RE: LAND NORTH OF COTE ROAD, ASTON

CLOSING SUBMISSION OF THE APPELLANT

INTRODUCTION

1. The context for this appeal is the national imperative to boost significantly the supply of housing (NPPF 60). There is a recognition from Central Government that the planning system has simply failed to deliver sufficient homes for a protracted period of time and this can no longer be tolerated. The housing crisis, exacerbated by inflation, repeated rises in interest rates and the cost of living (a daily news story), has been expressed most recently in the White Papers *Fixing Our Broken Housing Market* (2017) and *Planning for the Future* (2020).

2. This is a national imperative which has a clear local expression.[1] In the light of 4 recent Appeals concluding that the LPA's claimed housing land supply assessment (HLSA) was not robust, the latest agreed position establishes a land supply between **2.56 and 3.14 years**.[2] The LPA has therefore failed to meet the *minimum* requirement of national policy (to deliver a 5 year supply) against a *minimum* housing requirement. The HLS position is dire. Further, the uncontested evidence of the Appellant demonstrates that there will be a very significant shortfall of housing at the end of the Plan period (at 2031). The evidence demonstrates that the LPA's strategic allocations and spatial strategy have failed and will fail to 2031. The need for Affordable Housing (AH) is equally acute. The latest assessment is a net need for 483 AH/pa (2021 - 2041), which the Council

[1] See evidence of Jeff Richards and Jamie Roberts

[2] See HLS SoCG

are failing to meet by a significant margin. Consequently, lower quartile affordability has risen exponentially, such that even modest housing is 11 times income, such that it is unaffordable for vast swathes of the local population. This is the antithesis of the NPPF (60, 61 and 63), which seeks to boost the supply of housing to meet up to date objective needs of all.

3. In that context, WOx are significantly dependent on greenfield sites, outside the settlement boundaries of sustainable settlements, to meet their urgent need for more market and affordable housing. This is a proposal which delivers the significant benefits of more market and affordable homes, with substantial economic benefits, on an accessible site immediately adjacent to the settlement of Aston, consistent with the development plan spatial distribution of housing (Policy H2). Indeed, a comparable proposal has previously been consented on this site (CD I1)[3] and this application was unequivocally recommended for approval.

THE APPEAL PROPOSAL

4. This appeal concerns a full application for 40 new homes for people in need, with the provision of a new access and associated works and landscaping. 100% of the housing will be affordable, to address the identified crisis in affordable housing delivery. The tenure split is 60% social rent and 40% shared ownership. The buildings will achieve EPC A rated energy efficiency and will incorporate solar pv panels, air source heat pumps and water efficiency measures. The proposal does not involve any loss of trees. Circa 38% of the site (0.8ha) will be landscaping/GI, with 3,000 new trees planted and 350m of new native hedgerows. There will be a significant 12% BNG.

[3] It is acknowledged that the decision was quashed but it remains a material consideration

5. The proposal does not comprise EIA development. The plans for determination are agreed (SoCG at 1.5).

6. At the time of the determination, there were no outstanding requests for further information from the LPA and no technical objections from external statutory consultees, which could not be overcome by condition/planning obligation. Consistent with the previous consent on the site, the application was recommended for approval. The application was, however, refused by Members of the Planning Committee for 3 reasons:

(i) Impact to designated heritage assets (Grade II Listed Church of St James and the Aston CA);
(ii) Impact to the character and appearance of the area, with a failure to meet Nationally Described Space Standards (NDSS);
(iii) A failure to enter into a s.106 planning obligation in respect of affordable housing, contributions to sport and leisure, public transport and education and waste.

7. Had the LPA acted reasonably and engaged with the Applicant on a s.106 agreement, RFR 3 should not have been an issue. It has now been addressed by the submission of a draft Unilateral Undertaking (UU).

MAIN ISSUES

8. The Main Issues reflect the two RFR:

(i) Does the LPA have a 5 year supply of deliverable housing sites?
(ii) Are the most important policies for determining the appeal out of date, such that the tilted balance is engaged (NPPF 11)?
(iii) What is the level of less than substantial harm to the designated heritage assets (Church of St James and Aston Conservation Area)?

(iv) What are the public benefits of the proposal and what weight should be attached to them?

(v) Is the less than substantial harm to the significance of the designated heritage assets outweighed by the public benefits of the proposal (Policy EH 9 and NPPF 202)?

(vi) What is the impact of the proposal on the character and appearance of the area?

(vii) Does the proposal conflict with national or local policy in respect of national space standards?

(viii) Can the drainage and CDMP objections be adequately addressed by conditions?

(ix) If NPPF 202 is passed, do any (contested) adverse impacts of the proposal significantly and demonstrably outweigh the benefits of the proposal.

THE STATUTORY TEST

9. This appeal falls to be determined in accordance with the Development Plan (DP), unless material considerations indicate otherwise (s.38(6) P&CPA 2004). So far as relevant the development plan comprises the West Oxfordshire Local Plan (2031), adopted Sept 2018.

10. Art 35(1) DMPO 2015 requires the RFR to be full. The LPA's witnesses cannot seek to expand the scope of its RFR at this Appeal. RFR 1 and 2 allege conflict with Policies OS2, OS4, OS5, H2, EH 2, EH 9, EH 10 and EH 11. There is no conflict with CA 5.

HOUSING LAND SUPPLY ASSESSMENT

(i) 5 Year Housing Land Supply Assessment (5YHLSA)

11. The social role of sustainable development includes a requirement to boost significantly the supply of housing (NPPF 60). This requires LPA's to

provide (as a minimum) for the objectively assessed needs (OAN) for market and affordable housing and to plan to meet them (NPPF 11(b), 23 and 35(a)).

12. The requirement for the LPA to demonstrate a 5YHLS is *the minimum requirement* of national policy (NPPF 74), set against *a minimum housing requirement* (NPPF 60).

13. The LPA's HLS has considered at 4 recent appeals:[4]

(i) In the Burford DL, 10th August 2022 (CD I10), the LPA claimed a 5.02 year supply (April 2021 base date). The Inspector concluded the supply was closest to the Appellant's **3.68 years** (DL 34) and made a partial award of costs against the Council on the basis of CW's evidence;

(ii) In the Ducklington DL, 9th January 2023 (CD I2), The Inspector found a **3.56 – 3.96 year** supply (April 2021 base date);

(iii) In their HLSA November 2022 (April 2022 base date), the LPA claimed a **4.1 year supply**. This is a deficit of 1,008 homes. It was the LPA's position at the date of the determination of the application (5th December 2022);

(iv) In the Freeland DL, 18th January 2023 (CD I3), the Inspector concluded that the supply was closer to the lower end figure of **2.5 years** (DL 59);

(v) It is agreed that 1346 units were removed from the claimed supply of 4.1 years by the Freeland Inspector (April 2022 base date), resulting in a **2.82 year** supply or shortfall of 2,354 homes (SoCG HLS at Table 3);

[4] See commentary from JRich at 3.20 *et seq*

(vi) In the Colwell Green Witney DL, dated 23rd May 2023 (CD I9), the Inspector concluded there was **a 2.6 year supply** (April 2022 base date).

14. In 4 contested Appeals, PINS have concluded that the claimed supply in the LPA's HLSA (April 2021 and 2022) was significantly inflated.

15. In that context, it is agreed (see SoCG HLS and XX of CW) that:

- Policy H1 plans for a <u>minimum</u> of 15,950 homes between 2011 and 2031;
- The relevant 5 year period is 1/4/22 to 31/3/27;
- The housing requirement is agreed to be 5,150 over 5 years;
- A 5% buffer must be added;
- There is **a 5 year requirement of 5,408 new homes**;
- There is **an annualised requirement of 1,082 d/pa**;
- The deliverable supply is between 2,768 (Appellant) to 3,401 (LPA) homes;
- This is **a shortfall in the minimum 5YHLS of 2,007 (LPA) to 2,640** (Appellant). This is a difference of 633 units;
- This is a mere 51% (Appellant) and 62% (LPA) of *the minimum requirement*;
- The LPA does not have a 5YHLS;
- **The LPA has between <u>a 2.56 and 3.14 year supply</u>**.

16. The Appellant submits that it is unreasonable for the LPA to persist in arguing that the supply is higher than determined in two recent appeals (Freeland and Witney). It is not, however, deemed proportionate to interrogate the difference in detail because it is agreed (in Opening) that:

(i) **This is a serious and significant shortfall against the minimum requirement of national policy** (SoCG HLS at 3.9); and

(ii) The difference between 2.56 and 3.14 years (633 units) is not material to the decision;

(iii) The 5YHLS can be reported as **a range between 2.56 and 3.14 years** (consistent with relevant decisions of the Planning Court).

17. In XX, CW conceded that:

- The requirement to identify a 5YHLS is the minimum requirement of national policy against a minimum housing requirement;
- The LPA is failing to meet this minimum requirement; and
- The LPA are failing to do so by at least 2,000 homes;
- The LPA must complete 1,082 homes each and every year for the next 5 years just to meet this minimum requirement;
- Annual delivery across the Plan period has been just 573 d/pa on average (JRich at 7.5);
- The LPA has delivered >1,000 homes just twice in 11 years; and
- There is, therefore, a need for an immediate step change in the delivery of housing.[5]

18. It follows that ***very significant weight*** should attach to the need to deliver more housing. It further follows that (XX of CW and EiC of RD):

- Relevant policies in the Local Plan are out of date[6];
- The tilted balance in Policy OS 1 is engaged, subject to the heritage balance in EH 9 being passed;

[5] CW stated that the LPA "needs to build a lot more homes"

[6] In this regard, the WOLP is expressly "in line with" the NPPF (see CD E1 at 4.8)

- The most important policies for determining the application are out of date (see NPPF FN 8);
- The tilted balance in NPPF 11(d) is engaged, subject to the heritage balance in NPPF 202 being passed.

(ii) Need for Housing In the Plan Period

19. **Policy H1** contains a minimum housing requirement of 15,950 (2011-2031). The policy contains an *indicative* distribution based on past completions and anticipated future supply. It is not "*an absolute target for each sub-area*" and/or a "*maximum ceiling*". Housing delivery was constrained in the AoNB (especially the Burford-Charlbury sub-area), as all of the allocations were deleted by the Inspector. Accordingly, the principle of areas outside the AoNB meeting needs arising inside the AoNB and of meeting housing needs across the District (rather than at a settlement level) is enshrined in Policy H1.

20. **Policy H2** contains a stepped housing trajectory. The housing requirement has been 550 d/pa (2011-2021). It will jump to 975 d/pa (2021-23) and 1125 d/pa (2024-2031). CW accepts this is a significant increase. App 2 WOLP sets out the planned housing trajectory to meet the stepped requirement. This LPA should have been delivering over 1,000 d/pa since 2019/20. To meet the identified minimum housing need, there are a number of sources:

- 2,200 homes at the Strategic Location for Growth (Oxfordshire Cotswold Garden Village) – WOLP at 5.27;
- 4,050 homes on 4 sites in the Strategic Development Areas – WOLP at 5.29;
- 1,470 homes on 11 non-strategic allocations;
- There is a windfall allowance.

21. It is acknowledged that there is currently a surplus of 7 units against the H2 stepped requirement (HLS SoCG at 2.8).

22. However, since adoption the LPA has delivered 758 fewer homes than planned in the trajectory (Table JRT3 p.28). The LPA is therefore significantly behind after only 5 years after adoption in 2018.

23. Further, the trajectory is to become significantly more challenging (*supra*). There will be an additional minimum deficit of 2,007 homes arising in the next 5 years. JRich has calculated that the cumulative shortfall will be 2,375 homes (see Table JRT21 on p.55).

24. It follows that 6,875 new homes will be required in the last 4 years of the Plan (2027-2031) at 1,719 d/pa. This is 3 times average delivery over the Plan (to date) and 700 homes more than has ever been constructed in a single year. Accordingly, **CW agreed that a step change in the delivery of housing is required *now* to meet the minimum housing requirement to 2031**.

25. Further, CW agreed that **it is a step change which is required on greenfield sites because 87% of the LPA's supply is on greenfield land** (JRich at 4.50). There is no sequential approach to the release of greenfield land in the NPPF (see ReX of RD). This was made clear many years ago by the SoS in the Manor Farm decision. Such a sequential approach would nonetheless be met in this LPA at the current time because there is simply nowhere near enough PDL to meet the significant need for more housing in WOx.

26. It is agreed (XX of CW) that the explanation is the failure of the LPA's strategic allocations. JRich's uncontested evidence is that:

- 1320 homes were planned to be delivered at the Garden Village (JRich at Table JRT4). It is agreed none will be delivered (SoCG HLS). There will be a shortfall of 1320 on a single site. The LPA now assume delivery of 595 units by 2031 (a shortfall of 1605) (EiC of JRich);
- It was planned that 3734 homes would be delivered on the 4 SDA sites by 2027. Only 480 will be completed (a shortfall of 3254);
- There is a shortfall of 336 on the 11 non strategic sites (or 207 by 2027).

27. In those circumstances, CW conceded that it was fair to conclude that there has been a failure (if not total failure) of the spatial strategy to deliver sufficient housing:

(i) To demonstrate the minimum requirement of a 5YHLS;
(ii) To meet the planned housing trajectory to date;
(iii) To meet the minimum housing requirement to 2027;
(iv) To meet the minimum housing requirement at 2031 without further greenfield development *now*.

28. In the light of such concessions, it is notable that neither the Committee Report (CD A33), nor CW's evidence, nor the evidence of the PC make *any* reference to the reality of current housing land supply picture. It has been airbrushed out of the LPA's consideration of this application.

AFFORDABLE HOUSING

29. Based on a minimum annual net need of **274 AH/pa** in the SHMA (2014), the Local Plan recognises "*a significant need for more affordable housing*" (WOLP at 5.51). Further, housing affordability was considered to be a "*key issue*" because even small, modest properties were beyond the reach of most single income households, with 1,440 households in need of an

AH (5.47). Increasing the number, type and *distribution*[7] of AH for rent and affordable sale was therefore a "*key priority*" (WOLP at 5.51).

30. During the Plan period, the position has deteriorated markedly:[8]

- The SHMA 2014 (CD F3) demonstrated a net annual need for **274AH/pa** in WOx and **2,370 AH/pa** across Oxfordshire (Table 53);
- The OGNA 2021 (CD F4) demonstrates a net annual need for **3,198 AH/pa** across Oxfordshire, an increase of 35%;
- The HENA 2022 (CD F5), dated Dec 2022, was commissioned by OCC and Cherwell Council. It demonstrates an annual net need of **483AH/pa** in WOx and **3,887 AH/pa** across Oxfordshire. CW conceded this was a "*very significant increase*" of 76% in the Plan period;
- JRob has provided 3 specific criticisms of the SHMA 2014, concerning: (a) the vintage of a number of the inputs (such as Housing Register data and affordability indicators); (b) a change in the definition of AH (NPPF 2018); and (c) an out of date assumption in respect of the "affordability threshold" (see JRob at 3.11). Such uncontested points reduce the weight to be attached to the SHMA (2014);
- By contrast, significant weight can attach to the OGNA and HENA as expert evidence (not policy), undertaken by independent technical experts, in accordance with best practice. There is no criticism of the method, assessment, results or conclusions before this Inquiry;
- The Appellant therefore submits that greatest weight should attach to the HENA 2022 and the current level of AH need is 483 d/pa.

[7] Which cannot mean placing it all in a single Garden Village (even if it was deliverable, which it is not).

[8] See JRob at 3.3 *et seq* and XX of CW

31. CW therefore conceded that the need to deliver more AH has only become *more acute* since adoption of the Plan.

32. AH delivery in the Plan period to date has been poor:

- There is a shortfall of 804 AH against the SHMA 2014 (JRob Fig 4.2). This is just 67% of the identified need;
- There is a shortfall of 222 AH in just 2 years against the HENA 2022 (JRob Fig 4.3). This is just 77% of the identified need;

33. From that poor baseline, the delivery of AH will deteriorate further:

- Assuming a 4.1 year supply, there will be a shortfall of 609 AH against the SHMA 2014 (JRob Fig 5.1);
- Assuming a 4.1 year supply, there will be a shortfall of 1,072 AH against the HENA 2022 (JRob Fig 5.2);
- It is not the LPA's case that there is a 4.1 year supply and such analyses are not, therefore, robust;
- Assuming a 2.6 year supply, there will be a shortfall of 1,284 AH against the SHMA 2014 (JRob Fig 5.3);
- Assuming a 2.6 year supply, there will be a shortfall of 1,747 AH against the HENA 2022 (JRob Fig 5.4);
- The failure of the strategic allocations will result in the failure to deliver adequate levels of AH.

34. In the light of such agreed figures, CW conceded that:

(i) There has been a failure to meet the identified need for AH *now*;

(ii) There will be a continued failure to meet the identified need in the future;

(iii) There is a substantial need for more AH *now*;

(iv) That substantial need can only be met by building more AH on greenfield sites.

35. The position is exacerbated (as the Plan recognises) by evidence of a crisis in the affordability of homes in WOx:[9]

- The Housing Register now evidences 3,056 households living in inadequate housing and in need of an AH. This is a 112% increase since the SHMA 2014 (JRob at 6.4);
- Average waiting times for an AH in WOx now stand at 2-3 years (JRob at Fig 6.2);
- 977 are seeking affordable home ownership in WOx on the Help to Buy Register (JRob at 6.11);
- The ratio of lower incomes to lower quartile house prices is now 10.55 (JRob at 6.14).
- The lower quartile selling price in WOx was £270,000 - 3% more than the SE and 50% more than England as a whole (JRob at 6.16);
- In the Standlake, Aston and Stanton Harcourt Ward, the lower quartile selling price (2022) was £405,000. This is 50% higher than the SE and 125% higher than England as a whole (JRob at 6.17);
- The Private Rental Sector is not an alternative to affordable housing (EiC of JRob). Even so, Lower Quartile rents are £850 pcm (10% more than the SE and 43% more than England);
- The tenure mixed is skewed heavily in favour of home ownership and away from social rented tenures. There is, therefore, limited availability (explaining very long waiting times) (JRob at 6.23).

[9] All of which are uncontested in the evidence of JRob

36. It is unanswerable that housing has become unaffordable for vast swathes of society in WOx (EiC of JRob). CW conceded that the position is "*acute*". JRob reasonably characterises affordable housing as being in crisis.

37. In that context, the Appeal scheme will deliver 40 affordable homes for a households who are living in inadequate housing (and probably have been for a number of years). The proposed tenure mix includes 24 dwellings of 1-4 bedrooms for social rent (60%) and 16 dwellings of 2 and 3 beds for shared ownership (40%). In the light of consultation with the LPA Officers (and a change in the proposed mix), it is common ground that this proposal delivers the LPA's "*desired mix*" (SoCG at 3.10). The proposal delivers on the Plan's key priority, from which it derives substantial support.

38. The PC (RleF at p.11) nonetheless assert a conflict with policy in the Plan. This is based on a misinterpretation and misapplication (if not fabrication) of local policy. The policies do not prescribe *any* particular mix at all. The reasoned justification (at 5.47) provides a "*general guide*" of 2:1 in favour of affordable rent (the most affordable tenure), with which the proposal aligns. The SPD provides an "*indicative size mix*" (CD E4 at 5.2.3). There is simply no requirement to meet (precisely or otherwise) the requirements of those Housing Register applicants who specify Aston as their preferred location (XX of RleF). This proposal has been responsive to the needs of those 75 households and will meet them (in part). The proposal will (unanswerably) add to the balance and mix of households in the District and local area, having regard to specific local needs. There is, therefore, compliance with Policy H3 and H4, which strongly support this proposal.

39. The PC's complaint appears to be that this proposal should provide more smaller (1 or 2 bed) homes (RleF at p.11). It is, however, a benefit of this proposal that is can deliver some larger homes and thereby meet the needs

of those with families (especially children) who are living in inadequate housing. That cannot reasonably be characterised as a "bad thing". Further, the logic of the PC's position is that this proposal should deliver more smaller homes (consistent with their reliance on NPPF 119 and 124). The PC have not, however, ever suggested that this site should be developed for 50 or 60 smaller units and/or how this would meet their heritage and landscape objection. Their position is illogical and absurd and betrays a lack of engagement with the position of families with children in need of a home *now*.

40. The proposal is strongly supported by the LPA's AH Officer (CD K6). The benefit of AH was considered to be "*substantial*" by the LPA's Case Officer. Indeed, the Ducklington Inspector considered the benefits of AH housing in a village to be "substantial" (DL 103-105 CD I2). The position has deteriorated since then. Indeed, the SoS considers the delivery of AH to generate "*substantial and tangible benefits*" (CD I22 DL 28).

41. In the light of the totality of the unchallenged and unchallengeable evidence on the need for more AH, it can reasonably be concluded that neither the Committee Report, the decision of Members, the evidence of CW, nor the evidence of the PC has adequately addressed the scale of the AH crisis in WOx.

EXPERT EVIDENCE

42. The LPA claim there will be an unacceptable impact on designated heritage impacts and the landscape of the site and its immediate setting. CW agreed that both were technical disciplines. He accepted, however, that he did not have any relevant technical/professional qualifications and/or relevant expert experience. The LPA has provided no explanation for their failure to provide any independent expert evidence to support the

refusal of Members, contrary to the agreed position between the Appellant's independent expert analysis and the Case Officer.

43. The landscape officer did not deign to provide a consultation response (indicating an obvious lack of concern). Reliance on the written response of the Conservation Officer is obviously problematic, in circumstances where that Officer has not been called to be tested. Only limited weight can attach to a brief written objection which has not been XX'd.

44. Such points are not academic. CW agreed that it was a validation requirement of the LPA to provide *inter alia* a LVA and HIA. The LPA recognise these are technical impacts requiring technical assessment, to increase: (i) the *quality* of decision-making; and (ii) the *consistency* of decision-making. CW accepted that a robust technical analysis is required to inform the assessment. On this basis, the LPA simply have no relevant evidence on which to base their refusal. The PC have not provide any evidence at all.

45. In such circumstances, it is reasonable (if not unanswerable) that, where they conflict, greater weight should attach to the Appellant's expert evidence than to the lay evidence of CW. CW has no reasonable basis on which to dispute that proposition. Indeed, the Appellant questions whether CW's evidence is consistent with his obligations as a professional witness, a key component of which is not to give evidence outside the scope of one's competence (see ***The Ikarian Reefer*** [1993] 2 Lloyd's Rep 68). It follows that the evidence of CW should be treated with very considerable caution, especially where he lapses into ill-considered lay hyperbole, which is inconsistent with a consideration of the evidence.

IMPACT TO HERITAGE ASSETS

46. The correct approach to the assessment of impact to Heritage Assets was set out in Opening. RB's evidence sets out comprehensively the correct statutory, policy, NPPG and HE guidance approach to the assessment of impact to the setting of designated heritage assets (DHA). It has not been challenged and is not, therefore, repeated.

47. There are 2 relevant DHA's (the Parish Church of St James (Grade 2) and the Aston Conservation Area (ACA). It is agreed there will be less than substantial harm (LTSH) to both. There are 4 areas of dispute:

(i) The degree of harm to the ACA (medium v low end of LTSH);
(ii) The weight to be attached to the heritage harm in the planning balance;
(iii) The weight to be attached to the public benefits; and
(iv) Whether the heritage balance in EH 9 and NPPF 202 is passed.

(i) Church of St James (Grade II)

48. The Appellant's case is clear and compelling. The Church's significance resides primarily within its vernacular architectural and historic interest as an example of a 19th century church. It is not a work of outstanding architecture. It exhibits a Victorian interpretation of the evolution of ecclesiastical architecture from England's earliest Christian buildings. Some historic interest derives from it being surrounded by a graveyard with numerous funerary monuments. Its significance also resides in its role as the historic spiritual and religious core of Aston and its community (RB at 1.11). 1SEP

49. It is agreed that the proposed development will marginally affect views of the church spire from the PROW to the north of Aston. However, the change is very modest if perceptible at all (as demonstrated by the

submitted VVI's and supporting analysis). The prominence of the spire will remain undiminished, even on the limited lengths of distant footpath where housing and landscaping will appear in the foreground (see TJ App E). Such a change in the church's setting will result in less than substantial harm to the church's significance, which is at the very lowest end of the LTSH range (RB at 1.12 and in EiC).

50. By contrast, CW asserts *inter alia* that:

(i) The Church has "*an enormous local heritage significance*" (CW at 10.24);
(ii) The Church is "…*one of the greatest of the many wool churches in the Cotswolds*";[10]
(iii) There would be "*significant harm*" to the significance of the listed church (CW at 10.33), even though he agrees it would be at "*the lower end*" of the LTSH spectrum (CW at 10.29).

51. However, in XX, CW conceded *inter alia* that:

(i) The Church is Grade II;
(ii) It is not even a wool church (must less one of the greatest examples);
(iii) Pevsner described the Church as: "*obviously a cheap job. Insubstantial and unscholarly Gothic. Bleak and drab interior*" (CW App 3 p.62);
(iv) Pevsner is an authoritative independent source to which he had made no reference, as he was not aware of it.

[10] whilst CW accepted this was wrong, he did not explain how it came to be in the PoE and/or the extent to which it had infected his assessment and/or whether further consequent changes to his later judgments were required.

52. It follows that CW's claim of "*enormous local significance*" is overstated hyperbole, inconsistent with authoritative independent sources (on top of the analysis of RB).

53. Further, CW accepted that there will be:

- No works to the LB itself;
- No works in the curtilage of the LB;
- No works in the immediate setting of the LB which contributes materially to its significance (the churchyard);
- No works in the designed setting of the LB;
- No works in an identified key view of the LB;
- The nearest dwelling would be over 200m from the spire (CW at 10.26), with intervening modern development and existing trees and hedgerows.

54. CW is concerned solely with the proposal diminishing the visual impact of the Church spire (not the body of the Church) from the PROW (CW at 10.25). This is a kinetic viewpoint 300-500m away. The footpath is not orientated towards the church which is at an oblique angle. The spire is one (limited) component of a wider settled view. Housing and landscaping will be in front of the spire along only a limited portion of the PROW (see TJ App E Figs 5-7 where there is no visual impact on the spire at all). Even where housing/landscaping is positioned in front of the spire, the VVI's demonstrate that the spire will retain its prominence. Indeed, when mitigation matures, there will be no material impact at all (see TJ App E Figs 8, 9 and 10). CW conceded the impact would be "limited".

55. It is agreed that the statutory duty (s.66) needs to be afforded considerable importance and weight (see ***Barnwell Manor*** CD I4 at 19). However, that does not mean considerable importance and weight has to be applied to

each and every impact to a Listed Building. It is agreed (XX of CW) that the weight to be attached to the impact is also a function of (i) the value of the asset (NPPF 199); and (ii) the degree of impact: "*... The fact that the degree of harm may be limited or negligible will plainly go to the weight to be given to it as recognised in Paragraph 193 NPPF*" (see ***R (James Hall and Company Ltd) v City of Bradford MDC*** CD I8 at para 34 and RB at 2.40).

56. The impact to the significance of the Church is therefore of **limited weight** in the planning balance. This is consistent with the decision of the previous Inspector (CD I1) and the Committee Report (CD A33).

(ii) Aston Conservation Area

57. Again, the Appellant's case is clear and compelling. The proposed development is located within the setting of the Aston Conservation Area (ACA). It forms part of the wider agricultural setting and contributes to the significance of the ACA as an element of the former primary agricultural economy of the village (RB at 1.13). Due to change of the site from agriculture to housing, it is acknowledged that there will be LTSH to the setting of the CA as experienced from the PROW. Such an impact is, however, barely discernible and at the lowest end of LTSH (RB at 1.14 and EiC of RB).

58. By contrast, CW implausibly asserts that there will be "*very significant heritage harm*" to which "*great weight should justifiably be given*" (CW at 9.4 and 10.33)

59. CW's approach is flawed (and unlawful) in two significant respects:

(i) He accepted that the site lies outside the CA and therefore the statutory protection of s.72 does not apply (XX of CW). His

assessment nonetheless considers it to be relevant to informing the approach to decision-making (CW at 5.3). Such an approach is wrong because it imports the considerable importance and weight to be applied to a breach of statutory duty, when that statutory duty simply does not apply. The effect is to inflate the weight to be attached to the impact. CW refused to accept such an obvious methodological flaw, demonstrating a lack of objectivity (or partiality) as well as competence to assess heritage impact;

(ii) NPPF 199 provides that the impact to a setting of a CA is relevant as a matter of *policy* (not statute). CW agreed that the policy is concerned with the impact of a proposal on the setting of the CA, as a component of its significance. He conceded that the policy is not concerned with the impact on part of the significance of the CA in part of its area. He agreed his approach (CW at 10.23) is flawed and results in a higher degree of harm as a result (XX of CW).

60. CW draws a distinction between the "historic core" of Aston, which is centred on the triangular square (CW at 2.3, 2.19 and 2.21) and the non-historic development east of the Church, comprising *inter alia* the Catalyst Housing Centre, the Fellowship Centre, Foxwood and Foxwood Close, Marsh Furlong, the Pound Field Road housing estate, Saxel Close and infill development in the Conservation (see CW at 2.6, 2.11-2.15). It is agreed that the site lies outside the historic core of the village, with intervening modern development (XX of CW).

61. CW considers that the loss of heritage significance is strongest in the east of the village, either side of Cote Road (CW 2.6 and 2.7). This is an express reference to Foxwood and Marsh Furlong, where he considers any heritage significance has been "*completely eradicated*" (EiC of CW and CW at 10.11). RB agrees.

62. In that context, the designation of the CA (applying s.69) is baffling. Originally, the CA boundary was limited to include the historic core (CW App 3 p.88). It was expanded to include Duck End Farm in order to protect the "*northern approaches*" along Back Lane and North Street (CW App 3 p.98 and 99). It was, however, expanded to include a large amount of modern development devoid of heritage significance (or "*crap*" in the terms of the Officers – p.88 CW App 3).

63. There is no CAA. It is nonetheless agreed that the CA boundary includes (XX of CW):

(i) All of the existing settlement regardless of merit (see the Report supporting the designation (9/6/98) and CW App 3); and
(ii) Open areas important to the setting of the CA (CW at 2.5); and
(iii) "… *small areas of open land immediately adjacent to the developed area which form important elements of the foreground in long views of the settlement*" (see the Report supporting the designation (9/6/98) and CW App 3).

64. It is, therefore, agreed (XX of CW) that:

(i) The CA boundary was drawn very widely;
(ii) The CA boundary includes significant areas with no conservation/heritage significance including Foxwood and Marsh Furlong immediately adjacent to the Appeal site;
(iii) The CA includes the areas deemed worthy of protection (applying s.69);
(iv) The CA included open areas forming part of the setting of the CA to be protected;
(v) The CA included those areas which formed part of the foreground in long views (from the PROW etc) to be protected;

(vi) The Appeal site was nonetheless excluded from the CA and the protection it provides;

(vii) It was not suggested that the Appeal site formed part of the setting or the foreground to be protected.

65. CW agrees that the significance of the CA includes the architectural and historic interest provided by the Listed Buildings and other non-designated heritage assets (NDHA's). He agrees with RB that there will be no impact to that aspect of the significance or to the street pattern and historic core (CW at 10.10 and XX of CW). He nonetheless raises 3 points of difference.

(i) Historic Pattern of Growth (Morphology)

66. CW asserts that the undeveloped fields that run into the village are important to understanding the historic morphology of the village (CW at 10.7) because it allows an understanding of the historic pattern of growth (10.9). However, he concedes that this relates to the open fields *inside* the CA (CW at 10.12 and 10.13). He accepted that if planning permission were granted, the open fields would retain their contribution to the significance of the CA as part of their setting (XX of CW).

67. It follows that the only significance of the appeal site is that it connects the protected setting (the open fields) to the undeveloped open countryside. It is, therefore, a setting of a setting, which is not protected. Indeed, CW agreed that the significance of the open fields derives from their definition of the morphology of the historic core not from their proximity to the open countryside (XX of CW and CW at 10.13).

(ii) Separation With St James Court

68. This part of CW's evidence is problematic because:

(i) The designation of the CA did not seek to protect the significance of Duck End Farm nor any separation with the historic core;

(ii) The CA considers Duck End Farm to be part of the same settlement. There is no logic to preventing coalescence of the same settlement;

(iii) The Appeal site is not relevant to the northern approaches along North Street and Back Lane;

(iv) The HEBDA concluded St James Court did not have heritage significance and were not NDHA's. The LPA has never sought to take a different view (CW at p.27);

(v) Nowhere does CW demonstrate that St James Court has any heritage significance worthy of protection. It is agreed it does not form part of the historic core;

(vi) CW actually recognises that much of the heritage significance of Duck End Farm "has been lost" (CW at p.27);

(vii) Accordingly, CW accepted that his concern was that non-historic development (St James Court) would join non-historic development (Foxwood/Marsh Furlong) (XX of CW and CW at p.27);

(viii) Whether or not that is correct (the VVI's demonstrate it is not correct), it is not a heritage point, it is (at best) a landscape or design point;

(ix) The Appeal site has never previously been considered important in separating modern development in Aston. Indeed, given it is agreed that the settlement is nucleated, this would be a perverse concern.

69. There is, therefore, no heritage harm arising from the development's contribution to the significance of St James Court and/or any separation it has with other parts of the same settlement.

(iii) The Link Between the Historic Core and the Open Land in the CA and the Wider Open Countryside

70. In XX, CW accepted this added nothing to his first point. Further or alternatively, RB accepts that the site contributes to the wider agricultural setting of the CA. This is not, therefore, a point of difference and/or a reason to elevate the claimed heritage harm.

71. In the light of such flawed points, CW considers 5 points relevant to impact (CW at 10.20):

(a) Blocking Views into the CA from the PROW

72. There is no meaningful view into the CA from the PROW. CW accepted that you cannot appreciate any aspect of the significance of the CA (including its morphology) from the PROW. There cannot, therefore, be any material impact on significance. The VVI's demonstrate that there will not be a "*wall of development from Marsh Furlong to St James Court*" (CW at 10.20) as a matter of unanswerable fact. CW has plainly misunderstood the nature of the proposal and its impact on heritage significance. It is, however, from this viewpoint that RB accepts there will be the lowest level of harm to the agricultural setting of the ACA.

(b) Views out of the CA from the Open Fields inside the CA

73. This is not a public view, a designed view or a referenced/protected view. More importantly, it is a view *away* from the CA and its significance. You do not appreciate any aspect of the CA's significance from this point. Accordingly, there cannot be any material impact on heritage significance.

(c) Creation of a Physical Barrier

74. CW asserts the proposal will create a physical barrier between the open fields (inside the CA) and the open countryside. This point is flawed for 4 reasons: (i) it is based (wrongly) on a consideration of the red line site

boundary rather than a consideration of the built envelope; (ii) CW has failed to demonstrate any relationship between the open countryside (the Appeal site) and the morphology of the ACA; (iii) the proposal will not create "a wall of development" from Marsh Furlong to St James Court; and (iv) the VVI's demonstrate that open views will remain from the PROW to the CA (see especially TJ App E Figs 5-7) and (v) no element of the significance of the CA is visible from the PROW and so it cannot be severed by this imaginary physical barrier.

(d) Contact with St James Court

75. The proposal will not bring Marsh Furlong into contact with St James Court. This is clear from the VVI's (see Figs 5-10). There will remain an appreciable countryside gap as a matter of fact. It is clear (again) that CW has misunderstood the position, impact and mitigation of the proposal. Further, CW cannot demonstrate any aspect of the significance of the CA which is harmed as a result. From the PROW, the raw dominant impact of modern housing at St James Court raise no issue of heritage significance (and none is claimed by CW).

(e) Blurs the Distinction with farms to the North

76. CW accepted this adds nothing to point (e). It is incomprehensible. There is no farm to the north of the site.

77. Finally, CW concludes that the impact is "*very significant*" (CW at 9.4). This is at the top end of this bracket. He therefore equiparates[11] the proposal's impact with partial or total loss of a heritage asset. On any sensible view, his calibration of harm is risible.

[11] Regards as the same

78. It follows that (remarkably) CW's assessment of heritage impact is flawed at every single stage, thereby grossly exaggerate the impact. On balance, the evidence of RB and RD must be preferred. There is LTSH to the setting of the Church and the ACA (at the lowest end of the bracket) to which limited weight should attach. A conclusion supported by the previous Inspector and Case Officer.

Heritage Balance

79. Any such limited LTSH is clearly outweighed by the public benefits (addressed above):

- Delivering housing to meet the 5YHLS;
- Delivering housing to meet the Plan requirement;
- Delivering 40 homes to meet the identified needs of real people in real need now;
- Delivery of accessible affordable housing (RD at 7.10);
- Delivering highly sustainable housing (see especially the Committee Report at CD A33 at 5.69-5.72);
- Delivering significant socio-economic benefits to which significant weight should attach (NPPF 81); and
- Delivering a 12% BNG;
- Providing open space, with 3,000 trees and 350m of hedgerow.

80. There has been some pettifogging criticism of the manner in which the Appellant has aggregated the weight to be attached to the benefits. The Inspector does not need detailed assistance in considering the weight to be attached to such benefits (individually and collectively). The weight to be attached to the need for AH is substantial. The benefit if specific accessible AH is additional and significant because of the rarity of such units. The housing shortfall is significant and exacerbates the need for AH because it will not be met by other sources. Such a benefit is not totally

additional and should a blended addition. The socio-economic benefits are significant and additional to the social benefits. The environmental benefits are equally additional.

81. By contrast, CW's consideration of the balance is incomprehensible and deeply flawed. He was forced to make repeated amendments to his attribution of weight, which was mechanistic and error strewn. However, even on CW's analysis, the weight to be attached to the social benefits of affordable housing must be substantial. It is not clear how socio-economic benefits can be subsumed in such a conclusion, when they are different from and additional to social benefits. A 12% BNG also cannot be subsumed in such social benefits, as this will *not* be a benefit of all schemes of AH.

82. It follows that there is demonstrable compliance with EH 9 and NPPF 202. The judgment is clear. This Appeal therefore falls to be considered against the tilted balance.

LANDSCAPE AND VISUAL IMPACT

Baseline Landscape Value

83. There is limited dispute over the baseline landscape value (cf CW at 11.8 and TW at 5.24). It is agreed that there are no relevant landscape designations. The nearest AoNB is >8km away and there is no intervisibility. There is a limited contribution to landscape/GI. The landscape condition is unremarkable and the site has no unusual or distinctive landscape characteristics. It is specifically agreed that the existing settlement has an urbanising influence on the site (CW 11.8 at point 6). The site is neither wild nor tranquil. It is not rare or unusual. There is no relevant conservation interest. In summary, CW concedes it is ordinary countryside with urban influences, which derive (especially) from the unfiltered rear of Foxwood Close.

84. There are just 2 points of difference: (i) the contribution which the site makes to the setting of the CA; and (ii) the classification of the site in the WOLA.

85. TJ has specifically taken into account the limited contribution which the site makes to the significance of the CA, as part of its wider agricultural setting (TJ at 5.28-5.30). This is not a point of difference. Further, CW conceded that: (i) the *heritage* significance of the buildings in the CA is not relevant to the *landscape* of the site; and (ii) the morphology of the settlement is not relevant to the *landscape* of the site.

86. Further, the WOLA (1998) is a dated baseline study, which provides a broad brush assessment of the whole district at a high level, in the light of different national policy (PPG/PPS 7) which sought to protect the countryside for its own sake, at a time when the LPA had a 5YHLS. The WOLA does not provide a baseline analysis of landscape value. Rather, it provides some broad landscape strategies (see CD G3 at p.36). It has not been updated to address new development since 1998, such as St James Court and Marsh Furlong. Applying GLVIA 3, it is a relevant baseline study to inform an assessment of landscape quality and condition (a component of landscape value). You do not undertake the bespoke fine-grained analysis and then crudely inflate the landscape value to reflect the district assessment. That is a total misapplication and misunderstanding of the approach.

87. There is, therefore, no reason to consider the landscape value is higher than medium low. In any event, the Appellant submits the difference (to medium) is not material to the outcome.

88. CW uses the same two factors to increase the susceptibility to change (CW at 11.14). TJ has explained (without challenge) that this is the wrong

approach. Further, it is difficult to understand how a site with agreed urban influences, which is immediately adjacent on two sides to the settlement and designed open space, has a medium-high susceptibility to housing. This is apparently on the basis that the site should be considered in isolation from its immediate setting, such that housing would be an uncharacteristic element (XX of TJ). Despite being expressly contrary to good practice, such an approach simply cannot be undertaken. Even if you consider the site *in isolation*, you cannot air brush out the influence of the adjacent housing on the site *in isolation*. It is clear that CW's approach is significantly flawed, such that the urbanising influence of the adjacent housing has not been properly considered, such that the sensitivity of landscape has been elevated.

89. It follows that the site is not a valued landscape. It has no statutory status and has no identified quality in the Local Plan (taking into account the WOLA 1998). It is not, therefore, a site which is protected under NPPF 174(a) at all. It is not designated, contains urbanising influences in an area which has lost its heritage significance. CW therefore agreed that (applying NPPF 175), where there is a need for greenfield housing, this is a landscape to which development should actually be directed.

Landscape Impact

90. The Site comprises a small part of a larger flat arable field, which has been developed as open space for the adjacent housing development. It sits back against the existing settlement edge and is clearly and well defined. It is also effectively separated from the larger part of the arable field by the POS to the east and south east. The Site is contained by boundaries that are variable, though in relatively poor condition and include gappy hedgerows (to be improved).

91. It is agreed that the magnitude of change at the site level would be high. However, this is true of *any* greenfield housing development and does not, therefore, add anything material to an assessment of acceptability.

92. It is agreed that the impact will be localised. The only claimed effects are to the site and its immediate context (CW at 11.18). It follows that (again) where there is a need for greenfield housing to meet minimum housing requirements, applying NPPF 174/175 and Policy H2, housing should be directed to non-designated, non-valued sites where any impacts are constrained to the site and its immediate surroundings, without tree loss or hedgerow removal. As TJ explained (EiC), this is a site which performs very well as a potential housing site.

93. It is not suggested that the impact has not been minimised. CW does not make any suggestion to reduce the landscape or visual impact of the proposal (save a reduction in units which could be said of literally *any* development). 40% of the site (0.8ha) will be high quality native landscaping, with 3,000 trees and 350m of hedgerow. It follows that the proposal will protect the local landscape setting *so far as is reasonably practicable* (in compliance with Policy OS 2).

94. CW asserts that the Appellant has failed to take into account cumulative impact. That contention suffers from multiple flaws:

- CW means (although it is far from clear) that the Appellant has failed to consider the impact of the proposal in addition to the modern non-historic housing. However, the LVA clearly considers such housing as part of the existing baseline. The "cumulative impact" (if this were the correct term) has therefore been considered;

- Considering the marginal (additional) impact of the proposal against the existing baseline is the usual LVIA approach and is consistent with GLVIA3, which (in any event) is not prescriptive;
- No issue was ever raised with this approach in the processing of the application. No additional assessment was ever requested;
- A cumulative assessment would be required where a "project" has multiple components and/or where there is allocated or consented development which has not yet been completed. Neither applies here;
- CW considers the urbanising influences of the settlement as part of his consideration of landscape value. He agrees this aspect of the approach. The same (modern existing) housing cannot rationally *reduce* the landscape value/susceptibility to change/sensitivity of the site, whilst simultaneously elevating the impact of the proposal, which does not impact that existing housing. Such an approach is irrationally inconsistent, inconsistent with GLVIA3 and absurd;
- Further, one cannot go back in time and simply excise the modern housing from the baseline. Where would such an excision end? 1848? Indeed, Marsh Furlong was consented in 2014, when the NPPF emphasised the requirement for high quality development. It is a popular development with its occupants. There is no reason to consider its impact to be so significantly adverse as to sterilise Aston from future housing development;
- Finally, you cannot lump the landscape impact of Foxwood and Marsh Furlong together with the impact of this proposal because those homes have already been consented. They form no part of this proposal.

95. The LVA and the evidence of TJ has, therefore, robustly assessed the landscape impact of this proposal, in accordance with s.38(6).

Visual Impact

96. In visual terms, the Site is not widely or highly visible and where discernible is generally perceived to be set back against, and closely associated with, the immediately adjoining housing/settlement edge. Views towards the Site are largely restricted to a small number of immediately adjoining or nearby properties, with limited views from a single Public Right of Way (PROW) footpath and North Street. In these views, where the Site is discernible, it is seen immediately adjoining the existing settlement edge. This is clear from a consideration of the plans and the VVI's.

97. CW agrees that the visual impact is generally localised (CW at 11.36). It is common ground that (see CW at 11.36 and in XX):

- There are opportunities to screen the site from the PROW which have been taken (*supra*);
- Such screening might take 5-10 years which is fairly standard (and no different from any housing);
- **After 5-10 years, the screening could achieve significant softening/elimination of the housing from the north and north east** (CW at 11.36).

98. There is no policy requirement to render the housing invisible. It is, therefore, a significant positive that after 10 years the housing will not be visible and will also have the benefit of screening the existing raw edge of Foxwood Close.

99. In that context, CW is primarily concerned with the visual impact from the PROW. It is currently a settled view. The walker is looking at the settlement of Aston. In this context, the introduction of modest, heavily landscaped housing is contextually appropriate. The new housing does not

increase the amount of housing which is visible in either the horizontal or the vertical plane. The recreational experience will not change at all and the enjoyment of the FP will not diminish. The layout of the houses (cul-de-sac form) is not discernible. It follows that there is no material change to this settled view. And yet, CW asserts that there will be "sea of unexceptional generic suburban housing" which will stretch unabated from Marsh Furlong and St James Court. The VVI's demonstrate that is unanswerably wrong. CW has (again) fundamentally misunderstood the impact and wildly exaggerated the impact.

100. It is agreed that the impact to neighbouring properties is no different from that experienced from properties in any settlement (XX of CW and CD I1).

101. In the light of his flawed assessment, CW reaches a hyperbolic conclusion of "*at least significant weight*" (CW at 11.37) which means "*very significant weight*" (XX of CW). The impact of this proposal has been equiperated with an impact to a valued landscape in the AoNB. That is a demonstrably flawed calibration of the impact and vividly demonstrates why there is a requirement for independent professional assessment of such impacts.

102. The Appellant therefore submits that there is inevitable but limited landscape and visual impact, which should be afforded limited weight in the planning balance. Such a conclusion is expressly consistent with the previous Inspector's conclusions[12] (CD I1 at DL 4, 11-18) and the Committee Report, which expressly endorses the Inspector's conclusions in respect of a comparable development (CD A33 CD 5.27-5.33).

[12] which were not the subject of challenge and can be afforded significant weight (per ***Davison***)

DESIGN

103. A consideration of the plans and landscape masterplan robustly confirm that the scheme delivers a high quality contextually appropriate development (see also RD App E – technical design note). The criticism of the layout is hard to understand. The point of access from Marsh Furlong is fixed. The housing should face back to back to Foxwood Close. The housing faces outwards, with bungalows in the most sensitive location. The swale is located to the north east, closest to the Phase 1 swale and to create an open area with the adjacent POS. The line of the access road into and around the is therefore essentially fixed the positioning the housing. There could be variations on a theme but the location of the housing should not change and the access road is not perceptible off site. Finally, the significant area of landscape planting and GI creates a high quality (improved) interface with the countryside and provides a separation with St James Court. This is demonstrably a high quality design.

104. It is not accepted that there is any policy and/or evidential basis for the site to be kept open to avoid coalescence with St James Court in urban design terms (for the reasons give above). On the contrary, the VVI's demonstrate that the visual impact is acceptable (TJ App E).

105. The Committee Report explains that the design of the proposal is high quality (CD A33 at 5.27 to 5.28). Members of the Planning Committee have suggested no changes to the proposed layout and/or design of the proposal. It is, therefore, submitted that the design is high quality and contextually appropriate, sitting adjacent to the recently consented Marsh Furlong, which the LPA consider to be high quality design.

NATIONAL DESCRIBED SPACE STANDARDS (NDSS)

106. Such standards have no statutory basis. Despite being published in 2015, they have no support in local or national policy. It is for the LPA to adopt

them in local policies (NPPG). This did not happen. There is, therefore, no policy basis for this aspect of the RFR and no adverse impact to weigh in the planning balance. It is unanswerable that the LPA's reliance on the NDSS is contrary to the NPPG.[13] This aspect of the LPA's refusal is unreasonable.

107. The requirement to adopt the NDSS is not academic. Such a proposal would need to be the subject of robust viability testing and could be the subject of objection, to be determined after an EiP. The LPA cannot subvert the statutory process of adoption. Further, this LPA have (literally) no idea how the impact of the NDSS would impact the viability of AH delivery, an issue which is acute. There is, no basis, for reliance on the NDSS in the absence of an adopted local policy.

COMPLIANCE WITH THE DEVELOPMENT PLAN

108. In the light of the agreed need for more housing, especially affordable housing, it becomes important to consider what the development plan provides for in such circumstances

109. **Policy OS 1** is a key policy, which enshrines the application of the tilted balance within NPPF (11) into the statutory development plan. Accordingly, it is agreed that there are 2 means by which the proposal can comply with the development plan: (i) by conventional compliance with the policies of the Plan read as a whole (per ***Corbett***); and (ii) through the application of the tilted balance (Policy OS1). If the proposal complies with OS1, it complies with the development plan *as a whole* (and should be consented without delay).

[13] On the Appellant's note this was conceded by CW. It is noted that this is contested by the LPA.

110. The tilted balance in Policy OS 1 is engaged because the heritage balance in EH 9 is passed (*supra*). It is agreed that if there is compliance with EH 9, there is compliance with the heritage policies as a whole i.e. EH 9, EH 10 and EH 11 (XX of CW). On that basis, the conclusion of the Ducklington Inspector that there is conflict with EH 9, when NPPF 202 is passed is a clear error (XX and ReX of RD).

111. **Policy OS 2** sets out the overall spatial strategy, based on a settlement hierarchy (WOLP at 4.14). Aston is a Village (a tier 3 settlement). Not all housing growth can or should be directed to Tier 1 or 2 (WOLP at 4.17). Policy OS 2 directs housing development to Villages in the Plan period because they are considered to be suitable for limited development to help maintain the vitality of the communities (WOLP at 4.22). Such a spatial approach is expressly provided for in Policy OS 2. In assessing compliance with Policy OS 2, the Appellant submits:

(i) Policy OS 2 is out of date (*supra*) and any policies of limitation, which frustrate the delivery of a 5YHLS, must be afforded limited weight;

(ii) Whilst "a significant proportion of new homes" should be focussed on the Tier 1 and 2 settlements, this does not mean all development;

(iii) In circumstances where there is a 2.56 to 3.14 year supply and the higher tier settlements and the allocations are totally failing to deliver sufficient housing, the distribution must be applied flexibly to allow minimum housing requirements to be met (see the Supreme Court in ***Richborough Estates*** (CD I24) at para 83);

(iv) The villages are expressly considered to be appropriate for "limited development which respects the village character and local distinctiveness and would help to maintain vitality of these communities;

(v) This proposal for 40 affordable homes is a "limited development" in absolute terms. It will make small but important contribution to meeting housing needs (in accordance with NPPF 69);

(vi) Development is "limited" at least in part because of the proposed allocations. Where there is total failure of the allocations, such a limitation must be out of date and of limited materiality or lese the housing crisis will not be addressed;

(vii) The policy is concerned with land use planning impacts not arithmetic (EiC of RD). The proposal will have a limited impact on village character. There is no claimed local distinctiveness in heritage or landscape terms. The proposal is, therefore, "limited" in policy OS 2 terms;

(viii) If, which is denied, the proposal is not "limited development" then limited weight should attach to such a restrictive policy in the tilted balance;

(ix) There is, therefore, compliance with the first part of Policy OS 2.

112. **Policy H2** is a permissive policy. New dwellings *will be permitted* in the villages in the following circumstance:

- *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 set out in Policy H1 and … the general principles in OS 2.*

113. The Appellant submits that this proposal complies with (and draws significant support from) Policy H2 because it directs housing to sites such as the Appeal site when there is an identified need for housing and there is no prospect of a review and update of the Plan. The Appellant further submits:

- On an objective interpretation (per Lord Reed in ***Dundee***), Policy H2 does not set out a sequential approach (cf RleF). Even if it did, with a 2.56-3.14 year supply and 87% delivery on greenfield sites, it would be passed;
- The site is undeveloped land (greenfield land) adjoining the built up area of Aston. It is, therefore, a site to which housing is specifically directed where there is convincing evidence of an identified housing need;
- It is unanswerable (*supra*) that there is convincing evidence to demonstrate that this development is required to meet identified needs;[14]
- The policy does not require this proposal to demonstrate a "specific local need". This is not a Rural Exception Site (RES) and is not promoted on this basis. There is a clearly different policy approach between (i) sites adjacent to the villages, which can be justified on a district wide need (WOLP at 5.38 and Policy OS 2) and (ii) greenfield sites in the AoNB (WOLP at 5.39) and sites in small villages, hamlets and open countryside (see Policy OS 2). It is a flawed and unlawful approach to the development plan to either treat this proposal as a RES or as a site in the AoNB/hamlet;
- No issue is taken with the housing distribution in Policy H1. Accordingly, this proposal complies with Policy H2 if it complies with the general principles of OS 2.

114. Accordingly, as CW accepted, **it is clear that development is directed to the village of Aston (amongst others) because it is considered to be a sustainable settlement/location for development**. Indeed, such a conclusion is expressly supported by the following (EiC of RD):

[14] This is not a local need to Aston

(i) The conclusion that Aston was a sustainable settlement in granting consent at Pound Field Road;

(ii) The St James Court was in an accessible location close to a sustainable settlement (CD J5 at 6.17-6.19);

(iii) Marsh Furlong was in a sustainable location (CD J3 at 5.9 to 5.16);

(iv) The previous appeal scheme was in a sustainable location and facilities were no so limited as to justify refusal (CD I1 at DL 30);

(v) The Committee Report confirmed that there was no issue that Aston was a sustainable settlement (applying OS 2 and H2) and that Aston was a sustainable settlement consistent with the previous Appeal decision (CD A33 at 5.13, 5.32 and 5.75/5.76);

(vi) The LPA (and CW) agree the site is in a reasonably sustainable location (SoCG at 3.2);

(vii) The LHA agree the site is in a reasonably sustainable location (SoCG Highways at 2.40).

115. It is common ground that the site lies in a reasonably sustainable location. It follows (applying the development plan) that this is a sustainable location to meet the very significant need for more housing.

116. In interpreting and applying the general principles of Policy OS 2, the Appellant submits *inter alia*:

- It is one of the most important policies and is out of date. Policies restricting housing development must therefore be applied flexibly (per ***Richborough Estates***). Restrictions on scale should be afforded limited weight in the tilted balance;
- The policy applies to greenfield development adjacent to existing villages. It must, therefore, be interpreted and applied in a manner which permits such greenfield housing sites to be consented. The inevitable impacts on housing on the site and immediate context

cannot rationally justify refusal (or else the policy would become otiose). CW did not consider there was any part of the policy which restricted the inevitable impacts of housing development (XX of CW);

- Indeed, housing must "*as far as reasonably practicable*" protect the local landscape and the setting of the settlements. This is not a "no harm" policy;
- Policy OS 2 must be interpreted and applied in a manner which is consistent with EH 9 and NPPF 202. If, therefore, any harm to designated heritage assets is outweighed by public benefits, it is submitted there is compliance with EH 9, NPPF 202 and the development plan as a whole.

117. In that context, the Appellant submits that:

- Applying the evidence of RB and TJ, the proposal is an appropriate scale to its context. This requires a planning judgment not an arithmetic calculation (cf RleF);
- The proposal will form a logical complement to the pattern of development and the character of the area. RB and TJ explain that this is the least sensitive part of the village in heritage and landscape terms and will demonstrably read as a logical complement to the village, especially from the North and East (see VVI's at TJ App E);
- There is no coalescence of separate settlements;
- CW and TJ agree that *as far as reasonably possible* the proposal protects the local landscape and setting of the settlement;
- The LHA agree there is safe and suitable access;
- There is safe and suitable access to supporting services in Aston. The cycling network is adequate and there is no history of accidents. There is also a regular service to Witney which allows for commuting and short trips through the day. This provides a "genuine choice" of non-car modes, given the rural location (consistent with NPPF 105);

- The proposal will not increase the risk of flooding elsewhere;
- The proposal will comply with policy EH 9 and therefore CW accepted there can be no breach of OS 2 and/or the development plan as a whole.

118. RD's evidence is that there is a limited conflict with OS 2 because of the landscape harm to the site and immediate setting (RD at 6.72 and 6.74). The proposal does not conserve the natural environment. However, any such is the inevitable impact of greenfield housing. On that basis, only limited weight can attach to it in the planning balance. There is compliance with OS 2 read as a whole and there is compliance with the development plan as a whole. Indeed, applying the approach of CW (which is more flexible than the approach of RD), such inevitable does not conflict with policy. On that basis, the proposal complies with all parts of OS 2.

119. It follows that the proposal complies with the development plan.

120. Further or alternatively, Policy OS 1 is engaged. Such limited policy conflict, with policies which are out of date, result in limited adverse impacts. Such conflicts cannot significantly and demonstrably outweigh the benefits (to which very significant weight must attach individually and collectively). Rather, the benefits significantly and demonstrably outweigh any claimed harm. There is, therefore, compliance with Policy OS 1 and the development plan as a whole.

121. Compliance with NPPF 202 and the tilted balance further support (strongly) the grant of consent on this site.

CONDITIONS

122. The PC raise 2 issues which can be addressed by conditions.

(i) Parking and Cycle Spaces

123. Cycle spaces can and will be addressed by further details secured by condition.

124. Notwithstanding any submitted details, should an overprovision of 4 car parking spaces be material, amendments can be secured by condition.

125. There is no basis for a refusal and the contrary has never been properly arguable.

(ii) Drainage

126. Foul drainage is a clear and legitimate concern of the local community. Cllr Maynard stated that a condition must be imposed which precludes occupation unless and until capacity in the network has been secured. This is provided by the conditions. It follows that there can be no occupation until TW provide adequate capacity. This is a complete answer to the PC's objection (XX of CS). Either capacity is provided or no development will take place. Regrettably, the PC did not consider this point in the preparation of their (voluminous) evidence.

127. CS does not trust either TW, the LLFA or the LPA to discharge the condition. However, TW are regulated by the WIA and OFFWAT. The Inspector does not have jurisdiction over TW. Further, CS's distrust of TW stems from a misreading of their submission. There was not a requirement on TW to provide a network capacity upgrade at Bull Street prior to Phase 1. Rather, this might be required for Phase 1 and 2. She gives no reason for her mistrust of the LLFA and LPA. Ultimately, foul drainage is subject to a separate statutory process, which we must assume will operate effectively (NPPF 188).

128. Further or alternatively, TW have demonstrated that they will create 4l/s of capacity by removing groundwater from the foul sewer on top of planned upgrades (CD K4). This Inquiry does not need to know how this is to be achieved. It is a matter for TW as statutory undertaker. Section 106 WIA provides a statutory requirement on TW to deliver the upgrade and the condition prevents development until it does. Such an upgrade (with the upgrade to the STW to 36l/s) will provide capacity in the network *for all*. It follows that the infrastructure charge from this proposal has the ability to solve the existing network constraint to the benefit of existing and future residents. CS agreed that this is **a benefit of significant weight**.

129. Surface water is a concern to residents. However, the photos of flooding match the areas of FZ 3. They are photos of the functional floodplain … functioning (EIC of AB). The proposal does not create *any new surface water*. Rather, the proposal will attenuate flows, via the swale. Again, this is betterment. The swale for phases 1 and 2 have been calculated to carry sufficient capacity. The photos show the swale operating normally. This will be addressed by the condition and a technical design process. There is demonstrable compliance with the development plan and NPPF.

130. There is no requirement for time consuming, expensive and pointless ground water monitoring. CS could not identify *any* reason why it was required beyond her own interest. AB explained that the capacity of the swale will not be designed by reference to groundwater, which has no impact on it. The swale will be lined so that it is insulated from groundwater flows. Monitoring is pointless and irrelevant. It would appear to be a device to delay or frustrate the development and it is strongly opposed.

COSTS

131. It follows that the Appellant does not consider that there is any respectable basis for the LPA's refusal. Whilst this might form the basis for an application for costs, such an application is not being made (for reasons which do not relate to the strength of evidence). This should not, however, be misinterpreted as implying the RFR are reasonable.

CONCLUSION

132. It follows that the proposal (in either scenario) complies with the development plan and should be granted consent *without delay* (NPPF 11). Material considerations further support the grant of consent. It is, therefore, the Appellant's case that planning permission should be granted subject to conditions and a s.106 obligation.

GILES CANNOCK KC

Kings Chambers

27th June 2023