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# Appeal Decision

Inquiry held on 13-16 and 20-22 February 2024

Site visit made on 21 February 2024

**by Kevin Ward BA (Hons) MRTPI**

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

**Decision date: 28<sup>th</sup> March 2024**

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## **Appeal Ref: APP/D3125/W/23/3331279**

### **Land south of Burford Road, Minster Lovell, Oxfordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Catesby Strategic Land Limited against the decision of West Oxfordshire District Council.
  - The application Ref 22/03240/OUT, dated 17 November 2022, was refused by notice dated 21 July 2023.
  - The development proposed is the development of up to 134 dwellings (Use Class C3) including means of access into the site (not internal roads) and associated highway works, with all other matters (relating to appearance, landscaping, scale and layout) reserved.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the development of up to 134 dwellings (Use Class C3) including means of access into the site (not internal roads) and associated highway works, with all other matters (relating to appearance, landscaping, scale and layout) reserved at land south of Burford Road, Minster Lovell, Oxfordshire in accordance with the terms of the application, Ref 22/03240/OUT, dated 17 November 2022 subject to the conditions in the attached schedule.

### **Preliminary Matters**

2. The application was submitted in outline with all matters reserved except access. The application was originally for up to 140 dwellings. Revisions were made prior to the determination of the application which reduced the site area and the number of dwellings proposed to up to 134. The Council's decision was based on this revised proposal, and I have considered the appeal on this basis. An illustrative masterplan was submitted with the application and revised as above. I have given this consideration as an indicative scheme only.
  3. The Society for the Protection of Minster Lovell had sought and been granted Rule 6 Party status. Prior to the Inquiry it was agreed that they did not require this and would act as an interested party.
  4. Statements of common ground between the Appellant and the Council were submitted on foul drainage, landscape, housing land supply, affordable housing and overall matters.
  5. A duly executed S106 agreement was submitted on 7 March 2024. I deal with this later in my decision.
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6. Just prior to the resumption of the Inquiry on 20 February 2024, an agreed position statement by the Council and the Appellant was submitted. This explained that the Council now considered that the appeal proposal is in accordance with the development plan as a whole and that permission should be granted subject to conditions and the S106 agreement. The Council maintained its position that it can demonstrate a five year supply of deliverable housing sites however. This position was confirmed by Mr Wood on behalf of the Council when the Inquiry resumed. The Council no longer contested the appeal therefore. The Council's advocate was not involved in the Inquiry during this second week. Interested parties continued their strong opposition to the appeal proposal.

### **Main Issues**

7. I identified the main issues following the case management conference held on 20 December 2023. I deal with the main issues in a different order in my decision, given that issues of housing needs and supply and the effect on the character and appearance of the area are of relevance to the policy approach towards the principle of such proposals. The main issues are:
- a) Whether the Council can demonstrate a five year supply of housing land;
  - b) The effect of the proposed development on the character and appearance of the area;
  - c) Whether the scale and location of the proposed development is appropriate in principle in terms of the policy approach to housing development in Minster Lovell and accessibility to services and facilities;
  - d) The effect of the proposed development on flood risk and drainage;
  - e) Whether the proposed development would make adequate provision towards local infrastructure requirements, affordable and self-build housing needs and biodiversity net gain; and
  - f) Whether the policies which are most important for determining the application are out of date due to a lack of a five year supply of housing land or any other reason and if so, would any adverse impacts of the proposed development significantly and demonstrably outweigh the benefits.

### **Reasons**

#### *Five year supply of housing land*

8. The statement of common ground on housing land supply confirms a number of matters of agreement. The five year period is agreed as being 1 April 2023 to 31 March 2028.
9. The West Oxfordshire Local Plan (the Local Plan) was adopted in September 2018. It sets out a housing requirement for at least 15,950 new homes between 2011 and 2031. This includes 2,750 homes towards meeting Oxford City's unmet needs between 2021 and 2031. It sets out a phased approach to an annual housing requirement with 550 homes per annum between 2011 and 2021, 800 homes per annum between 2021 and 2023, 975 homes in 2023/24 and 1,125 homes per annum thereafter.

10. The strategic policies in the Local Plan are now more than five years old. The Council has undertaken a review and found that the strategic housing policies need to be updated. In light of paragraph 77 and footnote 42 of the National Planning Policy Framework (NPPF), the local housing need figure using the standard method is the basis for calculating the five year housing requirement. The latest local housing need figure calculated for West Oxfordshire is 570 homes per annum. There is no need to add a requirement for Oxford City's needs and given performance against the housing delivery test, there is no need to add a buffer. The statement of common ground therefore sets out a five year requirement of 2,850 homes. Given the circumstances that exist, I consider that this is an appropriate approach.
11. The Council's position in the statement of common ground was that there was a supply of 3,111 homes in the five year period (5.46 years supply). At the Inquiry the Council reduced its estimate of supply on site EW2 – West Eynsham Strategic Development Area by 30 homes. The Council's revised position is that there is a supply of 3,081 in the five year period (5.41 years supply). The Appellant considers that there is a supply of 2,199 homes (3.86 years supply). The disagreement is based on the contribution from five specific sites and the overall figure from small sites with planning permission. I deal with these in turn.
12. Outline permission for up to 150 homes was granted in February 2023 on land North of Witney Road, Long Hanborough. One of the pre-commencement conditions has recently been discharged but a number remain to be discharged. A reserved matters application has not been submitted. Whilst the Council referred to pre-application discussions, there is no written evidence to verify the nature or outcome of these discussions. There is also no evidence as to the intended timescale for submitting a reserved matters application or developing the site. Indeed there is nothing at all in writing from the developer.
13. It may be that the condition requiring the submission of a reserved matters application within two years reflected the expectation of early delivery but as set out above there is little actual evidence of progress. It may also be that the developer concerned is experienced in the local area and has a track record of delivery. However, this does not in itself provide a convincing argument on deliverability in this particular case. There is not clear evidence that completions will begin on the site within five years. The site should not be counted towards the five year supply therefore.
14. The REEMA North site is part of the larger REEMA North and Central site allocated under Policy CA1 of the Local Plan. The central part of the site has been developed. The whole site was subject to an outline planning permission. A reserved matters application for the northern part was approved in 2011 and an alternative reserved matters application for 200 homes was approved in 2013. The Council maintain that this permission is extant. The Appellant disputes this.
15. The site is owned by the Ministry of Defence and the Defence Infrastructure Organisation is in discussions with a major housing developer with a view to bringing forward an alternative full application for an increased number of homes. The Council acknowledges that the intention is to pursue an alternative scheme to that which was the subject of the 2013 reserved matters approval.

16. Inspectors have previously taken different views on whether the REEMA North site should be included in a five year supply<sup>1</sup>.
17. The Council provided recent correspondence from the housing developer concerned, setting out a detailed timetable for the submission of a full planning application, its determination and completions on site. This information was not available to the Inspectors in the cases referred to above.
18. There has been and still is, clear and realistic interest in bringing forward the site for development. There is a major housing developer actively pursuing the submission of a full planning application and they are working to an ambitious timetable. The site has been cleared. As noted above there is a dispute as to whether the site currently benefits from detailed planning permission. Either way, taking into account the history and circumstances of the site, I am satisfied that there is clear evidence that housing completions will begin on site within five years.
19. However, I do not consider the timetable put forward by the developer to be realistic. This would see a full application submitted in March 2024 and approved in July 2024, with construction starting very early in 2025. The first completions (15 homes) would be completed in the calendar year 2025. It is likely to take significantly longer to determine an application, even if it were to be submitted in March 2024. More realistically, first completions are likely to be in 2026. Pushing the developers timetable back a year would see 127 completions by the 31 March 2028. The site should be included in the five year supply therefore, but with a contribution of 127 homes, rather than 200.
20. The Derrymerrye Farm site is part of the larger West Eynsham Strategic Development Area allocated under Policy EW2 of the Local Plan. It was subject to an outline planning application in 2020. An appeal against non-determination was lodged but it was subsequently withdrawn in October 2023. Improvements to the A40 are required and this is reliant on Housing Investment Fund (HiF2) funding. Confirmation of such funding has not yet been received. There is currently no planning application and no clear timetable for one being submitted. The Council accepts that an outline planning permission would need to await confirmation of HiF2 funding.
21. As noted above, the Council reduced its estimate of supply in the five year period by 30 homes at the Inquiry. Notwithstanding this, there are significant issues still to be resolved before planning applications can be submitted. Time would then be needed to determine outline and then reserved matters applications and bring the site forward for development. There is considerable uncertainty over the timescales for development. There is not clear evidence that completions will begin on the site within five years. The site should not be counted towards the five year supply therefore. The wider site would contribute 76 homes.
22. The land north of Hill Rise, Woodstock is an allocated site under Policy EW4 of the Local Plan. A hybrid planning permission was granted on appeal in October 2023<sup>2</sup>. This gave full permission for 48 homes and outline permission for up to a further 132. The dispute lies with the supply from the outline element.

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<sup>1</sup> APP/D3125/W/22/3301202 – Land west of Wroslyn Road – included it in the supply  
APP/D3125/W/22/3297487 – Land at Witney Road, Ducklington – excluded it

<sup>2</sup> APP/D3125/W/23/3315391

23. To date, no reserved matters applications have been submitted for the outline element of the scheme. There are a number of pre-commencement conditions yet to be discharged. This is not surprising however, given that the appeal decision is still fairly recent. There is a single landowner and developer involved in the site and evidence put to that Inquiry demonstrates a clear intent to bring forward the whole site for development and a clear timetable for doing so within five years. I am satisfied that there is clear evidence that housing completions will begin on site within five years. Even if the timescale slipped, there would still be adequate time to see all 180 homes completed within the five year period. The site should be included in the five year supply therefore with a contribution of 180 homes.
24. The land north of Banbury Road, Woodstock is an allocated site under Policy EW5 of the Local Plan. An application for outline permission was submitted in January 2021. The Council resolved to grant permission in December 2022 subject to a S106 agreement. To date this has not been agreed and no decision has been issued. A trajectory was submitted by the developer in September 2022 but there is nothing further in writing from them since then. There is not clear evidence that completions will begin on the site within five years. The site should not be counted towards the five year supply therefore.
25. With regards to small sites with planning permission, the Appellant argues that a 10% discount of the overall supply from this source should be applied to reflect the likelihood of some permissions lapsing. I acknowledge that it is likely that some of those permissions will lapse and development will not take place. I also note that in the Ducklington appeal<sup>3</sup>, the Inspector agreed that a 10% discount should be applied. Whilst the Inspector in the Burford appeal<sup>4</sup> agreed with the Appellant in that case that a reduction to the supply from small sites should be made, this appears to be based on evidence on specific sites where permission had actually lapsed, rather than a generic assumption to apply a percentage lapse rate.
26. The statement of common ground indicates agreement that there is a total of 397 homes with planning permission on small sites. The Appellant's position does not point to evidence on specific sites where permission has actually lapsed. It simply seeks to apply an assumption that 10% of homes with permission will not be delivered and should be removed from the supply. The definition of "deliverable" in the NPPF refers to "sites which do not involve major development and have planning permission... unless there is clear evidence that homes will not be delivered within five years...". There is no reference in the NPPF or the Planning Practice Guidance to the application of a generic percentage reduction. In this case there is no clear evidence that specific small sites with permission will not deliver within five years. There is no basis to apply a 10% discount or any other generic reduction. The supply from small sites with planning permission is 397 homes therefore.
27. Taking all of the above into account I conclude that there is a supply of 2,498 homes (4.38 years supply). The Council cannot therefore demonstrate a five year supply of housing land.

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<sup>3</sup> APP/D3125/W/22/3297487

<sup>4</sup> APP/D3125/W/22/3293656

*The character and appearance of the area*

28. The appeal site is currently undeveloped agricultural land in arable use. It sits immediately to the west of the existing built up area of Minster Lovell. It is adjacent to residential properties on Ripley Avenue and the Bovis Homes development. Burford Road forms the northern boundary of the site and immediately beyond this is the Cotswolds National Landscape (formerly known as the Area of Outstanding Natural Beauty). There are no public rights of way across the site and no other form of public access. The appeal site is not covered by any landscape, heritage or ecological designations.
29. It is common ground that Minster Lovell is a non-designated heritage asset. It was originally developed as a Chartist settlement called Charterville in the mid 19<sup>th</sup> Century, based on the concept of providing housing with smallholdings. The original settlement was distinctly linear in form with detached single storey cottages along the road sitting in long narrow plots. Some of the original buildings remain. There has been new development, redevelopment and some intensification of the built form over time. However, along much of Brize Norton Road the village has largely retained its linear form and it is still predominantly characterised by single storey dwellings set in relatively narrow plots along the road. Albeit that the remaining original buildings are interspersed with more recent additions. The character of Upper Crescent is similar. The significance of the non-designated heritage asset is largely based on the form, design and layout of the original buildings and their historic plots. This gives it an architectural, historic and cultural interest. It is appreciated mainly at close range from within.
30. There is, however, a substantial area of 20<sup>th</sup> Century housing at the north western end of the village. This is a mix of single and two storey properties set out in a typical estate form. There is a range of building design and materials. The recent Bovis Homes development has added further to this expanse of modern development. It has bungalows set back from the Burford Road frontage but otherwise consists of two storey houses, again following a typical modern estate layout. The character of this part of the village is noticeably different and bears little, if any resemblance to the original Chartist settlement, in terms of house types, layout and design.
31. The appeal proposal would involve a further extension of this modern estate development, away from the historic origins of the village. The intervisibility between the proposed development and the remaining historic elements of the village would be very limited given the distance and intervening buildings. The proposed housing would be clearly visible on the approach to the village from the west along Burford Road, but this would only be for a limited stretch of the road and it would be seen against the backdrop of the Bovis Homes development. From the east along Burford Road, it would not be visible on the approach to the village, or the junction with Brize Norton Road. It would only become visible having passed the entrance road to the Bovis Homes development.
32. The visual perception, understanding and appreciation of the non-designated heritage asset would not be affected. Its significance would not be harmed.
33. The appeal site is relatively flat and other than field boundaries consisting of hedgerows and some trees, it is featureless. The statement of common ground confirms the agreed position that the appeal site does not form part of a valued



landscape in terms of paragraph 180 of the NPPF. It also confirms agreement that the proposed development would not harm the Cotswolds National Landscape or its setting.

34. Close range views of the proposed housing would be limited to some extent by existing properties to the west along Burford Road and by existing hedgerows and trees along both sides of Burford Road. There is clear potential to enhance planting and landscaping around the boundaries and within the site which over time would further reduce visibility and soften the visual impact of the housing.
35. Views of the proposed development from the wider area would be limited to a considerable degree by the distances involved, intervening topography and vegetation. Again, there is clear scope to enhance landscaping to further reduce the effects.
36. The proposed development would inevitably involve significant visual change at site level, transforming an undeveloped area of farmland into a housing estate. This would include additional street lighting and internal estate lighting. Whilst there would be some harm to the landscape as a result of this change, it would be very localised. In itself, the site does not currently play a significant role in the wider landscape, and it makes a limited contribution to the setting of the village. It does not make an important contribution to the character and appearance of the area. Developing the site would further extend the built up area, but Minster Lovell would remain a distinct village set in a rural, largely agricultural landscape.
37. There would be some limited, localised harm to the landscape as a result of the proposed development. In this respect it conflicts with Policies OS2 (9<sup>th</sup> bullet point of general principles), OS4 and EH2. In other respects, it would not harm the character and appearance of the area.

*The policy approach to housing development in Minster Lovell and accessibility to services and facilities*

38. The Local Plan divides the District into five sub-areas. Minster Lovell is within the Witney sub-area. It also identifies a clear settlement hierarchy and spatial strategy which seeks to focus a significant proportion of new housing and other development on the three main service centres of Witney, Carterton and Chipping Norton. It then identifies seven rural service centres, including the proposed new Oxfordshire Cotswolds Garden Village, to the north of Eynsham. Below this in the hierarchy are a large number of villages, of which Minster Lovell is one.
39. Policy H1 sets out an indicative distribution of the overall housing requirement (at least 15,950 homes 2011-2031) between the sub-areas. For the Witney sub-area this is 4,702 homes. The Local Plan anticipated that this will be delivered by a combination of completions to 2017, existing commitments, four site allocations and anticipated windfalls. There are two Strategic Development Area allocations adjacent to Witney, one to the east (450 homes) and one to the north (1,400 homes). There is a small allocation for 50 homes within Witney and an allocation for 125 homes on land to the west of Minster Lovell. This site allocation at Minster Lovell has now been fully developed. This is the Bovis Homes development. The site for the appeal before me is adjacent to the existing Bovis Homes development.

40. Policy OS2 of the Local Plan sets out the overall approach to the location of development, in line with the settlement hierarchy referred to above. A key phrase in the policy is that "The villages are suitable for limited development which respects village character and local distinctiveness and would help to maintain the vitality of these communities." The correct interpretation of this phrase was subject to significant discussion at the Inquiry and reference made to the different wording in Paragraph 4.22 of the reasoned justification in the Local Plan. This uses the phrase "...some development will be supported in the villages but this will be limited to that which respects the village character and local distinctiveness and would help to maintain the vitality of the local community."
41. It is necessary to base decisions on the actual wording of the policy itself, rather than potentially contradictory wording within the reasoned justification. Read plainly, Policy OS2 is clear that for villages, the need for development to be limited is a distinct factor in its own right. The requirement for development to be limited is the first step but then it should also respect the village character etc. This is a logical interpretation, given the settlement hierarchy and spatial strategy and the more limited role that villages are expected to play in meeting development needs compared with higher order settlements.
42. There is no specific definition of "limited" and the Local Plan does not attempt to set a numerical cap on the scale of development appropriate in villages such as Minster Lovell. There are no defined settlement boundaries or limits. The Local Plan clearly envisages windfall sites coming forward within and adjoining villages (Policy H2 and as noted above in relation to the Witney sub-area). Policy OS2 goes on to set out a number of general principles for development. These include the need for it to "be of a proportionate and appropriate scale to its context having regard to the potential cumulative impact of development in the locality" and to "form a logical complement to the existing scale and pattern of development and/or the character of the area."
43. Therefore, it is necessary to consider whether the appeal proposal would constitute limited development, but this is a matter of judgement based on the specific circumstances of the case and a range of factors.
44. In terms of the number of dwellings proposed it is debateable whether this should be assessed on its own in the context of the size of Minster Lovell as it now is with the Bovis Homes development completed, or cumulatively with that scheme in the context of the size of the village as it was at the time the Local Plan was adopted. I note the view of the Planning Officer in their report to the Area Sub-Committee and the position taken by Mr Wood on behalf of the Council at the Inquiry. However, even if it is assessed individually in the context of the village as it now is, the appeal proposal would result in a significant increase in the number of homes. The 134 proposed would represent an increase of some 19% on the 706 estimated to currently exist in the village (including the Bovis Homes scheme).
45. The appeal site is some 8.5ha. Its development would see a relatively significant expansion of the built form of the village, into surrounding farmland. It would be a sizeable area of new built development relative to the existing physical scale of the village.
46. I deal with issues relating to delivery of housing below. However, it is useful to note that the Local Plan anticipated a total of some 276 homes on windfall sites



in the whole of the Witney sub-area between 2017 and 2031. This again puts the development of a single site for 134 homes into context.

47. Taking this all into account I consider that the appeal proposal would not constitute limited development. I note that in the Ducklington appeal<sup>5</sup> the Inspector concluded that the development of 120 dwellings in a village of 654 households would not be limited in scale.
48. As set out above, there would be some adverse effect on the character and appearance of the area. However, this would be limited to localised landscape harm. Taking account of the current form of the village including the Bovis Homes development, the proposed development would be of a proportionate and appropriate scale to its context and would form a logical complement to the existing scale and pattern of development and the character of the area. It would not result in coalescence and it would retain the distinct identity of Minster Lovell as a village, clearly separated from other settlements.
49. Therefore, whilst it would not be limited development, it would respect the village character and local distinctiveness. The additional housing and population would contribute positively to the vitality of the community.
50. As noted above, the Local Plan recognises the need for windfall sites to come forward. Policy H2 allows for housing development on undeveloped land adjoining the built up area of main service centres, rural service centres and villages. This is subject to there being convincing evidence that it is necessary to meet identified housing needs and proposals also need to be in accordance with the distribution of housing in Policy H1 and other policies, in particular the general principles in Policy OS2.
51. I have concluded above that the Council cannot demonstrate a five year supply of housing land. In the Local Plan period so far (up to 2022/23) there has been a modest overall shortfall in delivery of 64 homes compared with requirements. Under delivery in the first six years has almost been offset by better performance since 2017 although there was a dip again in 2022/23. However, this is in the context of the phased approach to the annual housing requirement with a lower requirement at the start of the period. Performance against the housing trajectory in the Local Plan has been poor with under delivery in every year to date apart from 2017/18. Cumulatively, there is a shortfall in delivery of 1,316 homes against that anticipated in the trajectory.
52. Progress on strategic allocations has not been as expected and the Council accepts that they will not deliver the number of homes in the plan period originally anticipated. In fact the Council accepts that there will be a significant shortfall in delivery against the District wide requirement overall. This is also the case with the Witney sub-area. It is common ground that there is an acute need for affordable housing in West Oxfordshire and a need for affordable housing provision in Minster Lovell.
53. There are clearly identified needs for market and affordable housing in the District and within the Witney sub-area which are not being met. Given its status as a village, the Local Plan recognises that Minster Lovell is in principle an appropriate location for additional housing and it can provide opportunities to meet housing needs. This is in addition to the site allocations in the Local

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<sup>5</sup> APP/D3125/W/22/3297487 – paragraph 40

Plan. The appeal proposal would contribute up to 134 homes to the supply of housing in the Witney sub-area and the wider District. It would boost the five year supply and provide some 54 affordable homes and 7 custom/self-build plots. There is convincing evidence therefore that the appeal proposal is necessary to meet identified housing needs. It accords with Policy H2.

54. Minster Lovell is recognised as a sustainable settlement in the Local Plan. It has a number of local services and facilities, including a primary school, convenience store, post office, village hall and public houses. It is relatively close to Witney, which is the largest town in the District and has a wide range of higher order services and facilities. Minster Lovell is reasonably well served by public transport, including regular bus services to and from Witney, Carterton and Burford. There is a secondary school in Burford. Typical bus journey times to the centre of Witney are approximately 12 minutes. The Downs Road Employment Area is situated between Minster Lovell and the main built up area of Witney and is only some 2 or 3 minutes away by bus.
55. The homes proposed on the appeal site would be within a reasonable walking and cycling distance of the key services in the village. The proposed development would link into existing pedestrian routes which are well lit and maintained. The appeal proposal would include the provision of a new section of footway along the southern side of Burford Road. The new homes would be well located to bus routes, particular along Burford Road itself. New bus stops would be provided on either side of Burford Road, close to the site entrance. The appeal proposal accords with Policies T1 and T3.
56. The appeal proposal would not constitute limited development and is therefore in conflict with that particular aspect of Policy OS2. However, it accords with Policies H2, T1 and T3 and given the particular circumstances that apply, I consider that overall, the scale and location of the proposed development is appropriate in principle in terms of the policy approach to housing development in Minster Lovell and accessibility to services and facilities.

#### *Flood risk and drainage*

57. The appeal site is in Flood Zone 1. Flood risk and drainage issues did not form part of the Council's reasons for refusal. Subject to conditions, neither Oxfordshire County Council (as Lead Local Flood Authority) nor Thames Water (as Local Water Authority) object to the appeal proposal in terms of surface water or foul drainage issues. There is, however, considerable concern from local residents and other interested parties.
58. Given the outline nature of the appeal proposal, the details of drainage arrangements will be finalised at reserved matters stage. However, the appellant has undertaken significant work on this issue.
59. The intended strategy for surface water is to utilise drainage runs and natural land fall so that it gravitates towards the lower ground at the east/south east of the appeal site. It is intended to construct an infiltration basin in this location. I saw similar arrangements in place on the Bovis Homes development. The evidence before me on this matter confirms that subject to appropriate conditions, this will be an effective mechanism to deal with surface water on the appeal site and that the appeal proposal will not increase flood risk or surface water drainage issues off-site including for nearby properties such as Repeater House.

60. At the pre-application and planning application stages, Thames Water identified the inability of the existing foul water network infrastructure to accommodate the needs of the proposed development. They suggested a condition to address this concern.
61. Thames Water have a statutory obligation to provide foul drainage connections and necessary capacity within the network to accommodate new development. They have confirmed that modelling work will be undertaken to design a solution and undertake necessary improvements to the local sewer network to accommodate foul flows from the proposed development. They estimate that from the grant of outline planning permission this will take 20 months. Given the estimated timescale for reserved matters approval and construction, it is likely that the works required will be completed before the first dwellings are occupied. The Appellant has already been liaising with Thames Water to progress modelling work and in principle it has been agreed to discharge foul flows from the proposed development into the existing sewage pumping station at the Bovis Homes development. Additional emergency storage is also planned to deal with issues of breakdown or maintenance.
62. Understandable concerns were raised over existing foul drainage issues in Minster Lovell and the ability of the Brize Norton sewage pumping station and the Witney sewage treatment works to deal with increased sewage generated by the proposed development. I saw for myself that the Brize Norton sewage pumping station was clearly experiencing capacity issues and at the time was relying on road tankers to function. Thames Water has recognised the need to increase capacity at the Witney sewage treatment works and is investing in its upgrading. As noted above, it is intended to utilise the existing sewage pumping station at the Bovis Homes development to accommodate foul flows from the proposed development.
63. Whilst I appreciate the concerns regarding existing capacity issues, I must consider the appeal proposal before me, the associated impacts on the sewage infrastructure network and the mitigation required. I am satisfied that the condition suggested will provide sufficient safeguards to ensure that necessary upgrades are completed to accommodate increases in foul water flows from the proposed homes.
64. The proposed development would not therefore have an adverse effect on flood risk and drainage.

*Local infrastructure requirements, affordable and self-build housing needs and biodiversity net gain*

65. The proposed development of up to 134 houses would place additional burdens on local infrastructure. The S106 agreement provides for financial contributions towards education, household waste and recycling facilities, public transport, travel plan monitoring, primary health care and sports and recreation facilities. It also provides for highway works and for open space within the site. These provisions are in accordance with Policies OS5, T1, T3, EH4 and EH5 of the Local Plan. Evidence submitted by the Council and Oxfordshire County Council provides justification for the contributions and the specific sums involved<sup>6</sup>.

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<sup>6</sup> Oxfordshire County Council Reg 12 Compliance Statement, ID11, ID17A, ID17B and ID25

66. The S106 agreement also provides for 40% of the homes on site to be affordable and 5% to be custom/self-build. These provisions are in accordance with Policies H3 and H5 of the Local Plan respectively.
67. I am satisfied that all of the above obligations are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. They would accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and NPPF paragraph 57. Therefore, I have taken them into account in reaching my decision.
68. The S106 agreement also includes a "village hall contribution" of £400,000 towards the provision of a new and/or refurbished and/or expanded village hall at the Parish of Minster Lovell. It is not clear what effect the proposed development would have on the existing village hall. No evidence was presented on the capacity of the hall, its usage or the increased demands that the new housing would place on it. It is also not clear what the financial contribution would be used for and how that would address additional demands from the new housing. The Council made reference to the desire to integrate new and existing communities in the village. Whilst this is a laudable aim, this does not provide a specific justification for a financial contribution to the village hall.
69. No clear basis for the figure of £400,000 has been given. I was not provided with any evidence of a specific project which had been costed, let alone any evidence as to the relationship of the sum involved to the proposed development. I understand that a contribution of £300,000 was made to "community facilities" in relation to the Bovis Homes development. The Council suggested that given index linking and the higher number of homes in this case, the figure of £400,000 was consistent with this. However, the basis for the figure of £300,000 itself is not clear.
70. I appreciate that the Parish Council requested the contribution of £400,000 and that the Appellant made it clear that they were content for it to be paid. However, this in itself is not sufficient to satisfy the requirements of the Community Infrastructure Levy Regulations and NPPF. It is notable that the Appellant's representative would not be drawn on whether the contribution was necessary to make the development acceptable in planning terms. Therefore in light of the above I am not satisfied that the obligation relating to the village hall contribution is necessary to make the development acceptable in planning terms, directly related to the development or fairly and reasonably related in scale and kind to the development. On this basis I have not taken this specific aspect of the S106 agreement into account in reaching my decision.
71. A condition has been suggested which would require the submission and approval of a Biodiversity Management and Monitoring Plan, including the delivery of on-site biodiversity net gain. This is an effective mechanism to address this issue in accordance with Policy EH3 of the Local Plan.
72. Subject to the S106 agreement and the condition referred to above, the proposed development would make adequate provision towards local infrastructure requirements, affordable and self-build housing needs and biodiversity net gain.

*Whether the policies which are most important for determining the application are out of date and if so, would any adverse impacts of the proposed development significantly and demonstrably outweigh the benefits*

73. I have concluded that the appeal proposal would not constitute limited development and that there would be some limited, localised harm to the landscape. There is conflict with Policies OS2, OS4 and EH2 in these respects. Whilst the proposed development would accord with a number of other policies referred to above, I find that on balance it conflicts with the development plan as a whole.
74. The Council cannot demonstrate a five year supply of housing land and I consider that in this case, the policies that are most important for determining the application are out of date. Paragraph 11 (d)i of the NPPF does not apply to the appeal proposal and therefore I have considered it in terms of Paragraph 11 (d)ii.
75. Taking account of my overall conclusions in relation to the principle of development and the effect on the character and appearance of the area, I consider that the harms identified due to the proposed development not being limited and the effect on the landscape are not substantial.
76. The appeal proposal would deliver a significant amount of much needed housing, making an important contribution to housing supply in the District and Witney sub-area. It would boost the supply in the short term and assist in meeting housing requirements for the Local Plan period. The housing would include 40% affordable housing and 5% custom/self-build. I attach substantial weight to these benefits.
77. The homes proposed would be built to high sustainability standards and the scheme would bring about biodiversity net gain. There would be some economic benefits during construction and once the homes are occupied. I attach moderate weight to these benefits.
78. The provision of open space and a play area on the site are a necessary and integral aspect of the development and I do not consider them as benefits as such. Likewise, the contributions to local infrastructure and services are necessary to make the development acceptable in planning terms and I do not consider them as benefits.
79. The adverse impacts of approving the proposed development would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. The presumption in favour of sustainable development applies therefore.

### **Other Matters**

80. Information from Oxfordshire County Council confirms that the primary school in Minster Lovell (St Kenelm's Church of England Primary School) is currently operating at near capacity and that by September 2024 it is forecast to be full. The lack of places at the school is an understandable concern for local residents. As set out above, the S106 agreement provides for financial contributions towards education, including primary school provision. The County Council confirmed that if it was not feasible to expand St Kenelm's, another school would be expanded with the intention of releasing capacity at St Kenelm's for local children.

81. Whilst the proposed development would increase vehicular traffic movements, there is no substantive evidence that this would cause undue congestion, parking issues or otherwise have an adverse effect on highway safety. The impact on traffic, parking and highway safety did not form part of the Council's reasons for refusal and the County Council did not object, subject to appropriate conditions and agreements.
82. I appreciate the concerns regarding existing water supply issues and reliability in Minster Lovell, including for the Bovis Homes development. However, I must consider the appeal proposal before me and the directly associated impacts and infrastructure requirements. I am satisfied that the condition suggested on this issue will provide sufficient safeguards to ensure that necessary upgrades to accommodate the additional demand from the development will be completed.
83. Reference was made to a restrictive covenant potentially affecting the appeal site and its development. I am not aware of the specific nature of such a covenant and in any case, this is a separate matter which is not directly before me as part of the appeal.

### **Conditions**

84. The Council and Appellant agreed conditions considered to be necessary in the event that planning permission was granted. These suggested conditions were set out in the overall statement of common ground and discussed at the Inquiry. I have amended the detailed wording in some cases to improve clarity and consistency. I have not imposed the suggested conditions on external lighting, a construction traffic management plan and hours of work as these are detailed matters more appropriately dealt with at reserved matters stage. I have not imposed the suggested condition on electric vehicle charging points as this is now a matter covered by Building Regulations.
85. Conditions 1-3 are necessary to clarify the requirements in respect of reserved matters and commencement. The expedited timescale is necessary to ensure that the development comes forward and contributes to housing supply as soon as possible. Condition 4 listing the approved plans is necessary for certainty.
86. Conditions 5 and 6 are necessary to ensure appropriate and effective arrangements for surface water drainage. Conditions 7 and 8 are required to provide safeguards against potential contamination from the site. I have imposed Conditions 9-11 in order to protect and enhance biodiversity and to secure biodiversity net gain. Condition 12 is necessary to ensure that the development is carried out in a sustainable fashion and minimises the use of natural resources.
87. In order to ensure that suitable and effective foul water network infrastructure is in place to accommodate the needs of the proposed development, Condition 13 is required. Condition 14 is required to ensure that sufficient water capacity is available.
88. To ensure highway safety and accessibility, Condition 15 is necessary. Condition 16 is required to promote a sustainable approach to travel. Condition 17 is necessary to mitigate the impacts on the Pumping Station Local Wildlife Site.



## **Conclusion**

89. The proposed development conflicts with Policies OS2, OS4 and EH2. It conflicts with the development plan as a whole. However, the presumption in favour of sustainable development applies. In this particular case, material considerations indicate that planning permission should be granted, notwithstanding the conflict with the development plan.
90. I acknowledge the strength and depth of opposition to the proposed development from local residents and other interested parties. I appreciate the range of concerns expressed and have taken these into account in reaching my decision. However, for the above reasons, the appeal is allowed.

*Kevin Ward*

INSPECTOR

## **Appearances**

### **For the Appellant:**

Sarah Reid KC

Constanze Bell

### **They called the following witnesses:**

Matthew Cheeseman – RSK Land and Development Engineering Ltd

Andrew Taylor - RSK Land and Development Engineering Ltd

David Neale – DTA Transportation Ltd

Alan Divall – Walsingham Planning

### **The following participated at round table sessions**

Jeff Richards – Turley

Jamie Roberts – Tetlow King

Charles Mylchreest – The Environmental Dimensions Partnership Ltd

Gail Stoten – Pegasus Group

Ed Barrett – Catesby Estates

Matt Nixon - Shoosmiths

### **For the Local Planning Authority:**

George Mackenzie

### **He called:**

Chris Wood – Senior Planning Officer (Appeals) West Oxfordshire District Council

### **For Oxfordshire County Council:**

Judith Coates – Infrastructure Funding Team Leader - Oxfordshire County Council

**Interested parties who spoke at the Inquiry:**

On behalf of Minster Lovell Parish Council:

Jonathan Stowell

Andrew Feilden (at the round table session on planning obligations)

On behalf of The Society for the Protection of Minster Lovell:

Andrew Feilden

Paul Eaglestone

Richard Clayton

Victoria McCormick

On behalf of Windrush Against Sewage Pollution:

Vaughan Lewis

On behalf of Mr and Mrs McAleer

Philip Shaw

As an individual:

Patricia McAleer

**Documents submitted during the Inquiry:**

- ID 1. Appellant's opening statement
- ID 2. Council's opening statement
- ID 3. List of Appearances – Appellant
- ID 4. Landscape SoCG Additional Viewpoints Review
- ID 5. Photographs of document introduced by The Society for the Protection of Minster Lovell
- ID 6. Society for the Protection of Minster Lovell Statement – Andrew Feilden
- ID 7. Society for the Protection of Minster Lovell Statement – Paul Eaglestone
- ID 8. Society for the Protection of Minster Lovell Statement – Victoria McCormick
- ID 9. Society for the Protection of Minster Lovell Statement – Richard Clayton
- ID 10. LPA Proof of Evidence Errata
- ID 11. Correspondence from Oxfordshire County Council regarding Primary School contributions
- ID 12. Statement from Minster Lovell Parish Council
- ID 13. Statement from Knights Professional Services Limited on behalf of Mr and Mrs McAleer
- ID.14 Statement from Windrush Against Sewage Pollution
- ID 15. Position Statement agreed by the Council and Appellant, 20th February 2024
- ID 16. Agreed Site Visit Itinerary
- ID 17. A. Regulation 122(2) Statement – West Oxfordshire District Council
- ID 17. B. Regulation 122(2) Statement Appendices
- ID 18. Additional Site Visit Location from Windrush Against Sewage Pollution
- ID 19. Photographs of Village Hall and Brize Norton Road from Society for the Protection of Minster Lovell
- ID 20. Council's Closing Statement
- ID 21. Society for the Protection of Minster Lovell Closing Statement – Andrew Feilden
- ID 22. Society for the Protection of Minster Lovell Closing Statement – Richard Clayton
- ID 23. Closing Statement – Mrs McAleer
- ID 24. Appellant's Closing Statement
- ID 25. Email from Oxfordshire County Council re. Public Transport Contribution

### **Schedule of conditions**

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.
- 3) The development hereby permitted shall be begun either before the expiration of four 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.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Site Location Plan ref 16b
  - Framework Plan ref PO2 Rev F
  - 23178-02-2 Rev B – Proposed Footway
  - 23178-02-1 Rev B – Proposed Site Access
- 5) Construction shall not begin until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development hereby approved is occupied. The scheme shall include:
  - A compliance report to demonstrate how the scheme complies with the "Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire";
  - Full drainage calculations for all events up to and including the 1 in 100 year plus 40% climate change;
  - A Flood Exceedance Conveyance Plan;
  - Comprehensive infiltration testing across the site to BRE DG 365 (if applicable)
  - Detailed design drainage layout drawings of the SuDS proposals including cross-section details;
  - Detailed maintenance management plan in accordance with Section 32 of CIRIA C753 including maintenance schedules for each drainage element, and;
  - Details of how water quality will be managed during construction and post development in perpetuity;
  - Confirmation of any outfall details.
  - Consent for any connections into third party drainage systems
- 6) Prior to first occupation, a record of the installed SuDS and site wide drainage scheme shall be submitted to and approved in writing by the local planning authority for deposit with the Lead Local Flood Authority Asset Register. The details shall include:

- As built plans in both .pdf and .shp file format;
  - Photographs to document each key stage of the drainage system when installed on site;
  - Photographs to document the completed installation of the drainage structures on site;
  - The name and contact details of any appointed management company information.
- 7) No development shall take place until a site investigation of the nature and extent of 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 ("the Remediation Scheme") which shall include a timetable of works, 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.
- 9) No development shall take place (including demolition, ground works and vegetation clearance) until a Construction Environmental Management Plan - Biodiversity (CEMP-B) has been submitted to and approved in writing by the local planning authority. The CEMP-B shall include, but not necessarily be limited to, the following:
- Risk assessment of potentially damaging construction activities;
  - Identification of 'biodiversity protection zones', including root protection zones for retained hedgerows and trees;
  - Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
  - Details of a precautionary working method statement for the following species: great crested newts, reptiles, ground-nesting birds and dormice;
  - Details of a badger sett closure method statement, including precautionary working methods in the event commuting/foraging badgers enter the site;
  - The location and timing of sensitive works to avoid harm to biodiversity features (e.g. daylight working hours only starting one hour after sunrise and ceasing one hour before sunset);



- The times during construction when specialist ecologists need to be present on site to oversee works;
- Responsible persons and lines of communication;
- The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person(s);
- Use of protective fences, exclusion barriers and warning signs, including advanced installation and maintenance during the construction period; and
- Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 10) An Ecological Design Strategy (EDS) shall be submitted to, and approved in writing by the local planning authority before the commencement of the development hereby approved. The plan shall include, but not necessarily be limited to, the following information:

- Details of planting such as hedgerows, tree planting, aquatic and emergent vegetation, scrub planting and grassland planting;
- Type and source of materials to be used where appropriate, e.g. native species of local provenance;
- Timetable for implementation demonstrating that works are aligned with the proposed phasing of the development;
- Details of integrated bird and bat boxes, dormouse nest boxes, reptile hibernacula, hedgehog friendly fencing and bee bricks;
- Details of initial aftercare and long-term maintenance and persons responsible for the maintenance.

The EDS shall be implemented in accordance with the approved details and all features shall be retained as approved thereafter.

- 11) A 30-year Biodiversity Management and Monitoring Plan (BMMP) shall be submitted to and approved in writing by the local planning authority before the commencement of the development hereby approved. The Plan shall include, but not necessarily be limited to, the following information:

- Description and evaluation of features to be managed, including locations shown on a site map;
- Landscape and ecological trends and constraints on site that might influence management;
- Aims and objectives of management, including ensuring the delivery of onsite biodiversity net gain;
- Appropriate management options for achieving the aims and objectives;
- Prescriptions for all management actions;

- A work schedule matrix (i.e. an annual work plan) capable of being rolled forward over 5 or 10 year periods;
- Details of the body or organisation responsible for implementation of the plan;
- Ongoing monitoring of delivery of the habitat enhancement and creation details to achieve net gain as well as details of possible remedial measures that might need to be put in place;
- Timeframe for reviewing the plan;
- Details of how the aims and objectives of the BMMP will be communicated to the occupiers of the development; and
- The submission of a monitoring report to the local planning authority at regular intervals, e.g. every 5 years.

The BMMP shall also include details of the legal and funding mechanism(s) by which the long term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that the conservation aims and objectives of the BMMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented. The BMMP shall be implemented in full in accordance with the approved details.

- 12) The development hereby approved shall be constructed in accordance with the Sustainability Statement prepared by Turley (April 2023; Turley Reference CATZ3041) unless otherwise agreed in writing by the local planning authority.
- 13) The development shall not be occupied until confirmation has been provided that either:
  - All foul water network upgrades required to accommodate the additional flows from the development have been completed; or,
  - A development and infrastructure phasing plan has been agreed with the local planning authority in consultation with Thames Water 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.

- 14) The development shall not be occupied until confirmation has been provided that either:
  - All water network upgrades required to accommodate the additional demand from the development have been completed; or,
  - A development and infrastructure phasing plan has been agreed with the local planning authority in consultation with Thames Water 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.

- 15) Prior to first occupation of the development hereby approved, full details of the means of access between the land and the highway, the shared pedestrian & cycle path and bus stops, including, position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the local planning authority. The means of access shall be constructed and thereafter retained in accordance with the approved details.
- 16) Prior to the first occupation of the development hereby approved, a Travel Plan and Travel Information Pack, prepared in accordance with the Department of Transport's Best Practice Guidance Note "Using the Planning Process to Secure Travel Plans" and its subsequent amendments, shall be submitted to and approved in writing by the local planning authority. Thereafter, the approved Travel Plan shall be implemented and operated in accordance with the approved details.
- 17) Prior to the commencement of the development hereby approved, full details of the signposting for the Pumping Station Meadow Local Wildlife Site (LWS) shall be submitted to the local planning authority for approval. For clarity, a minimum of the following details shall be submitted:
  - Scaled drawings showing the height(s), width(s) and depth(s) of the signposting;
  - Material(s) sample(s);
  - The wording/imagery/content of the signposting;
  - Location of where the signposting shall be placed;
  - A timing schedule for when the signposting shall be installed; and
  - A 30 year maintenance schedule of the signposting.

The signposting shall be installed in accordance with the agreed details prior to the first occupation of the dwellings and shall be retained as such thereafter.

## **End of schedule of conditions**