



Appeal Decision

Hearing held on 20 May 2025

Site visits made on 19 & 20 May 2025

by Chris Preston BA (Hons) Town and Country Planning, Bachelor of Planning (BPI)

an Inspector appointed by the Secretary of State

Decision date: 15 OCTOBER 2025

Appeal Ref: APP/C3105/W/23/3324704

Hempton Road, PART OF OS PARCEL 8752 EAST OF COMBE COTTAGE AND SOUTH OF ST JOHNS WAY, Deddington, Oxfordshire, OX15 0QR

- 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 Rainier Developments Limited against the decision of Cherwell District Council.
 - The application Ref is 22/03802/OUT.
 - The development proposed is an outline planning application for the erection of up to 9 dwellings and creation of associated vehicular and pedestrian access onto Hempton Road, highway improvements, parking, landscaping, drainage features, open space, and associated infrastructure, with all matters to be reserved except new vehicular access into the site from Hempton Road.
 - This decision supersedes that issued on 08 December 2023. That decision on the appeal was quashed by order of the High Court
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A previous appeal decision relating to the same development was quashed by order of the High Court on 17 May 2024¹. Essentially, the decision was quashed on grounds of procedural unfairness on the basis that the Inspector had reached a different conclusion on a number of matters that were agreed between the main parties in the Statement of Common Ground (SoCG). The result was that the appellant did not know the case it had to meet and was not given a fair opportunity to comment.
3. The appellant and all parties have had the opportunity to comment on the issues raised in the previous appeal decision, including the areas where the Inspector departed from the SoCG, and on any changes in material circumstances since the decision was originally determined.
4. Those changes are not insubstantial, including (but not limited to) revisions to the National Planning Policy Framework (the Framework); the making of the Deddington Neighbourhood Plan (DNP); changes in the available supply of housing land and a change in the type of housing proposed in the scheme which is now self-build housing, secured through a revised unilateral undertaking.

¹ High Court reference AC-2024-BHM-000017

5. In respect of the latter, I am satisfied that the proposed change does not lead to a fundamental alteration in the nature of the proposal. It remains an outline application for the erection of up to nine dwellings with associated works. It is not uncommon for the type and tenure of dwellings to evolve during consideration of a scheme, and I am satisfied that no injustice will arise as a result of my decision to consider the appeal on that basis.
6. Whilst a quashed decision is capable of constituting a material consideration, I am mindful of the reasons why the decision was quashed and of the changes in material circumstances since that time. Accordingly, as required, I have determined the appeal afresh, from first principles, based on the material circumstances before me.

Statement of Common Ground and Main Issues

7. A revised SoCG was submitted shortly before the Hearing.
8. The parties agree that the proposal would result in some harm to the character and appearance of the area and the local landscape and that this should be afforded moderate weight, noting the conclusions of the previous Inspector². I find no reason to reach a different conclusion, and it is a matter that attracts moderate weight against the grant of permission.
9. The factual position relating to housing need and housing supply is agreed³. When assessed against Cherwell's housing needs only⁴ the available supply is 3.1 years with a shortfall of 2,001 homes set against the requirement in the Cherwell Local Plan Part 1 (2015) (the LP Pt 1.). It is also agreed that the LP Pt 1 is in excess of 5 years old and that the housing requirement needs to be updated. Whilst the appellant does not necessarily agree that all of the sites listed in the Council's supply calculation are deliverable, based on the definition in the Framework, it is agreed that the shortfall is serious and significant, on any count.
10. In terms of location, the parties dispute whether the site is poorly connected to existing development and whether future occupiers would have a realistic choice of means of travel, including a dispute as to whether the pedestrian/ cycleway running along the southern side of the road from Hempton to Deddington is adequate.
11. There remains a dispute over whether the proposal would result in an inefficient use of land and whether the density of development would be contrary to Policy BSC2 of the LP Pt 1 and the weight that should be afforded if that is the case.
12. In terms of the planning balance, the parties dispute the weight that should be given to any conflict with the development plan, including the saved policies of the Cherwell Local Plan (1996) (the 1996 LP), the LP Pt 1 and the DNP. Whilst there is agreement that the Council cannot demonstrate a five-year housing land supply there is dispute over whether paragraph 11 of the Framework is engaged, having regard to paragraph 14 of the Framework and the acknowledged conflict with the DNP.

² Paragraphs 23 to 27 of the previous appeal decision

³ Paras 6.13 to 6.21 and 6.24 to 6.30 respectively.

⁴ As agreed should be the benchmark, see para 6.30 of the SoCG.

13. Pulling all of that together, the Council and appellant agree that the proposal would bring both harm and benefits but there is disagreement in many areas on the weight that should be afforded to those matters⁵, with the exception of landscape harm where there is agreement that the harm would be moderate.
14. In view of the above, I shall structure my decision to consider the remaining matters where there is disagreement as to whether harm would arise before considering the weight that should be afforded to other considerations and the overall planning balance. Consequently, the main issues are:
 - i) Whether the location of the site is suitable for the development proposed having regard to accessibility to services and facilities, likely travel patterns and local and national planning policy with regard to such matters;
 - ii) The extent to which the development would accord with local and national planning policies with regard to the effective use of land and housing density; and
 - iii) The degree of weight that should be afforded to other material considerations and whether the balance of respective harms and benefits indicate that permission should be granted.

Reasons

Location and Accessibility

15. The appeal site is located within the countryside, to the south-east of Hempton, with St John's Way, a cul-de-sac of 70s style dwellings immediately to the north, and a number of more historic buildings to the west which form part of the historic core of the village.
16. Policy H18 of the 1996 LP states that development of new dwellings in the countryside beyond settlement boundaries will only be permitted where it is essential for agriculture or other existing undertakings. There is clearly conflict with that policy. However, it predates the Framework by some years and is more restrictive in its approach. In addition, in a situation where the Council cannot demonstrate a five-year supply of housing land it is clear that some development will be required in the countryside, beyond settlement limits if the housing needs of the area are to be met. Consequently, of itself, the conflict carries limited weight.
17. The strategy for distributing housing growth across the rural areas is set out in Policy Villages 1 and 2 of the LP Pt 1. It is essentially a hierarchical approach where housing will be directed to the settlements that are considered to be the most sustainable. Policy Villages 2 identifies that 750 homes will be delivered across Category A villages, in addition to windfalls, and that sites will be identified through the LP Pt 2 or through Neighbourhood Plans.
18. Policy Villages 1 classifies the various settlements. Hempton is identified as a satellite village within Category B and Deddington, situated approximately 2km to the west is a Service Village within Category A. The rationale for the categorisation refers to the concept of clustering. In other words, recognising that development in villages that have relatively few services of their own but are close

⁵ As summarised in Section 7 of the SoCG

to larger villages with services can help to minimise the length of car journeys, support community facilities and the like.

19. Policy Villages 1 identifies that satellite villages are not suitable for major development on account of their lack of services, but does allow for minor development, infilling and conversion within the built-up limits of settlements. The strategy in Policy Villages 1 and 2 is broadly in line with the aims of paragraph 83 of the Framework which states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.
20. Policies DEDD1 and DEDD2 of the DNP follow a similar approach. Policy DEDD1 states that proposals within defined settlement limits will be supported in principle but those outside defined settlement limits will only be supported where they accord with other policies of the development plan, including Policy Villages 1 and 2. Policy DEDD2 allocates land within Deddington for a scheme of 85-90 dwellings.
21. The Examiner's Report⁶ relating to the DNP explains how that number of dwellings was derived. In the formation of the DNP the LPA was not able to provide the Parish with a firm housing number to work to, as would normally be expected⁷. Consequently, the Parish commissioned a Housing Needs Assessment of its own and used that to derive a figure, equating to 126 dwellings over the period 2022-2040. When approvals were deducted the target figure was 76 dwellings⁸. The allocated site in Deddington for 85-90 dwellings is therefore above that figure.
22. The LPA confirmed that figure was broadly aligned to housing growth planned in the Cherwell Local Plan Review and was content with the figures used. The DNP Examiner consequently concluded that the figure put forward was adequate but that if the strategic housing framework were to change once the Local Plan Review was adopted then the Parish would need to conduct a review of the NP.
23. Although things may be subject to change, as things stand no other up to date figures are before me and I am satisfied that the DNP allocates housing sufficient to meet its identified housing requirement. I understand that representations were made during the evolution of the DNP to the effect that allocations should be made in Hempton but there would appear to have been a deliberate choice to focus the main housing allocation in Deddington and maintain settlement limits for the smaller settlements⁹. That aligns with the locational principles of the development plan as a whole.
24. Whilst the proposal has been limited to less than 10 dwellings, thereby constituting minor development, the expansion of the village into the countryside beyond existing settlement boundaries is not in conformity with LP Part 1 Policy Villages 1 or DEDD1 of the DNP which seek to limit new housing to minor development within the existing built up limits. By their nature, the satellite villages are small in scale and in seeking to confine additional minor housing within existing development limits there is an inbuilt limitation on the likely level of development anticipated.

⁶ CD 11.15

⁷ Paragraph 70 of the Framework

⁸ Paragraph 3.5 of the DNP

⁹ Paragraph 59 of the Examiner's Report

25. Extending beyond existing limits onto countryside beyond would open up a much greater potential for housing growth in satellite villages than envisaged in the development plan. Consequently, whilst the development plan allows for limited development in cluster settlements it does not follow that principle should extend to the location of the development proposed in this instance. The Council will clearly need to find additional housing land beyond existing settlement boundaries but whether that is appropriate in any given instance will need careful consideration.
26. In that context, I share the misgivings of the original Inspector in respect of the accessibility of the site and the availability of alternatives to the private car. There are no services at all in Hempton, beyond the church and church hall. Thus, those residing in the new development would need to travel to Deddington and beyond for a full range of services. Deddington contains a range of shops, services, schools and leisure amenities that could cater for most day to day needs of future residents. The larger settlements of Banbury and Bicester, containing a greater range of shops, further education and employment opportunities are situated some distance to the north and south-east.
27. The Transport Note submitted by the appellant refers to guidance from the Institution of Highways and Transportation (IHT) which identifies 2km as the maximum suggested walking distance for pedestrians without a mobility impairment. A footpath runs alongside Hempton Road between the two villages, with the edge of Deddington just under 2km but the central area, where shops and services are located, is slightly further away. It is at the upper end of the suggested distance for an able walker, but the distance alone is likely to be off putting for the elderly, those with young children or pushchairs or others with impaired mobility.
28. The route is hard surfaced and could readily function as a cycle route or for those with pushchairs or wheelchairs or mobility scooters as well as those on foot. The previous Inspector noted that it may not meet best practice in terms of its width such that someone may have to step off the tarmac to allow others to pass. However, rural roads and footpaths rarely do meet best practice and given the level of use such occurrences would be infrequent. Even then there is adequate verge to allow that to happen without people having to step onto the carriageway.
29. I walked along the full length of the footpath, and it did not feel unsafe at any point. Nonetheless, that was in good weather in the early evening with full daylight. The road is not lit for the most part and walking would be an unattractive prospect in the dark or in poor weather. The reality is that the footpath would not be used regularly by most people for essential day to day journeys for those reasons and on account of the distance involved.
30. No bus services run through Hempton, and the closest operational bus stops are those in Deddington, approximately 2km away. Given the observations on the unlit nature of the footpath and distance involved, it is unlikely that pedestrians or cyclists would be encouraged to travel to Deddington for onward travel by bus. Even then, the bus timetables are infrequent at best¹⁰. Train services are even further away.

¹⁰ Table 3.2 of the Transport Note Core Document 1.9

31. Overall, notwithstanding that Hempton is identified as a cluster village, it has no services of its own and travel options would be limited on account of the distance to Deddington and the nature of the route. The likelihood is that residents would be heavily reliant upon the private car. I recognise that the Highway Authority did not object to the proposal despite accepting that it would not be in a highly sustainable location. I am also aware that a previous appeal decision for a single dwelling was approved, with the Inspector concluding that the footpath to Deddington provided a sustainable transport option. Nonetheless, the scale of that scheme was notably different and neither of those matters alter my conclusions on the location, distance to services and the lack of realistic alternatives to the car.
32. I also recognise that paragraph 110 of the Framework acknowledges that travel choices will vary between urban and rural areas. However, even by local standards the site is poorly served by alternatives to the car and Hempton is not identified in the development plan as a village where development beyond settlement limits should be accepted.
33. The scheme would include electric vehicle charging points and the revised Unilateral Undertaking (UU), includes an obligation to the effect that the first purchaser of each plot would be “gifted” a Zero Emission Vehicle (ZEV). A further obligation seeks to prohibit the owners or respective members of their household from bringing a non ZEV vehicle onto the land unless at least one owner/ member of the household owns a ZEV vehicle. The fact that such a mechanism is included within the UU is perhaps a tacit acknowledgement that realistic alternatives are limited.
34. Moreover, I have misgivings as to whether the obligation is reasonable, having regard to Regulation 122(2) of the Community Infrastructure Levy Regulations (2010) (the CIL Regulations) which states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is 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. Paragraph 58 of the Framework states that obligations must only be sought where those criteria are met. It would also be difficult to monitor and enforce such an obligation.
35. There is no guarantee that the purchaser of each plot would actually utilise the vehicle, such matters being an issue of personal choice. Monitoring vehicles coming and going to the site on a daily basis to assess whether they complied with the obligation would require almost constant attention and it may not be readily obvious to someone observing which vehicles were ZEVs and which were not. Nor would it preclude other “Non ZEV” vehicles driven by friends, delivery drivers, refuse collection and the like from visiting the site.
36. Fundamentally, whether it is reasonable for the planning system to seek to dictate what type of car someone chooses to drive also seems questionable. If the gifted car broke down or was written off and a resident could not afford to purchase another ZEV for personal reasons, I can’t imagine it would be proportionate to require they be prosecuted for non-compliance with the obligation. For all of those reasons it seems to me to be an ill thought-out obligation that would not mitigate the harm arising from the unsuitable location of the site.

37. There may be some associated benefit in that residents of the site and maybe of the village could use the proposed EV charging points, which would be available to all, but the extent to which that would be taken up is not clear and any minor benefit that would arise is not sufficient to overcome the inherent concerns related to location of the site in my view.
38. For those reasons, the location of the site is contrary to the locational strategy of the development plan, as set out in saved Policy H18 of the 1996 LP, Policy Villages 1 and 2 of the LP Pt 1 and Policy DEDD1 of the DNP.

Effective Use of Land and Housing Density

39. Policy BSC2 of the LP Pt 1 states that housing development will be expected to make effective and efficient use of land, with new housing development on net developable areas of at least 30 dwellings per hectare unless there are justifiable planning reasons for lower density development. That policy is consistent with the aims of Chapter 11 of the Framework and paragraph 124 which states that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding the environment and ensuring safe and healthy living conditions. Moreover, paragraph 130(c) states that applications should be refused where they fail to make efficient use of land, taking into account the policies of the Framework.
40. The site extends to 1.22 hectares. The Council estimates that the 9 proposed dwellings equates to 8.5 dwellings per hectare. The appellant contends that the net developable area is significantly less than the entirety of the site on the basis that areas used for recreation, children's play, ecological enhancement and drainage should be excluded from the density calculation. Thus, the appellant's view is that the balance of the site, 0.5 hectares will yield a density of 17 dwellings per hectare.
41. I recognise that the Framework and policy BSC2 allow for flexibility to take account of local design characteristics. It is the case that St. John's Way has a similarly low density but that estate is very much of its time, when housing densities tended to be lower than is presently the case and is itself something of an anomaly when viewed against the village as a whole.
42. In addition, as noted by the Council, there is no planning policy requirement to provide an area of open space of the size proposed on the indicative plan, nor was there a requirement to offer biodiversity net gain of 20% at the time the application was submitted. Mr Richards, when questioned at the Hearing also accepted that one of the drivers for limiting the proposal to up to 9 dwellings was the limitation in Policy Villages 1 which seeks to limit new housing development in the built confines of Hempton to less than 10 units, largely on the grounds that the location is not suitable for major development.
43. In other words, in order to try and overcome issues relating to the lack of sustainable travel options in addition to the effect on the character and appearance of the area the number of dwellings has been kept to a very low density relative to the size of the site. Therefore, it is clear that the proposal would not make efficient use of land, even taking the appellant's position on net developable area.
44. At the pre-application stage 25 units were proposed which is more in line with the 30 dwellings per hectare envisaged by Policy BSC2 and an indication of the

capacity of the site, if it were not beset by numerous constraints, particularly those arising from its location. It follows that the proposal is contrary to the aims of Policy BSC2 of the LP Pt 1 and the overarching aims of Chapter 11 of the Framework.

Other Material Considerations

45. The Council's third reason for refusal conflates the issue of the efficient use of land and the loss of Best and Most Versatile (BMV) agricultural land. In effect the two are separate matters. The Soils and Agricultural Quality Report¹¹ identifies the land is Grade 2, such that the proposal would result in the loss of BMV land. The appellant accepts that this weighs against the proposal, having regard to paragraph 187(b) of the Framework, but contends that the harm should be given very limited weight on account of the scale of the site.
46. Footnote 65 of the Framework states that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of higher quality. No definition is given to the word "significant" in that context but it is clear that significant amounts of land will be needed if the Council is to meet its housing shortfall, a proportion of which is likely to be on agricultural land given the lack of available sites within settlement limits. No assessment has been undertaken of whether alternatives on lesser quality land have been considered. The matter therefore weighs against the proposal.
47. However, 1.2 hectares is a small amount of land in the context of the area as a whole and it is a matter that attracts limited weight in my view, with slightly more emphasis than the very limited weight suggested by the appellant, given the clear thrust of the Framework.
48. In light of the significant housing delivery shortfall and the fact that the Council can only demonstrate a 3.1 year supply of deliverable sites, the provision of up to 9 dwellings is a matter that carries weight in favour of the development. The number of units is modest but when set against the extent of the shortfall, the need for additional homes and the aims of the Framework to significantly boost housing supply it remains a matter that attracts significant weight.
49. The Council acknowledges that but contends that the weight should be tempered on account of the unsustainable location of the site. That is not necessarily a case of double counting and the benefit of a house in a remote location may not necessarily be the same as one in a more sustainable position. That could be for numerous reasons, not simply likely travel choices but to maintain the character of an area and to ensure that future residents can readily access services in respect of providing a suitable quality of life. Nonetheless, given the extent of the housing shortfall, it remains a matter of significant weight in my view.
50. The Self-Build and Custom Housebuilding Act 2015, as amended by the Housing and Planning Act 2016 and the Levelling Up and Regeneration Act (LURA) 2023, places a statutory duty on local authorities to maintain a register of individuals and associations seeking serviced plots and to have regard to that register when exercising planning functions. The demand for such plots is measured by the number of entries added to the register over each base period.

¹¹ Core Document 5.6

51. Allied to the need to keep a register, The Self-Build and Custom Housebuilding (Time for Compliance) Regulations 2016 require that suitable planning permissions to meet demand must be granted within three years of the end of each respective base period. Demand not met in one period will carry over to the next. The appellant has provided a cumulative analysis running from the first base period onwards¹². Based on the figures provided to the appellant by the Council that shows a cumulative shortfall of 356 dwellings up to base period 6. If registered demand for base period 7 is added the requirement is that permission for 368 plots would be required by October 2025.
52. The appellant contends that the figure should actually be much larger, primarily on the basis that the figure for base period 1 should take account of registered demand from an earlier date than that provided by the Council. The difference is substantial with Council figures indicating 519 registrants for base period 1 with the appellant contending that figure should be 2,757, in line with previous figures used by the Council in its 2022 Housing and Economic Needs Assessment.
53. The Council did not respond to the appellant's Self/ Custom- Build Note so I have nothing to contradict the appellant's contention. However, whichever figure is used, the evidence is that the Council is failing in its statutory duty by a significant or very significant margin. I note comments from an interested party that the Council may not be alone in that failure and may even be performing better than some other authorities. Nonetheless, that does not dilute the fact that the statutory duty has not been met persistently over a number of years and that there is a significant unmet demand for serviced plots to meet the need identified on the register. In that context, the provision of self/custom build housing is a material consideration in favour of the development to which I attach significant weight.
54. The form of proposed affordable housing has changed since the appeal was originally determined, with the current UU proposing two discounted market plots, which would make up part of the self-build scheme. The discounted price is defined as no more than 80% of the open market value. The two plots would be marketed in line with the defined marketing strategy for a 12 month period, the first 6 months aimed at those with a local connection and after 6 months without the need for a local connection. The discounted market plots would be available to a "qualifying person", defined as a person(s) who has and an annual household income of no more than £80,000 and who will occupy the discount market plot as their sole or main residence. No time limit is placed on that period of occupation.
55. The Framework does acknowledge that custom/ self-build housing could provide affordable housing¹³ and there is clearly a need for such housing, as identified above. There is also a defined local need for affordable housing, as identified in the Deddington Housing Needs Assessment undertaken in July 2021 on behalf of the Parish Council (the HNA).
56. Average household incomes for Deddington were £59,500 at that time, well below the £80,000 limit for eligibility for the discounted market plots in this instance. The HNA did identify a "relatively large" group of households, typically earning between £40,000 to £80,000 who may be able to afford to rent but could not afford home ownership. The HNA identified that such households may benefit from affordable housing products such as First Homes or Shared Ownership. However, there is

¹² Self/ Custom Build Note, dated 28 May 2025

¹³ Footnote 28 to paragraph 63

no analysis within the HNA of whether Self/ Custom Build would form a suitable mechanism for the delivery of affordable housing within the Parish.

57. For example, no indication has been provided as to what the open market value of a plot on the appeal site would be or how that relates to the income levels of households in need within the Parish, taking account of the need to purchase the plot and construct the dwelling. In other words, it is difficult to ascertain whether the suggested tenure would be likely to provide a suitable solution for the need identified in the HNA. There appears to have been no direct consultation with the Council's Housing Officer on the form of affordable housing which has altered since the application was submitted to the Council.
58. Consequently, whilst the provision of affordable housing may be considered a benefit, I have some reservations as to whether the form of housing would be suitable to meet identified local needs.
59. In any event, the Framework is clear that affordable housing should not be sought for residential developments that are not major developments, except in designated rural areas, which is not the case in this instance¹⁴. In the absence of any policy basis for the provision of affordable housing it is difficult to conclude that the provision is necessary to make the development acceptable in planning terms. In other words, the provision does not stem out of a need to mitigate any harm arising from the proposal in respect of the provision of housing. One could also question whether the provision is reasonably related in scale and kind on that basis. Whilst I accept that the provision may bring benefits, I have reservations as to whether weight should be afforded to a matter that should not constitute a reason for granting permission in line with the CIL Regulations/ would not comply with paragraph 58 of the Framework.
60. Similar concerns arise in respect of a number of obligations put forward by the appellant. The offer to contribute £10,000 towards improvements to the Old School Room/ St John's Church seems tenuously linked to the proposal. It is not clear how the erection of 9 dwellings would impact upon use of the church or school room in terms of the extent of use. Whilst I understand that the Parish Council may have requested a contribution towards new heaters, lights, carpets and a kitchen upgrade it is not clear how those elements are linked to the proposal or how the quantum of the contribution has been calculated.
61. Accordingly, whilst the development may lead to a very minor increase in usage of the facility, it has not been demonstrated that the contribution is reasonably related in scale and kind. It would not be appropriate to attach any weight to the matter as a reason for granting permission.
62. The proposed locally equipped play area is also not a facility required to be provided for a development of this scale, having regard to local planning policy and I note that extensive facilities for play, recreation and sport are available in nearby Deddington. Having regard to that and the policy position I cannot conclude that the play area would be necessary to make the development acceptable in planning terms.
63. I have no doubt that the facility would be valuable for those living in the development and potentially those living in Hempton who would be able to access

¹⁴ Under s157 of the Housing Act 1985

it. The obligation to provide the facility would not be unlawful and the appellant is perfectly entitled to provide a play area as part of the scheme. However, given that its provision would not comply with Reg 122(2)(a) of the CIL regs or paragraph 58(a) of the Framework it is not a matter that I can take account of as a reason for the grant of permission.

64. The obligation includes a requirement to achieve 20% Biodiversity Net Gain (BNG). The requirement to provide 10% BNG secured by planning condition was brought into force on 12 February 2024¹⁵ but that requirement does not apply in relation to an application made before that date, as was the case in this instance. There is no policy in the development plan that seeks to secure BNG of any specified percentage. It is therefore difficult to see how the provision is necessary to make the development acceptable in planning terms.
65. The appellant may wish to provide such a benefit for benevolent reasons but I am not satisfied that it is a matter that should be taken into account as a reason for granting permission for the reasons set out above. In any event, the aim of introducing the requirement for BNG on a nationwide basis is to make a concerted effort in arresting the decline in biodiversity. The actual increase in biodiversity on any given site will depend on the scale of development and the baseline position. In other words a 20% increase on a site which is presently not very diverse will be less than a site of the same scale that is presently full of diversity.
66. In this case, the existing site is made up of hedgerows (H1 & H2) which are said to be in moderate condition along with cereal crops and modified grassland which are of low value in terms of biodiversity. Based on the information provided, including the updated BNG Metric Calculations and Ecology Report provided in response to the previous Inspector's comments, I have no reason to doubt that a BNG of 20% could be achieved via the measures set out. That would come in the form of improvements to the hedgerows, linear planting and habitat creation within the area of the drainage swales and surrounding the LEAP. The impact on a site level would represent a modest increase in habitat. In the sense of the wider environmental benefit of the area as a whole it would result in a modest increase in biodiversity. Thus, even if I could take that into account as a reason for granting permission, the weight would be moderate as a result.
67. It is common ground between the Council and appellant that the site access arrangement and associated traffic calming measures would enable safe access and egress from the site without causing harm to highway safety. In the lead up to the Hearing a Tree Preservation Order (TPO) was placed on a number of trees which are interspersed amongst the hedgerow adjacent to Hempton Road. Having inspected the site after the event I am satisfied that none of those trees need be removed to enable suitable visibility splays to be achieved, once a short strip of hedgerow and associated undergrowth is removed.
68. The proposed scheme includes suitable crossing points for pedestrians, and I find no reason to depart from the agreed position between the main parties in respect of highway safety issues. Forward visibility is limited through the "pinch" as one enters Hempton but that is an existing situation and the level of traffic associated with the proposal would not lead to any notable worsening of traffic conditions at that point on the highway. Since the application was submitted a 20mph limit has

¹⁵ S98 of The Environment Act 2021 & s.90A & Schedule 7A of the Town and Country Planning Act 1990

been implemented along Hempton Road and any additional arising from the highway works associated with the scheme would be modest in my view. In other words, whilst no harm would arise in respect of highway safety it is a matter of neutral weight in the overall balance.

69. As noted above, the Council agree with the appellant's position that significant weight should be afforded to economic benefits associated with the proposal, albeit that it considers that should be tempered by the limited period of the jobs created during the construction phase. That is not an unreasonable position in my view. In effect, what the Council is saying is that there would be a spike in economic activity during the construction phase and then a lesser ongoing benefit, post-construction through additional spending from residents of the development in the local economy.
70. Overall, applying a sense check, the economic benefits weigh in favour of the scheme and I attach a moderate amount of weight, commensurate with the scale of the proposal. Whilst the wording of the SoCG is somewhat unclear it seems to me that is in line with the Council's stated position and not a departure from an agreed matter.

Planning Balance

71. For the reasons given, the location of the site is contrary to the locational strategy of the development plan, as set out in saved Policy H18 of the 1996 LP, Policy Villages 1 and 2 of the LP Pt 1 and Policy DEDD1 of the NP. The proposal would also cause moderate harm to the character and appearance of the area, contrary to policies ESD13 and ESD15 of the LP Pt1 and would make inefficient use of land, contrary to policy BSC2 of the LP Pt1. Overall, it is clear that the proposal is in conflict with the Development Plan for the area.
72. I am required to determine the appeal in line with the provisions of the Development Plan, unless material considerations indicate otherwise. In that respect, the Council cannot demonstrate a five-year supply of deliverable housing land and paragraph 11 of the Framework is clearly engaged. Under paragraph 11(d)(ii) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
73. Whilst the policies of the development plan that are most relevant for determining the application may be deemed to be out-of-date courtesy of footnote 8 of paragraph 11(d) they remain part of the development plan and the weight to be attached to any conflict remains a matter for the decision maker. As set out above, little weight can be given to the conflict with saved Policy H18 of the Local Plan because it is clear that sites within the countryside will need to be found in order to meet the housing needs of the area.
74. Nonetheless, the overall housing strategy set out within Policy Villages 1 and 2 remains consistent with section 9 of the Framework in respect of the aims of locating development to the most sustainable locations within the district. For the

reasons given, the site performs poorly in that respect and Hempton is unsuitable for expansion beyond its settlement limits on account of the absence of any services or facilities. The inherent problems associated with the location would not be mitigated by the suggested measures put forward with regard to ZEVs and EV charging points. Accordingly, the location of the site weighs heavily against the proposal having regard to the conflict with the development plan and policies of the Framework and I attach significant weight to that matter.

75. Moreover, embedded in paragraph 11(d) is a requirement to have particular regard to making effective use of land, in line with section 11 of the Framework. The proposal would fail to do so. That should not be viewed in isolation and the fact that such a low number of units is proposed in relation to the amount of land available is largely due to the locational constraints identified above. The inefficient use of land is a significant matter in itself but also adds to my concerns regarding whether the location is suitable for the development proposed.
76. The proposal would also result in the loss of a small amount of BMV which weighs against the proposal, having regard to paragraph 187(b) of the Framework, albeit to a limited degree given the small amount of land involved.
77. On the positive side of the balance the proposal would provide 9 dwellings in the context of a district with a substantial housing shortfall and the clear aims of the Framework to significantly boost the supply of housing. Those dwellings would also be self/ custom build and assist with meeting the large and persistent unmet demand for such homes. Both of those matters attract significant weight in favour of the proposal, in addition to the moderate economic benefits.
78. The two units of affordable housing that have been put forward are not required to make a development of this size acceptable in planning terms. Thus, whilst that would comprise a benefit, it is not one that I can take into account as a reason for granting planning permission. The same can be said of other benefits have been put forward, including the contribution to community facilities, the provision of a play area and a BNG of 20%. This is because such benefits may only constitute a reason for granting planning permission if they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind.
79. Whilst the proposal would boost the supply of housing and self-build housing, those benefits are clearly outweighed by the harm that would arise to the character and appearance of the area, the loss of BMV but particularly having regard to the inefficient use of land and policies for directing development to the most sustainable locations. Overall, having regard to the policies of the Framework taken as a whole, the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits,
80. I am of that view, even without accounting for paragraph 14 of the Framework. That paragraph sets out how paragraph 11(d) should be applied in respect of development involving Neighbourhood Plans but does not disengage the presumption in favour of sustainable development, as suggested by the Council.
81. The DNP became part of the development plan less than five years ago and contains policies to meet the housing requirement for the Parish. Paragraph 14 is clearly addressing situations where paragraph 11(d) is in play, including where an LPA cannot demonstrate a five-year supply of housing. In other words, even where

that situation applies, Government policy states that the balance is likely to point against a proposal.

82. That is not to say that will always be the case, as evidenced by other appeal decisions provided. However, it is a strong indication that the Government attaches significant weight to the policies of recently produced NPs and the community effort that goes into producing them. Thus, it is not simply a case of conducting the balance and seeing where one gets to – the content of paragraph 14 is a significant consideration in itself. In this case it adds to my conclusion that the adverse effects significantly and demonstrably outweigh the benefits of the scheme.
83. Moreover, it is worth stating that I would have reached that conclusion even if I could take account of the package of benefits put forward in the UU. The combined effect of those measures and other material considerations would not be sufficient to overcome the fundamental harm arising from the location of the site, the inefficient use of land and the harm to the character and appearance of the area.

Conclusion

84. Having regard to all of the above, the proposal is clearly contrary to the development plan and the other material considerations put forward are not sufficient to outweigh that conflict. Accordingly, I shall dismiss the appeal.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Killian Garvey	Counsel, Kings Chambers
Mr Jeff Richards	Turley
Mr Will Gardner	EDP
Ms Annie Gingell	Turley
Ms Kylie Wesson	Shakespeare Martineau

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nathaniel Stock	DM Team Leader
Ms Kathryn Daniels	Principal Planning Officer

INTERESTED PARTIES:

Mr Nick Gillham
Ms Cara Hedges
Ms Daniella Kozersky
Mr John Dovey
Cllr David Rogers, Deddington Parish Council
Mrs Katrina Kozersky-Gillham

DOCUMENTS SUBMITTED AT THE EVENT:

- 1.Updated draft schedule of conditions
- 2.Appeal decisions APP/C3105/W/24/3354739, APP/C3105/W/24/3350881, APP/Z3825/W/24/3350094
- 3.Copy of Tree Preservation Order (No.14 2025) and associated plans
- 4.Updated Core Document List

DOCUMENTS SUBMITTED AFTER THE EVENT:

- 5.Self/ Custom-Build Note, dated 28 May 2025, Turley
- 6.Signed/ executed UU, together with a list of post-Hearing amendments
- 7.Comments on Self/ Custom-Build Note from Ms C Hedges