

## Appeal Decision

Hearing Held on 17 May 2023

Site visit made on 17 May 2023

**by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 May 2023**

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**Appeal Ref: APP/D3125/W/22/3307358**

**Land at Colwell Green, Witney**

**Easting 432483 Northing 210231**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Crest Nicholson Operations Ltd against the decision of West Oxfordshire District Council.
  - The application Ref 21/03342/OUT, dated 23 September 2021, was refused by notice dated 29 March 2022.
  - The development proposed is described as *Outline planning application for a residential development comprising up to 75 dwellings (with up to 40% affordable housing provision) and public open space. All matters reserved.*
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### Decision

1. The appeal is allowed and planning permission is granted for outline planning application for a residential development comprising up to 75 dwellings (with up to 40% affordable housing provision) and public open space. All matters reserved at Land at Colwell Green, Witney in accordance with the terms of the application, Ref 21/03342/OUT, dated 23 September 2021, subject to the conditions set out in the Schedule of Conditions at the end of this document.

### Procedural Matter

2. The appeal has been submitted in outline with access, appearance, landscaping, layout and scale for consideration at a later stage. I have proceeded on the basis that the illustrative plan only shows how the site could be developed and accommodate up to 75 dwellings, rather than how it will necessarily be developed.

### Main Issues

3. The main issues are:
  - (i) Whether or not the proposed residential development would conflict with the adopted development plan which seeks to provide specific land for employment land, and;
  - (ii) The applicability of the presumption in favour of sustainable development in light of deliverable housing land supply locally, and;
  - (iii) Whether or not the proposal would make adequate provision for local infrastructure.

## Reasons

### *Employment land*

4. The appeal site is around 3.098 hectares in size. The site is situated to the rear (northwest) of the development of Colwell Green, which is subject to ongoing construction to deliver residential development, and lies on the western side of Witney, Oxfordshire. It is situated to the west of Downs Road. The site itself comprises an area of ground cleared and utilised for earth storage as part of the construction process associated with residential development being undertaken immediately to the south.
5. The main parties<sup>1</sup> agree that the site is undeveloped but effectively forms part of the built-up area of Witney. This is because development has been previously approved, has been largely delivered to the south of the site and the site is bounded on three sides by development. They also agree that the site is vacant and not within an existing employment use. As such, the site does not generate current employment in the form of jobs. Having visited the site and its surrounds I concur with this assessment.
6. Policy E1 of the *West Oxfordshire Local Plan 2031 – adopted September 2018* (LP) sets out that:

*'Employment Development Land and Employment Sites are those which include predominantly office-based, industrial or storage and distribution activities (B class uses) or related sui generis uses. Including existing commitments, the following Employment Development Land provision is identified to meet employment needs: Witney Sub-Area – 18ha to the West of Witney including 10ha to be provided as part of the West Witney (North Curbridge) urban extension and 8ha within the existing employment area around Downs Road through existing commitments and previous Local Plan Allocations...'*
7. Paragraphs 9.2.60-9.2.65, on page 160 of the LP, details that the *'Witney sub-area plays an important role in terms of the West Oxfordshire economy'* and that *'there is around 8 hectares of existing business land'* and *'an additional 10 hectares of new business floorspace will be provided as part of the committed urban extension at West Witney (north Curbridge).'* Figure 9.2h: *Witney Sub-Area Strategy (inset map)* on page 166 of the LP expresses this in plan form. The appeal site does not lie within with the Main existing employment area, nor does it lie within the Committed development area identified on this plan. In answering my questions, the main parties agreed this at the Hearing.
8. I acknowledge that the Council granted outline planning permission (ref 16/01540/OUT) for *'an employment area of up to a maximum of 3,720 sq metres B1(a) offices; a hotel (up to 62 bed); up to a maximum of 257 homes together with public open spaces; landscaping, new access to Downs Road and other associated works'*. As a large part of this permission has been implemented (albeit the residential element only), the local planning authority considers that this means the appeal site has an 'allocated' and 'approved purpose'.

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<sup>1</sup> See Agreed and signed Statement of Common Ground (SOCG), dated 3 May 2023

9. At the Hearing, the Council suggested that this meant that the appeal site was a '*de facto employment land site*'. I was not directed to any specific policy provision whereby sites achieve this undefined status through the grant of permission. Indeed, the Council acknowledged that the grant of permission for any different use would, in effect, trump the 2017 permission. The Council also agreed that the 2017 approval had 'lapsed' in terms of the three years in which details relating to reserved matters for the employment use needed to be submitted within. I do not, therefore, find that an earlier permission for the site (and land adjacent) granted back in 2017 provides some form of '*de facto employment land site*' allocation.
10. Put simply, Policy E1 is a policy related to the provision of new employment land (as allocated or identified within the plan such as shown at Figure 9.2h) or existing employment sites. The appeal site is neither. Accordingly, the policy is of extremely limited relevance in this case. Furthermore, in any application of the policy in relation to the proposal, it is clear that the proposal would not conflict with Policy E1 of the LP.
11. I also note that the main parties agree that, in relation to the first main issue, the proposal would accord with Policies OS2, H1, H2 and WIT6 of the LP. Put simply, these are policies that allow for new dwellings at the Main Service Centres on land within the built-up area and general principles for development being supported by infrastructure<sup>2</sup>. I see no reason to disagree with this agreed position of the main parties.
12. My attention has been drawn to Paragraphs 81 to 83 of the *National Planning Policy Framework* (the Framework), which relate to building a strong and competitive economy. Whilst the Framework post-dates the adoption of the LP, it is clear that Policy E1 of the LP reflects the broad aims of these paragraphs by allocating specific land for employment. As considered above, Policy E1 is of very limited relevance in this case and the proposal would not conflict with it. Moreover, the proposal, which seeks up to 75 dwellings and public open space, would support economic growth through direct and indirect jobs and investment in Witney. I therefore find that the proposal would be in accordance with the aims of Paragraphs 81 to 83 of the Framework.
13. Accordingly, I find that the proposed residential development would not conflict with the adopted development plan which seeks to provide specific land for employment land.

*Applicability of the 'Presumption in favour of sustainable development'*

14. I acknowledge the position of the main parties in that the Council is unable to demonstrate a deliverable five-year housing land supply<sup>3</sup>. At the Hearing the local planning authority confirmed verbally that its most recent position is that it considers itself to have a deliverable supply of 3.55 years.
15. To the contrary, the Appellant's written evidence sets out that there is only 2.6 years of deliverable supply. This latter figure is not dissimilar to that found in appeal decision ref 3301202 from January 2023 provided in the Council's appendices and referred to in the SOCG at Paragraph 8.14. This indicates that the position was '*closer to a 2.5 year land supply*' in that case.

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<sup>2</sup> Agreed SOCG, paragraph 8.9

<sup>3</sup> SOCG, paragraph 8.14

16. Based upon the evidence before me, I consider that a position of around 2.6 years, as suggested by the Appellant, is appropriate in this instance. Consequently, the provision of housing in this respect is afforded significant weight in favour of the proposal.
17. My attention has been drawn to the presumption in favour of sustainable development set out in Paragraph 11 of the Framework. Whilst I have found that the proposal would accord with the development plan, the above local housing land supply position means that the proposal falls to be considered under Paragraphs 11)d)i) and ii) as supported by footnotes 7 and 8 of the Framework.
18. In this case, there are no policies in the Framework that protect areas or assets of particular importance that provides a clear reason for refusing the development proposed. Moreover, there are no adverse impacts that would significantly or demonstrably outweigh the multiple benefits arising from the proposal, including but not limited to the delivery of up to 75 new dwelling in an area where there is currently a shortfall in deliverable five-year housing land supply, when assessed against the Framework as a whole. The presumption in favour of sustainable development weighs in favour of the proposal.

#### *Infrastructure and planning obligations*

19. Policy OS5 of the LP sets out that the Council will require new development to deliver or contribute towards the timely provision of essential supporting infrastructure either as directly part of the development, or through an appropriate financial contribution. Policy EH5 of the LP sets out that new development will be expected to provide or contribute towards the provision of necessary improvements in open space, sports and recreational buildings and land.
20. A signed and dated (17 May 2023) Planning Obligation Deed under s106 of the TCPA securing planning obligations has been submitted. Put simply, this would secure monies or land for; a monitoring fee, an Active Travel Contribution, Primary and Nursery Education, Public Transport Services, Secondary Education, Street Lighting, Waste Management, Curbridge Parish Council, Sports Facilities, Local Area of Play, Local Equipped Area of Play, Public Open Space, and a Management Company for Public Open Space. It would also secure affordable housing which Policy H3 of the LP seeks. This would be a policy-compliant level of affordable housing (of at least 40%)<sup>4</sup>.
21. Justification for the above is provided within the Local Planning Authority's evidence before the Hearing and Oxfordshire County Council's *Regulation 122 Compliance Statement* dated 31 March 2023. These include setting out why the contributions sought are considered necessary, directly related to the development, and are fairly and reasonably related in scale and kind to the development. Neither main party takes issue with the monies sought or what they would be provided for.
22. I find that all of the contributions sought would meet the tests set out in Paragraph 57 of the Framework and as set out in Regulation 122(2) of the *Community Infrastructure Levy Regulations 2010*. They should therefore be taken into account in the decision.

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<sup>4</sup> SOCG, paragraph 8.34

23. In particular, the provision of at least 40% affordable homes on the appeal site should be afforded significant weight in any planning balance. This is especially pertinent here, as the Council's figures put before the Hearing suggest there are over 1800 applicants registered or seeking affordable dwellings within this district under the Council's Homeseeker+ system<sup>5</sup>.

### **Other Matters**

24. I note the comments made by interested parties. Concerns have been raised over the highway and footpath between Wheatfield Drive and Curbridge Park Road on Downs Road which narrows for a short stretch. However, this is outside of the appeal site, and it is not within the direct scope of the appellant to widen this part of the public highway. Moreover, contributions have been sought through planning obligations which would address matters such as active transport, public transport services and street lighting.
25. Comments over the sale of the land and/or its use in association with businesses located on Curbridge Park Road have been made. However, these are private matters between the parties involved and beyond my remit which is to consider the planning merits and issues arising from the appeal scheme.
26. Taking in account these and all other comments about the proposed development, I do not find that, whether individually or cumulatively these provide justification for the dismissal of the appeal scheme.

### **Conditions**

27. A list of suggested conditions agreed between the main parties was submitted the day prior to the Hearing. In considering these, and any other conditions, I have taken into account Paragraph 56 of the Framework and guidance provided in the national *Planning Practice Guidance* and the use of planning conditions. The Appellant confirmed verbally at the Hearing (and subsequently, as agreed at the Hearing, in writing), that the use of the pre-commencement conditions suggested are accepted.
28. Conditions requiring the submission of reserved matters, their details and general accordance with the illustrative masterplan, are necessary to provide certainty. A condition relating to superfast broadband will ensure improved connectivity for occupiers and accord with the aims of Policy OS2 of the LP which seeks such connections.
29. Conditions relating to the provision of bird and bat boxes, retaining trees and hedges on the land, details of works to protect and enhance the ecology and biodiversity of the site, and provision of biodiversity net gain are necessary and relevant to planning in order to enhance biodiversity and positively contribute to the character of the area.
30. A condition requiring site investigations in terms of contaminated land and any remediation schemes, is necessary in order to protect human and animal health. The submission of details of ground and finished floor levels is necessary in order to safeguard the character and appearance of the area.

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<sup>5</sup> See document 3, dated 11 November 2021 from the Council's Strategic Housing and Development Officer. Whilst noting the time period elapsed between this document and the date of Hearing, there was no suggestion or detailed information put forward that suggests that this broad figure had reduced in the intervening period.

31. A condition relating to a surface water drainage scheme, as set out in suggested condition 10 is necessary and reasonable in order to ensure that the risk of flooding is minimised. I note that suggested conditions 19 and 20, which are based upon the comments of the Local Lead Flooding Authority (LLFA) provide significantly more detailed requirements. This was discussed at the Hearing, where the main parties considered that it was for the decision-maker to consider which suggested condition(s) of these three should be imposed were permission granted. I am content that the suggested condition 10 would satisfy the requirements of the LLFA and Paragraph 56, whilst not being onerous in the way that suggested conditions 19 and 20 would be. I have therefore imposed suggested condition 10.
32. A condition requiring the provision of details of fire hydrants is necessary and reasonable in order to safeguard the safety of occupiers of the proposal and ensure fire services have adequate provision in terms of public safety. Similarly, the submission and agreement of a scheme for the protecting the occupiers of the proposed development from noise arising from nearby businesses is necessary in order to protect human health and to minimise the impact of existing noise from local businesses on occupiers of the proposal.
33. Suggested condition 14, relating to the provision of a public art plan would not reflect Paragraph 56 which indicates that planning conditions should be kept to a minimum and only imposed where they are necessary and reasonable in all other respects. In this case, no public art has been commissioned or secured for the appeal site, nor is there any specific planning policy requirement identified. It may be that public art could be provided through landscaping or other forms of artwork in agreement between the house builder, the local planning authority and local community. However, I do not find that the imposition of the suggested condition is necessary in this case.
34. A condition requiring a travel plan is necessary in order to ensure that sustainable modes of transport are promoted and supported. A condition requiring a construction environmental and traffic management plan to be submitted is necessary and reasonable given that the likely route for construction vehicles would be through the existing residential development to the south of the site which is now occupied. The submission and agreement of such a plan, including an indication of the hours of traffic movement, is reasonable in order to protect the living conditions of these occupiers.
35. Two conditions have been suggested by Oxfordshire County Council – one relating to cycle parking areas and one relating to a car park layout plan. Whilst layout is a reserved matter, given that the illustrative masterplan shows garden areas serving the proposed dwellings a condition requiring cycle parking areas is not necessary. Similarly, a condition requiring the number of car parking spaces to be in line with a maximum figure is not reasonable or necessary in this case, given that layout remains a reserved matter for the local planning authority to consider at that stage.
36. Conditions requiring confirmation and/or provision of foul and water network upgrades are necessary and reasonable in order to reduce the risk of sewerage flooding and/or pollution and ensure sufficient water pressure and capacity for occupiers.



## **Overall Conclusion**

37. With regard to s38(6) of the *Planning and Compulsory Purchase Act 2004*, as amended, the proposed development would accord with the adopted development plan when considered as a whole. Furthermore, there are no material considerations that indicate a decision otherwise than in accordance with it. Indeed, material considerations such as the Framework, and the provision of both housing and affordable housing in an area which currently has a shortfall against the deliverable five-year supply, weigh in favour of the grant of permission.
38. Accordingly, for the reasons given above, I conclude that the appeal should be allowed.

*C Parker*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Peter Goatley KC	Advocate for Appellant
James Yeoman	Planning Matters
Neil Tiley	Housing Matters

### **FOR THE LOCAL PLANNING AUTHORITY (OR SECTION 106 MATTERS):**

Chris Wood	Senior Planner (Appeals), WODC
Will Barton	Business Development Officer, WODC
Judith Coats	Oxfordshire County Council Infrastructure (for s106 session)

## **Documents submitted at the Hearing**

- 1 Cherkley Judgment, Neutral Citation Number: [2014] EWCA Civ 567, DATED 7<sup>th</sup> May 2014
- 2 Section 78 Appeal, Land adjacent to Witney Lakes Resort, at Downs Road, Witney, Appeal by Crest Nicholson, NOTE by Peter Goatley KC, dated 17<sup>th</sup> May 2023
- 3 Memorandum dated 11 November 2021 from Strategic Housing and Development Officer to A Fettes, WODC.
- 4 Oxfordshire County Council's Regulation 122 Compliance Statement dated 31<sup>st</sup> March 2023



## **Schedule of Conditions imposed 3307358**

1. (a) Application(s) for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission; and, (b) The development hereby permitted shall be begun either before the expiration of five years from the date of this 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.
2. Details of the access, appearance, landscaping, layout and scale, (herein called the reserved matters) shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
3. The details submitted at reserved matters stage will be in general accordance with the Illustrative Masterplan, drawing number P20-1309\_1 Sheet 3 Rev M) hereby approved.
4. Prior to the commencement of development, the developer must submit details for agreement in writing by the Local Planning Authority of evidence that every dwelling hereby approved will be able to connect to and receive a superfast broadband service (>24Mbps). The connection will be to either an existing service in the vicinity (in which case evidence must be provided from the supplier that the network has sufficient capacity to serve the new premises as well as the means of connection being provided) or a new service (in which case full specification of the network, means of connection, and supplier details must be provided). The development shall only be undertaken in accordance with the said agreed details which shall be in place prior to first occupation of the development and retained in place thereafter.
5. Bat and bird boxes shall be installed in accordance with details that have been submitted to and approved in writing by the Local Planning Authority before development commences.
6. All existing trees and hedges on the land not shown to be affected by building operations, shall be retained until 3 years from the completion of the development and any plants which die, are removed or become seriously damaged or diseased within that period shall be replaced in the next planting season with others of a similar species.
7. No development shall take place until a site investigation of the nature and extent of any contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any significant contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority before any development begins.
8. The Remediation Scheme, as agreed in writing by the local planning authority, shall be fully implemented in accordance with the approved timetable of works

and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the local planning authority in advance of works being undertaken. On completion of the works the developer shall submit to the local planning authority written confirmation that all works were completed in accordance with the agreed details. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

9. No development shall take place until plans of the site showing the existing and proposed ground levels and finished floor levels of all proposed buildings have been submitted to and approved in writing by the local planning authority. These levels shall be shown in relation to a fixed and known datum point. The development shall then be carried out in accordance with the approved details.
10. A full surface water drainage scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of the size, position and construction of the drainage scheme and results of soakage tests carried out at the site to demonstrate the infiltration rate. Where appropriate the details shall include a management plan setting out the maintenance of the drainage asset. The Surface Water Drainage scheme should, where possible, incorporate Sustainable Drainage Techniques in order to ensure compliance with the Flood and Water Management Act 2010, as amended, and/or any subsequent replacement legislation.

The development shall be carried out in accordance with the approved details prior to the first occupation of the development hereby approved and shall be maintained in accordance with the management plan thereafter.

11. Fire hydrants shall be installed in accordance with details which have first been submitted to and approved in writing by the local planning authority.
12. A scheme for protecting the occupiers of the dwellings hereby approved from noise arising from the adjoining business area shall be submitted to and approved in writing by the local planning authority. All works which form part of the scheme shall be completed before any of the permitted dwellings are occupied.
13. As part of the reserved matters, full details of works to protect and enhance the ecology and biodiversity of the site shall be submitted and the said agreed measures shall be implemented in full in accordance with a timetable first agreed in writing by the local planning authority and retained in place thereafter.
14. Prior to first occupation an updated Travel Plan shall be submitted to and approved in writing by the local planning authority.
15. Development shall not begin until a construction environmental and traffic management plan that will include, but not limited to, measures to minimise construction noise and the times and days of the week for such activities, has been submitted to and approved by the local planning authority. The approved

plan shall be implemented and adhered to throughout the period of construction.

16. No dwelling hereby approved shall be occupied until confirmation has been provided to and approved in writing by the local planning authority that either:-
- (i) Foul water Capacity exists off site to serve the development, or;
  - (ii) A development and infrastructure phasing plan has been agreed with the local planning authority in consultation with Thames Water (or the responsible provider for such provision). Where a development and infrastructure phasing plan is agreed, no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan, or;
  - (iii) All foul water network upgrades required to accommodate the additional flows from the development have been completed.
17. No dwelling shall be occupied until confirmation has been provided to and approved in writing by the local planning authority that either:-
- (i) all water network upgrades required to accommodate the additional flows to serve the development have been completed; or;
  - (ii) a development and infrastructure phasing plan has been agreed with the local planning authority in consultation with Thames Water (or the responsible provider for such provision) to allow development to be occupied. Where a development and infrastructure phasing plan is agreed no occupation shall take place other than in accordance with the agreed development and infrastructure phasing plan.
18. No development shall commence until such time that a scheme dealing with the provision of a biodiversity net gain on or offsite, has been submitted to and approved in writing by the local planning authority.

**\*\*\* END OF CONDITIONS \*\*\***