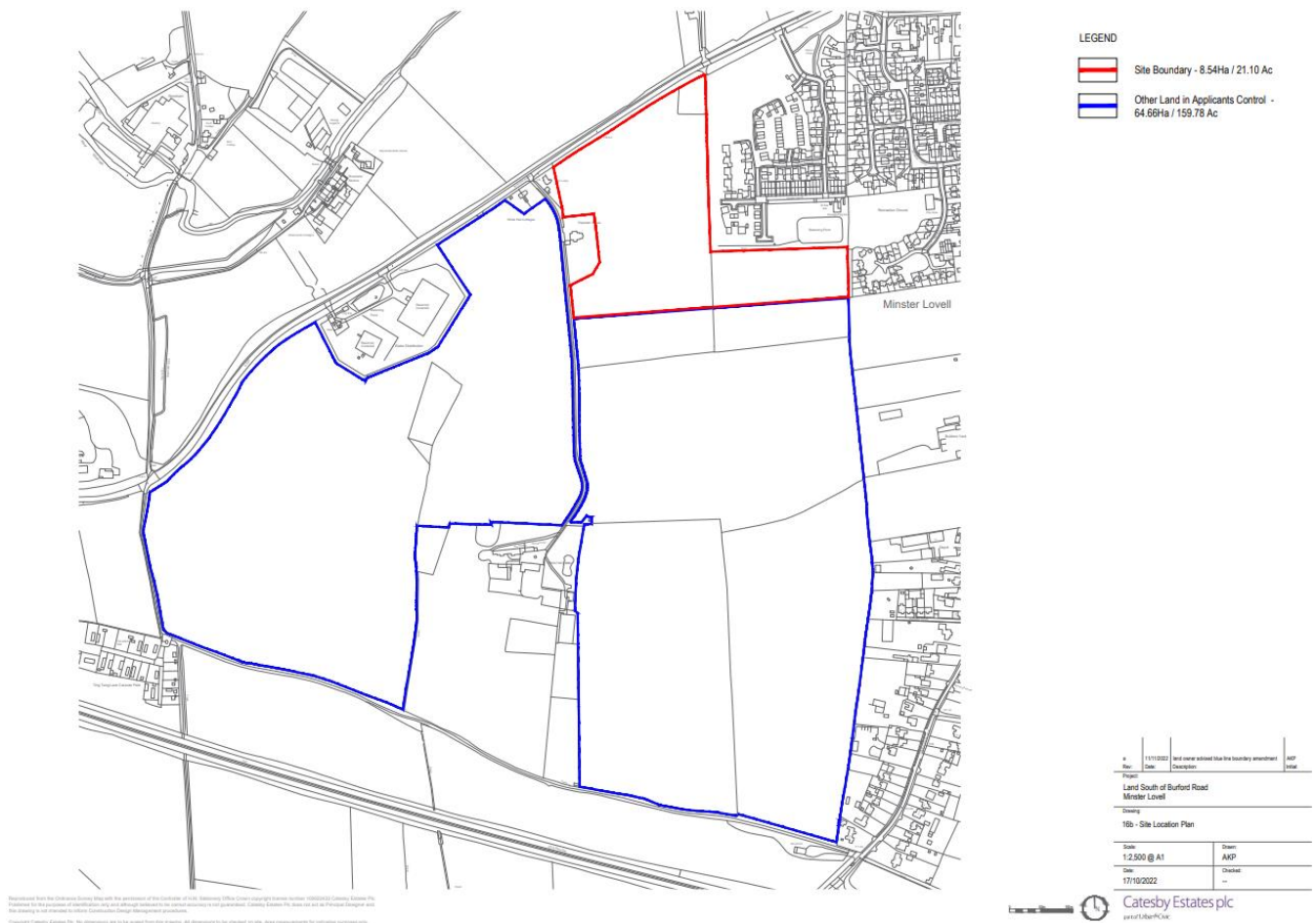
As such, the proposal is considered to be unsustainable development and is contrary to policies H2, OS2, OS4, T1, T3 and EH2 of the adopted West Oxfordshire Local Plan 2031, the West Oxfordshire Design Guide 2016, and the relevant paragraphs of the National Planning Policy Framework.

- 2 The applicant has not entered into a legal agreement or agreements to secure the provision of affordable housing, self build plots, biodiversity net gain or signposting to the Local Wildlife Site; or contributions to education, waste, public transport, sport and leisure, medical facilities, Village Hall, or children's play area.
- The proposal conflicts with West Oxfordshire Local Plan 2031 Policies OS5, H3, H5, T1, T3, EH3, EH4, and EH5; and the relevant paragraphs of the National Planning Policy Framework.

- 1.3 The plans and supporting documentation will all have been supplied with the appeal form; and details of relevant policies, comments from statutory and other consultees, third party representations the related committed report and minutes and other relevant facts relating to the case have been provided by the LPA in its appeal questionnaire response.
- 1.4 This appeal (ref. APP/D3125/W/22/3293656, "the current appeal") is to be determined by public inquiry that is programmed for eight sitting days, due to commence on 13 February June 2024.
- 1.5 This Rule 6 statement will set out the LPA's currently intended approach to presenting its case at the inquiry.

## 2 **The Appeal Site and Surrounding Area**

- 2.1 The LPA will note that the appeal site was altered during the period when the application underlying this appeal was being determined, making it slightly smaller. However, whilst it reserves its right to comment on this as it considers necessary and appropriate, it will focus principally on the appeal site as defined when the application was determined:



NB the LPA will note the large areas of adjoining "blue line" land under the appellant's control to the south/southwest.

2.2 The LPA will describe the Appeal Site ("the site") and nearby area in such detail as it may consider relevant/ necessary/ appropriate, with regard to all or some of the following matters:

- The main dimensions of the site, including its width, depth and area and its proximity to the often busy main B4047 Burford Road, as it runs east-west through the northern outskirts of the historic former Chartist rural village of Minster Lovell ("the village")

NB the LPA will note that Burford Road runs from Witney in the east, which is the largest town in the district of West Oxfordshire ("the District") to a roundabout some 1.7km west of the appeal site where it meets the A40, which is the District's busiest and most important road, effectively linking the M40 in the east to Gloucester and points west, passing through Oxford, Witney, Burford and Cheltenham en route.

- The character and appearance of the appeal site, as a very roughly "L-shaped" area of land that is made up of parts of two undeveloped agricultural fields containing no buildings, adjoining the southern side of the A40 to the west of the village;
- The nature and character of adjoining land and development, noting that:
  - **To the east** the site adjoins a very recently built housing development to the west of the village shown in some of the plans as the Bovis Homes site that has Holloway Lane and Abraham Way as its main estate roads and Norridge View, Lock Close and Stratford Row along its western edge, with the main historic village beyond and then open land that separates the village from the ever expanding Witney further to the east;
  - **To the north/ northwest** it is bounded by the A40, with agricultural fields that lie within the Cotswolds AONB/ National Landscape that fall towards the Windrush river beyond (the river is only some 300m from the appeal site);
  - **To the west** there is a cluster of four dwellings with accesses onto Burford Road, the southernmost of which is Repeater House, which has a large curtilage that "bites into" the appeal site, with open fields containing various dispersed development further west;
  - **To the south:** there are further open fields, then the main A40 (some 800m from the site), with open farmland and occasional, mainly agricultural built development beyond.
- The limited changes of levels within the site and adjoining land, noting that land rises gently and becomes more undulating towards the north before falling towards the river;
- Relevant landscape designations of the site and nearby area, noting in particular that the West Oxfordshire Landscape Assessment ("the WOLA") classifies the appeal site as *open limestone wolds* landscape type ("LT") within the *Upper Windrush Valley* landscape character area ("LCA"), with *semi-enclosed valley-side farmland* on the upper slopes of the Windrush valley in the AONB to the north;

- Nearby public rights of way (“PRoWs”) and the wider PRoW network and its relevance to the tourism industry and to the status of the wider Cotswolds area as a holiday destination for leisure walkers and others, including national and international tourists;
- Viewpoints looking out from and in towards the appeal site, paying particular attention to public viewpoints, including views from Burford Road and nearby PRoWs;
- The assessment of the eastern part of the appeal site in the LPA's 2016 West Oxfordshire Strategic Housing Land Availability Assessment (“the SHLAA”) as the southern part of the otherwise now developed SHLAA Site 388; and the western part of the site as most of Site 398 in the LPA's 2017 West Oxfordshire Strategic Housing and Economic Land Availability Assessment (“the SHELAA”);
- The layout, size, sustainability characteristics and general character of the historic rural village of Minster Lovell (“the village”), with its characteristic small bungalows in linear plots, which the LPA will note is a design feature retained in many later houses, including the Bovis Homes site to the east of the current appeal site.
- The fact that Minster Lovell (Charterville) is classified as a village in the settlement hierarchy in the West Oxfordshire Local Plan 2031 (“the Local Plan”);
- The size of the population of Minster Lovell, the number of dwellings in the village and the pattern of recent growth;
- Walking distances to local facilities from dwelling s within the proposed houses.

2.3 In doing so, the LPA will differentiate between the main western part of the site that bounds the Bovis Homes site to the east and the smaller eastern part of the site that bounds the southern part of the Bovis Homes site.

2.4 The LPA reserves its right to comment on any such other matters as it may consider relevant relevant/ appropriate/ helpful in this context.

### **3 The Appeal Proposal and Relevant Planning History**

3.1 West Oxfordshire District Council as the Local Planning Authority in this case (“the LPA”) will describe the Appeal Proposal in such detail as it may consider relevant/necessary/appropriate, noting that it received application ref. 22/03240/FUL (“the appeal application”) on 21 November 2022, initially seeking outline planning permission for development described as:

***Development of up to 140 dwellings (Use Class C3), including means of access into the site (not internal roads) and associated highway works, with all other matters (relating to appearance, landscaping, scale and layout) reserved***

3.2 The LPA will note this was amended when the site location plan was altered and, as determined the appeal proposal sought outline planning permission for development described as:

***Development of up to 134 dwellings (Use Class C3), including means of access into the site (not internal roads) and associated highway works, with all other matters (relating to appearance, landscaping, scale and layout) reserved (amended description) (amended plans)***

3.3 Again, the LPA may comment on the initial proposal and the reasons why it was amended but fundamentally, the LPA will comment on the appeal proposal that is to be determined at this appeal and to which its reasons for refusal relate.

3.4 the LPA will refer to all the submitted layout plans comprising:

- The detailed plans for the access and (ref. 23178-02-1 Rev A), which the LPA will note would be located broadly centrally within the roadside frontage/ northern site boundary and the proposed footway (ref. 23178-02-2 Rev A), both of which were unchanged;
- The amended *Framework Plan* (ref P02 Rev E) which it will note shows: residential development in sand in two main areas with the site, dark green woodland to the roadside frontage and around Repeater House light green open space alongside most of the site boundaries and in the middle of the site between the two areas of housing and in the southeastern corner of the site, where there would also be a swale or other surface water attenuation feature a children's play area, recreational routes and a foul pumping station:



As seen above, this also shows pedestrian/cycle access into the Bovis Homes development in three places and a proposed footpath along Burford Road to the east.

- The amended *Illustrative Masterplan* (ref. P03 Rev F), which the LPA will characterise as a “multi-armed cul-de-sac” layout, with a main access road running broadly south from the access and serving two main clusters of housing with a central area of green space running broadly east-west in the middle of the site; and other areas of open space along the roadside boundary and in the southwestern and southeastern corners of the site:



NB the LPA will note throughout that all matters other than access remain reserved.

- The albeit again indicative *Landscape Strategy* plan (ref. edp7754\_d011b), which the LPA will describe in some detail and will take into account when assessing landscape and visual impacts in particular:



- 3.5 When describing the Landscape Strategy Plan, the LPA will note that this proposes *inter alia*:
- *Reinforcement of northern [roadside] boundary vegetation to reduce visibility from the Cotswold AONB to the north and west.*
  - *Strong green corridors [alongside boundaries and in the middle of the site] break up the areas of development within the site and provide separation between site and adjacent Bovis development.*
  - *Structural planting along western green corridor to provide separation between proposed development and existing properties to the west, and reduce visibility from the west;*
  - *New hedgerow and hedgerow trees along western part of southern boundary to provide a strong landscaped edge and reduce visibility from the south.*
  - *Strong green corridors [continuing the line of the western boundary of the Bovis Homes site across the southern part of the appeal site] break up the areas of development within the site and provide separation between site and adjacent Bovis development.*
  - *Pedestrian and cycle routes throughout the green spaces [throughout the site].*
  - *Formal equipped area for children's play [in the southeastern corner of the site], accessible for both new residents and existing residents of the Bovis development and the rest of Minster Lovell.*
  - *SuDS attenuation basin [in the southeastern corner of the site] also provides additional amphibian habitat and other ecological and social interest.*
  - *Structural planting along eastern boundary [in the southeastern corner of the site] adjacent to Ripley Avenue to reinforce separation between proposed development and existing properties, and reduce visibility from the east and south-east.*
- 3.6 The LPA will also review the supporting documentation, which initially comprised:
- **Planning Statement** – Walsingham Planning
  - **Affordable Housing Statement**– Tetlow King Planning
  - Agricultural Land Classification – Kernon Countryside Consultants Ltd
  - Air Quality Assessment – RSK
  - Arboricultural Impact Assessment, Method Statement and Tree Protection Plan – RammSanderson Ecology Ltd
  - Built Heritage and Archaeological Assessment Report – Pegasus Group
  - **Design & Access Statement** – Edge Urban Design
  - Ecological Impact Assessment - RSK
  - Flood Risk Assessment – RSK Land and Development Engineering Ltd

- Preliminary Foul Drainage and Utilities Assessment – RSK
- Land and Development Engineering Ltd Phase 1 Desk Study Assessment – GRM Development Solutions Ltd
- Noise Assessment Report – RSK Acoustics
- **Statement of Community Involvement** – Catesby Estates
- **Landscape and Visual Appraisal** – EDP Ltd
- **Sustainability Statement** – Turley
- Sustainability Transport Assessment – DTA
- Transportation Framework Travel Plan - DTA
- Transportation Lighting Impact Assessment - RSK

3.7 It will note that the following documents were updated when the site and proposal were amended including in particular those aspects of these documents that relate to the main planning issues in dispute at this appeal:

- Drainage Strategy & Plans introduced by letter dated 28 February 2023 in response to initial objection from Oxfordshire County Council (“the County Council”) as LLFA
- Note from DTA relating to initial objection from Oxfordshire County Council (“the County Council”) as Highway Authority (“the HA”) relating to: Access Arrangements; Sustainable transport connectivity/ transport sustainability; Traffic Impact; and updated Travel Plan
- **Sustainability Statement** – Turley
- Built Heritage and Archaeological Assessment Report – Pegasus Group
- Interim and presumably final Archaeological Evaluation Reports - Oxford Archaeology

3.8 The LPA expects to review the discuss highlighted in bold in greater details although it reserves its right to comment on any of the other submitted documents in such detail as it may consider relevant/ appropriate/ necessary in describing the appeal proposal.

3.9 In addition, whilst it may in places discuss relevant documents produced to support the application, the LPA recognises that the appellant is likely to augment that supporting evidence at appeal stage and reserves its right to review any such additional evidence in due course.

3.10 The LPA will note that all these documents were available to the case officer in writing the committee report and to the members of the committee who determined the application.

### **Relevant Planning History**

3.11 The LPA will comment on relevant planning history at the appeal site and nearby, including in particular the SHLAA/ SHELAA consideration of this site and the adjoining Bovis Homes site to the east that was eventually approved; and perhaps other decisions in the village.

## **4      The Committee Report and the LPA's Decision**

### **The Committee Report**

- 4.1      The LPA will describe the decision making process and/or its decision in such detail as it may consider relevant/ necessary/ appropriate.
- 4.2      It will in particular refer to the planning officers' report relating to the application considered by its Lowlands Area Planning sub-Committee ("the committee report" and "the committee")
- 4.3      **As regards sections 1-4 of the committee report**, it will discuss all or some of the following:
- **Responses from statutory and other consultees**, including some such responses that objected to the proposal and/or that requested conditions to be imposed and/or provision of affordable housing and/or financial contributions towards infrastructure/ services;
  - In particular, it will *inter alia* note that:
  - Detailed, extensive objections were received from the Parish Council;
  - No comment was received from the Conservation and Design Officer
  - Objection(s) from the West Oxfordshire District Council (WODC) Landscape and Forestry Officer that, as summarised in the report commented *inter alia*:

***The location and layout of the housing estate does not reflect or reinforce the linear settlement pattern or character of Minster Lovell/Charterville Allotments.***

***It is an unallocated site that extends into open countryside, within the setting of the AONB.***

*It is within the Upper Windrush Valley Character Area and the Landscape Type of the site is 'open limestone wolds'. It exhibits characteristics typical of this landscape type. **Elevated, open limestone wolds landscapes are very visually exposed and particularly sensitive to development. The principal factors that potentially threaten landscape quality in this area include the expansion of settlements into open countryside, the suburbanisation of rural settlements and roads and the visual intrusion of unsightly development** and poor management of fringe areas (e.g. West of Witney).*

***The northern boundary is particularly sensitive. The site is relatively open in views from the B4047. Existing vegetation along the boundary is sporadic. Tree cover is predominately ash and so this cannot be relied upon to survive in the short to medium term. There is no hedgerow and only occasional scrub cover. This boundary will become more open and exposed. The high ground along the Burford Road ridge is important in protecting views from within the AONB and from within and beyond the Windrush Valley. Consideration will need to be given to the potential visibility of housing development along the high ridge.***

***Views from the south are more limited.*** Housing development is likely to be visible, but at some distance. However, ***views across the wider countryside, across the Windrush Valley, towards Leafield and Wychwood Forest, is likely to be punctuated by a modern housing development roofscape.***

***The B4047, west of Minster Lovell, retains a very rural character. This would be adversely affected by the construction of housing development, new traffic access infrastructure, new roadside footpaths and signage.***

- Comment from the LPA's Planning Policy team that were given on the basis that the District Council acknowledges that it is currently unable to demonstrate a 5-year supply of deliverable housing land, the 'tilted balance' of the NPPF is engaged, whereby there is a presumption that planning permission will be granted..... and identified the proposal's key benefits as including *the provision of additional housing to help meet the Council's five year housing land supply, affordable housing, the provision of additional public open space and the economic benefits development would bring*; but also identified the following potential harms as including: *the limited range of services and facilities within the village; the use of the private car unless measures are delivered to facilitate active travel and sustainable transport improvements; and the potential adverse biodiversity and landscape impacts if existing hedgerows, trees and their buffers are not adequately protected and maintained.*
- Comment from the WODC Housing Enabling Officer that: ***Affordable Housing provided on this development could make an important contribution to local housing need.***
- The **Summary of the Representations received** identified only two third party support comments (mainly focussing on the benefits of new housing and in particular affordable housing); and 157 third party objections relating to a very wide range of concerns, as summarised in the report, including many that overlap with the LPA's concerns.
- The **Summary of the Appellant's Case** (then as applicant) presented in the report, noting that this is taken from the conclusions in the submitted Planning Statement and is clearly premised on the LPA having a shortfall in its deliverable housing land supply ("HLS");
- The list of relevant **Planning Policies**, from the Local Plan, noting that this included the National Planning Policy Framework ("the NPPF") as a material planning consideration.

4.4 The **Planning Assessment** section of the report, in relation to which the LPA will note:

- It is carried out under the tilted balance on the basis of footnote 8 of the NPPF applying [under which housing policies are taken to be out of date]
- Its summarised description(s) of the application proposal and the application site are broadly correct but brief and lack detail [as is common in this type of report];
- It noted that a screening opinion (planning ref: 22/03089/SCREEN) had been determined in December 2022 as stating that *the application does not constitute EIA development.*

- It further noted that *Officers raised concerns that the scheme extended further to the south than the adjacent Ripley Avenue to the east and as such, secured a reduction to the site area and number of homes proposed.*
- It confirmed that *This application was previously heard by Members of the Lowlands Area Planning Sub-Committee on May 30th 2023. During the May 30th meeting, Members deferred the application in order to conduct a site visit [the LPA will argue that the committee assessed the proposal thoroughly and did not rush to judgment];*
- it identified the following key considerations: **Principle of Development; Siting, Design, Form and Landscape Impact; Heritage Impacts; Archaeology; Highway Safety; Accessibility; Drainage and Flood Risk; Trees and Ecology; Residential Amenities; Sustainability; S.106 matters; Other Matters; and Conclusion and Planning Balance.**
- In relation to **Principle of Development**, the LPA will note that the report identifies Local Plan policies OS2 and H2 as most relevant in the following terms:

5.11 Policy OS2 sets out the overall strategy on the location of development for the District. It adopts a hierarchal approach, with the majority of new development focused on the main service centres of Witney, Carterton and Chipping Norton, followed by the rural service centres of Bampton, Burford, Charlbury, Eynsham, Long Hanborough, Woodstock and the new Oxfordshire Cotswolds Garden Village (now referred to as Salt Cross), followed by the villages.

5.12 Minster Lovell is identified as a 'village' in the settlement hierarchy of the Local Plan and policy OS2 states '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'.

5.13 Local Plan Policy H2 states 'new dwellings will be permitted at the main service centres, rural service centres and villages in the following circumstances.....

On undeveloped land adjoining the built up area where convincing evidence is presented to demonstrate that it is necessary to meet identified housing needs, it is in accordance with the distribution of housing set out in Policy H1 and is in accordance with other policies in the plan in particular the general principles in Policy OS2'.

5.14 Policy H2 would permit new homes on undeveloped land adjoining the built up area where there is convincing evidence to demonstrate it is necessary to meet identified housing needs, it is in accordance with the distribution of housing (in Policy H1) and it is in accordance with the other local plan policies, particularly Policy OS2.

- However, the LPA will emphasise that the report is written on the basis that the LPA has a shortfall in its deliverable HLS and that *the decision-making process for the determination of this application is therefore to assess whether the adverse impacts of granting planning permission for the proposed development would significantly and demonstrably outweigh the benefits or whether there are specific policies in the framework that protect areas or assets of particular importance which provide a clear reason for refusing the development proposed.*
- In relation to **Siting, Design, Form and Landscape Impact**, the LPA will note the discussion within the report and its conclusion that:

5.30 The proposal does not accord with the provisions of Policy OS2 of the Local Plan with regards to matters of character and appearance. Furthermore, the scheme would conflict with Policy EH2 of the Local Plan for the landscape reasons identified. However, there is much limiting this conflict, as set out above, and as a landscape led and high quality scheme could be secured at reserved matters stage, officers consider this policy conflict to be moderate.

- In relation to **Heritage Impacts**, the LPA will note the discussion of this issue in the report in the context of third party concerns relating to this issue; and its conclusion that:

5.36 While officers consider the immediate built form to the east to not reflect the settlement pattern of the original Chartist settlement, there is perhaps an argument that extending Minster Lovell further to the west would affect the significance of Minster Lovell as a non-designated heritage asset. This is noted and has some traction, however, officers can only assign modest harm to this. This is in part because if extending to the west from Minster Lovell were a concern, the Bovis Homes estate to the east of the current scheme would not have been allocated as an acceptable location for development in the current Local Plan (WIT4). Arguably, the impact to the settlement pattern of Minster Lovell is similar between WIT4 and the current proposal. Nonetheless, modest harm is attributed to the impact to Minster Lovell as a non-designated heritage asset.

5.37 There is some modest conflict therefore with Local Plan Policy EH16 and the NPPF insofar as they apply to the impact to Minster Lovell as a non-designated heritage asset.

- In relation to **Accessibility**, the LPA will note the discussion of this issue in the report; and its conclusion that:

5.49 Officers are aware that the Local Plan does not contain suggested acceptable/sustainable walking distances in relation to new development and access to goods/services. However, 20 minute neighbourhoods' have been gaining momentum for several years. Research (see TCPA publication '20-Minute Neighbourhoods Creating Healthier, Active, Prosperous Communities An Introduction for Council Planners in England') shows 20 minutes is the maximum time that people there are willing to walk to meet their daily needs. A 20-minute journey represents an 800 metre walk from home to a destination, and back again (10 minutes each way). The proposed development is solely for housing, as such does not provide the infrastructure or services required to serve the development. Occupiers are required to travel to meet their daily needs, this travel is likely by private vehicle and less by walking. As such, the proposed development would not meet the definition of a 20 minute neighbourhood. Be that as it may, the development would have permeability with the existing settlement, the routes are safe and attractive to walk, and the distances are comparable with the Bovis Home development to the east. As such, officers could not describe the development as being 'unsustainable' in accessibility terms, however, it could not be considered as wholly sustainable either. There is no clear cut off where a development would become unsustainable in these terms, no fixed distance that when crossed would equal unsustainable development, nonetheless, officers note there is some conflict with Local Plan Policy T1 and T3, and the NPPF in that regard.

- In relation to **S.106 matters**, the LPA will note the discussion of this issue in the report; and in particular that it sets out the various requests made by statutory consultees; and its conclusions on the need to meet the CIL Reg 122 tests.
- In relation to **Other matters**, the LPA will note the discussion of this issue in the report; and in particular that it *inter alia* confirms that:
  - *The applicant has agreed to a reduced timeframe of two years for the reserved matters to be submitted to the LPA and a total of four years for development to*

*begin (four years from the date of the outline permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later). This ensures the homes are delivered in good time and make a meaningful contribution to the housing shortfall in the District.*

- *Comments from Ministers regarding the removal of housing targets should be disregarded.....*
- *A children's play area and recreational route is proposed.*
- Finally, the LPA will note the discussion within the report's **Conclusion and Planning Balance**; and that:
  - It identifies harms in relation to all the following

5.94 Moving to the adverse impacts. The proposal does not wholly respect the village character and local distinctiveness as it extends the existing C20 development, which further delineates the historic from the modern. Cumulatively, it is not limited development (taken in isolation it is limited). It would not protect the local landscape or setting of Minster Lovell; and would involve the loss of an area of green space that makes an important contribution to the character and appearance of the area. In addition, the scheme causes localised landscape harm by urbanising this greenfield site. In light of the points raised within this report, the resultant harm is considered to be moderate and thus moderate negative weight is assigned to these harms.

5.95 Modest harm is attributed to the impact to Minster Lovell as a non-designated heritage asset and thus modest negative weight is assigned to this harm.

5.96 There is some conflict with Local Plan Policy T1 and T3, and the NPPF in that distances to key services and facilities are in excess of the 20 minute guidance. However, this issue is mitigated as explained in the accessibility section. This amounts to moderate negative weight against the scheme.

- Its balance is carried out under the paragraph 11(d)(ii) "tilted balance" [only]:

5.97 Turning to the planning balance as directed by paragraph 11 of the NPPF. Taking all of the above into consideration, it is officer opinion that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits and as such, planning permission should be granted.

5.98 The application is therefore recommended for approval, subject to the suggested conditions and the applicant entering into a legal agreement.

- 4.5 After the Planning Assessment, the report includes a set of recommended conditions, on which the LPA may base its initial suggested conditions in this case.

### **The LPA's Decision**

- 4.6 The LPA will note that following discussions set out in the extensive minutes of its 17 July 2023 meeting (which included presentations by different individuals in different capacities in objection to the proposal and a presentation on behalf of the applicant in support; and to which it may refer further as appropriate), its committee resolved to refuse the application in conflict with officer recommendation for the RfRs set out in section 1 of this Rule 6 Statement, above.

## 5 **Relevant Legislation and National Planning Guidance**

### Relevant Legislation

- 5.1 The LPA will discuss the legislation that it considers most relevant to this appeal in the detail that it considers necessary/ appropriate, including: S.38 (6) of the Planning and Compensation Act 2004, which requires decision makers to determine applications in accordance with the policies of the development plan (here the saved policies of the adopted West Oxfordshire Local Plan) unless other relevant material planning considerations (including in particular current national government planning policies and guidance) indicate otherwise.

### Relevant National Planning Guidance

- 5.2 In presenting its case, the LPA will refer as appropriate to the most up to date government policy, guidance and advice that it considers relevant to this appeal, with particular regard to:
- The current September 2023 *National Planning Policy Framework* (“the NPPF”); or any subsequent superseding iteration of the NPPF; and
  - The *Planning Practice Guidance* (“the PPG”, originally introduced in March 2014; and since updated continuously/ occasionally);
- 5.3 It will discuss in particular the following aspects of the NPPF:
- **Achieving Sustainable Development; and the Presumption in Favour of Sustainable Development, including paragraph 8, 11 and 12**
  - **Decision-making; the distinction between strategic and non-strategic policies, the need to review policies at least every 5 years and Conditions and Planning Obligations, including paragraphs 20-23, 28, 33, 34, 47, 55-58**
  - **Delivering a Sufficient Supply of Homes, including paragraphs 60-63, 64, 69-79**
  - **Promoting healthy and safe communities, including paragraphs 92, 93, 95 and 98**
  - **Promoting Sustainable Transport, including paragraphs 104, 105, 112, 113 and 152**
  - **Achieving well-designed places; and the Requirement for Good Design, including paragraphs 126-132 [particularly 130] and 134**
  - **Conserving and Enhancing the Natural Environment, including paragraphs 174, 176**
  - **And perhaps Conserving and Enhancing the Historic Environment, including paragraphs 189 and 203**
  - **Implementation; and Weight to be given to relevant policies of the adopted Local Plan, including paragraphs 218 and 219**
- 5.4 The LPA will discuss other planning, pollution and other legislation/ advice, as it considers relevant/ appropriate, including *inter alia*: the Community Infrastructure Levy Regulations 2010 (“the CIL Regulations”); and the National Design Guide.

## **6 Provisions of the Development Plan and Other Policy Documents**

- 6.1 The LPA will note that Section 38 (6) of the Planning and Compensation Act 2004 requires decision makers to determine applications in accordance with the policies of the statutory development plan ("the development plan") unless other relevant material planning considerations indicate otherwise.
- 6.2 The LPA will explain that in this case, the development plan effectively comprises the West Oxfordshire Local Plan 2011-2031 ("the Local Plan", adopted September 2018), there being no made neighbourhood plan for Burford.
- 6.3 In this context, the LPA will discuss the relevant policies of the Local Plan referred to in the reasons for refusal ("the RfRs") and identify the parts of each policy that are relevant to the appeal, noting that the following policies are referred to in the reasons for refusal:
- **RfR1:** Local Plan policies OS2, OS4, H2, T1, T3 and EH2.
  - **RfR2:** Local Plan policies OS5, H3, H5, T1, T3, EH3, EH4 and EH5.
- 6.4 The LPA will set out what it regards as the appropriate weight to be given to these policies with regard to its September 202 Regulation 10A review; paragraph 219 and footnote 8 of the NPPF and its housing land supply position (recognising that this may be the subject of dispute).
- 6.5 The LPA may also discuss the relevance of any other Local Plan policies that may be referred to by the appellant and/or other parties [or the Inspector] at application and/or appeal stage to the extent it considers this relevant/ appropriate/ necessary.
- 6.6 The LPA will identify and may discuss to the extent it considers necessary/ relevant/ appropriate, the relevant parts of other relevant policy documents, including:
- The **West Oxfordshire Design Guide** noting its status as an adopted supplementary planning document (adopted 2016);
  - The long established **West Oxfordshire Landscape Character Assessment**, noting that this is not adopted planning guidance but that it was approved for use in development control/ management decisions in 1998 and, in the LPA's opinion retains an importance as the most detailed of the published landscape assessments, particularly in areas where there has been little change in landscape terms since 1998 [NB the LPA may nonetheless refer to other published landscape assessments]; and
  - The adopted supplementary planning document **Affordable Housing**
  - The adopted supplementary planning document **Developer Contributions**
- 6.7 In relation to infrastructure, the LPA may also refer to its Infrastructure Delivery Plan.

## 7 The LPA's Housing Land Supply ("HLS") Position

- 7.1 The LPA will recognise that it has an obligation under the NPPF to be able to demonstrate a full 5-year deliverable housing land supply ("HLS"); and that if it cannot under the terms of footnote 8 of the current version of the NPPF, the policies which are most important for determining the application are out of date (subject to the operation of footnote 7).
- 7.2 It will note in this context that Paragraph 74 of the NPPF requires LPAs to identify and update annually a full 5-year deliverable housing land supply ("HLS") against their requirement, as set out in adopted strategic policies, until those strategic policies are more than 5 years old, after which they must do so against the local housing need ("LHN"), which footnote 39 states *should be calculated using the standard method*:
- 7.3 It will argue from this that in the first 5 years after the Local Plan was adopted, the *housing requirement set out in adopted strategic policies* as described in paragraph 74 was the requirement set out in Local Plan housing policies H1 and in particular H2.
- 7.4 It will observe that policy H1 sets out the overall housing requirement [as assessed at the EiP, relying heavily on the 2015 Oxfordshire SHMA assessed OAN of 660dpa and a contribution of 2,750 dwellings towards Oxford City Council's unmet need], split indicatively by sub-area. Policy H2 sets out a stepped requirement that [including 275dpa from 2021-2031 as the 2,750 dwelling contribution towards Oxford's unmet need] increases to 1,125 dpa by 2024:

<b>POLICY H2: Delivery of New Homes</b>  Provision will be made for at least 15,950 new homes in the period 2011 – 2031.  This will include 13,200 homes in the period 2011 – 2031 to meet West Oxfordshire's housing needs and a further 2,750 homes in the period 2021 – 2031 to meet Oxford City's housing needs.  The housing requirement will be phased over the plan period in accordance with the following table:			
Year	West Oxon's needs	Oxford City's needs	Combined annual requirement
2011 - 17	550 per annum		550 per annum
2017 - 18	550		550
2018 - 19	550		550
2019 - 20	550		550
2020 - 21	550		550

2021 - 22	525	275	800
2022 - 23	525	275	800
2023 - 24	700	275	975
2024 - 25	850	275	1125
2025 - 26	850	275	1125
2026 - 27	850	275	1125
2027 - 28	850	275	1125
2028 - 29	850	275	1125
2029 - 30	850	275	1125
2030 - 31	850	275	1125
<b>Totals</b>	<b>13,200</b>	<b>2,750</b>	<b>15,950</b>

The 5 year housing land supply is to be calculated on the basis of the phased requirement set out in this table. The additional requirement of 2,750 dwellings to meet Oxford City's housing needs is set out separately for illustrative purposes but delivery and supply will be assessed against the combined annual requirement.

When assessing the 5-year housing land supply the Council will apply the residual (Liverpool) approach with any under-supply (backlog) of housing to be delivered over the remaining plan period to 2031.

The required level of housing delivery of at least 15,950 homes will be achieved through a combination of homes already completed, existing commitments, site allocations (strategic and non-strategic sites) windfall development and any additional provision in Neighbourhood Plans.

If, post adoption of the Local Plan, the phased housing requirement is consistently not delivered, or it becomes clear that this is likely to be the case during the remainder of the plan period, then the Council will undertake an early review of the plan. Such a review will consider up to date evidence on housing needs (including unmet needs from neighbouring authorities) and, if necessary, will allocate additional sites for housing.

Proposals for housing will be determined as set out below:

- 7.5 That is the basis on which the LPA's November 2022 HLS position statement concluded that the LPA could only demonstrate a 4.1 year deliverable HLS [a position that was thereafter challenged at several subsequent appeals, with the LPA arguing for 3.14 years at the most recent inquiry determined on that basis at Land north of Cote Road, Aston, see details at Appendix 4].

7.6 However, these policies are now more than 5 years old, after which (as set out above) paragraph 74 states that the LPA should demonstrate a 5 year deliverable HLS against LHN, subject only to the caveat that the existing requirement can be maintained if [and only if] ....these strategic policies have been reviewed and found not to require updating.

7.7 In fact, as it will have explained, the LPA has carried out a Regulation 10A review in this context [see Appendix 3], which *inter alia* concluded that the housing requirements in policies H1 and H2 require updating, commenting in particular in relation to policy H2 that:

***Like Policy H1, the first strand of Policy H2 needs updating because it is based on 2014 evidence which pre-dates the introduction of the standard method for assessing local housing need.***

***It will be for the new Local Plan to establish an appropriate housing requirement to 2041 based on up-to-date evidence of housing need.***

***Whilst the second strand of Policy H2 remains consistent with the NPPF and the need to promote a sustainable pattern of development and remains up to date, the review of the Local Plan presents the opportunity to consider reasonable alternatives and determine whether this current approach should be rolled forward, or a different strategy pursued.***

7.8 As a result, **paragraph 74 requires LPAs to use local housing need (“LHN”)** when assessing whether a 5-year supply of specific deliverable sites exists and footnote 39 requires that **LHN .....should be calculated using the standard method set out in national planning guidance.**

7.9 The LPA will also note that whilst paragraphs 11(b), 23, 35(a) and 119 of the NPPF continue to require planning policies to provide for objectively assessed needs as a minimum, footnote 21 explicitly states that *Where this relates to housing, such needs should be assessed using a clear and justified method, as set out in paragraph 61 of this Framework* (and paragraph 61 states: *To determine the minimum number of homes needed, **strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach** which also reflects current and future demographic trends and market signals. In addition to the local housing need figure, **any needs that cannot be met within neighbouring areas should also be taken into account** in establishing the amount of housing to be planned for.*

7.10 Moreover, it seems to the LPA in relation to this last point that any such unmet need in neighbouring areas/ authorities that have based their requirement on an assessment of need that is materially different from the calculations arising from the 2014 Oxfordshire SHMA (“the SHMA”) would need to be recalculated using the LHN in the first instance for those areas/ authorities.

7.11 And in that context, the LPA will note that Oxford’s unmet need was based on an assessed OAN of 1,400dpa, whereas its standard method figure may be as low as only 603 dpa, which it will

conclude further supports the need as a minimum to reassess the level of any unmet need that might be deemed to arise from **exceptional circumstances** .....which also reflects current and future demographic trends and market signals and the extent to which individual neighbouring authorities might need to assist.

7.12 In the meantime, the LPA must **identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their local housing need .....calculated using the standard method**; and (as it reads paragraph 74) there is no choice about this approach so that it is impossible to paint this as opportunistic in any way.

7.13 Moreover, again as it reads the Planning Practice Guidance ("the PPG"), this appears unequivocally clear that the standard method is calculated to take account of past shortfalls (noting here that the LPA's last HLS position statement identified that the LPA had eliminated its shortfalls against the H2 requirement), with paragraph 2 of section 2a of the PPG [last updated 20 February 2019] confirming that **The standard method uses a formula to identify the minimum number of homes expected to be planned for, in a way which addresses projected household growth and historic under-supply**; and paragraph 11 of the same section of the PPG [and last dated at the same date] stating that **The affordability adjustment is applied to take account of past under-delivery. The standard method identifies the minimum uplift that will be required and therefore it is not a requirement to specifically address under-delivery separately**]:

**What is the standard method for assessing local housing need?**

The National Planning Policy Framework expects strategic policy-making authorities to follow the standard method in this guidance for assessing local housing need.

The standard method uses a formula to identify the minimum number of homes expected to be planned for, in a way which addresses projected household growth and historic under-supply.

The standard method set out below identifies a minimum annual housing need figure. It does not produce a housing requirement figure.

Paragraph: 002 Reference ID: 2a-002-20190220

Revision date: 20 02 2019

**Can strategic policy-making authorities take account of past under delivery of new homes in preparing plans?**

The affordability adjustment is applied to take account of past under-delivery. The standard method identifies the minimum uplift that will be required and therefore it is not a requirement to specifically address under-delivery separately.

Where an alternative approach to the standard method is used, past under delivery should be taken into account.

Paragraph: 011 Reference ID: 2a-011-20190220

Revision date: 20 02 2019

7.14 Finally, the LPA notes that whilst the Local Plan requirement includes a 275dpa addition to help meet Oxford City's unmet need, there is no reference to any such additions in paragraph 74; although it will accept that if this additional 2,750 dwellings is not achieved this has the potential to result in unmet need in Oxford and that this therefore remains a material planning consideration..

7.15 However, it will argue that any remaining element of Oxford City's unmet need should be assessed against the LHN for Oxford and other Oxfordshire LPAs and their decisions as to how to adjust their contributions towards Oxford's unmet needs (if at all).

- 7.16 In any case, the LPA will exhibit its recently published HLS position statement for the 5-year period starting 1 April 2023 ("the HLSPS2023"), which used the standard method LHN figure of 570dpa; and concluded on that basis that the LPA could demonstrate a 5.4 year deliverable HLS.
- 7.17 It will argue that the assessed deliverable HLS has been informed by what were sometimes detailed discussions about its HLS position based on the policy H2 housing requirement at several appeals in the past 18 months or so; and, as such, the LPA regards HLSPS2023 as significantly more robust than previous HLS position statements for reasons that include all the following:
- It includes an allowance of 64 dwellings for past undersupply, which does not appear to be required under the standard method for the reasons set out in the PPG and referred to above;
  - Adjusting for this would add approximately 0.1 years to the HLS;
  - It does not include any allowance for any of the large SDAs that have not yet been granted consents [or from the Cotswolds Garden Village]; and only 256 dwellings at the West Eynsham SDA, where there is an agreed masterplan; and some permissions have already been granted and some dwellings have been/ are being built;
  - This reflects the NPPF definition (b) of deliverability for allocated sites but I consider it likely that in practice many of these large sites, these remain a very large resource of potential future supply including 1,850 dwellings in the North and East Witney SDAs; a balance of 744 dwellings at the West Eynsham SDA, as well as some 2,200 dwellings at the Garden Village and 1,200 dwellings at the East of Chipping Norton SDA where I consider delivery less likely;
  - Even excluding these last two sites entirely, this still represents 3.25 years' supply at 570dpa
  - Moreover (as can be seen in places within the large commitments at appendix 1 and the Woodstock and WESDA sites in Appendix 3), allocated sites often over deliver)
  - In producing the HLSPS2023 a detailed check of all the small commitments has been carried out; and the LPA therefore expects that part of the supply to be reliable;
  - The HLS includes an allowance for windfalls (omitting large schemes) using an estimate of 125dpa, whereas historic small windfall rates in West Oxfordshire have averaged 175dpa;
  - In this context, the windfall performance in the five complete years since 1 April 2018 total 1,544 dwellings, at an average of 309 dpa;
  - As shown below, small windfalls on their own averaged 162 dpa (30% more than the projected 125dpa) and large windfalls averaged an additional 146 dpa, as follows:

Year	Small Windfall Residential Permissions (<10 dwellings net gain)	Large Windfall Residential Permissions (≥10 dwellings net gain)	Total	Commentary
2018/19	191	53	244	This year included a number of larger planning permissions that have been excluded from the windfall calculations. <ul style="list-style-type: none"> <li>• 126 dwellings on land west of Minster Lovell</li> <li>• 80 extra care apartments at London Road, Chipping Norton</li> <li>• 66 dwellings on former Stanton Harcourt Airfield</li> </ul>
2019/20	180	356	536	This year included one large permission that has been excluded from the windfall calculations. <ul style="list-style-type: none"> <li>• 99 dwellings south of Banbury Road, Chipping Norton</li> </ul>
2020/21	179	28	207	This year included one large permission that has been excluded from the windfall calculations. <ul style="list-style-type: none"> <li>• 22 dwellings, Oliver's Garage, Long Hanborough</li> </ul>
2021/22	145	0	145	This year included one large permission that has been excluded from the windfall calculations. <ul style="list-style-type: none"> <li>• 72 dwellings Land east of Swinbrook Road, Carterton</li> </ul>
2022/23	120	292	412	This year included one large permission that has been excluded from the windfall calculations. <ul style="list-style-type: none"> <li>• 200 dwellings south of Milestone Road, Carterton</li> </ul>
<b>Total</b>	<b>815</b>	<b>729</b>	<b>1,544</b>	

NB Windfall approvals for the year to date since 1 April already exceed 125 dwellings.

- 7.18 The LPA will argue that it can see no reason why this long term oversupply of windfall dwellings might suddenly stop and regards this as likely to continue to provide a buffer against the LHN in future years even if only the long term trend figure of 175dpa is achieved.
- 7.19 Moreover, although the large allocated sites have delivered more slowly than anticipated, the LPA considers them very clearly to be developable and with an agreed masterplan at the 1,000-dwelling West Eynsham SDA and an emerging masterplan at the 1,400 dwelling North Witney SDA and an Area Action Plan also in train at the 2,200-dwelling Cotswolds Garden Village, these total approximately an 8-year developable supply on their own.
- 7.20 The LPA is thus confident that its HLS is more robust and there are numerous potential sources of future oversupply, so that against the LHN, it expects to perform well in future.
- 7.21 In any event, although the assessed deliverable HLS is close to 5 years, it exceeds this figure; and in the LPA's view is in several respects conservatively assessed.
- 7.22 The LPA is aware that the appellant has not had an opportunity to comment on this recently published HLS position statement [and will respond appropriately to any arguments/ evidence advanced, if necessary]; but at present it is content to contend that it has a 5-year deliverable HLS and that, accordingly, footnote 8 does not apply.
- 7.23 The LPA will emphasise that since the Local Plan was adopted, it has consistently outperformed its housing requirement set out in Local Plan policy H4 and has now eliminated its HLS shortfall.

- 7.24 It has also achieved what it considers very good Housing Delivery Test (“HDT”) results, above 100% in all years with no consequences and most recently achieving a HDT result for 2020-2021 of 195% (it achieved 103% in 2017-2018, 114% in 2018-2019 and 153% 2019-2020).
- 7.25 It will also accept that although its provision of affordable housing (“AH”) has exceeded estimated need since 2018, its ongoing needs are very significant.
- 7.26 It hopes to negotiate an agreed position on housing land supply with the appellant that may have the potential to save significant inquiry time discussing this issue in forensic detail.

## **8        The LPA’s Case 1: Main Planning Issues**

- 8.1 The LPA will state that in its view with reference to the planning concerns referred to in the reasons for refusal and the discussions at the committee meeting, the main planning issues in this case are:
- 1        Whether the proposed development is acceptable in principle under the spatial strategy of the West Oxfordshire Local Plan 2031 (“the Local plan”), as set out in the relevant strategic location policies OS2 and H2;**
  - 2        Impact on the character and appearance of the site and nearby area in landscape and visual (“LV”) and other terms and in terms of the loss of an area of green space that makes an important contribution to the character and appearance of the area**
  - 3        Whether it would lead to excessive reliance on use of the private motor vehicles, as a result of the proposed dwellings being inconveniently located to access key local services and facilities on offer in Minster Lovell**
  - 4        Whether the proposal would fail to make adequate provision towards essential supporting infrastructure directly required to offset the demands that the proposed development would otherwise place on those services and infrastructure**
- 8.2 The LPA will assess the harm arising from each issue in turn; and will give weight to those harms.
- 8.3 It will then set out what it regards as the main planning benefits likely to arise from the proposal and assess the weight that it considers should be attributed to those benefits.
- 8.4 Finally, the LPA will assess the appropriate balance(s) to be applied in this case; and will set out in each case why it considers that the balance falls against the appeal proposal.

## **9      The LPA's Case 2: Planning Harm**

9.1      The LPA will note for ease of reference that the first reason for refusal ("RfR1") states:

- 1      The proposal does not respect the village character and local distinctiveness as it extends the existing C20 development, which further delineates the historic from the modern. Cumulatively, it is not limited development. It would not protect the local landscape or setting of Minster Lovell. It would involve the loss of an area of green space that makes an important contribution to the character and appearance of the area and the scheme causes localised landscape harm by urbanising a greenfield site. In addition, the site is divorced from key services and facilities on offer in Minster Lovell with future residents reliant on private vehicles to meet their daily needs. While the development would provide up to 134 dwellings to include 40% affordable homes and 5% self-build plots; economic benefits, a children's play area, open space/recreational route, pedestrian and cycle links, biodiversity net gain, and sustainability measures.**

**The adverse impacts identified would significantly and demonstrably outweigh the benefits.**

**As such, the proposal is considered to be unsustainable development and is contrary to policies H2, OS2, OS4, T1, T3 and EH2 of the adopted West Oxfordshire Local Plan 2031, the West Oxfordshire Design Guide 2016, and the relevant paragraphs of the National Planning Policy Framework.**

9.2      Bearing in mind the main planning issues it has identified in this case, the LPA will assess the harm arising from each issue in turn; and will give weight to those harms as set out below:

### **Acceptability in Principle**

9.3      The LPA will argue that the proposal does not represent "limited development", as required in the first part of Local Plan OS2 with regard to the number of new dwellings proposed and likely increase in population and physical size of the resulting village in terms of area and spread to the west compared to the existing village.

9.4      It will emphasise that the adjoining Bovis Homes development has been built since the adoption of the Local Plan and that seen cumulatively with this development it is even more difficult to conclude other than that the current appeal proposal would not represent "limited development" and should thus be regarded as unacceptable in principle under the key strategic policy OS2.

9.5      It will further note that policy OS2 beyond this initial requirement generally defers to housing policy H2 in terms of locational acceptability in principle and that this states that *New dwellings will be permitted at the main service centres, rural service centres and villages in the following circumstances: .....on undeveloped [and unallocated] land adjoining the built up area where*

*convincing evidence is presented to demonstrate that it is necessary to meet identified housing needs, it is in accordance with the distribution of housing set out in Policy H1 and is in accordance with other policies in the plan in particular the general principles in Policy OS2.*

- 9.6 It will conclude that the current proposal must conflict with this policy if the appellant cannot demonstrate that it is *necessary to meet identified housing*.
- 9.7 The LPA will note that the supporting text to policy H2 accepts that an identified need could be a District-wide need but will argue that, as it can now demonstrate a full 5-year deliverable HLS, this does not apply, particularly in a relatively unsustainable location.
- 9.8 As such, the LPA will argue that the proposal would also conflict with the key strategic locational policy for housing H2 [NB the LPA will also demonstrate conflict with policy H2, as a result of conflict with other policies, including various of the OS2 *General Principles*].
- 9.9 The LPA will further argue that this is not just a policy harm but that these strategic policies exist to limit planning harms that would otherwise arise as a result of building new housing in inappropriate locations and will identify such harms in general and as applied to this case,
- 9.10 The LPA will rely on paragraph 219 of the NPPF, its September Regulation 10A review and its HLS position to argue that these key strategic policies are up-to-date and should be given full statutory weight; but it will confirm that even if not they are an important part of the development plan and are highly consistent with the NPPF and should be given weight accordingly.

### **Impact on Character and Appearance of the Site and nearby Area**

- 9.11 The LPA will argue with reference to the appellant landscape and visual ("LV") evidence and the industry standard approach to assessment LV effects set out in the "GLVIA3" that:
- The proposal would involve the loss of an attractive field adjacent to the Cotswolds NL; and that this is a very high magnitude adverse effect to a landscape receptor of some value [although the LPA will accept it has urban influences and is not a "valued landscape"]
  - The LPA will further argue that the LVA overstates the extent to which on-site landscaping could mitigate these landscape harms;
  - There are public and private viewpoints from which visual receptors would experience significant adverse visual effects; and that in at least some cases these receptors are more sensitive and the magnitude of effects are greater than assessed in the LVA;
  - The LPA will consider how these visual effects vary across the seasons and over time.
  - Taken together these LV effects are a significant material planning consideration that conflicts with policies OS2, OS4 and EH1 (and consequentially H2)
- 9.12 The LPA will further argue that in building on an important part of the rural setting of the historic rural village of Minster Lovell (Charterville), the proposal would involve the loss of an important

green open space that has become more important following the building out of the Bovis site; and that this has already extended non-historic [20<sup>th</sup> and 21<sup>st</sup> century] development further to the west and further from the historic centre of the village, with its north-south linear character that is so apparent along Brize Norton Road, whereas [particularly as experienced by passing visitors travelling along Burford Road] its character is already very significantly informed by development in depth to the west of Brize Norton Road.

- 9.13 Additionally, as a related point that to some degree overlaps with the accessibility issues that are also a material planning concern to the LPA, the new housing would be located at the periphery of the village an away from its main facilities, thereby reducing opportunities to intermingle with existing residents in the traditional heart of the village, which the LPA will identify as a genuine further adverse impact in terms of paragraph 92(a) and 130(a) of the NPPF.
- 9.14 The LPA will argue that the proposal would further exacerbate this real/ perceived effect to the detriment of the historic character of this small former Chartist settlement, again contrary to policies OS2 and OS4 of the Local Plan.
- 9.15 The LPA will rely on paragraph 219 of the NPPF, its September Regulation 10A review and its HLS position to argue that the non-strategic policies OS2 and EH2, as well as the General Principles of OS2 are up to date [irrespective of the HLS position]; as they are highly consistent with the NPPF and should be given full statutory weight accordingly.
- 9.16 Moreover, the LPA will argue that under the application of paragraph 134 of the NPPF, these local design policies and the local West Oxfordshire Design Guide should be given great weight to the extent that they are consistent with the broadly expressed paragraph 130 of the NPPF; and indeed that its reading of paragraph 134 if the paragraph 11(d)(ii) is not engaged then its ordinary means applies and that: *Development that is not well designed **should be refused***.

### **Accessibility and Dependence on Private Motor Vehicles**

- 9.17 The LPA will set out the shops and other facilities available in Minster Lovell and the walking distances to those facilities [NB it expects to agree these with the appellant as matters of fact].
- 9.18 It will argue from this that:
- Although the village has some facilities and even some employment opportunities, these are limited and would be more than an 800m walk from residents at the proposed dwellings, which it will suggest represents a broad indication of what most reasonably fit, unaccompanied adult not of advancing age would regard as easy walking distance;
  - On this basis, the LPA will suggest that even if they wished to use these limited local facilities, most residents would normally use private motor vehicles to access them; and that

once in a car many more facilities that duplicate local shops/ facilities would then be readily accessible, making it less likely that they would choose to use the village shop(s).

- The LPA will argue that the great majority of new residents with jobs are very likely to work outside the village [noting also that access to the main A40 and Witney may well be a reason for many people choosing to live in this location], meaning that most will depend on use of private motor vehicles to travel to and from work;
- Moreover, most people would need to access the many facilities and services not available in the village [including health, most leisure, most shops, including large supermarkets, most older friends/ existing social support networks] and most would therefore also need to travel for the great majority of non-work related trips;
- As also noted above, the LPA is concerned that this combination of limited use of local shops, limited natural intermingling with existing residents [especially existing residents outside the Bovis development; reliance of motor vehicles to see existing friends] would mean that there would be limited opportunities to integrate into the community.

9.19 The LPA will argue from this that the proposed location is likely to lead to excessive use of motor vehicles, increasing the carbon footprints of new residents in the District Council's declared climate emergency, contrary to policies T1 and T3 of the Local Plan, relevant paragraphs of the NPPF, including paragraphs 92(a), 104, 105 and 154 and good planning principles.

9.20 The LPA will rely on paragraph 219 of the NPPF its September Regulation 10A review and its HLS position to argue that the relevant parts of non-strategic policies OS4 (bullet point 3), T1 and T3 are up to date [irrespective of the HLS position]; as they are highly consistent with the NPPF and should be given full statutory weight accordingly.

### **Provision of Contributions towards Services and Infrastructure (RfR3)**

9.21 The LPA will explain that it considers that contributions towards infrastructure and services upon which the appeal proposal would place an additional burden are required to help to mitigate the likely impacts of the increased population and related increased demands on those services that would arise from the proposal.

9.22 In this case, the committee report has set out the requested contributions.

9.23 The LPA will argue that all the requested contributions meet the CIL Reg.122 tests except for those contributions requested by the Parish Council in relation to the tennis court and works to the Wash Meadow and pre School facilities for the reasons set out in the report.

9.24 The LPA will set out its position that these requests are clearly required under Local Plan policies OS5, H3, H5, T1, T3, EH3, EH4 and EH5, as referred to in RfR2 and in particular, it will contend that failure to mitigate these impacts would conflict directly with these relevant adopted Local Plan policies and the relevant paragraphs of the NPPF (including for many of these requests,

paragraph 58, which states: ***Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage.....***).

- 9.25 In this context, the LPA has requested contributions that it considers meets the tests set out in the NPPF and the CIL Regulations and will in its evidence to the inquiry demonstrate this.
- 9.26 The LPA notes that, as it reads section 8 of the appellant's initial Statement of Case ("the SoC"), the appellant appears to be positively inclined to meeting the requests that it consider justified and that it intends ....*to submit a draft Section 106 Agreement in advance, within the planning appeal timetable and under the appeal inquiries regulation; and to ....engage with both WODC and Oxfordshire County Council in respect of the contents of this document; and that ....At this time, it is not expected that any contentious matters will arise during these discussions or the preparation of this document, given the consultation responses and discussions with the Case Officer during the application process.....*
- 9.27 It interprets this as an indication that the appellant will provide a unilateral undertaking or other legally binding commitment to the inquiry that will provide the necessary contributions in full.
- 9.28 The LPA is therefore optimistic that the necessary legal agreement can be finalised and agreed ahead of the inquiry.
- 9.29 However, there is in any case currently no formal unilateral undertaking or S.106 agreement (or other mechanism) to provide contributions towards infrastructure and services upon which the appeal proposal would place an additional demand and the LPA takes the view that such a mechanism that is legally secure and satisfactory in all other respects is required to offset the likely impacts of the increased population that would arise from the proposal on services such as public transport, education, on and off site leisure facilities and waste management.
- 9.30 Therefore, in the continued absence of an acceptable, legally binding, ideally agreed planning obligation to offset these additional burdens, the LPA is not currently in a position to dispense with its concerns relating to RfR3.

## **10      Response to the Appellant's Grounds of Appeal**

- 10.1      The LPA intends to set out its case in full under the headings listed in the previous sections of this statement and in doing so will take due account of the appellants' submissions both at application and its appeal submissions (to the extent that these may differ).
- 10.2      As such, it does not anticipate commenting in any great depth on the appeal submissions separately, which it anticipates will be augmented significantly at proofs of evidence stage.
- 10.3      However, it reserves its right to respond appropriately to the Appellant's Statement of Case to the extent that it considers appropriate and relevant.

## **11      Planning Benefits of the Appeal Proposal**

- 11.1      The LPA will emphasise that it takes account of all positive planning benefits of every proposal that comes before it in determining a given application as a matter of course.
- 11.2      In that context, the LPA will acknowledge that provision of 134 dwellings, with 40% affordable housing units significant economic and social benefits, irrespective of the HLS position.
- 11.3      The LPA will therefore fairly assess the weight to be given to the planning benefits that it considers likely to result from the proposal with reference to both the normal benefits associated with new housing schemes; and the claims by the appellant in this regard.
- 11.4      In that context, it will emphasise that in its opinion the weight to be given to the likely benefits of the proposal will depend *inter alia* on:
- The number of units proposed (the more units, the greater the weight);
  - The extent of the LPA's deliverable HLS shortfall (the greater any shortfall, the greater the weight);
  - The extent to which there is any clear identified housing need for the type of housing being proposed in this particular location (the more convincingly such a need can be identified and/or demonstrated, the greater the weight);
  - The accessibility of services and facilities without the use of private motor vehicles
  - The extent of any ecological/ biodiversity gains

NB the LPA reserves the right to consider other factors as appropriate.

Related Issues: Deliverability and Viability

- 11.5      The LPA will accept in this case that the proposal would appear likely to lead to an increase in the supply of housing and affordable housing that is *deliverable, achievable and likely to come*

*forward in the next five years should the appeal not be dismissed* - subject to clear assurances and/or compelling evidence on deliverability and viability from the appellants and will emphasise in particular in this context that if the level of contributions was in doubt this would significantly reduce the weight to be given to the dwellings being provided.

- 11.6 In this case, the LPA will also note the appellant's willingness to agree to a reduced time limit condition as indicating that the proposal is likely to be delivered in the next 5 years.
- 11.7 However, in the absence of clear evidence of likely delays and in anticipation of reassurances on the issue of deliverability and viability from the appellant, the LPA's evidence will be prepared on the basis that the proposal would be deliverable in full within the current 5 year period (i.e. by the end of March 2027) and that the full 134 dwellings with 40% AH units and all necessary financial contributions would be provided.

## **12 The Planning Balance(s)**

- 12.1 As noted above, the LPA intends to argue that it can demonstrate a full 5-year deliverable HLS; and that its policies are up to date under the application of paragraph 219 of the NPPF.
- 12.2 On that basis, footnote 8 does not apply and the paragraph 11(d)(ii) is not engaged; and the LPA will argue that the correct approach to the balance should be as follows:
- The key strategic locational policies of the Local Plan should be considered first effectively in isolation [because one of the most important aspects of the "plan-led" system is to identify from a strategic point of view whether a site is suitable for the proposed development; and if it is not then the LPA consider that it is clearly and directly contrary to the Local Plan].
  - As such, if the proposal is directly contrary to policies H2 and OS2 then it should fail a paragraph 12 policy balance immediately;
  - Additionally, if the Inspector considers this necessary, other non-strategic policy breaches should be assessed against relevant policies, first applying paragraph 134 to test whether the proposal represents "poor design" [noting that the LPA considers that paragraph 130 of the NPPF effectively sets out the breadth of this term and the factors that the government considers make up good design] and refuse the proposal if it is poor design; and then other policy breaches should be considered and given weight, the totality of which should be weighed against the overall benefits as material considerations in a paragraph 12 balance.
- 12.3 The LPA will conclude that any such policy balance must fall against the appeal proposal.

- 12.4 Finally, if a **Paragraph 11(d)(ii) “tilted balance”** was thought necessary, the LPA will emphasise that this is the basis on which it determined the proposal and on which RfR1 is set out as a planning balance in which ***While the development would provide up to 134 dwellings to include 40% affordable homes and 5% self-build plots; economic benefits, a children's play area, open space/recreational route, pedestrian and cycle links, biodiversity net gain, and sustainability measures.....The adverse impacts identified would significantly and demonstrably outweigh the benefits.***
- 12.5 The LPA will therefore maintain that position at this appeal.
- 12.6 The LPA will stand prepared to assess the appeal proposal under any other balance that may apply if the NPPF is altered between today and the close of the inquiry.

### **13 Conclusions**

- 13.1 The LPA will demonstrate that the appeal proposal would be harmful for the reasons set out in the decision notice and that, on any balance, the appeal should be dismissed.
- 13.2 It will therefore respectfully request that the Inspector should dismiss this appeal.

### **14 Suggested Conditions**

- 14.1 The LPA will argue that no conditions could offset the harm that it contends would arise in this case for the reasons referred to above.
- 14.2 However, and without prejudice to the strength of its objections to the appeal proposal, the LPA hopes to agree a set of conditions with the appellant (with any remaining points of difference between the parties identified as appropriate) prior to the inquiry that the parties consider should be imposed should this appeal not be dismissed.
- 14.3 The LPA anticipates at this stage that these are likely to be based around those recommended in the committee report which also take note of any conditions requested by statutory and perhaps other consultees at application stage.
- 14.4 The LPA nonetheless reserves its right to re-word, amalgamate, omit or otherwise alter any such conditions for what it may regard as good planning reasons and that it will explain in advance of and/or as necessary at the inquiry. Similarly, it reserves its right to suggest additional conditions that it considers meet the requisite tests set out in the NPPF.

## **15      Statement of Common Ground**

- 15.1      The LPA is optimistic that an agreed Statement of Common Ground that will be of assistance to all parties will be available well in advance of the public inquiry.

## **16      Documents**

- 16.1      Whilst the LPA reserves the right to refer any documents as may become relevant during the course of the appeal, to assist all parties at this stage of proceedings, the documents that the LPA expects to refer to include some or all of the following:

- Plans, documents and supporting information submitted with the appeal application;
- Consultation responses, third party representations, and any other relevant correspondence in connection with the appeal application and/or the current appeal
- Officer Committee report relating to the appeal application
- Planning history of the appeal site together with related Committee Reports, correspondence between the appellant and the LPA and comments of consultees and third party representations relating to the planning application underlying this appeal.
- The West Oxfordshire Local Plan 2011-2031 ("the Local Plan")
- The West Oxfordshire Design Guide 2016
- The West Oxfordshire Landscape Assessment 1998
- The West Oxfordshire SHLAA 2016 and SHELAA 2018 (or any update that supersedes it)
- The Oxfordshire SHMA 2014
- WODC monitoring reports and housing land supply position statements
- The NPPF
- The NPPG
- The CIL Regulations
- Photographs, photomontages and visualisations as necessary/appropriate
- Aerial Photographs of the site and surrounding area.
- Guidelines for Landscape and Visual Impact Assessment (GLVIA 3<sup>rd</sup> edition 2013) by the Landscape Institute and the Institute of Environmental Assessment.
- Planning Appeal Decisions and case law judgments on other sites, within and outside the District, together with details of the cases in question as may be pertinent to the inquiry.
- Such other documents as may be required to support the Council's case or rebut the appellant's case.